

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

<b>STATE OF OHIO, ex rel.</b>	:	
<b>JIM PETRO,</b>	:	<b>CASE NO.</b>
<b>ATTORNEY GENERAL OF OHIO</b>	:	
	:	
	:	
<b>Plaintiff,</b>	:	<b>JUDGE</b>
	:	
<b>v.</b>	:	
	:	
	:	
<b>STONEHOUSE BUILDING</b>	:	
<b>PRODUCTS, INC. (f.k.a UNITED</b>	:	<b>CONSENT ORDER AND FINAL</b>
<b>RESOURCE TECHNOLOGIES, INC.)</b>	:	<b>JUDGMENT ENTRY</b>
	:	
<b>Defendant.</b>	:	
	:	

Plaintiff, State of Ohio, ex rel. Jim Petro, Attorney General of Ohio (“Plaintiff”), having filed the Complaint in this action against Defendant Stonehouse Building Products, Inc. (“Defendant”) to enforce Ohio’s air pollution control laws found in R.C. Chapter 3704 and the hazardous waste laws found in Chapter 3734 of the Revised Code and rules adopted thereunder; and Plaintiff and Defendant having consented to the entry of this Order;

**THEREFORE**, without trial 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:
  - A. **“Approved Closure Plan”** means a closure plan that has been approved by the Director. The Approved Closure Plan may be a Closure Plan approved by the

Director as submitted by Defendant, or a closure plan approved by the Director after being submitted by Defendant and modified by the Director.

- B. **“Closure Plan”** means a plan that meets the requirements of Ohio Adm. Code Sections 3745-55-11 through 3745-55-20.
- C. **“Consent Order”** means this Consent Order and Final Judgment Entry.
- D. **“Contractor”** means the individual(s) or company or companies retained by or on behalf of Defendant to undertake and complete the work required by this Consent Order.
- E. **“Defendant”** means Stonehouse Building Products, Inc.
- F. **“Director”** means Ohio's Director of Environmental Protection.
- G. **“Effective Date”** means the date the Brown County Court of Common Pleas enters this Consent Order.
- H. **“Facility”** refers to the location of Defendant’s facility and principal place of business, which facility is located at 9955 Fite Avenue, Hamersville, Brown County, Ohio.
- I. **“Ohio EPA”** means the Ohio Environmental Protection Agency.
- J. **“Plaintiff”** means the State of Ohio by and through the Attorney General of Ohio.
- K. **“Remediation Plan”** means a plan which complies with the requirements set forth in Ohio Adm. Code 3745-55-11(A) and (B) and Ohio Adm. Code 3745-55-14.

## II. JURISDICTION AND VENUE

- 2. This Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapters

3704 and 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. To the extent provided by Civ.R. 65(D), the provisions of this Consent Order shall apply to and be binding upon the parties to the action, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of the Order whether by personal service or otherwise. Defendant is ordered and enjoined to provide a copy of this Consent Order to each contractor it employs to perform work itemized herein.

### **IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS**

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.

5. Nothing in this Consent Order, including the imposition of stipulated civil penalties, shall limit the authority of the State of Ohio to:

- A. Seek relief for claims or conditions not alleged in the Complaint;
- B. Seek relief for claims or conditions alleged in the Complaint that 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. Bring any action against Defendant or against any other person, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. §9601, et seq. and/or R.C. 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 Facility that may present an imminent threat to the public health or welfare, or the environment.

## **V. INJUNCTIVE RELIEF**

6. Defendant is ordered and enjoined to comply with all applicable provisions of the Ohio air pollution control laws set forth in R.C. Chapter 3704 and the regulations adopted thereunder and the hazardous waste laws and rules as set forth in R.C. Chapter 3734 and Ohio Adm.Code Chapters 3745-50 through 3745-69, Ohio Adm.Code Chapters 3745-270, and 3745-279.

### **A. Closure**

7. Within thirty (30) days of the effective date of these Orders, Defendant is ordered and enjoined to submit to Ohio EPA a sampling and analysis plan (“SAP”) for sampling activities to determine the rate and extent of contamination at all areas of the Facility where hazardous waste was stored without a permit. The SAP is subject to Ohio EPA approval. If Ohio EPA does not approve the SAP and provides Defendant with a written statement of deficiencies, Defendant is ordered and enjoined to revise the SAP or submit a new SAP to Ohio EPA for review and approval within 30 days of receipt of Ohio EPA's notice of deficiency. After receipt of Defendant's new or revised SAP, Ohio EPA will notify Defendant in writing that Ohio EPA either approves the SAP or approves the SAP with modifications. If Ohio EPA modifies the SAP, the modified SAP shall become the approved SAP.

8. Within 30 days from receipt of Ohio EPA's approval of the SAP, Defendant is ordered and enjoined to implement the approved SAP pursuant to the schedule of implementation set forth therein.

9. Following receipt of the analytical results generated by the implementation of the approved SAP, Defendant is ordered and enjoined, pursuant to the schedule in the approved SAP, to submit to Ohio EPA a report ("SAP Report") that includes the laboratory analysis and evaluation of data generated from implementing the approved SAP. Using the format found in Ohio Adm. Code 3745-50-42(D), Defendant is ordered and enjoined to certify that the sampling and analysis was conducted in accordance with the approved SAP. The certification shall be signed by Defendant and shall be included in the SAP Report.

#### **Soil Contamination**

10. The SAP Report is subject to Ohio EPA review and approval. If Ohio EPA approves the SAP Report and it indicates that soil, but not ground water, has been contaminated by hazardous waste above the remediation levels identified in Ohio EPA's "Closure Plan Review Guidance" dated March 1, 1999, (and supplements), as a result of hazardous waste disposed of or stored at the Facility, Defendant is ordered and enjoined to prepare a Remediation Plan.

11. The Remediation Plan shall be submitted to Ohio EPA within 30 days from Ohio EPA's approval of the SAP Report. The Remediation Plan shall comply with Ohio Adm. Code 3745-55-11(A) and (B) and Ohio Admin. Code 3745-55-14. The Remediation Plan shall propose methods of and a schedule for remediation of all areas of soil contaminated with hazardous waste.

12. The Remediation Plan is subject to Ohio EPA review and approval. If Ohio EPA does not approve the Remediation Plan and provides Defendant with a written statement of deficiencies, Defendant is ordered and enjoined to revise the Remediation Plan or submit a new Remediation Plan for approval that corrects the stated deficiencies within 30 days of receipt of such written statement.

After receipt of Defendant's new or revised Remediation Plan, Ohio EPA will notify Defendant in writing that Ohio EPA either approves the Remediation Plan or approves the Remediation Plan with modifications. If Ohio EPA modifies the Remediation Plan, the modified Remediation Plan shall become the approved Remediation Plan.

13. Upon receipt of Ohio EPA's approval of the Remediation Plan, Defendant shall implement the approved Remediation Plan in accordance with the requirements of Ohio Adm. Code 3745-55-11(A) and (B) and Ohio Adm. Code 3745-55-14 and the specifications and schedules contained in the approved Remediation Plan and any conditions attached thereto.

14. Within 60 days from the completion of work required by the approved Remediation Plan, Defendant is ordered and enjoined to submit to Ohio EPA, for review and approval, a certification that the remediation work was conducted in accordance with the approved Remediation Plan. The certification shall be signed by Defendant using the format found in Ohio Admin. Code 3745-50-42(D).

#### **Soil and Groundwater Contamination**

15. In the event that the SAP Report indicates that both soil and ground water have been contaminated by hazardous waste above the remediation levels identified in Ohio EPA's "Closure Plan Review Guidance" dated March 1, 1999, (and supplements) as a result of hazardous waste disposed of or stored at the Facility, Defendant is ordered and enjoined to submit to Ohio EPA a Closure Plan prepared in accordance with Ohio Adm. Code 3745-55-11 through 3745-55-20.

16. The Closure Plan shall be submitted to Ohio EPA within 30 days from Defendant's receipt of Ohio EPA's approval of the SAP Report. The Closure Plan is subject to Ohio EPA approval. If Ohio EPA does not approve the Closure Plan, and provides Defendant with a written statement of deficiencies, Defendant is ordered and enjoined, within 30 days from the receipt of such written

statement, to revise the Closure Plan or submit a new closure plan to Ohio EPA addressing the deficiencies. After receipt of Defendant's new or revised Closure Plan, Ohio EPA will notify Defendant in writing that Ohio EPA either approves the Closure Plan or approves the Closure Plan with modifications. If Ohio EPA modifies the Closure Plan, the modified Closure Plan shall become the Approved Closure Plan.

17. Immediately upon receipt of notice of approval by Ohio EPA of Defendant's Closure Plan, either as originally submitted, as revised, or as revised and modified, Defendant is ordered and enjoined to implement the Approved Closure Plan in the manner and pursuant to time frames set forth in the Approved Closure Plan and Ohio Adm. Code 3745-55-13.

18. Within sixty (60) days of completion of closure, Defendant is ordered and enjoined to submit certification of closure to Ohio EPA, pursuant to Ohio Adm. Code 3745-55-15.

19. Defendant is ordered and enjoined to amend the Closure Plan in accordance with Ohio Adm. Code 3745-66-12(C) whenever: (a) changes in operating plans or facility design affect the Closure Plan; or (b) there is a change in the expected year of closure, if applicable; or (c) in conducting partial or final closure activities, unexpected events require a modification of the Closure Plan.

20. If Defendant is unable to certify clean closure, Defendant shall comply with the standards for post-closure care identified in Ohio Adm. Code 3745-55-16 through 20.

#### **Closure Cost Estimate, Financial Assurance and Financial Responsibility**

21. If closure is determined to be necessary, Defendant is ordered and enjoined to submit to Ohio EPA detailed closure cost estimates which are calculated pursuant to Ohio Adm. Code 3745-55-42 and 3745-55-44 within thirty (30) days from submitting the closure plan.

22. If closure is determined to be necessary, Defendant is ordered and enjoined to submit to Ohio EPA documentation of financial assurance for closure pursuant to Ohio Adm. Code 3745-55-43

and 3745-55-45 within thirty (30) days from submitting the closure plan.

23. If closure is determined to be necessary, Defendant is ordered and enjoined to submit to Ohio EPA documentation demonstrating financial responsibility pursuant to Ohio Adm. Code 3745-55-47 within thirty (30) days from submitting the closure plan.

### **C. Hazardous Waste Facility Standards**

24. Defendant is ordered and enjoined from storing, treating or disposing of hazardous waste in violation of R.C. 3734.02.

26. Defendant is ordered and enjoined to manage all hazardous waste generated at the Facility in a manner consistent with Ohio Adm. Code 3745-52-34.

### **D. Air Permits to Install and Permits to Operate**

27. Per R.C. 3704.05(C), Defendant is further ordered and enjoined to maintain compliance with all terms and conditions of any permits to install, permits to operate, or Title V permit, as issued by the Director.

### **E. Title V Permit Application**

28. Within one hundred eighty (180) days of the issuance, by Ohio EPA, of the final permit to install pursuant to paragraph 27 of this Consent Order, Defendant agrees and is hereby enjoined and ordered to submit to the Director a complete Title V operating permit application pursuant to Ohio Adm.Code 3745-77-03 and 3745-77-04(B)(3).

### **F. MACT Determination**

29. Within sixty (60) days of the entry of this Consent Order, Defendant agrees and is hereby enjoined and ordered to apply to the Director for a MACT determination in accordance with Ohio Adm.Code 3745-31-28(B), if such determination is applicable.

### **G. Toxic Release Inventory Reports and Fees**

30. Within sixty (60) days of the entry of this Consent Order, Defendant agrees and is hereby enjoined and ordered to submit to the Director a complete Toxic Release Inventory for calendar year 1999 and all associated fees pursuant to Ohio Adm.Code 3745-100-06, 3745-100-07 and 3745-100-12.

#### **H. Title V Fee Emission Reports**

31. Within sixty (60) days of the entry of this Consent Order, Defendant agrees and is hereby enjoined and ordered to submit to the Director complete Title V fee emission reports pursuant to R.C. 3704.05(G) and Ohio Adm.Code 3745-78-02 for the years 1999, 2000 and 2001 and within thirty (30) days of billing by Ohio EPA pay all associated fees.

#### **VI. FACILITY ACCESS**

32. As of the effective date of this Consent Order, Plaintiff and its representatives and contractors shall have access at all reasonable times to the Facility, and shall have access to any other property controlled by or available to Defendant to which access is necessary to effectuate the actions required by this Consent Order. Access shall be allowed for the purposes of conducting activities related to this Consent Order including but not limited to:

- A. Monitoring the work or any other activities taking place at the Facility;
- B. Verifying any data or information submitted to Plaintiff;
- C. Conducting investigations relating to contamination at or near the Facility;
- D. Obtaining samples;
- E. Assessing the need for, planning, or implementing additional response actions at or near the facility;
- F. Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Defendant or its agents, consistent with this Consent Order and applicable law; or

G. Assessing Defendant's compliance with this Consent Order.

33. Nothing in this Consent Order shall be construed to limit the statutory authority of the Director or his authorized representatives to enter at reasonable times upon any private or public property, real or personal, to inspect or investigate, obtain samples and examine or copy any records to determine compliance with R.C. Chapter 3734.

#### **VII. SUBMITTAL OF DOCUMENTS**

34. All appropriate documents required to be submitted to Ohio EPA pursuant to this Consent Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio Environmental Protection Agency  
Division of Air Pollution Control and/or  
Division of Hazardous Waste Management  
Lazarus Government Center  
122 South Front Street  
Columbus, Ohio 43215  
Attn: Compliance Assurance Section

and

Ohio EPA  
Southwest District Office  
401 E. Fifth Street  
Dayton, Ohio 45402-2911  
Attn: DHWM Group Leader

#### **VIII. CIVIL PENALTY**

35. Defendant is ordered and enjoined to pay to the State of Ohio a total civil penalty in the amount of forty thousand and 00/100 dollars (\$40,000.00), twelve thousand and 00/100 (\$12,000.00) of which shall represent the civil penalty for air pollution control violations set forth in the Complaint and twenty-eight thousand and 00/100 dollars (\$28,000.00) of which shall represent the

civil penalty for hazardous waste violations set forth in the Complaint. The civil penalty shall be paid in installments over a period of twenty-four (24) months as follows:

- (a) Beginning on April 15, 2003 and continuing until September 15, 2003, Defendant shall deliver a certified check for five hundred and 00/100 (\$500.00), made payable to the order of "Treasurer, State of Ohio" to the address stated in paragraph VIII, 35(f) of this Consent Order.
- (b) Beginning on October 15, 2003 and continuing until March 15, 2004, Defendant shall deliver a certified check for one thousand and 00/100 (\$1,000.00), made payable to the order of "Treasurer, State of Ohio" to the address stated in paragraph VIII, 35(f) of this Consent Order.
- (c) Beginning on April 15, 2004 and continuing until September 15, 2004, Defendant shall deliver a certified check for two thousand and 00/100 (\$2,000.00), made payable to the order of "Treasurer, State of Ohio" to the address stated in paragraph VIII, 35(f) of this Consent Order.
- (d) Beginning on October 15, 2004 and continuing until February 15, 2005, Defendant shall deliver a certified check for three thousand and 00/100 (\$3,000.00), made payable to the order of "Treasurer, State of Ohio" to the address stated in paragraph VIII, 35(f) of this Consent Order.
- (e) On March 15, 2005, Defendant shall deliver a certified check for four thousand and 00/100 (\$4,000.00), made payable to the order of "Treasurer, State of Ohio" to the address stated in paragraph VIII, 35(f) of this Consent Order..
- (f) All certified checks shall be delivered to:

Jena Suhadolnik, Administrative Assistant

Office of the Attorney General of Ohio  
Environmental Enforcement Section  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, Ohio 43215-3428

### **IX. STIPULATED PENALTIES**

36. In the event that Defendant fails to comply with any requirement or deadline contained in this Consent Order or any requirement or deadline contained in any document approved in accordance with this Consent Order, Defendant is liable for and shall pay stipulated penalties at the Plaintiff's written demand in accordance with the following schedule for each failure to comply:

- A. For each day of each failure to comply with a requirement or deadline of this Consent Order, up to and including thirty (30) days—fifty dollars (\$50.00) per day for each requirement or deadline not met.
- B. For each day of each failure to comply with a requirement or deadline of this Consent Order, from thirty-one (31) to sixty (60) days—one hundred dollars (\$100.00) per day for each requirement or deadline not met.
- C. For each day of each failure to comply with a requirement or deadline of this Consent Order, over sixty (60) days—two hundred dollars (\$200.00) per day for each requirement or deadline not met.

37. Any payment required to be made under the provisions of this Section of the Consent Order shall be made by delivering to Plaintiff, c/o Jena Suhadolnik 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, a cashier's or certified check or checks made payable to the order of "Treasurer, State of Ohio," for the appropriate amount within thirty (30) days from the date of the State's written demand after failure to meet the requirement or deadline of this Consent Order.

38. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff pursuant to this Article shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to R.C. Chapter 3734, including civil penalties under R.C. 3734.13, 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.

#### **X. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS**

39. All activities undertaken by Defendant pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state and local laws, rules, regulations and permits or other. Defendant 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 Ohio EPA of the potential conflict. Defendant is ordered and enjoined to include in all contracts or subcontracts entered into for work required under this Consent Order, provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and rules. This Consent Order is not a permit issued pursuant to any federal, state or local law or rule.

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

40. This Court shall retain jurisdiction of this action for the purpose of enforcing this Consent Order.

#### **XII. COSTS**

41. Defendant shall pay the court costs of this action.

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

42. Upon signing of this Consent Order by the Court, the clerk is directed to enter it upon

the journal. Within three (3) 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.

#### **XIV. AUTHORITY TO ENTER INTO THE CONSENT ORDER**

43. 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.

#### **IT IS SO ORDERED:**

---

**JUDGE  
BROWN COUNTY  
COURT OF COMMON PLEAS**

Respectfully submitted,

Jim Petro  
Attorney General of Ohio

Stonehouse Building Products, Inc.  
d.b.a. United Resource Technologies, Inc

By:

By:

---

Peter M. Simcic, Jr. (0066382)  
J. Randall Engwert (0070746)  
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215-3428  
Telephone: (614) 466-2766  
Facsimile: (614) 644-1926  
*Attorneys for Plaintiff  
State of Ohio*

---

Bill Barkalow, President  
Stonehouse Building Products, Inc.

By:

---

Andrew L. Kolesar (0067927)  
April R. Bott (0066463)  
Thompson Hine, LP  
312 Walnut Street  
14<sup>th</sup> Floor  
Cincinnati, OH 45202-4089  
*Attorneys for Defendant  
Stonehouse Building Products*