

Miller City of Putnam Co. Gen RECEIVED

MAY 10 1994

IN THE COMMON PLEAS COURT OF PUTNAM COUNTY OHIO, P.A. N.W.D.O.

PUTNAM COUNTY BOARD OF HEALTH :
AND : CASE NO. 92-117 & 92-121
STATE OF OHIO, ex rel : JUDGE BASINGER
LEE FISHER :
ATTORNEY GENERAL OF OHIO :
PLAINTIFFS :
VS. :
WILHELM FORSTER :
DEFENDANT :

CONSENT ORDER AND AGREED ENTRY RESOLVING CHARGES IN CONTEMPT

WHEREAS, the State of Ohio and the Putnam County Board of Health (hereinafter the "County") have filed Complaints against Defendant Forster relating to the closure of the Miller City Landfill;

WHEREAS, the State filed a Motion for Summary Judgment as to the Defendant's liability on the violation alleged in the State's complaint;

WHEREAS, the Court granted the State's Motion for a Summary Judgment in a Journal Entry filed November 4, 1993;

WHEREAS, the Journal Entry entered by the Court on November 4, 1993 orders the Defendant to inter alia, provide complete financial assurance in compliance with O. A. C. 3745-27-15 and -16; to fully comply with the terms of the Defendant's Permit to Install; to conduct groundwater monitoring for a period of thirty years and to conduct explosive gas

monitoring;

WHEREAS, on the 17<sup>th</sup> day of March, 1994, the State filed a Motion to Show Cause Why the Defendant Should Not Be Held in Contempt, alleging that the Defendant is in violation of the November 4, 1993 Journal Entry issued by this Court;

WHEREAS, the Defendant has provided evidence and documentation to the State and the County demonstrating that he is financially unable to fully comply with the final entry entered February 22, 1994; and

WHEREAS, the parties desire to resolve the Defendant's contempt of the Journal Entry through this Agreed Entry.

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

#### DEFINITIONS

For the purpose of this decree, the following terms shall have the following meanings:

- a. "Miller City Landfill" or "landfill" shall mean the Defendant's facility located at the intersection of State Route 108 and County Road E, in Palmer Township, Putnam County, Ohio.
- b. "Trust Fund" shall mean the Trust Fund established by the Defendant on August 25, 1988 at the Ohio Bank, 236 South Main Street, Findlay, Ohio, Account Number 33-0423-00.

#### I. JURISDICTION

1. The Court has jurisdiction over the parties and the subject matter of this action

pursuant to R. C. Chapters 3734. The Complaint states a claim upon which relief can be granted, Venue is proper in this Court.

## II. PARTIES

2. The provisions of this Consent Decree 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. Defendant Inge Forster is not bound by the terms of this decree.

## III. SATISFACTION OF LAWSUIT

3. Except as provided herein, compliance with the terms of this Consent Decree shall constitute full satisfaction of any civil liability by Defendant Forster for those claims which have been alleged in the State's and the County's Complaint and in the State's Motion to Show Cause Why the Defendant Should Not be Held in Contempt filed February 22, 1994. This satisfaction applies only to Defendant Forster and the State and the County reserve all rights against all others.

4. This Consent Decree shall not be construed to act as a bar to the authority of the State or the County to seek relief, by separate action or by charges in contempt for future violations of law or violations of this Decree.

5. Nothing in this Consent Decree shall limit the authority of the State or the County to seek relief for claims or conditions not alleged in the Complaint, or to seek relief for claims or conditions alleged in the Complaint which occur or exist after the entry of this Consent Decree. This reservation of rights includes but is not limited to any future action which the State or the County may undertake regarding additional landfills owned and/or

operated by Forster. In addition, the State and the County hereby specifically reserve the right to take action against any person, including but not limited to Forster, pursuant to the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U. S. C. Section 9601 *et seq.*, and/or R. C. 3734.20 through 3734.27, for any removal, remedial or corrective actions.

#### IV. INJUNCTIVE RELIEF

6. Forster is hereby permanently enjoined and ordered to comply with R. C. Chapter 3734 and rules promulgated thereunder.

7. Except as expressly provided for herein, Defendant Forster is hereby enjoined to comply with the post-closure care requirements for the Miller City Landfill as set forth in O. A. C. 3745-27-14 for a period of thirty years from August 1, 1991.

8. Defendant Forster is hereby enjoined to cause the Miller City Landfill to be maintained, including maintaining the integrity of the cap and maintaining the access roads, for a period of thirty years from August 1, 1991.

9. Defendant Forster is hereby enjoined to cause the conduct of such groundwater monitoring as is necessary to establish the background levels for the groundwater, as required by O. A. C. 3745-27-10(C). The background levels are to be established no later than the 30th day of March, 1995. Once those levels have been established, Defendant Forster is hereby enjoined to conduct annual ground water monitoring for a period of ten years from date of establishment. If, after ten years of annual monitoring, assessment has not been triggered pursuant to O. A. C. 3745-27-10(E), then Defendant Forster is enjoined to conduct bi-annual groundwater monitoring for an additional ten years. If, however, Ohio EPA notifies

Defendant Foster that assessment has been triggered, then Forster is enjoined to fully comply with O. A. C. 3745-27-10 to the extent he is financially able to do so, which shall mean that his net assets exceed \$50,000.00.

10. Defendant Forster is hereby enjoined to cause explosive gas (methane) monitoring pursuant to O. A. C. 3745-27-12 for a period of twenty years from the date of this order. Said monitoring system is to be installed and operational no later than September 30, 1994. The Putnam County Health Department hereby agrees to conduct the explosive gas monitoring, for as long as there is money in the trust fund to reimbursement the Board of Health and the Director hereby agrees to release funds from the trust fund for to pay for necessary equipment, training and employee time for the Health Department.

11. For a period of ten years from the date of this order, Defendant Forster is hereby enjoined to cause the leachate in the leachate collection system to be maintained by pumping 50,000 gallons of leachate per year, <sup>SET</sup> ~~or twice a year~~ <sup>DRY</sup> ~~or~~ <sup>W7-</sup> by pumping the leachate so as to maintain the leachate at or below 724 mean sea level, whichever is greater. If assessment is triggered pursuant to OAC 3734-27-10(E) and paragraph 9 of this Order, then Defendant Foster is enjoined to continue to pump leachate for at least thirty (30) years. The Director, at his discretion, may require the Defendant to pump less leachate than this paragraph requires.

#### V. FINANCIAL ASSURANCE

12. Defendant Forster is hereby enjoined to pay Five Hundred Dollars (\$500.00) into the trust fund on the first day of every month for a period of fifteen (15) years. The first payments shall be due on March 1, 1996 and continue thereafter. The Director hereby agrees

to release Twenty Thousand Dollars (\$20,000.00) to Bluffton Aeration for debts alleged against the Defendant in Case No. 92-60 in the Putnam County Common Pleas Court.

13. Defendant Forster may apply to the Director for reimbursement of post-closure expenses in accordance with O. A. C. 3745-27-16 by submitted itemized bills to the Director. Except as provided herein, the Director reserves the right to deny reimbursement requests if the trust fund is under-funded. In addition, the Director reserves the right to deny reimbursement requests if the Defendant is not in compliance with this order, or if the Director determines, pursuant to O. A. C. 3745-27-16(A)(11) that the costs are not justified. The following post-closure expenses may be paid from the fund even though the amount of the trust fund is insufficient to cover all post-closure costs:

- a. The costs associated with groundwater monitoring done in compliance with paragraph 9 of this Consent Order;
- b. The costs associated with explosive gas monitoring done in compliance with paragraph 10 of this Consent order. These costs include equipment and training for employees of the Putnam County Health Department so that they may conduct the monitoring pursuant to Paragraph Ten (10); and
- c. The actual cost of disposing of leachate in compliance with paragraph 11 of this order, up to a maximum of eight cents per gallon, minus any costs for transportation. In order to receive reimbursement for this cost, the Defendant must submit documentation from the facility where leachate was disposed of and provide both the Putnam County Health Department and the Ohio Environmental Protection Agency (Northwest District Office) with a copy of the leachate analysis conducted by the treatment facility and a receipt including the amount of leachate treated and the date of treatment. The Director may revise the maximum amount paid per gallon from time to time.

14. Provided the Defendant is in compliance with paragraph 12, the Defendant shall not be held in contempt of this order if he fails to perform the tasks required by paragraphs 9, 10 and/or 11 and such failure is caused solely by the Director's failure to release funds from

the trust fund in accordance with paragraph 13.

## **VI. COMPLIANCE WITH APPLICABLE LAWS**

15. Nothing in this Decree shall affect Foster's obligation to comply with all applicable federal, state or local law, regulation, rule or ordinance. Forster shall obtain any federal, state, or local permits necessary to comply with this Decree.

## **VII. CIVIL PENALTY**

16. Forster shall pay a civil penalty of One Thousand Dollars (\$1,000.00) within thirty (30) days after entry of this Decree by delivering a certified check to the Administrative Assistant, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410. The check shall be made payable to "Treasurer, State of Ohio," and will be paid into the Hazardous Waste Clean Up Fund pursuant to R. C. 3734.28.

## **VIII. INSPECTIONS**

17. Forster shall allow representatives of the Ohio EPA and Putnam County Board of Health to enter upon the Miller City Landfill to inspect, investigate, take samples and pictures and examine or copy records in order to determine compliance with the terms of this Consent Decree and R. C. Chapter 3734 and rules promulgated thereunder. Nothing in the Decree shall limit the rights of the Ohio EPA, U. S. EPA or the Putnam County Board of Health to conduct regular and inspections and/or investigations pursuant to statute, regulation or permit.

## **IX. SUBSTANTIAL CHANGE IN DEFENDANT'S**

### **FINANCIAL STATUS**

18. The State hereby reserves its right to seek relief from this judgment pursuant

to Civil Rule 60 if it has reason to believe the Defendant's financial status has changed substantially.

### X. CONTINUING JURISDICTION

19. This Court shall retain jurisdiction over this action for the purposes of enforcing this Consent Decree.

20. The State hereby dismisses all of its claims against Defendant Inge Forster with prejudice.

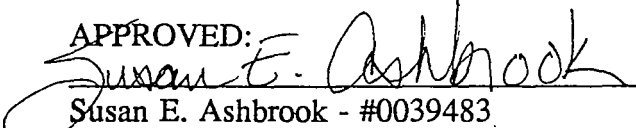
### XI. COSTS

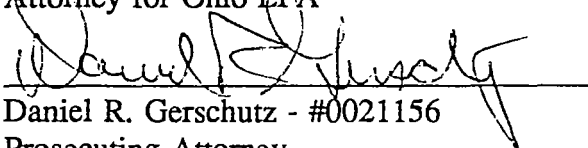
21. Defendant Forster shall pay the court costs of this action.

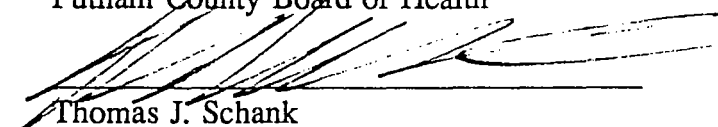
IT IS SO ORDERED.

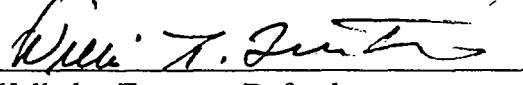
  
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JUDGE BASINGER  
COURT OF COMMON PLEAS  
PUTNAM COUNTY, OHIO

APPROVED:

  
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Susan E. Ashbrook - #0039483  
Assistant Attorney General  
Attorney for Ohio EPA

  
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Daniel R. Gerschutz - #0021156  
Prosecuting Attorney  
Putnam County Board of Health

  
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Thomas J. Schank  
Attorney for Wilhelm Forster

  
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Wilhelm Forster - Defendant

THE STATE OF OHIO Putnam County, ss	I, MARY WIENER, Clerk OF THE COURT OF COMMON PLEAS, WITHIN AND FOR SAID COUNTY.
HEREBY CERTIFY THAT THE ABOVE AND FORE- GOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL <u>Consent Order</u>	
NOW ON FILE IN MY OFFICE	
WITNESS MY HAND AND SEAL OF SAID COURT THIS <u>12</u> DAY OF <u>March</u> A.D. 19 <u>97</u>	
MARY WIENER, Clerk	
By <u>Maria Ricker</u> Deputy	