

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, : CASE NO. 584791  
JIM PETRO :  
ATTORNEY GENERAL OF OHIO, : JUDGE TIMOTHY MCCORMICK  
 :  
Plaintiff, :  
 :  
v. :  
 :  
SUMMIT EQUIPMENT AND :  
SUPPLIES, INC., *et al.*, :  
 :  
Defendants. :



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CONSENT ORDER AND FINAL JUDGMENT ENTRY

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Plaintiff State of Ohio (“Plaintiff”), through its Attorney General, at the written request of the Director of Environmental Protection (“Director”), having filed a Complaint seeking civil penalties from Defendants Benny J. Hirsch and Summit Equipment and Supplies, Inc. (“Defendants”) for violations of Ohio Revised Code (“R.C.”) Chapter 3704 and the rules promulgated thereunder, and the parties having consented to the entry of this Order,

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

**I. DEFINITIONS**

1. As used in this Order, the following terms are defined as follows:
  - a. “Air contaminant source” or “source” has the same meaning as set forth in R.C. 3704.01 and Ohio Adm.Code 3745-15-01.
  - b. “Adequately wet,” has the same meaning as set forth in Ohio Adm.Code 3745-20-01.

- c. "Consent Order" or "Order" means this Consent Order and Final Judgment Entry.
- d. "Defendants" means Summit Equipment and Supplies, Inc. and Benny J. Hirsch.
- e. "Demolition" has the same meaning as set forth in Ohio Adm.Code 3745-20-01.
- f. "Director" means the Director of OEPA.
- g. "Facility" means the location of Defendants' demolition and all related operations located at 25100 Detroit Avenue in Westlake, Cuyahoga County; Ohio.
- h. "OEPA" means the Ohio Environmental Protection Agency.
- i. "Owner or operator" has the same meaning set forth in Ohio Adm.Code 3745-15-01 and 3745-20-01.
- j. "Regulated asbestos-containing material" or "RACM" has the same meaning as set forth in Ohio Adm.Code 3745-20-01.

## **II. JURISDICTION AND VENUE**

2. The Court has both personal and subject matter jurisdiction over the parties in this case. The Complaint states a claim upon which relief can be granted against Defendants under R.C. Chapter 3704 and the rules authorized by that chapter. Venue is proper in this Court.

## **II. PERSONS BOUND**

3. The terms and provisions of this Consent Order shall apply to and be binding upon the parties to this action, and in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure, their officers, servants, employees, attorneys, successors and assigns, and those persons in active concert or participation with them who receive actual or constructive notice of this Consent Order whether by personal service or otherwise.

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

4. Compliance with the terms of this Consent Order shall constitute full satisfaction

of any civil liability of Defendants to Plaintiff for the claims alleged in the Complaint against Defendants, which concerns violations of asbestos emission control regulations and Ohio law at the Facility located at 25100 Detroit Avenue in Westlake, Ohio.

5. Nothing in this Consent Order shall be construed to limit the authority of Plaintiff to seek relief for violations not alleged in the Complaint, nor shall this Consent Order bar the State of Ohio from bringing any action against Defendants for any violations that occur after the entry of this Consent Order. Nothing in this Consent Order shall be construed to relieve Defendants of their obligations to comply with applicable federal, state, or local statutes, regulations or ordinances.

#### **IV. INJUNCTIVE RELIEF**

6. If Defendants move or demolish any building in the State of Ohio after the date of entry of this Consent Order, Defendants agree to follow the asbestos emission control rules in Ohio Administrative Code Chapter 3745-20.

#### **V. CIVIL PENALTY**

7. Pursuant to R.C. 3704.06, it is hereby ordered that Defendants shall pay to the State of Ohio a total civil penalty of \$1250. The civil penalty payment shall be made by certified check for the appropriate amount, made payable to "Treasurer, State of Ohio", which check shall be delivered by mail, or otherwise, to Martha Sexton, Paralegal, or her successor, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> floor, Columbus, Ohio 43215-3400 within 30 days of the effective date of this Consent Order.

#### **VI. STIPULATED PENALTIES**

8. In the event that Defendants fail 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, the stipulated penalties contained herein shall apply for the purpose of effecting compliance. Defendants are liable for and shall pay stipulated penalties 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, from sixty-one (61) to ninety (90) days: One Hundred Fifty Dollars (\$150.00) per day for each requirement or deadline not met.

9. 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 Martha Sexton, Paralegal, or her successor, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> floor, Columbus, Ohio 43215-3400, a cashier's or certified check made payable to the order of "Treasurer, State of Ohio", for the appropriate amount within thirty (30) days from the date of the failure to meet the requirement or deadline of this Consent Order. The payment of the stipulated penalty shall be accompanied by a letter briefly describing the type of violation, deadline, or requirement not met and the date upon which the violation of this Consent Order occurred.

10. The payment of stipulated penalties by Defendants and the acceptance of such stipulated penalties by Plaintiff pursuant to this Section shall not be construed to limit Plaintiff's

authority to seek additional relief pursuant to R.C. Chapter 3704, including civil penalties under R.C. 3704.06, 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.

**VI. RETENTION OF JURISDICTION**

11. The Court will retain jurisdiction of this action for the purpose of enforcing and administering Defendants' compliance with this Consent Order.

**VII. COURT COSTS**

12. Defendants are hereby ordered to pay the court costs of this action.

**VIII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK**

13. Upon signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby 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.

**IX. AUTHORITY TO ENTER INTO THE CONSENT ORDER**

14. Each signatory for Defendant Summit Equipment and Supplies, Inc. represents 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.**

2/24/10

DATE

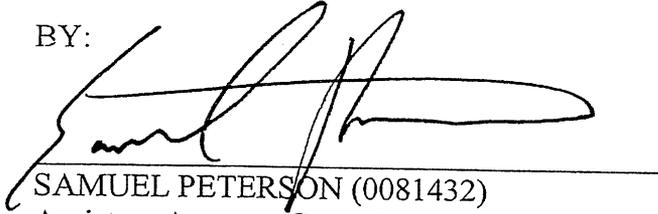


JUDGE TIMOTHY MCCORMICK  
COURT OF COMMON PLEAS  
CUYAHOGA COUNTY

**APPROVED:**

**RICHARD CORDRAY,  
ATTORNEY GENERAL OF OHIO**

BY:

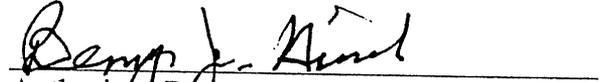


SAMUEL PETERSON (0081432)  
Assistant Attorney General  
Environmental Enforcement Section  
Public Protection Division  
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Columbus, OH 43215-3400  
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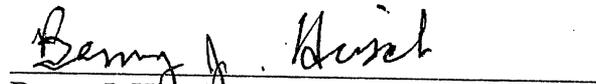
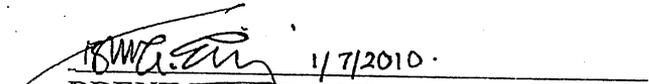
*Attorney for Plaintiff State of Ohio*

**SUMMIT EQUIPMENT AND  
SUPPLIES, ~~INC.~~**

BY:

  
Authorized Representative  
Summit Equipment and Supplies, ~~Inc.~~

**BENNY J. HIRSCH**

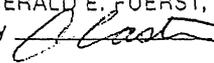
  
Benny J. Hirsch  
1/7/2010  
**BRENT L. ENGLISH**

Law Offices of Brent L. English  
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Cleveland, Ohio 44113-1422

*Attorney for Defendants*

RECEIVED FOR FILING

FEB 25 2010

GERALD E. FUERST, CLERK  
By  Deputy