

IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, STATE OF OHIO

FILED
LUCAS COUNTY

1999 JUL 27 P 3:46

STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

CASE NO.

PLAINTIFF

JUDGE

v.

ASSIGNED TO JUDGE WITTENBERG

BRUCE COMLY FRENCH,
in his capacity as Trustee
of the Bankruptcy Estate of Unitcast, Inc. :
fka William Cook North America :

CONSENT ORDER

DEFENDANT

Plaintiff, the State of Ohio, by its Attorney General Betty D. Montgomery, at the written request of Christopher Jones, the Director of Environmental Protection, has filed a Complaint seeking injunctive relief and civil penalties from Defendant Bruce Comly French, as Trustee in bankruptcy ("Defendant"), for violations by the bankruptcy estate of Revised Code Chapter 3734 and the rules promulgated thereunder, and both parties have consented to the entry of this Order;

Therefore, without trial, admission, or determination of any issue of fact or law, and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. DEFINITIONS

1. As used in this Order, the following terms are defined as follows:
 - a. "Approved Closure/Post-Closure Plan" or "Closure/Post-Closure Plan" means the closure/post-closure plan for the former Unitcast residual waste facility located at 1414 E. Broadway Street, Toledo, Ohio that was approved by the Director of the Ohio EPA through Findings and Orders issued on April 26, 1996 or any and all subsequent amendments thereto which are approved by the Director.

- b. **"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.
- c. **"Contractor"** means the individual(s) or company or companies retained by or on behalf of Defendant to undertake and complete the work, if any, required by this Order.
- d. **"Defendant"** means Bruce Comly French as Trustee in bankruptcy of the bankruptcy estate of Unitcast, Inc., fka William Cook North America.
- e. **"Director"** means Ohio's Director of Environmental Protection.
- f. **"Facility"** refers to the facility located at 1414 E. Broadway Street, Toledo, Lucas County, Ohio.
- g. **"Ohio EPA"** means the Ohio Environmental Protection Agency.
- h. **"O.A.C."** means the Ohio Administrative Code.
- i. **"Plaintiff"** means the State of Ohio by and through the Attorney General of Ohio.
- j. **"R.C."** means the Revised Code.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim for which relief can be granted, and venue is proper in this Court.

III. PERSONS BOUND

3. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and, in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure, their officers, agents, servants, employees, attorneys, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Consent Order whether by personal service or otherwise.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

4. The Plaintiff alleges in its Complaint that the Defendant as Trustee in bankruptcy has owned and operated the Facility in such a manner as to result in numerous violations of the solid waste laws and regulations of the State of Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of the Defendant to the Plaintiff for the claims alleged in the Plaintiff's Complaint.

5. 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 of Ohio from bringing any action against the Defendant for any violations which occur after the entry of this Order. Nothing in this Consent Order shall be construed to relieve the Defendant of his obligations to comply with applicable federal, state or local statutes, regulations, or ordinances.

V. PERMANENT INJUNCTION

6. The Defendant is hereby enjoined and ordered to immediately and permanently comply with R.C. Chapter 3734 and the regulations adopted thereunder.

VI. PRELIMINARY INJUNCTIVE RELIEF

7. Defendant is enjoined and ordered to, prior to entry of this Consent Order, file with the United States Bankruptcy Court for the Northern District of Ohio ("the Bankruptcy Court"), Case No. 93-31383-S, all of the following:

- a. a stipulated entry dismissing Adversary Proceeding Case No. 98-3250;
- b. a motion to withdraw with prejudice all contested motions to stay distribution on the State of Ohio's Chapter 11 administrative claims;

- c. agreed Orders allowing the following claims in the following amounts: on behalf of Ohio EPA, Claim No. 261 for a Chapter 11 administrative expense in the amount of \$952,345; on behalf of Ohio EPA, Claim No. 263 for a Chapter 11 administrative expense in the amount of \$1,104,000; on behalf of Ohio Bureau of Workers' Compensation, Claim No. 278 for a Chapter 11 administrative expense in the amount of \$1,062,690.58; and on behalf of Ohio Department of Taxation, Claim No. 279 for a Chapter 11 administrative expense in the amount \$15,701.98, for a priority tax in the amount of \$15,087.03, and for a tax penalty in the amount of \$4554.10 for a total of \$35,343.11 for Claim No. 279.

8. Defendant is enjoined and ordered to, within thirty (30) days of entry of an Order by the Bankruptcy Court authorizing distribution, or in accordance with such regulations of the office of the United States Trustee, U. S. Department of Justice as are relevant to the approval of orders of distribution, have established and have deposited into and in accordance with and pursuant to O.A.C. 3745-30-11(A), (B) and (H), cash into a closure/post-closure trust fund in the amount determined by the Bankruptcy Court that is equivalent to Ohio EPA's pro rata share of its Chapter 11 claim for administrative expenses, Claim No. 261, currently allowed in the amount of \$952,345. The wording of the closure/post-closure trust fund instrument shall be identical to the wording specified in Attachment A attached hereto.

9. In addition to the requirements of paragraph number 8, in the event that the Defendant is successful in a suit to be filed in the Bankruptcy Court or the District Court seeking to rescind the sale of the real property at the Facility to Fisher Acquisition and Development Corp. ("FADC") on grounds of fraud and/or other bases, in that the low sale price of \$5,000 was premised upon the agreement between the Defendant and FADC, memorialized by the Consent Order issued by the Court of Common Pleas, Lucas County on April 29, 1996 in Case No. 96-1347, and either the Bankruptcy Court or District Court shall determine that the sale to FADC should be rescinded, and the Defendant recovers the unjust gains held by FADC or others, then

Defendant is enjoined and ordered to deposit all returned proceeds, except for Defendant's reasonable and court approved costs and fees, into the closure/post-closure trust fund established in accordance with paragraph number 8 above. These proceeds shall be deposited in the closure/post-closure trust fund account within thirty days of entry of the Bankruptcy Court's or District Court's order rescinding such purchase, or in accordance with such regulations of the office of the United States Trustee, U. S. Department of Justice, as applicable.

VII. CIVIL PENALTY

10. Pursuant to R. C. 3734.13, the Defendant, as Trustee, is liable to the State of Ohio for a civil penalty in the amount of One Million One Hundred Four Thousand Dollars (\$1,104,000.00). Defendant shall satisfy this civil penalty amount by delivering a Trustee's check, payable to the Order of Treasurer, State of Ohio, to Jena Suhadolnik or her successor, Administrative Assistant, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, within thirty (30) days of entry of an Order of the Bankruptcy Court authorizing distribution, or in accordance with such regulations of the office of the United States Trustee, U.S. Department of Justice as are relevant to the approval of orders of distribution, in an amount that is equivalent to Ohio EPA's pro rata share of its Chapter 11 claim for administrative expenses, Claim No. 263, currently allowed in the amount of \$1,104,000. Civil penalties collected in accordance with this paragraph shall be deposited into the hazardous waste cleanup fund created by R.C. 3734.28.

VIII. STIPULATED PENALTIES

11. In the event that the Defendant fails to comply with any of the requirements imposed by paragraphs 7, 8, 9 or 10 of this Consent Order, including any milestone date therein,

the Defendant 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 -- Two Thousand Five Hundred Dollars (\$2,500.00) per day for each requirement not met. For each day of failure to meet a requirement, from thirty-one (31) to sixty (60) days -- Five Thousand Dollars (\$5,000.00) per day for each requirement not met. For each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days -- Seven Thousand Five Hundred Dollars (\$7,500.00) per day for each requirement not met. For each day of failure to meet a requirement, over ninety (90) days -- Ten Thousand Dollars (\$10,000.00) per day for each requirement not met.

12. In the event the Defendant fails to meet any of the requirements of this Consent Order, the Defendant shall immediately and automatically be liable for payment of stipulated penalties imposed by this Consent Order without prior demand by the State of Ohio. Payment of all stipulated penalties shall be paid by the Defendant by his delivering to the Plaintiff, c/o Jena Suhadolnik, Administrative Assistant, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check in that amount, payable to the Order of "Treasurer, State of Ohio," within thirty days of issuance of an appropriate order of the Bankruptcy Court.

13. The imposition, payment and collection of stipulated penalties pursuant to violations of this Consent Order shall not prevent the State from pursuing additional remedies, civil, criminal or administrative, for violations of applicable laws.

IX. RETENTION OF JURISDICTION

14. The Court will retain jurisdiction of this action for purposes of enforcing this Consent Order.

X. COURT COSTS

15. The Defendant is hereby ordered to pay all court costs of this action.

XI. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

16. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three 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.

XII. AUTHORITY TO ENTER INTO THE CONSENT ORDER

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

IT IS SO ORDERED

7/22/99
DATE

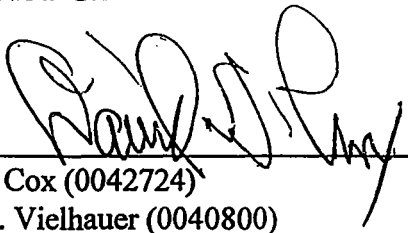
Charles W. Witting
JUDGE, COURT OF COMMON PLEAS
LUCAS COUNTY

APPROVED:

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

 06-28-99
Bruce Comly French, 0005398
as Trustee In Bankruptcy

Defendant


David G. Cox (0042724)
Harold G. Vielhauer (0040800)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
614) 466-2766
Attorneys for Plaintiff State of Ohio

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TRUST AGREEMENT

The "Agreement," entered into as of _____, 1999, by and between Bruce Comly French (the "Grantor"); _____, a National Bank (the "Trustee"); and the Ohio Environmental Protection Agency (the "Ohio EPA").

Whereas, the Ohio EPA has established certain rules applicable to the Grantor, requiring that the owner or operator of a solid waste facility provide assurance that funds will be available when needed for final closure and/or post-closure care, and/or corrective measures of the facility,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the trustee who enters into this Agreement and any successor trustee.

(c) The term "Director" means the director of the Ohio EPA, or his designee.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and/or noncontiguous unit(s) of a sanitary landfill facility and cost estimates identified on the attached Schedule A, pertaining to closure and post-closure care including any adjustments from updated cost estimates approved by the Ohio EPA, as well as any outstanding monthly disposal fees owed to the State. Said Facilities specifically include what is commonly known as the former Unitcast site, a residual waste landfill, located at 1414 Broadway, Toledo, Lucas County, Ohio ("the site").

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Ohio EPA. The Grantor and the Trustee intend that no third party shall have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Except as otherwise provided by an Order of any court of competent jurisdiction, such property shall be the Grantor's sole payment into the Fund. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together

with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund will be held by the Trustee, in trust, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Ohio EPA.

Section 4. Payment for Closure and Post-Closure Care and Corrective Measures. The Director, at his non-reviewable discretion, may allow, or provide for, the disbursement of any proceeds from the trust fund for the payment of any closure, post-closure care or other costs associated with environmental remedial activities or corrective measures at the former Unitcast site. The Trustee will reimburse the Director or other persons as specified by the Director from the Fund for closure, post-closure, and/or corrective measures expenditures in such amounts as the Director will direct, in writing. Upon refund, such funds will no longer constitute part of the Fund as defined herein.

Section 5. Remaining Monies. Any monies remaining in the trust fund after the completion of the thirty year post-closure period shall be disbursed to the Ohio EPA for payment into the hazardous waste clean up fund established pursuant to O.R.C. Section 3734.28, or any successor fund identified by the Ohio EPA.

Section 6. Payment Comprising the Fund. Payments made to the Trustee for the Fund will consist of cash or securities acceptable to the Trustee.

Section 7. Trustee Management. The Trustee will invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Director may communicate in writing to the Trustee periodically, subject, however, to the provision of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee will discharge its duties with respect to the Trust Fund solely in the interest of the Beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

(a) Securities or other obligations of the Grantor or any other owner or operator of the facilities or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. Section 80a-2(a), will not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 8. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer periodically any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. Sections 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 9. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee will be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentally thereof, with a Federal Reserve Bank, but the books and records of the Trustee will at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal of State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 10. Taxes and Expenses. All taxes of any kind that may be assessed or levied against

or in respect of the Fund and all brokerage commissions incurred by the Fund will be paid from the Fund. All other expenses, proper charges, and disbursements, incurred by the Trustee in connection with the administration of this trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee will be paid from the Fund. Expenses, proper charges, and disbursements include fees for legal services, rendered to the Trustee and the compensation of the Trustee to the extent the Grantor fails to compensate the Trustee pursuant to section 13.

Section 11. Annual Valuation. The Trustee will annually, not later than thirty days prior to the anniversary date of the establishment of the Fund, furnish to the Grantor and to the Director a statement confirming the value of the Trust. Any securities in the Fund will be valued at market value as of no more than sixty days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee not later than ninety days after the statement has been furnished to the Grantor and the Director will constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 12. Advice of counsel. The Trustee may periodically consult with counsel with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee will be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 13. Trustee compensation. The Trustee will be entitled to reasonable compensation from the Fund for the Trustee's services as agreed upon in writing periodically with the Director.

Section 14. Successor Trustee. The Trustee may resign or the Director may replace the Trustee, but such resignation or replacement shall not be effective until the Director has appointed a successor Trustee and this successor accepts the appointment. The successor Trustee will have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee will assign, transfer, and pay over to the successor Trustee the funds and properties then constituting the fund. If for any reason the Director cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor Trustee shall specify the date on which it assumes administration of the Trust in a writing sent to the Grantor, the Director, and the present Trustee by certified mail not later than ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section will be paid as provided in section 10.

Section 15. Instructions to the Trustee. All orders, requests, and instructions by the Director to the Trustee will be in writing, signed by the Director and the Trustee will act and be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee will have the right to assume, in the absence of written notice to the contrary, that no event

constituting a change or a termination of the authority of any person to act on behalf of the Director hereunder has occurred. The Trustee will have no duty to act in the absence of such orders, requests and instructions from the Director except as provided for herein.

Section 16. Amendment of Agreement. There shall not be any further modifications or amendments to this Trust Agreement for the trust fund without the Director's written approval. This Agreement may be amended by an instrument in writing executed by the Director and the Trustee, provided that no such amendment may require the Grantor to make additional payments to the Fund or to otherwise make payments in furtherance of the purposes of this Agreement.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 17, this trust will be irrevocable and will continue until terminated at the written agreement of the Trustee and the Director. Upon termination of the Trust, all remaining Trust property, less final Trust administration expenses, will be delivered to the Hazardous Waste Clean Up Fund established pursuant to O.R.C. Section 3734.28, or any successor fund identified by the Ohio EPA.

Section 18. Immunity and Indemnification. The Trustee will not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the Director issued in accordance with this agreement. The Trustee will be indemnified and saved harmless from the Trust Fund, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense.

Section 19. Choice of Law. This Agreement will be administered, construed, and enforced according to the laws of the State of Ohio.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement will not affect the interpretation or the legal efficacy of this Agreement.

Section 21. Compliance with Administrative Code. The parties below certify that the wording of this Agreement is identical to the wording specified in paragraph (A)(1) of Rule 3745-27-17 of the Administrative Code, as such rule was constituted on the date first above written.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written.

GRANTOR:

BY: _____

Bruce Comly French
as Trustee for the Bankruptcy Estate
of Unitcast, Inc. fka William Cook North America

Attest: _____

Witness

TRUSTEE:

VICE PRESIDENT

Attest: _____

Witness

State of Ohio
County of Lucas

On this _____, 1999, before me personally came _____,
_____, to me known, who being by me duly sworn, did depose and say that she/he
resides at _____,
_____, that respectively
they are/were the Trustee of the Bankruptcy Estate of Unitcast, Inc. fka William Cook North
America and the corporation described in and which executed the above instrument; and that
they signed their names thereto.

Notary Public

SCHEDULE A

Closure Cost Estimates

The cost of closure is estimated to be \$689,745.00, subject to revision by the Ohio EPA as conditions warrant.

SCHEDULE B

AMOUNT OF INITIAL DEPOSIT

An amount determined by the United States Bankruptcy Court for the Northern District of Ohio in Case No. 93-31383-S that is equivalent to Ohio EPA's pro rata share of its Chapter 11 claim for administrative expenses, Claim No. 261, currently allowed in the amount of \$952,345.

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