

TERMINATION NO. 7
BY: lp 10-16-96

OHIO
ATTY GENERAL
IN THE COURT OF COMMON PLEAS
OCT 21 6 45 AM '96
FRANKLIN COUNTY, OHIO

ENVIRONMENTAL
ENFORCEMENT

CASE NO. 10-7788

STATE OF OHIO, EX REL.
BETTY D. MONTGOMERY,
ATTORNEY GENERAL OF OHIO,

Plaintiff,

vs.

MICHAEL M. BOICH,

and

MICHAEL C. TSAO

Defendants.

JUDGE _____

CONSENT ORDER

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
96 OCT 21 AM 9:18
JESSE D. ODDI
CLERK OF COURTS

Plaintiff, State of Ohio, by its Attorney General, Betty D. Montgomery ("Plaintiff"), having filed the Complaint against Defendants Michael M. Boich and Michael C. Tsao ("hereinafter Defendants") to enforce Ohio's asbestos air pollution control laws set forth in Ohio Revised Code ("O.R.C.") Chapter 3704. and the rules adopted thereunder, and the parties having consented to the entry of this Consent Order,

NOW THEREFORE, without trial 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. JURISDICTION AND VENUE

1. The Court has jurisdiction over the parties and the subject matter of

this action, pursuant to O.R.C. Chapter 3704. and the rules adopted thereunder. The Complaint states a claim upon which relief can be granted against Defendants under O.R.C. Chapter 3704., and venue is proper in this Court.

II. PERSONS BOUND

2. The provisions of this Consent Order shall apply to and be binding upon the Defendants to this action, their agents, representatives, assigns and successors in interest. In addition, the provisions of this Consent Order shall apply to and be binding upon those persons who receive actual notice of this Consent Order whether by personal service or otherwise who act in concert or participation with any of the entities identified above.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendants have engaged in demolition operations involving asbestos or asbestos-containing materials at the Wine Cellar Restaurant, formerly located at 1771 East Dublin-Granville Road, Columbus, Franklin County, Ohio. Plaintiff's Complaint also alleges that Defendants' demolition operation involving asbestos have resulted in violations of O.R.C. Chapter 3704. and the regulations adopted thereunder. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for the violations 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 or for violations of Chapters 3704. which occur after the filing of the Complaint. Further, nothing in this Consent

Order shall be construed to relieve the Defendants of their obligations to comply with applicable federal, state or local statutes, regulations or ordinances.

IV. PERMANENT INJUNCTION

4. Defendants are hereby enjoined and ordered to immediately and permanently comply with O.R.C. Chapter 3704. and the regulations adopted thereunder, including but not limited to the asbestos regulations contained in Ohio Administrative Code ("O.A.C.") Chapter 3745-20. Specifically, but not in any way limiting the scope of this paragraph, Defendants agree to and are hereby permanently enjoined to:

- a.) submit timely and complete notifications of intent to engage in demolition and renovation operations to the proper authority, as required by O.A.C. Rules 3745-20-02 and 3745-20-03(A);
- b.) remove friable asbestos materials before commencing any wrecking or demolishing of a facility, as required by O.A.C. Rule 3745-20-04(A)(1);
- c.) properly handle and adequately wet friable asbestos materials and facility components covered with, coated by or containing such materials, while being removed, cut, disjointed, stripped or otherwise taken out of a facility, as required by O.A.C. Rule 3745-20-04(A)(2), (A)(3), (A)(4) and (A)(5);
- d.) repair, encapsulate or remove all friable asbestos-containing materials prior to the removal of emission controls, as required by O.A.C. Rule 3745-20-04(B);
- e.) prevent the visible emission of asbestos-containing waste material during its collection, processing, packaging, transporting, or deposition, as required by O.A.C. Rule 3745-20-05(B);
- f.) seal all friable asbestos-containing waste material into properly labelled, durable, leak-tight containers, as required by O.A.C. Rule 3745-20-05(C);
- g.) prepare and secure all loads of asbestos-containing waste material to prevent any visible emissions, load loss, spillage and/or leakage during

removal or transporting to a disposal site, as required by O.A.C. Rule 3745-20-05(D).

V. CIVIL PENALTY

5. For violations of O.R.C. Chapter 3704. and the regulations adopted thereunder, Defendants are enjoined and ordered to pay to the State of Ohio a civil penalty in the amount of Twenty Thousand Dollars (\$20,000.00). The civil penalty shall be paid by Defendants by their delivering to Plaintiff, c/o Matt Sanders, Administrative Assistant, or his successor, at the office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check in that amount, payable to the order of "Treasurer, State of Ohio," within thirty (30) days from the date of entry of this Consent Order.

VI. STIPULATED PENALTIES

6. In the event that Defendants fail to comply with any of the requirements imposed by paragraphs 4 and 5 of this Consent Order, the Defendants shall, immediately and automatically, be liable for and shall pay a stipulated penalty in accordance with the following schedule:

a.) for each violation of paragraph 4, Two Thousand Dollars (\$2,000.00) per day per violation;

b.) for each violation of paragraph 4(a), Fifteen Thousand Dollars (\$15,000.00) per violation;

c.) for each violation of paragraphs 4(b) through 4(g), Five Thousand Dollars (\$5,000.00) per day per violation;

d.) for each violation of paragraph 5, One Thousand Dollars (\$1,000.00) per day per violation.

7. In the event that Defendants fail to meet any of the requirements of this Consent Order, the Defendants shall immediately and automatically be liable for payment of stipulated penalties imposed by this Order without prior demand by the State of Ohio. Payment of all stipulated penalties shall be paid by Defendants by their delivering to Plaintiff, c/o Matt Sanders, Administrative Assistant, or his successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a cashier's check in that amount, payable to the order of "Treasurer, State of Ohio," immediately upon the occurrence of the violation giving rise to the penalty.

8. 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. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS

10. All activities undertaken by Defendants 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, licenses and permits. Defendants are ordered and enjoined to obtain all licenses, permits or approvals necessary under applicable federal, state or local laws and shall submit timely applications and requests for any such licenses, permits and approvals. Where such laws appear to

conflict with the other requirements of this Consent Order, Defendants are ordered and enjoined to immediately notify the Ohio EPA of the potential conflict. Defendants are ordered and enjoined to provide a copy of this Consent Order to all contractors, subcontractors and agents with whom Defendants contract to perform asbestos demolition or renovation activity. This Consent Order is not a permit issued pursuant to any federal or state or local law or rule.

VIII. RETENTION OF JURISDICTION

11. This Court will retain jurisdiction of this action for the purpose of enforcing compliance with this Consent Order.

IX. COSTS

12. Defendants are hereby ordered to pay all court costs of this action.

X. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

13. 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 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.

THE STATE OF OHIO }
Franklin County, ss } I, JESSE D. ODDI, Clerk
OF THE COURT OF COMMON
PLEAS, WITHIN AND FOR
SAID COUNTY.

HEREBY CERTIFY THAT THE ABOVE AND FORE-
GOING IS TRULY TAKEN AND COPIED FROM THE
ORIGINAL Consent order
NOW ON FILE IN MY OFFICE.

WITNESS MY HAND AND SEAL OF SAID COURT
THIS 21st DAY OF Oct. A.D. 19 96.

JESSE D. ODDI, Clerk

By [Signature] Deputy

[Signature]
JUDGE
FRANKLIN COUNTY COURT OF
COMMON PLEAS

APPROVED:

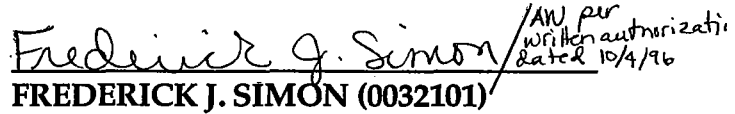
**BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO**

**MICHAEL M. BOICH AND
MICHAEL C. TSAO**



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*Counsel for Plaintiff
State of Ohio*



*AW per
written authorizati
dated 10/4/96*

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