

IN THE COURT OF COMMON PLEAS
WYANDOT COUNTY, OHIO

STATE OF OHIO, ex rel.	:	CASE NO. 97-CV-0038
JIM PETRO	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE AUBRY
	:	
Plaintiff,	:	
	:	
v.	:	JUDGMENT ENTRY
KIRBYS' TIRE RECYCLING, INC., et al.	:	
	:	
Defendants.	:	

2005 OCT 21 P 1:37
 ANN K. DURBIN
 CLERK
 CLERKS OFFICE
 WYANDOT CO., OHIO
 FILED

This matter came before the Court on Plaintiff State of Ohio's Amended Complaint filed on June 14, 2002. In its Judgment Entry of September 1, 2004, this Court granted the State's Motion for Summary Judgment as to the State's Amended Complaint and found all Defendants liable for Counts One through Three, Defendant Kirbys' Tire Recycling, Inc. liable for Counts Four through Seven, and Defendant Doris P. Kirby and Defendant Doris P. Kirby, Sole Trustee of the Doris Patricia Kirby Living Trust liable for Count Six. On October 13, 2005, a hearing was held in order to assess a civil penalty and determine the award of damages to the State of Ohio. After considering the evidence before this Court, this Court HEREBY ORDERS the following:

- A. In determining the appropriate amount of civil penalty assessed, this Court considered the evidence presented as to the recalcitrance of the Defendants, the economic benefit obtained from Defendants' years of violating Ohio's environmental laws, the gravity of harm from the unlawful operation of Kirbys' Tire Recycling, Inc., and the extraordinary enforcement costs that were incurred by the State in enforcing Ohio's environmental laws and regulations at the Kirbys' Tire Recycling site.

Therefore, Defendants are hereby ordered to pay the State of Ohio a \$20,000,000.00 civil penalty. The imposition of the civil penalty is joint and several as to all of the Defendants.

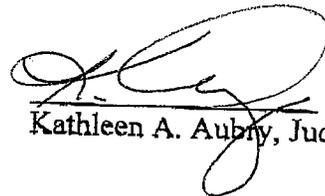
- B. As to Count Five, Defendant Kirbys' Tire Recycling, Inc., is ordered to reimburse the State for the costs of the tire removal in the amount of \$11,700,944.98.
- C. As to Count Six, Defendant Kirbys' Tire Recycling, Inc., Defendant Doris Kirby and Defendant Doris P. Kirby, Sole Trustee of the Doris Patricia Kirby Living Trust are ordered to reimburse the State a total of \$6,156,729.56 for fire abatement costs that have been incurred by the State of Ohio at the Kirbys' Tire Recycling site since a massive tire fire in August of 1999, in addition to future fire abatement costs up to 7 million dollars. In light of Defendant Doris Kirby's bankruptcy petition, this Court's assessment of fire abatement costs as to Defendant Doris Kirby is as follows: (1) from August of 1999 until May 20, 2002, Doris Kirby is jointly and severally liable to the State for fire abatement costs in the amount of \$4,404,278.25, (2) from May 20, 2002, until June 30, 2006, Doris Kirby is jointly and severally liable to the State for fire abatement costs in the amount of \$1,754,451.31, and (3) for future fire abatement costs, Defendant Doris Kirby is jointly and severally liable to the State for an amount up to 7 million dollars.
- D. As to Count Seven, Defendant Kirbys' Tire Recycling, Inc., is ordered to pay the State of Ohio future tire removal costs of an additional 1.4 million

dollars.

E. Defendants are permanently ordered to comply with Ohio's environmental laws and regulations and are permanently enjoined from maintaining a nuisance.

F. Defendants are permanently enjoined from engaging in, allowing or authorizing any activities at the Kirbys' Tire Recycling site that would interfere with, compromise or undo the remediation of the site by the State.

IT IS SO ORDERED.



Kathleen A. Aubry, Judge