

Filed and journalized  
by court on 10/4/01.  
DAC

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

STATE OF OHIO ex rel.	:	
BETTY D. MONTGOMERY,	:	
ATTORNEY GENERAL OF OHIO,	:	Case No. 406465
	:	
Plaintiff,	:	Judge Christopher A. Boyko
	:	
v.	:	
	:	<u>CONSENT ORDER</u>
BERNARD ADAMS,	:	<u>AND FINAL JUDGMENT</u>
	:	
Defendant.	:	

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio by its Attorney General Betty D. Montgomery (hereinafter "State" or "Plaintiff") and Defendant Bernard Adams having consented to the entry of this Consent Order,

NOW THEREFORE, 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 parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against the Defendant under Chapter 3704 of the Ohio Revised Code, and venue is proper in this Court.

**II. PARTIES**

2. 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 person acting in concert or privity with any of them. Defendant shall provide a copy of this Consent Order to each contractor and/or consultant he employs to perform work itemized herein,

and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work.

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

3. Plaintiff alleges in its Complaint that Defendant has operated his gasoline dispensing facility (“GDF”), as that term is defined by Ohio Adm. Code 3745-21-01(H)(7), known as University Sunoco located at 10400 Chester Avenue, Cleveland, Ohio, in such a manner as to result in violations of the air pollution control laws and regulations of the State of Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by the Defendant for all claims under such laws alleged in the Complaint. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint.

### **IV. INJUNCTIVE RELIEF**

4. Defendant is hereby enjoined and ordered to immediately and permanently comply with R.C. Chapter 3704 and the rules and regulations adopted thereunder, and all the terms and conditions of any Permit to Operate that is issued to the Defendant by the Director of Ohio EPA for the GDF.

5. Defendant is hereby permanently enjoined from operating the GDF without first complying with the requirements of Ohio Adm. Code 3745-21-09(DDD) as applicable, unless otherwise exempt. In addition, Defendant is enjoined and ordered to properly operate and maintain each piece of stage II vapor control system equipment at the GDF, as required by Ohio Adm. Code 3745-21-09(DDD).

6. Defendant is enjoined and ordered to submit to Ohio EPA, prior to operation of the GDF, a complete and approvable Permit to Operate application, per Ohio Adm. Code 3745-35-02, for the GDF.

**V. CIVIL PENALTY AND  
SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)**

7. Pursuant to R. C. 3704.06, Defendant shall pay to the State of Ohio a total of three thousand dollars (\$3,000), which shall be paid as follows:

- (a) On or by February 1, 2002, Defendant shall deliver a certified check for one thousand and two hundred dollars (\$1,200), which represents civil penalty, made payable to the order of "Treasurer, State of Ohio."
- (b) On or by April 3, 2002, Defendant shall deliver a certified check for one thousand and two hundred dollars (\$1,200), which represents civil penalty, made payable to the order of "Treasurer, State of Ohio."
- (c) In lieu of paying the remaining six hundred dollars (\$600) in civil penalty, on or by December 3, 2001, Defendant shall deliver a certified check for the six hundred dollars (\$600), made payable to the "Ohio Department of Natural Resources, Division of Forestry, State Forest Fund (Fund No. 509)." The purpose of this payment is to fund a supplemental environmentally beneficial project, specifically urban area tree-planting projects in Ohio.
- (d) All certified checks referenced in this paragraph shall be delivered to:

Jena Suhadolnik, Administrative Assistant  
Office of the Attorney General of Ohio  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215-3428

8. On or by November 2, 2001, Defendant shall deliver a certified check in the amount of three hundred dollars (\$300), made payable to "Attorney General of Ohio," to the address indicated in paragraph 7(d) of this Consent Order. This payment represents the sanctions imposed against Defendant by this Court's Order of March 20, 2001.

#### **VI. STIPULATED PENALTIES**

9. In the event that Defendant fails to meet any of the deadlines or requirements of this Consent Order, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

- (a) For each day of each failure to meet a requirement and/or deadline up to thirty (30) days, five hundred dollars (\$500) per day per requirement and/or deadline not met;
- (b) For each day of each failure to meet a requirement and/or deadline from thirty-one (31) to sixty (60) days, one thousand dollars (\$1,000) per day per requirement and/or deadline not met; and
- (c) For each day of each failure to meet a requirement and/or deadline after sixty (60) days, one thousand five hundred dollars (\$1,500) per day per requirement and/or deadline not met.

10. Any payment required to be made under the provisions of paragraph 9 of this Consent Order shall be made by immediately submitting a certified check for the appropriate amount, made payable to the order of "Treasurer, State of Ohio," to the address indicated in paragraph 7(d) of this Consent Order.

11. The imposition, payment, and collection of stipulated penalties pursuant to violations of this Consent Order shall not prevent the State from pursuing additional remedies, civil, criminal or administrative, for violations of applicable laws.

**VII. RETENTION OF JURISDICTION**

12. The Court will retain jurisdiction of this action for the purpose of administering or enforcing Defendant's compliance with the terms and provisions of this Consent Order.

**VIII. COSTS**

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

**IX. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK**

14. Upon signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three 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 to note the service in the appearance docket.

**IT IS SO ORDERED.**

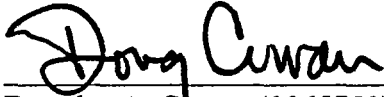
10/3/01  
DATE

Chris Boyko  
CHRISTOPHER A. BOYKO, JUDGE  
CUYAHOGA COUNTY COURT OF  
COMMON PLEAS

(Consent Order for State of Ohio ex rel. Montgomery v. Bernard Adams, Case No. 406465 – cont.)

**APPROVED:**

**BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO**



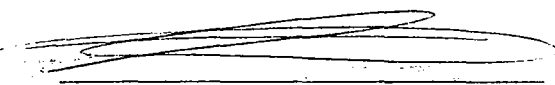
Douglas A. Curran (0065750)  
David G. Cox (0042724)  
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215-3428  
Telephone: (614) 466-2766  
Telefax: (614) 644-1926

*Attorneys for the Plaintiff  
State of Ohio*



A. Deane Buchanan (0033954)  
Hardiman, Buchanan, Howland  
& Trivers  
1025 Huntington Building  
925 Euclid Avenue  
Cleveland, Ohio 44115-1405  
Telephone: (216) 696-5444  
Telefax: (216) 696-3937

*Attorney for Defendant Bernard Adams*

  
Bernard Adams  
Defendant