

IN THE COURT OF COMMON PLEAS
PUTNAM COUNTY, OHIO

PUTNAM CO. GENERAL
HEALTH DISTRICT, et al.

Plaintiffs,

v.

WILHELM FORSTER

Defendant.

CASE NO. 92 CVH 00117

JUDGE RANDALL BASINGER

COMMON PLEAS COURT
MARY E. WIENER, CLERK
PUTNAM COUNTY, OHIO
2002 NOV 14 A 10:08

JUDGMENT ENTRY

An Order to Show Cause, dated May 30, 2002, was duly issued by this Court, directed to the Defendant Wilhelm Forster ("Defendant"), requiring Defendant to show cause why he should not be held in civil contempt for failing and refusing to obey this Court's Judgment Entry of March 17, 1994. The Order to Show Cause was regularly and duly served on the Defendant's attorney by ordinary mail.

On October 28th and 29th, 2002, a hearing was held pursuant to this Court's Order to Show Cause. After reading the Plaintiff State of Ohio's ("State") Set of Written Charges in Contempt, Motion to Show Cause, and Request for Hearing and after hearing all evidence introduced and all arguments of the parties presented at the hearing, the Court finds that the Defendant is in civil contempt for noncompliance with this Court's Judgment Entry of March 17, 1994.

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This Court adopts and approves in its entirety the findings of fact and conclusions of law of the State, which follow here in addition to those findings of fact and conclusions of law already stated above.

I. **Findings of Fact**

1. The Defendant operated a solid waste landfill on the property located at the intersection of State Route 108 and County Road E, in Palmer Township, Putnam County, Ohio ("Miller City Landfill" or "landfill").
2. The Plaintiffs State of Ohio and the Putnam County Board of Health filed separate Complaints against the Defendant relating to the closure of the Miller City Landfill.
3. On March 19, 1993, the State filed a Motion for Partial Summary Judgment as to the Defendant's liability for the violations alleged in the State's Complaint. This Court granted the State's Motion for Partial Summary Judgment in a Journal Entry filed on November 4, 1993.
4. The November 4, 1993 Journal Entry ordered the Defendant to *inter alia*, provide complete financial assurance in compliance with Ohio Administrative Code 3745-27-15 and 3745-27-16; to fully comply with the terms of the Defendant's Permit to Install; to conduct groundwater monitoring for a period of thirty (30) years and to conduct explosive gas monitoring.
5. On March 17, 1994, the State filed a Motion to Show Cause Why the Defendant Should Not Be Held in Contempt alleging that the Defendant was in violation of the November 4, 1993 Journal Entry issued by this Court.

6. The Parties resolved the Defendant's contempt of the Journal Entry by entering into a Consent Order and Agreed Entry Resolving Charges in Contempt on March 17, 1994 ("Consent Order").
7. The Consent Order required, in part, that the Defendant perform the following terms and conditions:
 - A. Paragraph 12 of the Consent Order requires that beginning March 1, 1996, the Defendant pay five hundred dollars (\$500.00) into a trust fund on the first day of every month for a period of fifteen (15) years.
 - B. Paragraph 11 of the Consent Order states, in part, that:

For a period of ten years from the date of this order, Defendant Forster is hereby enjoined to cause the leachate in the leachate collection system to be maintained by pumping 50,000 gallons of leachate per year or by pumping the leachate so as to maintain the leachate at or below 724 mean sea level, whichever is greater. If assessment is triggered pursuant to OAC 3734-27-10(E) and paragraph 9 of this Order, then Defendant Forster is enjoined to continue to pump leachate for at least thirty (30) years.
8. On June 12, 2000, a second Motion to Show Cause Why the Defendant Should Not Be Held in Contempt was filed alleging that the Defendant was in violation of the Consent Order.
9. A hearing was held on July 26, 2000, in the Putnam County Court of Common Pleas. Following the hearing, this Court found that the Defendant had violated the Consent Order; specifically finding the following: (1) the Defendant did not pump leachate as required under the Consent Order, (2) the Defendant did not pay into the trust fund as required under the Consent Order, and (3) the Defendant did not comply with the gas remediation plans as required under the Consent Order.

10. This Court found the Defendant in contempt and sentenced him to a term of imprisonment of sixty (60) days. The imposition of sentence was ultimately suspended upon the Defendant's compliance with the terms and conditions of the Consent Order.
11. On May 30, 2002, the State filed a Motion to Show Cause Why the Defendant Should Not Be Held in Contempt. The State's Written Charges in Contempt alleged that the Defendant violated Paragraph 12 of the Consent Order by failing to make the \$500.00 deposits into the trust fund, which were due by the first day of the following months: October 2001, November 2001, December 2001, January 2002, February 2002, March 2002, April 2002, and May 2002. The State's Written Charges in Contempt also alleged that the Defendant had violated Paragraph 11 of the Consent Order by failing to pump the required amount of leachate, 50,000 gallons, for the year 2001.
12. The parties entered into the following stipulations prior to hearing:
 - A. That the Defendant failed to make the required \$500.00 deposits into the trust fund for the months October 2001, November 2001, December 2001, January 2002, February 2002, March 2002, April 2002, May 2002, June 2002, July 2002, August 2002, September 2002, and October 2002, in violation of Paragraph 12 of the Consent Order; and
 - B. That the Defendant did not pump the required amount of leachate, 50,000 gallons, for the year 2001, in violation of Paragraph 11 of the Consent Order, and only met that obligation as of March 28, 2002.

13. This matter appeared for hearing on October 28th and 29th, 2002. The Defendant Wilhelm Forster was represented by counsel;
14. The State asked this Court to do the following:
 - a. Order the Defendant to fully comply with all of the terms and conditions of the Consent Order;
 - b. Issue an Order requiring the Defendant to enter into a written contract with a leachate pumping service to pump 50,000 gallons of leachate, per year, from the Miller City Landfill for the remainder of the term set forth in the Consent Order;
 - c. Order the Defendant to immediately deposit \$6,500 (the amount outstanding) into the trust fund;
 - d. Pursuant to Revised Code 2705.05(A)(3), impose a \$1,000.00 fine and a ninety (90) day term of imprisonment on the Defendant to coerce compliance with all of the terms and conditions of the Consent Order.
15. Following the hearing, the Court found the Defendant in contempt of court for failing to comply with the terms and conditions in Paragraph 11 and Paragraph 12 of the March 17, 1994 Consent Order.

II. Conclusions of Law

16. This Court has authority both under R.C. 2705.02 and on the basis of its inherent powers to enforce the March 17, 1994 Consent Order through contempt proceedings.
17. The Court finds that the Defendant failed to make the required \$500.00 deposits into the trust fund for the months October 2001, November 2001, December

2001, January 2002, February 2002, March 2002, April 2002, May 2002, June 2002, July 2002, August 2002, September 2002, and October 2002, in violation of Paragraph 12 of the Consent Order. The Court also finds that the Defendant did not pump the required amount of leachate, 50,000 gallons, for the year 2001, in violation of Paragraph 11 of the Consent Order.

18. The Court has considered all of the evidence presented at the hearing and finds that the Defendant has not met the burden of proof for the defense of impossibility.
19. The Court finds that the Defendant *has had* and *does have* the ability to pay the required \$500.00 monthly payments into the trust fund.
20. The Court finds that the State has proven by clear and convincing evidence the findings of fact and conclusions of law set forth above.

It is therefore **ORDERED, ADJUDGED, AND DECREED** that the Defendant do the following:

1. The Defendant be, and hereby is, adjudged in civil contempt of court for noncompliance with Paragraph 12 (failure to properly fund trust) and Paragraph 11 (failure to pump leachate) of the Consent Order entered herein on March 17, 1994.
2. The Defendant is committed to the custody of the Sheriff of the County of Putnam, Ohio, to be confined in the county jail of that county for a term of ninety (90) days. The Defendant may purge himself of this contempt if by 5:00 p.m. on November 28, 2002, the Defendant deposits \$6,500.00 into the trust fund and enters into a written contract with a qualified and capable sewer service company

for the pumping of 50,000 gallons of leachate from the Miller City landfill, per year, for the remainder of the term set forth in the Consent Order.

3. In the event that the Defendant fails to purge himself as provided in this order, the State may apply *ex parte* and, without further notice to this Court, on proof, by affidavit, of the failure of the Defendant to purge himself as provided in this order within the time frame set forth above, for an order directing that the Defendant be confined in the county jail for a term of ninety (90) days or until such time as the Defendant fully complies with the terms and conditions of this Order.
4. Pursuant to R.C. 2705.05(A)(3), the Court imposes a \$1,000.00 fine on the Defendant.
5. The Defendant is ordered to pay all attorney fees.
6. This Court orders the Defendant to comply with all of the terms and conditions of the March 17, 1994 Consent Order.

IT IS SO ORDERED.

JUDGE RANDALL BASINGER

Randall Basinger
COMMON PLEAS COURT
MARY E. WIENER, CLERK
PUTNAM COUNTY, OHIO
2002 NOV 14 10:48

JOURNALIZED this _____ day of _____

*M. BUCKLEY/M. YOST.
WELCH
J. SHARTZER*

Copies of this Order are to be served by ordinary mail to the following parties:

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COMMON PLEAS COURT
MARY E. WIENER, CLERK
PUTNAM COUNTY, OHIO
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