

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY

79802069

STATE OF OHIO, ex rel.  
BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO  
Environmental Enforcement Section  
30 East Broad Street  
Columbus, Ohio 43215-3428

Plaintiff,

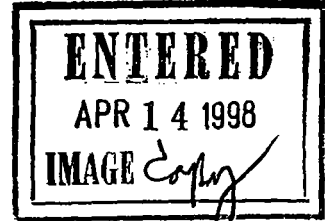
v.

CELOTEX CORPORATION  
320 S. Wayne Avenue  
Cincinnati, Ohio

Defendant

CASE NO.

JUDGE



CONSENT ORDER

Plaintiff, State of Ohio, by its Attorney General, Betty D. Montgomery ("Plaintiff"), filed a Complaint against Defendant Celotex Corporation ("Defendant") to enforce Ohio's air pollution control laws set forth in R.C. Chapter 3704 and the rules adopted thereunder. Plaintiff and Defendant now consent 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 Plaintiff and Defendant it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over Defendant and the subject matter of this action pursuant to R.C. Chapter 3704 and the rules adopted thereunder. The Complaint states a claim upon which relief can be granted against Defendant under 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 Defendant to this action, its agents, representatives, officers, directors, employees, subsidiaries or divisions, 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 Defendant is liable for the violations committed through demolition and renovation operations involving asbestos or asbestos-containing materials at the Plant Building at Defendant's Wayne Avenue facility ("facility"). Plaintiff's Complaint also alleges, in part, that Defendant's demolition/renovation operations involving asbestos have resulted in numerous violations of 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 Defendant 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 R.C. Chapter 3704 which occur after the filing of the Complaint. Further, nothing in this Consent Order shall be construed to relieve the Defendant of its obligations to comply with applicable federal, state or local statutes, regulations or ordinances.

## **IV. PERMANENT INJUNCTION**

4. Defendant is hereby enjoined and ordered to immediately and permanently

comply with 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, Defendant agrees to and is 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. 3745-20-02 and -03(A);
- b.) 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. 3745-20-04(A)(1), (A)(2), (A)(3), (A)(4) and (A)(5);
- c.) keep all demolition debris containing asbestos adequately wet and seal all friable asbestos-containing waste material into properly labeled, durable, leak-tight containers, as required by O.A.C. 3745-20-05(B) and (C).

#### **V. STIPULATED PENALTIES**

5. In the event that Defendant fails to comply with any of the requirements imposed by paragraph 4 of this Consent Order, then Defendant 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, other than as specified in 4 (a), (b) and (c), 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 (c), Five Thousand Dollars (\$5,000.00) per day per violation.

6. In the event that Defendant fails to meet any of the requirements of this Consent Order, then Defendant 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 its delivering to Plaintiff, c/o Jena Suhadolnik, Administrative Assistant, or her 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," immediately upon the occurrence of the violation giving rise to the penalty.

7. 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.

#### **VI. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS**

8. 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, licenses and permits. Defendant is 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, Defendant is ordered and enjoined to immediately notify the Ohio EPA of the potential conflict. Defendant is ordered and enjoined to provide a copy of this Consent Order to all the contractors, subcontractors and agents with whom Defendant contracts to perform asbestos demolitions/renovations. This Consent Order is not a permit issued pursuant to any federal or state or local law or rule.

#### **VII. RESERVATION OF RIGHTS**

9. Nothing contained in this Consent Order shall be deemed to create any rights in or

any obligations or liabilities to persons or entities not a party hereto. Nothing in this Consent Order shall be construed as an acknowledgment by the State that any defenses exist, whether in an action to enforce the terms of this Consent Order or in any other action or claim brought by the State against Defendant.

**VIII. RETENTION OF JURISDICTION**

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

**IX. COSTS**

11. Defendant is hereby ordered to pay all court costs of this action.

**X. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK**

12. 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.

**XI. AUTHORITY TO ENTER INTO THIS CONSENT ORDER**

13. Each signatory for Defendant represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof. Each signatory for Defendant shall submit with this Consent Order an authenticated and certified resolution from Defendant establishing that he/she is so empowered to sign for and bind Defendant.

**XII. TERMINATION OF ORDER**

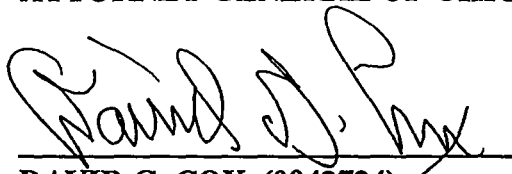
14. No earlier than five years from the date of entry of this Consent Order, Defendant may, pursuant to Civ. R. 60 (B), move the Court to terminate the provisions of this Consent Order if Defendant can demonstrate that (1) it has been in continuous compliance with all the requirements of this Consent Order for a five year period; and (2) it has been in compliance with all terms and conditions of all applicable PTIs and PTOs and all subsequent modifications or amendments thereto for such five year period; and (3) it has paid all penalties required by this Consent Order for such five year period. The Plaintiff takes no position at this time as to such motion and reserves any rights it may have to oppose the motion, including the basis that five years is, in actuality, not an appropriate time period. Termination of this Consent Order shall only be upon written application by any party, and by Order of the Court after the Court has made a determination that the requirements of this paragraph have been satisfied.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
JUDGE  
HAMILTON COUNTY COURT OF  
COMMON PLEAS

**APPROVED:**

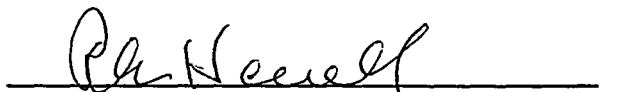
**BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO**



**DAVID G. COX (0042724)**

**APRIL R. BOTT (0066463)**

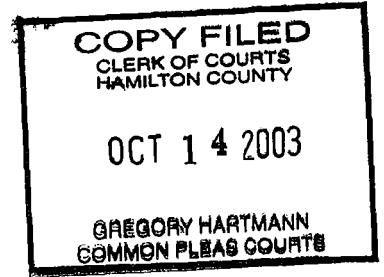
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215-3428  
(614) 466-2766  
Counsel for Plaintiff  
State of Ohio



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**DEFENDANT CELOTEX CORPORATION**  
by Authorized Representative

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO



|                           |   |                              |
|---------------------------|---|------------------------------|
| STATE OF OHIO, EX REL.    | ) | Case No. 9802069             |
| JIM PETRO,                | : |                              |
| ATTORNEY GENERAL OF OHIO, | ) | Judge                        |
|                           | : |                              |
| Plaintiff,                | ) | Joint Motion for Termination |
|                           | : | <u>of Consent Order</u>      |
| v.                        | ) |                              |
|                           | : |                              |
| CELOTEX CORPORATION,      | ) |                              |
|                           | : |                              |
| Defendant.                | ) |                              |

On April 14, 1998, the Plaintiff, the State of Ohio, by and through Ohio Attorney General Jim Petro, and the Defendant, Celotex Corporation, entered into a Consent Order before this Court in the above-captioned matter. The Consent Order provides for its termination if the Defendant demonstrates compliance. The Plaintiff concurs that Defendant has substantially complied with the requirements of the Consent Order. Therefore, the Plaintiff and the Defendant respectfully request the Court to terminate this Consent Order against the Defendant in this matter.

Respectfully submitted,

Attorney General  
Jim Petro

John K. McManus (0037140)  
Assistant Attorney General  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, Ohio 43266-0410  
(614) 466-2766



*Brian Babb*

Brian M. Babb (0034139)  
Keating, Muething & Klekamp, P.L.L.  
1400 Provident Tower  
One East Fourth Street  
Cincinnati, Ohio 45202  
(513) 579-6963  
Counsel for Defendant, Celotex Corporation

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Joint Motion for Termination of Consent Order was served upon John K. McManus by ordinary U.S. Mail this 14th day of October, 2003.

*Brian Babb*

Brian M. Babb

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