

IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

COURT OF C.P. _____
FILED

STATE OF OHIO, ex rel.
LEE FISHER
ATTORNEY GENERAL OF OHIO

CASE NO. 88-43

1993 MAR 18 PM 1:21

JUDGE BURKHART

KITTY KAHRIG
CLERK OF COURTS
MONROE COUNTY OH.

Plaintiff,

vs.

BROWN BROTHERS LANDFILL, INC.,
et al.,

AGREED ORDER OF CONTEMPT

Defendants.

The State of Ohio by its Attorney General, Lee Fisher, filed Charges in Contempt of Court stating that Brown Brothers Landfill, Inc., Darrell Brown and Guy Brown (hereinafter "Defendants") violated the provisions of the Court's Consent Order filed on May 10, 1989 (hereinafter "May 1989 Order"). Defendants agree that they violated the May 1989 Order.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED, that this AGREED ORDER OF CONTEMPT be entered against Defendants, and that Defendants are guilty of contempt of this Court because of their failure to comply with the provisions of the May 1989 Order and because of their failure to pay to Plaintiff State of Ohio stipulated penalties as required by the terms of the May 1989 Order;

It is FURTHER ORDERED AND ADJUDGED, that Defendants may purge themselves of this AGREED ORDER OF CONTEMPT (hereinafter "Contempt Order") upon Defendants' full and complete satisfaction of the compliance requirements and the amounts owed to Plaintiff State of Ohio, as set forth in this Contempt

Order.

I. JURISDICTION

1. The Court has authority to issue this Contempt Order pursuant to O.R.C. Section 2705.02.

II. PARTIES

2. The provisions of this Contempt 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 Contempt Order to any consultant or contractor hired by Defendants to conduct the work required by this Contempt Order.

III. COMPLIANCE REQUIREMENTS

3. In order to attain compliance with the May 1989 Order, Defendants are ordered and enjoined to complete the following actions:

- a) By May 15, 1993, submit a revised final soil cap certification report which demonstrates that the quality assurance/quality control requirements set forth in paragraph 3(a) of the May 1989 have been met or exceeded;
- b) By September 30, 1993 establish a dense vegetative cover at the facility.
- c) By May 15, 1993 submit a revised permanent leachate permit to install application which corrects the deficiencies outlined in all Ohio EPA correspondence to the Defendants or their representatives including the most recent letter dated June 3, 1992. (Attachment 1). Also include schedules of implementation and completion for construction of this project that shall provide for completion no later than September 30, 1993.
- d) Upon entry of this Order, take interim actions which

effectively control, contain, or collect leachate generated by the facility. By May 15, 1993 submit documentation demonstrating that appropriate interim measures have been taken.

- e) By May 15, 1993, submit a revised sedimentation pond permit to install application which corrects the deficiencies outlined in all Ohio EPA correspondence to the Defendants or their representatives, including the most recent letter dated May 19, 1992 (Attachment 2). Also include schedules of implementation and completion of construction of this project that shall provide for completion no later than September 30, 1993.
- f) Upon entry of this Order, take interim actions which effectively control and contain sedimentation runoff from the facility. By May 15, 1993, submit documentation demonstrating that appropriate interim actions have been taken.
- g) By June 1, 1993, submit a revised hydrogeologic assessment report which corrects the deficiencies outlined in all Ohio EPA correspondence to the Defendants or their representatives, including the most recent letter dated June 11, 1992. (Attachment 3).
- h) By August 1, 1993, submit a groundwater monitoring program plan, in accordance with the May 10, 1989 consent agreement, as one has not yet been submitted by Defendants as outlined in all Ohio correspondence to the Defendants or their representatives including the most recent letter dated June 11, 1992. (Attachment 3). Defendants shall implement the groundwater monitoring program plan within thirty days of receiving written approval by Ohio EPA.
- i) By July 1, 1993, submit an itemized written estimate in current dollars of the cost for a third party to complete closure and post-closure care of the facility. In addition, an unexecuted draft of the financial assurance instrument shall also be submitted with the estimate. The financial assurance documents shall be in accordance with OAC 3745-27-15, -16, and -17. Defendants shall make corrections to deficiencies in the closure and post-closure estimates for the facility, as well as any deficiencies in the financial assurance documents, and Defendants shall submit to Ohio EPA such corrections within fifteen (15) days of receiving written notice of any such deficiencies. The financial assurance instrument shall be executed within thirty (30) days of written Ohio EPA approval and funded within thirty (30) days

thereafter.

- j) By May 15, 1993, submit an adequate landfill plat which corrects the deficiencies outlined in all Ohio EPA correspondence to the Defendants or their representatives including the latest letter dated January 22, 1992. (Attachment 4).

4. Ohio EPA will approve Defendants' submittals with or without conditions that specify additional actions to be taken by Defendants that satisfy the requirements set forth in paragraphs 3(a) through 3(j) above. Defendants shall conduct all such actions as directed by Ohio EPA.

IV. PENALTY AND PLAINTIFF'S LITIGATION COSTS

5. In resolution of the stipulated penalties accrued by Defendants for failing to comply with the May 1989 Order, and in resolution of Plaintiff's litigation costs in investigating and prosecuting this contempt action, Defendants shall pay amounts which are based on Defendants' ability to pay. However, the parties agree that these amounts will not exceed \$321,000.00.

6. In order to determine Defendants' ability to pay, Defendants are ordered and enjoined to complete the following actions:

- a. Within thirty (30) days of service by Plaintiff's counsel to Defendants' counsel of a letter specifying what financial documents and/or information Defendants are required to submit, Defendants shall submit to Plaintiff's counsel all the requested financial documents and/or information.
- b. If Plaintiff's counsel determines that Defendants' financial documents or information are deficient and/or incomplete, or if Plaintiff's counsel determines that additional financial documents or information are needed, Defendants shall submit all such financial

documents or information as specified by Plaintiff's counsel. Such submittal shall be made to Plaintiff's counsel within thirty (30) days of service of Plaintiff's counsel's request.

7. After Plaintiff reviews Defendants' financial documents and information, Defendants shall pay the penalty and litigation costs as specified by Plaintiff. Such payments shall be paid by delivering to counsel for Plaintiff certified checks in the amount specified, payable to the order of "Treasurer, State of Ohio" within thirty (30) days from the date of service of Plaintiff's demand letter to Janis Miller, 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 43266-0410. The penalty payment shall be deposited into the Hazardous Waste Clean-up Fund created by O.R.C. Section 3734.28 and the litigation payments shall reimburse the Attorney General's Office.

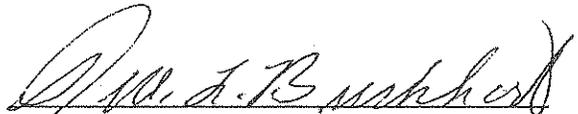
8. If Defendants dispute the penalty and litigation costs specified by Plaintiff, the parties agree that Defendants can request from this Court a hearing regarding their ability to pay the penalty and litigation costs requested by Plaintiff. However, the parties agree that such hearing is solely limited to whether Defendants have the ability to pay the penalty and litigation costs and not to whether the penalty and litigation costs are fair and reasonable in consideration of the violations.

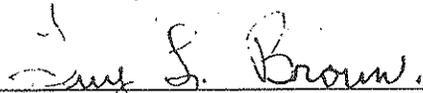
V. MAY 1989 SHALL REMAIN IN FORCE

9. The May 1989 Order shall remain in full force and effect and Defendants are to continue to comply with the May 1989 Order, except as modified by this Contempt Order.

VI. COSTS

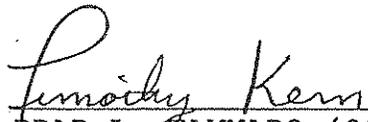
10. Defendants are hereby ordered to pay the costs of this action.


JUDGE GEORGE F. BURKHART


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

LEE FISHER
ATTORNEY GENERAL OF OHIO


GUY L. BROWN

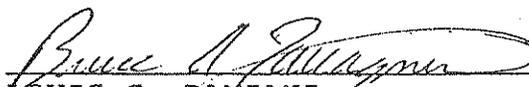

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