

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

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

Plaintiff,

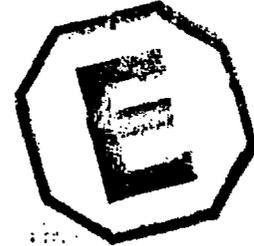
vs.

CINCINNATI AUTO RECYCLERS

Defendant.

: CASE NO. A 0300096

: JUDGE NADEL



CONSENT ORDER AND FINAL JUDGMENT ENTRY

Plaintiff, State of Ohio, *ex rel.* Betty D. Montgomery, Attorney General of Ohio ("Plaintiff"), having filed the Complaint in this action against Defendant to enforce Ohio's hazardous waste laws found in R.C. Chapter 3734 and rules adopted thereunder and Ohio's water pollution laws found in R.C. Chapter 6111 and the rules adopted thereunder, and Plaintiff and Defendant having consented to the entry of this Order;

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

I. DEFINITIONS

As used in this Consent Order:

- A. "Consent Order" or "Order" means this Consent Order and Final Judgment Entry.
- B. "Contractor" means the individual(s) or company or companies retained by or on



behalf of Defendants to undertake and complete the work required by this Consent Order.

C. "Defendant" means Cincinnati Auto Recyclers.

D. "Director" means Ohio's Director of Environmental Protection.

E. "Effective Date" means the date the Hamilton County Court of Common Pleas enters this Consent Order.

F. "Facility" refers to 625 Shepherd Drive, Cincinnati, Ohio, where the alleged treatment, storage, disposal, or other placement of hazardous wastes was conducted by Defendant, and/or where unpermitted discharge of industrial waste or other waste is alleged to have occurred.

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapters 3734 and 6111 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

2. The provisions of this Consent Order shall apply to and be binding upon Plaintiff and Defendant, their agents, officers, employees, assigns, successors in interest and any person acting in concert, privity or participation with them who receives actual notice of this Consent Order whether by personal service or otherwise. Defendant is ordered and enjoined to provide a copy of this Consent Order to each contractor and consultant it employs to perform work itemized herein. Defendant shall require each general contractor to provide a copy of this Consent Order to each of its subcontractors for such work.



IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

3. Plaintiff alleged in its Complaint that Defendant had operated the Facility in such ways as to violate various hazardous waste management laws and rules and certain water pollution control laws and rules of the State of Ohio.

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 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 effective date 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 or remedial activities not conducted pursuant to the terms of this Consent Order;
- e. Bring any action against Defendant or against any other person, under R.C. 6111.03, 6111.04, 3734.13 or 3734.20 and/or other applicable corrective action authority to order the performance of any investigative, assessment, remedial or corrective activities not conducted pursuant to the terms of this Consent Order; and
- f. 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 safety, or the environment.

V. INJUNCTIVE RELIEF



6. Defendant is ordered and enjoined to comply with all applicable provisions of the Ohio hazardous waste laws and rules as set forth in R.C. Chapter 3734 and Ohio Adm. Code Chapter 3745-34 at the Facility.

7. Defendant is ordered and enjoined to comply with all applicable provisions of the Ohio water pollution control laws as set forth in R.C. Chapter 6111 at the Facility.

Personnel Training Program Plan Requirements

8. Defendant is ordered and enjoined to conduct and record personnel training, as required by Ohio Adm. Code 3745-54-16 and/or Ohio Adm. Code 3745-65-16.

9. Defendant is ordered and enjoined, within thirty (30) days of the entry of this Order, to develop and submit a Personnel Training Program Plan ("PTPP") for all employees who handle or manage hazardous waste. The plan shall include annual refresher training and provide training for new employees or employees newly assigned to handle or manage hazardous waste within six months of their hire date or assignment to a hazardous waste management position.

10. Following review of the PTPP referenced in the previous paragraph, if Ohio EPA determines that the PTPP is deficient and gives the Defendant written notice of the deficiencies of the PTPP, Defendant is ordered and enjoined to submit to Ohio EPA a revised PTPP or a new plan for approval that corrects the deficiencies noted by Ohio EPA within sixty (60) days of receipt of the notice of deficiencies. If the Director modifies the revised or new plan, the modified plan becomes the approved plan.

11. Upon approval of the PTPP by Ohio EPA, the Defendant shall implement the



approved PTPP within thirty (30) days of receipt of approval from Ohio EPA.

12. Annually, for a period of three (3) years, on the first day of August, Defendant shall submit to Ohio EPA documentation demonstrating that the annual (each calendar year) updates of the PTPP have been conducted for all employees managing hazardous waste at the facility.

Sampling and Remediation of the Hazardous Waste at the Disposal Site

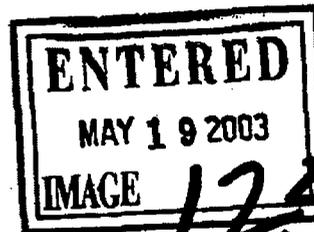
13. Defendant is ordered and enjoined from disposing or treatment of any hazardous waste except in accordance with R.C. 3734.02(E) or R.C. 3734.02(F).

14. Defendant is ordered and enjoined to perform a determination as required by Ohio Adm. Code 3745-52-11 for all wastes generated by Defendant including wastes that result from any work required by this Order.

15. Defendant is ordered and enjoined to maintain and operate the facility to minimize the risk of fire, explosion, and unplanned release, as stated in Ohio Adm. Code 3745-54-31 and/or Ohio Adm. Code 3745-65-31.

16. Defendant is hereby ordered and enjoined to determine the scope of hazardous waste contamination at the locations at the Facility where Defendant disposed of hazardous waste on March 4, 1997.

17. Within one hundred eight (180) days after entry of this Order, Defendant shall conduct a preliminary investigation with the assistance of Ohio EPA to determine the location of a hazardous waste management unit at or adjacent to the tributary of Mill Creek in the area of the facility where the hazardous waste disposal occurred. This study can coincide with any other study being undertaken simultaneously at the Facility.



18. Within thirty (30) days after the date of the preliminary investigation, Defendant shall prepare and submit to Ohio EPA, for review and approval, either:

- A. If a location of the hazardous waste management unit cannot be determined, Defendant shall submit, to Ohio EPA for review and approval, documentation, which justifies that soil sampling and remediation activities are not necessary at the Facility.
- B. If a hazardous waste management unit is located and defined, or the Director disapproves the documentation submitted in 18.A. Defendant shall submit a Sampling and Analysis Plan ("SAP") for the hazardous waste unit where hazardous waste was disposed. The SAP shall describe:

- i. The methods to be used to determine the nature and extent of contamination attributable to the disposal of hazardous waste that occurred on March 4, 1997, associated with the identified hazardous waste unit(s);
- ii. The method to be used to determine the cleanup standards, including background sampling and analysis, or the use of established standards, including Ohio EPA Division of Hazardous Waste Management's generic cleanup standards, or any other agreed to gasoline cleanup standard, and;
- iii. Shall contain a schedule for the implementation of sampling and analysis of these areas.



19. Following review of the SAP referenced in the previous paragraph, if Ohio EPA

determines that the SAP is deficient and provides Defendant with written notice of the deficiencies in the SAP, Defendant shall revise the SAP to address the stated deficiencies within thirty (30) days of receipt of the notice of deficiencies. The Director may approve the SAP with modifications. If the Director modifies the revised plan, the modified plan shall become the approved plan.

20. Within thirty (30) days of receipt of approval from Ohio EPA of the SAP, Defendant shall implement the approved SAP in accordance with the specifications and the approved schedule contained in the approved SAP.

21. Within thirty (30) days of Defendant's receipt of analytical results, Defendant shall submit to Ohio EPA a Sampling and Analysis Report ("SAR") describing the type and extent of contamination found in the locations where hazardous waste was disposed of at the Facility. If the SAR indicates hazardous waste contamination in the areas where hazardous waste was disposed above the cleanup standards indicated in the SAP, the SAR shall also include a Remediation Plan.

22. The Remediation Plan, referenced in the previous paragraph, shall meet closure performance standards set forth in Ohio Adm. Code 3745-66-11(A) and (B) and comply with Ohio Adm. Code 3745-66-14. If the evaluation of data within the SAR confirms that no hazardous waste contamination exists above the cleanup standards at the Facility, the SAR shall provide conclusions with supporting justification that no remediation is needed.

23. The SAR and Remediation Plan are both subject to Ohio EPA approval. If Ohio EPA does not concur with Defendant's evaluation of data within the SAR and/or does not approve the Remediation Plan submitted by Defendant and provides Defendant with a written



statement of the deficiencies in the SAR and/or the Remediation Plan, Defendant is ordered and enjoined to revise the Remediation plan and/or the SAR within thirty (30) days after receipt of the notice of the deficiencies. The Director may approve the Remediation Plan and SAR with modifications. If the Director modifies the revised plan, the modified plan shall become the approved plan.

24. Upon approval from Ohio EPA of the Remediation Plan, Defendant shall implement the approved Remediation Plan in accordance with the requirements of Ohio Adm. Code 3745-66-11(A) and (B) and 3745-66-14, and in accordance with the specifications and the approved schedule contained in the approved Remediation Plan.

25. Within thirty (30) days of completion of the work described in the approved Remediation Plan required by this Order, Defendant shall submit to Ohio EPA, for review and approval, a certification that the sampling analysis and remediation work has been conducted in accordance with the specifications in the approved Remediation Plan. The certification shall be signed by Defendant or a responsible official of Defendant in accordance with Ohio Adm. Code 3745-50-42.

NPDES Storm Water Requirements

26. Defendant is ordered and enjoined, within thirty (30) days of the entry of this Order, to apply for and obtain, from Ohio EPA, a National Pollutant Discharge Elimination System ("NPDES") General Permit to Discharge Storm water Associated with Industrial Activity.

27. Upon approval and issuance of the NPDES General Permit to Discharge Stormwater Associated with Industrial Activity by Ohio EPA, Defendant is ordered and enjoined



to comply with all rules and requirements in the Permit.

28. Defendant is hereby ordered and enjoined, within thirty (30) days of the entry of this order, to submit a Storm Water Pollution Prevention Plan ("SWPPP") that identifies potential pollutant sources and indicates how they will be managed to prevent pollution to waters of the State.

29. Upon review of the SWPPP referenced in the previous paragraph, if Ohio EPA determines the SWPPP is deficient and gives Defendant written notice of the deficiencies, Defendant is ordered and enjoined to submit to Ohio EPA a revised SWPPP that corrects the deficiencies within thirty (30) days of receipt of the notice of deficiencies. If Ohio EPA modifies the revised plan, the modified plan becomes the approved plan.

30. Within thirty (30) days of approval of the SWPPP by the Director, the Defendant shall implement the SWPPP and adhere to the SWPPP for the life of the permit.

VII. SUBMITTAL OF DOCUMENTS

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

Ohio Environmental Protection Agency
Division of Hazardous Waste Management
122 South Front Street
Columbus, Ohio 43215
Attn: Manager, Compliance Assurance Section

Ohio Environmental Protection Agency
Southwest District Office
401 E. Fifth Street



Dayton, Ohio 45402-2911
Attn: DHWM Group Leader

Ohio Environmental Protection Agency
Division of Surface Water
122 South Front Street
Columbus, Ohio 43215
Attn: Enforcement Coordinator, Water Resource Management Section

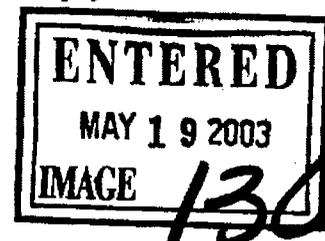
VII. REIMBURSEMENT

32. No later than thirty (30) calendar days after entry of this Consent Decree, Defendant shall pay to the State of Ohio two thousand dollars (\$2,000.00) for the costs associated with the investigation of this incident by Ohio EPA's Division of Emergency Response at this site.

33. The payment made pursuant to Paragraph 32 above shall be made in the form of a certified or cashier's check payable to "Treasurer, State of Ohio" and sent to the Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, ATTN: Edith Long, or her successor. A copy of the transmittal letter and copy of the check shall also be submitted to: the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, ATTN: Patricia Campbell or her successor, and the Assistant Attorney General representing the State in this case.

VIII. CIVIL PENALTY

34. Defendant is ordered and enjoined to pay to the State of Ohio a civil penalty in the amount of Twenty-Two Thousand dollars (\$22,000.00). Six Thousand dollars (\$6,000.00) of this amount will be satisfied by a supplemental environmental project, as described in paragraph 36. One Thousand Dollars (\$1,000.00) of this amount is satisfied by the completion of the supplemental project described in paragraph 37. The remaining Fifteen Thousand dollars (\$15,000.00) of the civil penalty shall be paid in accordance with the payment schedule described

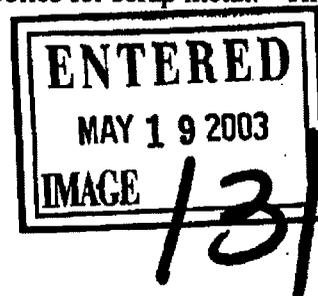


in paragraph 35, below, by delivering to Plaintiff, c/o Jena Suhadolnik, or her successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a cashier's checks or certified checks, payable to the order of "Treasurer, State of Ohio". Twelve Thousand Five Hundred Dollars (\$12,500.00) shall be deposited into the hazardous waste clean-up fund created by R.C. 3734.28. Two Thousand Five Hundred Dollars (\$2,500.00) shall be deposited into the water pollution control administration fund and the environmental education fund specified by R.C. 6111.09(B).

35. Defendant is ordered and enjoined to pay to the State of Ohio a civil penalty in the amount of Fifteen Thousand Dollars (\$15,000.00) in accordance with the following schedule:

- a. Three Thousand Dollars (\$3,000.00) on the effective date of this order.
- b. Three Thousand Dollars (\$3,000.00) paid ninety (90) days after the effective date of this order;
- c. Three Thousand Dollars (\$3,000.00) paid one hundred eighty (180) days after the effective date of this order;
- d. Three Thousand Dollars (\$3,000.00) paid two hundred seventy (270) days after the effective date of this order; and
- e. Three Thousand Dollars (\$3,000.00) paid three hundred sixty (360) days after the effective date of this order.

36. Defendant has agreed to implement or has implemented a supplemental environmental project ("SEP") consisting of the installation of a concrete pad and the necessary ancillary equipment to be used for the purpose of removing and capturing automobile gasoline and other automobile fluids prior to processing the automobiles for scrap metal. The Defendants



will be awarded a SEP allowance of six thousand (\$6,000) dollars for this for this project. This SEP shall be implemented either at the current facility or at a new location if the facility is relocated within a period of two years from the effective date of this action. Within thirty (30) days of completion of the concrete pad, Defendants shall submit to Ohio EPA documentation and receipts demonstrating that the pad has been installed. In the event that Defendant fails to implement the above SEP project within a period of 2 years of the entry date of this action, Defendant shall pay the civil penalty equal to the SEP allowance amount to the address described in paragraph 34.

37. Defendant has implemented a SEP consisting of removal of the abandoned semi-trailer located at 601 E. Third Street, Dayton, Ohio. The Defendant is awarded a SEP allowance of one thousand (\$1,000) dollars for this project. Within thirty (30) days of completion of removal of the trailer Defendant shall submit to Ohio EPA documentation that demonstrates that the trailer has been properly removed. In the event that Defendant fails to implement the above SEP project within a period of ninety (90) days of the effective date of this action, Defendant shall pay the civil penalty equal to the SEP allowance amount to the address described in paragraph 34.

IX. STIPULATED PENALTIES

38. If Defendant fails to meet any of the deadlines contained in this Consent Order, Defendant is immediately and automatically liable for and ordered and enjoined to pay to Plaintiff a stipulated penalty as follows:

- a. Defendants shall pay five hundred dollars (\$500.00) per day for



each day any requirement of this Consent Order is violated up to thirty (30) days;

- b. Defendant shall pay seven hundred fifty dollars (\$750.00) per day, each day that Defendant is in violation of any requirement of this consent order for thirty-one (31) to sixty (60) days;
- c. Defendant shall pay one thousand dollars (\$1,000.00) per day, each day that Defendant is in violation of any requirement of this consent order over sixty (60) days.

39. Defendant is ordered and enjoined to pay any required stipulated penalty 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 certified check in the amount of the stipulated penalty, payable to the order of "Treasurer, State of Ohio." This penalty shall be deposited into the hazardous waste clean-up fund created by R.C. 3734.28 and the water pollution control administration fund created by 6111.09(B).

40. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff pursuant to this Order 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

41. All activities undertaken by Defendant pursuant to this Consent Order shall be



undertaken in accordance with all applicable federal, state or local laws, regulations and rules, ordinances, and permits. Defendant is ordered and enjoined to obtain any and all federal, state, or local permits or approvals necessary to comply with this Consent Order and shall submit timely applications and requests for 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, 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.

42. Any acceptance by the State of Ohio of any payment, document or other work due under this Consent Order hereunder subsequent to the time that the obligation is due under this Consent Order shall not relieve Defendant from timely performance of any other obligation created by the Consent Order.

XI. RETENTION OF JURISDICTION

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

XII. COURT COSTS

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

XIII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

45. The parties agree and acknowledge that this Consent Order is being made available for public comment and final approval by the Plaintiff and Defendant, and the Court's entry of this



Consent Order is subject to the requirement of 40 C.F.R. 123.27(d)(1)(iii), which provides for notice of the journalization of this Consent Order, opportunity for public comment, and the consideration of any public comment. Plaintiff and Defendant reserve the right to withdraw consent to this Consent Order based on comments received during the public comment period.

46. Upon the 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

47. Each signatory hereof represents and warrants that he/she has been duly authorized to sign this document and so binds his/her entity to all terms and conditions thereof.

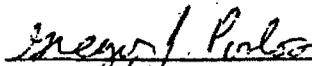
IT IS SO ORDERED:

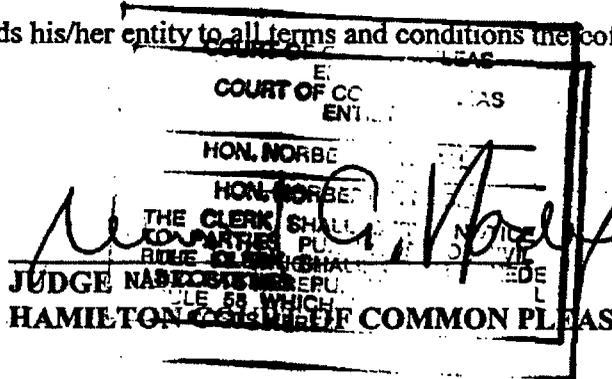


Approved:

Betty D. Montgomery
Attorney General

By:


Gregory Poulos (0070532)
Lori A. Massey (0047226)
Assistant Attorneys General



Cincinnati Auto Recyclers

By:


Roger Bien
President
Cincinnati Auto Recyclers

Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
Telephone: (614) 466-2766
Facsimile: (614) 644-1926

G.J.P.
625 Shepherd Drive
Cincinnati, Ohio 45215

*Attorneys for Plaintiff
State of Ohio*

By:



Theodore J. Schneider, Esq.
Murdock, Goldenberg, Schneider & Groh, L.P.A.
Suite 400
700 Walnut Street
Cincinnati, Ohio 45202-2015

Attorney for Cincinnati Auto Recyclers

