

FILED

IN THE COURT OF COMMON PLEAS
GREENE COUNTY, OHIO
TERRI A. HAZON, CLERK
COMMON PLEAS COURT
GREENE COUNTY, OHIO

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

Plaintiff,

CASE NO. 2002CV0559

JUDGE CP2

v.

PHILIP DOWNS

CONSENT ORDER

Defendant

Plaintiff State of Ohio, by its Attorney General Betty D. Montgomery, at the written request of the Director of Environmental Protection, having filed a Complaint in this action against Defendant Philip Downs, to enforce Ohio's solid waste laws found in Chapter 3734. of the Revised Code and rules adopted under those chapters; and the parties having consented to the entry of this Order.

NOW THEREFORE, without adjudication 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:

"Consent Order" or "Order" means this Consent Order and Final Judgment Entry and all appendices hereto. In the event of conflict between this Order and any appendix, the Order shall control.

"Defendant" means Philip Downs.

CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL
FILED July 18 2002
CERTIFIED THIS 5 DAY OF July 2002
Terri A. Hazon
DEPUTY CLERK OF COURTS, GREENE COUNTY, OHIO

6691-10-20 ✓

"Director" means Director of Ohio Environmental Protection Agency.

"Property" means a parcel of land located at **640 Hawkins Road, Xenia, Greene** Colmty, Ohio (parcel number **M36000100150001500**).

"Ohio EPA" means the Ohio Environmental Protection Agency.

"Plaintiff" means the **State** of Ohio by and through the Attorney General **of** Ohio,

II. JURISDICTION AND VENUE

2. The **Court** has jurisdiction over the subject matter of this action, pursuant to RC Chapters 3734. and the rules adopted thereunder. **This court** has jurisdiction over all the parties. The Complaint states a claim upon which relief can be granted. Venue is proper in this Court.

III. PERSONS BOUND

3. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest, and any other person acting in concert, privity or participation with them who receive service of this Consent Order whether by personal service or otherwise.

IV. SATISFACTION OF LAWSUIT

4. Except as otherwise provided herein, 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. This Consent Order shall not be construed to act as a bar to the authority of the State to seek relief, by separate action or by charges in contempt, for future violations of law, or violations of this order.

6. Nothing **in this Consent Order shall** limit the authority of the State to **seek relief** for **claims** or conditions **not** alleged in the Complaint, or to **seek** for claims or conditions which did **not arise** or **exist** prior to entry of this **Consent Order**.

7. This Consent **Order does** not prevent **the State from seeking further** relief for other **pollution** caused by **Defendant that may** be discovered after the **entry** of this **Consent Order**. **relief** for violations of **law** or conditions alleged in the Complaint **which** occur after the entry of **this Consent Order**.

8. The State **hereby** specifically reserves the right to **take** any action **authorized by law** against **any person, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. 9601, et seq. and/or R.C. Sections 3734.20 through 3734.27** to recover natural resource **damages** and/or 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**.

9. The State hereby **specifically** reserves the **right to** take any action authorized by **law against any person, including Defendant, to eliminate or mitigate** conditions at the **Property which may present an imminent threat** to the public **health or welfare** or the environment. **Entering into this Consent Order, the Consent Order itself, or the taking of any action in accordance with it does not constitute an admission by Defendant of any factual or legal matters or opinions set forth herein or in the complaint. Defendant does not admit liability under Ohio law or any other applicable law, rule or regulation for any purpose or admit any issues of fact or law, any wrongdoing, or any responsibility with regard to the Property. Defendant does not admit, and reserves its rights to contest or legally challenge, jurisdiction and venue with regard to**

activities not required or contemplated by *this* Consent Order. Nothing herein absolves Defendant from his duty to comply with the Consent Order.

V. INJUNCTION

10. Defendant is hereby ordered and enjoined to comply with R.C. Chapter 3734. and the rules and regulations promulgated thereunder.

11. Defendant is hereby ordered and enjoined to cease the open dumping of scrap tires or other solid wastes onto the Property.

VI. CIVIL PENALTY

12. In accordance with the schedule set out in Paragraph 23 of this Consent Order, Defendant agrees and is ordered and enjoined to pay a civil penalty of \$ 1,200.

13. Defendant shall make such civil penalty payment by delivering to Plaintiff, c/o Jena Suhadolnik or her successor, Office of the Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check for \$100, payable to the order of "Treasurer, State of Ohio", each month for a twelve month period commencing with the first payment due September 15, 2002. Subsequent \$100 payments are due on the 15th day of each month, with the final payment due August 15, 2003. Pursuant to RC . 3734.13(E), the moneys will be deposited into the Scrap Tire Management Fund created in R.C. 3734.82.

VII. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS

14. All activities undertaken by Defendant pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal and state and local laws, rules and regulations, and permits. This Consent Order is not a permit issued pursuant to any federal, state or local Law. Nothing in this Consent Order relieves Defendant from following any

self-implementing requirement **in any statute** or rule while preparation and review of any application for **a permit or other authorization is ongoing, nor thereafter.**

VIII. RETENTION OF JURISDICTION

15. This Court will retain jurisdiction of this action for the purpose of enforcing this Consent Order.

IX. COURTCOSTS

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

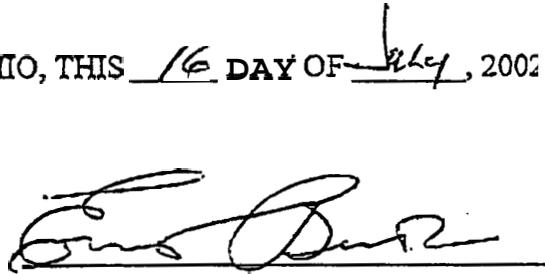
X. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

17. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, 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.

IT IS SO ORDERED.

SIGNED AT XENIA, GREENE COUNTY, OHIO, THIS 16 DAY OF July, 2002

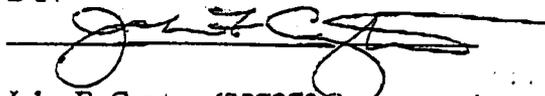
SIGNED:



JUDGE
GREENE COUNTY
COURT OF COMMON PLEAS

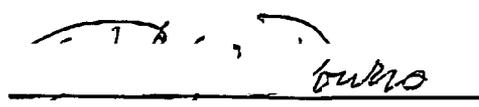
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

BY:



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Defendant