

IN THE COURT OF COMMON PLEAS  
ASHTABULA COUNTY, OHIO

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

Plaintiff, :

v. :

DOHERTY SANITARY LANDFILL, :  
INC. :

Defendant. :

CASE NO.

JUDGE

97-CV-11

*Yost*

JAN 7 1 23 PM '97  
CAROL A. MEAD  
COMMON PLEAS COURT  
ASHTABULA CITY, OH.  
FILED

COPY

**CONSENT ORDER AND FINAL JUDGMENT ENTRY**

Plaintiff State of Ohio, by its Attorney General, Betty D. Montgomery (hereinafter "the State"), at the written request of the Director of Environmental Protection, commenced this action by filing a Complaint against Doherty Sanitary Landfill, Inc. alleging violations of Chapter 3734 of the Ohio Revised Code. The State and Defendant consent to the entry of this Consent Order and Final Judgment Entry.

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

**I. DEFINITIONS**

1. For the purposes of this Consent Order, the following terms shall have the following meanings:

- a. "Defendant" shall mean the Defendant Doherty Sanitary Landfill, Inc.
- b. "Disclosure Statement" shall mean the statement required to be filed with the Ohio Attorney General and the Director of Environmental Protection pursuant to R.C. §3734.42 and O.A.C. Rule 109:6-1-02, and shall include fingerprint cards for every person required to be listed in the disclosure statement.
- c. "Doherty Sanitary Landfill Trust Fund" shall mean the trust fund established pursuant to the trust agreement executed on June 24, 1992 for the purpose of establishing financial assurance for the cost of closure and post-closure care of the Doherty Sanitary Landfill.
- d. "Landfill" shall mean the Doherty Sanitary Landfill, which is located at 2581 Tuttle Road, Geneva Township, Ashtabula County, Ohio.

## **II. JURISDICTION**

2. The Court has jurisdiction over the parties and the subject matter of this action pursuant to R.C. Chapter 3734. The Complaint states a claim upon which relief can be granted. Venue is proper in this Court.

## **III. PARTIES**

3. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, their assigns, successors in interest, and other persons as provided in Rule 65 of the Ohio Rules of Civil Procedure, except that the provisions of this Consent Order requiring the payment of monies shall be binding only upon Defendant, its officers, assigns and successors in interest.

#### **IV. SATISFACTION OF LAWSUIT**

4. The State has alleged in its Complaint that the Defendant has violated R.C. Chapter 3734, and the rules adopted thereunder. Except as provided herein, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for the claims alleged in the Complaint.

#### **V. RESERVATION OF RIGHTS**

5. Nothing in this Consent Order, including the satisfaction of claims for damages or civil penalties, shall limit the authority of Plaintiff to:

- (a) Seek relief for claims or conditions not alleged in the Complaint, or for violations or conditions alleged in the Complaint which occur after the entry of this Consent Order;
- (b) Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;
- (c) Bring any action against Defendants or against any other person, under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. §9601, et seq., and/or R.C. §§ 3734.20 through 3734.27, and/or R.C. Chapter 6111 to: (1) recover natural resource damages, and/or (2) to order the performance of, and/or to recover costs for any removal, remedial or corrective activities not conducted within the scope of this Consent Order.
- (d) Take any action authorized by law against any person, including Defendant, to eliminate or mitigate conditions at the Facility which

may present an imminent threat to public health and welfare, or the environment.

6. Except as set forth herein, Defendant retains all rights, claims, defenses and privileges to which it is entitled under law or equity, including but not limited to the right to contest claims or allegations that may be asserted against it by Plaintiff in the future pursuant to the rights reserved by Plaintiff in paragraphs 5(a) and 5(b) of this Consent Order or any other future claim or action. The entry of this Consent Order does not constitute an admission of any wrongdoing or misconduct on the part of the Defendant, its officers or employees, and is being agreed to by Defendant solely to settle this action without the necessity of litigating the allegations set forth in the Complaint. Nothing in this Consent Order shall constitute a waiver of any right of Defendant to challenge or appeal any action of Plaintiff.

#### VI. PERMANENT INJUNCTION

7. Defendant agrees and is ordered and enjoined to submit an initial disclosure statement to the Ohio Attorney General's Environmental Background Investigation Unit and the Director of Environmental Protection in accordance with R.C. §3734.42 and O.A.C. Rule 109:6-1-02 by February 1, 1997, or within thirty (30) days after the termination of a July 15, 1996 merger agreement between Sanifill, Inc. and Defendant, whichever is earlier. If prior to February 1, 1997, the July 15, 1996 merger agreement between Sanifill, Inc. and Defendant is executed and fully or substantially performed, Defendant is not required to submit such initial disclosure statement to the Ohio Attorney General or the Director of Environmental

Protection.

8. Defendant agrees and is ordered and enjoined to pay to the Ohio Attorney General an initial disclosure statement filing fee of \$35,000.00 dollars, as required by O.A.C. Rule 109:6-1-04. This fee shall be paid by certified check or money order, payable to the "Attorney General of Ohio", and mailed to the Environmental Background Investigation Unit, Attn: Merle Pratt, 35 East Chestnut Street, Fourth Floor, Columbus, Ohio 43215. Defendant has agreed to pay such fee at the time Defendant executes this Consent Order, and to deliver such payment to Plaintiff with the signed original of this Consent Order. Should Defendant fail to pay and deliver the above-described fee at such time, Defendant is ordered and enjoined to pay such fee within ten (10) days after entry of this Consent Order.

9. Defendant agrees and is ordered and enjoined to:

A. Deposit into the Doherty Landfill Trust Fund, by January 20, 1997, a lump sum of \$213,720.00 based upon the value of such trust fund as of December 19, 1996 of \$571,608.45. If, prior to such time, the July 15, 1996 merger agreement between Sanifill, Inc. and Defendant is executed and fully or substantially performed, Defendant is not required to pay such sum.

B. Deposit into the Doherty Landfill Trust Fund, beginning on February 1, 1997, six (6) equal payments sufficient to bring the balance of the funds deposited in the trust to \$970,396.35 by June 24, 1997.

Defendant agrees and is ordered and enjoined to pay the first five (5) of

such payments by the first of each month from February 1, 1997 to June 1, 1997. Defendant agrees and is ordered and enjoined to pay the sixth of such payments by June 24, 1997. If, prior to February 1, 1997, Ohio EPA has approved, pursuant to O.A.C. Rules 3745-27-15 and 3745-27-16, an alternative mechanism for financial assurance for the costs of closure and post-closure care of the Landfill, Defendant is not required to comply with the provisions of paragraph nine, subparagraph B (¶9B), of this Consent Order.

#### **VII. COMPLIANCE WITH APPLICABLE LAWS**

10. Nothing in this Consent Order shall effect Defendant's obligation to comply with all applicable federal, state or local laws, regulations, rules or ordinances. Defendant shall obtain any federal, state, or local permits necessary to comply with this Consent Order.

#### **VIII. CIVIL PENALTY**

11. In lieu of a civil penalty, Defendant has agreed to pay the amount of Seven Thousand Eight Hundred Dollars (\$7,800.00) into a fund administered by the Croghan Colonial Bank for the closure of the County Line Landfill facility located at 1680 County Road 157, Rice Township, Sandusky and Ottawa Counties, Ohio ("County Line closure fund"). This payment shall be made by certified check or money order payable to Croghan Colonial Bank Trustee, FBO Henry G. Stahl, Account Number 8100, and mailed to Croghan Colonial Bank, 323 Croghan Street, Fremont, Ohio 43420. Defendant has agreed to pay such monies, and to submit to

Plaintiff evidence of such payment, at the time Defendant executes this Consent Order. Should Defendant fail to pay and deliver the above-described monies at such time, Defendant is ordered and enjoined to pay such monies within ten (10) days after entry of this Consent Order.

**IX. RETENTION AND SUBMITTAL OF DOCUMENTS**

12. All documents which must be generated as result of this Consent Order must be maintained by Defendant's president and at the Landfill. All such documents shall be made available to Ohio EPA during inspections, or as otherwise requested.

13. Documents which must be submitted under this Order shall be submitted to the following:

Ohio Environmental Protection Agency  
Attention: Enforcement Coordinator  
Division of Solid and Infectious Waste Management  
Compliance Monitoring and Enforcement Section  
P.O. Box 1049  
1800 Watermark Drive  
Columbus, Ohio 43266-0149

and:

Ohio Environmental Protection Agency  
Attention: Group Leader  
Division of Solid and Infectious Waste Management  
Northeast District Office  
2110 E. Aurora Road  
Twinsburg, Ohio 44087

**X. ENFORCEMENT OF THIS ORDER**

14. If the Defendant fails to comply with this Consent Order, Defendant is liable for and shall immediately pay stipulated penalties according to the following

schedule:

Defendant shall pay one hundred dollars (\$100.00) per day for each day any requirement in this Consent Order is violated up to thirty (30) days; after thirty (30) days, Defendant shall pay two hundred dollars (\$200.00) per day; after ninety (90) days, Defendant shall pay four hundred dollars (\$400.00) per day.

15. Stipulated penalties due under this Consent Order shall be paid by certified check or money order, payable to "Treasurer, State of Ohio" and mailed to Administrative Assistant, Office of the Attorney General, Environmental Enforcement Section, 30 East Broad Street - 25th Floor, Columbus, Ohio 43266-0410 within ten days of the occurrence of the failure to comply with this Order as described above.

#### XI. TERMINATION OF CONSENT ORDER

16. This Consent Order may be terminated only by order of this Court upon a motion of Defendant pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure demonstrating the following: (1) Defendant has achieved and maintained compliance with all requirements contained in this Consent Order; (2) Defendant has paid any and all stipulated penalties that may be owed pursuant to this Consent Order; and (3) The grounds for relief from judgment set forth in Rule 60(B) of the Ohio Rules of Civil Procedure have been satisfied.

#### XII. CONTINUING JURISDICTION

17. This Court shall retain jurisdiction over this action for the purposes of enforcing this Consent Order.



Signed at Jefferson, Ashtabula County, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_.


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JUDGE  
COURT OF COMMON PLEAS  
ASHTABULA COUNTY, OHIO

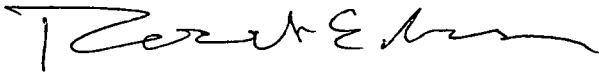
APPROVED BY:

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

DEFENDANT, DOHERTY  
SANITARY LANDFILL, INC.

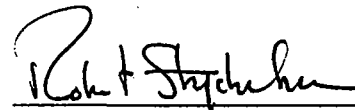
  
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PATRICK DOHERTY  
2581 Tuttle Road  
Geneva, Ohio 44041

*Authorized Representative of  
Doherty Sanitary Landfill*



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*(Approved as to form)  
Attorney for Defendant*