

098-355

IN THE COURT OF COMMON PLEAS
LAWRENCE COUNTY, OHIO

13 11 23
COURTS
COUNTY

J. 256
P. 303

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

CASE NO. 98OC00355

JUDGE

Plaintiff,

vs.

CONSENT ORDER AND FINAL
JUDGMENT ENTRY
FINAL APPEALABLE ORDER

KEN HAMPTON,

Defendant.

WHEREAS, Plaintiff State of Ohio, on relation of Betty D. Montgomery, Attorney General of Ohio, at the written request of the Director of Environmental Protection ("Director"), filed a complaint commencing this action against Defendant Ken Hampton ("Defendant") to enforce the provisions of Ohio's solid waste laws set forth in Ohio Revised Code ("R.C.") Chapter 3734. and the rules adopted pursuant to that chapter, R.C. Chapter 3767., and to pursue other legal and equitable relief;

NOW THEREFORE, without trial or admission of any issue of law or 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 subject matter of this action pursuant to R.C. Chapter 3734. and the rules adopted thereunder. The Court has jurisdiction over the parties. Venue is proper in this Court. The complaint states a claim upon which relief can be granted.

II. PERSONS BOUND

2. The provisions of this Consent Order and Final Judgment Entry shall apply to and be binding upon Defendant, his agents, officers, employees, assigns, successors in interest, and any person acting in concert, privity or participation with them who receives actual notice of this Consent Order and Final Judgment Entry whether by personal service or otherwise.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in the complaint that Defendant Ken Hampton unlawfully disposed, and/or otherwise conducted, permitted or allowed the open dumping of scrap tires on property located on County Road 210, Village of Waterloo, Lawrence County, Ohio (hereinafter "County Road Tire Dump"), in violation of the solid waste laws of the State of Ohio, and in a manner that constitutes a threat to public health and safety and the environment. Except as otherwise provided for by this Consent Order and Final Judgment Entry or by law, compliance with the terms of this Consent Order and Final Judgment Entry shall constitute full and complete satisfaction of any civil liability of Defendant for all claims alleged in the Complaint.

IV. RESERVATION OF RIGHTS

4. Nothing in this Consent Order and Final Judgment shall limit the authority of the State of Ohio to:

- A. Seek any relief for claims or conditions not alleged in the complaint;

- B. Seek any relief for violations of law or conditions alleged in the complaint which occur after the entry of this Consent Order and Final Judgment Entry;
- C. Enforce this Consent Order and Final Judgment Entry through a contempt action or otherwise for violations of this Consent Order and Final Judgment Entry;
- D. Bring any action against Defendant or against any other person, under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9601, et seq., R.C. §§ 3734.20 through 3734.27, or R.C. Chapter 6111, to: (1) recover natural resource damages, or (2) order the performance of, or recover costs for any removal, remedial or corrective activities not conducted pursuant to the terms of this Consent Order and Final Judgment Entry, or both; and
- E. Take any action authorized by law against any person, including the Defendant, to eliminate or mitigate conditions at the County Road Tire Dump, which may present an imminent threat to the public health and safety and the environment.

V. COMPLIANCE WITH APPLICABLE LAWS

- 5. Nothing in this Consent Order and Final Judgment Entry shall affect Defendant's obligation to comply with all applicable federal, state or local laws, regulations, rules, or ordinances. Defendant shall obtain all federal, state, or local permits and licenses necessary to comply with this Consent Order and Final Judgment Entry.

VI. INJUNCTION

- 6. Defendant Ken Hampton is ordered and enjoined immediately to cease dumping scrap tires or allowing any scrap tires to be dumped at the County

Road Tire Dump. Defendant Ken Hampton is furthered ordered and enjoined to take all actions necessary to prevent other persons from dumping scrap tires at the County Road Tire Dump.

7. By December 1, 1998, Defendant Ken Hampton is ordered and enjoined to remove all scrap tires from the County Road Tire Dump for lawful disposal at a licensed scrap tire facility. Defendant Ken Hampton is ordered and enjoined to submit receipts demonstrating that all scrap tires removed from the County Road Tire Dump were lawfully disposed. In removing any scrap tires, Defendant is ordered and enjoined to use a properly licensed and registered scrap tire transporter, as provided in R.C. Section 3734.83 unless an exception to the registration requirement is obtained pursuant to Ohio Administrative Code Section 3745-27-54(A)(2)(e).

VII. RIGHT OF ENTRY

8. Defendant hereby agrees to allow representatives of Ohio EPA and the Lawrence County Health District to enter the County Road Tire Dump to inspect, investigate, take samples and pictures, and examine or copy records in order to determine compliance with the terms of this Consent Order and R.C. Chapter 3734. and the rules promulgated thereunder. Nothing in this Consent Order limits Ohio EPA's authority under R.C. Chapter 3734. or any other statutory authority, to enter any property to determine compliance with this Consent Order and R.C. Chapter 3734. and the rules promulgated thereunder.

VIII. STIPULATED PENALTIES

9. In the event that Defendant Ken Hampton fails to meet any of the requirements of this Consent Order and Final Judgment Entry, Defendant Ken Hampton shall immediately and automatically be jointly and severally liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of each failure to meet a requirement, up to thirty (30) days - One Hundred Dollars (\$100.00) per day for each requirement not met. For each day of each failure to meet a requirement, from thirty-one (31) to sixty days (60) - One Hundred Fifty Dollars (\$150.00) per day for each requirement not met. For each day of each failure to meet a requirement, over sixty days - Two Hundred Dollars (\$200.00) per day for each requirements not met.

10. Any payment required to be made under the provisions of Paragraph 9 of this Consent Order and Final Judgment Entry shall be made by delivering to Plaintiff State of Ohio, 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 43266-0410, a certified check in the amount owed, payable to the order of "Treasurer, State of Ohio."

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IX. GENERAL PROVISIONS

11. This Order shall be effective upon the date of entry by the Court.
12. All documents submitted pursuant to this Order shall be submitted

to:

Unit Supervisor
Compliance Monitoring and Enforcement Unit
Division of Solid and Infectious Waste
Ohio Environmental Protection Agency
2305 Westbrooke Drive, Building C
Columbus, Ohio 43228-9644

and

Unit Supervisor
Division of Solid and Infectious Waste Management
Southeast District Office
Ohio Environmental Protection Agency
2195 Front Street
Logan, Ohio 43138

X. RETENTION OF JURISDICTION

13. This Court will retain jurisdiction of this action for the purpose of enforcing compliance with this Consent Order and Final Judgment Entry.

**XI. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT ENTRY,
AND FINAL JUDGMENT BY CLERK**

14. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order and Final Judgment Entry 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 hereby 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. The Clerk shall mail a copy of this Judgment/Order to all counsel of record and to each party not in default who is not represented by counsel and make note of the service in the Appearance Docket.

A copy of the foregoing has been mailed via U.S. mail to the following on this _____ day of _____, 1998.

IT IS SO ORDERED.


DATE




JUDGE, COURT OF COMMON PLEAS
LAWRENCE COUNTY, OHIO

APPROVED:

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO



TRINA L. BLAKEMORE (0066609)
JOSEPH P. KONCELIK (0061692)
Assistant Attorneys General
Environmental Enforcement
30 East Broad Street, 25th Floor
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(614) 466-2766



Ken Hampton
Defendant

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IN THE COURT OF COMMON PLEAS
LAWRENCE COUNTY, OHIO

CLERK OF COURTS
LAWRENCE COUNTY

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

CASE NO. 98OC000355

Plaintiff,

v.

PRAECIPE

KEN HAMPTON,

Defendant.

TO THE CLERK:

Please mail a copy of this Judgment/Order to all counsel of record and to each party not in default who is not represented by counsel and make note of the service in the Appearance Docket.

A copy of the foregoing has been mailed via U.S. mail to the following on this _____ day of August, 1998 to:

Ken Hampton
289 Twp. 297 '
Ironton, Ohio 45638