

**COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

Rumpke Sanitary Landfill, Inc., <i>et al.</i>,)	Case No. A0703073
)	
Plaintiffs-Realtors,)	
)	(Judge Megan Shanahan)
v.)	
)	(Visiting Judge Lee H. Hildebrandt Jr.)
Colerain Township, Ohio, <i>et al.</i>,)	
)	
Defendants-Respondents.)	

CONSENT DECREE

Plaintiffs, Rumpke Sanitary Landfill, Inc. (“RSL”), Charles M. Stoeppel and John J. Stoeppel, Trustees of the Henry and Lillian Stoeppel Family Living Trust dated November 5, 1997, Family Trust Share and the Henry and Lillian Stoeppel Family Living Trust dated November 5, 1997, Survivor's Trust Share, and Claire A. Stepaniak (hereinafter collectively referred to as “Plaintiffs”); and, Defendants Colerain Township, Colerain Township Board of Trustees, (hereinafter referred to as “Colerain”) Jeff Ritter, Trustee, Dennis Deters, Trustee, and Melinda Rinehart, Trustee (in their official capacities as Trustees, not individually) (all collectively referred to as “Defendants”), come before this Court, post-trial and after final adjudication of the matter on the merits, with a proposed Consent Decree as provided in R.C. 505.07 for the settlement of a court action involving zoning issues.

Plaintiffs and Defendants, upon consent of all parties, in consideration of the mutual promises set forth herein, and having conducted the fairness hearings pursuant to R.C. 505.07, all hereby agree and CONSENT to this DECREE by this COURT providing as follows:

1. The Court has jurisdiction over the parties and subject matter of this action.
2. This Consent Decree and Settlement Agreement attached as Exhibit A shall apply to and be binding upon the parties to this action, including “Rumpke” as defined in the

Settlement Agreement, their officers, directors, trustees, agents, successors, heirs, devisees, beneficiaries, and assigns. William J. Rumpke, Jr. has authority to execute this Consent Decree and Settlement Agreement on behalf of “Rumpke.”

3. Pursuant to Civil Rule 15(B), the pleadings are deemed amended to conform with the facts and issues presented at the hearing, included in the Settlement Agreement and/or addressed herein.

4. Plaintiffs and Rumpke are the legal owners of approximately 511 +/- acres, which prior to trial was zoned Industrial District (I-1) Estate Residential District (R-2) Planned Business (PBD) and Solid Waste District which is located between Hughes Road, Interstate 1-275, and Buell Road in Colerain Township, Hamilton County, Ohio (the “Property”). Pursuant to the Final Judgment Entry, Defendants are under order of this Court to rezone the majority of the Property to permit Plaintiffs’ intended use as a landfill. A more detailed description of the Property is attached hereto as Exhibit C and depicted in Exhibit B.

5. Pursuant to the Settlement Agreement, 433.64 +/- acres described in Exhibit C and depicted in Exhibit B shall be zoned SWD on the terms and conditions provided in Exhibit A.

6. This Consent Decree constitutes a full and final settlement of the claims which have been or could have been asserted by the Plaintiffs arising out of the Defendants’ zoning of the Property, and denial of their application for a zone change, up through the date this Consent Decree is entered. All appeals of the Final Judgment Entry shall be dismissed. Each party will bear its own attorneys’ fees.

WHEREFORE, upon due consideration of the terms and conditions of the aforesaid Consent Decree mutually agreed upon by and between the parties and the record in this action, and pursuant to R.C. 505.07, THIS COURT FINDS:

A. Defendant, Colerain Township Board of Trustees published notice of their intent to meet, consider and take action on this decree on December 1, 2015 in *The Cincinnati Enquirer*, a newspaper of general circulation in the township, being at least 15 days before the meeting. Proof of said publication has been filed with this Court. Defendant, Colerain Township Board of Trustees made copies of the proposed consent decree available to the public at the township fiscal officer's office during normal business hours, and on the internet via its website. This Court finds that notice of this Consent Decree has been properly made as required by R.C. 505.07.

B. Defendant, Colerain Township Board of Trustees held a public meeting to consider and take action on this Consent Decree, and following the meeting, and by Resolution No. _____ approved the Consent Decree on December 17, 2015.

C. On [REDACTED], 2015, at least ten days prior to the submission of the proposed consent decree to this Court, Plaintiffs published a notice of the intention of the parties in this action to file a consent decree that included a description of the real property involved and the proposed change in zoning or permitted use, in *The Cincinnati Enquirer*, a newspaper of general circulation in the township, which notice included the caption of this case, the case number, and this Court. Proof of said publication has been filed with this Court. This Court finds that notice of this Consent Decree has been properly made as required by R.C. 505.07.

D. Having reviewed the mutual stipulations and agreements and proposed Consent Decree of the parties, to which Exhibits A through C are integral parts thereof, this Court finds the Consent Decree contained herein to be fair and reasonable.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Consent Decree contained herein is fair and reasonable, and hereby is approved and the Court ADOPTS the same as the ORDER of this Court.

IT IS FURTHER ORDERED that the zoning agreed to under this order is effective immediately upon entry of this order and shall be treated as an amendment to the Colerain Township Zoning Resolution. No additional action by the Township is necessary to implement this zoning.

The Court shall retain jurisdiction over this matter and allow this case to be reopened without filing fee for the purpose of enabling the parties to this Consent Decree to apply to the court for any further order that may be necessary to construe, carry out, enforce, modify or enforce compliance with the terms of this Consent Decree. This decree may be modified upon consent of the parties and compliance with R. C. 505.07.

IT IS SO ORDERED.

Date:

Lee H. Hildebrandt, Jr., Judge

Approved by:

Rumpke Sanitary Landfill, Inc.

Colerain Township Board of Trustees

By _____

By _____

Township Administrator

“Rumpke” as defined in the Settlement Agreement

By: _____

William J. Rumpke, Jr.
President

Catherine A. Cunningham (0015730)

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Co-Trustee of the Henry and Lillian Stoeppel
Family Living Trust dated November 5, 1997,
Family Trust Share and the Henry and Lillian
Stoeppel Family Living Trust dated
November 5, 1997, Survivor's Trust Share

*Counsel for Defendants, Colerain
Township, Ohio; Colerain Township Board
of Trustees; and individual Trustees in
their official capacity*

John J. Stoeppel, Trustee
Co-Trustee of the Henry and Lillian Stoeppel
Family Living Trust dated November 5, 1997,
Family Trust Share and the Henry and Lillian
Stoeppel Family Living Trust dated
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EXHIBIT LIST

- Exhibit A. Settlement Agreement
- Exhibit B. Map of Solid Waste District Zoning
- Exhibit C. Legal Description of Solid Waste District (SWD) zoning

EXHIBIT A

SETTLEMENT AGREEMENT

1. Definition of terms used herein:

a. “Rumpke” means Rumpke Sanitary Landfill, Inc., its affiliates, subsidiaries, related persons, partnerships, limited partnerships, joint ventures, limited liability companies, corporations, companies and any other related entity, and their successors and assigns including Rumpke Consolidated Companies, Inc. “Rumpke” shall include among others those entities specifically identified herein including Struble Road Development Company.

b. “Effective Date” means date of the final determination of the court of final jurisdiction approving the Consent Decree and Settlement Agreement when all appeals and other challenges having been exhausted.

c. “Solid waste” shall be defined in accordance with Ohio Revised Code Section 3734.01 in effect on the Effective Date, and in no event shall include hazardous waste, medical waste, or radioactive waste.

d. “Facility” shall be defined in accordance with Ohio Revised Code Section 3734.01 or as may be amended.

e. “Landfill” shall mean any Rumpke solid waste facility in Colerain Township and all Rumpke property in Colerain Township zoned “Solid Waste District” (SWD) or its equivalent or where the disposal, storage, treatment, handling, transfer or other management of solid wastes is a permitted use. Landfill specifically includes the 509 acres subject to the 2000 Consent Decree as well as the additional property that is the subject of this Settlement Agreement.

f. “Closure” shall be defined in accordance with Ohio Revised Code Section 3734.01 or as may be amended.

g. “2000 Consent Decree” means the ‘Consent Decree and Agreed Judgement (*sic*) Entry’ in *Rumpke Sanitary Landfill, Inc. v. Colerain Township*, Hamilton County Common Pleas court Case No. 0007121 entered on November 15, 2000 as amended.

2. Upon the Effective Date, the property described in Exhibit C as shown on Exhibit B shall hereby be zoned Solid Waste District (SWD), subject to the terms and conditions of this Consent Decree and Settlement Agreement, within the boundaries of Colerain Avenue to the west, Bank Road to the west and north, Crest Road to the North, Buell Road to the north and east, I-275 to the east and south, and Struble road to the South (as shown in purple on exhibit B), subject to siting and setback requirements of Ohio EPA, to the extent that they differ from the Colerain Township Zoning Resolution, *except property already subject to the 2000 Consent Decree, and excepting the property shown within tan borders on Exhibit B, which shall remain*

zoned light industrial. Rumpke shall not expand the landfill beyond the land zoned SWD (subject to EPA setbacks and permits) and that permitted by the 2000 consent decree.

3. This would be the final extent of any expansion of the area of the landfill by Rumpke including its successors and assigns, except as may be permitted by consent of the Colerain Township Board of Trustees in its sole discretion.

4. Beginning in 2016 and through 2021, a flat annual fee based on the tonnage of Solid Waste received for disposal in the prior year as follows:

○ 1MM or more tons	-	\$ 1,250,000
○ 750,000 - 999,000	-	\$ 750,000
○ 500,000 - 749,999	-	\$ 500,000
○ 499,999 or less	-	\$ 0

5. Beginning in 2022, and through the remainder of the operating life of the landfill, a flat annual fee based on the tonnage of Solid Waste received for disposal in the prior year as follows:

○ 1MM or more tons	-	\$ 1,100,000
○ 750,000 - 999,000	-	\$ 600,000
○ 500,000 - 749,999	-	\$ 350,000
○ 499,999 or less	-	\$ 0

These fees would be suspended if either the EPA permit or the road vacation were not obtained within 5 years of submission of application.

6. In addition:

a. The \$0.25\ton statutory fee (as may be amended from time to time) will be paid quarterly, in arrears.

b. The additional \$0.20\ton (from the 2000 Consent Decree) shall continue.

c. Beginning upon vacation of Hughes Road, an additional \$0.25\ton of Solid Waste will be paid quarterly, in arrears.

d. 12 months after first waste placement in the expansion area, and annually thereafter, the “per-ton” fees shall be adjusted by the lesser of 3% or the United States Department of Labor Midwest All Urban Consumers CPI less food and energy, with a floor of 0%.

7. All fees described in Sections 4, 5, and 6 above shall be paid quarterly by check, unless otherwise agreed in writing between the parties.

8. Rumpke shall comply with all requirements and specifications of the Ohio Environmental Protection Agency with regard to permitting, operation, maintenance and

nuisance related issues, to the extent that they differ from the Colerain Township Zoning Resolution.

9. Blasting shall be permitted only during the hours of 9:00 a.m. to 4:00 p.m. Mondays through Fridays. Blasting shall be prohibited within 200 feet of any Residence District or any right-of-way and shall be prohibited within 500 feet of any dwelling unit unless approved by written consent of the owner of the residence.

a. Blasting shall be monitored and reviewed by an independent seismic consulting firm for any period of time deemed necessary by the Zoning Administrator to provide third-party expert analyses of blast design, recording procedures, instrument operation or other related factors to assure adequate protection from structural damage and abatement of nuisance effects of blasting,

b. Records describing blast design and resultant ground vibration and airblast for all blasts shall be retained for at least three years and shall be made available for inspection upon request by the Zoning Administrator. Within thirty days of a request by the Zoning Administrator for third party expert analysis of blasting records, the landfill operator shall provide a report that evaluates blasting operations and recommends improvements in blasting operations if necessary to adequately protect surrounding property from property damage or unacceptable level or nuisance. Such report and recommendations shall be certified by an independent specialist in applied seismology. Upon request of the Zoning Administrator, Rumpke shall also provide expert certification of compliance approved by an agreed on consultant with recommended improvements, with copies to the Township and Rumpke.

10. Rumpke shall employ Best Management Practices (“BMPs”), Best Available Technology (“BAT”), and Best Engineering Techniques (“BET”), or equally effective alternative measures, to minimize dust emissions, odors, smoke, gas, noise, airblast, and vibrations from the landfill and shall not, in any event, create a nuisance at or beyond the property line of the landfill.

11. Colerain may designate a liaison who shall serve as a contact between Rumpke, Colerain Township and its residents and community to handle complaints from the township community and communicate with Rumpke. Rumpke shall cooperate with the liaison and provide the liaison with information and access to the landfill and its facilities. The liaison or his or her designee shall be provided access to the landfill to observe any and all activities at the landfill or at any appurtenances or improvements affiliated with or servicing the landfill during any time that landfill disposal activity occurs. Colerain Township shall not be permitted to keep or maintain any document or information owned by Rumpke that Rumpke considers proprietary, confidential and/or trade secret.

12. To the extent reasonably practicable and consistent with reasonable engineering practice, Rumpke shall utilize landfill capacity west of Hughes prior to waste placement east of Hughes Road, and new phases for the expansion of the landfill shall be contiguous to an existing operating phase or section of the landfill to the extent reasonably practical and consistent with BMPs.

13. Rumpke agrees to work cooperatively with the Township for the development of the Struble Road light industrial corridor for uses including sales and leases to third parties as market conditions allow, in accordance with reasonable development practices.

14. The Township will not oppose or interfere with Rumpke's applications for the necessary permits from Ohio EPA for the expansion and operation of the landfill, and shall support Rumpke's application for the vacation of Hughes Road.

15. There is currently pending before the Environmental Review Appeals Commission (ERAC) an appeal of the Director's Final Findings and Orders filed by Colerain Township in Case No. ERAC 316446. Colerain agrees that it shall withdraw that appeal.