

IN THE COURT OF COMMON PLEAS  
GUERNSEY COUNTY OHIO

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COMMON PLEAS COURT  
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CLERK OF COURTS  
GUERNSEY CO., OHIO  
**RECEIVED**

STATE OF OHIO, ex rel. CASE NO 88 M265  
BETTY D. MONTGOMERY

ATTORNEY GENERAL OF OHIO, OFFICE OF THE ATTORNEY GENERAL  
JUDGE RICHARD D. HIXSON  
(by Assignment)

Plaintiff,

vs.

MAR 22 2002

WESTLAND LANDFILL, INC.,  
et al.,

MODIFIED CONSENT ORDER OHIO EPA  
DIV. OF SOLID & INFECTIOUS WASTE MGMT.

**FINAL APPEALABLE  
ORDER**

Defendants.

On June 15, 1995, the State of Ohio by its Attorney General and on behalf of the Director of the Ohio Environmental Protection Agency (hereinafter "Director" and "Ohio EPA"), filed the State of Ohio's Civil Charges in Contempt Against All Defendants stating that Howard R. Winnett, Gordon Forster and Westland Landfill, Inc., (hereinafter "Defendants") violated the provisions of the Court's Consent Order filed on March 30, 1992 (hereinafter "March 1992 Order"). On July 8, 1998, the State of Ohio filed Plaintiffs Motion for Leave to File Amended Civil Charges in Contempt Against All Defendants, (1998 Version) Instanter and Plaintiffs Amended Civil Charges in Contempt Against All Defendants (The two above-named pleadings are hereinafter referred to as "State's Charges in Contempt"). At this time, Defendants agree that they have failed to fully comply with and are therefore in violation of the March, 1992 Order. Defendant3 further agree to enter into this Modified Consent Order to resolve the State's Charges in Contempt which are pending in this case. The terms and provisions of this Modified Consent Order shall supersede and replace the March, 1992 Order.

It is ORDERED AND ADJUDGED, that Defendants may purge themselves of the contempt of the March, 1992 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 Modified Consent Order

**I. JURISDICTION**

1. The Court has authority to issue this Modified Consent Order pursuant to O.R.C. Chapter 3734.

**II. PARTIES**

2. The provisions of this Modified Consent Order shall apply to and be binding upon the Defendants, their agents, officers, employees, assigns, and successors in interest. In addition, this Modified Consent Order shall apply to all persons, firms, corporations and other entities having notice of this Modified Consent Order and acting in privity with Defendants.

**III. INJUNCTION**

3. Defendants are ORDERED and ENJOINED to immediately cease accepting all wastes at the Westland Landfill including, but not limited to, solid waste as defined in RCAC 3745-27-01(B)(43).

4. Defendant Howard R. Winnett is ORDERED and ENJOINED to pay to the State of Ohio a civil penalty in the amount of Two Hundred Twenty-five Thousand Dollars (\$225,000.00). However, if Defendant Howard R. Winnett fully complies with the terms and conditions hereinafter set forth in paragraph 6 of this Modified Consent Order, the payments made pursuant to that paragraph shall be in lieu of any civil penalty and in satisfaction of all civil penalty claims relating to the Defendants' violations identified in the State's Charges in Contempt. If Defendant Howard R. Winnett fails to comply with the terms and conditions of paragraph 6, the civil penalty mentioned in this paragraph shall be in addition to Defendants'

obligation to fully fund the closure, post-closure trust set out in paragraph 5 below.

5. Attached to this Modified Consent Order and made a part hereof as Attachment 1, is a trust fund agreement entitled, "Westland Landfill Trust Agreement." The Westland Landfill Trust established by the Westland Landfill Trust Agreement is to provide for the closure and post-closure costs of the Westland Landfill. Defendant Howard R. Winnett agrees and is ORDERED and ENJOINED to fund the closure/post-closure trust fund, Account Number 1083014303, located at the ~~Huntington~~ Bank, for the full amount of the cost estimate for closure and post-closure care found in Schedule A of Attachment 1 including any adjustments from updated cost estimates approved by the Ohio EPA. The wording of the Westland Landfill Trust Agreement is identical in substance to OAC 3745-27-17(A) and contains the following additional language:

- a. Any moneys remaining in the trust fund after the completion of the thirty year post-closure period, shall be disbursed to the Ohio EPA for payment into the hazardous waste, ~~clean-up~~ fund established pursuant to R.C. Section 3734.28, or any successor fund identified by the Ohio EPA; and
- b. The Director, at his non-reviewable discretion, may allow, or provide for the disbursement of any proceeds from the trust fund for the payment of any closure, post-closure *care* or other costs associated with environmental remedial activities or corrective measures at the Westland Landfill.
- c. There shall not be any further modifications or amendments to the trust instrument for the trust fund without the Director's written approval.

6. The Court finds that Defendants have limited financial resources. Accordingly, the Court hereby SUSPENDS its civil penalty order in paragraph 4 herein and its order in paragraph 5 herein that Defendant Howard R. Winnett fully fund the closure, post-closure trust, on the following conditions:

- a. Defendant Howard R. Winnett shall deposit to the trust mentioned in paragraph 5 herein not less than Two Hundred and Twenty-Five Thousand Dollars (\$225,000.00) according to the following schedule:

<u>Payment Date</u>	<u>Payment Amount Due</u>	<u>Remaining Balance Due</u>
September 29, 2001	\$185,000.00	\$40,000.00
October 19, 2001	\$15,000.00	\$25,000.00
April 19, 2002	\$25,000.00	\$0.00

- b. The parties agree that the schedule set out above includes a grace period of thirty (30) days. Under this provision, payments will not be considered late under the Modified Consent Order until thirty calendar days after the due date set out in the schedule.

#### **IV. COMPLIANCE WITH APPLICABLE LAWS**

7. Nothing herein shall affect Defendants obligation to comply with all applicable federal, state, or local laws, regulation, rules, or ordinances. Defendants shall obtain all federal, state, or local permits and licenses necessary to comply with this Modified Consent Order.

#### **V. MONEYS RELEASED FROM THE TRUST FUND**

8. The Plaintiff, pursuant to its regulatory authority, may, at Plaintiffs non-reviewable discretion, perform closure and/or post-closure and/or corrective measure activities at the Westland Landfill at any time by using the funds from the trust fund. The Defendants waive any rights to challenge any of the activities identified in this paragraph.

#### **VI. SATISFACTION OF LAWSUIT**

9. Except as otherwise provided for by this Modified Consent Order and/or by law, compliance with the terms of this Modified Consent Order shall constitute full and complete satisfaction of Defendants' civil liability to Plaintiff for all claims alleged in Plaintiffs Complaint.

**VII. GENERAL PROVISIONS**

10. This court shall retain jurisdiction over this cause for the purpose of making any order or decree which it deems necessary to enforce this Modified Consent Order.

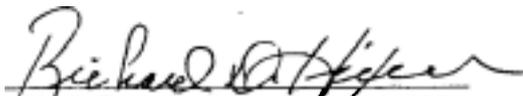
11. Unless otherwise specified in this Modified Consent Order, all references to Ohio Administrative Code shall refer to the most recent version of the rule that is effective on the date of entry of this Modified Consent Order. Attachment 1 of this Modified Consent Order is fully incorporated into this Modified Consent Order.

12. All court costs of this action shall be assessed against the Defendants and paid by the Defendants.

13. Documents required by this Modified Consent Order to be submitted to the Ohio EPA shall be submitted to:

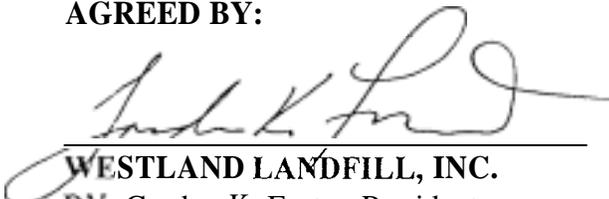
Ohio Environmental Protection Agency  
Southeast District Office, DSIWM  
2195 Front Street  
Logan, Ohio 43138

IT IS SO ORDERED THIS 11th DAY OF March, 2001, BY:

  
**JUDGE RICHARD D. HIXSON**

(Sitting by Assignment from  
Muskingum County, Ohio)

**AGREED BY:**



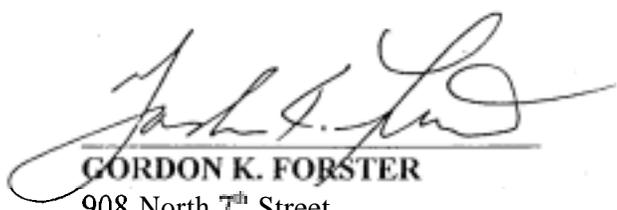
**WESTLAND LANDFILL, INC.**

BY: Gordon K. Foster, President  
P. O. Box 425  
Cambridge, Ohio 43725



**HOWARD R. WINNETT**

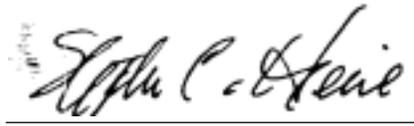
10673 Twin Oaks Drive  
Cambridge, Ohio 43725



**GORDON K. FORSTER**

908 North 7<sup>th</sup> Street  
Cambridge, Ohio 43725

**DEFENDANTS**



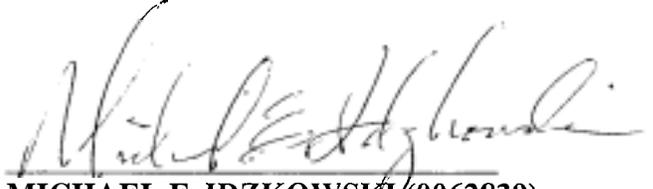
**STEPHEN C. HEINE, ESQ.**

Heine & Ferguson  
803 Steubenville Avenue  
Cambridge, Ohio 43725

**ATTORNEY FOR DEFENDANTS**

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**BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO**



**MICHAEL E. IDZKOWSKI (0062839)**

**SUMMER J. KOLADIN (0072072)**

Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215-3428  
Telephone: (614) 466-2766

**ATTORNEYS FOR PLAINTIFF**

## Attachment 1

### WESTLAND LANDFILL, TRUST AGREEMENT

The "Agreement," entered into as of Dec. 7, 2001, by and between Westland Landfill, Inc., by its President Howard R. Winnett and Vice President Gordon K. Forster (the "Grantor"); Huntington National Bank, a National Bank (the "Trustee"); and the Ohio Environmental Protection Agency (the "Ohio EPA").

Whereas, the Ohio EPA has established certain rules applicable to the Grantor, requiring that the owner or operator of a solid waste facility provide assurance that funds will be available when needed for final closure and/or post-closure care, and/or corrective measures of the facility,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

#### **Section 1. Definitions.** As used in this Agreement:

- (a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term "Trustee" means the trustee who enters into this Agreement and any successor trustee.
- (c) The term "Director" means the director of the Ohio EPA, or his designee.

**Section 2. Identification of Facilities and Cost Estimates.** This Agreement pertains to the facilities and/or noncontiguous unit(s) of a sanitary landfill facility and cost estimates identified on the attached **Schedule A**, pertaining to closure and post-closure care including any adjustments from updated cost estimates approved by the Ohio EPA, as well as any outstanding monthly disposal fees owed to the State. Said Facilities specifically include what is commonly known as the Westland Landfill, Inc., a solid waste landfill located at R.D. #2, New Concord, Guensey County, Ohio.

**Section 3. Establishment of Fund.** The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Ohio EPA. The Grantor and the Trustee intend that no third party shall have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in **Schedule B** attached hereto. Such property and any other property subsequently transferred to the Trustee is referred

to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund will be held by the Trustee, in trust, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantors, any payments necessary to discharge any liabilities of the Grantors established by the Ohio EPA.

**Section 4. Payment for Closure and Post-Closure Care, Scrap Tire Transportation and Corrective Measures.** The Director, at his non-reviewable discretion, may allow, or provide for, the disbursement of any proceeds from the trust fund for the payment of any closure, post-closure care or other costs associated with environmental remedial and or corrective measures at the Westland Landfill, Inc. The Trustee will reimburse the Director or other persons as specified by the Director from the Fund for closure, post-closure, and/or corrective measures expenditures in such amounts as the Director will direct, in writing. Upon refund, such funds will no longer constitute part of the Fund as defined herein.

**Section 5. Remaining Monies.** Any monies remaining in the trust fund after the completion of the thirty year post-closure period shall be disbursed to the Ohio EPA for payment into the hazardous waste clean up fund established pursuant to O.R.C. Section 3734.28, or any successor fund identified by the Ohio EPA.

**Section 6. Payment Comprising the Fund.** Payments made to the Trustee for the Fund will consist of cash or securities acceptable to the Trustee.

**Section 7. Trustee Management.** The Trustee will invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Director may communicate in writing to the Trustee periodically, subject, however, to the provision of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee will discharge its duties with respect to the Trust Fund solely in the interest of the Beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

(a) Securities or other obligations of the Grantors or any other owner or operator of the facilities or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. Section 80a-2(a), will not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

**Section 8. Commingling and Investment.** The Trustee is expressly authorized in its discretion:

(a) To transfer periodically any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. Sections 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

**Section 9. Express Powers of Trustee.** Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee will be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentally thereof, with a Federal Reserve Bank, but the books and records of the Trustee will at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

**Section 10. Taxes and Expenses.** All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund will be paid from the Fund. All other expenses, proper charges, and disbursements, incurred by the Trustee in connection with the administration of this trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantors, and all other proper charges and disbursements of the Trustee **will** be paid from the Fund. Expenses, proper charges, and disbursements include fees for **legal services**, rendered to the Trustee and the compensation of the Trustee to the extent the Grantors **fails to** compensate the Trustee pursuant to Section 13.

**Section 11. Annual Valuation.** The Trustee ~~will~~ annually, not later than thirty days prior to the anniversary date of the establishment of the Fund, furnish to the Grantors and to the Director a statement confirming the value of the Trust. **Any securities in the Fund will be valued at market value as of no more than sixty days prior to the anniversary date of establishment of the Fund.** The failure of the Grantors to object in writing to the Trustee not later than ninety days after the statement has been furnished to the Grantors and the Director will constitute a conclusively binding assent by the Grantors, barring the Grantors from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

**Section 12. Advice of counsel.** The Trustee may periodically consult with counsel with respect to any question arising **as to** the construction of this Agreement or any action to be *taken* hereunder. The Trustee will be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

**Section 13. Trustee compensation.** The Trustee will be entitled to reasonable **compensation** from the Fund for the Trustee's services **as** agreed upon in ~~writing~~ periodically with the Director.

**Section 14. Successor Trustee.** The Trustee may resign or the Director may replace the Trustee, but such resignation or replacement shall not be effective until the Director has appointed a successor Trustee and this successor accepts the appointment. The successor Trustee will have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee will assign, transfer, and pay over to the successor Trustee the funds and properties then constituting the fund. If for any reason the Director cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor Trustee shall specify the date on which it assumes administration of the Trust in a writing sent to the Grantors, the Director, and the present Trustee by certified mail not later than ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section will be paid **as** provided in Section 10.

**Section 15. Instructions to the Trustee.** All orders, requests, and instructions by the Director to the Trustee will be in Writing, signed by *the* Director and the Trustee will act and be **fully**

protected in acting in accordance with such orders, requests, and instructions. The Trustee will have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Director hereunder has occurred. The Trustee will have no duty to act in the absence of such orders, requests and instructions from the Director except as provided for herein.

**Section 16. Amendment of Agreement.** There shall not be any further modifications or amendments to this Trust Agreement for the trust fund without the Director's written approval. This Agreement may be amended by an instrument in writing executed by the Director and the Trustee, provided that no such amendment may require the Grantors to make additional payments to the Fund or to otherwise make payments in furtherance of the purposes of this Agreement.

**Section 17. Irrevocability and Termination.** Subject to the right of the parties to amend this Agreement as provided in Section 17, this trust will be irrevocable and will continue until terminated at the written agreement of the Trustee and the Director. Upon termination of the Trust, all remaining Trust property, less final Trust administration expenses, will be delivered to the Hazardous Waste Clean Up Fund established pursuant to O.R.C. Section 3734.28, or any successor fund identified by the Ohio EPA.

**Section 18. Immunity and Indemnification.** The Trustee will not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the Director issued in accordance with this agreement. The Trustee will be indemnified and saved harmless from the Trust Fund, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense.

**Section 19. Choice of Law.** This Agreement will be administered, construed, and enforced according to the laws of the State of Ohio.

**Section 20. Interpretation.** As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement will not affect the interpretation or the legal efficacy of this Agreement.

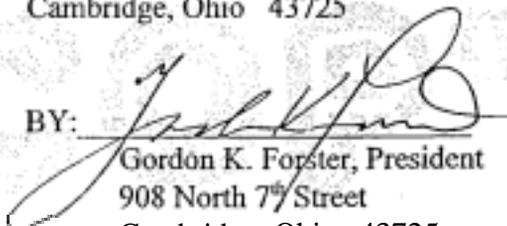
**Section 21. Compliance with Administrative Code.** The parties below certify that the wording of this Agreement is identical to the wording specified in paragraph (A)(1) of Rule 3745-27-17 of the Administrative Code, as such rule was constituted on the date first above written, except as modified by an agreed Modified Consent Order entered on or about March 5, 2002, in the case captioned as State of Ohio, ex. rel., Betty D. Montgomery vs. Westland Landfill, Inc., et al., (In The Court of Common Pleas, Guernsey County, State of Ohio, Case # 88 M 265.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written.

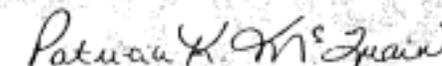
GRANTORS WESTLAND LANDFILL  
P. O. Box 425  
Cambridge, Ohio 43725



BY:

  
Gordon K. Forster, President  
908 North 7<sup>th</sup> Street  
Cambridge, Ohio 43725

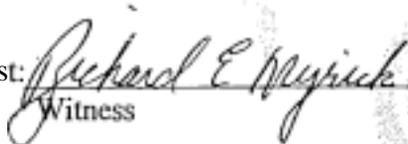
Attest:

  
Witness

BY:

  
Howard R. Winnett, Personally  
10673 Twin Oaks Drive  
Cambridge, Ohio 43725

Attest:

  
Witness

TRUSTEE:

  
VICE PRESIDENT

Attest:

  
Witness

# Certification of Acknowledgment

State of Ohio

County of Quebec

On this 9th day of Nov., 2001, before me personally came **Gordon K. Forster**, to me known, who being by me duly sworn, did depose and say that respectively he is/was the President of Westland Landfill, Inc. and the corporation described in and which executed the above instrument; and that he signed his name thereto.

Patricia K. McQuain  
Notary Public

**PATRICIA K. McQUAIN**  
Notary Public, State of Ohio  
My Commission Expires 4-17-06



**SCHEDULE B**

**AMOUNT OF INITIAL DEPOSIT**

The initial deposit into this Trust is \$ 100,000.00 . This amount was established by the Court of Common Pleas, Guernsey County, Ohio, Case No. 88 M 265.