



Attorney General
Lee Fisher

November 23, 1993

Kendra Sherman
Squire, Sanders & Dempsey
41 South High Street
Columbus, Ohio 43215

Re: Kimble Complaint and Consent Order

Dear Ms. Sherman:

Enclosed please find the Complaint and Consent Order filed in *State v. Kimble* on February 8, 1993. Please note that the Consent Order contains several unusual provisions. The facts of the *Kimble* case made those provisions necessary. However, we consider the sections to be an anomaly which it would be inappropriate to repeat in other cases.

If I may be of further help, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Susan E. Ashbrook".

Susan E. Ashbrook
Solid Waste Supervisor
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410
(614) 466-2766

SEA:pfm
Encls.

IN THE
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO

93CV020039

STATE OF OHIO, *ex rel.*
LEE FISHER
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

FLOYD E. KIMBLE,
dba KIMBLE SANITARY LANDFILL,
et al.,

Defendants.

CASE NO.

JUDGE

S/ EDWARD EMMETT O'FARRELL

CONSENT ORDER

FILED
COMMON PLEAS COURT
93 FEB 8 PM 4 33
ROCKIE W. CLARKE
CLERK OF COURTS

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio ("State") by its Attorney General Lee Fisher and Defendants Floyd E. Kimble and Keith B. Kimble, dba Kimble Sanitary Landfill (hereinafter referred to as "Defendants") having consented to the entry of this Order,

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

The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Defendants under Chapter 3734. of the Ohio Revised Code ("RC") and venue is proper in this Court.

II. PARTIES

The provisions of this Consent Order shall apply and be

binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them.

Defendants are ordered to provide a copy of this Consent Order to each contractor and/or consultant it employs to perform the work itemized herein. In addition, Defendants are ordered to instruct each general contractor and/or consultant to provide a copy of this Consent Order to each of its subcontractors and/or sub-consultants for such work.

III. SATISFACTION OF LAWSUIT

A. The State alleges in its Complaint that Defendants operate a sanitary landfill located approximately 4000 feet south of the intersection of State Route 39, and Township Road 384 Dover Township, Tuscarawas County, Ohio (hereinafter referred to as the "Dover Township facility") in such a manner as to result in violations of the solid waste law of the State of Ohio, *i.e.*, RC Chapter 3734. and the rules adopted thereunder.

B. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims under such laws alleged in the Complaint.

C. The signing of this Consent Order by Defendants is not an admission of the allegations contained in the State's Complaint.

D. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief for violations

which occur after the filing of the Consent Order.

E. Nothing in this Consent Order shall limit the State from requiring Defendants, pursuant to the provisions of RC Chapter 3734. and the rules adopted thereunder, to initiate appropriate corrective action to address contamination of the groundwater, surface water and/or soils at the Dover Township facility, or to recover costs incurred by the State for such remediation to which the State is entitled pursuant to state and/or federal law.

IV. RIGHT OF ENTRY

A. Defendants acknowledge that the State has the right and agree to give consent to the State, its agents and employees to enter into and onto Defendants' Dover Township facility, without a search warrant, to inspect the facility's operations and/or records, to take soil, water and/or other samples or to observe Defendants conducting the work required by this Consent Order.

B. Nothing in this Consent Order shall be construed to limit the State's statutory or permit authority under RC Chapters 3734. or the rules adopted thereunder to conduct inspections and/or surveys, to take samples, and/or review records.

V. EFFECT UPON OTHER ACTIONS

Nothing in this Consent Order shall be construed to relieve Defendants of the obligation to comply with all applicable federal, state or local statutes, regulations or ordinances, or shall constitute a waiver or release of any right, remedy,

defense or claim against Defendants with regard to any person not a party to this Consent Order.

VI. INJUNCTIVE RELIEF

A. Defendants are hereby permanently enjoined and ordered to refrain from conduct alleged in the Complaint as violative of the requirements of RC Chapter 3734. and the rules adopted thereunder.

B. Defendants are further enjoined and ordered to undertake the following activities:

1. Within one hundred eighty (180) days of the Court's entry of this Consent Order, obtain an approved permit to install ("PTI") which meets the criteria set forth in Rules 3745-27-06, 3745-27-07 and 3745-31-05 of the Ohio Administrative Code ("OAC");
2. Within ten (10) days of receiving the Ohio EPA's written approval issuing said PTI, implement the revised PTI, as approved by the Ohio EPA, with any special terms and conditions that may be imposed by the Ohio EPA pertaining to said PTI; and
3. Maintain the maximum daily solid waste receipt limit set forth in the March 29, 1989 Final Findings and Orders in the amount of 974.4 tons/day, i.e., 2923.2 cubic yards/day, or as contained in the Dover Township facility's PTI where approved and issued by the Director of Environmental Protection.

VII. EFFECT OF CONSENT ORDER

This Consent Order does not constitute authorization or approval of the construction of any physical structure or facility, or the modification of any existing physical

structure or facility, and does not excuse Defendants from acquiring any and all permits and/or licenses required by law.

VIII. CIVIL PENALTY

Defendants are ordered to pay to the State of Ohio, pursuant to RC Section 3734.13(C), a civil penalty of one hundred twenty thousand dollars (\$120,000.00). This penalty shall be paid by delivering to the attorney for the State, or his successor, a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within ten (10) days from the Court's entry of this Consent Order.

IX. STIPULATED PENALTIES

A. In the event that Defendants fail to meet any of the requirements of Article VI, Paragraph A, Defendants shall be liable for payment of a stipulated penalty according to the following payment schedule:

1. For each day of each failure to meet a requirement, up to thirty (30) days--two thousand dollars (\$2,000.00) per day.
2. For each day of each failure to meet a requirement, from thirty-one (31) to sixty (60) days--three thousand dollars (\$3,000.00) per day.
3. For each day of each failure to meet a requirement, from sixty-one (61) to ninety (90) days--four thousand dollars (\$4,000.00) per day.
4. For each day of each failure to meet a requirement, over ninety days (90) days--five thousand dollars (\$5,000.00) per day.

B. Any payment required to be made under the provisions of Paragraph A of this Article shall be made by delivering to

the State's attorney, or his successor, a certified check or checks for the appropriate amounts made payable to "Treasurer, State of Ohio".

C. Subject to the provisions of Article X, nothing in this Consent Order shall be deemed by the Court to suspend said payment, or payments, in whole or in part.

X. NOTICE PROVISION

A. In the event that the State determines that Defendants failed to meet the requirements of Article VI, Paragraph A and are, therefore, liable to pay a stipulated penalty, or penalties, under Article IX, Plaintiff, or its designated representative, will, within sixty (60) days of Defendants' failure, provide written notice to Defendants of such failure. Said notice will set forth, *inter alia*:

1. The conduct of Defendants that constitutes the failure to meet the requirements of Article VI, Paragraph A.
2. The number of days upon which the conduct occurred.
3. A statement of whether the conduct is continuing at the time the notice is issued.
4. A statement of whether the conduct has been terminated at the time the notice is issued, and a calculation of the amount of the stipulated penalty owed.

B. Within ten (10) days of receipt of the written notice referenced in Article X, Paragraph A, Defendants' are ordered to either pay the penalty demanded in the notice, or give written notice to the State of Defendants' intent to dispute the facts asserted in said notice. Where the matter is

disputed, either party may, by appropriate motion to the Court, place the matter before the Court for the taking of evidence and an order setting forth the amount of the stipulated penalty, if any, that must be paid by Defendants to the State. Where the Court finds that a stipulated penalty is owed by Defendants, nothing in this Consent Order shall be deemed by the Court to suspend said payment, or payments, in whole or in part.

C. It is understood by the parties hereto that the written notice provision prescribed by Article X, Paragraph A shall not be construed as a prerequisite to commencement by the State of proceedings seeking sanctions in contempt of court for violations of the provisions of this Consent Order.

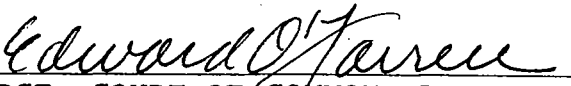
XI. RETENTION OF JURISDICTION

The Court will retain jurisdiction of this action for the purpose of enforcing the terms and provisions of this Consent Order.

XII. COSTS

Defendants are hereby ordered to pay the costs of this action.


Entered this 8th day of February, 1993.



JUDGE, COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO

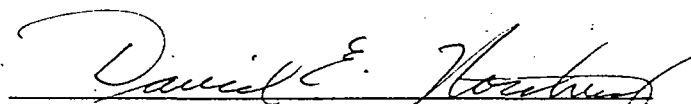
Approved:

STATE OF OHIO, *ex rel.*
LEE FISHER
ATTORNEY GENERAL OF OHIO

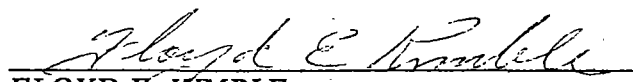

TIMOTHY J. KERN (0034629)
RETANIO A. RUCKER (0039744)
Assistant Attorneys General

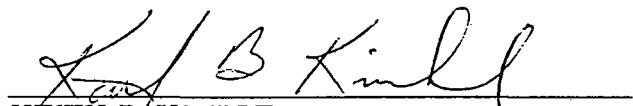
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Attorney for Plaintiff
State of Ohio


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