

FILED
COMMON PLEAS COURT
IN THE COURT OF COMMON PLEAS BELMONT CO., OH
BELMONT COUNTY, OHIO

2002 JUL 17 AM 9 35

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

Plaintiff,

v.

A&C CONSTRUCTION CO., INC., et al.

Defendants.

RANDY L. MARPLE
CLERK OF COURT
CASE NO. 01-CV-00375
JUDGE JOHN M. SOLOVAN, II
CONSENT ORDER AND
PERMANENT INJUNCTION

WHEREAS, Plaintiff State of Ohio, on relation of Betty D. Montgomery, Attorney General of Ohio, at the written request of the Director of the Ohio Environmental Protection Agency ("Ohio EPA"), filed a complaint commencing this action against A&C Construction Co., Inc., ("Defendant A&C"), E&T Lawn Service and Tire Recycling, Inc., and Earl F. Sturm to enforce the provisions of Ohio's solid waste laws set forth in R.C. Chapter 3734 and the rules and regulations promulgated thereunder

WHEREAS, Plaintiff and Defendant A&C agree to the entry of this Consent Order and Permanent Injunction ("Consent Order") without trial of any issue of fact or law, and upon consent of the Parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the undersigned parties to this action and the subject matter of the Complaint. Venue is proper in this Court.

II. PARTIES BOUND

2. The provisions of this Consent Order shall apply to and be binding upon Defendant A&C, its successor in interest and assigns, and others to the extent provided by Civil Rule 65(D).

3. Defendant A&C shall provide a copy of this Consent Order to each general contractor, subcontractor, laboratory, consultant, agent, employee, and person hired by or who will provide work or services related to this Consent Order on behalf of Defendants.

III. DEFINITIONS

4. The terms used in this Consent Order shall have the same meaning as used in R.C. Chapter 3734 and the regulations promulgated thereunder.

5. The term "A&C tire dump," as used in this Consent Order, refers to an unpermitted and unlicensed solid waste disposal facility, as defined in R.C. 3734.01(N) and Ohio Adm.Code 3745-27-01(C)(11), consisting of approximately 116,640 scrap tires deposited onto the surface of the ground at property currently owned by Defendants and located at 56805 Ferry Landing Road, Shadyside, Belmont County, Ohio.

IV. PERMANENT INJUNCTION

6. Defendant A&C agrees and is permanently ordered and enjoined to comply with the scrap tire laws and regulations set forth in R.C. Chapter 3734. and Ohio Adm.Code Chapter 3745-27.

7. Defendant A&C agrees and is permanently ordered and enjoined to cease the open dumping of scrap tires on the surface of the ground at the A&C tire dump, unless and until such time as Defendant A&C or another responsible party obtains a permit or registration, and

license as a scrap tire collection, storage, or recovery facility as required by R. C. Chapter 3734. and the rules promulgated thereunder.

8. Defendant A&C agrees and is hereby permanently ordered and enjoined to employ mosquito control measures at the A&C tire dump in accordance with Ohio Adm.Code 3745-27-60(B) until such time as all scrap tires have been removed from the A&C tire dump. Defendants shall keep detailed records of all mosquito control activities conducted at the A&C tire dump. These records shall be made available for inspection by Ohio EPA.

9. Defendant A&C shall not alter the configuration of the scrap tire piles at the A&C tire dump except as outlined in Paragraph 10 of this Consent Order.

10. Within thirty-one (31) months of the signing of this Consent Order, Defendant A&C shall remove all scrap tires from the A&C tire dump. All scrap tires removed from the A&C tire dump shall be transported by an Ohio EPA registered scrap tire transporter to a properly permitted or registered and licensed scrap tire facility in the State of Ohio, to an Ohio EPA approved beneficial use location, or to an appropriate facility outside of Ohio that is operating in compliance with the applicable regulations of the jurisdiction in which it is located. The scrap tires shall be removed from the A&C tire dump in accordance with R.C. Chapter 3734. based on the following schedule:

- a. Phase I: Within seven (7) months of the signing of this Consent Order, Defendant A&C shall lawfully remove and lawfully dispose of at least 20% of the original total of scrap tires (approximately 23,328 tires), i.e., either all of pile #1, pile #2, pile #3, or pile #4, as designated in Attachment A to this Consent Order.
- b. Phase II: Within thirteen (13) months of the signing of this Consent Order, Defendants shall lawfully remove and lawfully dispose of at least 40% of the original total of scrap tires (approximately 46,656 tires), i.e.,

either all of pile #1, pile #2, pile #3, or pile #4, whichever are remaining, as designated in Attachment A to this Consent Order.

- c. Phase III: Within nineteen (19) months of the signing of this Consent Order, Defendants shall lawfully remove and lawfully dispose of at least 60% of the original total of scrap tires (approximately 69,984 tires), i.e., either all of pile #1, pile #2, pile #3, or pile #4, whichever are remaining, as designated in Attachment A to this Consent Order.
- d. Phase IV: Within twenty-five (25) months of the signing of this Consent Order, Defendants shall lawfully remove and lawfully dispose of at least 80% of the original total of scrap tires (approximately 93,312 tires), i.e., either all of pile #1, pile #2, pile #3, or pile #4, whichever are remaining, as designated in Attachment A to this Consent Order.
- e. Phase V: Within thirty-one (31) months of the signing of this Consent Order, Defendants shall lawfully remove and lawfully dispose of 100% of the original total of scrap tires, i.e., all of pile #5, as designated in Attachment A to this Consent Order.

11. Defendant A&C shall maintain the existing fire lanes between the scrap tire piles at the A&C tire dump in accordance with Ohio Adm.Code 3745-27-60(B)(6)(d) and 3745-27-60(B)(6)(e) until such time as all scrap tires have been removed from the A&C tire dump.

12. Defendant A&C shall keep detailed records of all scrap tire removal operations conducted at the A&C tire dump. These detailed records shall include, but are not limited to, scrap tire transporter shipping papers (as detailed in Ohio Adm.Code 3745-27-57) and receipts establishing the proper disposal or deposition of scrap tires from the A&C tire dump at a properly permitted or registered and licensed scrap tire facility in the State of Ohio, an Ohio EPA approved beneficial use location, or an appropriate facility outside of Ohio that is operating in compliance with the applicable regulations of the jurisdiction in which it is located. These records shall be kept on file for a minimum of three years from the effective date of this Consent Order and shall be made available for inspection by Ohio EPA.

13. Defendant A&C shall permit Ohio EPA access to the A&C tire dump for the purpose of conducting inspections of the A&C tire dump to determine compliance with this Consent Order and other applicable laws and regulations.

14. Within thirty (30) days after entry of this Consent Order, the Director of Ohio EPA shall issue a scrap tire transporter registration certificate to Defendant A&C, based upon the application for a scrap tire transporter registration certificate currently pending before the Director of Ohio EPA. The issuance of this scrap tire transporter registration certificate does not relieve Defendant A&C of the obligation to comply with the scrap tire laws and regulations codified in R.C. Chapter 3734. and the regulations adopted thereunder.

15. Defendant A&C agrees and shall immediately dismiss its pending counterclaim against Earl F. Sturm, II in Case No. 01-CV-375 before the Court of Common Pleas of Belmont County, Ohio.

V. WRITTEN NOTIFICATION

16. Within seven (7) days of completion of each requirement set forth in Section IV, Paragraphs 8 and 10 of this Consent Order, Defendant A&C agrees and is ordered and enjoined to submit to the Court and to the Ohio EPA written notice of completion, along with documentation of proper removal and disposal, including receipts. The written notice of completion shall also include documentation of any transfer of scrap tires to another person or entity for an authorized beneficial use pursuant to Ohio Adm.Code 3745-27-78.

VII. STIPULATED PENALTIES

17. In the event that Defendant A&C fails to comply with any of the requirements of

this Consent Order, Defendant A&C shall, immediately and automatically, be liable for and shall pay a stipulated penalty in accordance with the following schedule: Defendant A&C shall pay seven hundred and fifty dollars (\$750.00) per day for each day any requirement of this Consent Order is violated up to thirty (30) days; after thirty (30) days, Defendant A&C shall pay one thousand five hundred dollars (\$1,500.00) per day; after ninety (90) days, Defendant A&C shall pay three thousand dollars (\$3,000.00) per day.

18. Stipulated penalties due under this Consent Order shall be paid by certified check or money order, payable to "Treasurer, State of Ohio" and mailed to Plaintiff, c/o Jena Suhadolnik or her successor, Administrative Assistant, Office of the Attorney General, Environmental Enforcement Section, 30 East Broad Street - 25th Floor, Columbus, Ohio 43215-3428, within ten (10) days of the occurrence of the failure to comply with this Consent Order as described above.

VIII. SITE ACCESS

19. Defendant A&C agrees and consents that Ohio EPA, its employees and agents, shall have full access to the A&C tire dump at all reasonable times without the need for a warrant, as may be necessary for the implementation of this Consent Order.

20. To the extent that the A&C tire dump or any other property to which access is required for the implementation of this Consent Order is owned or controlled by persons or companies other than Defendant A&C, then Defendant A&C shall use its best efforts to secure from such person(s) access for Defendant A&C and the Ohio EPA as necessary to effectuate this Consent Order. Defendant A&C shall submit copies of all access agreements obtained by Defendant A&C to the Ohio EPA within ten (10) days of receipt. If any access required to

effectuate this Consent Order is not obtained within thirty (30) days of the entry date of this Consent Order, or within thirty (30) days of the date that Ohio EPA notifies Defendant A&C in writing that additional access beyond that previously secured is necessary, Defendant A&C shall promptly notify the Ohio EPA in writing of the steps it has taken to obtain access. The Ohio EPA may, as it deems appropriate, assist Defendant A&C in obtaining access.

21. Paragraphs 19 and 20 of this Consent Order shall not be construed to eliminate or restrict any State right to seek access to the A&C tire dump that it may otherwise have under Federal or State law.

IX. RESERVATION OF RIGHTS

22. The State of Ohio reserves the right to seek further relief from this Court or any other court, including, but not limited to, further preliminary and/or permanent injunctive relief, civil penalties and cost recovery for work beyond this Consent Order. This Consent Order in no way waives any defenses, which Defendant A&C may have as to such further relief.

23. The State of Ohio expressly reserves, and this Consent Order shall be without prejudice to, any civil or criminal claims, demands, rights or causes of action, judicial or administrative, the State of Ohio may have or which may in the future accrue against Defendant A&C, regardless of whether such claim, demand, rights or cause of action was asserted in the Complaint.

24. Nothing herein shall limit the authority of the State of Ohio to undertake any action against any entity, including Defendant A&C, to eliminate or control conditions that may present a threat to the public health, safety, welfare or environment and to seek cost reimbursement for any such action.

25. Nothing herein shall be construed to relieve Defendant A&C of its obligation to comply with applicable Federal, State or local statutes, regulations or ordinances, including but not limited to permit requirements.

26. Nothing herein absolves Defendant A&C from the duty to comply with this Consent Order.

27. Defendant A&C reserves all rights that it may have against any other person under all Federal, State and local laws, except as may be set forth in a separate agreement or agreements.

28. Nothing in this Consent Order shall constitute or be construed as a release or a covenant not to sue against any entity not a signatory to this Consent Order, including, but not limited to E&T Lawn Service and Tire Recycling, Inc. and Earl F. Sturm, for any liability as alleged in the Complaint or for any liability that such entity may have arising out of or relating to the A&C tire dump.

X. RETENTION OF JURISDICTION

29. This Court shall retain jurisdiction of this matter for the purpose of overseeing the compliance by Defendant A&C with this Consent Order.

XI. COURT COSTS

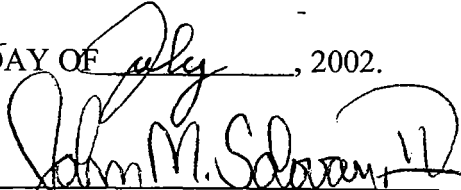
30. Defendant A&C shall pay the costs of this action that are attributable to Defendant A&C.

XII. SIGNATORIES

31. The undersigned representatives of Defendant A&C understands the terms and

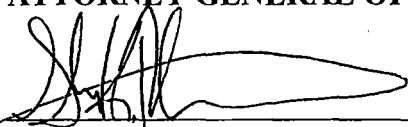
conditions of this Consent Order and certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to execute and legally bind Defendant A&C to this document.

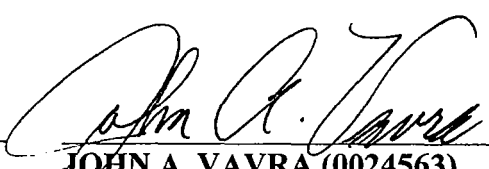
SIGNED IN BELMONT COUNTY, OHIO, THIS 2nd DAY OF July, 2002.



JUDGE JOHN M. SOLOVAN, II
COURT OF COMMON PLEAS
BELMONT COUNTY, OHIO

APPROVED BY:

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO


SHAUN K. PETERSEN (0072444)
MICHAEL E. IDZKOWSKI (0062839)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
(614) 466-2766
Trial Attorneys for Plaintiff


JOHN A. VAVRA (0024563)
132 West Main Street
P.O. Box 430
St. Clairsville, Ohio 43950
(740) 695-4331
Trial Attorney for Defendant
A&C Construction Co., Inc


A&C CONSTRUCTION CO., INC.
By Authorized Representative

JOURNALIZED

344

