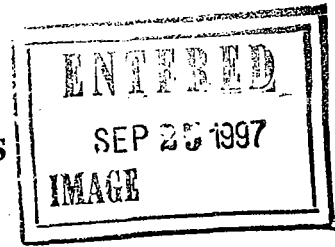


IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO



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

CASE NO. A9603114

and

JUDGE KRAFT

THE HAMILTON COUNTY  
GENERAL HEALTH DISTRICT  
BOARD OF HEALTH,

PLAINTIFFS,

CONSENT ORDER AND  
FINAL JUDGMENT ENTRY

v.

RUMPKE CONSOLIDATED  
COMPANIES, INC., ET AL.,

DEFENDANTS.

Plaintiffs, the State of Ohio, by and through Ohio Attorney General Betty D. Montgomery, and the Hamilton County General Health District Board of Health, filed a complaint in this action alleging that Defendants violated R.C. Chapter 3734 and other laws of the State of Ohio. Defendants dispute the allegations and claims set forth in the Complaint. To avoid expensive and protracted litigation, without admitting any fact, liability or violation, Defendants consent to the entry of this Consent Order and Judgment Entry ("Consent Order"). Plaintiffs consent to the entry of this Consent Order. Nothing herein may be offered later in evidence as an admission of fact, liability, or violation provided, however, that the State or the Defendants may offer as evidence this Consent Order, in addition to any other admissible evidence, for the purpose of enforcing or demonstrating compliance with this Consent Order.

Therefore, without the taking of any evidence, and until further order of this Court, it is

hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

### **I. DEFINITIONS**

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

a. **“Facility”** means a solid waste landfill owned and/or operated by Defendants in Colerain Township, Hamilton County, Ohio known as the Rumpke Sanitary Landfill.

b. **“Ohio EPA”** means the Ohio Environmental Protection Agency.

c. **“Defendants”** means Defendants Rumpke Consolidated Companies, Inc., Rumpke Waste, Inc., Rumpke Container Services, Inc., Rumpke Sanitary Landfill, Inc., William J. Rumpke, and Thomas B. Rumpke.

d. **“Plaintiffs”** means the State of Ohio and the Hamilton County General Health District Board of Health.

e. **“Director”** means the Director of the Ohio Environmental Protection Agency.

f. **“Parties”** means the parties to this Consent Order only.

g. **“Failed slope”** means that portion of the Facility in which a landslide occurred on March 9, 1996.

### **II. JURISDICTION**

2. The Court has jurisdiction over the parties and the subject matter of this action pursuant to R.C. Chapter 3734. Venue is proper in this Court.

### **III. PARTIES**

3. The provisions of this Consent Order shall apply to and be binding upon Defendants Rumpke Consolidated Companies, Inc. and Rumpke Sanitary Landfill, Inc., only as provided herein, and upon any other person specified in Ohio Civil Rule 65(D). Plaintiffs have filed a notice of voluntary dismissal without prejudice as to Defendants Rumpke Waste, Inc., Rumpke Container Services, Inc., William J. Rumpke, and Thomas B. Rumpke. Except as otherwise specifically provided herein, this Consent Order shall not bind Defendants Rumpke Waste, Inc., Rumpke Container Services, Inc., and William J. Rumpke and Thomas B. Rumpke personally.

#### **IV. SATISFACTION OF LAWSUIT**

4. Plaintiffs allege in their Complaint that the Defendants, as the owners and/or operators of the Facility, violated R.C. Chapter 3734, and rules adopted and orders issued thereunder, and that Defendants created and maintained a public nuisance.

5. Defendants dispute the allegations and claims made by Plaintiffs, and make no admission of fact or liability or of any violation of any statute, rule, order, permit or license.

6. Except as otherwise provided for by this Consent Order, and/or by law, compliance with the terms of this Consent Order shall constitute full and complete satisfaction and accord of all claims alleged in the complaint. Compliance with the terms of this Consent Order shall further constitute a release to the extent provided herein not only to the remaining Defendants but also to Rumpke Waste, Inc., Rumpke Container Services, Inc. and their officers, directors, employees, and agents, and William J. Rumpke and Thomas B. Rumpke personally.

#### **V. RESERVATION OF RIGHTS**

7. Nothing in this Consent Order, including the satisfaction of claims for damages or civil penalties, or the payment of stipulated penalties, shall limit the authority of Plaintiffs to:

a. Seek relief for claims or conditions not alleged in the Complaint or for claims or conditions alleged in the Complaint which occur after the entry of this Consent Order;

b. Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;

c. Bring any action against Defendants or against any other person, under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. §9601, et seq., and/or R.C. §§ 3734.20 through 3734.27, and/or R.C. Chapter 6111 to: (1) recover natural resources damages, and/or (2) to order the performance of, and/or to recover costs for any removal, remedial or corrective activities not conducted within the scope of this Consent Order.

d. Take any action authorized by law against any person, including Defendants, to

eliminate or mitigate conditions at the Facility which may present an imminent threat to public health and welfare, or the environment.

8. Nothing in this Consent Order shall constitute a waiver of any right of Defendants to challenge or appeal any action of Plaintiffs. Defendants retain all rights, claims, defenses and privileges to which they are entitled under law or equity including the right to contest claims or allegations that may be asserted against them by Plaintiffs in the future.

## VI. INJUNCTION

9. Defendants Rumpke Consolidated Companies, Inc. and Rumpke Sanitary Landfill, Inc. agree and are ordered and enjoined:

a. To complete, by December 1, 1997, reconstruction of the failed slope, including the installation of the intermediate cover, and construction of storm water diversion benches in the slope reconstruction area, in compliance with the slope reconstruction plan approved by Ohio EPA on November 1, 1996 and an Alteration approved by Ohio EPA on March 28, 1997;

b. To submit to Ohio EPA within sixty (60) days after completion of slope reconstruction, a construction certification report prepared in accordance with OAC Rule 3745-27-08(H), with as-built drawings, demonstrating that reconstruction of the failed slope was completed in accordance with the slope reconstruction plan approved by Ohio EPA on November 1, 1996;

c. To complete, by September 30, 1998, installation of the final cap system in accordance with OAC Rule 3745-27-19(H) in the area of the failed slope, and to submit to Ohio EPA, within sixty (60) days after completion of installation of the final cap system, a certification report for such installation, unless Ohio EPA authorizes in writing an alternative date for completion of installation of the final cap system.

d. Upon the effective date of this Consent Order and continuing until the installation of the final cap system as provided in paragraph 9(c), all solid waste placed into the area of the failed slope shall consist solely of waste excavated from areas of waste placement at the Facility that exceed authorized elevations of waste placement contained in the Permit-to-Install the Director issued to Defendant Rumpke Sanitary Landfill, Inc. on February 17, 1994, and any approved alterations thereof;

e. To remove by March 31, 1999, all waste placement at the Facility that exceeds authorized elevations of waste placement contained in the Permit-to-Install that the Director issued to Defendant Rumpke Sanitary Landfill, Inc. on February 17, 1994. Upon removal, such waste shall be placed within approved elevations in Ohio EPA authorized areas of waste placement at the Facility. Defendants shall reserve the necessary volume of disposal capacity, but at minimum 400,000 cubic yards in authorized areas at the Facility in order to dispose of

*a r-a*

*JTB*

all waste placement at the Facility that exceeds authorized elevations of waste placement contained in the Permit-to-Install that the Director issued to Defendant Rumpke Sanitary Landfill, Inc. on February 17, 1994;

f. Not later than May 1, 1999, Defendants shall verify with a land or aerial survey, the survey of which shall be at a scale of one inch which equals one hundred feet, that the Facility is in compliance with the Permit-to-Install that the Director issued to Defendant Rumpke Sanitary Landfill, Inc. on February 17, 1994, ~~Ohio EPA, and that intermediate cover thickness, as required by OAC Rule 3745-27-19(G) is not less than 12 inches.~~ *JAS*  
*REA*  
*CJS*

g. Not later than June 1, 1999, Rumpke shall submit to Ohio EPA for concurrence a report verifying completion of the activities specified in Orders No. 9(e) and 9(f) above. The report shall contain the following:

- i. date of completion of the activities;
- ii. the disposal location of the removal overfill wastes;
- iii. the volume, in cubic yards, of overfilled waste removed;
- iv. topographic maps containing the following:
  - a. areas of overfill that were removed; and
  - b. a comparison of the resulting waste grades to the permitted top of waste grades; ~~and~~ *REA* *CJS* *JAS*
  - c. ~~the thicknesses of intermediate cover placed over the regraded area.~~ *REA* *CJS*
- v. certification, by the surveyor who performed the land survey specified in Order No. 9(f) above, that the information contained in the topographic maps is correct and accurate.

h. To operate all odor control spraying devices available at the Facility continuously twenty-four (24) hours per day whenever waste is excavated or removed until daily cover or other cover is applied, and to take any other necessary actions to abate odors and other nuisances that may exist at the Facility until such time as the overfill is removed as required by this Consent Order.

i. To submit to Ohio EPA and the Hamilton County Health District by January 15, 1998, and thereafter quarterly, a progress report that summarizes the activities undertaken in the previous quarter to satisfy each of the requirements of paragraph 9 of this Consent Order, and to continue to submit such reports, until such time as the final cap system is placed on the reconstructed slope as provided in the slope reconstruction plan approved by Ohio EPA on November 1, 1996.

## VII. SUBMITTAL OF DOCUMENTS

10. Unless otherwise specified, documents which are required to be submitted to Plaintiffs pursuant to the provisions of this Consent Order shall be sent to the following addresses:

Ohio Environmental Protection Agency  
Southwest District Office  
401 East Fifth Street  
Dayton, Ohio 45402-2911  
Attn: Manager, Division of Solid and Infectious Waste Management

Ohio Environmental Protection Agency  
Division of Solid and Infectious Waste Management  
2305 Westbrook Drive, Building C  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attn: Solid Waste Enforcement Coordinator

The Hamilton County General Health District  
11499 Chester Road, Suite 1500  
Cincinnati, Ohio 45246  
Attn: Hamilton County Health Commissioner.

#### **VIII. CIVIL PENALTY AND SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

11. Defendants Rumpke Consolidated Companies, Inc. and Rumpke Sanitary Landfill, Inc. agree and are ordered and enjoined to pay to the State of Ohio a civil penalty in the amount of One Million Dollars (\$1,000,000.00). Five Hundred Thousand Dollars (\$500,000) of this civil penalty is hereby suspended, but, in lieu of civil penalty, shall be paid by Defendants Rumpke Consolidated Companies, Inc. and Rumpke Sanitary Landfill, Inc. to fund supplemental environmental projects as provided in paragraph 12 of this Consent Order. Defendants Rumpke Consolidated Companies, Inc. and Rumpke Sanitary Landfill, Inc. agree and are ordered and enjoined to pay Three Hundred Fifty Thousand Dollars (\$350,000) of the civil penalty within thirty (30) days of the entry of this Consent Order by delivering to Plaintiff State of Ohio, c/o Administrative Assistant, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, a certified check in that amount, payable to the order of "Treasurer, State of Ohio." Defendants Rumpke Consolidated Companies, Inc. and Rumpke Sanitary Landfill, Inc. agree and are ordered and

enjoined to pay the remaining One Hundred Fifty Thousand Dollars (\$150,000) of the civil penalty in equal Thirty Thousand Dollar (\$30,000) installments by delivering to Plaintiff State of Ohio, c/o Administrative Assistant, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, a certified check in that amount, payable to the order of "Treasurer, State of Ohio" on each of the following dates: September 30, 1998; September 30, 1999; September 30, 2000; September 30, 2001; and September 30, 2002.

12. Defendants Rumpke Consolidated Companies, Inc. and Rumpke Sanitary Landfill, Inc. agree and are ordered and enjoined to pay the Five Hundred Thousand Dollar (\$500,000) portion of the civil penalty suspended pursuant to paragraph 11 of this Consent Order to fund supplemental environmental projects as follows: Defendants Rumpke Consolidated Companies, Inc. and Rumpke Sanitary Landfill, Inc. agree and are ordered and enjoined to pay One Hundred Thousand Dollars (\$100,000) to fund the Hamilton County Environmental Priorities Project by delivering a certified check in that amount, payable to the order of the "Hamilton County Environmental Priorities Project", to the Plaintiff Hamilton County General Health District Board of Health, c/o Nee ong Chin, 230 East Ninth Street, Suite 7000, Cincinnati, Ohio 45202 within thirty (30) days of the entry of this Consent Order; Defendants Rumpke Consolidated Companies, Inc. and Rumpke Sanitary Landfill, Inc. agree and are ordered and enjoined to pay Fifty Thousand Dollars (\$50,000) to Plaintiff Hamilton County General Health District Board of Health to purchase equipment for the Board's Community Health Information Services Division by delivering a certified check in that amount, payable to the order of the "Hamilton County General Health District Board of Health", c/o Nee Fong Chin, 230 East Ninth Street, Suite 7000, Cincinnati, Ohio 45202 within thirty (30) days of the entry of this Consent Order; Defendants

Rumpke Consolidated Companies, Inc. and Rumpke Sanitary Landfill, Inc. agree and are ordered and enjoined to pay the remaining Three Hundred Fifty Thousand Dollars (\$350,000) of the civil penalty suspended in paragraph 11 of this Consent Order in equal annual installments of Seventy Thousand Dollars (\$70,000) to be paid on each of the following dates to fund supplemental environmental projects approved by the Director: September 30, 1998; September 30, 1999; September 30, 2000; September 30, 2001; and September 30, 2002. Should the Director not approve a supplemental environmental project for funding by such dates, said installments shall be paid into the Hazardous Waste Clean-Up Fund created in R.C. § 3734.28 by delivering to Plaintiff State of Ohio, c/o Administrative Assistant, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, a certified check in the appropriate amounts, payable to the order of "Treasurer, State of Ohio".

#### **IX. STIPULATED PENALTIES**

13. In the event that Defendants Rumpke Consolidated Companies, Inc. and Rumpke Sanitary Landfill, Inc. fail to meet any of the requirements of this Consent Order, Defendants Rumpke Consolidated Companies, Inc. and Rumpke Sanitary Landfill, Inc. shall be immediately and automatically, jointly and severally liable for, and shall pay, a stipulated penalty according to the following payment schedule. For each day of each failure to meet a requirement, up to thirty (30) days - Two Hundred Fifty Dollars (\$250.00) per day for each requirement not met. For each day of each failure to meet a requirement, from thirty-one (31) to sixty days (60) - Five Hundred Dollars (\$500.00) per day for each requirement not met. For each day of each failure to meet a requirement, from sixty-one (61) to ninety (90) days - Seven Hundred Fifty Dollars (\$750.00) per day for each requirement not met. For each day of each failure to meet a



requirement, over ninety days (90) days - One Thousand Dollars (\$1,000.00) per day for each requirement not met. Any claim by the Plaintiff for Stipulated Penalties under this Consent Order that is disputed by the Defendants Rumpke Consolidated Companies, Inc. and Rumpke Sanitary Landfill, Inc. shall be subject to review by this Court.

14. Any payment required to be made under the provisions of Paragraph 13. of this Consent Order shall be made by delivering to Plaintiff State of Ohio, c/o, Administrative Assistant, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, a certified check in the amount owed, payable to the order of "Treasurer, State of Ohio."

#### **X. RIGHT OF ENTRY**

15. Nothing in this Consent Order limits or expands Plaintiffs' authority under R.C. Chapter 3734. or any other statute to enter the Facility to determine compliance with this Consent Order and R.C. Chapter 3734, and other statutes, regulations and ordinances.

#### **XI. GENERAL PROVISIONS**

16. This Court shall retain jurisdiction over this case for the purpose of making any order or decree which it deems necessary to enforce this Consent Order.

17. All court costs of this action shall be assessed against Defendants Rumpke Consolidated Companies, Inc. and Rumpke Sanitary Landfill, Inc. .

18. All citations to the Ohio Administrative Code identified in this Consent Order refer to the most current version of the rule as of the date of filing of this Consent Order.

## **XII. TERMINATION**

19.If at any time after the entry of this Consent Order Defendants Rumpke Consolidated Companies, Inc. and Rumpke Sanitary Landfill, Inc. determine that they have substantially complied with all of the requirements of the Consent Order, they shall submit to Plaintiffs a certification of compliance. If Plaintiffs concur that Defendants Rumpke Consolidated Companies, Inc. and Rumpke Sanitary Landfill, Inc. have satisfied the requirements of this Consent Order, the parties shall file a joint motion with the Court to terminate the provisions of this Consent Order. Upon approval of the Court, this Consent Order and the obligations hereunder shall terminate.

20.If Plaintiffs do not agree that Defendants Rumpke Consolidated Companies, Inc. and Rumpke Sanitary Landfill, Inc. have substantially complied with and/or fully satisfied the requirements of this Consent Order in accordance with the previous paragraph, Defendants Rumpke Consolidated Companies, Inc. and Rumpke Sanitary Landfill, Inc. may file a motion pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure requesting that the Court terminate this Order. Plaintiffs reserve all rights to respond to any motion to terminate that Defendants Rumpke Consolidated Companies, Inc. and Rumpke Sanitary Landfill, Inc. may file.

## **XIII. AUTHORITY TO ENTER INTO THE CONSENT ORDER**

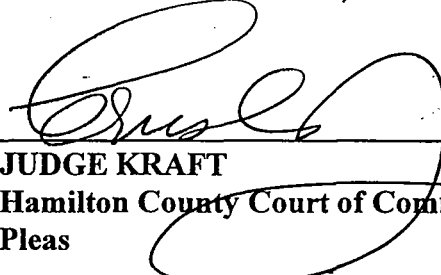
21.The signatories for Defendants Rumpke Consolidated Companies, Inc. and Rumpke Sanitary Landfill, Inc. represents and warrants that he/she has been duly authorized to sign this document and so bind Defendants Rumpke Consolidated Companies, Inc. and Rumpke Sanitary Landfill, Inc. to the terms and conditions thereof.

## **XIV. POTENTIAL FORCE MAJEURE**

22. In any action or proceeding to enforce any of the provisions of this Consent Order, including proceedings to enforce the stipulated penalty provisions set forth above, Defendants Rumpke Consolidated Companies, Inc. and Rumpke Sanitary Landfill, Inc. may raise at that time the question of whether they are entitled to defenses that their conduct was caused by reasons beyond their control such as, by way of example and not limitation, Acts of God, unusually severe weather conditions, strikes, acts of war or civil disturbances, or conflicting orders of any regulatory agencies or courts. While the Plaintiffs do not agree that such defenses exists, it is, however, hereby agreed upon by the parties that it is premature at this time to raise and adjudicate the existence of such defenses and that the appropriate point at which to adjudicate the existence of such defenses is at the time that an enforcement action, if any, is commenced. Acceptance of this Consent Order with this provision does not constitute a waiver by Defendants Rumpke Consolidated Companies, Inc. and Rumpke Sanitary Landfill, Inc. of any rights or defenses they may have under applicable law or equity.

**IT IS SO ORDERED.**

Signed at Cincinnati, Hamilton County, Ohio, this 25<sup>th</sup> day of Sept, 1997,  
1997.

*for*   
\_\_\_\_\_  
**JUDGE KRAFT**  
**Hamilton County Court of Common**  
**Pleas**

APPROVED BY:

**ATTORNEY GENERAL  
BETTY D. MONTGOMERY**

By:



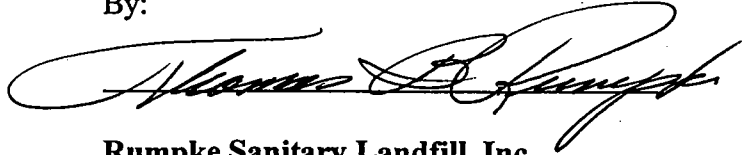
**CHRISTOPHER JONES (0046959)**

**ROBERT E. ASHTON (0032276)**

Assistant Attorneys General  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43266-0410  
(614) 466-2766  
Counsel for the State of Ohio

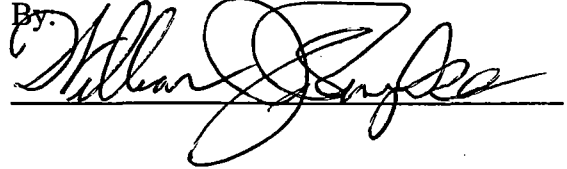
**Rumpke Consolidated Companies, Inc.**

By:



**Rumpke Sanitary Landfill, Inc.**

By:



**JOSEPH T. DETERS  
HAMILTON COUNTY  
PROSECUTING ATTORNEY**

By:

*Nee Fong Chin* by *[Signature]*  
**NEE FONG CHIN (0038095)**

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