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ATTORNEY GENERAL'S OFFICE  
ENVIRONMENTAL DIVISION

FILED  
FULTON COUNTY  
COMMON PLEAS COURT

2017 AUG 30 - A 8: 01

TRACY L. YOVER  
CLERK

IN THE COURT OF COMMON PLEAS  
FULTON COUNTY, OHIO

STATE OF OHIO, ex rel.,  
MICHAEL DEWINE,  
ATTORNEY GENERAL OF OHIO,  
30 East Broad Street, 25<sup>th</sup> Floor,  
Columbus, Ohio 43215,

Plaintiff,

v.

FULTON COUNTY BOARD OF  
COUNTY COMMISSIONERS  
125 Courthouse Plaza  
Wauseon, Ohio 43567,

Defendant.

CASE NO. 17 CV 000153

JUDGE Robinson

CONSENT ORDER

Plaintiff, the State of Ohio ("State"), by its Attorney General Michael DeWine, and on behalf of the Ohio Environmental Protection Agency ("Ohio EPA"), filed a Complaint in the above-captioned matter against the Defendant Fulton County Board of County Commissioners ("Board") seeking injunctive relief and civil penalties for violations of (a) Ohio Revised Code ("R.C.") Chapter 6111; (b) the rules adopted pursuant to that statute; and (c) Director's Final Findings and Orders issued July 9, 2002 ("2002 Orders").

By entering into the Consent Order, the Board does not admit that it committed the violations alleged by the State; however, in order to settle this case and avoid complicated, protracted and expensive litigation, the Board has entered into this Consent Order and agreed to

pay a civil penalty, as set forth in Section VII (Civil Penalties). Nothing in this Consent Order constitute an admission or evidence of, or shall be treated as an admission or evidence of, any violation of the law in any other litigation or forum.

The Board owns and operates the Fulton County Landfill ("Landfill"), a 32-acre inactive solid waste disposal facility located on the southeast corner of County Road F and County Road 9, Section 14, York Township, Fulton County, Ohio.

The State and the Board recognize, and the Court by entering this Consent Order, that the Consent Order has been negotiated by the Parties in good faith and will avoid protracted, complicated and expensive litigation among the Parties, and the Consent Order is fair, reasonable and in the public interest.

**NOW, THEREFORE**, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section II (Jurisdiction and Venue), below, and with the consent of the Parties, **IT IS HEREBY ADJUDGED, ORDERED** and **DECREED** as follows:

**I. PURPOSE**

1. It is the express purpose of the Parties in entering this Consent Order to further the objective of R.C. Chapter 6111. All plans, reports, construction, remedial maintenance and other obligations in this Consent Order or resulting from the activities required by this Consent Order shall have the objective of causing the Board to come into and remain in full compliance with R.C. Chapter 6111, the rules adopted pursuant to that chapter, and the 2002 Orders, as each relates to the Landfill and leachate associated with the Landfill.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the Parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against the Board under R.C. Chapter 6111, and venue is proper in this Court.

III. PARTIES

3. The provisions of this Consent Order shall apply to and be binding upon the State and the Board, acting through its officers, agents, servants and employees, and upon the Board's successors and assigns. To the extent allowed by Ohio R. Civ. P. 65(D), the injunctive relief provisions of this Consent Order are binding upon the Board's officers, agents, servants and employees, and are binding upon those Parties in active concert or participation with them and their officers, agents, servants or employees who receive actual notice of this Consent Order with respect to all matters related to the performance of this Consent Order.

4. Transfer of Ownership and Operation. No transfer of ownership or operation of the Landfill by the Board, whether in compliance with this paragraph or otherwise, shall relieve the Board of its obligation to ensure that the terms of the Consent Order are implemented. At least sixty (60) Days prior to such transfer, the Board shall provide a copy of this Consent Order to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement to the State in accordance with Section IX (Notices and Submissions) of this Consent Order. Any attempt to transfer ownership or operation of the Landfill, or any portion thereof, without complying with this paragraph constitutes a violation of this Consent Order.

5. If the ownership and operation of the Landfill, in whole or in part, is ever to be transferred, the Board shall condition the transfer upon the transferee's agreement 1) to enter into a modification to this Consent Order that makes the terms and conditions of the Consent Order

that apply to the ownership of the transferred assets apply to the transferee, and 2) to apply to Ohio EPA for an appropriate NPDES Permit modification or transfer. The Board shall notify the State at least sixty (60) Days prior to the transfer of ownership and shall provide the State with 1) a copy of the draft motion to modify the Consent Order to transfer obligations and liabilities; 2) the request for an NPDES Permit modification or transfer; and 3) information sufficient to demonstrate that the prospective transferee has the technical and financial qualifications to fulfill the Board's obligations and liabilities under this Consent Order. If the State opposes the transfer, the Board may file a motion for approval of the transfer requesting the Court to find that the transferee has the financial and/or technical ability to assume the Board's obligations and liabilities under this Consent Order.

6. Following the Effective Date of this Consent Order, upon approval by the Board of any contract relating to work to be performed pursuant to this Consent Order, the Board shall provide a copy of this Consent Order to each contractor or consultant retained to perform that work. For firms already retained by the Board to perform work under this Consent Order prior to the Date of Lodging, the Board shall provide a copy of this Consent Order no later than thirty (30) Days after the Effective Date. Subject to the provisions of this Consent Order an action taken by the contractor or consultant retained to fulfill any of the responsibilities under this Consent Order shall be considered an action of the Board for purposes of determining compliance with this Consent Order.

#### IV. DEFINITIONS

7. Unless otherwise defined herein, the terms used in this Consent Order (and any attachments thereto) shall have the meaning given to those terms in R.C. 6111, and/or Ohio Adm. Code Chapter 3745-1, and/or in the Board's Current NPDES Permit. Whenever the following terms are used in this Consent Order, the following definitions shall apply:

- A. "2002 Orders" means the July 9, 2002 Director's Final Findings and Orders entered into between Ohio EPA and the Board.
- B. "Board" means the Fulton County Board of County Commissioners.
- C. "Complaint" means the Complaint filed by the State in this action.
- D. "Consent Order" or "Order" means this Consent Order and all attachments attached hereto.
- E. "Date of Lodging" means the date the Consent Order is lodged with the Court of Common Pleas for Fulton County.
- F. "Day" means a calendar day, unless otherwise indicated. When the day a report or other deliverable is due under this Consent Order falls on a Saturday, Sunday, Federal holiday, or a legal holiday for the Board, the Board shall have until the next calendar day that is not one of the aforementioned days for submittal of such report or other deliverable.
- G. "Discharge" means any "discharge of a pollutant" as defined in Ohio Adm. Code 3745-33-01(P).
- H. "Effective Date" means the date upon which this Consent Order is entered by the Court or a motion to enter the Consent Order is granted, whichever occurs first, as recorded in the Court's docket.
- I. "Ohio EPA" means the Ohio Environmental Protection Agency and any successor departments or agencies of the State.
- J. "Paragraph" means a portion of this Consent Order identified by an Arabic numeral.
- K. "Parties" means the State and the Board.
- L. "Section" means a portion of this Consent Order identified by an upper case Roman numeral.
- M. "State" means the State of Ohio, acting on behalf of Ohio EPA.

V. PERMANENT INJUNCTION

8. The Board is hereby permanently enjoined and immediately ordered to comply with the requirements of R.C. Chapter 6111 and the rules and orders adopted or issued under this Chapter, as related to the Landfill and leachate associated with the Landfill.

9. Beginning on the Effective Date of this Consent Order by the Court, the Board is enjoined and ordered to complete the following actions:

a. Within thirty (30) Days of the Effective Date of this Consent Order, take all steps necessary to prevent leachate outbreaks at, and discharges from the Landfill.

b. The Board shall conduct monthly inspections of the Landfill to ensure no leachate outbreaks have occurred. The Board shall immediately address any leachate outbreaks identified during the inspections. The Board shall also document the date and time of the inspection, location of the leachate outbreak and steps taken to address the leachate outbreak and submit such information to Ohio EPA within seven (7) Days of the Board's or the Board's representative's discovery of a leachate outbreak. If no leachate outbreak is observed, the Board shall document the date and time of the inspection and submit such information to Ohio EPA within thirty (30) Days of the inspection.

c. Within one hundred twenty (120) Days of the effective date of this Consent Order, the Board shall submit to Ohio EPA for review and concurrence, an Operation and Maintenance Plan to prevent leachate outbreaks that includes (a) a monthly inspection schedule; (b) inspection forms to be used and maintained to document inspections of the Landfill; (c) a pumping schedule for the leachate pump station; (d) a determination of the maximum pump station liquid elevation that must be maintained in the pumping station to prevent leachate outbreaks (e) procedures for removal and disposal of leachate from the leachate storage lagoons; and (f) a Leachate Outbreak Response Protocol that includes methods for addressing leachate outbreaks.

d. Within 15 Days following the identification of a leachate outbreak, the Board shall conduct a follow-up inspection to determine if measures taken to address the outbreak have been successful. If, upon re-inspection, the outbreak is still occurring, the Board shall take all appropriate and necessary measures to address the outbreak.

10. The Board shall continue to pump leachate from the leachate storage lagoons for proper disposal. The leachate storage lagoons shall be pumped so that an operating level of no greater than seven feet, with a freeboard of two feet is maintained within the lagoons.

#### VI. EFFECT OF CONSENT ORDER

11. This Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities. Approval for any such construction or

modification shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

**VII. CIVIL PENALTY**

12. Pursuant to R.C. 6111.09, it is hereby ordered that the Board shall pay to the State of Ohio a cash civil penalty of ten thousand dollars (\$10,000.00). This amount shall be paid in four installments of two thousand, five hundred dollars every three (3) months, with the first installment being paid within three (3) months of the Effective Date of this Consent Order.

13. If the Board fails to make the civil penalty payment in a timely manner as set forth above, the entire civil penalty shall become due and owing, without further demand by the State, plus any applicable statutory interest pursuant to R.C. 131.02(D) and R.C. 5703.47 calculated from the civil penalty payment's due date.

14. The civil penalty payment shall be made by delivering to Scott Hainer, Paralegal, or his successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio, 43215, a certified check, made payable to the order of the "Treasurer, State of Ohio," for the appropriate amount. The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 432774."

**VIII. STIPULATED PENALTIES**

15. In the event that the Board fails to meet any of the requirements of this Consent Order, the Board shall be liable for and shall pay a stipulated penalty of two hundred dollars (\$200.00) per day for each requirement not met, for the first sixty (60) Days of noncompliance. The Board shall be liable for an additional stipulated penalty of four hundred dollars (\$400.00) per day for each requirement not met if the failure to comply continues for more than sixty (60) Days but less than one hundred twenty (120) Days. In the event that failure to comply continues

more than one hundred twenty (120) Days, the Board shall be liable for an additional six hundred dollars (\$600.00) per day for each requirement not met.

16. Any payment required to be made under the provisions of paragraph 15 of this Consent Order shall be made by delivering a certified check or checks, made payable to "Treasurer, State of Ohio", for the appropriate amounts, to Scott Hainer, Paralegal, or his successor, at the address set forth in Section VII, within sixty (60) Days of receipt of a written demand from the State .

17. The payment of stipulated penalties by the Board and the acceptance of such stipulated penalties by the State for specific violations of this Consent Order shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order, such as contempt. Further, payment by the Board shall not be considered an admission of liability on the part of the Board.

**IX. NOTICES AND SUBMISSIONS**

18. Unless otherwise specified herein, whenever notifications, reports, submissions, or communications are required by this Consent Order, they shall be made in writing and addressed as follows:

As to the State:

Ohio Environmental Protection Agency  
Northwest District Office  
Division of Surface Water  
Attn: Tom Poffenbarger  
347 North Dunbridge Road  
Bowling Green, Ohio 43402

As to the Board:

Fulton County Board of County Commissioners  
Attn: Vond Hall, County Administrator  
152 S. Fulton Street  
Wauseon, Ohio 43567



19. Notices and submissions provided pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Order or by mutual agreement of the Parties in writing.

20. The Board shall retain all underlying documents from which it has compiled any report or other submission required by this Consent Order until five years following the termination of the Consent Order.

**X. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS**

21. Performance of the terms of this Consent Order by the Board is not conditioned on the receipt of any federal or state grant funds or loans. In addition, the Board's performance is not excused by the failure to obtain or shortfall of any federal or state grant funds or loans, or by the processing of any applications for the same.

**XI. MODIFICATION**

22. No modification shall be made to this Consent Order without the written agreement of the Parties and the Court.

**XII. RETENTION OF JURISDICTION**

23. The Court will retain jurisdiction of this action for the purposes of overseeing that the Board complies with this Consent Order and making any order or decree that it deems appropriate to carry out this Consent Order.

**XIII. TERMINATION**

24. This Consent Order shall terminate upon joint motion of the Parties, and approval of the Court following completion of all requirements. For purposes of this Section, "completion of all requirements" shall mean compliance with the terms of this Consent Order for at least thirty-six (36) consecutive months with no leachate outbreaks reaching waters of the state. At

least six (6) of the thirty-six (36) consecutive months of compliance must be following the Effective Date of this Consent Order.

**XIV. COURT COSTS**

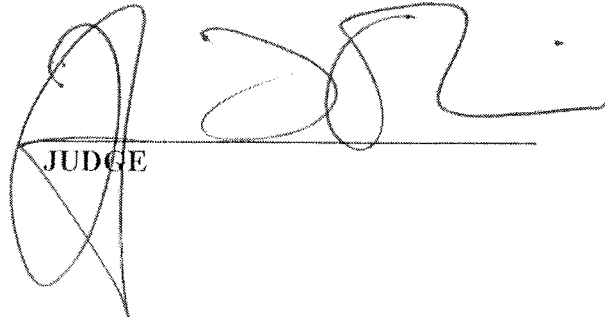
25. The Board is hereby ordered to pay the court costs of this action.

**XV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK**

26. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) Days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the 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.

**IT IS SO ORDERED.**

8-29-17  
DATE

  
JUDGE

APPROVED:

MICHAEL DEWINE  
OHIO ATTORNEY GENERAL

*Nicole  
Candelora-  
Norman  
(0079790)*

*Nicole Candelora-Norman*

~~SUMMER J. KOLADIN PLANTZ (0072072)~~

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30 East Broad Street, 25th Floor  
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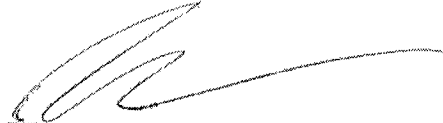
Facsimile: (614) 644-1926

~~Summer.Plantz@ohioattorneygeneral.gov~~

*nicole.candelora-norman@ohio  
Counsel for Plaintiff attorneygeneral.gov  
The State of Ohio*

*8/25/17*

Date



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Telephone: (614) 564-1442

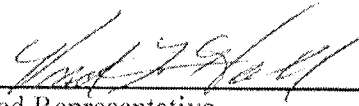
Facsimile: (614) 280-1777

~~jrduham@eastmansmith.com~~

*5-9-17*

Date

*Counsel for Defendant  
Fulton County Board of County  
Commissioners*



Authorized Representative

*5/4/17*

Date