

**IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO**

**STATE OF OHIO, ex rel.
BETTY MONTGOMERY
ATTORNEY GENERAL OF OHIO,**

Plaintiff,

v.

**PORTAGE LANDFILL AND
DEVELOPMENT COMPANY, et al.,**

Defendants.

: **CASE NO. 87 CV 0958**
:
: **JUDGE JOHN ENLOW**
:
:

: **FILED**
: **COURT OF COMMON PLEAS**
:
: **MAR 05 1998**
:
: **DELORES REED, Clerk**
: **PORTAGE COUNTY, OHIO**
:

CONSENT ORDER

Plaintiff State of Ohio, by its Attorney General, at the written request of the Director of Environmental Protection, filed a Complaint against the Defendant Portage Landfill and Development Company ("Defendant Portage"), Waldo A. Sober, Jr. ("Defendant Sober"), John Hoffman ("Defendant Hoffman"), Janic Inc. ("Defendant Janic"), David Ehrlich ("Defendant Ehrlich") and Franklinton Financial Corporation ("Defendant Franklinton") alleging violations of Chapters 3734, 3767, and 6111 of the Ohio Revised Code ("O.R.C.") associated with the Portage Landfill located at 2898 Tallmadge Road, Ravenna, Portage County, Ohio ("Portage Landfill or "Landfill").

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

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

II. PERSONS BOUND

2. The provisions of this Consent Order shall apply to and be binding upon the Defendant Portage, Defendant Sober and The Tracy L. and Laurie Sober Trusts A & B and to such other persons as provided in Ohio Civil Rule 65(D) with respect to matters covered herein and as provided herein. The Tracy L. and Laurie Sober Trusts A & B are bound by this Consent Order only as to the provisions contained in Section V., paragraph 7(d).

III. SATISFACTION OF CLAIMS

3. Except as provided herein, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability (including claims for injunctive relief and civil fines and penalties) by Defendant Portage and Defendant Sober and such Defendants' officers and employees and The Tracy L. and Laurie Sober Trusts A & B (Sober Trusts), for all claims alleged in the State's Complaint and Amended Complaint ("Complaint") and for any violations of the solid waste landfill operating, closure or post-closure requirements contained in O.R.C. Chapter 3734. and O.A.C. 3745-27.

IV. RESERVATION OF RIGHTS

4. Nothing in this Consent Order, including the imposition of stipulated civil penalties for violations of this Consent Order, shall limit the authority of the State of Ohio to:

- A. Seek any legal or equitable relief against Defendants Janic and Hoffman for claims or conditions either alleged or not alleged in the Complaint;
- B. Seek any legal or equitable relief for claims or conditions not alleged in the Complaint or which are not satisfied by the provisions in paragraph 3, above;
- C. Seek any legal or equitable relief for violations or conditions alleged in the Complaint or set forth in paragraph 3, above, which occur after the entry of this Consent Order if Defendants Portage and Sober are not in compliance with the terms and conditions of this Consent Order;
- D. Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;
- E. Bring any legal or equitable action against Defendants or against any person, to the extent allowed by law, under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9601, et seq., O.R.C. Chapter 3734, and/or O.R.C. Chapter 6111 to: (1) recover natural resource damages, and/or (2) to enjoin the performance of, and/or recover response costs for, any removal, remedial or corrective activities at the Landfill;
- F. Take any action authorized by law against any person, including the Defendants, to eliminate or mitigate conditions at the Landfill which may present an imminent and substantial threat to the public health and the environment;
- G. Bring any legal or equitable action against any person other than Defendants Portage and Sober.
- H. Seek any legal or equitable relief for claims or conditions related to the disposal or storage, after September 15, 1997, of additional solid wastes, including but not limited to scrap tires.

5. Except as set forth herein, Defendants Portage and Sober retain all rights, claims, defenses and privileges to which they are entitled under law or equity, including but not limited to the right to contest claims or allegations that may be asserted against them by Plaintiff in the future.

6. The financial/closure obligations required by Section V., paragraphs 7(a), (b), (c), and (d) of this Consent Order for Defendants Portage and Sober and the payment made by Defendants Ehrlich and Franklinown in a separate agreement will not provide for a full closure of the Portage Landfill. Thus, unless additional revenues are generated pursuant to paragraph 7(e) or additional revenues or resources are obtained by the State of Ohio from other sources, a complete closure of the Portage Landfill will not be implemented. The State of Ohio therefore reserves the right to seek any legal or equitable relief against nonsettling Defendants Janic and Hoffman and any other person, except as set forth in Section III of this Order, relating to the remaining requirements and/or costs for closure of the Portage Landfill.

V. FINANCIAL/CLOSURE OBLIGATIONS OF DEFENDANTS PORTAGE AND SOBER

7. Defendants Portage and Sober, as set forth below, is ordered and enjoined to comply with the following requirements.

(a) Defendants Sober and Portage, within thirty (30) days of entry of this Consent Order, shall pay Fourteen Thousand, Seven Hundred, Seventy-Nine Dollars and Seven Cents (\$14,779.07) to Plaintiff. This payment shall be deposited into the Portage Landfill Trust, attached to this Consent Order as Appendix A.

(b) Defendant Sober, beginning the first month after entry of this Consent Order, shall pay One Hundred Fifty Dollars (\$150.00) to Plaintiff. This payment shall be made by the fifteenth day of each month and shall be deposited into the Portage Landfill Trust. Such monthly payments shall be made during Defendant Sober's life or until all closure and post-closure requirements for the Portage Landfill have been fully implemented. This monthly

payment shall terminate upon Defendant Sober's death and shall not pass to his surviving spouse, heirs, or estate.

(c) Defendants Sober and Portage agree that this Court shall appoint Charles Ramer, District Coordinator, Portage County Solid Waste Management District ("Receiver Ramer") as a receiver, pursuant to the provisions set forth in O.R.C. Chapter 2735. Receiver Ramer shall make an accounting of all scrap metal and/or other scrap materials which is on or was on the Portage Landfill and which is on or was on the various parcels of land surrounding and in the vicinity of the Landfill as of June 1, 1997. Receiver Ramer shall determine ownership of the scrap, file a report with the Court setting forth his findings, resolve all claims regarding the scrap, bring execution actions as necessary including action pursuant to O.R.C. 2329.84, sell the scrap, and then, less expenses, submit such proceeds to Plaintiff. Such proceeds shall be deposited into the Portage Landfill Trust. Receiver Ramer shall file a final accounting regarding such proceeds with the Court.

(d) Defendants Sober and Portage and the Sober Trusts shall make available to the Ohio EPA, or its representative, soil that meets or exceeds the requirements set forth in O.A.C. Rule 3745-27-09 (F)(4), as effective July 29, 1976, from the land set forth in Appendix B attached to this Consent Order. The soil made available shall be used to implement the landfill cover requirements set forth in O.A.C. Rules 3745-27-10 (C) (1) and (F), as effective July 29, 1976. The first one hundred thousand cubic yards of soil shall be provided to Ohio EPA or its representative at no cost. An additional one hundred thousand cubic yards of soil needed to implement the cover requirements shall be provided to Ohio EPA or its representative at market value. Market value shall be determined by Ohio EPA by

considering the cost of soil at other soil borrow sources located in Portage and other surrounding counties, Arrangements to excavate the soil for Portage Landfill covering shall be made between Supervisor, Division of Solid and Infectious Waste Management, Northeast District Office, or his successor and Robert McGregor, Sober Trusts' representative.

(c) Defendants Sober and Portage, by June 1st of each year, shall (i) submit their federal income tax returns and W-2 forms for the tax year to this Court and (ii) submit their W-2 forms, and K-1, 1098, 1099 forms to Plaintiff at the following address: Patricia Payne, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428. The Court will conduct an in-camera inspection to determine if Defendant Sober and/or Defendant Portage have had a significant improvement in their finances. If this Court determines that there has been a significant improvement in the financial position of Defendant Sober and/or Defendant Portage, this Court will hold a hearing for the purpose of determining the amount of increased payment to be made pursuant to this Consent Order. Plaintiff may also request a hearing with this Court based on its review of Defendant Sober's and/or Defendant Portage's financial information

8. All payments required by paragraph 6 above shall be by check made payable to "Huntington Trust Company" and shall be submitted to the following address:

Trust Officer Candada J. Moore (or her successor)
Huntington Trust Company, N.A.
41 South High Street
HC 1112
Columbus, Ohio 43215

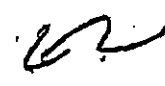
VI. TRUST AGREEMENT

9. The Portage Landfill Trust is attached to this Consent Order as Appendix A.

All payments made as required by Section V. of this Order shall be deposited into the Portage Landfill Trust.

10. The Portage Landfill Trust provides for language that is identical in substance to O.A.C. 3745-27-17(A) and contains the following additional revisions:

(a) Any monies remaining in the trust fund after closure and post-closure of the Portage Landfill is implemented shall be disbursed to the Ohio EPA for payment into the hazardous waste clean up fund established pursuant to O.R.C. Section 3734.28, or any successor fund identified by the Ohio EPA.

(b) The Director, at his non-reviewable discretion, may allow, or provide for, the disbursement of any proceeds from the trust fund for payment of any closure, post-closure care, ground water monitoring, explosive gas monitoring or other costs associated with environmental remedial activities or corrective measures at the Portage Landfill. 

(c) Trustee compensation, as agreed upon by the Director, shall be paid out of the Trust Fund.

(d) There shall not be any further modifications or amendments to the trust fund without the Director's written approval.

VII. ACCESS

11. Ohio EPA, and their employees and agents, shall have full access to the Portage Landfill through the primary access road leading to the Landfill at all reasonable times as may be necessary for the implementation of this Consent Order. To facilitate such access, the Ohio EPA Division of Solid and Infectious Waste Management, Northeast District Office and the Portage County Health Department Solid Waste Division shall possess keys and/or combinations

to all gates at the Landfill property site.

12. To the extent work to be performed pursuant to this Consent Order is to be performed on property owned by others besides Defendants Sober and Portage, Defendants Sober and Portage shall obtain access to properties surrounding the Landfill for the activities necessary to fulfill the requirements of this Consent Order.

13. Nothing in this Consent Order shall be construed to limit the right of access to the Portage Landfill as provided by O.R.C. Sections 3734.07 and 6111.05 or any other provision of State or Federal law.

VIII. WAIVER OF CLAIMS

14. In consideration of the fact that compliance with this Consent Order will resolve the claims alleged against Defendants Sober and Portage in Plaintiff's Complaint, Defendants Sober and Portage waive and agree not to bring any claims in this Court, any Federal Court, or any other court against Ohio EPA, its employees or agents, regarding any inspections, monitoring, or other activity conducted at the Portage Landfill on or about September 16, 1997.

IX. COSTS

15. Defendants Portage and Sober shall pay one half of the court costs of this action as of the date of entry of this Consent Order.

X. CONTINUING JURISDICTION

16. This Court shall retain jurisdiction over this action for the purpose of enforcing this Consent Order.

XV. SIGNATURES AND ENTRY OF ORDER

17. The undersigned represent that they have full legal authority to bind the parties that they represent in this matter.

18. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon the signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon all parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the

IT IS SO ORDERED.




JUDGE JOHN ENLOW

DATE

APPROVED:

**STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO**


**MARGARET A. MALONE (0021770)
TIMOTHY J. KERN (0034629)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Fl.
Columbus, Ohio 43215-3428
(614) 466-2766**

The undersigned hereby consent to the foregoing Consent Order in State of Ohio v. Portage Landfill and Development Company, et al., Case No. 87 CV 0958

PORTAGE LANDFILL AND DEVELOPMENT COMPANY


BY: *Waldo A. Sober, Jr.*

WALDO A. SOBER, JR

Waldo A. Sober, Jr.

THE TRACY L. AND LAURIE SOBER TRUSTS A & B

BY: *Robert J. Van Dyke Trustee*


JOSEPH L. PALMISANO (0021146)
EVANCHAN & PALMISANO
Twin Oaks Estate
1225 West Market Street
Akron, Ohio 44313

Attorney for Defendants Sober and Portage



Ohio Environmental Protection Agency
Division of Solid and Infectious Waste Management
P.O. Box 1049
Columbus, Ohio 43216-1049
Phone: 614-644-2621, FAX 614-728-5315

Please Deliver These Faxed Copies To:

Name: Mike Buckley

Company: AGO

FAX No.: _____

Date: April 18, 2003

Pages: 12 (Including Cover Sheet)

Sender: Carl Mussenden

Email: Carl.Mussenden@epa.state.oh.us

Phone: (614) 728-5341

Comments:

March 5, 1998 Consent Order for Portage Landfill & Development & Waldo Sober.

Let me know if you need me to look for any other documents, and please find a new ringer tune for your cell phone! ☎

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