

CLERK OF COURT
L. MORRIS

88 SEP 13 4: 21

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

MONTGOMERY COUNTY
FILED - COURT CLERK
COMMON PLEAS

STATE OF OHIO, ex rel.,	:	Case No. 87-3045
ANTHONY J. CELEBREZZE, JR.,	:	
ATTORNEY GENERAL OF OHIO,	:	Judge Meagher
	:	
Plaintiff,	:	
	:	
v.	:	
	:	<u>CONSENT DECREE</u>
DAYTON WALTHER CORPORATION,	:	
et al.	:	
	:	
Defendants.	:	

The Plaintiff, State of Ohio, ex rel. Anthony J. Celebrezze, Jr., Attorney General of Ohio ("State" or "Plaintiff"), having filed the Complaint in this action against the Defendants, Dayton Walther Corporation ("Dayton Walther"), and Max Behrer ("Behrer") to enforce the State hazardous waste statutes at Dayton Walther's Portsmouth, Ohio facility located at 2400 E. Charles Street, Portsmouth, Ohio (hereinafter "Facility" or "Site") and Plaintiff and Defendants having consented to entry of this Decree;

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

I. PERSONS BOUND

The provisions of this Consent Decree shall apply to and be binding upon the Defendant Dayton Walther, its agents, officers, employees, assigns, successors, predecessors in interest, and those persons in active concert or participation with them or who

receive notice of this Decree whether by personal service or otherwise. So long as the Defendant Max Behrer retains the position of Portsmouth Division Manager of Dayton Walther or is otherwise authorized by Dayton Walther to implement the provisions of this Consent Decree, Defendant Behrer is ordered to act within the scope of his authority to cause the timely and effective implementation of this Consent Decree.

II. STATEMENT OF PURPOSE

In entering into this Consent Decree, the mutual objective of the Plaintiff and Defendants is to have Dayton Walther fully comply with the state hazardous waste laws and regulations. The Plaintiff and Defendants have disagreed and continue to disagree whether Defendants ever took, deposited, treated, stored, disposed or otherwise handled hazardous waste in or onto the "Old Landfill," as that area is known to the parties and delineated on Figure 1 of Appendix A. This case is being settled in this Consent Decree without a determination that such materials were or were not hazardous waste. Nothing in this Consent Decree, or Dayton Walther's or Behrer's compliance with it or with hazardous waste rules shall be considered as evidence that Dayton Walther ever did or did not take, deposit, treat, store, dispose or otherwise handle hazardous waste in or on the "Old Landfill."

III. JURISDICTION AND VENUE

This Court has jurisdiction over the parties and the subject matter of this case. Venue is appropriate in this Court. The Complaint states a claim upon which relief can be granted under

Chapter 3734. of the Ohio Revised Code and regulations promulgated thereunder.

IV. CONTINUING JURISDICTION AND DISPUTES RESOLUTION

This Court shall retain jurisdiction over this action for the purpose of overseeing and resolving disputes concerning the implementation of this Consent Decree by Dayton Walther and by Behrer until two years after final closure of the landfill, at which time either party may petition the Court for termination of this Consent Decree.

Partial or total disapprovals or approval with additional requirements or terms and conditions by the OEPA or by the Director of Environmental Protection in relation to submittals or actions of Dayton Walther and/or Behrer in the implementation of this Consent Decree shall be presumed lawful and reasonable unless Dayton Walther and/or Behrer initiate dispute resolution within thirty (30) days of actual receipt of such partial or total disapproval or approval with additional requirements or terms and conditions or within such longer time as agreed to in writing by the parties. Dispute Resolution shall be commenced by Dayton Walther or Behrer submitting a written challenge to OEPA concerning their disagreement with the partial or total disapproval or approval with additional requirements or terms and conditions. Should OEPA refuse to adopt a position acceptable to Dayton Walther or Behrer based on that challenge, Dayton Walther or Behrer may then initiate Dispute Resolution by the Court by filing with the Clerk of Courts a Motion for Dispute Resolution

Hearing, with supporting Memorandum within thirty (30) days of actual receipt of OEPA's refusal, or within such longer time as agreed to in writing by the parties. The Plaintiff shall respond within twenty (20) days from actual receipt of the Motion and Memorandum unless otherwise agreed to in writing by the parties. The Court shall rule upon each such Motion in an expedited manner following the holding of an evidentiary hearing on the Motion. The Court's decision on the lawfulness and reasonableness of the challenged matters shall be made upon the same standards of review as would be the case had an appeal been taken to the Ohio Environmental Board of Review. Dayton Walther and Behrer waive their rights to contest the lawfulness and reasonableness of a partial or total disapproval or approval with additional requirements or terms and conditions issued in the implementation of this Consent Decree to the OEPA or Ohio Environmental Board of Review so long as this Court exercises continuing jurisdiction under this Order.

V. SATISFACTION OF CLAIMS AND EFFECT UPON OTHER ACTIONS

Compliance with the terms of this Consent Decree shall constitute full satisfaction of any civil, criminal or administrative liability of Behrer and/or of Dayton Walther, its officers, employees, and former officers and employees to the State of Ohio, its Attorney General and OEPA (hereinafter the "State") for all matters alleged in the Complaint. For actions beyond the terms and scope of this Consent Decree, the Plaintiff reserves the right to take any enforcement action pursuant to any

available legal authority, including the right to seek injunctive relief and monetary penalties.

This Consent Decree shall not be construed so as to preclude the State from seeking that Dayton Walther or others conduct remedial or corrective action or additional monitoring or testing at the Facility as a result of Dayton Walther's waste-handling practices at the Facility. This Consent Decree shall not be construed so as to preclude the State from seeking monetary, injunctive, or other relief against Dayton Walther for violations other than those referred to in the Complaint, provided, however, that the Plaintiff shall not bring an action under Chapter 3734 of the Revised Code with respect to those matters alleged in the Complaint or similar related matters not plead that were known to the OEPA or the Office of the Ohio Attorney General as of August 23, 1988. This Consent Decree shall also not be construed so as to preclude the State from seeking any form of relief against Dayton Walther as a result of its operation of facilities other than this Facility, regardless of when the violations occurred. Nothing herein shall be construed to limit the authority of the State of Ohio to undertake any action against any person, including Dayton Walther, to eliminate or mitigate conditions arising after the date hereof which may present an imminent endangerment to the public health, welfare or the environment.

VI. CIVIL PENALTY

It is hereby ordered that Dayton Walther shall pay a civil penalty of Forty-Five Thousand Dollars (\$45,000.00). This civil

penalty shall be paid by check made payable to "Treasurer, State of Ohio", which check shall be delivered by mail, or otherwise, to Paul D. Hancock, at his office at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 17th Floor, Columbus, Ohio 43266-0410, within thirty (30) days of the Court's Entry of this Consent Decree. This penalty shall be paid into the Ohio Hazardous Waste Cleanup Special Account.

VII. GROUNDWATER MONITORING SYSTEM

Dayton Walther shall submit an approvable plan for a hazardous waste facility groundwater monitoring system that will comply with the requirements of Rules 3745-65-90 to 3745-65-94 of the Ohio Administrative Code for the "Old Landfill" unit at the Facility to Mr. Mike Savage of OEPA-Central Office, P.O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43266-0149 and Mr. Ken Dewey of the Southeast District Office (SEDO) of OEPA, 2195 Front Street, Logan, Ohio 43138-9031. This plan shall conform to the Hazardous Waste Closure Concepts document attached hereto and incorporated herein as Appendix A. Based upon current knowledge, the parties believe that compliance will be achieved if the plan conforms to Appendix A concepts. The plan shall be submitted by November 1, 1988. The plan shall include, but is not limited to: proposed monitor well construction details, proposed monitor well locations, a groundwater sampling and analysis plan, an outline for a groundwater quality assessment program, recordkeeping and reporting procedures, and a schedule for implementing the plan.

The plan as required by this section is subject to the approval of the OEPA. If the OEPA disapproves part or all of the plan, Dayton Walther shall resubmit the disapproved portion in approvable form to the OEPA at the two addresses listed above, within thirty (30) days of OEPA's notification of disapproval of the plan unless otherwise agreed to in writing. No such disapproval of part or all of the plan as contained in a first or second submittal of the plan shall be construed to be a violation of this Consent Decree unless an approvable response to comments on the second submittal is not made by Dayton Walther within thirty (30) days of receipt of the comments.

Within fifteen (15) days of approval by OEPA of the groundwater monitoring plan provided for in this section, Dayton Walther shall implement the approved plan in accordance with the schedule contained therein.

VIII. CLOSURE PLAN

Dayton Walther is ordered to submit approvable closure and post-closure plans that will comply with the requirements of Rules 3745-66-10 to 3745-66-20 and 3745-68-10 of the Ohio Administrative Code for the "Old Landfill" unit at the Facility to Richard Shank, Director of OEPA, P.O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43266-0149 and Mr. Ken Dewey at the OEPA Southeast District Office at the address stated previously. In addition a copy of the plan shall be sent to U.S. EPA Region V.

These plans shall conform to the Hazardous Waste Closure Concepts document attached hereto and incorporated herein as

Appendix A. Based upon current knowledge, the parties believe that compliance will be achieved if the plans conform to Appendix A concepts. These plans shall be submitted on or before November 1, 1988. If OEPA disapproves part or all of the closure or post-closure plans, Dayton Walther shall resubmit the disapproved portion(s) in approvable form within thirty (30) days of OEPA's notification of the disapproval to Dayton Walther unless otherwise agreed in writing. No such disapproval of part or all of the plans as contained in a first or second submittal of the plans shall be construed to be a violation of this Consent Decree unless an approvable response to comments on the second submittal is not made by Dayton Walther within thirty (30) days of receipt of the comments. Dayton Walther shall implement the closure plan and post-closure plans as approved by OEPA.

IX. FUTURE POST-CLOSURE ACTIVITIES

No earlier than two years after the completion of closure activities required by the approved closure plan as specified in Order VIII, supra, Dayton Walther may petition the Director of Ohio EPA for a reduction of the post-closure care requirements. This petition will be acted upon by the Director in accordance with applicable law and regulations. Any petition shall include, but not be limited to, the inclusion of 'all groundwater sampling results obtained from the approved groundwater monitoring system as referenced above. The petition shall also include a description of how reduced post-closure care requirements will still assure the protection of human health and the environment.

**X. FINANCIAL RESPONSIBILITY/FINANCIAL
ASSURANCE REQUIREMENTS**

Dayton Walther is required by rule and by law to maintain:

- a. financial responsibility for bodily injury and property damage to third parties caused by sudden and nonsudden accidental occurrences arising from operations of the facility, in conformity with O.A.C. 3745-66-47 (A) and (B); and
- b. financial responsibility for closure and post-closure care of the facility, in conformity with O.A.C. 3745-66-43 and O.A.C. 3745-66-45.

Dayton Walther shall submit proof of compliance with the financial responsibility rules referred to above for closure, post-closure care and for third party bodily injury and property damage to the addressees specified in Order VIII no later than December 15, 1988. While not relieving Dayton Walther of the obligations imposed by the preceding sentence, and while not inferring that the State is obligated to accept the detailed explanation, if Dayton Walther cannot prove compliance with some or all of those financial responsibility requirements within that time, the Defendant may submit to Plaintiff a detailed explanation as to the causes of that inability, steps being taken to rectify that inability, a proposed schedule to rectify that inability, and interim measures being taken by the Defendant to minimize risks to the environment and to the people of the State during the continuation of that inability.

XI. WASTE ANALYSIS PLAN

Dayton Walther shall maintain a waste analysis plan which is in compliance with Rule 3745-65-13 of the Ohio Administrative Code.

XII. POTENTIAL FORCE MAJEURE

In any action to enforce any of the provisions of this Consent Order Dayton Walther may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons beyond its control such as, by way of example and not limitation, act of God, unusually severe weather conditions, strikes, acts of war or civil disturbances, or conflicting orders of any regulatory agency. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by the parties that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an enforcement action, if any, is commenced. Acceptance of this Consent Order without a force majeure clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

XIII. CONTINUED WASTE TREATMENT

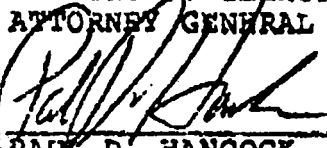
Dayton Walther may continue to operate its hazardous waste treatment bunker authorized by the Findings and Orders specified in Plaintiff's Complaint so long as the Defendant continues to have authority to do so under federal or state law.

XIV. COURT COSTS

Defendants shall pay the court costs of this action.

MEAGHER, JUDGE
COURT OF COMMON PLEAS

ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO



PAUL D. HANCOCK
KAREN CLEVELAND
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad St., 17th Flr.
Columbus, Ohio 43266-0410
(614) 466-2766

DAYTON WALTHER CORPORATION

BY: _____

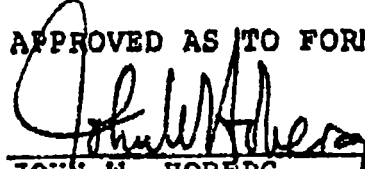
NAME: _____

TITLE: _____



MAX BEHRER

APPROVED AS TO FORM BY:



JOHN W. HOBERG
VORYS, SATER, SEYMOUR
AND PEASE
P. O. Box 1008
52 East Gay Street
Columbus, Ohio 43215
Counsel for Defendants
(614) 464-6213

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**DAYTON WALTHER CORPORATION
FOUNDRY WASTE LANDFILL**

HAZARDOUS WASTE CLOSURE CONCEPTS

August 23, 1988

1. PROJECT BACKGROUND

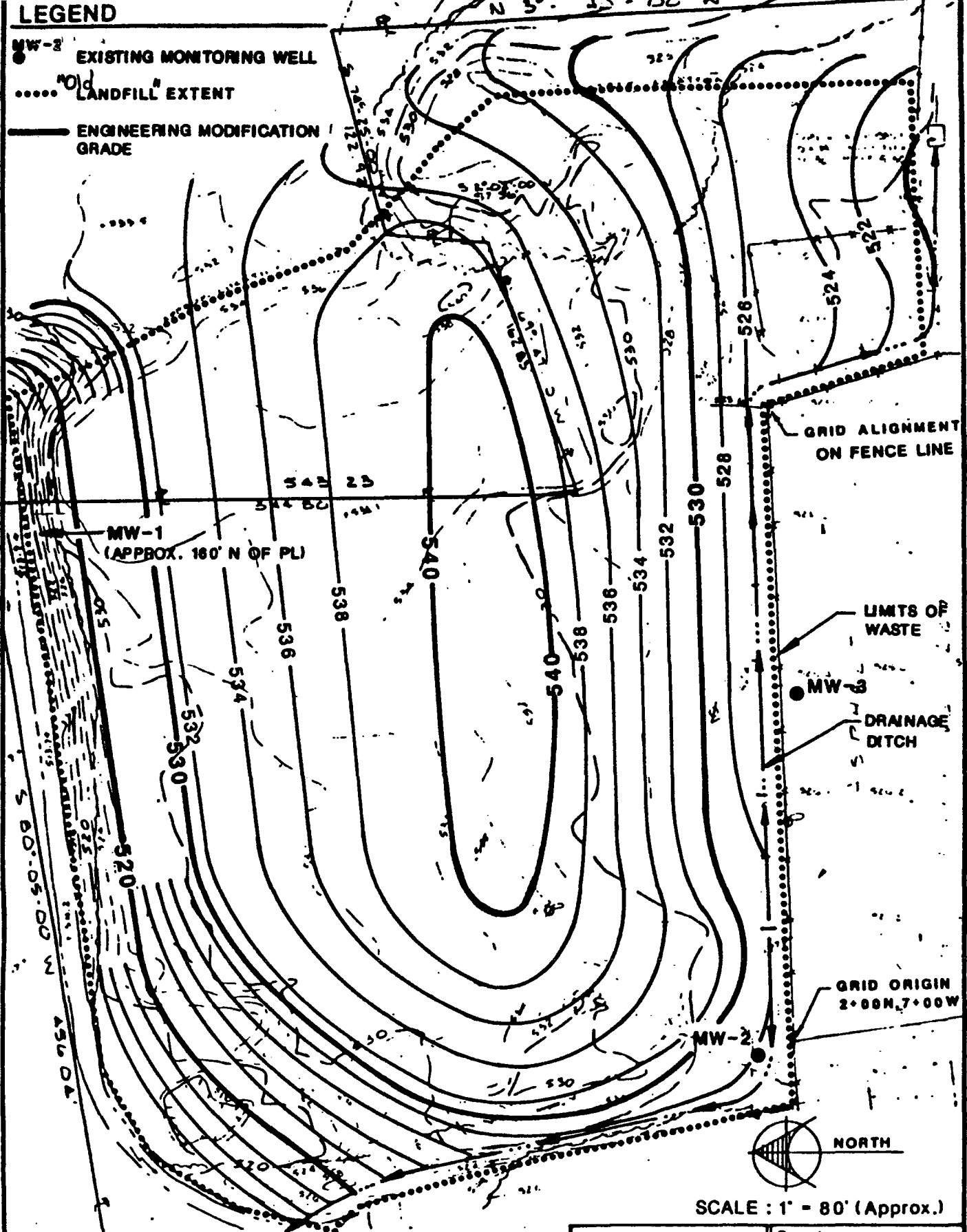
The Dayton Walther Corporation ("Dayton Walther") of Portsmouth, Ohio, is a grey iron foundry which has been in operation since the early 1950's. The iron foundry process generates excess (spent) foundry sand, quenched cupola slag, barrel blast dust, and cupola baghouse dust. From the early 1950's through late 1981, these materials were deposited, in varying quantities, immediately adjacent to the Dayton Walther plant in what is known as the "Old Landfill" described on Figure 1. From 1981 until the present, the fill area has been dormant with vegetation growing over the site.

Waste characterization data for the foundry indicates that some of the individual, unmixed wastes disposed in the landfill, if tested, would display the hazardous characteristic of EP-Toxicity for lead and cadmium. Based upon present knowledge it is believed that these materials do not display the other hazardous waste characteristics of reactivity, ignitability or corrosivity, and the wastes are not listed hazardous wastes.

Dayton Walther has been sued by the State of Ohio in

LEGEND

- MW-2 EXISTING MONITORING WELL
- "Old" LANDFILL EXTENT
- ENGINEERING MODIFICATION GRADE



**DAYTON-WALTHER CORP.
FINAL GRADES**



Dwn. by	PPD
Date	8/29/88
Proj. #	386.09

SCALE : 1" = 80' (Approx.)



Figure 1

the Montgomery County Common Pleas Court. The state believes this to be a hazardous waste facility and seeks relief requiring Dayton Walther to close its inactive foundry waste landfill as a hazardous waste facility. Dayton Walther is in the process of reviewing the available closure options, but denies that it is a hazardous waste facility. Nevertheless, upon incorporation of this plan into a Consent Decree, Dayton Walther will close the facility, maintain post-closure care and accept regulation under Ohio EPA hazardous waste rules.

2. PURPOSE

The purpose of this document is to define engineering concepts for final closure of the Dayton Walther landfill as a hazardous waste facility in settlement of the litigation, although Dayton Walther continues to deny that the facility contains hazardous waste. This document has been submitted to Ohio EPA for approval by Ohio EPA and incorporated into a Consent Decree so that the Court and Dayton Walther will have assurance as to what general closure concepts are believed by Ohio EPA to be adequate under the law. Detailed closure and construction plans necessary for ultimate approval of a formal closure plan will be submitted after the Consent Decree is entered. However, submission of detailed plans that meet the concepts in this document, which document is intended to comply with applicable law, shall constitute compliance with the Consent Decree.

3. CLOSURE CONCEPTS

The conceptual closure plan for the Dayton Walther Landfill site includes final grading, placement of a cover consisting of clay, synthetic liner, sand and topsoil, revegetation, and ground water monitoring. The cap will provide comparable performance to the performance that is calculated when a cover is designed for this facility in accordance with the requirements of "Minimum Technology Guidance on Final Covers for Landfills and Surface Impoundments" published by U.S. EPA and dated July 1987. The concepts below represent Dayton Walther's general approach to meeting closure and post-closure objectives. Details will be incorporated into a formal closure plan.

- ° Final Grading

The existing soil cover and waste shall be graded to establish adequate uniform slopes which will prevent surface water runoff and promote surface water runoff and provide slope stability (slopes: two percent minimum, 25 percent maximum). Ditching and erosion control shall also be provided. The earthwork shall be accomplished with as little grading as possible to achieve a soils balance and to blend final landfill topography with the existing adjacent terrain (Figure 1). The design shall also protect the cap from a 100 year flood event in Funk's Gut, probably by means of a separate dike with rip rap.

- ° The closure plan shall include a provision that will eliminate the path of the existing storm sewer as a potential conduit through the landfill. The Ohio EPA and Dayton Walther anticipate that an approvable plan will allow the pipe to be removed from its present location, crushed and returned to areas in the landfill and that the void left from the storm sewer will be back filled with landfill material. Clay caps will be placed at each end of the current storm sewer path.

Clay Cover and Topsoil

Suitable clayey soils shall be placed and compacted to 90% modified maximum dry density at a moisture content from optimum to 4% above optimum over the entire area of waste to a depth calculated as stated above, within acceptable tolerances. Clayey soils having the following properties are proposed for use as final cover soils:

- 50 percent passing P200 sieve
- 1×10^{-7} cm/sec permeability at or below 90% modified maximum dry density, prepared at or below optimum moisture content

A synthetic liner, the thickness calculated as stated above, will be placed on top of the clay. A sand drainage layer will be over the synthetic liner, capped by a topsoil layer. The combination of clay, synthetic liner, sand and topsoil will minimize infiltration of precipitation into the waste and encourage sheet flow runoff over the final cover surface, thus reducing the percolation of water into the waste and subsequent leachate generation.

A suitable clayey soil borrow source site will be investigated, and its ability to meet the above-mentioned soil properties will be tested and documented and presented as part of the final closure plan.

The fact that wastes currently in the landfill may be moved from one place to another within the landfill during closure shall not be construed to be generation, storage, treatment or new disposal of hazardous waste.

Ground Water Monitoring

Dayton Walther presently maintains a ground water monitoring network around the landfill consisting of three wells (Figure 1). Construction details and preliminary ground water monitoring data have been submitted to Ohio EPA for informational purposes under separate cover. The regional ground water flow is toward the Ohio River.

OAC 3745-65-91(A) specifies that ground water at hazardous waste units be monitored with a ground water monitoring system capable of both immediately detecting hazardous waste or hazardous waste constituents migrating from the landfill and yielding representative background samples unaffected by the landfill, to

include at a minimum one upgradient and three downgradient monitoring wells. Therefore, Dayton Walther will install a ground water monitoring system that will meet the requirements of the rule. Based on present knowledge, the Ohio EPA and Dayton Walther anticipate that this will require no more than five wells in addition to the three already installed. Dayton Walther will also initiate a ground water monitoring program consisting of the parameters, sampling frequencies and other requirements specified in OAC 3745-65-92 - 94. Dayton Walther will perform this monitoring for an initial period of at least two years after final closure. After the first year Dayton Walther will statistically evaluate the affect, if any, which the landfill is having on ground water. If this evaluation indicates that the landfill is not affecting the ground water in a way which poses a public health or environmental threat, Dayton Walther may petition the director of Ohio EPA for a reduction in the 30-year post-closure monitoring period, as allowed by OAC 3745-66-18.

The Ohio EPA and Dayton Walther believe that these conceptual plans, when implemented through the closure plan and ground water monitoring plan process, will meet applicable regulations. If after the installation of the approved system the state believes that the installed system does not meet the regulations, the Director will notify Dayton Walther of the deficiencies, and the parties will resolve the differences within thirty (30) days or enter the dispute resolution provision of the Consent Order.

4. SUMMARY

Based on the characteristics of the waste, and the nature of the surrounding areas, the above described cap and extended ground water monitoring should provide a safe closure approach.

Those landfill closure concepts will not radically change existing drainage patterns in the area and will

improve sedimentation control. Temporary erosion controls will be installed during and immediately following construction until the site is revegetated and stabilized. These controls will consist at a minimum of silt fences at key points across the site. These provisions will be maintained until the site is stabilized.

During construction, there will be comprehensive construction observation and documentation, including soil sampling (bag samples, permeability samples), to ensure consistency of clayey soil properties and placement conditions. In addition, positive drainage conditions surrounding the site and adjacent properties will be field verified.

Following closure of the site, periodic inspections will be conducted to verify that stabilized conditions have been achieved. Dayton Walther will maintain post-closure care which will include maintenance of the slopes, vegetation, post closure care, ground water monitoring and the aesthetic appearance of the site as required in the Consent Decree and/or this Hazardous Waste Closure Concepts.

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

Case No. 08743045
MONTGOMERY CO. OHIO
Judge Meagher

Plaintiff,

v.

DAYTON WALTHER CORP.

AMENDED CONSENT DECREE

Defendant.

The Plaintiff, State of Ohio, ex rel. Lee Fisher, Attorney General of Ohio ("State"), having filed a complaint in this action against Defendant Dayton Walther Corporation ("Dayton Walther") alleging violations of Chapter 3734 of the Ohio Revised Code and the State and Dayton Walther having attempted to resolve such Complaint by entry of a Consent Decree filed in this case on September 13, 1988, (the "Consent Decree") and Dayton Walther having allegedly committed violations of the Consent Decree and the State and Dayton Walther having consented to entry of this Amended Consent Decree;

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

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CHRIST

FEB 1 - 1993

RECEIVED

Post-it Fax Note	7671	Date	1/30/01	# of pages	10
To	Michael Joseph	From	Donna Goodman		
Co./Dept.	DHWM	Co.	SEDO		
Phone #		Phone #			
Fax #		Fax #			

800-1290 128

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the parties and the subject matter of this case. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted under Chapter 3734 of the Ohio Revised Code and regulations promulgated thereunder.

II. PERSONS BOUND

2. The provisions of this Amended Consent Decree and the Consent Decree, to the extent that it is not amended by this document, shall apply to and be binding upon Plaintiff and Dayton Walther, its agents, officers, employees, assigns, successors, predecessors in interest, and those persons in active concert or participation with them or who receive notice of this Amended Consent Decree or the Consent Decree whether by personal service or otherwise.

III. NONADMISSION OF LIABILITY

3. Nothing in this Amended Consent Decree or the Consent Decree shall constitute an admission by Dayton Walther of any legal or factual matters set forth in the Complaint, Notices of Violation, or herein, which matters Dayton Walther denies.

IV. SATISFACTION OF LAWSUIT

4. Compliance with the terms of this Amended Consent Decree and the Consent Decree, to the extent that the Consent Decree is not amended, shall constitute full satisfaction of any civil, criminal or administrative liability by Dayton Walther, its officers, employees, and former officers and employees for all claims alleged in the Complaint. Further, compliance with the terms of this Amended Consent Decree shall constitute full satisfaction of any civil, administrative and criminal liability by Dayton Walther, its officers, employees, and former officers and employees for violations of the Consent Decree as stated in the Notices of Violation dated December 23, 1991, September 17, 1992, and October 30, 1992. Nothing in this Amended Consent Decree or the Consent Decree shall be construed so as to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint or Notices of Violation, or for violations which occur after the filing of this Amended Consent Decree, including future violations of the Amended Consent Decree or the Consent Decree.

V. PERMANENT INJUNCTION

5. Dayton Walther, relative to its Portsmouth, Ohio facility, is hereby permanently ordered and enjoined to comply with Ohio Revised Code Chapter 3734, and rules promulgated thereunder. Noncompliance with this Article V shall not void

any portion of the Satisfaction of Lawsuit set forth in Article IV, but shall entitle the State to secure appropriate relief for any violation of the first sentence of this Article V.

VI. EFFECT UPON CONSENT DECREE

6. The obligations and rights of the parties under the Consent Decree (which shall remain in full force and effect) shall not be modified except as expressly provided in this Amended Consent Decree.

VII. REVISED POST-CLOSURE PLAN

7. Dayton Walther is ordered and enjoined to submit a revised post-closure plan and revised cost estimate for post-closure care for the Old Landfill at the facility to Ohio EPA within fifteen (15) days after the entry of this Amended Consent Decree. The revised post-closure plan shall address the following areas of the Old Landfill where it is alleged that:

- 1) Rip-Rap was applied directly to the clay layer;
- 2) The filter fabric was torn and Dayton Walther laid pieces of filter fabric over the rips rather than welding them;
- 3) The slopes of the Old Landfill, between the buffer levy and the creek, were 3:1 rather than the approved 4:1 slope

- C
- 4) Debris and rocks picked from cover material were deposited in two pits in the Old Landfill which resulted in two soft spots on the face of the Old Landfill;
 - 5) A pipe had been inserted to drain excess water which accumulated in the northwest corner of the Old Landfill during closure.

Dayton Walther is ordered and enjoined to implement the revised post-closure plan as approved by Ohio EPA. If the Director disapproves part or all of the revised post-closure plan, Defendant is ordered and enjoined to resubmit the disapproved portion in an approvable form to the Ohio EPA within thirty (30) days after receiving the Director's written notice of the deficiencies in the plan. If after resubmittal, the plan is still unapproved, the Director may modify or place conditions on the plan and approve the plan as modified or conditioned.

VIII. CERTIFICATION OF MODIFIED CLOSURE

8. Within fifteen (15) days of the entry of this Amended Consent Decree, Dayton Walther is ordered and enjoined to resubmit a certification of closure, in accordance with O.A.C. Rule 3745-55-15, to Ohio EPA detailing modifications to the original closure plan submitted by Dayton Walther and approved by Ohio EPA on September 13, 1989.

IX. FINANCIAL ASSURANCE

9. Within thirty (30) days of the entry of this Amended Consent Decree, Dayton Walther is ordered and enjoined to submit proof of financial assurance for post-closure care and liability coverage for third-party bodily injury and property damage pursuant to O.A.C. Rules 3745-55-45 and 3745-55-47. Dayton Walther shall be entitled to (i) withdraw its financial assurance for the Old Landfill closure and/or (ii) apply all or part of its financial assurance for the Old Landfill closure to Dayton Walther's post-closure care financial obligations hereunder, upon receipt of acceptance by Ohio EPA of Dayton Walther's Article VIII certification of modified closure.

X. GROUNDWATER MONITORING

10. Dayton Walther is ordered and enjoined to evaluate its groundwater monitoring data in accordance with the statistical procedures contained in the facility's post-closure plan originally approved September 13, 1989, or any alternate procedure selected from "Statistical Analysis of Groundwater Monitoring Data at RCRA Facilities" (April, 1989) as amended by "Addendum to Interim Final Guidance" (April, 1992).

XI. CIVIL PENALTY

11. Dayton Walther is ordered and enjoined to pay to the State of Ohio a civil penalty of Sixty Three Thousand Six

Hundred Dollars (\$63,600) by delivering a certified check for that amount, payable to the order of "Treasurer, State of Ohio" for payment into the Hazardous Waste Clean-up Fund pursuant to O.R.C. Section 3734.28, to Janis Miller, Administrative Assistant, Environmental Enforcement Section, or her successor, at the Office of the Ohio Attorney General, 25th Floor, 30 East Broad Street, Columbus, Ohio 43216, within thirty (30) days from the date of entry of Amended Consent Decree.

XII. STIPULATED PENALTIES

12. In the event that Dayton Walther fails to meet any requirement of Articles VII (Revised Post-Closure Plan), VIII Certification of Modified Closure, IX (Financial Assurance) or XI (Civil Penalty), Dayton Walther shall pay a stipulated penalty of One Thousand Dollars (\$1,000) for each day of each violation, from one (1) to thirty (30) days of violation; for each day of each violation from thirty-one (31) to sixty (60) days of violation -- Two Thousand Five Hundred Dollars (\$2500.00) per day of each day of violation; for each day of violation from sixty-one (61) to ninety (90) days of violation -- Four Thousand Dollars (\$4000.00) per day of each day of violation; for each day after ninety (90) days of violation -- Five Thousand Dollars (\$5000.00) per day of each day of violation.

13. In the event certification of modified closure as described in Article VIII is not accepted by Ohio EPA.

stipulated penalties will begin to accrue if the deficiencies in the modified closure certification are not corrected by Dayton Walther within Fifteen (15) days of receipt of notice of non-acceptance by Dayton Walther.

XIII. RETENTION OF JURISDICTION

14. The Court will retain jurisdiction of this action for the purpose of overseeing compliance with this Amended Consent Decree and the Consent Decree.

XIV. SUBMITTALS

15. Any submission to the Ohio EPA as required by this Amended Consent Decree or the Consent Decree, to the extent it is not amended, unless otherwise indicated, shall be delivered to both of the following:

Ohio EPA
Southeast District Office
2195 Front Street
Logan, Ohio 43138
Attn: RCRA Group Leader

Ohio EPA
P.O. Box 1049
1800 WaterMark Drive
Columbus, Ohio 43266-0149
Attn: Manager, Compliance, Monitoring and
Enforcement Section

XV. COURT COSTS

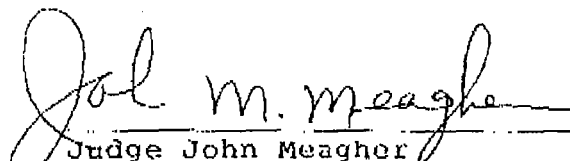
16. Dayton Walther shall pay the court costs associated with entry of the Amended Consent Decree.

XVI. ENFORCEMENT COSTS

17. Dayton Walther is ordered to pay the enforcement costs of relator Ohio Attorney General expended in pursuing the Amended Consent Decree, totaling \$4500.00, by delivering a certified check in such an amount for payment into the State Treasury made payable to the order of "Treasurer, State of Ohio" to Janis Miller, Administrative Assistant, or her successor, Environmental Enforcement Section, 25th Floor, 30 East Broad Street, Columbus, Ohio 43216, within thirty (30) days after the entry of this Amended Consent Decree. Any check submitted in compliance with this section shall be in addition to and separate from any check submitted pursuant to any other section of this Amended Consent Decree.

IT IS SO ORDERED.

Entered this 6TH day of January, 1993


Judge John Meagher
Judge, Court of Common Pleas
of Montgomery County

AGREED TO:

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

BY: Beverly Yale Pfeiffer
BEVERLY YALE PFEIFFER (0018063)
Assistant Attorney General
Environmental Enforcement
Section, 25th Floor
30 E. Broad Street
Columbus, Ohio 43266-0410
(614) 466-2766

DAYTON WALTHER
CORPORATION

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Hollister
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Cincinnati, Ohio 45202
(513) 381-2838

Attorney for Dayton Walther

BY: STEVEY M. PALM

Authorized Representative
of Dayton Walther

2606E.1-10