

IN THE COURT OF COMMON PLEAS
COSHOCTON COUNTY, OHIO

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

Plaintiff,

vs.

STONE CONTAINER CORPORATION :

Defendant.

CASE NO. _____

JUDGE _____

PROFESSOR MILLER
CLERK OF COURTS
COSHOCTON CO., OHIO

01 DEC 31 PM 3:38

FILED

CONSENT ORDER AND FINAL JUDGMENT ENTRY

Plaintiff State of Ohio, ex rel. Betty D. Montgomery, Attorney General of Ohio, having filed the Complaint in this action against Defendant Stone Container Corporation to enforce Ohio's solid waste laws found in Chapter 3734 of the Revised Code and rules adopted under those chapters; and Plaintiff and Defendant having consented to the entry of this Order.

THEREFORE, without adjudication or admission of any issue of law or of fact, and upon the consent of the parties hereto, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

I. DEFINITIONS

1. As used in this Consent Order:

"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.

“Defendant” means the Stone Container Corporation.

“Director” means Ohio’s Director of Environmental Protection.

“Mill Creek Landfill” refers to the solid waste facility, including all areas of waste placement since the facility’s inception, operated by the Stone Container Corporation, in Coshocton County, Ohio, located approximately 11 miles north of Coshocton on County Road 38 in Mill Creek Township.

“Ohio EPA” means the Ohio Environmental Protection Agency.

“O.A.C.” means the Ohio Administrative Code.

“Plaintiff” means the State of Ohio by and through the Attorney General of Ohio.

“R.C.” means the Ohio Revised Code.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapters 3734 and the rules adopted thereunder. This court has jurisdiction over the parties. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted.

III. PERSONS BOUND

3. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and their assigns and successors in interest.

IV. SATISFACTION OF LAWSUIT

4. Except as otherwise provided in this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendant to Plaintiff for all claims alleged in the Complaint; for all claims, allegations or findings set forth in the

Director's Final Findings and Orders issued on December 22, 1989 (attached hereto as Exhibit A), for all claims, allegations or findings set forth in the Director's Findings and Proposed Orders issued on December 22, 1989 (attached hereto as Exhibit A1); and for all other claims and alleged violations set forth in the Ohio Environmental Protection Agency's (hereafter the "Ohio EPA") letters identified in Exhibit B, attached hereto. Defendant shall, within 30 days of entry of this Consent Order, withdraw its Permit to Install application(s) for continued use of the Mill Creek Landfill and dismiss its appeal to the Environmental Review Appeals Commission of the Director's December 22, 1989 Final Findings and Orders regarding the Mill Creek Landfill.

V. RESERVATION OF RIGHTS

5. Nothing in this Consent Order shall limit any authority the State of Ohio may have to:

(a) Seek relief for claims or conditions not alleged in the Complaint, for claims or conditions which did not arise or exist prior to entry of this Consent Order, or otherwise satisfied as set forth in Section IV above;

(b) Seek relief for violations of law or conditions alleged in the Complaint which occur after the entry of this Consent Order;

(c) Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order.

(d) Take any action authorized by law against any person, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended., 42 U.S.C. § 9601, *et seq.* and/or Ohio Revised Code Sections 3734.20 through 3734.27 to: (1) recover

natural resource damages and/or (2) order the performance of, and/or recover costs for any removal, remedial or corrective activities not conducted pursuant to the terms of this Consent Order.

(e) Take any action authorized by law against any person, including Defendant, to eliminate or mitigate conditions at the Mill Creek Landfill which may present an imminent threat to the public health or welfare or the environment.

6. Entering into this Consent Order, the Consent Order itself, or the taking of any action in accordance with it does not constitute an admission by Defendant of any factual or legal matters or opinions set forth herein or in the Complaint. Defendant does not admit liability under Ohio law or any other applicable law, rule or regulation for any purpose or admit any issues of fact or law, any wrongdoing, or any responsibility with regard to the Mill Creek Landfill. Defendant does not admit, and reserves its rights to contest or legally challenge, jurisdiction and venue with regard to activities not required or contemplated by this Consent Order. Nothing herein absolves Defendant from its duty to comply with the Consent Order.

7. Defendant reserves all rights that it may have against any other person under all federal, state and local laws.

8. The State of Ohio reserves all rights that it may have against any person other than Defendant.

VI. INJUNCTIVE RELIEF

Corrective Measures and Ground Water Monitoring

9. Defendant is hereby ordered and enjoined to implement the ground water monitoring plan as a corrective measure approved by the Director pursuant to O.A.C. 3745-29-10(F)(10), which plan is incorporated in Defendant's closure/post-closure care plan for the Mill Creek Landfill approved by the Director on May 21, 1997. If any of the wells which monitor the LK or the LKC zones show a valid statistically significant increase for any of the parameters being monitored per the ground water monitoring plan, Defendant must comply with O.A.C. Rule 3745-29-10(E) regarding assessment monitoring and O.A.C. Rule 3745-29-10(F) regarding development of a corrective measures plan (CMP). A copy of Defendant's closure/post-closure care plan for the Mill Creek Landfill, and related approval documents, are incorporated herein by reference. Modification of this groundwater monitoring plan may only be done with prior written concurrence of the Ohio EPA.

Post-Closure Care of Industrial Waste Landfill

10. Defendant is hereby ordered and enjoined to implement the post-closure care provisions of the closure/post-closure care plan for the Mill Creek Landfill approved by the Director on May 21, 1997. Defendant shall complete post-closure care in accordance with the schedule set forth in the approved closure/post-closure care plan. Defendant may modify the approved closure/post-closure care plan only with prior written concurrence of the Ohio EPA.

Addressing Landfill-Related Seeps

11. Defendant shall address all seeps which Defendant has identified as landfill-related seeps (currently seeps numbered 6 through 11). pursuant to Defendant's approved closure plan for the Mill Creek Landfill. Any additional landfill-related seeps which may occur after final closure of the existing landfill will be addressed pursuant to Defendant's approved 30 year post-closure care plan for the Mill Creek Landfill. Defendant shall collect all leachate and any other liquid flowing from the Seep 11 area and direct it through and treat it in the on-site wastewater treatment facility, such that discharge from the facility complies with the NPDES permit. With the prior written concurrence of the Ohio EPA, Defendant may address other landfill-related seeps by collecting and directing the seeps through the on-site wastewater treatment facility as an alternative to addressing the seeps through the applicable closure or post closure plan.

VII. SUBMITTAL OF DOCUMENTS

12. All documents required to be submitted to Ohio EPA pursuant to this Consent Order shall be submitted to the following address, or to such address(es) as Ohio EPA may hereafter designate in writing:

Ohio EPA
Southeast District Office
2195 Front Street
Logan, Ohio 43138
Attn: Solid Waste Supervisor

VIII. CIVIL PENALTY/SUPPLEMENTAL ENVIRONMENTAL PROJECT

13. Defendant agrees and is ordered and enjoined to pay to the Ohio EPA a civil penalty in the amount of two hundred and eighteen thousand and four hundred dollars (\$218,400.00). One hundred seventy-five thousand dollars (\$175,000.00) of this civil penalty is hereby suspended, but, in lieu of civil penalty, shall be paid by Defendant to fund supplemental environmental projects as set forth in paragraph 14 of this Consent Order. Defendant agrees and is ordered and enjoined to pay forty three thousand and four hundred dollars (\$43,400.00) of the civil penalty within thirty (30) days of entry of this Consent Order by delivering to Plaintiff, c/o Jena Suhadolnik or her successor, Office of the Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check in the full amount, payable to the order of "Treasurer, State of Ohio." This civil penalty shall be deposited into the hazardous waste cleanup fund created by R.C. Section 3734.28.

14. In lieu of paying the one hundred seventy-five thousand dollars (\$175,000.00) portion of the civil penalty suspended pursuant to paragraph 13 of this Consent Order, Defendant agrees and is ordered and enjoined to fund the following Supplemental Environmental Projects, in an amount totaling one hundred seventy five thousand dollars (\$175,000), as follows:

(a) Within thirty (30) days of entry of this Consent Order, Defendant agrees and is ordered and enjoined to pay one hundred twenty five thousand dollars (\$125,000.00) into a fund administered by the Huntington National Bank for the closure of the Scioto Sanitation Sanitary Landfill located at Lick Run-Lyra-Bloom Switch Road, Vernon Township, Scioto County, Ohio ("Scioto Sanitation Closure Fund"). This payment shall be made by certified check, payable to

“Huntington Trust Company, N.A., Candida Moore, Trustee, Account Number 108-301-31-0-8”, and mailed to Huntington Trust Company, N.A., c/o Candida Moore, Vice President, 41 South High Street, HC 1112, Columbus, OH 4.3215. Defendant shall deliver a copy of this check to Plaintiff State of Ohio, 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.

(b) Within thirty (30) days of entry of this Consent Order, Defendant agrees and is ordered and enjoined to pay fifty thousand dollars (\$50,000) for use by the Coshocton County schools for environmental education programs/projects. This amount shall be allocated as follows:

Coshocton City School District
\$16,000.00
Attn: Wade Lucas
1207 Cambridge Road
Coshocton, Ohio 438 12
(740) 622- 1901

River View Local School District
\$16,000.00
Attn: Kyle Kanuckle
26496 S.R. 60 N.
Warsaw, Ohio 43844
(740) 824-3521

Ridgewood Local School District
\$16,000.00
Attn: Vic Cardenzana
225 West Union Avenue
West Lafayette, Ohio 43845
(740) 545-6354

Coshocton County Joint Vocational School District

\$2,000.00
Attn: Donna Johnson
23640 CR 202
Coshocton, Ohio 43812
(740) 622-02 11

Payment to these entities shall be made by certified check. Defendant shall deliver copies of these checks to Plaintiff State of Ohio, 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.

15. Failure to complete the Supplemental Environmental Project payments set forth in paragraph 14 within the time specified will cause the civil penalty to become immediately payable in the amount of two hundred and eighteen thousand and four hundred dollars (\$218,400.00) less amounts expended as part of the Supplemental Environmental Project(s).

16. Any public notice or advertisement of the Projects by Defendant shall state that Defendant has agreed to fund the Projects pursuant to this Consent Order.

IX. POTENTIAL FORCE MAJEURE

17. In any action by Plaintiff to enforce any of the provisions of this Consent Order, Defendant may raise at that time the questions of whether it is entitled to a defense that its conduct was caused by reasons beyond its control such as, by way of example and not limited to, acts of God, strikes, acts of war or civil disturbances. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time, if ever, that a proceeding to

enforce this Consent Order is commenced by Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances beyond the control of Defendant shall rest with Defendant. Unanticipated or increased cost associated with the implementation of any action required by this Consent Order, or changed financial circumstances shall not constitute circumstances entirely beyond the control of Defendant or serve as a basis for an extension of time under this Consent Order. An extension of one compliance date based on a particular incident does not mean that Defendant qualifies for an extension of subsequent compliance date or dates. Defendant must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order without a force majeure clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

X. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS

18. All activities undertaken by Defendant pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal and state and local laws, rules and regulations, and permits. For work on the Facility, Defendant is ordered and enjoined to obtain all permits or approvals necessary under applicable federal, state or local laws or shall submit timely applications and requests for any such permits and approvals. Where such laws appear to conflict with the other requirements of this Consent Order, Defendant is ordered and enjoined to immediately notify the Ohio EPA of the potential conflict. This Consent Order is not a permit issued pursuant to any federal or state or local law or rule. Nothing in this Consent Order relieves Defendant from following any self-implementing requirement in any statute or

rule while preparation and review of any application for a permit or other authorization is ongoing, nor thereafter.

XI. RETENTION OF JURISDICTION

19. This Court will retain jurisdiction of this action for the purpose of enforcing this Consent Order and resolving any disputes which may arise under this Order so long as such disputes are not subject to the jurisdiction of the Environmental Review Appeals Commission. Both parties retain their rights under Rule 60 of the Ohio Rules of Civil Procedure, including their right to seek relief from this Consent Order.

XII. TERMINATION

20. This Consent Order shall terminate upon fulfillment by Defendant of the requirements set forth herein.

XIII. COSTS

21. Defendant is hereby ordered to pay the court costs of this action.

XIV. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

23. 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.

XV. AUTHORITY TO ENTER INTO THE CONSENT ORDER

23. Each signatory for a corporation represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof.

SIGNED:

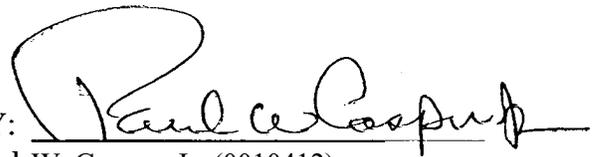
12/31/01


JUDGE EVANS
COSHOCKTON COUNTY
COURT OF COMON PLEAS

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

STONE CONTAINER CORPORATION

BY: 
Bryan F. Zima (0001053)
Ann M. Wood (0064894)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
(614) 466-2766

BY: 
Paul W. Casper, Jr. (0010412)
Frost Brown Todd, LLC
2200 PNC Center
P.O. Box 5715
201 East Fifth Street
Cincinnati, Ohio 4520 1-57 15
(513) 561-6490

Attorneys for Plaintiff
State of Ohio

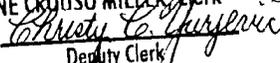
Attorney for Defendant
Stone Container Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true, file-stamped copy of the foregoing document was sewed upon the attorney and/or party(ies) of record by ordinary U.S. mail, postage prepaid, this 2nd January, 2002

By: 

Stone Container Corporation

IRENE CROUSO MILLER, Clerk
By: 
Deputy Clerk



State of Ohio Environmental Protection Agency

P O. Box 1049, 1800 WaterMark Dr.
Columbus, Ohio 43266-0149
(614) 644-3020 Fax (614) 644-2329

Richard F. Cole
Governor

December 22, 1989

Re: Director's Final Findings and Orders
Stone Container Corporation

CERTIFIED MAIL

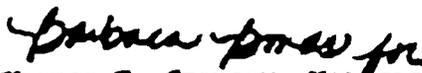
Mr. John West, General Manager
The Stone Container Corporation
Mill Creek Landfill
500 North Fourth Street
Coshocton, Ohio 43812

Dear Sir:

Transmitted herewith are Final Findings and Orders of the Director.

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Board of Review pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth in the action complained of and the grounds upon which the appeal is based. It must be filed with the Environmental Board of Review within thirty (30) days after notice of the Director's action. A copy of the appeal must be served on the Director of the Ohio Environmental Protection Agency and the Environmental Enforcement Section of the Office of the Attorney General within three (3) days of filing with the Board. An appeal may be filed with the Environmental Board of Review at the following address: Environmental Board of Review, 236 East Town Street, Room 300, Columbus, Ohio 43215.

Very truly yours,


Thomas E. Crepeau, Manager
Data Management Section
Division of Solid and Hazardous Waste Management

TEC/laj
0256V/10

cc: Barbara Bonds, Assistant Chief, DEHAM
Coshocton County Health Department
Safaa El-Oraby, DEHAM
John Russ, SEDO
Steve Hamlin, SEDO
Steve Kine, SEDO



Issue Date: December 22, 1989
Effective Date: December 22, 1989

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

The Stone Container Corporation ;
Mill Creek Landfill ;
500 North Fourth Street ;
Coshocton, Ohio 43812 ;

Director's Final Findings
and Orders

Pursuant to Chapters 3736 and 6111 of the Ohio Revised Code (ORC), the Director of the Ohio Environmental Protection Agency (Ohio EPA) hereby makes the following Findings and issues the following Orders:

FINDINGS

1. The Stone Container Corporation (hereinafter "Stone Container") owns and operates the Mill Creek Landfill (hereinafter the "facility") located in Mill Creek Township, Coshocton County, Ohio.
2. By letter dated April 26, 1977, Stone Container submitted to Ohio EPA Southeast District Office (SEDO) an operational report pursuant to the requirements of Ohio Administrative Code (OAC) Rule 3745-27-09(J). The report included a map indicating:
 - (a) all property owned or leased for the facility;
 - (b) all areas where waste materials are being, or will be deposited;
 - (c) all areas used for excavating of cover material;
 - (d) that no excavation for landfilling purposes had been done at the facility and none was contemplated in the future; and
 - (e) the proposed final topography of the facility.
3. By letter dated May 17, 1983, Stone Container submitted to Ohio EPA SEDO, an updated contour map indicating past and future fill areas.

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

Ohio Environmental Protection Agency
COLUMBUS, OHIO 43260

4. By letter dated November 6, 1987, Stone Container submitted to Ohio EPA SEDO, an operational report which was prepared by ERM-Midwest, Inc. This report contains a proposed operating plan which includes a site plan, operating procedures, and closure information specifying final cover and grade. It also includes figures identifying past, present, and contemplated future solid waste disposal activities at the facility.
5. The documents referenced in Findings No. 2, No. 3 and No. 4 above, indicate that Stone Container has modified the facility as defined by OAC Rule 3745-31-01(I) (2) without first obtaining a Permit to Install (PTI) from the Director in violation of OAC Rule 3745-27-06 and Ohio Revised Code (ORC) Section 3734.02. Substantial modifications have occurred at the boundaries of areas where waste materials are to be deposited and the areas and depths of excavation.
6. Inspections by Health Department and Ohio EPA SEDO personnel have documented leachate draining from the site from approximately 1982 through the most recent Health Department program survey conducted on December 8, 1988, and an inspection of the landfill conducted on September 20, 1989. Leachate was draining from the site in such quantities that a substantial threat of water pollution exists in violation of OAC Rule 3745-27-09(H).
7. Ohio EPA inspections also have documented one or more seeps of leachate containing pollutants discharging from the landfill into surface waters of the State. Ohio EPA has determined that said discharges constitute pollution of waters of the State in violation of ORC-Section 6111.04 because the leachate comes in contact with industrial waste and is not discharged pursuant to an NPDES permit issued by Ohio EPA.
8. Stone Container conducted a groundwater assessment of the facility during 1987 and as part of the assessment, samples were taken of the seven installed groundwater monitoring wells on August 19-20, 1987, October 7-8, 1987, and November 12-13, 1987. The sample results indicate that the uppermost aquifer underlying the facility is contaminated in violation of ORC Section 6111.04 as a direct result of landfilling. Stone Container later installed seven additional groundwater monitoring wells to assess the lower groundwater table. The sample results from these monitoring wells indicates that the lower groundwater table also is contaminated in violation of ORC Section 6111.04 as a direct result of landfilling.

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency

Ohio Environmental Protection Agency
CITIZEN SERVICES DIVISION

9. Stone Container conducted additional sampling in December 1988 and February 1989 and submitted to Ohio EPA a "Summary Report of Investigations of Ground Water and Surface Water at the Mill Creek Landfill" and a "Progress Report of the February 1989 Sampling" by cover letters dated February 17, 1989, and March 29, 1989, respectively. Stone Container also submitted to Ohio EPA by cover letter of May 11, 1989, a report analyzing the use of the constituent phenol as a "tracer" to determine the impact of the facility on the ground water and surface water. Review of these documents and the additional ground water analyses contained therein, confirm that both the uppermost aquifer underlying the facility and the lower ground water table are contaminated in violation of ORC Section 6111.04 as a direct result of landfilling. Further assessment of the ground water beneath the facility is necessary to determine the rate and extent of migration.
10. On January 14, 1988, Stone Container submitted to Ohio EPA SEDO a Proposal for Environmental and Remediation Feasibility Studies which outlines proposed ground water and surface water monitoring programs and proposes ways to remediate the ground water contamination and the surface water contamination caused by leachate drainage at the facility. This Proposal includes monitoring well locations and parameters for all ground water and surface water samples. Ohio EPA reviewed and commented on this Proposal, and by cover letter dated May 5, 1988, returned the Proposal to Stone Container for incorporation of these comments. Ohio EPA has not received a revised Proposal to date.
11. The Director has given consideration to and based his determination on evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purpose of Chapter 6111 of the Revised Code.

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

By: Mary Cavin Date 12-22-89

Ohio Environmental Protection Agency
 EXECUTIVE DIRECTOR'S JOURNAL

DEC 22 1989

ORDERS

1. Stone Container shall submit to Ohio EPA SEDO a revised Proposal for Environmental and Remediation Feasibility Studies within 60 days of the effective date of these Orders. The revised Proposal shall incorporate a corrective measures study which shall at a minimum evaluate all practicable remedies that are available for remediating the contamination of the upper aquifer, intermediate water bearing zones, and lower Kirtanning aquifer beneath the facility. The revised Proposal also shall incorporate a plan for continuing ground water monitoring sufficient to determine the rate and extent of ground water contamination beneath the facility, and a detailed plan for the sampling and analysis of all surface waters surrounding the facility.

If Ohio EPA determines that this Proposal is deficient, Stone Container shall submit to Ohio EPA a revised proposal incorporating all of Ohio EPA's comments and correcting all such deficiencies within 30 days of receipt of Ohio EPA's notice of deficiencies. Stone Container shall implement the remedial program and continuing ground water monitoring program approved by Ohio EPA in accordance with the schedules contained therein. The schedules contained in the approved remedial and monitoring program shall become an enforceable part of these Findings and Orders.

2. Stone Container shall submit to Ohio EPA SEDO all ground water and surface water monitoring sample results for the facility through the effective date of these Orders, and a summary of all such data within 30 days of the effective date of these Orders. Stone Container shall continue to submit to Ohio EPA SEDO all ground water and surface water monitoring sample results for the facility with a summary of all such data within 15 days of receipt of the sample results by Stone Container, through the post closure care period for the facility in effect at the time Stone Container completes final closure of the facility.

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

By: Mary Conroy Date 12-22-79

Ohio Environmental Protection Agency

3. Stone Container shall submit to Ohio EPA SEDO for approval a PTI application and detailed plans for the installation of a leachate collection system to collect and contain all leachate draining from the facility within 60 days of the effective date of these Orders. If Ohio EPA determines that this plan is deficient, Stone Container shall submit to Ohio EPA SEDO a revised plan correcting all such deficiencies within 45 days of receipt of Ohio EPA's notice of deficiencies. Stone Container shall implement the approved plan in accordance with the schedules contained therein. All leachate collected at the facility shall be treated prior to discharge to waters of the state consistent with an NPDES permit or collected and removed for off-site treatment and disposal. The schedules contained in the approved PTI and approved plans shall become an enforceable part of these Findings and Orders.


Richard L. Sheak, Ph.D.
Director

December 22, 1989
Date

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

By: Mary Givins Date: 12-22-89

Ohio Environmental Protection Agency
GENERAL DIRECTOR'S JOURNAL

DEC 22 1989



State of Ohio Environmental Protection Agency

P.O. Box 1049, 1800 WaterMark Dr.
Columbus, Ohio 43266-0149
(614) 844-3020 Fax (614) 844-2329

Richard F. Celeste
Governor

December 22, 1989

Re: Director's Findings & Proposed
Orders, Stone Container
Corporation

CERTIFIED MAIL

Mr. John West, General Manager
The Stone Container Corporation
Mill Creek Landfill
500 North Fourth Street
Coshocton, Ohio 43812

Dear Sir:

Transmitted herewith are Findings & Proposed Orders of the
Director concerning the matter indicated.

The order of denial is issued as a proposed action pursuant to
Section 3745-07 of the Revised Code. This order will become
final on the effective date indicated unless you or an objector
files an appeal requesting an adjudication hearing within thirty
(30) days of the date of issuance of this order. This
adjudication hearing will be conducted in accordance with Ohio
Administrative Code Chapter 3745-47. The request for a hearing
shall be in writing and shall specify the issues of fact and law
to be contested. Requests for hearings shall be sent to:

Ohio Environmental Protection Agency
Hearing Clerk
P.O. Box 1049
1800 Watermark Drive
Columbus, Ohio 43266-0149

Very truly yours,

Barbara J. Bonds for
Thomas E. Crepeau, Manager
Data Management Section
Division of Solid and Hazardous Waste Management

TEC/laj

cc: Joan DeMartin, Legal
Barbara Bonds, DSHWM
Safaa El-Oraby, DSHWM
Steve Hamlin, SEDO
Steve Rine, SEDO
John Russ, SEDO
Coshocton County Health Department



Date Issued: December 22, 1989

Date Effective: January 21, 1990

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:

John West, General Manager :
Stone Container Corporation : Director's Findings
500 North Fourth Street : and Orders
Coshocton, Ohio 43812 :

Pursuant to Chapter 3734 of the Ohio Revised Code (ORC), the Director of Environmental Protection Agency (hereinafter "Director") hereby makes the following Findings and issues the following Orders.

FINDINGS

1. Stone Container Corporation ("the entity") operates the Mill Creek Landfill ("the facility"), Coshocton County located approximately 11 miles north of Coshocton on County Road 38 in Mill Creek Township.
2. The entity was in operation prior to July 1, 1968 and is required to submit a Permit-To-Install application in accordance with ORC Section 3734.05.
3. The entity submitted a Permit-To-Install application to the Director on May 15, 1989.
4. The Director has reviewed the Permit-To-Install application and based upon this review has determined that the proposed source will violate those Sections of Rules 3745-27-06 and 3745-31-05 of the Ohio Administrative Code (OAC) enumerated in the "Specific Reasons for Denial" given in Attachment "A" of these Findings and Orders.
5. ORC Section 3734.05 states that if the Director denies a Permit-To-Install application submitted under ORC Section 3734.05, he shall include in the order denying the application the requirements that the owner or operator

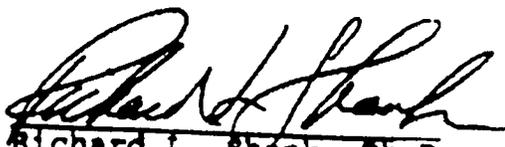
submit a plan for closure and post-closure care of the facility to the Director for approval within six months after issuance of the order and he shall order that the facility cease accepting solid wastes for disposal at the facility and commence closure of the facility not later than one year after issuance of the order.

6. The Director has determined that the hydrogeology of the facility and the documented contamination of the ground waters beneath the facility as detailed in the "Specific Reasons for Denial" attached as Appendix A hereto necessitate an expedited schedule for ceasing solid waste and other waste disposal within the boundaries of the facility and for the submittal and implementation of a comprehensive closure plan for the entire facility.

ORDERS

1. The application for a Permit-To-Install is hereby denied.
2. The entity shall cease disposing of all solid wastes and all other wastes at the facility including but not limited to mill trash, wasted paper rejects, waste water treatment sludge, and fly ash from the mill's No. 6 boiler, within thirty (30) days from the effective date of these Orders.
3. The entity shall submit a complete closure plan for the facility within sixty (60) days of the effective date of these Orders. The closure plan shall comply fully with all applicable solid waste regulations in effect on the effective date of these Orders. The closure plan at a minimum shall provide for the application of at least two feet of well compacted cover material having a soil permeability less than or equal to 1×10^{-7} cm/sec, a one foot thick drainage layer, and six inches of topsoil, on all areas of the facility that have reached final elevations and that have not been graded, covered, and seeded in accordance with current solid waste regulations.
4. The closure activities shall be conducted and completed in accordance with the submitted closure plan and all applicable solid waste regulations in effect on the effective date of these Orders.

IT IS SO ORDERED:


Richard L. Shank, Ph.D.
Director

December 22, 1989
Date

ATTACHMENT A

Specific Reasons for Denial

1. Ohio Administrative Code (OAC) Rule 3745-27-06(I) (6) states, "Except by means of a waiver granted under 3745-27-11, the Director shall not approve plans for a sanitary landfill under any of the following conditions...":

"the seasonal high water table and the lowest level of waste materials in the sanitary landfill will be separated by less than 5 feet of soil of low permeability."

Data included within the submitted application indicates there is no separation between the seasonal high ground water table (uppermost aquifer) and the waste. At this facility the seasonal high ground water table is part of the uppermost aquifer.

OAC Rule 3745-27-11(B) specifies in part, that "any person who wishes to obtain a waiver of any provision of Regulation 3745-27-06(I), ... shall apply in writing to the Director. Applications for waivers shall contain such detailed information regarding the objectives, procedures controls and any other pertinent data regarding the proposal, as the Director may require."

The submitted application did not include the required waiver nor was an application for a waiver otherwise submitted in accordance with OAC Rule 3745-27-11 for a waiver of the requirement of OAC Rule 3745-27-06(I) (6) cited above.

2. OAC Rule 3745-27-06 (H) (1) states "The Director shall not approve any detail plans, specifications, and information unless he determines that....":

"establishment or modification and operation of the solid waste disposal facility will not create a nuisance or a health hazard, will not cause water pollution, and will not violate any regulation adopted by the Director under ORC Chapter 3704."

Data included within the submitted application and other information available to the Director indicate that the past and present operations of the facility have caused pollution of the ground water beneath the facility in

violation of ORC Section 6111.04 and OAC Rule 3745-27-08 (I). The modification and/or continued operation of the facility is likely to exacerbate the existing ground water pollution and cause additional pollution of the ground water beneath the facility and other waters of the State in violation of ORC Section 6111.04 and OAC Rule 3745-27-08 (I).

3. In accordance with OAC Rule 3745-27-06(H) (2) the Director shall not approve any detail plans, specifications, and information unless he determines that in case of plans submitted by a person who has previously operated or is currently operating one or more solid waste disposal facilities, such person has operated such facilities in accordance with applicable provisions of ORC Chapter 3734; these Chapters 3745-27 and 3745-37; and/or Chapter 3745-26, in the course of such previous or current operations.

Ohio EPA inspections, since at least 1982, have consistently documented the following violations of Ohio's solid waste and water pollution control laws:

- A. The entity has modified the facility as defined by OAC Rule 3745-31-01(I) (2) without first obtaining a Permit-To-Install (PTI) from the Director in violation of OAC Rule 3745-27-06 and ORC Section 3734.02 in that substantial modifications have occurred at the boundaries of areas where waste materials are to be deposited and the areas and depths of excavation.
- B. Leachate draining from the site in such quantities that a substantial threat of water pollution exists in violation of OAC Rule 3745-27-09(H). The entity also has not taken adequate measures to minimize, control, or eliminate the conditions which contribute to the production of leachate and to collect and contain the leachate draining from the site in violation of OAC Rule 3745-27-09(H)
- C. One or more seeps of leachate containing pollutants discharging from the landfill into surface waters of the State. Said discharges constitute pollution of waters of the State in violation of 6111.04 because waters come in contact with industrial waste and the resultant leachate is not discharged pursuant to an NPDES permit issued by Ohio EPA.

- D. The entity conducted a ground water assessment of the facility during 1987 and as part of the assessment, samples were taken of the seven installed ground water monitoring wells on August 19-20, 1987, October 7-8, 1987, and November 12-13, 1987. The samples results indicate that the uppermost aquifer underlying the facility is contaminated in violation of ORC Section 6111.04 and OAC Rule 3745-27-08(I) as a direct result of landfilling. Stone Container later installed seven additional ground water monitoring wells to assess the lower ground water table. The sample results from these monitoring wells indicate that the lower ground water table also is contaminated in violation of ORC Section 6111.04 and OAC Rule 3745-27-8(I) as a direct result of landfilling.
- E. The entity conducted additional sampling in December 1988 and February 1989 and submitted to Ohio EPA a "Summary Report of Investigations of Ground Water and Surface Water at the Mill Creek Landfill" and a "Progress Report of the February 1989 Sampling" by cover letters dated February 17, 1989, and March 29, 1989, respectively. The entity also submitted to Ohio EPA by cover letter of May 11, 1989, a report analyzing the use of the constituent phenol as a "tracer" to determine the impact of the facility on the ground water and surface water. Review of these documents and the additional ground water analyses contained therein, confirm that both the uppermost aquifer underlying the facility and the lower ground water table are contaminated in violation of ORC Section 6111.04 and OAC Rule 3745-27-08(I) as a direct result of landfilling.
- F. The entity has not applied daily, intermediate, and final cover materials on substantial portions of the facility in violation of OAC Rule 3745-27-09(F) (1) through (F) (3). Failure of the entity to comply with OAC Rule 3745-27-09(F) (1) through (F) (3) has contributed to and exacerbated the documented ground water pollution and surface water pollution at the facility.

Exhibit B

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