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

Case No. 08743045
MONTGOMERY CO. OHIO
Judge Meagher

Plaintiff,

v.

DAYTON WALTHER CORP.

AMENDED CONSENT DECREE

Defendant.

The Plaintiff, State of Ohio, ex rel. Lee Fisher, Attorney General of Ohio ("State"), having filed a complaint in this action against Defendant Dayton Walther Corporation ("Dayton Walther") alleging violations of Chapter 3734 of the Ohio Revised Code and the State and Dayton Walther having attempted to resolve such Complaint by entry of a Consent Decree filed in this case on September 13, 1988, (the "Consent Decree") and Dayton Walther having allegedly committed violations of the Consent Decree and the State and Dayton Walther having consented to entry of this Amended Consent Decree;

Now therefore, without trial of any issue of law or of fact, and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED and DECREED as follows:

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Post-it [®] Fax Note	7671	Date	4/30/01	# of pages	10
To	Michael Joseph	From	Donna Goodman		
Co./Dept.	DHWM	Co.	SEDO		
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I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the parties and the subject matter of this case. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted under Chapter 3734 of the Ohio Revised Code and regulations promulgated thereunder.

II. PERSONS BOUND

2. The provisions of this Amended Consent Decree and the Consent Decree, to the extent that it is not amended by this document, shall apply to and be binding upon Plaintiff and Dayton Walther, its agents, officers, employees, assigns, successors, predecessors in interest, and those persons in active concert or participation with them or who receive notice of this Amended Consent Decree or the Consent Decree whether by personal service or otherwise.

III. NONADMISSION OF LIABILITY

3. Nothing in this Amended Consent Decree or the Consent Decree shall constitute an admission by Dayton Walther of any legal or factual matters set forth in the Complaint, Notices of Violation, or herein, which matters Dayton Walther denies.

IV. SATISFACTION OF LAWSUIT

4. Compliance with the terms of this Amended Consent Decree and the Consent Decree, to the extent that the Consent Decree is not amended, shall constitute full satisfaction of any civil, criminal or administrative liability by Dayton Walther, its officers, employees, and former officers and employees for all claims alleged in the Complaint. Further, compliance with the terms of this Amended Consent Decree shall constitute full satisfaction of any civil, administrative and criminal liability by Dayton Walther, its officers, employees, and former officers and employees for violations of the Consent Decree as stated in the Notices of Violation dated December 23, 1991, September 17, 1992, and October 30, 1992. Nothing in this Amended Consent Decree or the Consent Decree shall be construed so as to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint or Notices of Violation, or for violations which occur after the filing of this Amended Consent Decree, including future violations of the Amended Consent Decree or the Consent Decree.

V. PERMANENT INJUNCTION

5. Dayton Walther, relative to its Portsmouth, Ohio facility, is hereby permanently ordered and enjoined to comply with Ohio Revised Code Chapter 3734, and rules promulgated thereunder. Noncompliance with this Article V shall not void

any portion of the Satisfaction of Lawsuit set forth in Article IV, but shall entitle the State to secure appropriate relief for any violation of the first sentence of this Article V.

VI. EEFFECT UPON CONSENT DECREE

6. The obligations and rights of the parties under the Consent Decree (which shall remain in full force and effect) shall not be modified except as expressly provided in this Amended Consent Decree.

VII. REVISED POST-CLOSURE PLAN

7. Dayton Walther is ordered and enjoined to submit a revised post-closure plan and revised cost estimate for post-closure care for the Old Landfill at the facility to Ohio EPA within fifteen (15) days after the entry of this Amended Consent Decree. The revised post-closure plan shall address the following areas of the Old Landfill where it is alleged that:

- 1) Rip-Rap was applied directly to the clay layer;
- 2) The filter fabric was torn and Dayton Walther laid pieces of filter fabric over the rips rather than welding them;
- 3) The slopes of the Old Landfill, between the buffer levy and the creek, were 3:1 rather than the approved 4:1 slope

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- 4) Debris and rocks picked from cover material were deposited in two pits in the Old Landfill which resulted in two soft spots on the face of the Old Landfill;
 - 5) A pipe had been inserted to drain excess water which accumulated in the northwest corner of the Old Landfill during closure.

Dayton Walther is ordered and enjoined to implement the revised post-closure plan as approved by Ohio EPA. If the Director disapproves part or all of the revised post-closure plan, Defendant is ordered and enjoined to resubmit the disapproved portion in an approvable form to the Ohio EPA within thirty (30) days after receiving the Director's written notice of the deficiencies in the plan. If after resubmittal, the plan is still unapproved, the Director may modify or place conditions on the plan and approve the plan as modified or conditioned.

VIII. CERTIFICATION OF MODIFIED CLOSURE

8. Within fifteen (15) days of the entry of this Amended Consent Decree, Dayton Walther is ordered and enjoined to resubmit a certification of closure, in accordance with O.A.C. Rule 3745-55-15, to Ohio EPA detailing modifications to the original closure plan submitted by Dayton Walther and approved by Ohio EPA on September 13, 1989.

IX. FINANCIAL ASSURANCE

9. Within thirty (30) days of the entry of this Amended Consent Decree, Dayton Walther is ordered and enjoined to submit proof of financial assurance for post-closure care and liability coverage for third-party bodily injury and property damage pursuant to O.A.C. Rules 3745-55-45 and 3745-55-47. Dayton Walther shall be entitled to (i) withdraw its financial assurance for the Old Landfill closure and/or (ii) apply all or part of its financial assurance for the Old Landfill closure to Dayton Walther's post-closure care financial obligations hereunder, upon receipt of acceptance by Ohio EPA of Dayton Walther's Article VIII certification of modified closure.

X. GROUNDWATER MONITORING

10. Dayton Walther is ordered and enjoined to evaluate its groundwater monitoring data in accordance with the statistical procedures contained in the facility's post-closure plan originally approved September 13, 1989, or any alternate procedure selected from "Statistical Analysis of Groundwater Monitoring Data at RCRA Facilities" (April, 1989) as amended by "Addendum to Interim Final Guidance" (April, 1992).

XI. CIVIL PENALTY

11. Dayton Walther is ordered and enjoined to pay to the State of Ohio a civil penalty of Sixty Three Thousand Six

Hundred Dollars (\$63,600) by delivering a certified check for that amount, payable to the order of "Treasurer, State of Ohio" for payment into the Hazardous Waste Clean-up Fund pursuant to O.R.C. Section 3734.28, to Janis Miller, Administrative Assistant, Environmental Enforcement Section, or her successor, at the Office of the Ohio Attorney General, 25th Floor, 30 East Broad Street, Columbus, Ohio 43216, within thirty (30) days from the date of entry of Amended Consent Decree.

XII. STIPULATED PENALTIES

12. In the event that Dayton Walther fails to meet any requirement of Articles VII (Revised Post-Closure Plan), VIII Certification of Modified Closure, IX (Financial Assurance) or XI (Civil Penalty), Dayton Walther shall pay a stipulated penalty of One Thousand Dollars (\$1,000) for each day of each violation, from one (1) to thirty (30) days of violation; for each day of each violation from thirty-one (31) to sixty (60) days of violation -- Two Thousand Five Hundred Dollars (\$2500.00) per day of each day of violation; for each day of violation from sixty-one (61) to ninety (90) days of violation -- Four Thousand Dollars (\$4000.00) per day of each day of violation; for each day after ninety (90) days of violation -- Five Thousand Dollars (\$5000.00) per day of each day of violation.

13. In the event certification of modified closure as described in Article VIII is not accepted by Ohio EPA.

stipulated penalties will begin to accrue if the deficiencies in the modified closure certification are not corrected by Dayton Walther within Fifteen (15) days of receipt of notice of non-acceptance by Dayton Walther.

XIII. RETENTION OF JURISDICTION

14. The Court will retain jurisdiction of this action for the purpose of overseeing compliance with this Amended Consent Decree and the Consent Decree.

XIV. SUBMITTALS

15. Any submission to the Ohio EPA as required by this Amended Consent Decree or the Consent Decree, to the extent it is not amended, unless otherwise indicated, shall be delivered to both of the following:

Ohio EPA
Southeast District Office
2195 Front Street
Logan, Ohio 43138
Attn: RCRA Group Leader

Ohio EPA
P.O. Box 1049
1800 WaterMark Drive
Columbus, Ohio 43266-0149
Attn: Manager, Compliance, Monitoring and
Enforcement Section

XV. COURT COSTS

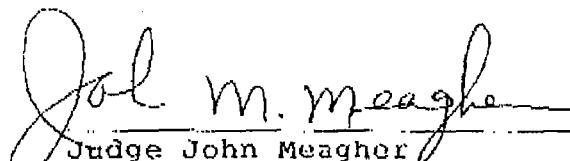
16. Dayton Walther shall pay the court costs associated with entry of the Amended Consent Decree.

XVI. ENFORCEMENT COSTS

17. Dayton Walther is ordered to pay the enforcement costs of relator Ohio Attorney General expended in pursuing the Amended Consent Decree, totaling \$4500.00, 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 Janis Miller, Administrative Assistant, or her successor, Environmental Enforcement Section, 25th Floor, 30 East Broad Street, Columbus, Ohio 43216, within thirty (30) days after the entry of this Amended 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 Amended Consent Decree.

IT IS SO ORDERED.

Entered this 6TH day of January, 1993


Judge John Meagher
Judge, Court of Common Pleas
of Montgomery County

AGREED TO:

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

BY: Beverly Yale Pfeiffer
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DAYTON WALTHER
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Attorney for Dayton Walther

BY: STEVEY M. PALM

Authorized Representative
of Dayton Walther

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