

IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO
CIVIL DIVISION

STATE OF OHIO, ex. rel.
BETTY MONTGOMERY,

Plaintiff,

vs.

CENTRAL WASTE INCORPORATED, :

Defendant.

CASE NO.

97CV1724

JUDGE

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COPY

CONSENT ORDER

The Complaint in the above-captioned case having been filed herein and the Plaintiff, State of Ohio, by its Attorney General, Betty Montgomery, (hereinafter the "State or Plaintiff") and the Defendant, Central Waste Inc. (hereinafter the "Defendant") having consented to the entry of this Consent Order;

WHEREAS, from at least April 23, 1995 to the date of entry of this Consent Order, the Defendant has failed to adequately fund its closure/post-closure financial assurance mechanisms as required by O.A.C. Rules 3745-27-15(F)(3) and 3745-27-16(F)(3) for the Central Waste Landfill;

WHEREAS, from July 1, 1995 through May 31, 1996, Defendant failed to pay solid waste disposal fees for operation of the Central Waste Landfill, as required by R.C. Section 3734.57;

WHEREAS, on April 10, 1997 Defendant delivered to Plaintiff financial assurance mechanisms in the amount of One Million Eight Hundred Sixteen Thousand and 81/100 (\$1,816,000.81) Dollars, which constitutes the entire amount necessary under O.A.C. Rules 3745-

June 10, 1997
This is a true copy of the original
Filed in Case No. 97CV1724

ANTHONY VIVO, Clerk of Courts
By *[Signature]* Deputy

CLERK OF COURTS
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[Signature] 1225
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27-15 and 3745-27-16 for closure and post-closure of the facility, including the 8 acres of the landfill which have been constructed and filled and the 5.5 acres proposed in Defendant's Environmental Improvement Permit to Install. However, this amount excludes the 8 acres Unconstructed Portion authorized by Permit to Install #02-4934;

NOW, THEREFORE, without the trial or admission of any issues 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. This Court has jurisdiction over the subject matter herein, pursuant to Ohio Revised Code ("R.C.") Chapters 3734 and the rules adopted hereunder. The Complaint states a claim upon which relief can be granted against the Defendant. This Court has jurisdiction over the parties hereto. Venue is properly in this Court.

II. PERSONS BOUND

2. The provisions of this Consent Order shall apply to and be binding upon the Defendant, its agents, employees, assigns, and successors in interest and those persons bound by Rule 65 of the Ohio Rules of Civil Procedure. The provisions of this Consent Order shall also apply to those in active concert or participation with the Defendant who receive actual notice of this Consent Order, whether by personal service or otherwise.

III. DEFINITIONS

3. Unless otherwise stated, all terms used in this Consent Order shall have the same meaning as used in Ohio Revised Code Chapter 3734 and the regulations promulgated thereunder:

- A. "Central Waste Landfill" as used in this Consent Order, refers to the permitted and licensed sanitary landfill facility, as defined in O.A.C. Rule 3745-27-01(C)(4), located at 12003 Oyster Road, Alliance, Mahoning County, Ohio.
- B. "Day" means a calendar day unless expressly stated to be a business day. "Business day" means a day other than a Saturday, Sunday, or State holiday. In computing any period of time under this Consent Order, when the last day would fall on a Saturday, Sunday, or legal holiday, the period of time shall run until the close of the next business day.
- C. "Defendant" means Central Waste Incorporated.
- D. "O.A.C." means Ohio Administrative Code.
- E. "Ohio EPA" means the Ohio Environmental Protection Agency and its designated representatives.
- F. "Parties" shall mean the State of Ohio and Defendant collectively.
- G. "Plaintiff" means the State of Ohio on the relation of its Attorney General who brought this action upon the written request of the Director of the Ohio EPA.
- H. "Solid Waste" shall have the same meaning as provided in R.C. Section 3734.01(E) and the regulations promulgated thereunder.
- I. "Unconstructed Portion" shall mean the portion of the Central Waste Landfill where Defendant's 1992 Permit-to-Install authorizes disposal of solid waste, but the Defendant has yet to construct any disposal area or deposit solid waste.

IV. SATISFACTION OF LAWSUIT

4. Plaintiff alleges in its Complaint that the Defendant has violated R.C. Chapter 3734, the rules adopted and orders issued thereunder, as the owner/operators of a solid waste landfill located at 12003 Oyster Road, Alliance, Mahoning County, Ohio (hereinafter the "Central Waste Landfill").

5. Except as otherwise provided for by this Consent Order and/or by law, compliance with the terms of this Consent Order shall constitute full and complete satisfaction of Defendant's civil liability to Plaintiff for all claims alleged in the Plaintiff's Complaint.

V. RESERVATION OF RIGHTS

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

- (a) Seek relief for claims or conditions not alleged in the Complaint;
- (b) Seek relief for claims or conditions alleged in the Complaint which occur after the entry of this Consent Order;
- (c) Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;
- (d) 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, and/or recover costs for any removal, remedial or corrective activities not conducted pursuant to the terms of this Consent Order;
- (e) Take any action authorized by law against any person, including the Defendant, to eliminate or mitigate conditions at the Central Waste landfill that may present an imminent threat to the public health or welfare, or the environment.

VI. PERMANENT INJUNCTION

7. Except as provided in Section VII "Compliance Schedule" of this Consent Order, the Defendant is hereby ordered and enjoined to immediately comply with all the requirements set forth in Chapter 3734 of the Ohio Revised Code and the terms and conditions of the rules adopted thereunder. For the activities set forth in Section VII "Compliance Schedule", the Defendant is ordered and enjoined to comply with the terms and conditions specified in paragraphs 8 through 11 of this Consent Order.

VII. COMPLIANCE SCHEDULE

8. The Defendant shall not dispose of any Solid Waste in the eight acre Unconstructed Portion of the Central Waste Landfill, which was authorized by Permit to Install No. 02-4934, until Defendant complies with the requirements set forth in paragraph 9 of this Consent Order.

9. Prior to disposing any solid waste in the area described in paragraph 8 of this Consent Order, Defendant shall establish and fund a financial assurance mechanism or mechanisms in an amount of Six Hundred Seventeen Thousand Eight Hundred Seven Dollars and 00/100 (\$617,807), in accordance with O.A.C. Rules 3745-27-15 and 3745-27-16, for the additional costs of closure and post-closure care associated with that area.

10. The Defendant shall review and revise all cost estimates for the Central Waste Landfill in accordance with O.A.C. Rules 3745-27-15(D) and 3745-27-16(D).

11. By May 14, 1997 the Defendant shall pay the amount of Eighty Six Thousand Two

Hundred Ninety One and 23/100 (\$86,291.23) Dollars in late fees for its failure to pay district and state disposal fees from July 1995 through May 1996 in a timely manner, as required by R.C. Section 3734.57, O.A.C. Rules 3745-28-02(B) and 3745-28-03(B). This payment shall be made by certified check or money order made payable to "Treasurer, State of Ohio", and mailed to Office of Fiscal Administration, 1800 Watermark Drive, P.O. Box 1049, Columbus, Ohio 43216-1049.

VIII. COMPLIANCE WITH APPLICABLE LAWS

12. Nothing herein shall affect the Defendant's obligation to comply with all applicable federal, state, or local laws, regulations, rules, or ordinances. Defendant shall obtain all federal, state, or local permits and licenses necessary to comply with this Consent Order.

IX. STIPULATED PENALTIES

13. In the event that Defendant violates paragraph 8 of this Consent Order, Defendant shall immediately and automatically be liable for and shall pay stipulated penalties for each day of violation or failure to meet that requirement in the amount of Ten Thousand Dollars (\$10,000.00) per day.

14. Any payment required to be made pursuant to this section shall be paid by certified check made payable to "Treasurer, State of Ohio," said check shall be delivered by mail, or otherwise, to the Administrative Assistant, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, within thirty (30) days of the violation for failure to meet the requirements of this Consent Order.

X. RIGHT OF ENTRY

15. Nothing in this Consent Order limits Plaintiff's authority under R.C. Chapter 3734 or any other statutory authority to enter upon the Central Waste Landfill to determine compliance with this Consent Order and R.C. Chapter 3734.

XI. TERMINATION

16. This Consent Order shall terminate upon joint motion of the Parties, and approval of the Court, following completion of all activities required under this Consent Order, including but not limited to those items specified in paragraphs 8 and 9 of this Consent Order.

XII. GENERAL PROVISIONS

17. This Court shall retain jurisdiction over this cause for the purpose of making any order or decree which it deems necessary to enforce this Consent Order.

18. All court costs of this action shall be assessed against the Defendant.

19. All citations to the Ohio Administrative Code identified in this Consent Order refer to the most current version of the rule as of the date of filing of this Consent Order.

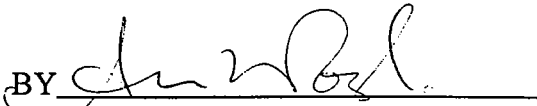
XIII. AUTHORITY TO ENTER INTO THE CONSENT ORDER

20. The signatory of the Defendant represents and warrants that he/she has been duly authorized to sign this document and so bind Defendant to all terms and conditions thereof.




JUDGE, COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

APPROVED:
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

BY 

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