

IN THE COURT OF COMMON PLEAS
CARROLL COUNTY, OHIO

STATE OF OHIO, ex rel.
BETTY MONTGOMERY,
ATTORNEY GENERAL OF OHIO

Plaintiff,

v.

BOARD OF COUNTY
COMMISSIONERS OF
CARROLL COUNTY, OHIO

Defendant.

CASE NO. 21345

JUDGE Martin

COMMON PLEAS JOURNAL PAGE

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CARROLL COMMON PLEAS
BRYAN GRUBBS
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CONSENT ORDER AND PRELIMINARY INJUNCTION

Plaintiff State of Ohio, by and through Ohio Attorney General Betty D. Montgomery, at the written request of the Director of Environmental Protection, has filed a complaint against Defendant Board of County Commissioners of Carroll County, alleging violations of R.C. Chapter 3734 and the regulations promulgated thereunder. The parties, through their attorneys, consent to the entry of this Consent Order and Preliminary Injunction. Defendant enters into this Consent Order and Preliminary Injunction without admission of fact or liability, and nothing herein may be later offered in evidence as an admission of fact or liability; provided, however, that the State may offer in evidence this Consent Order and Preliminary Injunction, in addition to any other admissible evidence, for the purpose of enforcing this Consent Order and Preliminary Injunction.

Therefore, without taking of any evidence, during the pendency of this action and until further order of this Court, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

A. DEFINITIONS

1. As used in this Consent Order and Preliminary Injunction, the following terms are defined as follows:

a. "Facility" refers to the Carroll County Landfill located at Chase Road S.E., Center Township, Carroll County, Ohio.

b. "Kepcor Material" means the material required to be removed from Structural Stoneware, Inc., Minerva, Ohio, through consent agreement with the State of Ohio, filed in Carroll County Common Pleas Court, Case No. 18117, on February 14, 1992.

c. "Ohio EPA" means the Ohio Environmental Protection Agency.

d. "Defendant" means the Board of County Commissioners of Carroll County.

e. "Plaintiff" means the State of Ohio.

B. JURISDICTION

2. The Court has jurisdiction over the parties and the subject matter of this action pursuant to R.C. Chapter 3734. Venue is proper in this Court.

C. PARTIES

3. The provisions of this Consent Order and Preliminary Injunction shall apply to and be binding upon the parties to this action and other persons specified in Ohio Civil Rule 65(D). Defendant shall provide a copy of this Consent Order and

Preliminary Injunction to each contractor and subcontractor Defendant employs to perform work itemized herein.

D. RESERVATION OF RIGHTS

4. This Consent Order and Preliminary Injunction is preliminary in nature, and the entry of this Consent Order and Preliminary Injunction is without prejudice to Plaintiff's right to seek further relief from this Court, including, but not limited to, further preliminary and/or permanent injunctive relief and civil penalties. Plaintiff specifically reserves the right to seek such additional relief. In addition, the entry of this Consent Order and Preliminary Injunction is without prejudice to any defenses that Defendant may raise.

E. INJUNCTION

5. Defendant is enjoined and ordered to perform the following work at the Carroll County Landfill:

- a. Within 180 days of the entry of this Consent Order and Preliminary Injunction, contain all leachate flowing off-site by properly collecting the leachate in surface water control structures identified in an August, 1994 "Sketch Showing The Proposed Grading For The Carroll County Landfill" prepared by Randy Hull, R.S. 7041, which sketch is attached hereto as Exhibit A.
- b. Within 180 days of entry of this Consent Order and Preliminary Injunction, grade each area where ponding is occurring at the Facility in such a manner as to divert surface water off the landfill and prevent surface water from entering the waste. This grading may be accomplished

by using a combination of on-site soil materials and/or off-site approved materials, provided, however, that Defendant may use the Kepcor material for this purpose only so long as Defendant (1) timely complies with all other requirements in Section E of this Consent Order and Preliminary Injunction, (2) submits to Ohio EPA a complete and approvable request for the authorization under R.C. § 3734.02(G) for disposal of the Kepcor material at the Facility, and (3) the Director grants such authorization. In the event the Director issues authorization for the use Kepcor material at the Facility pursuant to R.C. § 3734.02(G), Defendant is ordered and enjoined to comply with all terms and conditions of such authorization. In the event that Defendant is not permitted to use Kepcor material at the Facility, Defendant is immediately ordered and enjoined to comply with the requirements of this paragraph using on-site and/or off-site approved materials other than the Kepcor material.

- c. Within 180 days of entry of this Consent Order and Preliminary Injunction, install surface water control structures in accordance with OAC Rule 3745-27-19(J).
- d. Within 360 days of entry of this Consent Order and Preliminary Injunction, apply a soil cover, or verify that a soil cover currently exists, of at least six (6) to twelve (12) inches in thickness over all areas of waste placement, including, but not limited to, areas where Kepcor material has been placed. Compliance with this requirement may be achieved, in part,

by the utilization of Biogrow, Inc. to apply the soil cover at the Facility.

Silt fences and hay bales shall be installed as necessary for further surface water and erosion control subsequent to application of the 6 to 12-inch soil cover.

e. Within 30 days of entry of this Consent Order and Preliminary Injunction, bait and treat the Facility as necessary for rodents, insects and other vectors in accordance with OAC Rule 3745-27-11(H)(4).

f. Within 30 days of entry of this Consent Order and Preliminary Injunction, sample and analyze the leachate at the Facility, in accordance with the protocols and methods set forth in the United States Environmental Protection Agency manual entitled "Test Methods for Evaluating Solid Waste Physical/Chemical Methods (SW-846)", for the following

parameters:

- | | |
|------------------------------|--------------------------------|
| 1. pH | 15. Nickel |
| 2. Total Dissolved Solids | 16. Barium |
| 3. Chemical Oxygen Demand | 17. Cadmium |
| 4. Total Alkalinity | 18. Chromium |
| 5. Ammonia | 19. Lead |
| 6. Nitrate-Nitrite | 20. Mercury |
| 7. Chloride | 21. Selenium |
| 8. Sodium | 22. Silver |
| 9. Sulfate | 23. Iron |
| 10. Magnesium | 24. Manganese |
| 11. Phenolics | 25. Arsenic |
| 12. Biological Oxygen Demand | 26. Volatile Organic Compounds |
| 13. Total Kjeldahl Nitrogen | 27. PCB |
| 14. Copper | |

Upon receipt of the results of the analysis of the leachate at the Facility for the above-described parameters, Defendant is enjoined and ordered to

- immediately submit such analytical results to Ohio EPA, Division of Solid and Infectious Waste Management.
- g. Within 90 days of the entry of this Consent Order and Preliminary Injunction, submit to Ohio EPA, Division of Solid and Infectious Waste Management, verification that a plat of the Facility has been filed with the Carroll County Board of Health and a notation has been recorded on the deed for the Facility in accordance with OAC Rule 3745-27-11(H)(5)(a) and (b).
- h. Funds for pre-closure stabilization and closure activities at the Facility are currently maintained in escrow account number FS55 at the National City Bank. Immediately upon entry of this Consent Order and Preliminary Injunction, Defendant is ordered and enjoined to amend the escrow agreement that governs the above-described escrow account to provide that National City Bank shall not transfer, withdraw or disburse any funds maintained in the escrow account without prior written approval from Ohio EPA's Division of Solid and Infectious Waste Management for such transfer, withdrawal or disbursement. Defendant is enjoined and ordered not to transfer, withdraw or disburse any funds maintained in the escrow account without first submitting a written request and obtaining prior written approval from Ohio EPA. Plaintiff agrees to act upon any such written request within 30 days of receipt thereof. Defendant is enjoined and ordered to submit to Ohio EPA copies of all bills and invoices with the requested disbursements itemized so that Ohio EPA can ascertain the

nature of the work performed at the Facility and the dollar amount incurred for such work. Funds in the escrow account can be used only for the pre-closure stabilization activities at the Facility described in this Consent Order and Preliminary Injunction. Defendant is ordered and enjoined not to use any portion of the funds contained in the escrow account for payment of attorney's fees.

- i. Defendant is enjoined and ordered to submit immediately to Ohio EPA's Division of Solid and Infectious Waste Management, a copy of the last account statement received detailing the current account balance of funds set aside for pre-closure stabilization activities at the Facility. Defendant is enjoined and ordered to submit to Ohio EPA's Division of Solid and Infectious Waste Management, within fourteen (14) days of receipt, copies of all account statements received in the future which detail the balance of the escrow account. National City Bank is permitted reasonable compensation from Defendant for escrow services pursuant to a written agreement with the Defendant.

F. SUBMITTAL OF DOCUMENTS

6. Unless otherwise specified, documents which are required to be submitted to Ohio EPA under Paragraph 5 above shall be sent to the following address:

Ohio Environmental Protection Agency
Northeast District Office
2110 E. Aurora Rd.
Twinsburg, Ohio 44087
Attn: John Watkins, Division of Solid and Infectious Waste Management

Documents that are required to be submitted to Defendant pursuant to Section 5 of this Consent Order and Preliminary Injunction shall be submitted to :

Commissioner Robert E. A. Smith
President, Carroll County Board of County Commissioners
Courthouse
119 Public Square
Carrollton, Ohio 44615

G. TERMINATION

7. This injunction shall remain in effect until entry of a final judgment or order resolving all issues in this action, or until further order of the Court otherwise vacating this injunction.

H. ADMINISTRATIVE CODE PROVISIONS

8. Unless otherwise specified in this Consent Order and Preliminary Injunction, all references to the Ohio Administrative Code, shall refer to the most recent version of the rule that is effective on the date of entry of this Consent Order and Preliminary Injunction.

IT IS SO ORDERED.

Oct. 31, 1996
DATE

William J. Martin
JUDGE, Carroll County Court of Common Pleas

APPROVED BY:

ATTORNEY GENERAL
BETTY D. MONTGOMERY

CARROLL COUNTY COMMISSIONERS

Robert E. A. Smith
Commissioner Robert E. A. Smith, President

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SUPERINTENDENCE
CLERK - COM. PL. CT.
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John H. Davis
Commissioner John H. Davis, V. President

Bruce L. Schmidt
Commissioner Bruce L. Schmidt, Commissioner

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