

IN THE COURT OF COMMON PLEAS
MERCER COUNTY, OHIO

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

CASE NO. 94-CIV-097

JUDGE _____

Plaintiff,

v.

LIDLAW WASTE SYSTEMS
(CELINA), INC.

Defendant.

RECEIVED
AUG 22 1994
CHIEF COUNSEL
STAFF

CONSENT ORDER

Plaintiff State of Ohio, by its Attorney General, at the written request of the Director of Environmental Protection, having filed a Complaint against defendant Laidlaw Waste Systems (Celina), Inc., ("Laidlaw") alleging violations of the solid waste law of Chapters 3734 of the Ohio Revised Code, and the parties having consented to the entry of this Decree,

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:

I. DEFINITIONS

1. For the purposes of this decree, the following terms shall have the following meanings:

(a) "Laidlaw's Mercer County Landfill" or "landfill" shall mean the Defendant's facility located at 6226 Sebastian Road, Celina, Ohio.

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4:00
AUG 17 1994

JAMES J. HIGHLEY
MERCER CO. CLERK OF COURTS
CELINA, OHIO

II. JURISDICTION

2. The Court has jurisdiction over the parties and the subject matter of this action pursuant to R.C. Chapter 3734.10 and 3734.13. The Complaint states a claim upon which relief can be granted. Venue is proper in this Court.

III. PARTIES

3. The injunctive provisions of this Consent Order shall apply and be binding upon the Defendant. To the extent provided by Rule 65(D) of the Ohio Rules of Civil Procedure, this Consent Order also shall be binding upon Defendant's officers, agents, employees, assigns, successors in interest, and those acting in concert, privity or participation with it who receives actual notice of this Consent Order, whether by personal service or otherwise, except that compliance with those provisions of this Consent Order concerning payment of monetary penalties and restitution, performance of credit projects, payment of stipulated penalties, and payment of costs shall be the sole responsibility of Defendant and shall not be binding upon the other persons or entities named in this paragraph. Defendants shall provide a copy of this Consent Order to any contractor or sub-contractor engaged to perform work required by this decree.

IV. SATISFACTION OF LAWSUIT

4. Except as provided herein, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by the Defendant for those claims which have been alleged in the State's Complaint. This satisfaction applies only to the Defendant and the persons bound by

paragraph 3, *supra*, and the State reserves all rights against all others.

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

6. Nothing in this Consent Order shall limit the authority of the State 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 Order that are not addressed by this Order. In addition, the State hereby specifically reserves the right to take action against any person, including but not limited to the Defendants, pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. §9601 *et seq.*, and/or R.C. 3734.20 through 3734.27, for any removal, remedial or corrective actions. Defendant and those persons bound by Section III, Paragraph 3, above, are not deemed to have waived any defenses to an action by the State pursuant to CERCLA or R.C. 3734.20 through 3734.27 with respect to the landfill.

V. INJUNCTIVE RELIEF

7. The Defendant is hereby permanently enjoined and ordered to comply with R.C. Chapter 3734 and rules promulgated thereunder, including but not limited to: O.A.C. 3745-27-19(C), -19(F), and-19(J).

8. By letters dated May 5, 1994 from John Hull to Steve Snyder of the Ohio EPA and June 2, 1994 from Mark Peterson to Timothy Schumm of the Ohio EPA, Defendant Laidlaw has applied for alterations to its PTI dated February 28, 1992 (hereinafter the "EI-PTI"). If the alteration request is

approved by Ohio EPA, Defendant Laidlaw is enjoined to comply fully with the EI-PTI, as altered. If the alteration request or parts thereof are not approved, Defendant Laidlaw is enjoined to comply with the EI-PTI including any approved alterations within 60 days of receiving notice, except as provided in paragraph 9.

9. Laidlaw must maintain the landfill at the elevations depicted in Attachment A unless otherwise authorized by the Ohio EPA. Laidlaw is hereby enjoined and ordered to comply with the terms of the EI PTI that address capping and begin construction of a cap on those portions of the landfill delineated in Attachment A in accordance with O.A.C. 3745-27-19(H) by April 1, 1995, unless prior to that date: (1) the Director of Ohio EPA issues the defendant a permit authorizing vertical expansion of the landfill or (2) the parties to this consent order agree, in writing, to an extension of the date for commencement of capping. The parties to this consent order acknowledge that this paragraph does not obligate the Director of Ohio EPA to take any action on Laidlaw's pending permit application for a vertical expansion prior to April 1, 1995, and if no such action is taken by the Director by that date, Laidlaw must nevertheless begin capping by April 1, 1995 pursuant to the EI-PTI. The parties further acknowledge that pursuant to the EI-PTI Laidlaw must begin capping by April 1, 1995 despite Laidlaw's filing of any appeal to contest a decision or proposal by the Director to deny Defendant's permit application for a vertical expansion of the landfill, and Laidlaw agrees that it will not file such an appeal for the purpose of delaying the April 1, 1995 deadline.

VI. COMPLIANCE WITH APPLICABLE LAWS

10. Nothing in this Order shall affect the Defendant's obligation to comply with all applicable federal, state or local law, regulation, rule or ordinance at the landfill. Laidlaw shall obtain any federal, state, or local permits necessary to comply with this Order.

VII. CIVIL PENALTY AND RESTITUTION

11. Defendant Laidlaw is assessed a civil penalty of one hundred and twenty-five thousand dollars (\$125,000). Within thirty days of the entry of this decree, Laidlaw shall pay five thousand dollars (\$5,000) of the penalty 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. The rest of the civil penalty is suspended and Defendant Laidlaw is instead enjoined to pay one hundred and twenty thousand dollars (\$120,000.00) into a closure/post-closure trust fund for the Paulding Disposal Company's landfill ("closure trust fund") within 120 days of the entry of this order. This money shall be paid in accordance with Ohio EPA's directions as to the existence and location of the closure trust fund. If Ohio EPA fails to notify Laidlaw about the existence and location of the closure trust fund, Laidlaw shall pay the one hundred and twenty thousand dollars (\$120,000.00) into the hazardous waste clean up fund by delivering a certified check in the same manner as described above. The parties acknowledge that Laidlaw has no independent obligation to perform closure at the Paulding Disposal Company's

landfill, and the payment of money into that trust fund is to be treated as a penalty for all accounting and tax purposes.

12. In addition, Defendant Laidlaw shall make a contribution of Eighteen Thousand Five Hundred and Fifty Dollars (\$18,550.00) to the Mercer County Solid Waste Management District ("District") for the District to use in funding the Mercer County Recycling Center, Inc. or other such project which Ohio EPA may approve. Laidlaw shall pay this amount within fifteen days of the entry of this order by delivering a certified check made payable to the Mercer County Solid Waste Management District to the Board of County Commissioners, Mercer County Courthouse, 101 Main Street, Celina, Ohio.

IX. STIPULATED PENALTIES

13. In the event that Defendant Laidlaw fails to meet any of the requirements of this Consent Order, the Defendant shall immediately and automatically be liable for payment of a stipulated penalty of Five Hundred Dollars (\$500.00) per day per violation. If the violation continues for more than thirty (30) days, from the thirty-first day forward the Defendant shall pay a stipulated penalty of Seven Hundred Fifty Dollars (\$750.00) per day per violation. If the violation continues for more than sixty (60) days, from the sixty-first day forward the Defendant shall pay a stipulated penalty of One Thousand Dollars (\$1,000.00) per day per violation. If the violation continues for more than ninety (90) days, from the ninety-first day forward the Defendant shall pay a stipulated penalty of Two Thousand Dollars (\$2,000.00) per day per violation.

14. Any payment required to be made under the provisions of

Paragraphs 13 of this Order shall be made by delivering to the Administrative Assistant, Environmental Enforcement Section, 25th Floor, 30 East Broad Street, Columbus, Ohio 43215 a certified check or checks for the appropriate amounts, within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, made payable to "Treasurer, State of Ohio".

X. INSPECTIONS

15. Defendant Laidlaw shall allow representatives of the Ohio EPA and the Mercer County Board of Health to enter upon the landfill to inspect, investigate, take samples and pictures and examine or copy records in order to determine compliance with the terms of this Consent Order and R.C. Chapter 3734 and rules promulgated thereunder. Nothing in the Order shall limit the rights of the Ohio EPA, U.S. EPA or the Mercer County Board of Health to conduct regular inspections or investigations pursuant to statute, regulation or permit.

XI. POTENTIAL FORCE MAJEURE

16. In any action or proceeding to enforce any of the provisions of this Consent Order, including proceedings to enforce the stipulated penalty provisions set forth above, Laidlaw may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons beyond its control such as, by way of example and not limitation, Acts of God, unusually severe weather conditions, strikes, acts of war or civil disturbances, or conflicting orders of any regulatory agencies or courts. While the State does not agree that such a defense exists, it is, however, hereby agreed upon by the parties 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 enforcement action, if any, is commenced. Acceptance of this Consent Order with this paragraph does not constitute a waiver by Laidlaw of any rights or defenses it may have under applicable law or equity.

XII. CONTINUING JURISDICTION

17. This Court shall retain jurisdiction over this action for the purposes of enforcing this Consent Order.

XIII. TERMINATION

18. The Parties hereby agree that the stipulated penalty provisions of this order, Section IX, will terminate eighteen months after the execution of this consent order. After completion of the remaining terms of this Consent Order by Defendant or three years after the entry of this decree, whichever is later, Defendant may apply to the Court for termination of this consent order pursuant to Civil Rule 60, provided Defendant is able to demonstrate it has complied with the remaining terms of this Order. Thirty days prior to Defendant's application for termination, Defendant shall provide by certified mail notice to the Ohio EPA and the Ohio Attorney General of its intention to apply for termination. The State reserves its rights to oppose the Defendant's motion.

XII. COSTS

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

20. Defendant Laidlaw is ordered to pay the costs of Relator Ohio Attorney General in pursuing the instance action in the amount of Five Thousand Dollars (\$5,000.00) by delivering a certified check in such an amount for payment into the State Treasury made payable to the order of "Treasurer, State of Ohio" to Matt Sanders, Administrative Assistant, or his successor, Environmental Enforcement Section, 25th Floor, 30 East Broad Street, Columbus, Ohio 43215, within thirty (30) days after the entry of the instant Consent Order.

Defendant Laidlaw is ordered to pay the costs incurred by the Mercer County Commissioners in retaining counsel to represent the Mercer County Board of Health in relation to this action by delivering a certified check for Six Thousand Four Hundred and Fifty Dollars (\$6,450) made payable to the order of "Mercer County Board of Commissioners," and delivering it to Board of County Commissioners, Mercer County Courthouse, 101 Main Street, Celina, Ohio.

Any check submitted in compliance with this Section shall be in addition to and separate from any check submitted pursuant to any other Section of this Consent Order.

IT IS SO ORDERED.



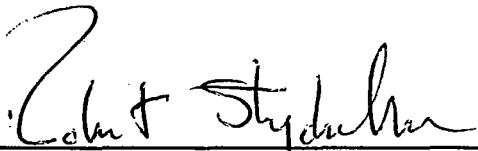
JUDGE, COURT OF COMMON PLEAS
MERCER COUNTY, OHIO

APPROVED:

LEE FISHER
ATTORNEY GENERAL OF OHIO



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ROBERT J. STYDUHAR
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P.O. Box 1008
Columbus, Ohio 43216-1008
(614) 464-6400



Authorized Representative
of Laidlaw Waste Systems (Celina), Inc.

CERTIFICATE OF SERVICE

I certify a copy of the foregoing was served upon all parties to this case or upon their attorneys of record as authorized by and in accordance with the Rules of Civil Procedure this 18th day of August, 1994.
Karen Shank

JAMES J HIGHLEY
MERCER CO CLERK OF CTS
101 N MAIN ST
PO BOX 28 COURTHOUSE
CELINA OH 45822-0028

IN THE COURT OF COMMON PLEAS
MERCER COUNTY, OHIO

STATE OF OHIO, ex rel.	:	CASE NO. 94-CIV-097
BETTY D. MONTGOMERY,	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE _____
	:	
Plaintiff,	:	
v.	:	
	:	
LIDLAW WASTE SYSTEMS	:	
(Celina), INC.,	:	
	:	
Defendant.	:	

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James J. Highley 105/1131
MERCER CO. CLERK OF COURTS
CELINA, OHIO

AMENDED CONSENT ORDER

Plaintiff State of Ohio, by its Attorney General, at the written request of the Director of Environmental Protection, filed a complaint in this Court against Defendant Laidlaw Waste Systems (Celina), Inc. (n/k/a Celina Landfill, Inc.) (hereinafter "Laidlaw") alleging violations of Ohio's solid waste laws codified in Chapter 3734 of the Ohio Revised Code, which violations arose out of Laidlaw's operation of a solid waste disposal facility located at 6226 Sebastian Road, Celina, Mercer County, Ohio (hereinafter the landfill). On August 17, 1994, the Court entered a Consent Order resolving the violations alleged in the State's complaint. The State subsequently filed an Amended Complaint. Defendant and the State now consent to the entry of this Amended Consent Order.

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:

I. EFFECT OF THIS AMENDED CONSENT ORDER

1. The provisions of the Consent Order entered in this case on August 17, 1994 shall remain in full force and effect except as otherwise provided in this Amended Consent Order.

II. SATISFACTION OF LAWSUIT

2. Plaintiff alleges in its Complaint and Amended Complaint that the Defendant, as the owners and/or operators of the landfill, violated R.C. Chapter 3734, and the rules adopted thereunder.

3. Defendant disputes the allegations and claims made by Plaintiff, and makes no admission of fact or liability or of any violation of any statute, rule or order.

4. Except as otherwise provided for by the Consent Order and this Amended Consent Order, compliance with the terms of the Consent Order and this Amended Consent Order shall constitute full and complete satisfaction and accord of all claims alleged in the Complaint and Amended Complaint, and of any and all civil claims the State may have arising out of Defendant's communications, prior to the filing of this Amended Consent Order, with the Ohio Environmental Protection, including all statements written or oral, application submittals, plan approval submittals, plan sheet

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James J. Highley 1132
MERCER CO. CLERK OF COURTS

submittals, aerial survey submittals, topographical map submittals or any other oral, written or electronic communications, regarding the existence of solid waste in the center waste disposal cells of the landfill known as the inclement weather area.

III. RESERVATION OF RIGHTS

5. Except as otherwise provided in the Consent Order or this Amended Consent Order, nothing in the Consent Order, or this Amended Consent Order shall limit the authority of Plaintiff to:

- (a) Seek relief for claims or conditions not alleged in the Complaint or Amended Complaint, or for claims or conditions alleged in the Complaint or Amended Complaint which occur after the entry of the Consent Order or this Amended Consent Order;
- (b) Enforce the Consent Order or this Amended Consent Order through a contempt action or otherwise for violations of the Consent Order or this Amended 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 R.C. §§ 3734.20 through 3734.27, and/or R.C. Chapter 6111 to: (1) recover natural resource damages, and/or (2) to order the performance of,

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and/or to recover costs for any removal, remedial or corrective activities not conducted within the scope of the Consent Order or this Amended Consent Order.

- (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 public health and welfare, or the environment.

6. Nothing in the Consent Order or this Amended Consent Order shall constitute a waiver of any right of Defendant to challenge or appeal any action of Plaintiff. Defendant retains all rights, claims, defenses and privileges to which it is entitled under law or equity including the right to contest claims or allegations that may be asserted against it by Plaintiff in the future.

IV. ADDITIONAL CIVIL PENALTY AND RESTITUTION

7. In addition to the civil penalties and other payments required by the provisions of the Consent Order, Defendant is hereby assessed a civil penalty of thirty-five thousand dollars (\$35,000), which is hereby suspended. In lieu of the payment of this civil penalty, within thirty (30) days of the entry of this order, Defendant is ordered and enjoined to pay thirty-five thousand dollars into the Paulding Disposal/Ohio EPA Closure Trust

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James J. Highley
MERCER CO. CLERK OF COURTS
CELINA, OHIO

Fund, Account Number 69000300. Defendant shall make such payment by sending a check payable to the order of Key Trust Company of Ohio, N.A. to Linda Mechel, Trust Officer, Key Trust Company of Ohio, N.A., P.O. Box 10099, Toledo, Ohio.

IT IS SO ORDERED.

April 1, 98
Dated

Deputy Douglas
JUDGE, COURT OF COMMON PLEAS
MERCER COUNTY, OHIO

FILED

APPROVED:

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

APR 01 1998
James J. Highley 1135
MERCER CO. CLERK OF COURTS
CELINA, OHIO

Robert E. Ashton

ROBERT E. ASHTON (0032276)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
(614) 466-2766

CERTIFICATE OF COPY
THE STATE OF OHIO, MERCER, ss
I, James J. Highley, Clerk of the Court of Common Pleas, and Court of Appeals, within and for the aforesaid County and State, do hereby certify that the foregoing is a true and correct copy of the original Consent Order
now on file in said Clerk's Office in the court.
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court, at Celina, Ohio, this 21st day of April, A.D. 1998
Karen Dhaner Deputy
James J. Highley, Clerk

Kristin Watt

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KRISTIN L. WATT
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Counsel for Defendant