

IN THE COURT OF COMMON PLEAS
ROSS COUNTY, OHIO

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

CASE NO. 89CI000079

JUDGE CORZINE

Plaintiff,

v.

THE MEAD CORPORATION,

Defendant.

OSS COURT CLERK
PLEAS COURT

AUG 12 9 46 AM '94

CLERK OF COURTS
ROBERT L. ...

RECEIVED
AUG 16 1994
CHIEF COUNSEL
STAFF

CONSENT DECREE

Plaintiff State of Ohio, by its Attorney General, at the written request of the Director of Environmental Protection, having filed a Complaint against defendant Mead Corporation alleging violations of Chapters 3734 and 6111 of the Ohio Revised Code associated with the Paint Street Landfill and the Depot Landfill, 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 purposes of this Consent Decree, the following terms shall have the following meanings:

- a. "Depot Landfill" means the landfill facility and associated leachate spray fields located on Lancaster Road between routes U.S. 50 and U.S. 35, Liberty Township, Ross County, Ohio.

- b. "Paint Street Landfill" means the landfill facility located on South Paint Street, Chillicothe, Scioto Township, Ross County, Ohio.
- c. "Spray Fields" means all areas of the Depot facility that were used by Mead for the land application of leachate generated at the Depot Landfill.

II. JURISDICTION

2. The Court has jurisdiction over the parties and the subject matter of this action pursuant to R.C. Chapters 3734 and 6111. The Complaint states a claim upon which relief can be granted. Venue is proper in this Court.

III. PARTIES

3. 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. Mead shall provide a copy of this Consent Decree to each key employee, consultant or contractor employed to perform work referenced herein.

IV. SATISFACTION OF LAWSUIT

4. Except as provided herein, compliance with the terms of this Consent Decree shall constitute full satisfaction of any civil liability by Mead for those claims which have been alleged in the State's Complaint regarding the Paint Street and Depot landfills, and for any other operational violations of Ohio's solid waste laws and regulations occurring at those landfills up to the time this Order is entered. Except as provided herein, compliance with the terms of this

Consent Decree shall constitute full satisfaction of any claim the State may have for civil penalties for any violations of R.C. 6111 for alleged discharges to surface and ground water from either the Paint Street Landfill or the Depot Landfill. Except as provided herein, compliance with the terms of this Consent Order shall also constitute satisfaction of any claim the State may have for civil penalties accrued to date for violations relating to the construction of the cap at the Depot Landfill. This satisfaction applies only to Defendant Mead, its officers and employees and the State reserves all rights against all others.

5. This Consent Decree 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 Decree.

6. Except as provided in paragraph 4, nothing in this Consent Decree 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 Decree. This reservation of rights includes but is not limited to any future action which the State may undertake regarding additional landfills owned and/or operated by Mead. In addition, the State hereby specifically reserves the right to take action against any person, including but not limited to Mead, pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 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.

7. This Consent Decree does not constitute an admission or adjudication of fact with respect to any matter alleged in the complaint, or any wrongdoing or misconduct on the part of

Defendant Mead or any director, officer, employee or affiliated person of Defendant. This Consent Decree shall not affect any claim which Defendant may have against third parties.

V. GENERAL PERMANENT INJUNCTION

8. Mead is hereby permanently enjoined and ordered to comply with R.C. Chapters 3734 and 6111 and rules promulgated thereunder at the Paint Street and Depot Landfills. Except as provided in Paragraph 11 of this Order, Mead is permanently enjoined from discharging any pollutants, industrial waste or other waste into surface waters of the state from the Paint Street or Depot Landfills without first obtaining an NPDES permit issued by the Director of Environmental Protection under R.C. Chapter 6111.

9. Mead is hereby permanently enjoined from operating the spray fields.

VI. SPECIFIC INJUNCTIVE RELIEF FOR THE DEPOT LANDFILL

10. The final closure plan for the Depot Landfill was approved with conditions by Ohio EPA on January 10, 1992. Closure activities were performed by Mead in 1992 and 1993. In response to comments by Ohio EPA, Mead undertook additional investigation and reconstruction of portions of the landfill cap. Ohio EPA accepted Mead's certification of the construction of the Depot Landfill on February 7, 1994. See Attachment A. Mead shall comply with all continuing applicable requirements of the closure plan for Depot Landfill as approved by the Ohio EPA Director on January 10, 1992, and the conditions included in such approval.

11. Mead has submitted an NPDES permit application for three known discharge points from the Depot Landfill. Mead shall:

- a. fully respond to letters from Ohio EPA regarding this permit application within thirty days of receiving those letters.
- b. within one month of the entry of these orders, begin monthly monitoring in accordance with the procedures in 40 CFR 136 of the known discharge points at the Depot facility and submit the analytical results to the Ohio EPA, Southeast District Office Division of Surface Water. Mead shall test the discharges for the following parameters: iron, magnesium, manganese, COD, sulfates, total organic carbon, chlorides, ammonia and total dissolved solids. This monthly monitoring may cease upon receipt of an NPDES permit;
- c. within 180 days after the entry of this order, Mead shall conduct an investigation into additional leachate seeps and leachate contaminated groundwater seeps from the Depot landfill and submit a report detailing that investigation. In addition within 180 days after the entry of this order, Mead shall amend its NPDES permit application as needed for any additional discharges discovered; and
- d. comply with the terms and conditions of any NPDES permit received from Ohio EPA, subject to all applicable appeal rights.

12. Mead is hereby enjoined to comply with the post-closure care requirements as set forth in O.A.C. 3745-27-14, including but not limited to maintaining the integrity and effectiveness of the cap system.

13. Mead is hereby enjoined to implement the explosive gas monitoring requirements of R.C. § 3734.041 and O.A.C. Rule 3745-27-12.

14. Mead is hereby enjoined to comply with O.A.C. 3745-27-10 at the Depot landfill. This includes, but is not limited to the following:

- (a) Within sixty days of the entry of this decree Mead is enjoined to submit a revised groundwater monitoring plan for the Depot Landfill. This groundwater monitoring plan shall include a groundwater assessment plan that complies with the requirements of O.A.C. Rule 3745-27-10(E).
- (b) Mead is hereby enjoined to implement an assessment monitoring program and conduct an assessment at the Depot landfill in accordance with OAC Rule 3745-27-10(E).
- (c) Mead's assessment program shall include, at a minimum, wells D9-70, D9-37, D1 1-50, D1 11-85, D115-45, D1-35, D12-49, D4-35, D3-48, the replacement well of D106-53, D118-12, D116-12, D119-10, D13-40, D112-35, D100-103 or a well of equivalent depth and location, D105-47, D100-51 or a well of equivalent depth and location, D1 17-35, D1 13-30, D114-35, D103-81, D109-31, D110-29, D107-85, D107-35, D2-40, and all springs/seeps found in the north, central and south drainage areas. The Ohio EPA and Mead may modify this list by agreeing in writing to a modification.
- (d) Mead is hereby enjoined to comply with the specified ground water sampling frequencies and parameters and shall submit sampling results to Ohio EPA in accordance with OAC Rule 3745-27-10(D) and (E).
- (e) Mead is hereby enjoined to repair, replace or resample any well that does not yield sufficient water for sampling results in accordance with OAC Rule 3745-27-10(B)(3)(e).
- (f) Within 12 months after the entry of this Order, or within 14 days after receiving approval from U.S. EPA for the interim measure workplans which have been submitted pursuant to U.S. EPA Administrative Order on Consent No. VW-34-93 ("the AOC"), whichever is sooner, Mead is hereby enjoined to commence a corrective measure study for the Depot Landfill that complies with O.A.C. Rule 3745-27-10(F), except for the requirement in that subsection to complete the corrective measures study within 180 days: Mead is enjoined instead to complete the corrective measures study in accordance with the time frame established in the plans approved by U.S. EPA pursuant to the AOC, or within 180 days of commencing the corrective measures study if Mead is required to commence such study without approval from U.S. EPA. Mead is hereby enjoined to implement the corrective measure selected by

the Director pursuant to OAC. 3745-27-10(F), subject to all applicable appeal rights.

- (g) Mead is hereby enjoined to prepare all ground water documents required by paragraph 14 in accordance with O.A.C. 3745-27-10.

VII. SPECIFIC INJUNCTIVE RELIEF FOR THE PAINT STREET LANDFILL

15. Mead submitted a certification of the closure of the Paint Street Landfill on December 10, 1990. Mead is hereby enjoined to respond to any comment letters or notices of deficiencies from Ohio EPA concerning Mead's certification within thirty days of receiving the correspondence, or such longer period of time as the parties mutually agree upon. If Ohio EPA notifies Mead that the closure of the landfill has not been conducted in accordance with O.A.C. Rule 3745-27-11(L), Mead is enjoined to correct the deficiencies within the time frame specified by Ohio EPA in the notice of deficiency, subject to all applicable appeal rights.

16. Mead is hereby enjoined to comply with the post-closure care requirements as set forth in O.A.C. 3745-27-14, including but not limited to maintaining the integrity and effectiveness of the cap system. Further, Mead is hereby ordered to extend the existing leachate collection system to include the western portion of the facility between the "Star Pond" and the landfill in order to collect and contain leachate generated on site. By September 15, 1994, Mead shall complete construction of the extended leachate collection system. Within thirty days of completing said construction, Mead shall submit as-built drawings of the extended system and certify the construction pursuant to OAC 3745-27-08(B). Mead is not required to obtain a Permit to Install in order to perform the construction to extend the leachate collection system.

17. Without admitting the applicability of this rule to the Paint Street Landfill, Mead is hereby enjoined to provide financial assurance for the cost of post-closure care of the Paint Street landfill pursuant to O.A.C. 3745-27-16 and 3745-27-17. Mead is enjoined to demonstrate compliance with this paragraph within sixty days after the entry of this order.

18. Without admitting the applicability of this rule to the Paint Street Landfill, Mead is hereby enjoined to submit and implement an explosive gas monitoring plan that meets the requirements of O.A.C. Rule 3745-27-12 within 180 days of the entry of this decree.

19. Mead is hereby enjoined to comply with O.A.C. 3745-27-10 at the Paint Street landfill. This includes, but is not limited to the following:

- (a) Within sixty days of the entry of this decree Mead is enjoined to submit a revised groundwater monitoring plan for the Paint Street Landfill. This groundwater monitoring plan shall include a groundwater assessment plan that complies with the requirements of O.A.C. Rule 3745-27-10(E).
- (b) Mead is hereby enjoined to implement an assessment monitoring program and conduct an assessment at the Paint Street landfill in accordance with OAC Rule 3745-27-10(E).
- (c) Mead is hereby enjoined to comply with the specified ground water sampling frequencies and parameters and shall submit sampling results to Ohio EPA in accordance with OAC Rule 3745-27-10(D) and (E).
- (d) Mead is hereby enjoined to repair, replace or resample any well that does not yield sufficient water for sampling results in accordance with OAC Rule 3745-27-10(B) (3) (e).
- (e) Within 180 days of the entry of this order Mead is hereby enjoined to submit a corrective measures study for the Paint Street Landfill that complies with OAC Rule 3745-27-10(F). Mead is hereby enjoined to implement the corrective measure selected by the Director pursuant to O.A.C. 3745-27-10(F), subject to all applicable appeal rights.

- (f) Mead is hereby enjoined to prepare all ground water documents required by paragraph 19 in accordance with O.A.C. 3745-27-10.

VII. COMPLIANCE WITH APPLICABLE LAWS; NO WAIVER OF APPEAL

20. Nothing in this Decree shall affect Mead's obligation to comply with all applicable federal, state or local law, regulation, rule or ordinance. Mead shall obtain any federal, state, or local permits necessary to comply with this Decree. Likewise, nothing in this Decree shall be deemed to be a waiver of any right Mead might otherwise have under applicable laws or regulations to contest or appeal any finding, order, determination or directive issued by the State or Ohio EPA pursuant to the terms of this Decree.

IX. POTENTIAL FORCE MAJEURE

21. In any action proceeding to enforce any of the provisions of this Consent Order, including proceedings to enforce the stipulated penalty provisions set forth at paragraphs 25, Mead 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 without a force majeure clause does not

constitute a waiver by Mead of any rights or defenses it may have under applicable law or equity.

X. CIVIL PENALTY AND RESTITUTION

22. For the alleged violations of Ohio's solid waste law, Mead shall pay a civil penalty of one hundred and fifty thousand dollars (\$150,000) 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.

23. For its alleged violations of Ohio's water pollution statute, Mead shall pay a civil penalty of ten thousand dollars (\$10,000) 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 pursuant to R. C. 6111.09(B).

24. In addition, Mead shall pay twenty five thousand dollars (\$25,000) into the Ohio Environmental Education and Charitable Trust by delivering a certified check to the Administrative Assistant, Environmental Enforcement Section, 30 E. Broad Street, 25th Floor, Columbus, Ohio within thirty days after the entry of this order. Mead shall also pay thirty thousand dollars (\$30,000) to the Ross, Pickaway, Highland, Fayette Joint Solid Waste Management District ("the District") for use in a Ross County open-dump cleanup project to be mutually agreed upon by Ohio EPA and the District. If the District is unwilling to accept this

donation with this specific limitation, then Mead shall pay the thirty thousand dollars (\$30,000) to the Ohio Environmental Education and Charitable Trust in the same manner as described above.

XI. STIPULATED PENALTIES

25. In the event that Mead fails to submit any of the documents listed below by the deadlines established in section VI and VII, Mead is liable for and shall immediately pay stipulated penalties in accordance with the following schedules for each failure to meet a deadline:

- a. For each day of each failure to submit a document, up to thirty (30) days -- One Thousand Dollars (\$1,000.00) per day.
- b. For each day of each failure to submit a document over thirty days -- Three Thousand Dollars (\$3,000.00) per day.

Documents subject to these penalties are the following:

1. Leachate seep Investigation Report or, if required, amended NPDES permit application (paragraph 11(c));
2. Groundwater monitoring plan for Depot Landfill (paragraph 14(a));
3. Groundwater corrective measures study for Depot (paragraph 14(f));
4. Response to Notices of Deficiencies for closure of Paint Street Landfill pursuant to paragraph 15;
5. As-Built drawings for leachate collection system for Paint Street Landfill (paragraph 16);
6. Groundwater monitoring plan for Paint Street (paragraph 19(a));

7. Groundwater corrective measure study for Paint Street (paragraph 19(e)); and
8. Any responses required by paragraph 27.

Payments required by this section shall be paid 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.

XII. RETENTION AND SUBMITTAL OF DOCUMENTS

26. All documents which must be generated as a result of this Consent Decree must be maintained at Mead's paper mill facility in Chillicothe, Ohio for the thirty year post closure period.

27. Mead is enjoined to respond in writing to Ohio EPA within twenty days of receiving from Ohio EPA a deficiency letter, unless a different time frame for such response is provided by this decree or Ohio EPA's letter or agreed upon by the parties. All such responses shall address Ohio EPA's comments. All such responses or documents submitted pursuant to the responses must be made available to Ohio EPA during inspections, or as otherwise requested.

28. Documents which must be submitted under this Decree shall be submitted to the following:

Dan Harris, Enforcement Coordinator
Ohio Environmental Protection Agency
Division of Solid and Infectious Waste Management
Compliance Monitoring and Enforcement Section
P.O. Box 1049
1800 WaterMark Drive
Columbus, Ohio 43266-0149

and:

Steve Rine, Group Leader or his successor
Ohio Environmental Protection Agency
Division of Solid and Infectious Waste Management
Southeast District Office
2195 Front Street
Logan, Ohio 43138

XV. CONTINUING JURISDICTION

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

30. If Mead fully complies with the terms of this decree for a period of not less than five years, it may apply to this Court for a termination of this Order. The State reserves its right to oppose the request for termination at the time it is made.

XVI. COSTS

31. Mead shall pay the court costs of this action.

32. Mead shall pay the costs of relator Ohio Attorney General expended in pursuing the instant action in the amount of ten thousand dollars (\$10,000) 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 Administrative Assistant, Environmental Enforcement Section, 25th Floor, 30 East Broad Street, Columbus, Ohio 43215, within thirty (30) days after the entry of the instant Consent Decree. 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 Decree.

IT IS SO ORDERED.

signed/WM. J. CORZINE

JUDGE WILLIAM CORZINE
COURT OF COMMON PLEAS
ROSS COUNTY, OHIO

APPROVED:

LEE FISHER
ATTORNEY GENERAL OF OHIO

MEAD CORPORATION

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