

**IN THE COURT OF COMMON PLEAS  
PIKE COUNTY, OHIO**

STATE OF OHIO, ex rel.	:	CASE NO.
JIM PETRO	:	
ATTORNEY GENERAL OF OHIO	:	JUDGE:
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
PIKE SANITATION, INC.	:	CONSENT ORDER
	:	
Defendant.	:	

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio, by its Attorney General, Jim Petro (hereafter “Plaintiff” or “State”), and Defendant Pike Sanitation, Inc. (hereafter “Defendant”) having consented to the entry of this Order;

NOW THEREFORE, without trial of any issues of fact or law, without admission of any issues of law, liability or fact, and upon the consent of 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 Chapter 3734 of the Ohio Revised Code. Venue is proper in this Court. Solely for the purposes of this Consent Order and the underlying Complaint, Defendant does not contest that the Complaint states a claim upon which relief can be granted against Defendant.

## **II. PARTIES BOUND**

2. The provisions of this Consent Order shall apply to and are binding upon Defendant and its respective successors in interest and assigns, in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure.

3. Defendant shall provide a copy of this Consent Order to any other agent that Defendant employs to operate, close and/or conduct post-closure care or remedial activity at the Pike Sanitation Landfill (hereafter “the Facility”). Defendant shall ensure that any agreements with any other agent that Defendant employs to operate, close, conduct post-closure or remedial activity at the Facility or for services or work related to this Consent Order, expressly provide that the services or work must be performed in accordance with this Consent Order.

## **III. SATISFACTION OF LAWSUIT AND EFFECT OF ORDER**

4. The State has alleged that Defendant has violated Ohio Revised Code Chapters 3734, and Ohio Administrative Code Chapter 3745-27. Defendant denies all such allegations by entering into this Consent Order, and makes no admission of fact, law or liability with respect to the State’s allegations.

5. Except as otherwise provided in paragraph 6 of this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil and administrative liability of Defendant and its successors in interest and assigns for the claims alleged in the State’s Complaint.

6. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief from Defendant for: (A) claims or violations not referenced in the State’s Complaint; (B) any violations arising out of acts or omissions first occurring after

the entry date of this Consent Order; (C) enforcement of this Order through contempt proceedings; or (D) claims or violations under the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. § 9601 et. seq. or Ohio Revised Code §§ 3734.20 through 3734.27, for any emergency, removal, remedial, or corrective actions. Notwithstanding any provision in this Consent Order to the contrary, Defendant retains all rights, defenses, and/or claims it may legally raise to the extent that the State seeks further relief from the Defendant in the future, or in any action brought to enforce the terms of this Consent Order.

7. Nothing herein shall be construed to relieve Defendant 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 thereunder. Nothing herein shall be construed to prohibit Defendant from seeking any authorization, waiver or variance from the Director of Ohio EPA, as provided by applicable statute or regulation, and, if granted, any such authorization waiver or variance shall not require a modification to this Consent Order.

#### **IV. PERMANENT INJUNCTION**

8. Except as provided in Section V, below, Defendant is ordered and permanently enjoined to comply with Ohio Revised Code Chapters 3734 and 6111 and the rules promulgated thereunder, including the applicable provisions of OAC Chapter 3745-27.

9. For any landfill phase constructed subsequent to the entry of this Consent Order, Defendant shall construct, in accordance with Ohio EPA authorized plans, additional leachate collection sumps that intercept and prevent leachate generated in

those areas from entering the Phase 1 sump. A small transitional area around the existing Phases 1 and 3 will be allowed to direct leachate to the Phase 1 sump.

**V. INJUNCTIVE RELIEF AND COMPLIANCE SCHEDULE**

10. By the end of every working day, Defendant shall apply daily cover to all exposed solid waste, including the truck turnaround / backing area and any access roads within the cell to control fire hazards, blowing litter, odors, insects, vectors, and rodents. Defendant shall apply a minimum of six inches of soil or an approved alternate daily cover (ADC) shall be used to cover all solid waste. In the event that six inches of soil is not adequate to control fire hazards, blowing litter, odors, insects, vectors, and rodents, Defendant shall use additional soil cover or an approved ADC.

11. Defendant shall apply intermediate cover to all exposed solid waste where additional solid waste is not to be deposited for at least thirty days. Defendant shall use a soil layer, a minimum of twelve inches thick, consisting of well-compacted loam, silt loam, clay loam, silty clay loam, silty clay or some combination thereof, shall be used.

12. Defendant shall protect areas with intermediate cover from erosion and establish dense vegetation on interim final cover and final cover by doing the following:

- A. Defendant shall fill and grade the cover to obtain the thickness required as required by Ohio Adm. Code 3745-27-19(G) and (H).
- B. Defendant shall apply, at a minimum, erosion control materials in accordance with Attachment A.

13. Defendant shall reapply seed, fertilizers, and mulch as required by paragraph 12, as often as necessary to prevent erosion of all current and future intermediate cover and establish dense vegetation on all current and future interim cover and final cover.

14. Within 30 days after the entry of the Consent Order, Defendant shall make the appropriate payment based on a final closure cost estimate of \$3,679,446.26 and post-closure care cost estimate of \$4,740,723.00 to fund the closure and post-closure care of the municipal solid waste landfill at the Facility.

- A. Thereafter, Defendant shall continue to make payments into the trust fund not later than 30 days after each anniversary date of the first payment (June 20, 1996) pursuant to OAC 3745-27-15(F)(3)(a) and OAC 3745-27-16(F)(3)(a).
- B. The amount of each payment required by paragraph 14 shall be determined by performing the following calculation in accordance with OAC 3745-27-15(F)(3)(b) and OAC 3745-27-16(F)(3)(b):

$$\text{Next payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

Where CE is the current final and post-closure care cost estimates, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

- C. As of June 20, 2003, the number of years remaining in the pay-in period is 22.

15. Within 7 days after the entry of the Consent Order, Defendant shall deposit \$33,882.00 for final closure and \$18,623.00 for post-closure care of the 3 acres of existing waste disposal area at the scrap tire monocell.

16. Within one year after the entry of the Consent Order, Defendant shall make the appropriate payment based on a final closure cost estimate of \$1,426,668.00 and post-closure care cost estimate of \$691,416.00 to fund the closure and post-closure care of the approved 18-acre final closure of the monocell at the Facility.

- A. Thereafter, Defendant shall continue to make payments not later than 30 days after each anniversary date of the first payment (July 16, 1999) pursuant to OAC 3745-27-15(F)(3)(a) and OAC 3745-27-16(F)(3)(a).
- B. The amount of each payment shall be determined by performing the following calculation in accordance with OAC 3745-27-15(F)(3)(b) and OAC 3745-27-16(F)(3)(b):

$$\text{Next payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

Where CE is the current final and post-closure care cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

- C. As of July 16, 2003, the number of years remaining in the pay-in period is 5.

17. In lieu of providing financial assurance for the entire 18-acre monocell at the Facility in accordance with paragraph 16 above, Defendant reserves its right to submit, within 90 days after the entry of the Consent Order, a request to modify the PTI for the monocell at the Facility that will reduce the size of the permitted acres to approximately 3 acres and to adjust the authorized maximum daily weight receipts (AMDWR) to 2 tons a day.

- A. Within 30 days after the issuance of the PTI modification, but no later than one year after the entry of the Consent Order, Defendant shall make the appropriate payment based the final closure and post-closure cost estimates for the monocell at the Facility in accordance with the PTI modification.
- B. Thereafter, Defendant shall continue to make payments not later than 30 days after each anniversary date of the first payment (July 16, 1999) pursuant to OAC 3745-27-15(F)(3)(a) and OAC 3745-27-16(F)(3)(a).
- C. The amount of each payment shall be determined by performing the following calculation in accordance with OAC 3745-27-15(F)(3)(b) and OAC 3745-27-16(F)(3)(b):

$$\text{Next payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

Where CE is the current final and post-closure care cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

- D. Defendant must comply with paragraph 16 above if a PTI modification is not issued, reducing the size of the permitted acres and adjusting the AMDWR, within one year after the entry of the Consent Order.
18. Within 30 days after the entry of the Consent Order, Defendant shall verify that waste has or has not been placed beyond the authorized limits of waste placement for the tire monocell. Defendant shall conduct a detailed investigation of this possible overfill. Defendant shall give Ohio EPA 7 days notice of the proposed date(s) of the investigation. The investigation of the overfill shall include at least excavating trenches every one hundred feet along the northern limits of waste of the constructed portion of the monocell to verify that waste was not placed beyond the permitted limits. The crest of the interior slope shall be exposed, inspected and surveyed during this investigation. Defendant shall submit all of the results of this investigation to Ohio EPA within 45 days after the entry of the Consent Order.
19. Defendant shall place all waste not currently located in permitted limits into permitted limits within 365 days after the entry of the Consent Order. Specific areas of overfill include, but are not limited to, the following areas outlined below.
- A. The waste placed on portions of the Northern and Western slopes of Phase 1 (see Exhibit No. 1 and Exhibit No. 2) that is at an elevation higher than what is authorized on Plan Sheet 4D approved November 1, 2000, and all waste placed horizontally outside the limits of waste (see Exhibit No. 3) as depicted on Plan Sheet 7A approved August 19, 1996.

- B. The waste placed on portions of the Northern edge of the monocell (see Exhibit No. 2) that is at an elevation higher than what is authorized in PTI 06-5678, approved on April 20, 1999, and all waste placed horizontally and vertically outside the limits of waste as depicted on plan sheet 4D approved August 19, 1996.
20. Defendant reserves its right to submit a PTI modification within 90 days after the entry of this Consent Order in lieu of moving the waste reference in paragraph 19 above.
21. Unless Defendant obtains the PTI modification referenced in paragraph 20 within 365 days of the entry of the Consent Order, Defendant must comply with paragraph 19.
22. If Defendant removes waste pursuant to paragraph 19, within 395 days after the entry of the Consent Order, Defendant shall re-survey all repaired grades specified in paragraph 19 and submit a certification report to Ohio EPA verifying that all work outlined in paragraph 19 is complete.
23. Within 90 days after the entry of the Consent Order, Defendant shall remove the waste existing east of the limits of waste placement of Phase 3 - Cell 1 (see Exhibit No. 1) that is at an elevation higher than what is authorized on Plan Sheet 6L approved August 3, 2001, and all waste existing horizontally outside the limits of waste (see Exhibit No. 4).
24. Within 90 days after the entry of the Consent Order, Defendant shall re-survey all repaired grades specified in paragraph 23 and submit a certification report to Ohio EPA verifying that all work outlined in paragraph 23 is complete.
25. Within 180 days after the entry of the Consent Order, Defendant shall hire an Environmental Compliance Officer (ECO) with substantial experience and

demonstrated success in managing environmental and regulatory affairs at a solid waste landfill. The ECO's duties shall include, but not be limited to, training facility personnel on all landfill operations, initiating and implementing an environmental audit and a compliance program that identifies regulatory requirements, including time frames for achieving and maintaining compliance and the status of compliance activities. The ECO shall, within 270 days after the entry of the Consent Order, complete the following:

- A. Train all of Defendant's employees regarding the operations of the landfill. This training shall include, at a minimum, a description of each position, including its roles and responsibilities, and a summary of all major job characteristics and duties in achieving and maintaining compliance. Further, the training shall include a detailed discussion regarding emergency procedures at the Facility.
- B. Implement an environmental auditing and compliance program for the Defendant. This program shall identify areas of noncompliance and appropriate actions to be taken in response to noncompliance.
- C. The requirements of this paragraph shall automatically terminate in 3 years after the date of hire.

26. Defendant shall maintain and/or complete the following to the leachate collection system:

- A. Maintain all recording flow meters, including the flow meters on the leachate tank inlet and outlet.
- B. Within 30 days after the entry of the Consent Order, implement a daily record keeping system that will record the amount of leachate produced as indicated by the flow meters and the amount of leachate taken to the publicly owned treatment works (POTW).
- C. Retain all leachate records for a period of three years and have the records available for inspection at all reasonable times by Ohio EPA and Pike County General Health District staff.
- D. Install additional recording flow meter(s) to monitor all future phases of the landfill separate from the Phase 1 sump.

## **VI. CIVIL PENALTY CLAIMS**

27. For the violations of Ohio Revised Code Chapter 3734 and the regulations promulgated thereunder, Defendant agrees and is enjoined and ordered to pay to the State of Ohio a civil penalty in the amount of \$200,000.00. One hundred thousand dollars (\$100,000) will be deposited into the Environmental Remediation Fund established pursuant to R.C. 3734.281 in twelve equal payments. Defendant shall deliver the first payment within 7 days after the entry of the Consent Order. Thereafter, Defendant shall pay eleven equal payments by the first day of each month beginning with February 1, 2004. Defendant will receive one hundred thousand dollars (\$100,000) credit against the State's civil penalty claim outlined above by implementing the Supplemental Environmental Project outlined in paragraph 28. Defendant shall pay the civil penalty assessed under this paragraph by delivering to Plaintiff, State of Ohio, c/o Jena Suhadolnik or her successor, Administrative Assistant, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad St. 25<sup>th</sup> Floor, Columbus, Ohio 43215-3400, a certified check or money order in the proper amount payable to the order of "Treasurer, State of Ohio."

28. Defendant will receive one hundred thousand dollars (\$100,000) credit against the State's civil penalty claim outlined in paragraph 27 by depositing one hundred thousand dollars into the Scioto Sanitation, Inc. Trust # 108-301-31-0-8, Huntington National Bank, in twelve equal payments. Defendant shall deliver the first payment within 7 days after the entry of the Consent Order. Thereafter, Defendant shall pay eleven equal payments by the first day of each month beginning with February 1, 2004. Defendant shall receive the Supplemental Environmental Project credit by delivering a

certified check or money order in the proper amount payable to the order of “Scioto Sanitation, Inc. Trust” to Scioto Sanitation, Inc. Trust, c/o Candada Moore, Huntington National Bank, Corporate Trust, 7 East Oval, EA4E63, Columbus, Ohio 43219.

## **VII. STIPULATED PENALTIES**

29. In the event that Defendant fails to comply with any of the requirements of Section IV, VI and paragraphs 14-26 in Section V of this Consent Order, Defendant shall, immediately and automatically, be liable for and shall pay stipulated penalties in accordance with the following schedule:

Defendant shall pay two hundred and fifty dollars (\$250) per day for each day any requirement of this Consent Order is violated up to thirty (30) days; from thirty-one (31) days until ninety (90) days, Defendants shall pay five hundred dollars (\$500) per day; after ninety (90) days, Defendant shall pay seven hundred and fifty dollars (\$750) per day.

30. Stipulated penalties due under this Consent Order shall be paid by certified check or money order, payable to “Treasurer, State of Ohio” and mailed to Jena Suhadolnik or her successor, Administrative Assistant, Office of the Attorney General, Environmental Enforcement Section, 30 East Broad St.-25<sup>th</sup> Floor, Columbus, Ohio 43215-3400, within 10 days of the occurrence of the failure to comply with this Order as described above.

31. The payment of stipulated penalties by Defendant pursuant to this Section together with the acceptance of such stipulated penalties by Plaintiff, as evidenced by the cashing of the stipulated penalty payment by Plaintiff, shall be in lieu of any claim for civil penalties otherwise authorized by R.C. Chapter 3734 for the particular days of the

particular violation covered by the stipulated penalties paid, but shall not otherwise be construed to limit Plaintiff's authority to seek additional relief pursuant to R.C. Chapter 3734, including injunctive relief, or to otherwise seek judicial enforcement of this Consent Order, for the same violation for which a stipulated penalty was paid or for other violations.

### **VIII. NOTICES**

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

As to the Plaintiff:  
Ohio Environmental Protection Agency  
Southeast District Office  
Solid Waste Supervisor  
2195 Front Street  
Logan, Ohio 43138

As to Defendant:  
Pike Sanitation, Inc.  
123 South Lock Street  
Waverly, Ohio 45690

33. Either Party may change the name and/or address of its contact person(s) by sending written notice to the other Party.

### **IX. POTENTIAL FORCE MAJEURE**

34. If any event occurs which causes or may cause a delay in Defendant's compliance with any requirement of this Consent Order, Defendant shall notify Ohio EPA in writing within fourteen 14 days from when the Defendant knew, or by the exercise of reasonable due diligence should have known of the event, describing in detail the anticipated length in delay, the cause or causes of delay, and the measures taken or anticipated to be taken by Defendant to prevent or minimize the delay. Financial

hardship or the inability to pay shall not be considered force majeure events. If Defendant fails to give notice to Ohio EPA as required under this paragraph, Defendant may not raise this potential defense.

35. In any action by the State to enforce any of the provisions of this Consent Order, Defendant may raise at that time the question of whether it is entitled to a defense that its conduct was caused by circumstances beyond its control such as, by way of example and not limitation, acts of God, acts of war, and civil disturbances. While the State does not agree that such a defense exists, it is, however, agreed to by Defendant and the State that it is premature at this time to raise and adjudicate the existence of such a defense.

#### **X. EFFECTIVE DATE**

36. This Consent Order shall become effective upon the date of its entry by the Court.

#### **XI. RETENTION OF JURISDICTION**

37. This Court shall retain jurisdiction of this action for the purposes of making any order or decree that it deems appropriate to enforce this Consent Order.

#### **XII. TERMINATION OF THIS CONSENT ORDER**

38. At any time after completion of the requirements set forth in paragraphs 14-28 above, Defendant may seek to terminate this Consent Order. Defendant may seek such termination only by filing a motion with this Court pursuant to Civ. R. 60(B)(4). Plaintiff and Ohio EPA reserve the right to oppose said motion. Any motion to terminate this Consent Order may be granted only if the requirements of Civ. R. 60(B)(4) are satisfied and (1) Plaintiff and Ohio EPA agree to the termination, or (2) Defendant

demonstrates that Defendant has satisfied the requirements of paragraphs 14-28 of this Consent Order.

39. Notwithstanding anything contained within this Section to the contrary, the provisions of paragraph 9 of this Consent Order shall not be subject to termination, unless the parties file a joint motion with the Court requesting termination of those provisions.

**XIII. SIGNATORIES**

40. Each of the undersigned representatives for 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. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK**

41. Upon the signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within 3 days of entering the judgment upon the journal, the clerk is hereby directed to serve upon all Parties notice of 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.

**IT IS SO ORDERED.**

\_\_\_\_\_  
Judge  
PIKE COUNTY  
COURT OF COMMON PLEAS

\_\_\_\_\_  
Date

APPROVED BY:

**STATE OF OHIO, ex rel.  
JIM PETRO  
ATTORNEY GENERAL OF OHIO**

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**PIKE SANITATION, INC.**

By: \_\_\_\_\_  
President of Pike Sanitation, Inc.