

FILED
COMMON PLEAS COURT
WAYNE COUNTY, OHIO
2009 SEP 21 AM 11 58

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CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
WAYNE COUNTY, OHIO

STATE OF OHIO, ex rel.
RICHARD CORDRAY
OHIO ATTORNEY GENERAL,

Plaintiff,

v.

NORTON ENVIRONMENTAL
COMPANY, et al.,

Defendants.

:
: CASE NO. 06-CV-0287
:
: JUDGE: MARK K. WIEST
:
:
:
:
: CONSENT ORDER AND
: PERMANENT INJUNCTION
:

The Complaint in the above-captioned matter having been filed, and the Plaintiff State of Ohio by Attorney General Richard Cordray ("Plaintiff") and Defendant Norton Environmental Company ("Norton") having consented to the entry of this Order,

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

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Norton under R.C. Chapters 3704 and 3734. Venue is proper in this Court.

II. DEFINITIONS

2. Unless otherwise stated, all terms used in this Consent Order shall have the same meaning as used in Ohio Revised Code Chapter 3734 and Ohio Administrative Code rules adopted thereunder.

3. As used in this Consent Order, "Landfill" means the Norton Environmental Company Mount Eaton Sanitary Landfill, located at 8544 West Lebanon Road, Navarre, Wayne County, Ohio.

III. PERSONS BOUND

4. The provisions of this Consent Order shall apply to and be binding upon Norton, its successors in interest and assigns, and others to the extent provided by Civil Rule 65(D).

5. Norton shall provide a copy of this Consent Order to each key employee, to each general contractor, subcontractor, laboratory, consultant, agent, and person hired by Norton or who will provide work or services related to this Consent Order on behalf of Norton, and to any potential purchaser for the Landfill.

6. Nothing herein shall be construed to relieve Norton of its obligation to comply with all applicable federal, state, or local statutes, regulations, or ordinances, including but not limited to, applicable permit requirements. The provisions of this Consent Order shall apply to and be binding upon Norton, and the injunctive provisions of this Consent Order shall apply to and be binding upon Norton, its officers, agents, servants, employees, and those persons in active concert or participation with them, to the extent provided by law and Civil Rule 65(D).

IV. SATISFACTION OF LAWSUIT

7. The State has alleged that Norton have violated R.C. Chapters 3704 and 3734, and Ohio Adm. Code Chapter 3745-27.

8. Except as otherwise provided in Paragraphs Nine and Ten of this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil and administrative liability (including injunctive relief, civil penalties and investigative or other costs or expenses) of Norton its officers, shareholders, agents and employees and its successors in interest and assigns, for the claims alleged in the State's lawsuit, and the violations alleged in the Ohio Environmental Protection Agency's ("Ohio EPA") or the Wayne County Board of Health correspondence identifying noncompliance through the date of entry of this Consent Order.

V. RESERVATION OF RIGHTS

9. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief from Norton for claims or violations not referenced or released in this Consent Order, any violations arising out of acts or omissions first occurring after the entry date of this Consent Order, any violations arising out of acts or omissions first occurring prior to the entry date of this Consent Order of which the State of Ohio was unaware as of the entry date of this Consent Order, or claims under the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. § 9601 et. seq. or R.C. 3734.20 through 3734.27, for any emergency, removal, remedial, or corrective actions. Notwithstanding any provision in this Consent Order to the contrary, Norton retains all rights, defenses, and/or claims it may legally raise to the extent that the State seeks further relief from Norton in the future, or in any action brought to enforce

the terms of this Consent Order.

10. Nothing in this Consent Order, including the imposition of stipulated or civil penalties, shall limit the authority of the State to take any action authorized by law against any person, including Norton, to eliminate or mitigate conditions at the Landfill that may present an imminent threat to the public health or welfare, or the environment.

VI. COMPLIANCE WITH APPLICABLE LAWS

11. Nothing in this Consent Order shall affect Norton's obligation to comply with all applicable federal, state or local laws, regulations, rules, or ordinances. Norton shall obtain all federal, state, or local permits and licenses necessary to comply with this Consent Order.

VII. INJUNCTION

12. Norton agrees to and is permanently enjoined and ordered to comply with the provisions of R.C. Chapters 3704 and 3734, and the rules and regulations promulgated thereunder.

13. Within two hundred seventy (270) days after the effective date of this Consent Order, Norton is ordered and enjoined to complete closure of the Landfill to within limits of waste placement as set out in Drawings 1, 4C and 7 included in the Appendices to the Proposed Closure/Post-Closure Plan for Mount Eaton Landfill submitted by URS Corporation on June 13, 2008. To the extent that the limits of waste placement as set out in Drawings 1, 4C and 7 included in the June 13, 2008 Proposed Closure/Post-Closure Plan conflict with limits of waste placement as set out in Mount Eaton Landfill's approved closure plan in Permit-to-Install 02-6450, those limits of waste placement in Permit-to-Install 02-6450 are voided. All final slopes at Landfill must be

maintained at a grade of 4:1 or less.

14. Within sixty (60) days after the effective date of this Consent Order, Norton shall submit a complete surface water control plan for the entire Mt. Eaton Sanitary Landfill facility in compliance with Ohio Adm. Code Rule 3745-27-08. The surface water plan must include provisions for maintenance of the current surface water structures on the 38-acre capped portion of the Landfill, as well as for construction and maintenance of structures on all other portions of the Landfill. Surface water structures shall be constructed and maintained in a manner as to avoid detrimental impact on the current 38-acre cap, or on newly capped portions of the Landfill. The surface water control plan shall include drawings and calculations in compliance with Ohio Adm. Code Rule 3745-27-06. Ohio EPA may concur and approve the surface water control plan as submitted, may approve of the plan with conditions or modifications, or may determine that the plan is unsatisfactory in whole or in part. In the event Ohio EPA notifies Norton that Norton's submittal required by this order is unsatisfactory in whole or in part, within thirty (30) days after receipt of such notification Norton shall amend and submit to Ohio EPA a fully revised plan in accordance with Ohio EPA's notice of deficiency. Any conditions or modifications unilaterally incorporated by Ohio EPA into the surface water control plan shall be a final appealable action of the Director. Norton shall implement the surface water control plan upon Ohio EPA's written concurrence or approval. In the event of any conflicts or inconsistencies between the approved surface water control plan and the closure plan for the Landfill as approved consistent with this Consent Order, the provisions of the closure plan shall apply.

15. Norton shall ensure that the soil used for the vegetative layer on all areas

of waste placement be of sufficient thickness and fertility to support vegetation and shall be seeded as soon as practicable, and as many times as is necessary to establish a dense vegetative cover. Within one year after certification of landfill closure as set out in Paragraph Seventeen herein, Norton shall have established a dense vegetative cover over the entire Landfill.

16. Except as set forth in Paragraphs Thirteen through Fifteen, herein, Norton must close its Landfill in accordance with Ohio Adm. Code Chapter 3745-27, Permit-to-Install 02-6450, and other authorizing documents. Except as set forth in Paragraphs Thirteen through Fifteen, herein, nothing in this Consent Order shall be interpreted to imply that Proposed Closure/Post-Closure Plan for Mount Eaton Landfill submitted by URS Corporation on June 13, 2008 is approved in whole or in part, or in any way supersedes any requirements set forth in Ohio Adm. Code Chapter 3745-27, Permit-to-Install 02-6450, and/or other authorizing documents.

17. Landfill closure shall be certified by an independent Professional Engineer registered in Ohio. Norton shall provide the Engineer to supervise the closure of the facility. The Engineer shall be at the facility at least once every two weeks, or more often as needed, to ensure closure of the facility in accordance with authorizing documents and Ohio Adm. Code 3745-27-11.

18. Throughout closure of the Landfill, Norton shall employ all reasonable means to collect, properly contain, and dispose of scattered litter, pursuant to Ohio Adm. Code 3745-27-19. Norton shall, during any waste excavation or relocation, employ all reasonable measures to prevent odors and nuisances. Norton shall keep any areas of exposed waste excavation and relocation as small as practical. Norton shall ensure that

all exposed waste is covered daily in accordance with OAC Rule 3745-27-19(F), by no later than sunset.

VIII. RIGHT OF ENTRY

19. Norton hereby agrees to allow representatives of Ohio EPA and the Wayne County Board of Health to enter the Landfill at reasonable times to inspect, investigate, take samples and pictures, and examine or copy records to determine compliance with the terms of this Consent Order and R.C. Chapter 3734 and rules promulgated thereunder. Nothing in this Consent Order limits Ohio EPA's authority under R.C. Chapter 3734, or any other statutory authority, to determine Norton's compliance with this Consent Order and R.C. Chapter 3734 and its rules.

IX. STIPULATED PENALTIES

20. If Norton fails to meet any of the requirements of this Consent Order set forth in Paragraphs Twelve through Nineteen and Twenty-Two, Norton shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule.

- a. For each day of failure to meet a requirement up to thirty (30) days, two hundred dollars (\$200.00) per day for each requirement not met.
- b. For each day of failure to meet a requirement from thirty-one (31) to sixty (60) days, three hundred dollars (\$300.00) per day for each requirement not met.
- c. For each day of failure to meet a requirement from sixty-one (61) to ninety (90) days, five hundred dollars (\$500.00) per day for each requirement not met.

d. For each day of failure to meet a requirement over ninety (90) days, one thousand dollars (\$1,000.00) per day for each requirement not met.

21. Any payment required to be made under the provisions of Paragraph Twenty of this Order shall be made by delivering to Karen Pierson or her successor, Office of the Attorney General, 30 E. Broad St., 25th Floor, Columbus, Ohio 43215, a certified check or checks for the appropriate amounts, payable to the order of "Treasurer, State of Ohio," within fifteen (15) days from the date of the failure to meet the requirement of the Consent Order.

X. CIVIL PENALTY

22. Defendant Norton is ordered and enjoined to pay to Plaintiff State of Ohio a civil penalty of seven hundred fifty thousand dollars (\$750,000). As set out in Exhibits 1-3 of this Consent Order, which are incorporated by reference as if fully re-written herein, Norton shareholders Steven M. Viny, Neil D. Viny and Joseph E. Viny each agree to personally guarantee two hundred fifty thousand dollars (\$250,000) of the \$750,000 civil penalty. The State may enforce the guarantees under this Consent Order against Steven M. Viny, Neil D. Viny and/or Joseph E. Viny in the event of default by Norton to pay the civil penalty. Steven M. Viny, Neil D. Viny and Joseph E. Viny acknowledge that their failure to pay as guaranteed can be enforceable by a contempt action by the State against the defaulting guarantor(s). The guarantees and their incorporation into this Consent Order shall not be used for any other purpose; however, any failure to pay as guaranteed after a default by Norton may be used for other purposes against the defaulting guarantor(s). The civil penalty shall be paid pursuant to the following schedule:

- a. No later than January 15, 2010, and no later than the fifteenth (15th) day of each of the thirty-seven (37) months thereafter, Norton shall make a payment of nineteen thousand seven hundred thirty-six dollars and eighty-five cents (\$19,736.85) to Plaintiff State of Ohio, with the exception that the thirty-eighth (38th) payment due no later than February 15, 2013 shall be in the amount of nineteen thousand seven hundred thirty-six dollars and fifty-five cents (\$19,736.55). Steven Viny, Neil Viny and Joseph Viny shall each guarantee one-third of each and every monthly payment
- b. Civil penalty payments made pursuant to this Consent Order shall be made by delivering to Karen Pierson or her successor, Office of the Attorney General, 30 E. Broad St., 25th Floor, Columbus, Ohio 43215, a certified check or checks for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

23. Ohio EPA will not release the performance bond, trust fund, and/or other instruments of financial assurance for closure of the Landfill until such time as Ohio EPA concurrence with certification of closure in accordance with this Consent Order and Ohio Adm. Code 3745-27-11.

XI. POTENTIAL FORCE MAJEURE

24. If any event occurs that causes or may cause a delay in Defendant Norton's compliance with any requirement of this Order, Norton shall notify Ohio EPA, in writing, within ten (10) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Norton to prevent or minimize the delay and the timetable by which measures will be

implemented. Norton will adopt all reasonable measures to avoid or minimize any such delay.

25. In any action by the State of Ohio to enforce any of the provisions of this Order, Defendant Norton may raise that it is entitled to the defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitation, acts of God, acts of war or civil disturbances. While Plaintiff State of Ohio does not agree that such a defense exists, it is, however, hereby agreed upon by the parties 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 that an action to enforce the terms and conditions of this Consent Order, if any, is commenced by Plaintiff State of Ohio. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Norton shall rest with Norton. Unanticipated or increased costs 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 Norton or serve as a basis for an extension of time under this Consent Order. Failure by Norton to comply with the notice requirements of the previous paragraph shall render this paragraph void and of no force and effect as to the particular incident involved and shall constitute a waiver of Norton's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one compliance date based on a particular incident does not mean that Norton qualifies for an extension of a subsequent compliance date or dates. Norton must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought.

XII. SUBMITTAL OF DOCUMENTS

26. All plans or documents, other than any payments for stipulated penalties, required pursuant to this Consent Order shall be submitted to:

Unit Supervisor
Division of Solid and Infectious Waste Management
Northeast District Office
Ohio Environmental Protection Agency
2110 East Aurora Road
Twinsburg, Ohio 44087

Wayne County Health Department
203 S. Walnut Street
Wooster, Ohio 44691

27. All notices, review, written responses, or approvals issued by Ohio EPA to the Norton pursuant to this Consent Order shall be submitted to:

Norton Environmental Company
6200 Rockside Boulevard, Suite 105
Independence, Ohio 44131

XIII. RETENTION OF JURISDICTION

28. The Court will retain jurisdiction of this action for the purpose of making any order or decree which it deems necessary to enforce this Consent Order or providing other appropriate relief in this action.

XIV. COSTS

29. Norton shall pay costs of the Wayne County Court of Common Pleas in this action.

XV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT

30. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three days of entering the Order upon the journal, the clerk is directed to serve upon all

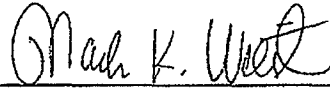
parties notice of the Order and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and to note the service in the appearance docket.

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ATTORNEY GENERAL OFFICE
ENVIRONMENTAL ENFORCEMENT

IT IS SO ORDERED:



9/21/09

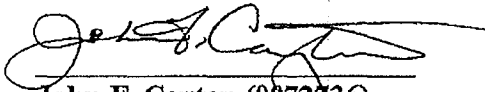
Judge Mark K. Wiest
Wayne County Common Pleas Court

APPROVED BY:

JOURNALIZED

SEP 21 2009

RICHARD CORDRAY
ATTORNEY GENERAL



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Counsel for State of Ohio

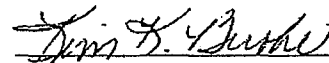
TIM NEAL

CLERK, WAYNE COUNTY, OHIO



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Cincinnati, OH 45202
Telephone: (513) 381-2838

Counsel for Steven M. Viny



RICHARD CORDRAY
OHIO ATTORNEY GENERAL

October 16, 2009

Cuyahoga County Clerk of Courts
JUDGMENT LIENS
Justice Center 1st Floor
1200 Ontario Street
Cleveland, OH 44113

Re: Foreign Judgment for filing
Against Norton Environmental Company, Et al.

Dear Sir/Madam:

Please find enclosed a Certificate of Judgment from the Wayne County Clerk of Courts for a \$750,000 judgment against Norton Environmental Company in Case No. 06-CV-0287. I would like to have this judgment lien filed in Cuyahoga County. A copy of the consent order is attached for your review. I am enclosing the \$20.00 filing fee for this transaction.

Please return a copy of the CJ Lien to me in the enclosed postage-paid envelope. Thank you very much.

Sincerely,

Karen M. Pierson
Paralegal

Direct Dial: (614) 752-9503

PLEASE
send me
a receipt
for the
\$20-

Environmental Enforcement

30 East Broad St 25th Fl • Columbus, Ohio 43215 • PHONE 614.466-2766 • FAX 614.644-1926
www.ohioattorneygeneral.gov

RECEIVED

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ATTORNEY GENERAL OFFICE
ENVIRONMENTAL ENFORCEMENT