

CLERK COMMON  
PLEAS COURT  
LICKING CO. OHIO

2014 AUG 27 PM 3: 36

GARY R. WALTERS  
CLERK

IN THE COURT OF COMMON PLEAS  
LICKING COUNTY, OHIO

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

Plaintiff,

v.

ROBERTS C&DD FACILITY, INC.,

Defendant

CASE NO. 14 CV 0771

JUDGE Branstool

---

CONSENT ORDER FOR PRELIMINARY INJUNCTION

---

WHEREAS Plaintiff, the State of Ohio, through its Attorney General, (the "State"), filed a Complaint for Injunctive Relief and Civil Penalties ("Complaint") against the Defendant Roberts C&DD Facility, Inc. (the "Defendant") (collectively, the "Parties") alleging violations of Chapter 3714 of the Ohio Revised Code and Chapter 3745-400 of the Ohio Administrative Code; and

WHEREAS the State and Defendant have consented to entry of this Consent Order for Preliminary Injunction;

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

## **I. JURISDICTION AND VENUE**

1. The Court has both personal and subject matter jurisdiction over the Parties. The Complaint states a claim upon which relief can be granted, and venue is proper in this Court for the purposes and duration of this Order.

## **II. PERSONS BOUND**

2. The provisions of this Consent Order shall apply to and be binding only upon the State and Defendant, and, to the extent consistent with Civ.R. 65(D), Defendant's officers, agents, servants, employees, successors, and assigns, and those persons in active concert or participation with Defendant under the names that it presently uses or any other names it uses through any corporate or other devise who receive actual notice of this Consent Order whether by personal service or otherwise.

3. Defendant agrees and is hereby enjoined to provide actual notice of this Order to its officers, agents, servants, employees, successors, and assigns, and those persons in active concert or participation with Defendant regarding any activity related to this Consent Order or the Complaint in this case.

## **III. DEFINITIONS**

4. "LCHD" means the Licking County Health Department.
5. "Order" refers to this Consent Order.
6. "Director" means the Director of the Ohio Environmental Protection Agency.
7. "Ohio EPA" means the Ohio Environmental Protection Agency.
8. "Techniglas Road Property" means the property owned by Defendant located on Techniglas Road, Newark, Ohio 43055, and identified by the Licking County Auditor's office as parcel ID no. 050-168150-00.

9. "Fallsburg Road Property" means the property owned by Defendant located at 7271 Fallsburg Road, Newark, Ohio 43055, and identified by the Licking County Auditor's office as parcel ID no. 50-168570-00.
10. "Fallsburg Road Landfill" or "C&DD Facility" means the construction and demolition debris landfill located at 7271 Fallsburg Road, Newark, Ohio 43055.
11. "Properties" means both the Techniglass Road Property and the Fallsburg Road Property.

#### **IV. PRELIMINARY INJUNCTIVE RELIEF**

12. **Property Access.** Defendant is enjoined and ordered to provide the Ohio EPA, its contractors, employees, agents, representatives, and assigns (hereinafter "Ohio EPA"), and the Licking County Health Department, its contractors, employees, agents, representatives, and assigns (hereinafter the "LCHD"), the right of full access to the Techniglas Road Property and the Fallsburg Road Property without any further or prior notice for all purposes that Ohio EPA or LCHD may deem reasonable, necessary, or appropriate to address the conditions arising from or related to the fire at the C&DD Facility and the Fallsburg Road Property, conditions related to closure of the C&DD Facility pursuant Ohio Adm. Code Rule 3745-400-12(A), or conditions related to post-closure care of the C&DD Facility, including but not limited to the following:

##### **Techniglas Road Property Access**

- a. Defendant shall allow Ohio EPA or the LCHD access over all access roads, easements, easements appurtenant to the Techniglas Road Property, and upon all portions of the Techniglas Road Property;
- b. Defendant shall allow Ohio EPA or the LCHD, and their respective trucks containing such on-site or off-site soils and equipment as Ohio EPA or the LCHD deem appropriate, access over all access roads, easements, easements appurtenant to the Techniglas Road Property, and upon all portions of the Techniglas Road Property;
- c. Defendant shall allow Ohio EPA or the LCHD at Ohio EPA's or the LCHD's

discretion, the right to clear, process and/or recover trees and vegetation, or to excavate, contour, move, relocate, and otherwise obtain and use soils located on the Techniglas Road Property, and place those soils upon the Fallsburg Road Property;

- d. Defendant shall allow Ohio EPA or the LCHD at Ohio EPA's or the LCHD's discretion, the right to install fencing, barriers, or signs on the Techniglas Road Property to prevent unauthorized access to the Property or to otherwise facilitate on-site safety measures;
- e. Defendant shall allow Ohio EPA or the LCHD at Ohio EPA's or the LCHD's discretion the right of full access to the Techniglas Road Property for all purposes that Ohio EPA or LCHD may deem reasonable, necessary, or appropriate to address the conditions arising from or related to closure of the C&DD Facility located on the Fallsburg Road Property pursuant Ohio Adm. Code Rule 3745-400-12;
- f. Defendant shall allow Ohio EPA or the LCHD at Ohio EPA's or the LCHD's discretion access to the Techniglas Road Property to perform leachate control, collection, and disposal measures; and
- g. Defendant shall allow Ohio EPA or the LCHD at Ohio EPA's or the LCHD's discretion access to the Techniglas Road Property to conduct sampling and perform monitoring of air, soil, or surface or ground waters to address conditions related to the fire, closure or post-closure care of the C&DD Facility.

#### **Fallsburg Road Property Access**

- a. Defendant shall allow Ohio EPA or the LCHD access over all access roads, easements, easements appurtenant to the Fallsburg Road Property, and upon all portions of the Fallsburg Road Property;
- b. Defendant shall allow Ohio EPA or the LCHD, and their respective trucks containing such on-site or off-site soils and equipment as Ohio EPA or the LCHD deem appropriate, access over all access roads, easements, easements appurtenant to the Fallsburg Road Property, and upon all portions of the Fallsburg Road Property;
- c. Defendant shall allow Ohio EPA or the LCHD at Ohio EPA's or the LCHD's discretion, access to the C&DD Facility to perform excavation activities and to apply fire suppressants to attempt to extinguish the fire;
- d. Defendant shall allow Ohio EPA or the LCHD at Ohio EPA's or the LCHD's discretion, the right to clear and/or process trees and vegetation, or to excavate, contour, move, place, relocate, and otherwise obtain and use soils located on the Fallsburg Road Property, or to grade and seed the Fallsburg Road Property;

- e. Defendant shall allow Ohio EPA or the LCHD at Ohio EPA's or the LCHD's discretion, the right to install fencing, barriers, or signs on the Fallsburg Road Property to prevent unauthorized access to the Property or to otherwise facilitate on-site safety measures;
- f. Defendant shall allow Ohio EPA or the LCHD at Ohio EPA's or the LCHD's discretion, the right to demolish the shed/outbuilding, and abandon the water well on the Fallsburg Road Property;
- g. Defendant shall allow Ohio EPA or the LCHD at Ohio EPA's or the LCHD's discretion access to collections or ponds of liquids on the Fallsburg Road Property to perform fire abatement, containment, and prevention measures;
- h. Defendant shall allow Ohio EPA or the LCHD at Ohio EPA's or the LCHD's discretion access to the Fallsburg Road Property to perform leachate control, collection, and disposal measures; and
- i. Defendant shall allow Ohio EPA or the LCHD at Ohio EPA's or the LCHD's discretion access to the Fallsburg Road Property to conduct sampling or perform monitoring of air, soil, or surface or ground waters to address conditions arising from or related to the fire, to closure or to post-closure care of the C&DD Facility.

13. **Additional Necessary Measures.** Nothing in the above paragraph number 12 shall be construed to limit the right of access of the Ohio EPA or the LCHD, their respective contractors, employees, agents, representatives, and assigns, to take additional measures that Ohio EPA or the LCHD may deem reasonable, necessary, or appropriate to address: the conditions arising from or related to the fire at the Facility, to conduct closure of the Facility, to conduct post-closure care of the Facility, or any incidental conditions such as the need to facilitate safety conditions on the Property.

14. **Clearing and Recovery of Timber.** The Parties shall execute a contract allowing Plaintiff to clear, process, recover, and/or for value sell the trees located on the Techniglas Road Property in furtherance of Plaintiff's excavation or use of soils from the Techniglas Road Property for closure, post-closure, and fire remediation activities at the Fallsburg Road Property.

15. **Civil Penalty.** The monies received by Plaintiff from the activities described in Paragraph 14 shall be credited, dollar for dollar, towards the civil penalty sought by Plaintiff pursuant to R.C. 3714.11.

16. **Environmental Covenant and Easement.** The Plaintiff and Defendant agree that, pursuant to R.C. 5301.80 to 5301.92 and R.C. 3745.01 that Defendant shall enter into an Environmental Covenant and an Easement, at Ohio EPA's discretion, and allow Plaintiff to record the Environmental Covenant and an Easement with the Licking County Recorder to facilitate the performance of the environmental response project including the containment or extinguishment of the fire, the closure of the Fallsburg Road Landfill and the post-closure care of the Fallsburg Road Landfill. .

17. Defendant agrees not to interfere with, hinder, harm, or otherwise damage the fire abatement measures, closure measures or post-closure care measures taken by Ohio EPA or the LCHD at the Fallsburg Road Property, including any operation and maintenance measures undertaken by Ohio EPA or the LCHD.

18. Plaintiff maintains, and Defendant agrees, that Plaintiff, by entering into this Order, assumes no liability for any injuries or damages to persons or property resulting from actions taken, or not taken, by Ohio EPA, its contractors, employees, agents, representatives, or assigns, or for actions taken, or not taken, by the Licking County Health Department, its contractors, employees, agents, representatives, or assigns. Plaintiff agrees that it will hold Ohio EPA and LCHD harmless for any damages that may occur on the Properties as a result of the tasks undertaken in compliance with this Order.

19. Upon completion of any remediation action specified in this Order, Defendant agrees

that the Director of Ohio EPA or the LCHD as applicable may record the costs incurred by performing those measures specified in this Order and not otherwise covered by the Owner or Operator by and through financial assurance or other forms of payment, including costs for labor, materials, and contract services, at the office of the Licking County Recorder. Defendant agrees that the costs so recorded shall constitute a lien against the Property until discharged. Defendant agrees not to dispute the validity of any lien, filed in accordance with these Orders, either in law or equity, to the extent that the costs are accurately recorded.

20. **Covenant Not to Sue.** Defendant agrees and covenants not-to-sue the State including Ohio EPA, its contractors, employees, agents, representatives, or assigns, and the LCHD, its contractors, employees, agents, representatives, or assigns, for any and all actions taken at the C&DD Facility or Properties, and for any and all actions not taken by the State including Ohio EPA, its contractors, employees, agents, representatives, and assigns, and the LCHD, its contractors, employees, agents, representatives, and assigns at the C&DD Facility or Properties, to address conditions arising from or related to the fire, closure or post-closure care of the C&DD Facilities. Defendant covenants not to sue and agrees not to assert any claim, demand, or cause of action against the Ohio EPA, its contractors, employees, agents, representatives, or assigns, or the Licking County Health Department, its contractors, employees, agents, representatives, or assigns, with respect to liability based upon ownership of the Properties or natural resources thereon for loss, damage, diminution in value to the Properties, mineral rights whether merged with the Properties or severed, or natural resources, including timber, upon the Properties.

## **V. RESERVATION OF RIGHTS**

21. Plaintiff reserves the right to seek further relief from this or any other Court including, but not limited to, further preliminary and/or permanent injunctive relief and civil penalties.

22. Plaintiff reserves, and this COPI shall be without prejudice to, any claims, demands, rights or causes of action, judicial or administrative, that Plaintiff may have or which may in the future accrue against Defendant, regardless of whether such claim, demand, right or cause of action was asserted in the Complaint.

23. Nothing herein shall be construed to relieve Defendant of its obligations to comply with applicable federal, State, or local statutes, regulations, rules, or ordinances.

## **VI. MODIFICATION**

24. No modification shall be made to this Order without written agreement of the Parties.

## **VII. RETENTION OF JURISDICTION**

25. The Court will retain jurisdiction of this action for the purpose of administering and enforcing Defendant's compliance with this Order.

## **VIII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK**

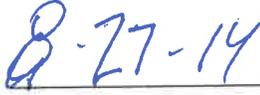
26. Pursuant to Civ.R. 58, upon the signing of this Order by the Court, the clerk is directed to enter it upon the journal. Within three days of entering the judgment upon the journal, the clerk is directed to serve notice of the judgment upon all parties, including its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

## **IX. SIGNATORIES**

27. The signatory for Defendant represents that she is fully authorized to enter into the terms and conditions of this Order and to legally bind Defendant to this Order.

**IT IS SO ORDERED:**

  
\_\_\_\_\_  
JUDGE, Licking County Court of Common Pleas

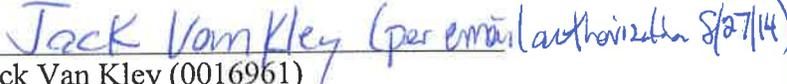
  
\_\_\_\_\_  
DATE

**APPROVED:**

Respectfully submitted,

MICHAEL DEWINE  
OHIO ATTORNEY GENERAL

  
\_\_\_\_\_  
Clint R. White (0086393)  
George Horvath (0030466)  
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, Ohio 43215-3400  
Telephone: (614) 466-2766  
Facsimile: (614) 644-1926  
clint.white@ohioattorneygeneral.gov  
george.horvath@ohioattorneygeneral.gov

  
\_\_\_\_\_  
Jack Van Kley (0016961)  
Van Kley & Walker, LLC  
132 Northwoods Blvd., Suite C-1  
Columbus, Ohio 43235  
Telephone: (614) 431-8900  
Facsimile: (614) 431-8905  
jvankley@vankleywalker.com

*Attorney for the Defendant*

*Attorneys for the Plaintiff State of Ohio*

  
\_\_\_\_\_  
Brenda Phelps  
President, Roberts C&DD Facility, Inc.  
121 Parana Drive  
Newark, OH 43055