

COURT OF CP
MONROE COUNTY, OHIO
FILED

IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

MAY 10 1989

Dorothy Anderson
CLERK OF COURTS
DEPUTY

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

CASE NO. 88-43

JUDGE BURKHART

Plaintiff,

vs.

BROWN BROTHERS LANDFILL, INC.,
et al.,

CONSENT ORDER

Defendants.

The State of Ohio by its Attorney General, Anthony J. Celebrezze, Jr., filed a Complaint seeking injunctive relief and civil penalties from Defendants Brown Brothers Landfill, Inc., Guy L. Brown, and Darrell A. Brown (hereinafter "Defendants") for violations of Ohio Revised Code ("O.R.C.") Chapters 3734. and 6111. and the rules adopted thereunder. With regard to these issues, the parties have reached agreement on the terms of permanent injunctive relief and for payment of a civil penalty.

THEREFORE, without trial of any issue of law or fact, and upon consent of the parties, 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 the Defendants, their agents, officers, employees, assigns, and successors in interest. In addition, this Order shall apply to all persons, firms, corporations and other entities having notice of this Order and acting in privity with Defendants. Defendants shall provide a copy of this Consent Order to any consultant or contractor hired by Defendants to conduct the work required by this Consent Order.

III. CLOSING OF LANDFILL

3. The Defendants are permanently ordered, enjoined and prohibited from accepting solid wastes at the entity known as the Brown Brothers Landfill located at Section 33, Switzer Township, Clarington, Ohio in Monroe County (hereinafter the "facility" or "site") unless the facility has been issued a valid license by the Director of Ohio EPA or the Monroe County Health Department. Furthermore, within seven (7) days of entry of this Consent Order, Defendants Guy L. Brown and Brown Brothers Landfill, Inc. shall voluntarily dismiss with prejudice their

appeal of the final denial of their 1987 and 1988 solid waste disposal licenses, Brown Brothers Landfill v. Richard L. Shank, Director of Environmental Protection, EBR Case No. 561935 and their appeal concerning their 1989 solid waste disposal license application, Brown Brothers Landfill v. Richard L. Shank, Director of Environmental Protection, EBR Case No. 561951.

4. The Defendants are ordered and enjoined to complete within sixty (60) days of entry of this Consent Order (hereinafter "the sixty day period"), the following closure actions.

- a) All waste deposited in the facility shall be covered with at least two feet of well compacted soil that meets the requirements set forth in Regulation 3745-27-09(F). To complete this cover requirement, Defendants shall implement a quality assurance/quality control (QA/QC) plan. This plan shall specify that: (1) the final cover is applied such that the following construction criteria are met or exceeded:
- each lift be constructed in lifts having a maximum permeability no greater than 1×10^{-7} cm/sec.
 - be constructed of a soil with a maximum clod size of 3 inches or half the lift thickness, whichever is less
 - be constructed of a soil with a maximum particle size of 0.75 inches
 - be compacted to at least 95% of the maximum standard proctor density or at least 90% of the maximum modified proctor density
 - be compacted at a moisture content between optimum and 4% above optimum moisture content

- (2) appropriate testing procedures to verify that the above criteria is met or exceeded. The quality of all work shall meet the requirements of the approved QA/QC plan and shall be thoroughly documented. Ten (10) days after final cover is applied in accordance with the QA/QC plan, Defendants shall submit the QA/QC plan and all verifying documentation to Ohio EPA.
- b) The site shall be seeded with such grasses or other vegetation as will grow to form a complete and dense cover, which seeding shall be done as many times as necessary to ensure compliance with this requirement (the seeding shall be conducted within the sixty day period but may have to be repeated after the sixty day period, as necessary).
 - c) All land surfaces shall be graded to slopes of no less than 1% and no greater than 25%.
 - d) All land shall be graded and drainage facilities shall be provided so as to direct surface water off the site, and not allow ponding of water on the site (this obligation shall continue after the sixty day period, as necessary).
 - e) Ventilation structures shall be installed and maintained as necessary to control gas migration (this obligation shall continue after the sixty day period, as necessary). Furthermore, in accordance with O.A.C. Rule 3745-27-12, Defendants shall submit within sixty (60) days after entry of this Consent Order, a gas migration testing plan to Ohio EPA. Any testing plan approved by Ohio EPA shall be implemented by Defendants. In the event Defendants receive a written exemption from this requirement, relief from this requirement shall be granted as set forth in the exemption.
 - f) The site shall be baited for rodents, and treated for other vectors, if necessary (this obligation shall continue after the sixty day period, as necessary).
 - g) Signs stating in letters not less than three inches high that the facility is permanently closed shall be posted in such a manner as to be easily visible from all access roads leading onto the site, which signs shall be maintained in legible condition for not less than two years after the sixty day period.

- h) A plat of the site shall be filed with the Board of Health having jurisdiction, the County Recorder's Office, and the Director of Ohio EPA, which plat shall accurately locate and describe the complete site and include information relating to the area, depth, volume, and nature of the waste materials deposited in the sanitary landfill.
- i) Unless the site is to be used for other than solid waste disposal, all entrances and access roads to the facility shall be blocked by locked gates, fencing, or other sturdy obstacles to prevent unauthorized access,

5. The Defendants are ordered and enjoined to comply with all other applicable closure actions as required by O.A.C.

Chapter 3745-27-10.

6. Defendants are ordered and enjoined to:

- a) If, within three years after the entry of this Consent Order, settling occurs to such an extent that ponding of water occurs on those portions of the site where waste materials are deposited, Defendants shall promptly re-grade the site and/or add additional cover material and re-seed as necessary to eliminate the ponding.
- b) If, within three years after entry of this Consent Order, cracking or erosion of the cover material occurs to such an extent that water may enter the cells, Defendants shall promptly re-grade the site and/or add additional cover material, and re-seed as necessary to eliminate the cracking and erosion.
- c) A ground water monitoring plan shall be implemented according to the following schedules provided for below. This plan shall conform to Attachments I and II attached hereto and incorporated herein.

Defendants shall submit to Ohio EPA, within sixty (60) days of entry of this Consent Order, a detailed work plan for a Hydrogeologic Site Investigation (Attachment I, Section A.). If Ohio EPA disapproves part or all of the report and/or plan, Defendants shall resubmit the disapproved portion(s) within thirty (30) days of

Ohio EPA's notification to Defendants' of the disapproval, and Defendants shall correct the disapproved portion(s) in its resubmittal to the satisfaction of Ohio EPA.

Defendants shall submit to Ohio EPA , within ninety (90) days after written approval by Ohio EPA of the Hydrogeologic Site Investigation work plan, a comprehensive Hydrogeologic Report (Attachment I, Section B) and Ground Water Monitoring Program Plan (Attachment I, Section C). If Ohio EPA disapproves part or all of the report and/or plan, Defendants shall resubmit the disapproved portion(s) within thirty (30) days of Ohio EPA's notification to Defendants' of the disapproval, and Defendants shall correct the disapproved portion(s) in its resubmittal to the satisfaction of Ohio EPA.

Within thirty (30) days after written approval by Ohio EPA of the Ground Water Monitoring Program Plan, the plan shall be implemented.

- d) Pursuant to O.A.C. Rule 3745-27-10(H), the Director has determined that leachate generated by the facility and draining from the facility has caused water pollution. Defendants shall immediately take interim actions which control and contain leachate generated by the facility so as to prevent any leachate from discharging from the facility. If any such interim actions require a permit to install as set forth in O.A.C. Chapter 3745-31, Defendants shall submit a permit to install application and detailed engineering plans and applicable fees along with the permanent leachate plan provided for below. Furthermore, to permanently contain control and treat this leachate, Defendants shall submit a leachate collection, treatment and/or transportation plan, subject to written Ohio EPA approval, within sixty (60) days after entry of this Consent Order to Ohio EPA.

This plan shall include but is not limited to the following:

- Details of how surface leachate is and will be contained on site and properly treated and/or collected, transported and properly treated off site until a permanent leachate collection, treatment and/or transportation system is installed and operating.
- Details of how surface leachate shall be contained on site and properly treated on a permanent basis and/or collected, transported and properly treated off site on a permanent

basis. Such detailed plans shall contain implementation schedules for installation of a permanent leachate collection, treatment and/or transportation system.

- What actions shall be taken to control, minimize or eliminate the conditions which contribute to the production of surface leachate.
- Schedules stating when all actions shall be implemented.

When Ohio EPA reviews the plan, Ohio EPA may approve it, approve it with the requirement of additional terms and conditions and/or require the submittal of a permit to install application, with detailed engineering plans and applicable fees, as required by O.A.C. Chapter 3745-31. If Ohio EPA disapproves part or all of the plan, Defendants shall resubmit the disapproved portion(s) within thirty (30) days of Ohio EPA's notification to Defendants of the disapproval, and Defendants shall correct the disapproved portions(s) in it resubmittal to the satisfaction of Ohio EPA.

The approved plan with or without additional terms and conditions shall be implemented by the Defendants in accordance with the schedules therein.

- e) Defendants shall immediately take interim actions to control and contain sedimentation runoff from the site. Furthermore, to permanently control and contain sedimentation runoff from the site, Defendants shall submit a sedimentation runoff plan, subject to written Ohio EPA approval within forty-five (45) days after entry of this Consent Order to Ohio EPA.

When Ohio EPA reviews the plan, Ohio EPA may approve it, approve it with the requirement of additional terms and conditions and/or require the submittal of a permit to install application, with detailed engineering plans and applicable fees, as required by O.A.C. Chapter 3745-31 and/or an NPDES permit application as required by O.R.C. Chapter 6111. and O.A.C. Chapter 3745-33. If Ohio EPA disapproves part or all of the plan, Defendants shall resubmit the disapproved portion(s) within thirty (30) days of Ohio EPA's notification to Defendants of the disapproval,

and Defendants shall correct the disapproved portions(s) in its resubmittal to the satisfaction of Ohio EPA.

The approved plan with or without additional terms and conditions shall be implemented by the Defendants in accordance with the schedules therein.

- f) Defendants have retained Benatec and Associates to design and implement the installation of the monitoring and treatment systems set forth in this paragraph and paragraph 4. In the event Defendants obtain a different consulting firm, Defendants, within ten (10) days of such fact, shall notify Ohio EPA.
- g) Defendants shall submit, within ninety (90) days of entry of this Consent Order, a topographic map identifying the final elevations and grades of all areas of the site where solid wastes have been placed.
- h) Defendants shall provide, within thirty (30) days of entry of this Consent Order, a cost estimate for the closure and post-closure requirements set forth in this Consent Order and O.A.C. Chapter 3745-27-10 and demonstrate financial assurance to pay for the cost of closure and post-closure care. This submittal is subject to Ohio EPA's written approval. If Ohio EPA disapproves part or all of the submittal, Defendants shall resubmit the disapproved portion(s) within twenty (20) days of Ohio EPA's notification to Defendants of the disapproval, and Defendants shall correct the disapproved portion(s) in its resubmittal to the satisfaction of Ohio EPA.

The requirements set forth in paragraphs 6(c) and 6(d) shall ~~shall~~ remain in effect until the Director is satisfied that actual or potential pollution of ground or surface water has been effectively controlled, minimized or eliminated.

All plans, permits, notifications, and other submittals required by this Consent Order shall be submitted to Ohio EPA, at the following addresses:

Ohio EPA, Division of Solid and Hazardous Waste
Management, Southeast District Office, 2195 Front
Street, Logan, Ohio 43138, Attention: Stephen Hamlin
(or his successor)

Ohio EPA, P.O. Box 0149, 1800 WaterMark Drive,
Columbus, Ohio 43266-0149, Attention: Daniel Harris
(or his successor)

IV GENERAL INJUNCTION

7. Defendants are permanently enjoined to comply with the requirements of O.R.C. Chapters 3734. and 6111., the Rules adopted pursuant to these O.R.C. Chapters, and the terms and conditions of any orders or permits, including modifications and renewals, issued pursuant to these Chapters and Rules.

V. SATISFACTION OF LAWSUIT

8. Except as provided for below, compliance with the terms of this Consent Order by Defendants, shall constitute full satisfaction of any civil liability of Defendants their agents, officers, employees, assigns, and successors in interest for all violations under such sections of O.R.C. Chapters 3734. and 6111., and the rules adopted thereunder, as alleged in the Complaint, occurring prior to the entry of this Order.

9. This Order does not limit the power of the State of Ohio to seek monetary or injunctive relief for any other claims

not alleged in the Complaint or for violations of any of the counts alleged in the Complaint which occur after the entry of this Consent Order. This Order does not limit the State of Ohio's authority to obtain future injunctive relief against Defendants or others for remedial/corrective action at the Brown Brothers Landfill in the future such as, by way of illustration and not limitation, correcting/ceasing ground water and/or surface water contamination and the effects thereof and/or conducting additional ground water monitoring.

VI. CIVIL PENALTIES

10. The Defendants are further ordered to pay a civil penalty pursuant to Ohio Revised Code Sections 3734.13 and 6111.09 of One Hundred Thousand Dollars (\$100,000), plus ten (10) percent interest per annum, for payment into the Hazardous Waste Clean-up Fund created pursuant to O.R.C. Section 3734.28. This One Hundred Thousand Dollars, plus ten (10) percent interest per annum, shall be paid in four installments according to the following schedule:

- A first payment of Thirty Thousand Dollars (\$30,000) within six months of entry of this Consent Order
- A second payment of Twenty-eight Thousand Seven Hundred and Fifty Dollars (\$28,750) within twelve months of entry of this Consent Order.
- A third payment of Twenty-seven Thousand Five Hundred Dollars (\$27,500) within eighteen months of entry of this Consent Order.

- A fourth payment of Twenty-six Thousand Two Hundred and Fifty Dollars (\$26,250) within twenty-four months of entry of this Consent Order.

These payments shall be made by tendering a check or money order to Plaintiff's attorney or his successor. Said check or money order shall be made payable to the "Treasurer, State of Ohio" and tendered at the following address:

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

VII. STIPULATED PENALTIES

11. In the event that Defendants fail to meet any of the requirements of this Consent Order set forth in Paragraphs 4(a) through 4(i) and 6(a) thorough 6(h) including any scheduled milestone requirement, the Defendants shall be immediately 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 - \$ 500.00 per day for each requirement not met. For each day of failure to meet a requirement, from thirty-one (31) to sixty (60) days - \$1,000.00 per day for each requirement not met. For each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days - \$ 2,000.00 per day for each requirement not met. For each day of failure to meet a requirement, from ninety-one (91) to one hundred twenty days (120) - \$ 5,000.00 per day for

each requirement not met. Such payment shall be made on Defendants' own initiative at the address listed in paragraph 10.

VIII. NOTIFICATIONS

Plan approvals and correspondence concerning this Consent Order and the Brown Brothers Landfill between Ohio EPA and the Brown Brothers Landfill will be mailed to the following address:

Guy L. Brown
P. O. Box 341
Clarington, Ohio 43915

If Defendants change this address, they shall submit written notification to Ohio EPA at the addresses set forth in this Order and to counsel for Plaintiff. Ohio EPA may send all plan approvals required by this Consent Order by Certified Mail to the above address.

Furthermore, Ohio EPA may send a copy of all such plan approvals and inspection reports by regular U.S. Mail to the following addresses:

Bruce A. Zaccagnini, Esq.
ARMSTRONG, GORDON, MITCHELL & DAMIANI
1725 The Midland Building
101 Prospect Avenue, West
Cleveland, Ohio 44115-1091

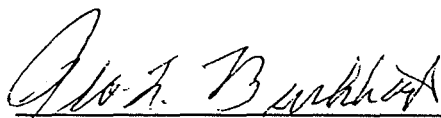
and

Jerry Daily
Banatec and Associates
3045 Olentangy River Road
Columbus, Ohio 43202
-12-

IX. MISCELLANEOUS

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

13. Defendants shall pay the costs of this action.

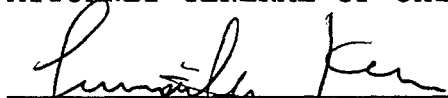


JUDGE GEORGE F. BURKHART



BROWN BROTHERS LANDFILL, INC.
By Its President
GUY L. BROWN

ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO


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LOUIS C. DAMIANI
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ATTORNEYS FOR DEFENDANTS

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ATTACHMENT I

General Outlines for preparation of: A) Hydrogeologic Site Investigation Work Plan. B) Hydrogeologic Site Investigation Report and C) Ground water Monitoring Program Plan.

A. Hydrogeologic Site Investigation Work Plan:

1. Number, location and expected depth of borings. (In some cases observation trenches and excavations may be recommended.)
2. Drilling and material extraction methods.
 - a. Rotary, hollow stem etc.
 - b. Split spoon (recommend continuous), Shelby tube etc.
3. Analytical procedures and methodology to characterize material/strata obtained from borings and soil material to be utilized in construction.
 - a. Permeability tests (insitu and lab).
 - b. Grain size analysis.
 - c. Other tests for chemical/physical properties.
4. Methodology to define saturated zones and uppermost aquifer.
 - a. Type of pump tests/slug tests.
 - b. Elevations and flow direction of ground water.
 - c. Ground water seepage observations during drilling.

B. Hydrogeologic Site Investigation Report:

1. Well logs and material characteristics.
2. Definition of uppermost aquifer.
3. Definition of geology/hydrogeology, and major aquifer(s) for water supply in the area of the proposed facility.
4. Definition of depth to bedrock.
5. Definition of saturated zones ("High Seasonal Water Table", perched zones etc.), includes interconnections and relationships between zones and with surface discharges (streams, springs, and seeps etc.)
6. Data characterizing soil materials to be utilized in construction. (If applicable)

C. Ground Water Monitoring Program Plan:

1. Number, location and depth of monitoring wells. (Well logs must also be submitted to the ODNR-Division of Water.)
2. Information on well construction and development.
3. Sampling and analytical procedures.
4. Frequency and parameters. (Set by OEPA-DGW.)
5. Methodology for evaluation of ground water quality data.
6. Assessment plan capable of determining:
 - a. Whether leachate or leachate-derived constituents have entered the ground water;
 - b. The rate and extent of migration of leachate or leachate-derived constituents in the ground water; and
 - c. The concentration of the leachate or leachate-derived constituents in the ground water.

ATTACHMENT II

A. Parameters and frequency for sampling at solid waste facilities in accordance to Ground Water Monitoring Program Plans.

1. The concentration or value of the following parameters in ground water must be determined in accordance to Items Number 2, 3 and 4.

a. Parameters establishing ground water quality:

Arsenic	Manganese
Barium	Iron
Cadmium	Calcium
Chromium (total)	Sodium
Oil/Grease	Chloride
Silver	Magnesium
Nickel	Potassium
Lead	Zinc
Copper	Sulfate
Nitrate Nitrogen	Phosphorous
Ammonia Nitrogen	
Total Alkalinity	
Total Kjeldahle Nitrogen (TKN)	
Methylene Blue Active	
Substances (MBAS) Volatile	
Organics (VOC)	
(method 8240 from Test	
Methods for Evaluating	
Solid Waste, Physical/	
Chemical Methods, USEPA	
Document SW-846.)	

b. Parameters used as indicators of ground water contamination:

Total Organic Halogen (TOX)
Total Organic Carbon (TOC)
Total Dissolved Solids (TDS)
Specific Conductivity
Chemical Oxygen Demand (COD)
pH
Temperature

2. For all monitoring wells initial background concentrations or values for all parameters, except volatile organics, listed in Item Number 1, must be established. The sampling frequency is quarterly for one year. The initial background concentration for volatile organics must be established for all monitor wells at least once during the initial year of ground water monitoring.

3. For each of the indicator parameters specified in Item Number (1.a.), at least four replicate measurements must be obtained for each sample. The initial background arithmetic mean and variance must be determined by pooling the replicate measurements for the respective parameter concentrations or values in samples obtained from background/upgradient wells during the first year.
4. After the first year, all monitoring wells must be sampled and the samples analyzed with the following frequencies:
 - a. Samples collected to establish ground water quality must be obtained and analyzed for the parameters specified in Item Number 1.a.), at least annually.
 - b. Samples collected to indicate ground water contamination must be obtained and analyzed for the parameters specified in Item Number (1.b.) at least semi-annually. At least four replicate measurements must be obtained during each sampling event.