

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

C : 90 05 1701

STATE OF OHIO, ex rel.
ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO

CASE NO. _____
JUDGE ASGND. TO JUDGE MORGAN

Plaintiff,

CONSENT ORDER

vs.

MYER AND IRIS WEINGARTEN,

Defendants.

The State of Ohio by its Attorney General, Anthony J. Celebrezze, Jr., filed a Complaint seeking injunctive relief and civil penalties from Defendants Myer Weingarten and Iris Weingarten ("Defendants") for violations of Ohio Revised Code ("O.R.C.") Chapters 3734 and 6111 and the rules adopted thereunder.

THEREFORE, without trial of any issue of law or fact, and upon consent of the parties, without any admission of liability or of fact or law, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION

1. The Court has jurisdiction over the subject matter herein pursuant to O.R.C. Chapters 3734 and 6111. The Complaint states a claim upon which relief can be granted against Defendants under these statutes. The Court has jurisdiction over the parties hereto. Venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply to and be binding upon Defendants Myer Weingarten and Iris Weingarten and their agents, officers, employees, assigns, successors in interest, representatives, consultants, contractors, and/or all persons that act in concert or privity with Defendants. Defendants shall provide a copy of this Consent Order to any contractor, consultant, or other person or entity hired by Defendants to conduct any work required by this Consent Order, and Defendants shall require that such contractor, consultant, person or entity shall provide a copy thereof to any subcontractor retained to conduct any work required by this Consent Order.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendants Myer Weingarten and Iris Weingarten have stored and/or disposed of hazardous wastes at the property owned by Myer Weingarten, located at 776 Highland Road, Macedonia, Ohio, in such a manner as to result in violations of O.R.C. Chapters 3734 and 6111. This property is a "facility" (hereinafter referred to as the "Highland Road Facility") as that term is defined by Ohio Administrative Rule 3745-50-10(32), and R.C. 3734.01, and includes the property owned by Myer Weingarten and all other contiguous land and structures, other appurtenances, and

improvements on the land used by Defendants for storing and/or disposing of hazardous waste, including, but not limited to, the ravine located upon the said property, the soil immediately surrounding the ravine, the adjacent property owned by Conrail upon which drums were stored, and any and all areas upon the said property, within the building and without, upon which drums were stored and/or hazardous wastes were disposed of at any time from April 15, 1981 to the present. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants Myer Weingarten and Iris Weingarten and their agents, officers, employees, assigns, and successors in interest for the claims alleged in the Complaint which are based on violations of law occurring at the Highland Road Facility and which occurred prior to the entry of this Order.

IV. RESERVATION OF RIGHTS

4. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint, including violations or conditions which occur after the filing of the Complaint. Similarly, nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to undertake any action against any person or entity, including, but not limited to, Myer Weingarten and Iris Weingarten to eliminate or mitigate conditions arising after the date hereof which may

present an imminent threat to the public health, welfare or the environment. In addition, the State of Ohio hereby specifically reserves the right to proceed under State or federal law against any party, including, but not limited to, Myer Weingarten and Iris Weingarten for any further removal, remedial or corrective action, monitoring and/or testing that is not otherwise required by this Order and which the State of Ohio determines must be conducted at the Highland Road Facility and/or any costs incurred by the State of Ohio for such activities.

5. The execution of, performance of and payment for work under this Consent Decree by the Defendants shall not constitute an admission of any factual or legal issue, or of any liability or wrongdoing relating to the facility although the Defendants do agree they shall do and pay for what is required to be done this Consent Order. In any proceeding, except for the instant proceeding, the Defendants reserve all rights, claims and defenses which they might have regarding the facility. As to this Consent Order, the Defendants preserve all arguments that they have, in fact, complied with the specific tasks and requirements of this Consent Decree. Defendants also reserve all rights, claims or remedies they may have against any person not a party to this Consent Order.

V. INJUNCTIVE RELIEF

6. Myer Weingarten and Iris Weingarten are hereby permanently enjoined from violating and are hereby ordered to comply with O.R.C. Chapter 3734. Defendants Myer Weingarten and Iris Weingarten are enjoined to comply with the terms and conditions of any closure plan approval or modifications or amendments thereof, issued pursuant to Chapter 3734, and the rules adopted pursuant to Chapter 3734. Defendants Myer Weingarten and Iris Weingarten are also permanently enjoined and ordered to refrain from engaging in any future storage and/or disposal of hazardous waste except at a properly licensed and authorized facility.

7. The Defendants are enjoined from violating O.R.C. Chapter 6111., and are hereby permanently enjoined from placing or causing to be placed any industrial wastes or other wastes into any location where these wastes will enter waters of the state unless Defendants have a valid, unexpired NPDES permit issued by the Director of Ohio EPA.

VI. CLOSURE

8a. Defendants Myer Weingarten and Iris Weingarten are enjoined to close the Highland Road Facility by submitting and implementing a closure plan which meets with the requirements of OAC Rules 3745-66-10 through 3745-66-20. This closure plan is subject to the approval of the Director of Ohio EPA. Such

closure plan shall be submitted within sixty (60) days of entry of this Order.

The closure plan required by this subsection shall be submitted to the Director of Ohio EPA, 1800 Watermark Drive, Columbus, Ohio 43266-0149, as set forth in O.A.C. Rule 3745-66-12 (D)(1). Furthermore, a copy of all plans shall be submitted to Ohio EPA, Northeast District Office, 2110 East Aurora Road, Twinsburg, OH 44087, attention Debby Berg.

8b. Pursuant to OAC Rule 3745-66-12(D)(4), if the Director of Ohio EPA does not approve the closure plan originally submitted by Defendants Myer Weingarten and Iris Weingarten, and provides Defendants with a detailed written statement of the reasons for the refusal, Defendants Myer Weingarten and Iris Weingarten agree to and are hereby enjoined to modify the plan or submit a new plan for approval within 30 days after receiving the Director's notice of disapproval. If the Director modifies the plan, this modified plan becomes the approved Closure Plan.

9a. Defendants Myer Weingarten and Iris Weingarten are enjoined to comply with the following requirements, set forth in O.A.C. Rules 3745-66-42 through 43, at the Highland Road Facility within thirty (30) days of entry of this Order:

- i.) Cost estimate for closure, as required by O.A.C. Rule 3745-66-42.
- ii.) Financial assurance for facility closure, as required by O.A.C. Rule 3745-66-43.

9b. Defendants Myer Weingarten and Iris Weingarten shall comply with the liability requirements set forth in O.A.C. Rules 3745-66-47 at the Highland Road Facility within ninety (90) days of entry of this Order.

9c. Defendants Myer Weingarten and Iris Weingarten shall submit documentation demonstrating that said Defendants have complied with the provisions of Paragraphs 8a, 8b, 9a and 9b of this Consent Order. Such documentation must be submitted within fourteen (14) days after completion of each provision as set out in this consent decree, to the following address.

Debby Berg
Ohio EPA
Northeast District Office
2110 Aurora Road
Twinsburg, Ohio 44087

VII. CIVIL PENALTIES

10. Defendants Myer Weingarten and Iris Weingarten are further ordered to pay a civil penalty pursuant to Ohio Revised Code Sections 3734.13 and 6111.09 of five-thousand dollars (\$5,000.00). This payment shall be made by tendering a check or money order to Plaintiff's Attorney or his successor within ten (10) days after entry of this Order. Said check or money order shall be made payable to the "Treasurer, State of Ohio" and tendered at the following address:

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

VIII. STIPULATED PENALTIES

11. In the event that Myer Weingarten and/or Iris Weingarten, violate any of the terms or requirements of this Consent Order which pertain to them, including any milestone requirement in the closure plan schedule and the requirements of paragraphs 8a, 8b and 9a, 9b and 9c, such Defendant or Defendants shall immediately and automatically be 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 - Five Hundred Dollars (\$500.00) for each requirement per each day. For each day of each failure to meet a requirement, from thirty-one (31) to sixty days (60) - One Thousand Dollars (\$1,000) for each requirement for each day. For each day of each failure to meet a requirement, from sixty-one days (61) to ninety (90) days - Two Thousand Dollars (\$2,000.00) for each requirement for each day. For each day of failure to meet a requirement, over ninety days (90) days - Five Thousand Dollars (\$5,000.00) for each requirement for each day.

12. Any payment required to be made under the provisions of Paragraph 11 of this Order shall be made by delivering to Plaintiff's counsel at the address provided for in Part VI, a certified check or checks for the appropriate amounts, within thirty (30) days from the date of the failure to meet the requirement of the Consent Order, made payable to "Treasurer,

State of Ohio". Such payment shall be deposited into the hazardous waste clean-up account. Nothing herein shall prevent Plaintiff from pursuing any other available remedies such as contempt for enforcement of this Consent Order or from bringing additional actions against Defendants or others for violations of R.C. Chapter 3734. or the regulations adopted thereunder at the Facility other than those delineated in the instant Complaint and Consent Order. Furthermore, nothing in this Consent Order shall be construed so as to authorize or allow the suspension, in whole or in part, of any of the aforementioned Stipulated Penalties by the Court.

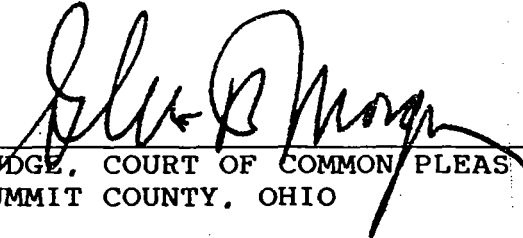
IX. POTENTIAL FORCE MAJEURE DEFENSE

13. In any action to enforce any of the provisions of this Consent Order, Defendants may raise at that time the question of whether they are entitled to a defense that their conduct was caused by reasons beyond their 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 Defendants of any rights or defenses it may have under applicable law.

14. The Court shall retain jurisdiction of this matter for the purpose of overseeing the implementation of this Order.

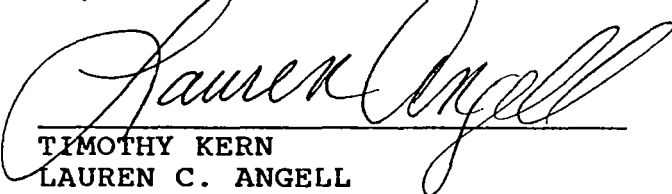
15. Defendants Myer Weingarten and Iris Weingarten shall pay the costs of this action.




JUDGE, COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

APPROVED:


ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO




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LAUREN C. ANGELL
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MYER WEINGARTEN
111 Partridge Lane
Cleveland, Ohio 44022



IRIS WEINGARTEN
111 Partridge Lane
Cleveland, Ohio 44022

8108E1/10



State of Ohio Environmental Protection Agency

P.O. Box 1049, 1800 WaterMark Dr.
Columbus, Ohio 43266-0149
(614) 644-3020
FAX (614) 644-2329

George V. Voinovich
Governor

CERTIFIED MAIL

February 13, 1991

Notice of Deficiency

Mr. Meyer Weingarten
Weingarten & Associates
111 Partridge Lane
Cleveland, Ohio 44022

RE: Closure Plan
Weingarten & Associates
OHD 986 968 840

Dear Mr. Weingarten:

On July 23, 1990, Ohio EPA received from Weingarten & Associates a closure plan for a hazardous waste drum storage area at your facility located at 776 Highland Road, Macedonia, Ohio.

This closure plan was submitted pursuant to Rule 3745-66-12 of the Ohio Administrative Code (OAC) in order to demonstrate that the Weingarten & Associates proposal for closure complies with the requirements of OAC Rules 3745-66-11 and 3745-66-12.

The public was given the opportunity to submit written comments regarding the closure plan in accordance with OAC Rule 3745-66-12. The public comment period extended from August 13, 1990 to September 18, 1990. No public comments were received by Ohio EPA.

Pursuant to OAC 3745-66-12(D)(4), I am providing you with a statement of deficiencies in the plan, outlined in Attachment A.

Please take notice that OAC Rule 3745-66-12 requires that a modified closure plan addressing the deficiencies enumerated in Attachment A be submitted to the Director of the Ohio EPA for approval within thirty (30) days of the

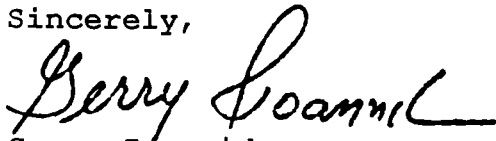


Mr. Weingarten
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receipt of this letter. The modified closure plan should be submitted to: Ohio Environmental Protection Agency, Division of Solid and Hazardous Waste Management, Attn: Thomas Crepeau, Manager, Data Management Section, P.O. Box 1049, Columbus, Ohio 43266-0149. A copy should also be sent to Andrea Dakoski, Ohio EPA, Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio 44087.

Upon review of the resubmitted plan, I will prepare and issue either a draft or a final action approving or modifying such plan. If you wish to arrange a meeting to discuss your responses to this Notice of Deficiency, please contact Andrea Dakoski, Ohio EPA, NEDO (216) 425-9171 or Paul Vandermeer, Ohio EPA, CO (614) 644-2956.

Sincerely,


Gerry Ioannides
Director

GI/PV/pas

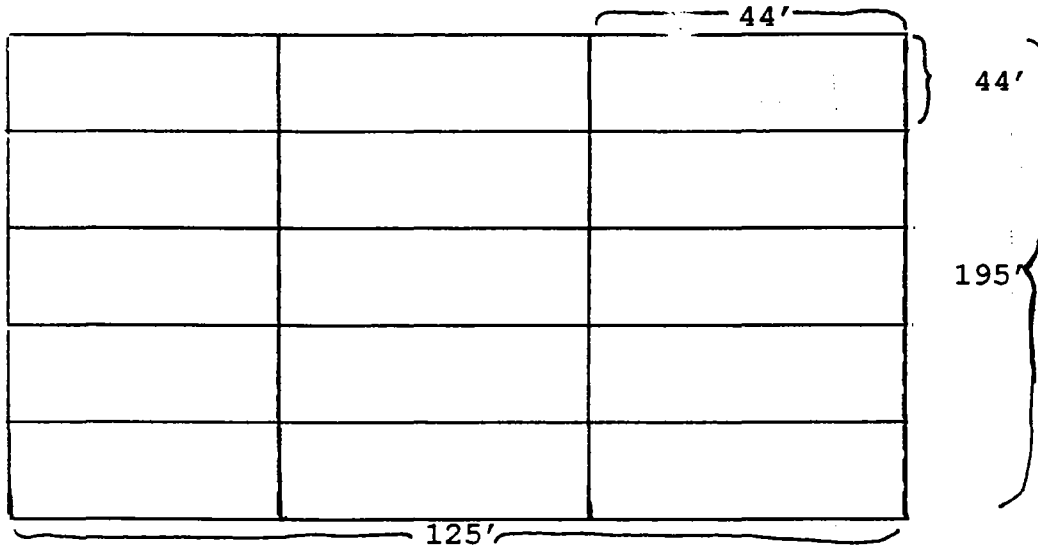
cc: Tom Crepeau, DSHWM, Central File, Ohio EPA
Lisa Pierard, USEPA, Region V
Joel Morbito, USEPA, Region V
Andrea Dakoski, NEDO, Ohio EPA
Paul Vandermeer, CO, Ohio EPA
Tim Kern, AGO
, CO, Ohio EPA

ATTACHMENT A

1. Section 6.0.0 Weingarten and Associates (W&A) shall revise the closure schedule to include additional specific events like soil removal, confirmation sampling, and estimated weather delays. W&A shall also provide for notification of Andrea Dakoski, the Northeast District Office site inspector, a minimum of 5 business days prior to each closure activity so she may be present to observe activities and/or take split samples.
2. Sections 7.0.0 and 8.0.0 W&A shall revise the closure plan to include a complete health and safety plan addressing appropriate worker protection levels, emergency procedures, and decontamination of personnel performing closure activities. W&A shall also address measures to restrict site access to only authorized personnel during closure activities.
3. Section 10.1.0 W&A shall explain the meaning of the last sentence in this section of the closure plan ("Statistical Methods may also be used for evaluating the extent of contamination and characterization of any end wastes"). Since the clean standard for heavy metals in soils was chosen to be the "Ohio Farm Soils" standard and background sampling has been ruled out, this statement seems superfluous. Soil characterization data need not be statistically evaluated.
4. Section 10.2.0 W&A shall revise the clean standards proposed for volatile organic chemical contamination remediation. Soils and surface water shall be considered clean when concentrations of volatile organic compounds fall below the analytical detection limit (not PQL) as defined in USEPA Publications SW-846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," Third Edition.
5. Section 11.2.0 W&A appears to have improperly used the formula for calculating a sampling grid interval. Apparently, the company used the formula to calculate a number of samples to take rather than using the formula for

its intended purpose (i.e., sample spacing). The new sample locations are not in any grid matrix. W&A shall revise the sampling locations to conform to the sampling grid as follows:

$$\begin{aligned}\text{Grid Interval} &= \frac{\sqrt{\text{area}/\pi}}{2} \\ &= \frac{\sqrt{(125' \times 195')/3.1415}}{2} \\ &= 44'\end{aligned}$$



DRAWING
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The sampling grid yields fifteen (15) boxes of which the center of each is sampled. This grid pattern can be integrated with those samples already obtained. It may be necessary to sample beyond the original grid in order to determine the full horizontal and vertical extent of contamination.

6. Section 13.0.0 W&A shall revise the closure plan to include specific decontamination measures for equipment (e.g., equipment scraping or brushing followed by triple rinsings). W&A shall include a design for the equipment decontamination area. This area must be large enough to accommodate the largest piece of equipment and be able to contain and collect all decontamination residues.
7. The proposed methods for soil sample collection appear to be satisfactory except in one regard: The organic liner material (PETG Copolyester) for the Shelby tube is not compatible with soils contaminated with organic constituents. The specifications given for PETG specifically state that the compound can be degraded by halogenated and aromatic hydrocarbons. These constituents may be present in soils at the site, making the soil samples incompatible with the sampling tube. W&A shall select some other liner material for the Shelby tube which will be compatible with all hazardous constituents at the site.
8. W&A shall revise the closure plan to include details on remedial action. The current plan contains very little with regard to plans for remediation of contaminated soils. W&A shall provide a full remediation plan in the revised closure plan including an itemized cost estimate for closure. If an unexpected event occurs during closure, the regulations allow for submission of an amended closure plan. However, the discovery of at least some minor soil contamination is to be expected. Therefore, Ohio EPA requires a remediation plan of action for soil contamination in the revised closure plan. The "remedial action plan" proposed by the company (to be submitted at some unspecified, later date) is not appropriate.