

FILED-COMM. PLEAS

2011 DEC -1 AM 10:16

CLINTON COUNTY  
CYNTHIA R. BAILEY, CLERK

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

<b>ESTATE OF WILLIAM STROUD,</b>	:	<b>CASE NO. CVH2009-0605</b>
	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	<b>JUDGE RUDDUCK</b>
	:	
<b>ESTATE OF DAN WOODGEARD,</b>	:	
	:	
<b>Defendant/ Third-Party Plaintiff,</b>	:	
	:	
<b>and</b>	:	
	:	
<b>STATE OF OHIO, ex rel.</b>	:	
<b>MICHAEL DEWINE</b>	:	
<b>OHIO ATTORNEY GENERAL,</b>	:	
	:	
<b>Third-Party Defendant.</b>	:	

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**CONSENT ORDER BETWEEN PLAINTIFF ESTATE OF WILLIAM STROUD  
AND THIRD-PARTY DEFENDANT STATE OF OHIO**

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This matter came before this Court upon Plaintiff William Stroud's Complaint filed July 22, 2009, upon Defendant Daniel Woodgeard's Third-Party Complaint against the State of Ohio filed on December 23, 2009, and upon Third-Party Defendant State of Ohio's Cross Claim and Counterclaim against William Stroud and Daniel Woodgeard filed on February 18, 2010. William Stroud passed away on March 25, 2011, and on

April 18, 2011 his counsel filed a Suggestion of Death and Motion for Substitution of Party. \_Mr. Stroud's will is being probated in the Greene County probate court (Case number 40575-11-59), Mr. Stroud's county of residence. The State has filed a proof of claim in that matter. \_This Court finds that Plaintiff Estate of William Stroud ("the Estate") and the Third-Party Defendant State of Ohio have reached an agreement, it is therefore hereby ORDERED, ADJUDGED AND DECREED as follows:

### **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter herein, pursuant to Ohio Revised Code ("R.C.") Chapter 3734 and the rules adopted hereunder. The State of Ohio's Cross Claim against William Stroud ("Stroud") stated a claim upon which relief can be granted against Stroud and the Estate agrees to waive any defects in or defenses to jurisdiction of this Action. The Court has jurisdiction over the parties hereto. Venue is properly in this Court.

### **II. PERSONS BOUND**

2. The provisions of this Consent Order shall apply to and be binding upon the Estate, including heirs or successors taking pursuant to the Estate, its executor or administrator, agents, employees, assigns, or successors in interest. The provisions of this Consent Order shall also apply to those who were or are in active concert or participation with Mr. Stroud and his Estate who receive actual notice of this Consent Order, whether by personal service or otherwise. The Executor or Administrator of the Estate shall provide a copy of this Consent Order to any consultants and/or contractors who will perform any work pursuant to this Consent Order.

### **III. SATISFACTION OF LAWSUIT**

3. The State of Ohio alleges in its Cross Claim and Counterclaim that Mr. Stroud had violated various sections of R.C. 3734, and the rules adopted thereunder, by open dumping solid waste, owning and operating an unlicensed solid waste facility, failing to manage used oil, owning and operating an unlicensed scrap tire facility, failing to properly manage and store scrap tires, and failing to perform mosquito control on the property located at 8539 U.S. 68, Liberty Township, Clinton County, Ohio (the "Site") which has specifically been identified in the State's Cross Claim and Counterclaim.

4. Except as otherwise provided for by this Consent Order and/or by law, compliance with the terms of this Consent Order shall constitute full and complete satisfaction of civil liability to the State of Ohio for all claims alleged in the State's Cross Claim and Counterclaim, provided that the Estate timely complies with the terms and requirements set forth herein.

### **IV. RESERVATION OF RIGHTS**

5. Nothing in this Consent Order shall limit the authority of the State of Ohio to: Seek relief for claims or conditions not alleged in the Cross Claim and Counterclaim; Seek relief for violations or conditions alleged in the Cross Claim and Counterclaim which occur after the entry of this Consent Order; Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order; Bring any action against the Estate 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 and/or R.C. Chapter 6111 to (1) recover natural resource damages and/or (2) to order the performance of, and/or recover costs for

any removal, remedial or corrective activities not conducted pursuant to the terms of the Consent Order.

6. The Estate retains all rights, defenses, and/or claims Mr. Stroud could legally raise to the extent that the State seeks further relief from it in the future, or in any action brought to enforce the terms of this Consent Order, except that he shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim splitting, or other defenses based upon any contention that the claims raised by the State in subsequent proceedings were or should have been brought in the instant case.

7. Nothing herein shall be construed to relieve the Estate of its obligation to comply with all applicable federal, state, or local statutes, regulations, or ordinances.

#### **V. PERMANENT INJUNCTION**

8. The Estate is hereby ordered and enjoined to immediately comply with all the requirements set forth in Chapter 3734 of the Ohio Revised Code and any rules adopted thereunder.

9. For the activities set forth in Section VI "Compliance Schedule," the Estate is ordered and enjoined to comply with the terms and conditions specified in Section VI of this Consent Order.

#### **VI. COMPLIANCE SCHEDULE**

10. Within one hundred and twenty (120) days of the approval of the State's claim in the Greene County Probate Court (Case Number 40575-11-159), the Estate is ordered and enjoined to hire a licensed hauler to remove all solid waste from the Site and legally dispose at a licensed and permitted solid waste facility. The Estate shall submit

receipts from any and all facilities that accepted the solid waste as proof of their legal disposal or reclamation within thirty (30) days of disposal or reclamation. All receipts must be submitted to Ohio EPA Southwest District Office, c/o Maria Lammers, 401 E. Fifth Street, Dayton, OH 45402-2911.

11. Within one hundred and twenty (120) days of the approval of the State's claim in the Greene County Probate Court, the Estate is ordered and enjoined to hire a scrap tire transporter registered with the State of Ohio to remove all scrap tires from the Site and legally dispose them at a licensed and permitted scrap tire facility. The Estate must submit receipts from any and all facilities that accepted the scrap tires as proof of their legal disposal or reclamation within thirty (30) days of disposal or reclamation. All receipts must be submitted to Ohio EPA Southwest District Office, c/o Maria Lammers, 401 E. Fifth Street, Dayton, OH 45402-2911.

12. Within one hundred and twenty (120) days of the approval of the State's claim in the Greene County Probate Court, the Estate is ordered and enjoined to properly remove all used oil currently stored at the site in accordance with Ohio Adm. Code Chapter 3745-279. The Estate must submit records from any and all facilities that handle the used oil as proof of the proper management of this material within thirty (30) days of removal from the site. All records must be submitted to Ohio EPA Southwest District Office, c/o Maria Lammers, 401 E. Fifth Street, Dayton, OH 45402-2911.

13. Within one hundred and twenty (120) days of the approval of the State's claim in the Greene County Probate Court, the Estate is ordered and enjoined to characterize all unidentifiable waste in accordance with Ohio Adm. Code 3745-52-11,

and if the waste is determined to be hazardous, to manage and dispose of the hazardous waste in accordance with Ohio Adm. Code Chapter 3745-52;

14. The Estate must notify Ohio EPA at least seven (7) days prior to any removal action taken pursuant to this Section so that an Ohio EPA representative may be present to observe any work conducted at the Site.

#### **VII. SITE ACCESS**

15. The Estate agrees and consents that the Director of Ohio EPA and his employees and agents, including any contractors, subcontractors, consultants or other persons working on behalf of Ohio EPA, shall have full access to the Site at all reasonable times without the need for a warrant as may be necessary for the implementation of this Order and/or to monitor compliance with this Order and/or Ohio environmental laws.

16. This section shall not be construed to eliminate or restrict any right Ohio EPA may otherwise have under Federal or State law to seek access to Stroud's property.

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

17. The Estate shall pay a Civil Penalty in the amount of Twenty Five Thousand Dollars (\$25,000.00). Payment shall be made by tendering a bank cashier's check in the above amount made payable to the "Treasurer, State of Ohio," c/o Martha Sexton, Paralegal, or her successor, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215-3400.

#### **IX. ATTORNEY GENERAL'S ENFORCEMENT COSTS**

18. The Estate is ordered and enjoined to pay the enforcement costs of the Ohio Attorney General in the amount of Five Thousand Dollars (\$5,000.00) within

the approval of the release of funds for the payment of  
fifteen (15) calendar days after ~~entry of this Consent Order~~. This payment shall be made <sup>the enforcement</sup> <sup>(costs haven't</sup> <sup>mentioned.</sup> <sup>in the</sup> <sup>Greene County</sup> <sup>Probate Court.</sup>  
by delivering to Martha Sexton, Paralegal, or her successor, at the Office of the Attorney  
General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor,  
Columbus, Ohio 43215-3400 a certified check for the appropriate amount, payable to the  
order of "Treasurer, State of Ohio." *JS*

**X. EFFECTIVE DATE**

19. This Consent Order shall become effective upon the date of its entry by the Court.

**XII. COURT COSTS**

20. The Estate is hereby ordered to pay the court costs of this action.

**XIII. RETENTION OF JURISDICTION**

21. This Court shall retain jurisdiction of this action for the purposes of making any Order or Decree, which it deems appropriate to carry out this Consent Order.

**XIV. SIGNATORIES**

22. Each of the undersigned representatives of the Parties represents that he/she is fully authorized to enter into the terms and conditions of this Consent Order and legally bind the respective party to this document.

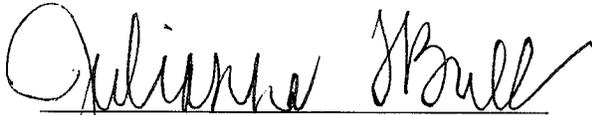
*The hearing SET FOR 12.02.11  
is canceled*

IT IS SO ORDERED

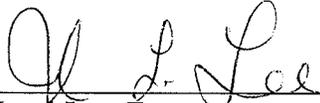
*Judge Rudduck*  
JUDGE RUDDUCK  
CLINTON COUNTY  
COURT OF COMMON PLEAS

12.01.2011  
DATE

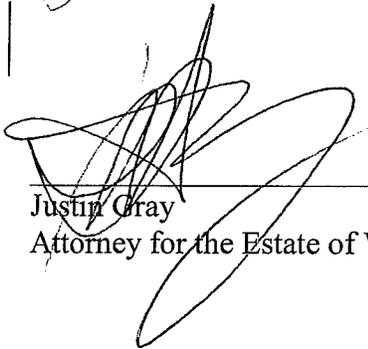
Approved by:



Julianna Bull  
Assistant Attorney General



Janel Lee, Executor  
Estate of William Stroud



Justin Gray  
Attorney for the Estate of William Stroud