

FILED
 LORAIN COUNTY
 IN THE COURT OF COMMON PLEAS
 2013 MAR -5 PM 12:00
 LORAIN COUNTY, OHIO

CLERK OF COMMON PLEAS
 LORAIN COUNTY, OHIO

13CV179583

STATE OF OHIO, ex rel.
 MICHAEL DEWINE
 OHIO ATTORNEY GENERAL,

CASE NO.
 JUDGE

Plaintiff,

JUDGE JOHN R. MIRALDI

v.

LORAIN COUNTY LANDFILL, LLC
 c/o CT Corporation System
 Statutory Agent
 1300 East Ninth Street
 Cleveland, Ohio 44114,

CONSENT ORDER – LORAIN
 COUNTY LANDFILL

and

BIO ENERGY (OHIO II), LLC
 c/o CT Corporation System
 Statutory Agent
 1300 East Ninth Street
 Cleveland, Ohio 44114,

Defendants.

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio, by its Attorney General, Michael DeWine (“Plaintiff” or “State”), and Defendant Lorain County Landfill, LLC. (“Defendant LCLF”) having consented to the entry of this Order;

NOW THEREFORE, without trial of any issue of fact or law, without any admission of any issues of law, liability or fact, and upon consent of the Parties hereto, it is **ADJUDGED, ORDERED, and DECREED** as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the Parties and the subject matter of this action pursuant to Revised Code Chapters 3704 and 3734. Venue is proper in this Court. Solely for purposes of this Consent Order and the underlying Complaint, Defendant LCLF does not contest that the Complaint states a claim upon which relief can be granted against Defendant LCLF.

II. PARTIES

2. Defendant LCLF is in the business of solid waste disposal services.

3. Defendant LCLF is a “person” as that term is defined in R.C. 1.59(C), 3704.01(O), 3734.01(G), and OAC 3745-27-01(P)(3).

4. The provisions of this Consent Order shall apply to and are 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 in interest, and those persons in active concert or participation with them who receive actual notice of this Consent Order whether by personal service or otherwise.

III. SATISFACTION OF LAWSUIT

5. The State alleges in its Complaint that Defendant LCLF has violated Revised Code Chapters 3704 and 3734, and Ohio Administrative Code Chapters 3745-15 and 3745-27. Defendant LCLF denies such allegations. The parties have agreed to resolve the disputed issues in this matter without adjudication of any issues of fact or law. Entry into this Consent Order shall constitute full satisfaction of any civil and administrative liability for matters addressed in Plaintiff’s Complaint, as well as all violations known by Ohio EPA up until the date this Consent Order is entered by the Court.

6. Except as otherwise provided in Paragraph 7 of this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil and administrative liability of Defendant LCLF and its successors in interest and assigns for the claims alleged in the State's Complaint, as well as all violations known by Ohio EPA up until the date this Consent Order is entered by the Court.

7. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief from Defendant LCLF for: (A) claims or violations not known by Ohio EPA at or before the date that this Consent Order is entered by the Court; (B) any violations arising out of acts or omissions first occurring after the effective date of this Consent Order; or (C) claims or violations under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§9601 et seq. or R.C. 3734.20 through 3734.27 for any emergency, removal, remedial, corrective actions, or natural resource damages. Defendant LCLF shall retain all rights, defenses, and/or claims it may legally raise to the extent that the State seeks further relief from Defendant LCLF in the future, or in any action brought to enforce the terms of this Consent Order, except that Defendant LCLF shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim splitting, or other defenses based upon any contention that the claims raised by the State in subsequent proceedings were or should have been brought in the instant case.

8. Entering into this Consent Order, the Consent Order itself, or the taking of any action in accordance with the Consent Order and/or any work performed at the site does not constitute and cannot be admitted as evidence of admission of any liability, wrongdoing, or misconduct on part of Defendant LCLF, their officers, employees, or agents by any other person or entity not involved in this case.

9. Nothing herein shall be construed to relieve Defendant LCLF of its obligation to comply with all applicable federal, state, or local statutes, regulations, or ordinances, including but not limited to the applicable permit requirements.

10. Nothing in this Consent Order shall constitute or be construed as a satisfaction of lawsuit, release, or a covenant not to sue regarding any claim alleged in the Complaint, or any other claim or cause of action, against any person, firm, trust, joint venture, partnership, corporation, association, or other entity not a signatory to this Consent Order for any liability they may have arising out of, or relating to, the site including, but not limited to, those identified in the Complaint.

IV. PERMANENT INJUNCTION

11. Defendant LCLF agrees and is ordered and enjoined to comply with Revised Code, Chapters 3704 and 3734 and the rules promulgated thereunder, including, but not limited to, the applicable provisions of Ohio Adm. Code Chapters 3745-15 and 3745-27 at the site.

V. INJUNCTIVE RELIEF

12. In any instance after the effective date of this Consent Order that Defendant LCLF has a scheduled disturbance of in-place waste in areas outside of the active working area, Defendant LCLF shall notify Ohio EPA of such planned disturbance via email notification within 24 hours in advance of the planned disturbance. This email notification shall include the measures Defendant LCLF will implement/did implement to reduce odors. Disturbances of in-place waste that are necessary to ensure compliance with applicable law, for instance Ohio Adm. Code 3745-27-19(E)(1)(c) and 19(K)(1), may be done with contemporaneous notification to Ohio EPA.

13. Well water level measurements (a.k.a. "well dipping") of all landfill gas extraction wells shall be conducted on a semi-annual basis and the results of these well dipping events shall be reported to Ohio EPA within five (5) working days of completion of all the well water levels being measured. If Ohio EPA has a reasonable basis to believe that landfill gas is escaping the system (for example, if three adjacent wells all have 40% of their perforations watered and odors are evident), then Defendant LCLF shall take corrective action or, as necessary, have a plan of action in place within fifteen (15) days of receiving written notice from Ohio EPA. Additionally, if a well on two successive monitoring events has greater than 50% of their perforations watered, Defendant LCLF shall conduct well dipping at that well again within 3 months. Also, whenever a well is dewatered, the maximum amount of water shall be pumped out of the well as

reasonably as can be done under the circumstances or as written in a plan submitted to Ohio EPA. If a well cannot be brought back to expected and/or immediate prior performance, Defendant LCLF shall provide a written explanation detailing the reason(s) to Ohio EPA within five (5) business days.

14. Effective the date this Consent Order is entered, whenever a gas well at the landfill is disconnected, shutdown, or not under negative pressure for a period of more than 5 consecutive days, Defendant LCLF shall, on the sixth day, conduct weekly surface scans of the affected area in the following manner:

- a. The perimeter of the area to be scanned shall be identified as the line that is half-way between wells that are not under negative pressure and wells that are under negative pressure.
- b. All areas within the perimeter shall be scanned in a serpentine pattern every 10 feet within the affected area. If the well is on the perimeter of the landfill, then scanning shall proceed to the limits of waste.
- c. The scans shall identify methane concentration ranges (as described in paragraph 18 below) and shall be available for Ohio EPA review within seven days of completing the scans.
- d. Defendant LCLF may petition the Ohio EPA for less frequent surface scanning; however, the denial of such a petition shall not be appealable to any court, tribunal or agency for review, except in accordance with Paragraph 26 below.

15. Effective the date this Consent Order is entered, whenever Defendant LCLF conducts surface scans, Defendant LCLF shall identify and record methane concentrations as they are encountered. The methane concentrations shall be identified as being within one of the

following ranges: 0-150 ppm, 151-300 ppm or 301-499 ppm. The ranges of methane and where such ranges occur on the landfill shall be plotted on a surface map of the landfill, within an accuracy of 15-20 feet. When submitting results of surface scans to the Ohio EPA, this plot map shall be included.

16. Effective the date this Consent Order is entered, Defendant LCLF shall notify Ohio EPA (via email or in writing) at least fourteen (14) days prior to conducting planned, quarterly surface scans. The fourteen-day period may be extended from time to time by agreement of the parties without requiring an additional fourteen days prior notice due to inclement weather.

17. No later than thirty (30) days of entry of this Consent Order, Defendant LCLF shall provide the revised procedures it will implement to report and monitor subsurface oxidation events per the December 7, 2012 technical meeting with Ohio EPA.

18. Effective the date this Consent Order is entered, in the event that Defendant LCLF receives three or more written notices of violation (from either Ohio EPA or the Lorain County Health Department based on their observations on separate days) that activities at the landfill are creating a nuisance in accordance with Ohio Adm. Code 3745-27-19(B)(3) or (B)(5) in a twenty-one day rolling period, Defendant LCLF shall immediately pay a stipulated penalty of \$5,000.00 to be deposited in accordance with Section VII below.

19. Effective the date this Consent Order is entered, if landfill gas odors continue to migrate offsite from the southern cell, Defendant LCLF shall place either a final cap or a sacrificial plastic cap on the entire southern cell of the landfill within 180 days of written notification and instruction by Ohio EPA.

VI. CIVIL PENALTY

20. Within 10 business days of entry of this Consent Order, Defendant LCLF is ordered and enjoined to pay a civil penalty of four hundred fifty thousand dollars (\$450,000) to the State. Such payment shall be made by delivering to Martha Sexton, Paralegal, or her successor, Office of the Attorney General, 30 E. Broad Street, 25th Floor, Columbus, Ohio 43215-3400, a check or checks for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

VII. ATTORNEY GENERAL ENFORCEMENT COSTS

21. Pursuant to R.C. 3734.11, Defendant LCLF is ordered and enjoined to pay the enforcement costs of the Ohio Attorney General in the amount of \$50,000.00 ten (10) days after entry of this Consent Order by the Court. This payment shall be delivered to Martha Sexton, Paralegal, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio

VIII. STIPULATED PENALTIES

22. In the event that Defendant LCLF fails to comply with any of the requirements of Sections IV, V, VI, and VII of this Consent Order, Defendant LCLF shall immediately and automatically be liable for and shall pay a stipulated penalty in accordance with the following schedule:

- a. Defendant LCLF shall pay one hundred dollars (\$100.00) per day for each day any separate legal requirement of this Consent Order continues to be violated up to thirty (30) days;
- b. Defendant LCLF shall pay two hundred fifty dollars (\$250.00) per day for each day any separate legal requirement of this Consent Order continues to be violated for thirty-one (31) days through ninety (90) days;

- c. Defendant LCLF shall pay five hundred dollars (\$500.00) per day for each day any separate legal requirement of this Consent Order continues to be violated after ninety (90) days.

23. Stipulated penalties due under this Consent Order shall be due and owing without further demand by the State, and shall be paid by check or money order payable to "Treasurer, State of Ohio" and mailed to Martha Sexton or her successor, Paralegal, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

IX. NOTICES

24. All documents required to be submitted under this Consent Order shall be submitted to the following, or their successor:

As to Plaintiff:

Ohio Environmental Protection Agency
Northeast District Office
Solid Waste Supervisor
2110 East Aurora Rd.
Twinsburg, Ohio 44087

As to Defendant LCLF:

Division Manager, Lorain County Landfill
43502 Oberlin-Elyria Rd.
Oberlin, OH 44074
RKostelnick@republicservices.com

General Manager, Elyria Business Unit
40195 Butternut Ridge Road
Elyria, OH 44035
EVanhouten@republicservices.com

and

Deputy General Counsel (East Region)
18500 North Allied Way
Phoenix, AZ 85054
MKort@republicservices.com

25. Either Party may change the name or address of its contact person(s) by serving written notice to the other party.

X. RETENTION OF JURISDICTION AND WAIVER OF SERVICE

26. The Court will retain jurisdiction of this action for purposes of enforcing this Consent Order during the effective term thereof. Defendant LCLF waives service of the Complaint and summons in this action.

XI. EFFECTIVE DATE

27. This Consent Order shall be effective upon the date of its entry by the Court.

XII. COURT COSTS

28. Defendant LCLF is hereby ordered to pay all court costs of this action.

XIII. SIGNATORIES

29. Each of the undersigned representatives of the Parties represents that he/she is fully authorized to enter into the terms and conditions of this Consent Order and legally bind the respective party to this document.

XIV. TERMINATION

30. After all of the requirements of this Consent Order have been met and two (2) years of being in substantial compliance (as that term is used within Ohio Adm. Code 3745-37-03) of all of Ohio's environmental laws and rules at the Site, Defendant LCLF may petition this Court for termination of this Consent Order.

XV. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

31. 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 (3) 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 current docket.

IT IS SO ORDERED:

03/05/13
Date



Judge, Lorain County Court of
Common Pleas

APPROVED BY:

MICHAEL DEWINE
Ohio Attorney General



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