

FILED
ATHENS COUNTY, OHIO
JUL 7 1993
Christie Kitchell
CLERK OF COMMON PLEAS COURT

IN THE
COURT OF COMMON PLEAS
ATHENS COUNTY, OHIO

STATE OF OHIO, *ex rel.*
LEE FISHER
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

FLORENCE COZART AS THE
ADMINISTRATRIX OF THE
ESTATE OF DARREL COZART,
et al.,

Defendants.

CASE NO. CI-86-11-655
JUDGE L. ALAN GOLDSBERRY

CONSENT ORDER

The Amended Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio ("State") by its Attorney General, Lee Fisher, and Defendants Florence Cozart as the Administratrix of the Estate of Darrel Cozart and Florence Cozart, individually (hereinafter referred to collectively as "Cozart") having consented to the entry of this Order,

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the parties hereto, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

I. JURISDICTION AND VENUE

The Court has jurisdiction over the parties and the subject matter of this case. The Amended Complaint states a claim upon which relief can be granted against Defendants Cozart under Chapter 3734. of the Ohio Revised Code ("RC"), and venue is proper in this Court.

II. PARTIES

A. The provisions of this Consent Order shall apply and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest, and any person acting in concert or privity with any of them.

B. The State reserves its rights to pursue any and all future owners and/or operators of the property and/or businesses that now comprises the Cozart facility and/or Cozart Sanitation, respectively.

III. SATISFACTION OF LAWSUIT

A. The State of Ohio alleges in its Amended Complaint that Defendants Cozart owned and/or operated a solid and hazardous waste landfill located off Township Road 135 in Section 3 of Carthage Township, Athens County, Ohio and/or the property said landfill is located on, (hereinafter referred to as the "Cozart facility") in such a manner as to result in numerous violations of the solid and hazardous waste laws and the water pollution control law of the State of Ohio, *i.e.*, RC Chapters 3734. and 6111. and the respective rules adopted thereunder.

B. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants Cozart for all claims alleged in the Amended Complaint, and for all solid and hazardous waste violations, *i.e.*, operational and closure, cited by the Ohio Environmental Protection Agency after the filing of the November 24, 1986 Complaint.

C. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief for violations which occur after the filing of the Amended Complaint, or not alleged in the Amended Complaint, regardless of when said violations occurred.

D. Defendant Florence Cozart, in her individual capacity, owns a 1/2 interest in the property that comprises the Cozart facility, and her admitted violations of RC Chapters 3734. and 6111. and the rules adopted thereunder are a result of her ownership interest and not any overt conduct on the part of said Defendant.

E. Nothing in this Consent Order shall be construed to limit the State from requiring Defendants Cozart, pursuant to the provisions of RC Chapter 3734. and the rules adopted thereunder, and/or any federal law, to initiate appropriate corrective action to address contamination of the groundwater, surface water and/or soils at the Cozart facility, or to recover costs incurred by the State for such remediation to which the State is entitled pursuant to state and/or federal law.

IV. REGULATORY RIGHT OF ENTRY

A. Defendants Cozart acknowledge that the State, its agencies and employees, are authorized by law to enter into and onto the Cozart facility, without a search warrant, to inspect, to take soil, water and other samples, and/or to observe the closure work and post-closure maintenance at said facility, and agree to, and are ordered to, refrain from any conduct that would interfere with such inspections.

B. Nothing in this Consent Order shall be construed to limit the State's statutory or permit authority under RC Chapters 3734. and 6111. and the respective rules adopted thereunder to conduct inspections, surveys and/or take samples.

V. ACCESS TO PROPERTY

A. Defendants Cozart agree to allow the State, its agencies, independent contractors, employees and any person acting in concert or privity with the State access to the Cozart facility, including the real property described in Appendix No. 1 to this Consent Order, for the purpose of surveying, mapping, taking soil, water (including groundwater) and other samples, performing soil borings and placing groundwater monitoring wells necessary for the development of a closure plan designed to complete closure of the Cozart facility, and for the purpose of completing closure and post-closure care of the site, which includes, but is not limited to, all clearing, grading, resoiling, cap construction, construction of leachate control systems, construction of methane gas control systems, the excavation of soil and/or rock, the construction of treatment facilities, mulching, planting of vegetative cover, construction of surface water diversion ditches and any other necessary or expedient work required to conduct closure of the Cozart facility, and to perform post-closure care for said facility.

B. Defendants Cozart agree to allow the State, its agencies, independent contractors, employees and any person acting in concert or privity with the State access to the real

property owned by said Defendants, which is described in Appendix No. 1 to this Consent Order, for the purpose of utilizing the natural resources thereon, *i.e.*, rock, soil, *etc.*, to achieve closure and to maintain post-closure care of the Cozart facility. In addition, Defendants agree to allow the State, its agencies, independent contractors, employees and any person acting in concert or privity with the State access to said property for any and all other purposes, *i.e.*, vehicle and heavy equipment parking, *etc.*, that are reasonably related to accomplishing the closure and post-closure care of the Cozart facility.

C. Defendants Cozart agree to provide access to the State, its agencies, independent contractors, employees and any person acting in concert or privity with the State to the real property identified in Article V, Paragraph B, and the utilization of the natural resources thereof, at no cost.

D. In return for Defendants Cozart's grant of access to the real property identified in Article V, Paragraph B and to the extent that funds remain available in the Cozart Trust, established on or about November 10, 1992, after the closure of the Cozart facility, the State agrees to restore, *i.e.*, minimize soil erosion and contamination to the ground and surface water, to the extent possible, the environmental integrity of all areas within said property which are affected by the acquisition of natural resources necessary for the closure and post-closure care of the Cozart facility. Nothing in this paragraph shall create in Defendants the right to bring

a cause of action against the State, *i.e.*, Defendants agree to hold the State harmless, for its failure to restore the environmental integrity of said property. In addition, nothing in this paragraph shall create in Defendants the right to receive, directly or indirectly, disbursements from the Cozart Trust, established on or about November 10, 1992, or from any other State funding source, regardless of when and how said source came into existence, for the actions described herein.

E. It is understood by the parties that the State is not responsible, *i.e.*, will be held harmless, for any damage to the environmental integrity of the real property described in Appendix No. 1 of this Consent Order and the Cozart facility caused by Defendants Cozart's, their agents, officers, employees, assigns, successors in interest, and any person acting in concert or privity with said Defendants, detrimental use of said property.

F. Defendants Cozart agree to reimburse the State for the cost of any repair to the closure remedy or post-closure care remedy performed at the Cozart facility by the State and/or its independent contractor(s) that is the result of Defendants', their agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with said Defendants, detrimental use of said facility, where the Director, or his authorized representative, determines that 1) the detrimental use damages or impairs the effectiveness of the closure remedy or post-closure care remedy; and 2) the repairs are necessary to protect said remedies.

G. Defendants Cozart agree to implement measures which will secure the Cozart facility from trespass and detrimental use.

H. Defendants Cozart agree not to bring, commence, maintain and/or prosecute, or cause to be brought, commenced, maintained and/or prosecuted, any action or suit in any court in the United States or in any state thereof or elsewhere against the State, its agencies and/or employees for any damages or injuries to their person or property arising out of, or in any way connected with the design, construction or maintenance associated with the closure and post-closure care of the Cozart facility.

I. Defendants Cozart assume no liability for injury or damage by or to employees of or any person acting in concert or privity with the State in the course of providing labor, materials and/or services related to the closure and post-closure care of the Cozart facility.

J. Nothing in this Article, or the Consent Order as a whole, creates an obligation in the State to perform the sampling, closure, post-closure or other activities described herein associated with the Cozart facility or the property described in Appendix No. 1 to this Consent Order.

V. EFFECT UPON OTHER ACTIONS

Nothing in this Consent Order shall be construed to relieve Defendants Cozart of the obligation to comply with applicable federal, state or local statutes, regulations or ordinances, or shall constitute a waiver or release of any right, remedy,

defense or claim against said Defendants with regard to any person not a party to this Consent Order.

VI. PERMANENT INJUNCTION

Defendants Cozart are hereby permanently enjoined and ordered to comply with the requirements of RC Chapters 3734. and 6111. and the rules adopted under each statute.

VII. CIVIL PENALTY

A. Defendant Florence Cozart, as the Administratrix of the Estate of Darrel Cozart ("Estate"), is ordered to pay to the State, pursuant to RC Sections 3734.13(C) and 6111.09, a civil penalty of thirty thousand dollars (\$30,000.00) on behalf of the Estate. The civil penalty shall be paid by delivering to the State's attorney, and/or his successor, a certified check for the above amount, payable to the order of "*Treasurer, State of Ohio*", to be deposited into the hazardous waste clean-up fund, within thirty (30) days of the Probate Court's distribution of the assets of the Estate of Darrel Cozart ("Estate"). The distribution of assets to the State, *i.e.*, the amount of the civil penalty received by the State, must be in accord with the distribution ratio for other similarly situated creditors of the Estate.

B. Defendant Florence Cozart, in her individual capacity, is ordered to pay to the State, pursuant to RC Sections 3734.13(C) and 6111.09, a civil penalty of five thousand dollars (\$5,000.00). The civil penalty shall be paid by delivering to the State's attorney, and/or his successor, a certified check for the above amount, payable to the order of

"Treasurer, State of Ohio", to be deposited into the hazardous waste clean-up fund, within thirty (30) days of the Court's entry of this Consent Order.

VIII. RETENTION OF JURISDICTION

The Court will retain jurisdiction of this action for the purpose of enforcing the terms and provisions of this Consent Order.

IX. COSTS

Defendants Cozart are hereby ordered to pay the costs of this action.


Entered this 7th day of July, 1993.



JUDGE L. ALAN GOLDSBERRY
COURT OF COMMON PLEAS
ATHENS COUNTY, OHIO

APPROVED:

LEE FISHER
ATTORNEY GENERAL OF OHIO



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Attorneys for Defendants
Florence Cozart as the
Administratrix of the
Estate of Darrel Cozart,
and Florence Cozart, individually

Florence Cozart
FLORENCE COZART as the
Administratrix of the
Estate of Darrel Cozart

Florence Cozart
FLORENCE COZART,
individually

APPENDIX NO. 1

Vol 222
Pg 526

#38868 Fee \$ 1.75

Warranty Deed
Sanford Cozart et ux
to
Darrel Cozart et ux

KNOW ALL MEN BY THESE PRESENTS: That Sanford Cozart and Nellie
Cozart, his wife, in consideration of One dollar and other considera-
tions to them paid by Darrel Cozart and Florence Cozart, whose add-

ress is Frost, Ohio, the receipt whereof is hereby acknowledged, do hereby Grant, Bargain, Sell
and convey to the said Darrel Cozart and Florence Cozart, their heirs and assigns forever, the
following described REAL ESTATE, situated in the County of Athens, State of Ohio, and Township of
Carthage and bounded and described as follows:

FIRST TRACT: Beginning at a stone at the southeast corner of southeast quarter of Section 4,
Town 5, Range 12, of the Ohio Company's Purchase, thence north 20 chains; thence east 20.15
chains, thence south 20 chains, thence west 20.30 chains to the place of beginning, containing
0.44 acres, more or less.

SECOND TRACT: Being in Section 4, Town 5, Range 12, of the Ohio Company's Purchase. Beginning at
the southeast corner of Section 4; Thence north 80 rods to lands formerly owned by Benjamin Green,
thence West 80 rods; thence south 80 rods to lands formerly owned by Isaac Boyse; thence East 80
rods to the place of beginning. Being the East half of the 80 acre lot on which Samuel Galbreath
formerly resided, containing 40 acres, more or less.

EXCEPTING and RESERVING all the coal, oil, gas and other minerals of every kind or nature
whatsoever together with the right to mine or remove the same lying in or under the above des-
cribed Real Estate.

The last previous conveyance of this Real Estate is recorded in Deed Book 187, Page 122,
Record of Athens County.

EXCEPTING from the Second tract above, that portion out of the northeast corner as recorded
Deed Book No. 107, Page 581, Deed Records of Athens County, Ohio.

I sell all the ESTATE, TITLE and INTEREST of the said Sanford Cozart and Nellie Cozart, either in Law
in equity, of, in and to the said premises; TOGETHER with all the privileges and appurtenances
thereunto belonging, and all the rents, issues and profits thereof; TO HAVE AND TO HOLD the same
unto the said Darrel Cozart and Florence Cozart, their heirs and assigns forever.
I, the said Sanford Cozart and Nellie Cozart, for themselves and their heirs, executors and admin-
istrators, do hereby covenant with the said Darrel Cozart and Florence Cozart, their heirs and
assigns, that they are the true and lawful owners of the said premises, and have full power to con-
vey the same; and that the title so conveyed is Clear, Free and Unincumbered; AND FURTHER, that
I do WARRANT AND WILL DEFEND the same against all claim or claims, of all persons whomsoever;

IN WITNESS WHEREOF, the said Sanford Cozart and Nellie Cozart, his wife, who hereby releases
her right and expectancy of Dower in the said premises, have hereunto set their hands, this 24th
day of March, in the year of our Lord one thousand nine hundred fifty five.

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Witnessed and acknowledged in presence of:

F. Swan
Notary Public
Sanford Cozart
Nellie Cozart

County of Meigs, SS:

BE IT REMEMBERED, that on the 24th day of March, in the year of our Lord one thousand nine
hundred fifty five, before me, the subscriber, a notary public in and for said county, personally
appeared Sanford Cozart and Nellie Cozart, the grantors in the foregoing deed, and acknowledged the
contents thereof to be their voluntary act and deed.

In WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the
this 24th day of March, A.D. 1955.

A. F. Swan, Notary Public
A. F. Swan, Long Bottom, O.
My com. exp. 3-19-56

Nov. 26, 1956 - 1 P.M.
Recorded Nov. 26, 1956

Attest: _____ Recorder

RECORDER'S CERTIFICATE

The State of Ohio, Athens County, SS:

I, the Undersigned Recorder of Said County,
Hereby Certify That the Foregoing Is a True and Correct Copy
of the Original Deed Filed With
Me Nov 26 1956 . Witness My Hand
and Official Seal, This 23 Day of May 1986 .

Wilma Allen

RECORDER

APENDIX NO. 2

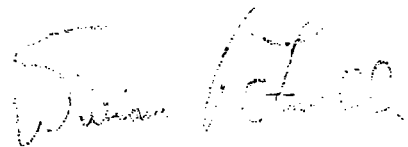
PROBATE COURT OF ATHENS COUNTY, OHIO

ESTATE OF DARREL COZART, DECEASED

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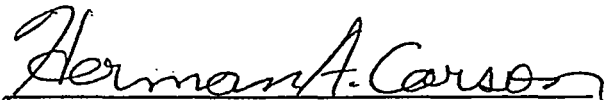
JOURNAL ENTRY

Upon application of Florence Cozart, Administratrix of the Estate of Darrel Cozart, deceased, the Court hereby authorizes Florence Cozart, Administratrix of the Estate of Darrel Cozart, deceased, to compromise and settle the claim of the State of Ohio asserted in Athens County Common Pleas Court Case No. CI 86-11-655, upon the terms set forth in the Consent Order attached as Exhibit A to the application. The Court, pursuant to O.R.C. §2117.05, further finds and Orders that notice of a hearing upon the administratrix's application to compromise and settle a claim is unnecessary.



JUDGE WILLIAM A. LAVELLE

Prepared and submitted by:

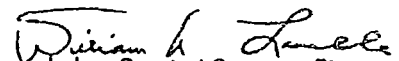


HERMAN A. CARSON (0002201)
Attorney for Florence Cozart,
Administratrix of the Estate of
Darrel Cozart, deceased

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FILED
ATHENS COUNTY OHIO

APR 5 1993



Judge Cc. rt of Common Pleas
Probate Division

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Law Offices