

OCT 16 1989

ENTER

*Richard A. Niehaus*  
JUDGE RICHARD A. NIEHAUS

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

DATE: OCT 12 1989

STATE OF OHIO, ex rel.	:	CASE NO.	A8908732
ANTHONY J. CELEBREZZE, JR.	:		
ATTORNEY GENERAL OF OHIO	:	JUDGE	
30 East Broad Street	:		
Columbus, Ohio 43266-0410,	:		
	:		
Plaintiff,	:		
	:		
v.	:	<u>CONSENT ORDER</u>	
	:		
RICHARD WURZELBACHER	:		
11260 Colerain Avenue,	:		
Cincinnati, Ohio 45252	:		
	:		
Defendant.	:		

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio by its Attorney General Anthony J. Celebrezze, Jr. (hereinafter "Plaintiff") and Defendant Richard Wurzelbacher (hereinafter referred to as "Defendant") 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

1. 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 Defendant under Chapter

3734 of the Ohio Revised Code ("RC"), and venue is proper in this Court.

## II. PARTIES

2. The provisions of this Consent Order shall apply and be binding upon the parties to this action, their agents, officers, employees, assigns, stockholders, directors, successors in interest and any person acting in concert or privity with any of them. Defendant shall provide a copy of this Consent Order to each contractor it employs to perform work itemized herein, and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work.

## III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant disposed of solid wastes by open dumping of such wastes on land located at 11260 Colerain Road, Cincinnati, Hamilton County, Ohio (hereinafter referred to as "the Dump") in violation of the solid waste law (R.C. Chapter 3734) of the State of Ohio and the rules and regulations promulgated thereunder. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims under such laws alleged in the Complaint. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for violations which occur after the filing of the Complaint.

#### IV. RIGHT OF ENTRY

4. Defendant gives consent to Plaintiff, its agents and employees to enter into and onto Defendant's facility at a reasonable time, without a search warrant, to inspect, to take soil, water and other samples or to observe Defendant conducting the work required by this Consent Order. Nothing in this Consent Order shall be construed to limit Plaintiff's statutory or permit authority under Chapters 3734 or the rules promulgated thereunder to conduct inspections and/or take samples.

#### V. EFFECT UPON OTHER ACTIONS

5. Nothing in this Consent Order shall be construed to relieve Defendant of the obligation to comply with applicable federal, state or local statutes, regulations or ordinances or shall constitute a waiver or release of any right, remedy, defense or claim against Defendant with regard to any person not a party to this Consent Order.

#### VI. INJUNCTIVE RELIEF

6. Defendant is hereby permanently enjoined and ordered to immediately comply with the requirements of R.C. Chapter 3734 and the terms and conditions of the rules and regulations adopted thereunder.

7. Defendant is further enjoined as follows:

- a. Except as provided in Paragraph 8 of this Consent Order, Defendant shall immediately cease all dumping or disposal of solid waste, demolition-construction debris at the Dump, remove or grade all "cliffs", and

maintain "No Dumping" signs at all points of access to the Dump.

- b. Defendant shall complete, at the Dump, within sixty (60) days after entry of this Consent Decree all actions required by:

(i) O.A.C. Rule 3745-27-10(C)(1), in that all material deposited at the Dump shall be covered with at least two (2) feet of well compacted cover material that meets the requirements set forth in O.A.C. 3745-27-09(F)(See 7(C)) and;

(ii) O.A.C. 3745-27-10(C)(2), in that the site shall be seeded with such grasses or other vegetation as will grow to form a complete and dense cover, which seeding shall be done as many times as necessary to insure compliance with this requirement; and

(iii) O.A.C. 3745-27-10(C)(3), in that all land surfaces shall be graded to slopes of no less than 1% and no greater than 25%; and

(iv) O.A.C. 3745-27-10(C)(4), in that all land shall be graded and drainage facilities shall be provided so as to direct surface water off the site, and not allow ponding of water on the site; and

(v) O.A.C. 3745-27-10(C)(7) in that signs stating in letters not less than three (3) inches high that the Dump is permanently closed shall be posted in such a manner as to be easily visible from all access roads leading onto the site, which signs shall be maintained in a legible condition for not less than two (2) years after closure of the site; and

(vi) O.A.C. 3745-27-10(C)(8), in that a plat of the site shall be filed with the Board of Health having jurisdiction, the County Recorder of the county in which the Dump is

located, and the Director of Environmental Protection, which plot shall accurately locate and describe the completed site and include information relating to the area, depth, volume, and nature of the waste materials deposited in the Dump; and

(vii)O.A.C. 3745-27-10-(E), in that if within three (3) years after closure, settling occurs to such an extent that ponding of water occurs on those portions of the site where waste materials are deposited, the operator, owner or lessee shall promptly re-grade the site and/or add additional cover material and re-seed as necessary to eliminate the ponding; and

(viii)O.A.C. 3745-27-10(F), in that if within three (3) years after closure, cracking or erosion of the cover material occurs to such an extent that water may enter the cells, the operator, owner, or lessee shall promptly re-grade the site and/or add additional cover material, and re-seed or necessary to eliminate the cracking and erosion.

- c. All cover material applied by the Defendant, at the Dump, shall be in accordance with O.A.C. 3745-27-09(F)(4), in that all cover material shall consist of non-putrescible materials having low permeability to water, good compactibility, cohesiveness, and relatively uniform texture. Such cover material shall not contain stones, cobbles, or boulders, or other large objects in such quantities as may interfere with its application and intended purposes. Suitable cover materials include, but may not be limited to loam, sandy loam, silty loam, clay loam, silty clay, and sandy clay. Other soil classifications may be used if it can be demonstrated to the satisfaction to the Director or his

authorized representative or the Health Commissioner that such other soil classifications meet the requirements of this paragraph. In determining whether to allow the use of such other soil classifications, the Director or his authorized representative or the Health Commissioner may require a sieve analysis and/or a permeability test to be conducted.

8. Defendant may, for a period not to exceed thirty (30) days commencing from the date of entry of this Consent Order, accept hardfill, consisting of gravel, concrete, dirt, and/or asphalt, at the Dump. All such hardfill accepted, at the Dump, must be covered with cover material in accordance with Paragraph 7 of this Consent Order.

#### VII. POTENTIAL FORCE MAJEURE

9. In any action to enforce any of the provisions of this Consent Order, Defendant 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, act of God, unusually severe weather conditions, strikes, acts of war or civil disturbances or orders of any regulatory agency. While Plaintiff 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 Defendant of any rights or defenses it may have under applicable law.

#### VIII. REPORTING REQUIREMENT

10. Defendant must give notice to Ohio EPA's Southwest District Office twenty-four (24) hours prior to commencement of any of the obligations set forth in paragraphs 7(b)(i) and 7(b)(iii)-(iv). Within seven (7) days from the completion of the actions required by Paragraph 7, Defendant shall submit a written report to Ohio EPA's Southwest District Office, with a carbon copy to Ohio EPA's Central Office, DSHWM, Enforcement Section, stating whether Defendant has completed the actions required therein and any documentation of completion of the actions.

#### IX. CIVIL PENALTIES

11. The Defendant is further ordered to pay a civil penalty pursuant to Ohio Revised Code Sections 3734.13 of Two Thousand Five Hundred Dollars (\$2,500), for payment into the Hazardous Waste Clean-up Fund created pursuant to R.C. Section 3734.28.

Payment shall be made in twenty-four (24) successive monthly payments of one hundred four dollars and seventeen cents (\$104.17) per month by tendering a check or money order to Plaintiff's attorney, or his successor, by the tenth day of each month beginning with the first month following the date of entry of this Consent Order. Said checks or money orders shall be made payable to the "Treasurer, State of Ohio" and tendered at the following address:

Attorney General's Celebrezze's Office  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43266-0410

X. STIPULATED PENALTIES

12. In the event that Defendant fails to meet any of the requirements of this Consent Order set forth in Paragraphs 6 and 7, Defendant shall be immediately liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of each failure to meet a requirement, up to thirty (30) days - \$ 500.00 per day for each requirement not met. For each day of each failure to meet a requirement, from thirty-one (31) to sixty (60) days - \$1,000.00 per day for each requirement not met. For each day of each failure to meet a requirement, from sixty-one (61) to ninety (90) days - \$ 2,000.00 per day for each requirement not met. For each day of each failure to meet a requirement, from ninety-one (91) to one hundred twenty days (120) - \$ 5,000.00 per day for each requirement not met. Such payment shall be made on Defendant's own initiative at the address listed in paragraph 11.

13. Any payment required to be made under the provisions of Paragraph 12 of this Order shall be made by delivering to Plaintiff's counsel 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".



XI. RETENTION OF JURISDICTION

14. The Court will retain jurisdiction of this action for the purpose of making any order or decree which it deems appropriate to carry out this Consent Order.

XII. COSTS

15. Defendant is hereby ordered to pay the costs of this action.

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JUDGE, COURT OF COMMON PLEAS

APPROVED:

ANTHONY J. CELEBREZZE, JR.  
ATTORNEY GENERAL OF OHIO



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