

IN THE COURT OF COMMON PLEAS
GALLIA COUNTY, OHIO

STATE OF OHIO, ex rel.	:	CASE NO. 86CL30
BETTY D. MONTGOMERY	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
DYER BROTHERS LUMBER CO, et al.	:	JUDGE JOSEPH L. GAN
	:	
Defendants	:	

96 MAY -7 AM 10:12
 FILED
 CLERK OF COURTS
 GALLIA COUNTY, OHIO
 COMMON PLEAS COURT

SENTENCING ORDER AND ENTRY

This matter came before the Court on Plaintiff State of Ohio's written charges in contempt filed against the Defendants Dyer Brothers Lumber Company, Elmer Dyer and Emmett Dyer (hereinafter "Defendants"). A hearing on the matter was held several days, and was concluded on October 25, 1995. On November 21, 1995, this Court entered its Order finding that the Defendants were in contempt of the Court's Orders of February 10, 1986, March 13, 1990 and July 21, 1991. A penalty hearing was held on January 5, 1996 whereby terms and conditions of sentence were imposed upon Defendants for their contempt of court. Accordingly, the Court now Orders that, for their contempt of court, the following sentence be imposed upon Defendants, their heirs, assigns, successors in interest, and any person acting in concert or privity with any of them:

- 1.) Defendants agree and are hereby Ordered to pay the agreed upon civil penalty of \$13,000. The immediate and full payment of this civil penalty is suspended pending compliance with the terms and conditions of this Order. As long as Defendants are in compliance with the terms and conditions of this Order, the \$13,000 civil penalty shall be paid in installments in accordance with paragraph 10 below. In the event any of the terms and conditions of this Order are violated by any or each of the Defendants at any time, then Defendants shall

immediately pay the entire remaining balance of the \$13,000 immediately upon violation of this Order;

- 2.) Defendants agree and are hereby Ordered to pay the agreed upon fine of \$500. This fine is in addition to the \$13,000 civil penalty. The fine shall be paid by delivering to Matt Sanders, Administrative Assistant, Environmental Enforcement Section of the Attorney General's office, 30 E. Broad St., 25th floor, Columbus, Ohio 43215-3428 a certified check in that amount payable to the Order of "Treasurer, State of Ohio" which shall be received by the Attorney General's Office within 15 days of entry of this Order;
- 3.) Defendants agree and are hereby Ordered to pay within 60 days of entry of this Order the Court costs of this action;
- 4.) Defendants agree and are hereby Ordered to serve 30 days in jail. This jail time is suspended pending compliance with all the terms of this Order. In the event Defendants violate any of the terms and conditions of this Order, Defendants are Ordered to immediately serve the entire 30 days jail time immediately upon their violation of any of the terms and conditions of this Order;
- 5.) The Court hereby Orders that with respect to the property identified at volume 259, page 311 of the Gallia County Recorder's Office, located in Green Township at Fraction 19, Section 20, Township 5, Range 15, the deed restriction which is attached hereto as Attachment A shall be imposed upon the area that was fenced in by the United States Environmental Protection Agency during the interim action performed by them during 1993 within Tract III, identified on the plat map attached to the deed as Parcel E, the fenced-in area of which comprises 8 - 10 acres more or less. The Clerk of Courts is instructed to forward a copy of this Judgment Entry and Order to the Gallia County Recorder's Office with instructions to have it placed and filed in the appropriate index;
- 6.) Defendants agree and are hereby Ordered to give immediately upon entry of this Order their irrevocable consent to authorized representatives of the United States, the State of Ohio, Gallia County and such other persons as authorized by the U. S. or State or County to perform any and all activities at the facility in accordance with federal, State or local law;
- 7.) Defendants agree and are hereby Ordered to provide each year to the State of Ohio a certified accounting of their net worth, including but

not limited to an accounting of all assets and liabilities, savings, investments, trust funds, retirement accounts, gifts, securities, land holdings, equipment and vehicles. The certified accounting for calendar year 1995 shall be received by the Ohio EPA within 15 days of entry of this Order. Each subsequent certified accounting shall be received by the Ohio EPA on or before February 1st of each succeeding calendar year;

- 8.) Defendants agree and are hereby Ordered to provide the State of Ohio with certified copies of all tax returns after tax year 1994 which have been filed with the United States and all other States, including but not limited to the States of Ohio and West Virginia. Certified copies of tax returns filed for tax year 1995 shall be received by the Ohio EPA on or before May 1, 1996. Certified copies of tax returns filed for subsequent tax years shall be received by the Ohio EPA on or before May 1st of each succeeding tax year;
- 9.) Defendants agree and are hereby Ordered to conduct monthly inspections of the facility for the purposes of ensuring that access to the facility is secure. The first monthly inspection shall be conducted on or before the fifth day of the first month after entry of this Order and each succeeding monthly inspection shall be done no later than the fifth day of each succeeding month. The Court recommends that an inspection checklist attached hereto as Attachment B be completed during each inspection with a copy being submitted to the Court and the Ohio EPA on or before the fifteenth day of each month. If at any time, during an inspection or otherwise, any Defendant discovers that the facility is not secure the the Court and the Ohio EPA shall be immediately notified.
- 10.) Defendants agree and are hereby Ordered to pay in installments the \$13,000 civil penalty imposed by paragraph number 1 of this Order. Defendants shall pay \$50 cash per month per Defendant into the Hazardous Waste clean-up fund in accordance with O.R.C. Section 3734.28. Payment shall be made by tendering a check for that amount to Edith Long or her successor, Office of Fiscal Administration for the Director of Ohio EPA, P. O. Box 1049, Columbus, Ohio 43216-1049, made payable to the Order of "Treasurer, State of Ohio" on or before the fifth business day of each month. The first payment into this fund shall be received by the Ohio EPA within 15 days of entry of this Order. If at any time any check submitted by any Defendant is dishonored for any reason, then the Defendant who submitted such check shall be deemed to be in violation of this Order and shall be enjoined and Ordered to submit all subsequent payments, beginning with the next payment, by certified check. If a single check representing payment by one or more

Defendants is submitted and is dishonored for any reason, then the Defendants on whose behalf such check was submitted shall be deemed to be in violation of this Order and shall be enjoined and Ordered to submit all subsequent payments, beginning with the next payment, by certified check;

- 11.) Defendants agree and are hereby Ordered to continue making cash payments into the Hazardous Waste clean-up fund after they have paid off the \$13,000 civil penalty. Defendants shall make these continued cash payments in accordance with the provisions of paragraph number 10 of this Order. The first payment of continued cash payments into the Hazardous Waste clean-up fund shall be received by the Ohio EPA on the fifth business day of the first month after Defendants have paid off the \$13,000 penalty.
- 12.) Defendants agree and are hereby Ordered to serve 18 months of probation. Defendants shall report their compliance with the terms of this Order, including but not limited to payments and inspections, to the appropriate Probation Officer once per month and shall comply with all other terms and conditions of probation as imposed by the Court. In addition, the requirements of this Order shall also be imposed upon Defendants as terms and conditions of probation.

This Order and all terms of sentence herein shall remain in effect until Defendants certify, in accordance with Ohio Administrative Code Chapters 3745-65 through 3745-69, that their hazardous waste facility has been closed by Defendants. In the event the facility is certified as closed by Defendants before they have paid off the \$13,000 civil penalty, then paragraph number 10 shall continue to remain in full force and effect until such time as the Defendants have paid off the \$13,000 civil penalty. Nothing in this Order shall preclude the Plaintiff from requesting further relief from this Court as a result of, among other thing, evidence of improved financial conditions of the Defendants. All notice and documents required to be provided under paragraphs 7, 8 and 9 of this Order shall be provided to Ohio EPA, Southeast District Office, 2195 Front Street, Logan, Ohio 43138, Division of

Hazardous Waste Management, attention Mike Moschell or his successor. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Judgment Entry and Order by the Court, the clerk is directed to enter it upon the journal. Within three days of entering the judgment upon the journal, the clerk is directed to serve upon all parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure, to note the service in the appearance docket, and to forward a copy of this Judgment Entry and Order to the Gallia County Recorder's Office with instructions to have it placed and filed in the appropriate index.

SO ORDERED

5/7/96

DATE



**JUDGE, GALLIA COUNTY
COURT OF COMMON PLEAS**

APPROVED:

**BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO**



David G. Cox (0042724)
Assistant Attorney General
Environmental Enforcement Section
30 E. Broad St., 25th floor
Columbus, Ohio 43215-3428
Counsel for Plaintiff State of Ohio



Louis W. Cennamo (0034329)
8 E. Broad St., Suite 900
Columbus, Ohio 43215
Counsel for Defendants

*Not Approved But
HAVE SEEN R.R.C.*

Ronald Calhoun, Esq. (0002927)
444 Second Avenue
Gallipolis, Ohio 45631

The Clerk is directed to furnish a copy of the forgoing entry to David G. Cox, Assistant Attorney General, Environment Enforcement Section, 30 E. Broad Street, Columbus, Ohio 43215-3428; Louis W. Cennamo, attorney for defendants, 8 E. Broad Street, Suite 900, Columbus, Ohio 43215; Ronald R. Calhoun, 444 Second Avenue, Gallipolis, Ohio 45631; Carl E. Langford, Adult Probation Officer, Gallia County Courthouse, Locust Street, Gallipolis, Ohio 45631; and Molly V. Plymale, Gallia County Recorder, Gallia County Courthouse, Locust Street, Gallipolis, Ohio 45631.

The following restrictions shall be imposed upon the property that was fenced in by the United States Environmental Protection Agency during the interim action performed by them during 1993 that is within the property identified in this deed as Tract III and identified on the Plat Map attached hereto and incorporated herein as Parcel E ("the property"):

- Restriction No. 1 the property shall at all times remain secure from ingress and egress from all persons including the Grantors, except for authorized representatives of the United States, the State of Ohio, the County of Gallia, and persons authorized by them who shall have access to the property for conducting any activity authorized by federal, state or local law;
- Restriction No. 2 the property shall not be used for any purpose except for closure activities which shall be conducted in accordance with Ohio Revised Code Chapter 3734. and the regulations adopted thereunder;
- Restriction No. 3 no operations of any kind shall be allowed on the property except for closure activities which shall be conducted in accordance with Ohio Revised Code Chapter 3734. and the regulations adopted thereunder;
- Restriction No. 4 no fixtures, structures or appurtenances of any kind shall be constructed, erected, located, affixed or otherwise placed upon the property;
- Restriction No. 5 the property, in whole or in part, shall not be partitioned;

The preceding restrictive covenants shall:

- a.) remain in effect until the property is certified as closed in accordance with Ohio's hazardous waste laws and the Regulations adopted thereunder;
- b.) run with the land;
- c.) be binding upon the Grantor's and their heirs, personal representatives, successors, assigns, and successors in title or interest forever; and
- d.) inure to the benefit of and be enforceable by an action in law or in equity by the State of Ohio.

DYER BROTHERS LUMBER COMPANY
FACILITY INSPECTION FORM

Month	Date of Inspection	Condition of Fence	Condition of Gate & Locks	Condition of Warning Signs	Condition of Erosion Control (Grass & Silt Poles)	Date and Type of Any Repair	Initials of Inspector
JAN							
FEB							
MARCH							
APRIL							
MAY							
JUNE							
JULY							
AUG							
SEPT							
OCT							
NOV							
DEC							