

Journal 12001

IN THE COURT OF COMMON PLEAS
ATHENS COUNTY, OHIO

STATE OF OHIO, ex rel.
ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO,

Plaintiff,

The Board of Athens
City-County General
Health District, et al.

Intervenor-Plaintiffs

v.

KILBARGER CONSTRUCTION, INC.,
et al.

Defendants.

CASE NO. CI87-7-351

FILED
ATHENS COUNTY, OHIO
JUL 28 1987
Marjorie Mitchell
CLERK OF COMMON PLEAS COURT

PARTIAL CONSENT ORDER

The Complaint in the above-captioned case having been filed herein, and the Plaintiff State of Ohio, by its Attorney General, Anthony J. Celebrezze, Jr. (hereinafter "Plaintiff"), the Board of Athens City-County General Health District and the City of Nelsonville (hereinafter "Intervenor-Plaintiffs), and the Defendants Kilbarger Construction, Inc., and Edward F. Kilbarger (hereinafter "Defendants") having consented to this decree,

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

I. JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter herein pursuant to R.C. Chapter 3734 and any regulations adopted thereunder. The Complaint states a claim upon which relief can be granted under these statutory and regulatory provisions. This Court has jurisdiction over the parties hereto. Venue is proper in this Court.

II. PERSONS BOUND BY THE ORDER

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 those persons in active concert or participation with them who receive actual notice of this consent order whether by personal service or otherwise.

III. COMPUTATION OF TIME

In computing any period of time prescribed in this consent order, the day of the act from which the designated period of time begins to run shall not be included.

IV. ACCEPTANCE OF WASTE

A. The Court orders that the Defendant Kilbarger shall within fourteen (14) days from this order, cause the division line between Areas II and III to be surveyed by a registered professional surveyor. The results of the survey shall be reported to all parties to this suit within three (3) days after completion of the survey.

B. The Defendants shall not accept solid waste for disposal in or place any solid waste in Area III of the landfill until: (a) Defendants have submitted to Ohio EPA a certification by a registered professional engineer that the area designated as Area III is prepared for the receipt of such solid waste in accordance with the Ohio EPA approved plans and (b) the Ohio EPA has inspected Area III and has certified, in writing, that Area III is prepared for waste receipt .

V. APPOINTMENT OF DEFENDANTS' ENGINEER

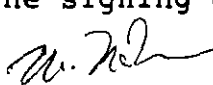
The parties agree that the Intervenor-Plaintiffs have provided the Defendant Kilbarger Construction, Inc. a list of a least five Ohio engineering firms qualified to engineer solid waste disposal facilities. The court orders that Defendants shall select one or more of the engineering firm(s) and it shall pay the engineering firm(s) for its professional services which shall include the overview of the installation of the liner in Area III, and the filling of all waste materials in Area III. In addition, the engineering firm(s) shall prepare and submit to the Plaintiff and Intervenor-Plaintiffs the detailed engineering report, assessment plan and report, remedial work plan, monitoring well work plan, and schedules for implementation of the plans specified in Sections VI., VII., and XII. of this Order.

In addition to those specific reports and plans, all other laboratory reports and written communications of the firm(s) with the Ohio EPA shall promptly be forwarded by those engineering firms to the Plaintiff and Intervenor-Plaintiffs' designated agent.


VI. ENGINEERING REPORT

A. The Defendants shall submit to Ohio EPA, a detailed engineering report by a registered Ohio professional engineer outlining all deviations from the permit to install (PTI) and approved plans for Area I of the landfill for construction, installation and closure.

B. The Defendants shall submit to Ohio EPA a detailed engineering report which has been completed by a registered Ohio professional engineer, outlining all deviations from the permit to install requirements and approved plans for Area II.

C. The detailed engineering report as required by paragraphs a and b of this section shall be submitted to the Ohio EPA within ^{thirty seven} ~~thirty~~ (30) days of the signing of this consent order.
 37 ^{AVS} ~~MM~~ EK. MW 

VII. ASSESSMENT AND REMEDIATION

A. The Defendants shall, within ^{sixty seven} ~~sixty~~ (60) days of the date this consent order is signed, submit to Ohio EPA, for its approval, a plan for assessing as described below, the areas designated as Area I and Area II of the landfill. The assessment plan shall be sufficient to determine the impact of
 ^{AVS} ~~MM~~ EK. MW 

landfilling above the approved elevation of 850 feet in Area I and Area II and of landfilling in Area II without meeting the requirements of the PTI and any other deviations from the requirements of the PTI. At a minimum such assessment plans shall provide adequate means to assess impacts on groundwater, surface water and compliance with all requirements of Ohio's solid waste laws.

B. Within sixty (60) days of the written approval of an assessment plan by Ohio EPA the Defendants shall implement the assessment plan as approved and shall submit a report to Ohio EPA summarizing the findings of said assessment.

C. Within ninety (90) days of the written approval of the assessment plan by Ohio EPA, the Defendants shall submit to Ohio EPA, for its approval, a remedial work plan and schedule for implementation which proposes the closure and remedial work to be performed concerning Areas I and II of the landfill. Such plan shall at a minimum propose the work that is consistent with the requirements of O.A.C. 3745-27-10 and any remedial work needed to protect the groundwater and surface waters from solid wastes and the constituents of solid wastes.

D. Within thirty (30) days of the written approval by Ohio EPA of the remedial work plan, the Defendants shall begin implementation of the remedial plan as approved. In the event that the Defendants need an additional 30 days to begin implementing the remedial work plan, Defendants must be obtain

Ohio EPA concurrence to the need for the additional 30 days. If Ohio EPA concurs, the Defendants may request the Court's permission for the additional 30 days. The Defendants shall complete remedial work in accordance with the schedule approved by Ohio EPA and have a registered Ohio professional engineer provide a written certification to the Ohio EPA that the remedial work plan has been completed.

VIII. ENGINEER FOR INTERVENOR-PLAINTIFFS

The Defendant Kilbarger Construction, Inc. shall pay to Intervenor-Plaintiff City of Nelsonville and Intervenor-Plaintiff Athens City-County General Health District the sum of \$500.00 per month for 18 months commencing on the 1st day of August, 1987, so that the General Health District and City of Nelsonville may secure the services of a qualified engineer to observe and monitor the Defendant's landfill and its progress as well as the exchange of plans or documents between the Ohio EPA and Defendants and Defendants' engineer.

IX. REGULATORY COMPLIANCE

The Defendants are ordered in the operation and/or closure of any portion or aspect of the Facility to fully comply with the requirements of O.A.C. 3745-27-08, 3745-27-09 and 3745-27-10.

X. COVER MATERIAL

A. The Defendants shall immediately place a well compacted layer of cover material not less than six (6) inches thick over all exposed waste materials at the end of each working day at said landfill. Cover material shall be applied more frequently if necessary in order to control fire, or fire hazards, blowing litter, odor, insects, or rodents.

B. The Defendants shall immediately apply a well compacted layer of cover material at least one (1) foot thick by the end of each working day to all exposed surfaces of a cell which will not receive solid waste for a period in excess of thirty (30) days.

C. The Defendants shall apply final cover material at least two (2) feet thick and seed all completed areas of the landfill in accordance with O.A.C. 3745-27-09(F)(3) within ten (10) days of the date that this consent order is signed.

D. The final cover shall be installed in six (6) inch lifts. Soil for the final cover shall be placed at a rate of compaction and a moisture content such that the installed permeability shall be equal or less than 1×10^{-7} centimeters per second. The final cover density and moisture content shall be tested at a rate of one test per acre per lift, however, a minimum of one test shall be performed for any day that final cover material is put in place. All tests shall be performed in accordance with ASTM methods.

XI. AMOUNTS OF WASTE

A. The Defendants are ordered to immediately cease receiving solid waste from community operations, i.e., solid waste generated by residential and municipal sources, in amounts in excess of 225 tons daily average. Defendants are further ordered to limit the receipt of any other types of solid waste to no more than 225 tons daily average.

B. Defendants shall limit the total solid waste receipts at the facility consistent with paragraph (a) unless and until Ohio EPA issues a Permit to Install authorizing the acceptance of solid waste in excess of the currently authorized amounts.

C. For purposes of determining Defendants daily average waste receipts, the actual waste receipts for each calendar week shall be added together and divided by the number of days of operation in that week. Defendants shall keep accurate records of daily waste receipts.

XII. MONITORING WELLS

A. Within sixty (60) days of the entry of this Consent Order the Defendants shall submit to Ohio EPA for its approval a work plan for the installation of six (6) monitoring wells around the landfill capable of monitoring the first water bearing zone. One (1) monitoring well shall be placed upgradient of any landfill areas which will receive waste and be capable of showing natural background conditions and five (5) monitoring wells shall be placed downgradient of the areas

of the landfill which will receive wastes. The placement and construction of the monitoring wells and the schedule for their installation is subject to the approval of Ohio EPA.

B. The Defendants shall install the monitor wells in accordance with the work plan as approved.

C. The Defendants shall sample the monitor wells on a quarterly basis, analyses shall be performed utilizing methods approved by Ohio EPA for the following parameters:

Total Dissolved Solids, Total Zinc, Total Iron, Total Lead, Total Arsenic, Total Barium, Total Cadmium, Total Chromium, Total Selenium, MBAS, Total Alkalinity, Phenol, TOC, COD, Temperature, pH, Chlorides, Total Calcium, Total Magnesium, Total Manganese, Total Sodium, Total Nitrate, Total Sulfates, Static Water Level and Ammonia as Nitrogen.

XIII. LINERS

A. The Defendants shall install the liner on the bottom and highwall of Area III in accordance with the approved plans, the terms of the PTI, and paragraph XI B below.

B. The liner(s) shall be installed in six (6) inch lifts. Soil for the liner(s) shall be placed at a rate of compaction and a moisture content such that the installed permeability shall be equal or less than 1×10^{-7} centimeters per second. The liner density and moisture content shall be tested at a rate of one test per acre per lift, however, a

minimum of one test shall be performed for any day that liner material is put in place. All tests shall be performed in accordance with ASTM methods.

XIV. RIGHT OF ENTRY

A. During the effectiveness of this Consent Order, Plaintiff and its agents and employees shall have authority to enter, without a search warrant, at a reasonable time, onto the Defendants' Work site to inspect, to take samples, or to observe Defendants conducting their work as required by this Consent Order. This provision in no way limits the Plaintiff State of Ohio's statutory authority to conduct inspections.

B. The engineer for the Intervenor-Plaintiffs is provided access to Defendants' facility for observation purposes. The Defendant further agrees that representatives of the Intervenor-Plaintiffs may accompany Ohio EPA personnel when they are at the landfill providing any Ohio EPA official authorizes their presence at the landfill.

XV. RESOLUTION OF LAWSUIT

joined by intervenor Plaintiffs,
Plaintiff, alleges in its Complaint that Defendants have in the installation and operation of the Facility, i.e., the Athens-Hocking Reclamation Center, located off State Route 33 in York Township, Athens County, Ohio, violated various State solid waste laws. Compliance with the terms of this Consent Order shall be in full satisfaction and release of any

liability by Defendants for the violations of law alleged in all Counts of the Complaint, except Counts One, Two and Three, which violations have occurred prior to the date of the entry of this Consent Order.

Nothing in this Order shall be construed to constitute a release or satisfaction of any liability of the Defendants for the payment of a civil penalty for the violations of law alleged in Counts One, Two and Three of the Complaint.

Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint or addressed by this Consent Order.

XVI. COMPLIANCE WITH APPLICABLE LAWS

Nothing herein shall affect Defendants' obligation to comply with all applicable federal, state, or local law, regulation, rule, or ordinance. Defendants shall obtain all federal, state, or local permits necessary to comply with this Consent Order.

XVII. INDEMNIFICATION OF THE STATE OF OHIO

Defendants agree to indemnify and save and hold the State of Ohio, its agencies, departments, agents, and employees, harmless from any and all claims or causes of action arising from, or on account of, acts or omissions of the Defendants, their officers, employees, receivers, trustees, agents, or assigns, in carrying out the activities pursuant to this

Consent Order. OEPA shall not be considered a party to any contract involving the Defendants at the Facility.

XVIII. STIPULATED PENALTIES

A. For each day that Defendants violate paragraph IV by placing any solid waste in Area III before said Area III has been certified in writing by OEPA to be prepared for waste receipt in accordance with the terms of the permit to install Defendants shall pay a stipulated penalty in the amount of \$5000.00 per day.

B. Defendants shall pay a stipulated penalty in the following amounts for each day that they violate the following paragraphs of this order:

i. Paragraphs: VI, and XII(A)

\$100 per day for the 1-7 days of violation
\$200 per day for the 8-14 days of violation
\$300 per day for the 15-21 days of violation
\$400 per day for the 22-27 days of violation
\$500 per day for the 28-33 days of violation
\$1000 per day for the days of violation beyond
day 33

ii. Paragraphs: VII, IX, X, XII(B)&(C),
XIII

\$250 per day for the 1-7 days of violations
\$500 per day for the 8-14 days of violations
\$750 per day for the 15-21 days of violations
\$1000 per day for the 22-27 days of violations
\$1250 per day for the 28-33 days of violations
\$5000 per day for day of violation beyond day 33

C. For each day that Defendant's receive solid waste in excess of 225 tons daily average in violation of paragraph XI, Defendants shall pay a stipulated penalty in the amount of \$5,000.00 per day.

E. All penalties which accrue pursuant to the requirements of this paragraph, shall be paid within fourteen (14) days of the occurrence Defendants violation by check made payable to the order of "State of Ohio, Hazardous Waste Clean Up Fund" and shall be forwarded to Plaintiff's counsel for deposit into the Hazardous Waste Clean-Up Fund established pursuant to Section 3734.28 ORC.

XIV. CIVIL PENALTY

The Defendants shall pay a civil penalty of \$25,000 to the State of Ohio for the violations of law alleged in the Complaint filed hereto, except that, this penalty does not satisfy or release the Defendants from the civil penalty due for the violations contained in Counts One, Two and Three of said Complaint. Said penalty shall be paid within seven (7) days of the entry of this Consent Order by check made payable to the order of "State of Ohio, Hazardous Waste Clean Up Fund" and shall be forwarded to Plaintiff's counsel for deposit into the Hazardous Waste Clean-Up Fund established pursuant to Section 3734.28 ORC.

XV. REMEDIES OF INTERVENTOR-PLAINTIFF
AND RETENTION OF JURISDICTION

The Intervenor-Plaintiffs are hereby authorized to commence and maintain contempt of court proceedings for any violation of the remedial actions of the Defendant Kilbarger set forth in this Court order.

This Court shall retain jurisdiction of this action for the purpose of making any order or decree which it may deem necessary to carry out all provisions the consent order.

XVI. COURT COSTS

Defendants shall pay court costs to date hereof.

July 28, 1987
Date

[Signature]
Judge

APPROVED:

ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO

KILBARGER CONSTRUCTION, INC.
dba KILBARGER CONSTRUCTION CO.,
INC.

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