

IN THE  
COURT OF COMMON PLEAS  
GUERNSEY COUNTY, OHIO

STATE OF OHIO, *ex rel.* : CASE NO. 88 M 265  
LEE FISHER :  
ATTORNEY GENERAL OF OHIO, : JUDGE RICHARD D. HIXSON  
 : (Sitting by assignment from  
Plaintiff, : Muskingum County, Ohio)  
 :  
v. :  
WESTLAND LANDFILL, INC., *et al.*, :  
 : CONSENT ORDER  
 :  
Defendants. :

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio by its Attorney General Lee Fisher and Defendants Westland Landfill, Inc., Gordon Forster and Howard Winnett (hereinafter referred to as "Defendants") 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

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

II. PARTIES

The provisions of this Consent Order shall apply and be binding upon the parties to this action, who are signatories

hereto, their agents, officers, employees, assigns, stockholders, directors, successors in interest and any person acting in concert or privity with any of them. Defendants are ordered to provide a copy of this Consent Order to each contractor and/or consultant it employs to perform the work itemized herein, and Defendants are ordered to instruct each general contractor and/or consultant to provide a copy of this Consent Order to each of its subcontractors and/or subconsultants for such work.

### III. SATISFACTION OF LAWSUIT

A. Plaintiff alleges in its Complaint that Defendants operated a sanitary landfill located at R.D. #2, New Concord, Guernsey, County, Ohio (hereinafter referred to as the "Westland facility") in such a manner as to result in numerous alleged violations of the solid waste law of the State of Ohio, *i.e.*, RC Chapter 3734. and the rules adopted thereunder. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims under such laws alleged in the Complaint. Nothing in this Consent 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 Consent Order, or not alleged in the Complaint, regardless of when they occurred.

B. Nothing in this Consent Order shall limit the State of Ohio from requiring Defendants, pursuant to the provisions of RC Chapter 3734. and the rules adopted thereunder, to

initiate appropriate corrective action to address contamination of the groundwater, surface water and/or soils at the Westland facility, or to recover costs incurred by the State for such remediation to which the State is entitled pursuant to state and/or federal law.

C. The signing of this Consent Order by Defendants is neither an admission of the truth or a denial of the allegations contained in Plaintiff's Complaint.

#### IV. RIGHT OF ENTRY

A. Defendants are ordered to give consent to Plaintiff State of Ohio, its agents and employees to enter into and onto Defendants' Westland facility, during daylight hours, without a search warrant, to inspect the facility's operations and/or records, to take soil, water and/or other samples or to observe Defendants conducting the work required by this Consent Order.

B. Nothing in this Consent Order shall be construed to limit Plaintiff's statutory or permit authority under RC Chapters 3734. and the rules adopted thereunder to conduct inspections and/or surveys, to take samples, and/or review records.

#### V. EFFECT UPON OTHER ACTIONS

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

## VI. PERMANENT INJUNCTION

Defendants are hereby permanently enjoined and ordered to immediately comply with the requirements of RC Chapter 3734. and the rules adopted thereunder.

## VII. OTHER INJUNCTIVE RELIEF

A. Within one hundred twenty (120) days after the Court's entry of this Consent Order, Defendants are enjoined and ordered to complete closure of all areas of solid waste placement at the Westland facility in accordance with Rule 3745-27-10 of the Ohio Administrative Code ("OAC") as effective July 29, 1976. Specifically, Defendants are enjoined and ordered to achieve compliance with the following provisions of OAC Rule 3745-27-10, as effective July 29, 1976:

1. Defendants shall apply at least two (2) feet of well compacted final cover material that meets the criteria set forth in OAC Rule 3745-27-09(F)(4), as effective July 29, 1976, over all waste materials that have been disposed at the Westland facility to attain compliance with OAC Rule 3745-27-10(C)(1) as effective July 29, 1976. Defendants shall provide detailed engineering plans including appropriate quality control and quality assurance to verify compliance with the above requirement.
2. Defendants shall seed the site with grasses or other vegetation as many times as is required to form a dense cover to attain compliance with OAC Rule 3745-27-10(C)(2);
3. Defendants shall properly grade all final slopes of the Westland facility to no less than one (1) percent and no greater than twenty-five (25) percent to attain compliance with OAC Rule 3745-27-10(C)(3);
4. Defendants shall grade the Westland facility and provide drainage structures

as necessary to direct surfacewater off the site, and not allow ponding of water to attain compliance with OAC Rule 3745-27-10(C)(4);

5. Defendants shall bait the Westland facility for rodents and treat for other vectors as necessary to attain compliance with OAC Rule 3745-27-10(C)(6);
6. Defendants shall submit a plat of the site to the Guernsey County Board of Health, Guernsey County Recorder, and the Director of Environmental Protection which shall accurately locate and describe the completed site, and include information relating to the area, depth, volume, and nature of wastes disposed in the Westland facility to attain compliance with OAC Rule 3745-27-10(C)(8);
7. Defendants shall correct all settling of the final cover placed at the Westland facility to attain compliance with OAC Rule 3745-27-10(E);
8. Defendants shall correct all erosion and cracking of the final cover material placed at the Westland facility to attain compliance with OAC Rule 3745-27-10(F);

B. Within sixty (60) days after the Court's entry of this Consent Order, Defendants are enjoined and ordered to submit an explosive gas monitoring plan with a schedule of compliance that meets the requirements in OAC Rule 3745-27-12 as that rule was effective June 12, 1989. Defendants are enjoined and ordered to implement said plan within fifteen (15) days after receipt of written approval from the Ohio EPA in accordance with the schedule of compliance contained therein.

C. Within ninety (90) days after the Court's entry of this Consent Order, Defendants are enjoined and ordered to

submit a permit to install ("PTI") application with a schedule of implementation proposing to contain and properly maintain leachate outbreaks at the Westland facility to achieve compliance with OAC Rule 3745-27-10(H) as effective JULY 29, 1976. Defendants are enjoined and ordered to implement the PTI and Leachate Management Plan within fifteen (15) days after receipt of written approval from the Ohio EPA in accordance with the schedule of compliance contained therein.

D. Within thirty (30) days after the Court's entry of this Consent Order, Defendants are enjoined and ordered to submit an interim leachate control plan that will properly maintain leachate outbreaks at the Westland facility until the permanent leachate control measures outlined in Article VII, Paragraph C are in place. Defendants are enjoined and ordered to implement the Interim Leachate Control Plan within seven (7) days after receipt of written approval from the Ohio EPA.

E. Defendants are enjoined and ordered to conduct a ground water monitoring program at the Westland facility in accordance with OAC Rule 3745-27-10, as effective March 1, 1990, and the following provisions:

1. Within sixty (60) days of the Court's entry of this Consent Order, Defendants shall submit to the Ohio EPA a Hydrogeologic Site Investigation Work Plan that contains a schedule of implementation. The Hydrogeologic site investigation work plan shall, at a minimum, detail the methodology, equipment and procedures to be used to locate a ground water monitoring well system around the Westland facility capable of complying with

OAC Rules 3745-27-10(A) and (B). Defendants are enjoined and ordered to initiate the Hydrogeologic Site Investigation Work Plan within fifteen (15) days after receipt of written approval from the Ohio EPA, and in accordance with the schedule of implementation contained in said plan.

2. Within one hundred eighty (180) days of the Court's entry of this Consent Order, Defendants shall submit to the Ohio EPA a ground water quality monitoring program plan that contains a schedule of implementation. The Ground Water Quality Monitoring Program Plan shall, at a minimum, comply with OAC Rules 3745-27-10(A) through (D), inclusive. Any amendments to the Ground Water Quality Monitoring Program shall be submitted to the Ohio EPA prior to their implementation. Defendants are enjoined and ordered to initiate the ground water quality monitoring program plan within fifteen (15) days after receipt of written approval from the Ohio EPA, and in accordance with the schedule of implementation contained in said plan.

F. Defendants are enjoined and ordered to take immediate interim actions to control and contain sedimentation runoff from the Westland facility. Furthermore, Defendants are enjoined and ordered to submit a permanent Sedimentation Runoff Plan to the Ohio EPA within thirty (30) days after the Court's entry of this Consent Order. Defendants are enjoined and ordered to maintain the permanent Sedimentation Runoff Plan until such time that the potential for sedimentation runoff from the Westland facility has been abated.

G. In the event Defendants are notified that any or all

of the documents submitted to achieve compliance with Article VII, Subparagraphs B, C, D, E and F are unsatisfactory in whole or in part, the Ohio EPA will include a statement in the notification as to the modifications or additions which must be made to the document prior to approval. Within thirty (30) days after receipt of the Ohio EPA's notification requiring modifications or additions, Defendants are enjoined and ordered to amend and submit to the Ohio EPA a revised document, or documents, incorporating all of the required modifications or additions. Such revised document, or documents, must be to the Ohio EPA's satisfaction. Defendants are enjoined and ordered to implement the revised document, or documents, within fifteen (15) days after receiving written approval from the Ohio EPA.

H. Defendants are enjoined and ordered to conduct post closure monitoring at the Westland facility for thirty (30) years after the Court's entry of this Consent Order in accordance with OAC Rule 3745-27-14 as effective March 1, 1990.

I. Defendants are enjoined and ordered to provide a detailed written estimate of the cost of closing the Westland facility in accordance with OAC Rule 3745-27-11(A)(5)(a) within thirty (30) days from the Court's entry of this Consent Order.

#### VIII. REPORTING REQUIREMENT

Unless otherwise stated in this Consent Order, within seven (7) days from the completion of any task set forth in this Consent Order, Defendants are ordered to submit a



written report identifying that they have performed the action set forth therein and any documentation pertaining to the completion of said task to the Ohio EPA's Southeast District Office at 2195 Front Street, Logan, Ohio 43138-9031; with an additional copy to the Ohio EPA's Central Office, Division of Solid and Hazardous Waste Management/Enforcement Section at 1800 WaterMark Drive, P.O. Box 1049, Columbus, Ohio 43266-0149.

**IX. EFFECT OF CONSENT ORDER**

This Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing physical structure or facilities. Approval for any such construction or modification shall be by permit issued by the Director of Environmental Protection or other such permits as may be required by applicable federal, state or local laws, rules or regulations.

**X. CIVIL PENALTY**

Defendants are ordered to pay to the State of Ohio, pursuant to RC Section 3734.13(C), a civil penalty of fifty thousand dollars (\$50,000.00) to be deposited into the "Hazardous Waste Clean-up Fund." This penalty shall be paid by delivering to the attorney for Plaintiff, or his successor, five (5) certified checks, each for \$10,000.00, made payable to the order of "*Treasurer, State of Ohio*" in accordance with the following schedule:

**DATE PAYMENT DUE**

**AMOUNT**

1. The first payment shall be made within seven (7) days of the Court's entry of this Consent Order. \$10,000.00

- 10
2. The 2nd payment shall be made within ninety (90) days after the Court's entry of this Consent Order. 10,000.00
  3. The 3rd payment shall be made within one hundred eighty (180) days of the Court's entry of this Consent Order. 10,000.00
  4. The 4th payment shall be made within two hundred seventy (270) days of the Court's entry of this Consent Order. 10,000.00
  5. The 5th payment shall be made within three hundred sixty (360) days of the Court's entry of this Consent Order. 10,000.00
- TOTAL \$50,000.00

#### XI. STIPULATED PENALTIES

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A. In the event that Defendants fail to meet the requirements of Articles VI, VII, and X, Defendants shall immediately and automatically be liable for payment of a stipulated penalty according to the following payment schedule:

1. For each day of each failure to meet a requirement, up to thirty (30) days--five hundred dollars (\$500.00) per day per violation.
2. For each day of each failure to meet a requirement, from thirty-one (31) to sixty (60) days--one thousand dollars (\$1,000.00) per day per violation.
3. For each day of each failure to meet a requirement, from sixty-one (61) to ninety (90) days--one thousand five hundred dollars (\$1,500.00) per day per violation.
4. For each day of each failure to meet a requirement, over ninety days (90) days--two thousand dollars (\$2,000.00) per day per violation.

IN THE  
COURT OF COMMON PLEAS  
GUERNSEY COUNTY, OHIO

FILED  
1992 MAR 30 PM 4:02

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

CASE NO. 88 M 265 DAMKOVIC  
COURTS  
JUDGE RICHARD D. HIXSON  
(Sitting by assignment from  
Muskingum County, Ohio)

v.

JOURNAL ENTRY

WESTLAND LANDFILL, INC.,  
*et al.*,  
  
Defendants.

The cause *sub judice* is dismissed without prejudice as to  
Defendant Jerin Corporation, dba Ace Disposal Company.  
  
No further order is required.

Entered this 30<sup>th</sup> day of March, 1992.

JUDGE RICHARD D. HIXSON  
Guernsey County Court of  
Common Pleas