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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

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

CASE NO. 249430
JUDGE RALPH A. McALLISTER

Plaintiff,

vs.

WEST 11TH STREET
PARTNERSHIP, et al.,

Defendants.

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff, State of Ohio, by its Attorney General, Lee Fisher, and Defendants, West 11th Street Partnership, West 5th Street Corp. and Daniel Bradbury, 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. DEFINITIONS

1. For the purposes of this Consent Order, the following terms shall have the following definitions:

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- a. "Facility" shall mean the construction and demolition landfill owned and operated by West 11th Street Partnership, located on the corner of Spring and Jennings Roads, Cleveland Ohio.
- b. "Defendants" shall mean Defendants West 11th Street Partnership and Defendant West 5th Street Corporation and shall exclude Defendant Bradbury in his personal capacity.
- c. "Defendant Bradbury" shall mean Defendant Daniel R. Bradbury in his personal capacity.

II. JURISDICTION AND VENUE

2. 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 Defendants under Chapters 6111, 3704 and 3767 of the Ohio Revised Code, and venue is proper in this Court.

III. PARTIES

3. The provisions of this Consent Order shall apply and be binding upon the Defendants to this action, their agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them, and owners and operators of the facility now and hereafter. The Defendants 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 sub-contractors for such work. The Defendants shall provide the Ohio EPA and the City of Cleveland with at least sixty days written notice before transferring or leasing the property on which the facility is located.

4. The following provisions of this Consent Order shall apply and be

binding upon Defendant Bradbury: Paragraphs 5, 6, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24.

IV. SATISFACTION OF LAWSUIT

5. The Defendants and Defendant Bradbury own and operate the facility. The State's complaint alleges that the Defendants and Defendant Bradbury have discharged pollutants to waters of the State, in violation of R.C. Chapter 6111, and have operated the facility as a nuisance in violation of R.C. Chapter 3704 and 3767. Except as set forth in paragraphs 6 and 7 below, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants and Defendant Bradbury 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 not alleged in the Complaint, including violations which occur after the filing of the Complaint. This Consent Order supersedes the Agreed Preliminary Injunction entered into by the parties and signed by the court on March 25, 1993.

6. Nothing in this Consent Decree shall limit the authority of the State to seek relief for claims or conditions not alleged in the Complaint, or to seek relief for claims or conditions alleged in the Complaint which occur or exist after the entry of this Consent Decree. The State hereby specifically reserves the right to take action against any person, including but not limited to the Defendants and Defendant Bradbury, pursuant to the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. §9601 *et seq.*, and/or R.C. 3734.20 through 3734.27, for any removal,

remedial or corrective actions.

7. Nothing in this Consent Order shall be construed as a release of any personal liability Defendant Bradbury may have for violations which occur after this order is entered, even if those violations arise from conduct or conditions which occurred prior to the entry of this order.

V . INJUNCTIVE RELIEF

8. Defendants are hereby permanently enjoined from violating R.C. 6111.04 by discharging any pollutant to waters of the state without first receiving a discharge permit from the State of Ohio. Defendants are permanently enjoined from violating R.C. 3704.05, R.C. 3767.13 or O.A.C. 3745-15-07 by causing, permitting or maintaining a nuisance at the facility.

9. Defendants are hereby permanently enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures at the facility, notwithstanding any closure of the facility. Defendants are hereby enjoined to comply with any indirect discharge permit issued to the defendants by the Northeast Regional Sewer District.

10. Defendants and Defendant Bradbury shall submit a plan for explosive gas monitoring and extraction by September 30, 1994 or within thirty days after the landfill stops accepting waste, whichever occurs first. The plan shall be designed to prevent the migration of any explosive gases off-site.

11. Defendants and Defendant Bradbury are enjoined to install and operate the explosive gas monitoring system as approved by Ohio EPA.

12. Defendants and Defendant Bradbury are enjoined to respond to

any notices of deficiency or comment letters from the Ohio EPA within 14 days of receiving the letter or notice. The response shall fully address all of the State's comments.

13. Defendants and Defendant Bradbury are hereby ordered to comply with the closure plan as ratified by Ohio EPA, including any terms and conditions included in Ohio EPA's ratification.

VI. FINANCIAL ASSURANCE

14. Within sixty days after the entry of this decree, Defendants and Defendant Bradbury shall provide financial assurance for the post-closure care of the facility. Defendants and Defendant Bradbury shall provide financial assurance by either:

- (a) Establishing a trust fund in the amount of \$100,000 (one hundred thousand dollars). Defendants and Defendant Bradbury shall be the grantor of the trust, the beneficiary of the trust shall be the State of Ohio, and the trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The terms of the trust shall provide that Defendants and Defendant Bradbury may make requests for reimbursement from the trust for any "approved post closure costs", as that term is defined below, incurred by Defendants and Defendant Bradbury; provided however, that Defendants and Defendant Bradbury shall ensure that as of the beginning of every calendar year (i.e., January 1) for every year beginning in 1995 and continuing through 2025, the trust shall have a minimum value of \$100,000 (one hundred thousand dollars.) Reimbursements from the trust fund must be approved in writing by the Ohio EPA.

or:

- (b) Obtaining an irrevocable standby letter of credit from an institution authorized to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency. The letter of credit shall be for a minimum amount of \$100,000 (one hundred thousand dollars). The letter of credit shall be irrevocable and issued for a period of at least one year. The letter of credit shall provide that the expiration date will be automatically extended unless, at least one hundred twenty days prior to the expiration date, the issuing institution notifies both the defendants and the Director of Ohio EPA, by certified mail, of a decision not to extend the expiration date. If the issuing institution makes such a decision, Defendants and Defendant Bradbury shall obtain another letter of credit that meets the requirements of this rule, or comply with subparagraph (a) of this paragraph.

15. Nothing in this decree shall be construed as to limit Defendants and Defendant Bradbury's obligations pursuant to section IV of this decree.

16. Except as specifically provided herein, Defendants and Defendant Bradbury shall maintain financial assurance in the amounts described above for a minimum of thirty years. Subject to the following limitations, the Defendants and/or Defendant Bradbury may apply to the Ohio EPA for a change in the requirements of this decree as follows: first, the Defendants may apply for permission to either stop treating the leachate being generated from the landfill and/or to stop extracting explosive gasses from the landfill; second, Defendants and/or Defendant Bradbury may apply for a reduction and/or elimination of the requirement for financial assurance described above. Applications for a change in treatment requirements may be made pursuant to paragraph 17, and applications for a change in financial assurance may be

made pursuant to paragraph 18. Notwithstanding paragraphs 17 and 18, Defendants and Defendant Bradbury shall provide financial assurance as described above for a minimum period of five (5) years subsequent to the filing and entry of this consent order. No two applications for change in the consent order pursuant to this section may be submitted within three years of each other.

17. Defendants and/or Defendant Bradbury may apply to the Ohio EPA for permission to stop treating their leachate if they are able to demonstrate that the leachate from the landfill can be legally discharged without treatment. Defendants and/or Defendant Bradbury may apply to the Ohio EPA for permission to stop extracting explosive gasses from the landfill if they can demonstrate that the landfill is not generating any explosive gasses. If the Ohio EPA approves the application to stop operating either system, they shall notify the Defendants and the parties may proceed in accordance with paragraph 19. If the Ohio EPA disapproves the application, the parties may proceed in accordance with paragraph 20. Defendants and/or Defendant Bradbury shall send a copy of the application to the City of Cleveland.

18. If Defendants and/or Defendant Bradbury demonstrate pursuant to paragraph 17 that either the leachate treatment system and/or the explosive gas extraction system are no longer necessary, they may also apply for a reduction or elimination in the amount of the financial assurance required. If either system must continue to operate, then only a reduction in the amount of financial assurance may be requested. Any application for a reduction in the amount of financial assurance must include adequate documentation of

the annual cost of operating and maintaining the leachate collection system or the explosive gas extraction system. The amount of the appropriate financial assurance is at least twice the annual operation and maintenance costs for whichever system will continue to be operated. Defendants and/or Defendant Bradbury shall send a copy of the application to the City of Cleveland.

19. Upon Ohio EPA's approval of the application for a change in the financial assurance requirements, the parties may submit a joint entry to the Court setting forth the revised requirements of this Order.

20. Upon Ohio EPA's denial of the application for a change in financial assurance, it shall so notify Defendants and/or Defendant Bradbury in writing. Within thirty days of receiving the notice from Ohio EPA denying the application for a change, Defendants and/or Defendant Bradbury may submit their dispute with Ohio EPA's denial to this Court for resolution. This Court shall uphold the Ohio EPA's decision unless it finds that the Ohio EPA's decision is arbitrary and capricious.

21. If Defendants and Defendant Bradbury elect to establish a trust fund in order to comply with this section, Defendants and Defendant Bradbury may apply for reimbursements for "approved post-closure costs" by submitting a detailed bill to the Ohio EPA for approval. "Approved post-closure costs" are hereby defined as the costs of operating and maintaining the wastewater treatment plant at the facility; operating and maintaining the explosive gas monitoring and extraction system at the facility; maintaining the cap at the facility; and associated costs thereto. The Ohio EPA may refuse to reimburse expenses which are not approved post-closure costs, and may also refuse to

reimburse expenses if Defendants or Defendant Bradbury fail to fully fund the trust as required by paragraph 10(a).

22. Defendants and Defendant Bradbury shall demonstrate compliance with this section by submitting to the Ohio EPA signed, executed instruments within sixty days after the entry of this decree, and, if a trust fund is utilized, by sending documentation that the trust fund has been fully funded. The instruments shall be modeled after those in O.A.C. 3745-27-17. A copy shall be sent to the City of Cleveland.

VII. SUBMITTAL OF DOCUMENTS

23. Defendants and Defendant Bradbury shall submit all documents required by this consent order to:

Dennis Lee
Division of Surface Water
Ohio EPA
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087

Defendants shall submit the financial instruments required by Section

VI to:

Fanny Haritos
DSIWM
Ohio EPA
1800 Watermark Drive
Columbus, Ohio 43215

Defendants shall send documents required to be submitted to the City of Cleveland to:

Commissioner of Environment
Cleveland Department of Public Health
1925 St. Clair

Cleveland Ohio, 4115

VIII. CIVIL PENALTY

24. Defendants and Defendant Eradbury shall pay to the State of Ohio a civil penalty of fifteen thousand dollars (\$15,000.00). The penalty shall be paid by delivering to Plaintiff Attorney General, care of Matt Saunders, Administrative Assistant, or his successor, 25th Floor, 30 E. Broad Street, Columbus, Ohio, a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within forty-five (45) days from the date of entry of this Consent Order. The penalty shall be paid according to R.C. 6111.09.

IX. STIPULATED PENALTIES

25. In the event that the Defendants fail to meet the requirements of paragraphs 9, 10, 11, 12, 13, 14, or 16 of this Consent Order, the Defendants shall, immediately and automatically, be liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of failure to meet a requirement, up to thirty (30) days - Three Hundred and Fifty Dollars (\$350.00) per day for each requirement not met. For each day of failure to meet a requirement, from thirty-one (31) to sixty days (60) - Eight Hundred (\$800.00) per day for each requirement not met. For each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days - Two Thousand (\$2000.00) per day for each requirement not met. For each day of failure to meet a requirement, over ninety days (90) days - Three Thousand (\$3,000.00) per day

for each requirement not met.

26. Any payment required to be made under the provisions of the preceding paragraph 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".

X. RETENTION OF JURISDICTION

27. 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.

XI. COSTS

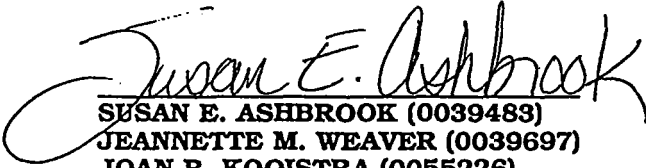
28. Defendants are hereby ordered to pay the costs of this action.



**JUDGE McALLISTER
COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

APPROVED:

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ATTORNEY GENERAL OF OHIO



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By David R. Bradbury Partner
DEFENDANT WEST 11th PARTNERSHIP

David R. Bradbury Partner
DEFENDANT WEST 5th STREET CORPORATION

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GERALD E. FUERST, CLERK
By J. Gatto DEP.

THE STATE OF OHIO Cuyahoga County	} ss	I, GERALD E. FUERST, CLERK OF THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY,
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL <u>of</u>		
NOW ON FILE IN MY OFFICE.		
WITNESS MY HAND AND SEAL OF SAID COURT THIS <u>21</u> DAY OF <u>April</u> A.D. 199 <u>4</u> .		
		GERALD E. FUERST, Clerk
By	<u>L. Sniffles</u>	Deputy

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