

JUN 17 2002

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
02 APR 17 PM 2:30
U.S. BANKRUPTCY COURT
COLUMBUS, OHIO

OHIO EPA
DIV. OF SOLID & INFECTIOUS WASTE MGMT.

IN THE MATTER OF: : Case No. 97-50253
NEWARK PROCESSING CO., INC : Chapter 7; Judge Sellers
Debtor : EIN: 31-4398148

AGREED ORDER REGARDING THE COMPROMISE OF CLAIMS OF THE STATE OF OHIO, ENVIRONMENTAL PROTECTION AGENCY, AND AUTHORIZING PARTIAL DISTRIBUTION TO THE STATE OF OHIO, ENVIRONMENTAL PROTECTION AGENCY

This matter is before the Court upon the Amended Motion by David M. Whittaker, Trustee, for authority to (1) compromise the claims of the State of Ohio, Environmental Protection Agency, and (2) to make partial distribution to the State of Ohio, Environmental Protection Agency, filed February 1, 2002, the partial objection of the Ohio Environmental Protection Agency to those portions of the Amended Motion by David M. Whittaker, Trustee that request abandonment of certain real property, and the objection to Amended Motion and Request for Order Allowing All Real Estate Tax to be Paid as Priority filed by William R. Kashner, Treasurer of Licking County, Ohio. The Court finds that notice of Trustee's Amended Motion has been provided and that no other objections or requests for hearing have been filed. The Court finds that the objection and request for order allowing all real estate taxes to be paid as a priority, filed by William R. Kashner, Treasurer of Licking County, Ohio has been withdrawn.

The Trustee and the Ohio Environmental Protection Agency agree and the Court finds that Trustee's Amended Motion shall be granted as set forth in this Agreed Order.

The parties agree and the Court orders as follows:

ENTERED

APR 18 2002

BY

[Signature]

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(A) **IT IS ORDERED** that the Trustee is authorized to distribute a total sum of Fifty Thousand Dollars (\$50,000) to administrative fees and expenses (other than Trustee's commissions and attorney fees), priority claims, and general unsecured claims pursuant to subsequent orders of this Court.

(B) **IT IS FURTHER ORDERED** that compensation for the Trustee pursuant to 11 U.S.C. Section 326 and an award of attorney fees and expenses for counsel to the Trustee shall be allowed and paid in amounts to be determined pursuant to subsequent orders of this Court upon application by the Trustee and counsel for Trustee.

(C) **IT IS FURTHER ORDERED** that the remainder of funds held in the bankruptcy estate, after the payment of the amounts set forth in Sections (A) and (B) above shall be paid to the Ohio Environmental Protection Agency in full satisfaction of its claims against the bankruptcy estate and/or its claims against the Trustee individually or in his representative capacity, including, but not limited to, the following:

- 1) Any and all claims asserted by the Ohio Environmental Protection Agency in its proof of claim filed in this bankruptcy case arising prepetition or post-petition.
- 2) Any and all claims regarding the clean up **of** any real property remaining owned by the Debtor or any related costs, fines, assessments or charges, whether statutory or contractual; and
- 3) Any claims of any attorney or agent acting on behalf **of** the Ohio Environmental Protection Agency with respect to any claim which it may assert against the bankruptcy estate or the Trustee in his individual or representative capacity.

(D) **IT IS FURTHER ORDERED** that the Ohio Environmental Protection Agency will execute a release with respect to its claims against the bankruptcy estate and the Trustee as set forth herein. The Ohio Environmental Protection Agency expressly reserves any and all claims against the Debtor or against any other parties not released pursuant to this settlement.

(E) **IT IS FURTHER ORDERED** that Trustee is authorized, pursuant to 11 U.S.C. Section 726 and Federal Rules of Bankruptcy Procedure 3009 to make a partial distribution to the Ohio Environmental Protection Agency in the amount of Three Hundred Thousand Dollars (\$300,000.00), to be paid within five (5) days after this order becomes final and non-appealable.

(F) **IT IS FURTHER ORDERED** that any remaining distribution to the Ohio Environmental Protection Agency to be made pursuant to the terms of this order shall be made upon the approval of the Trustee's final report and account in this case and after the approval of the fee application of the Debtor's attorney, the approval of any other administrative fees or claims, the approval of the Trustee's compensation and the approval of the attorney fees and expenses of counsel for the Trustee.

(G) **IT IS FURTHER ORDERED** that the real estate consisting of approximately 50 acres and known generally as 1367 East Main Street, Newark, Ohio and being adjacent to the Licking River will be abandoned only at the time of the closing of this case pursuant to 11 U.S.C. Section 554(c).

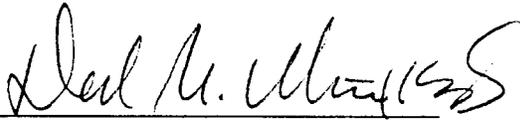
(H) **IT IS FURTHER ORDERED** that the partial objection filed by the Ohio Environmental Protection Agency is fully resolved and addressed in this Agreed Order.

IT IS SO ORDERED.

4/17/02
Date


UNITED STATES BANKRUPTCY JUDGE

APPROVED:



David M. Whittaker, Esq. (0019307)
Case Attorney for David M. Whittaker, Trustee
LUPER, SHERIFF & NEIDENTHAL
50 W. Broad Street, Suite 1200
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614.221-7663



Michael J. Idzkowski, Esq. (0062839)
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- ✓ Newark Processing Co., Inc.
P.O. Box 730
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- ✓ James R. Cooper, Esq.
33 W. Main Street
P.O. Box 4190
Newark, OH 43055
- ✓ U.S. Trustee
170 N. High Street, Suite 200
Columbus, OH 43215

Served Through BNC 13 APR 2002 

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

2001 AUG 13 P 3:27

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

CASE NO. E-01 CV 0722 JRS

PLAINTIFF

JUDGE

v

DAVID WHITTAKER,
in his capacity as Trustee
of the Bankruptcy Estate of Newark
Processing, Inc.

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 David Whittaker, 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. "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.
 - b. "Defendant" means David Whittaker as Trustee in bankruptcy of the bankruptcy estate of Newark Processing, Inc.

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- e. "Director" means Ohio's Director of Environmental Protection.
- f. "Facility" refers to the facility located on about 50 acres known generally as 1367 E. Main Street, Newark, Licking 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. 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

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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. Defendant is enjoined and ordered to, within 5 days of the entry of this Consent Order, file with the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division ("the Bankruptcy Court"), Case No. 97-50253, a motion to compromise claims of the State of Ohio and make partial distribution. A copy of said motion is attached as Attachment A.

7. 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, in accordance with and pursuant to O.A.C. 3745-27-11(A), (B) and (E), money into a trust fund in the amount determined by the Bankruptcy Court to properly compromise the State of Ohio's claim. The wording of the trust fund instrument shall be identical to the wording specified in Attachment B attached hereto.

VI. STIPULATED PENALTIES

8. In the event that the Defendant fails to comply with any of the requirements

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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.

9. 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.

10. 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.

VII. RETENTION OF JURISDICTION

11. The Court will retain jurisdiction of this action for purposes of enforcing this Consent order.

VIII. COURT COSTS

12. The Defendantis hereby ordered to pay all court costs of this action.

IX. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

13. 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.

X. AUTHORITY TO ENTER INTO THE CONSENT ORDER

14. 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

DATE.



JUDGE, COURT OF COMMON PLEAS
LICKING COUNTY

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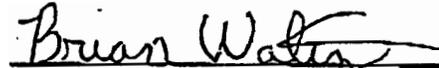
APPROVED:

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO



David Whittaker,
as Trustee In Bankruptcy

Defendant



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