

IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO

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

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CASE NO. 96 1347

ASSIGNED TO JUDGE SCHMOLLINGER

Plaintiff,

vs.

FISHER ACQUISITION AND
DEVELOPMENT CORPORATION

Defendant.

CONSENT ORDER AND FINAL JUDGMENT ENTRY

Plaintiff, State of Ohio, ex rel. Betty D. Montgomery, Attorney General of Ohio, having filed the Complaint in this action against Defendant to enforce Ohio's solid waste laws found in Chapter 3734. of the Revised Code and the rules adopted thereunder; and Plaintiff and Defendant having consented to the entry of this Order;

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. DEFINITIONS

As used in this Consent Order:

"Approved Closure/Post-Closure Plan" or "Closure/Post-Closure Plan"

means the closure/post-closure plan for the Unitcast residual waste facility located at 1414 E. Broadway Street, Toledo, Ohio that was approved by the Director of the Ohio

EPA through Findings and Orders issued on August 29, 1995 or any and all subsequent amendments thereto which are approved by the Director.

"Consent Order" or "Order" means this Consent Order and Final Judgment Entry and all appendices hereto. In the event of conflict between this Order and any appendix, the Order shall control.

"Contractor" means the individual(s) or company or companies retained by or on behalf of Defendant to undertake and complete the work required by this Consent Order.

"Defendant" means Fisher Acquisition and Development Corporation.

"Director" means Ohio's Director of Environmental Protection.

"Facility" refers to the facility located at 1414 E. Broadway Street, Toledo, Lucas County, Ohio.

"Ohio EPA" means the Ohio Environmental Protection Agency.

"O.A.C." means the Ohio Administrative Code.

"Plaintiff" means the State of Ohio by and through the Attorney General of Ohio.

"R.C." means the Ohio Revised Code.

II. JURISDICTION AND VENUE

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

III. PERSONS BOUND

The provisions of this Consent Order shall apply to and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest and any person acting in concert, privity or participation with them who receives actual notice of this Consent Order whether by personal service or otherwise.

Defendant is ordered and enjoined to provide a copy of this Consent Order to each contractor it employs to perform work itemized herein.

IV. SATISFACTION OF LAWSUIT

1. Except as otherwise provided in this Consent Order, compliance with Article VI, Paragraph Number 2 of this Consent Order shall constitute full satisfaction of, and Plaintiff covenants not to sue Defendant or its successors in interest or assigns for, any civil liability of Defendant to Plaintiff for all claims alleged in the Complaint and for all violations under O.R.C. Chapter 3734. known to the State at the time of the filing of the Complaint.

2. Nothing in this Consent Order shall limit the authority of the State of Ohio to:

(a) Seek relief for claims 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 Defendant 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 Ohio Revised Code Sections 3734.20 through 3734.27 to: (1) recover natural resource damages, and/or (2) to order the performance of, and/or recover costs for any removal, remedial or corrective activities not conducted pursuant to the terms of this Consent Order; and

(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 the public health or welfare, or the environment.

V. PERMANENT INJUNCTIVE RELIEF

Except as provided in Article VI, Defendant is ordered and enjoined to comply with all applicable provisions of the Ohio's residual waste laws and rules as set forth in R.C. Chapter 3734 and O.A.C. Chapter 3745-30 immediately upon entry of this Consent Order.

VI. PRELIMINARY INJUNCTIVE RELIEF

1. Within 60 days of entry of this Consent Order, Defendant is ordered and enjoined to implement the approved closure/post-closure plan, including any and all amendments thereto as approved by the Director, in the manner and pursuant to the time frames set forth therein and in accordance with O.A.C. Rules 3745-30-09 and -10.

2. Within sixty days of completion of closure, the Defendant is ordered and enjoined to submit certification of closure to Ohio EPA, pursuant to O.A.C. Rule 3745-30-09. Certification shall be submitted in accordance with Article IX of this Consent Order.

3. Within 60 days of entry of this Consent Order, Defendant is enjoined and ordered to comply with O.A.C. Rules 3745-30-11 and O.A.C. 3745-30-13 except that Defendant is enjoined and ordered to fund financial assurance for 20 years of post-closure care and/or corrective measures within 180 days of entry of this Consent Order.

VII. POTENTIAL FORCE MAJEURE

1. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Defendant shall notify the Ohio EPA, Northwest District Office, in writing within ten (10) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendant to prevent or minimize the delay and the timetable by which measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

2. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendant may raise that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and the Plaintiff 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 action to enforce the terms and conditions of this Consent Order, if any, is commenced by the Plaintiff. At that time,

the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant shall rest with Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Defendant or serve as a basis for an extension of time under this Consent Order. Failure by Defendant to comply with the notice requirements of Paragraph 1 shall render this Paragraph 2 void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendant's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one compliance date based on a particular incident does not mean that Defendant qualifies for an extension of a subsequent compliance date or dates. Defendant must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. 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.

VIII. FACILITY ACCESS

1. As of the date of entry of this Consent Order, Defendant consents to allow Plaintiff and its representatives and contractors to have access at all times to the Facility, and to have access to any other property controlled by or available to Defendant to which access is necessary to effectuate the actions required by this Order. Access shall be allowed for the purposes of conducting activities related to

this Order including but not limited to:

- (a) Monitoring the work or any other activities taking place at the Facility;
- (b) Verifying any data or information submitted to Plaintiff;
- (c) Conducting investigations relating to contamination at or near the Facility;
- (d) Obtaining samples;
- (e) Assessing the need for, planning, or implementing additional response actions at or near the Facility;
- (f) Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Defendant or its agents, consistent with this Consent Order and applicable law; or
- (g) Assessing Defendant's compliance with this Consent Order.

2. Nothing in this Consent Order shall be construed to limit the statutory authority of the Director or his authorized representatives to enter at reasonable times upon any private or public property, real or personal, to inspect or investigate, obtain samples, and examine or copy any records to determine compliance with R.C. Chapter 3734.

IX. SUBMITTAL OF DOCUMENTS

All documents required to be submitted to Ohio EPA pursuant to this Consent Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio Environmental Protection Agency
2305 Westbrooke Drive, Building C
P.O. Box 2198
Columbus, Ohio 43266-2198
Attn: DSIWM Manager

Ohio EPA
Northwest District Office
347 North Dunbridge Road
Bowling Green, Ohio 43402
Attn: DSIWM Group Leader

X. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS

All activities undertaken by Defendant pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal and state and local laws, rules and regulations, and permits. For work both on and off the Facility, Defendant is ordered and enjoined to obtain all permits or approvals necessary under applicable federal, state or local laws and shall submit timely applications and requests for any such permits and approvals. Where such laws appear to conflict with the other requirements of this Consent Order, Defendant is ordered and enjoined to immediately notify the Ohio EPA of the potential conflict. Defendant is ordered and enjoined to include in all contracts or subcontracts entered into for work required under this Consent Order, provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and rules. This Consent Order is not a permit issued pursuant to any federal or state or local law or rule.

XI. RETENTION OF JURISDICTION

This Court will retain jurisdiction of this action for the purpose of enforcing this Consent Order.

XII. COSTS

Defendant is hereby ordered to pay the court costs of this action.

XIII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

Upon signing of this Consent 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 and note the service in the appearance docket.

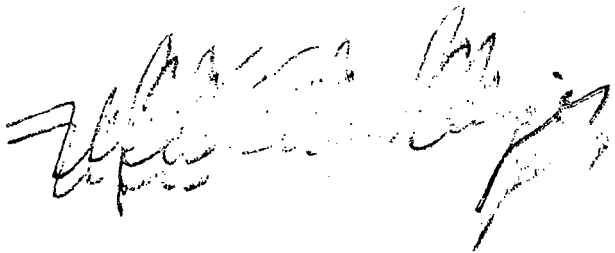
XIV. AUTHORITY TO ENTER INTO THE CONSENT ORDER

Each signatory for a corporation represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof, and that he/she submits with this Consent Order an authenticated and certified resolution from the corporation establishing that he/she is so empowered.

SIGNED:

4/26/94

DATE



JUDGE SCHMOLLINGER
LUCAS COUNTY COURT
OF COMMON PLEAS

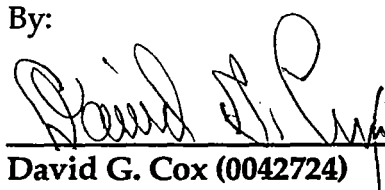
APPROVED:

Respectfully submitted,

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

FISHER ACQUISITION AND
DEVELOPMENT CORPORATION


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