

IN THE COURT OF COMMON PLEAS
MIAMI COUNTY, OHIO

FILED
MIAMI COUNTY
COMMON PLEAS COURT
06 NOV 28 AM 9:14
JILL D. HOFFINGER
CLERK OF COURTS

STATE OF OHIO, ex. rel.
JIM PETRO
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

The Board of Commissioners of Miami
County Ohio, et al.,

Defendants.

: CASE NO. 05-635
: BY CONSOLIDATION 05-466
:
:

: Judge Jeffery M. Welbaum
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:
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CONSENT ORDER AND FINAL JUDGMENT ENTRY

Plaintiff State of Ohio, ex rel. Jim Petro, Attorney General of Ohio, having filed the Complaint in this action to enforce Ohio Revised Code 3734.57, as it pertains to the Defendants in this matter, having filed the State's Motion for Summary Judgment, and having received a favorable order granting the State's Motion for Summary Judgment, and having been ordered by this Court to prepare, circulate, and submit a proper judgment entry, the Plaintiff and Defendants have consented to this Judgment Entry.

WHEREAS, the parties have presented their legal and factual arguments through motions to the Court regarding the Board of Commissioners of Miami County's legal responsibility under R.C. 3734.57 to collect and remit to the Ohio Environmental Protection Agency a \$3.50 per ton fee from all transporters of solid waste transferring such waste through the Miami County Transfer Facility.

WHEREAS, this Court, as a part of its Order granting the Plaintiff's Motion for Summary Judgment, has ordered the Plaintiff to submit a proposed Judgment Entry for the Court to adopt.

WHEREAS, the objective of this Consent Order and Final Judgment Entry is to provide an entry to this Court agreeable to both parties and, thereby, forgo a hearing before this Court concerning damages and forgo an appeal of this Court's Order or Adopted Judgment Entry.

WHEREAS, this Consent Order fully incorporates the opinion and determination of this Miami County Common Pleas Court's September 14, 2006 Declaratory Judgment Order Granting Cross-Motion for Summary Judgment of Plaintiffs, and Overruling Motion for Summary Judgment of Defendants.

WHEREAS, the counsel of the Ohio EPA has informed the Board of Commissioners of Miami County, through the Board's undersigned counsel, of the proper forms on which to report to the Ohio EPA the tonnage of solid waste transferred through the Miami County Transfer Station.

WHEREAS, the failure of the Board of Commissioners of Miami County to collect and remit to the Ohio EPA R.C. 3734.57 fees has acted as an impediment to the Board receiving a license to operate its Transfer Station.

THEREFORE, upon the consent of the parties hereto, it is hereby **ORDERED**, **ADJUDGED** and **DECREED** as follows:

I. DEFINITIONS

1. 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 Ohio Administrative Code rules adopted thereunder.

2. As used in this Order, the following terms are defined as follows:

“Consent Order” or “Order” means this Consent Order and Final Judgment Entry and all appendices hereto. In the event of conflict between this Order and any appendix, the Order shall control.

“Defendant” or “Defendants” means the Board of Commissioners of Miami County.

“Miami County Transfer Station” refers to the solid waste transfer facility located in Miami County of Ohio on C.R. 25A, Troy, Ohio 45373 owned and operated by the Board of Commissioners of Miami County.

“Ohio EPA” means the Ohio Environmental Protection Agency.

“Ohio Adm. Code” means the Ohio Administrative Code.

“Plaintiff” means the State of Ohio by and through the Attorney General of Ohio.

“R.C.” means the Ohio Revised Code.

II. JURISDICTION AND VENUE

1. The Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapters 3734. This court has jurisdiction over the parties. This Court shall retain jurisdiction of this action for the purposes of enforcing this Consent Order. Venue is proper in this Court.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

2. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendants to the Plaintiff for the claims alleged in the Plaintiff's Complaint.

3. The Board's failure to comply with R.C. 3734.57, addressed by this Court's Declaratory Judgment Order, shall not serve as an impediment to the Board receiving a renewed

license to operate the Miami County Transfer Station in the event that the Board complies with the terms of this Consent Order.

4. The State of Ohio and the Ohio Environmental Protection Agency (EPA) will waive and forgo any claim for penalties or other charges related to this action and the premises thereof except as is explicitly set forth herein below.

5. The Board agrees to forgo its appeal of this Consent Order and Judgment Entry, including the herein incorporated September 14, 2006 Declaratory Judgment Order Granting Cross-Motion for Summary Judgment of Plaintiffs, and Overruling Motion for Summary Judgment of Defendants issued by this Court.

6. This Consent Order shall not be construed to limit the authority of the Plaintiff to seek relief for violations not alleged in the Complaint, nor shall this Consent Order bar the State from bringing any action against the Defendants for any violations that occur after the entry of this Order. Nothing in this Consent Order shall be construed to relieve Defendants of its obligations to comply with applicable federal, state or local statutes, regulations, or ordinances.

IV. INJUNCTIVE RELIEF

7. By December 1, 2006, the Board of Commissioners of Miami County will pay to the Ohio Environmental Protection Agency the full balance for R.C. 3734.57 fees for the months of July 2005 through October 2006, which would have been collected had the Board imposed the R.C. 3734.57 fees and initiated its collection as of July 1, 2005.

8. By December 1, 2006, the Board of Commissioners of Miami County will pay to the Ohio Environmental Protection Agency the full balance of interest that would have accrued on

the R.C. 3734.57 fees for the months of July 2005 through September 2006 had the Board imposed the R.C. 3734.57 fees and initiated its collection as of July 1, 2005.

9. Interest shall be calculated for the months of July 2005 through September 2006 based on the following monthly interest rates:

September, 2005	3.06
October, 2005	3.16
November, 2005	3.50
December, 2005	3.56
January, 2006	3.69
February, 2006	4.09
March, 2006	4.24
April, 2006	4.24
May, 2006	4.39
June, 2006	4.45
July, 2006	4.62
August, 2006	4.69
September, 2006	4.65

10. As of the date of the filing of this Consent Judgment Entry, the Board of Commissioners of Miami County is hereby ordered and enjoined to begin the collection and remittance to the Ohio EPA of R.C 3734.57 fees and to otherwise come into full compliance with the language of R.C. 3734.57 and the rules promulgated thereunder.

11. By December 1, 2006, the Board of Commissioners of Miami County shall submit to the Ohio Environmental Protection Agency a completed "Monthly MSW Disposal Fee Submittal Form For TRANSFER Facilities" for each month from July 2005 through October 2006. In lieu of the late fee indicated on the form, the forms shall indicate the amount of interest owed on the total amount of unpaid fees, up to and including the month indicated on the form, in accordance with paragraph 9 of this Consent Order.

All forms and payment of fees and interest shall be sent to

Ohio Environmental Protection Agency

DSIWM – Attention Brian Dearth
PO Box 1049
Columbus, OH 43216-1049

V. STIPULATED PENALTIES

12. In the event that Defendant fails to comply with Provision 7 through 11 of this Consent Order, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty that is meant to be coercive in nature in accordance with the following schedule:

- a. Defendant shall pay two hundred fifty dollars (\$250.00) per day for each day any requirement under Provision 7 through 11 of this Consent Order is violated up to thirty (30) days;
- b. From thirty-one (31) days through ninety (90) days, Defendant shall pay five hundred dollars (\$500.00) per day for each day any requirement under Provision 7 through 11 of this Consent Order is violated;
- c. After ninety (90) days, Defendant shall pay seven hundred and fifty dollars (\$750.00) per day for each day any requirement under Provision 7 through 11 of this Consent Order is violated.

13. Stipulated penalties due under this Amended Consent Order shall be paid by certified check or money order, payable to “Treasurer, State of Ohio” and mailed to J. Mark Lemmon or his successor, Paralegal, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

14. The payment of stipulated penalties by Defendants and the acceptance of such stipulated penalties by Plaintiff shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to Ohio statutory law, including civil penalties, or to otherwise seek judicial enforcement of this Consent Order, for the same violation for which a stipulated penalty was paid or for other violations.

VI. COURT COSTS

15. Defendants shall pay the court costs of this action.

VII. ENTRY OF ORDER AND JUDGMENT BY CLERK

16. Upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is directed to serve upon all parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

VIII. AUTHORIZATION TO ENTER INTO CONSENT ORDER

17. Each signatory for a party represents and warrants that he/she has been duly authorized to sign this document and so bind the party to all terms and conditions thereof.

IX. SUBMITTAL OF DOCUMENTS

18. All documents required to be submitted to Ohio EPA and the designated Health District or District Office pursuant to this Consent Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio Environmental Protection Agency
DSIWM – Attention Brian Dearth
PO Box 1049
Columbus, OH 43216-1049

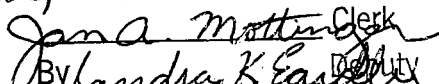
IT IS SO ORDERED:

State of Ohio, Miami County, ss

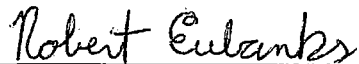
I hereby certify the above to be a true and correct copy of the original Entry, journalized


JEFFREY M. WELBUAM, JUDGE

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By Sandra K. Easley, Clerk
Deputy

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JIM PETRO**


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