

**ENTERED**  
**DEC 30 1996**  
**IMAGE**

IN THE COURT OF COMMON PLEAS  
 HAMILTON COUNTY, OHIO

**COPY**

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

CASE NO. A9605621  
 JUDGE ARTHUR NEY

**ENTER**

PLAINTIFF,

DEC 30 1996

*Arthur M. Ney Jr.*  
 ARTHUR M. NEY JR., JUDGE

vs.

BARRY KIRBY, et al.  
 //  
 DEFENDANTS.

PARTIAL CONSENT ORDER

Plaintiff, State of Ohio, by its Attorney General, Betty D. Montgomery ("Plaintiff"), filed a Complaint against Defendants Priority 1 Construction Services, Inc., Priority 3 Contracting Inc., Grant Kirby and Barry Kirby to enforce Ohio's asbestos air pollution control laws set forth in Ohio Revised Code ("R.C.") Chapter 3704. and the rules adopted thereunder. Plaintiff and only Defendant Priority 1 Construction Services, Inc., now consent to the entry of this Partial Consent Order.

NOW THEREFORE, without trial or admission of any issue of law or of fact, and upon the consent of the Plaintiff and only Defendant Priority 1 Construction Services, Inc., it is hereby ORDERED, ADJUDGED and DECREED as follows:

**I. JURISDICTION AND VENUE**

1. The Court has jurisdiction over Defendant Priority 1 Construction Services, Inc., 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 Priority 1 Construction Services, Inc., under Chapter 3704. of the Ohio Revised Code, and venue is proper in this Court.

## **II. PERSONS BOUND**

2. The provisions of this Partial Consent Order shall apply to and be binding upon only Priority 1 Construction Services, Inc., 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 Partial Consent Order shall apply to and be binding upon those persons who receive actual notice of this Partial 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 Grant Kirby and Priority 3 Contracting Inc. are liable for the violations committed by I & F Corporation when I & F engaged in demolition and renovation operations involving asbestos or asbestos-containing materials at Wright Patterson Air Force Base, the Cincinnati Job Corps Center, Celotex Corporation and Old McAlpin's Store. Plaintiff alleges in its Complaint that Defendants Priority 1 Construction Services, Inc. and Barry Kirby have engaged in demolition and renovation operations involving asbestos or asbestos-containing materials at the Old Retail Stores and Celotex facilities. Plaintiff's Complaint also alleges, in part, that Defendant Priority 1 Construction Services, Inc.'s demolition/renovation operations involving asbestos has resulted in numerous violations of R.C. Chapter 3704. and the regulations adopted thereunder. Compliance with the terms of this Partial Consent Order shall constitute full satisfaction of any civil liability by Defendant Priority 1 Construction

Services, Inc., for the violations alleged in the Complaint. Nothing in this Partial Consent Order shall be construed, nor is it intended by the Plaintiff and Defendant Priority 1 Construction Services, Inc., to release Defendants Barry Kirby, Grant Kirby and Priority 3 Contracting Inc. from their liability for the violations alleged in the Complaint. Nothing in this Partial 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 Partial Consent Order shall be construed to relieve the Defendant Priority 1 Construction Services, Inc., of its obligations to comply with applicable federal, state or local statutes, regulations or ordinances.

#### **IV. PERMANENT INJUNCTION**

4. Defendant Priority 1 Construction Services, Inc., 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 Priority 1 Construction Services, Inc., 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. Rules 3745-20-02 and -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, disjoined, 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 R.C. Chapter 3704. and the regulations adopted thereunder, Defendant Priority 1 Construction Services, Inc. is enjoined and ordered to pay to the State of Ohio a civil penalty in the amount of Eighty Thousand Dollars (\$80,000.00). The civil penalty shall be paid by Defendant Priority 1 Construction Services, Inc. by its 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, certified checks payable to the order of "Treasurer, State of Ohio," on or before the following dates in the following amounts:

- a.) \$44,000 within thirty (30) days of entry of this Partial Consent Order;
- b.) \$1,500 for the next 24 months due on or before each of the following

dates: February 3, 1997, March 3, 1997, April 7, 1997, May 5, 1997, June 2, 1997, July 7, 1997, August 4, 1997, September 1, 1997, October 6, 1997, November 3, 1997, December 1, 1997, January 5, 1998, February 2, 1998, March 2, 1998, April 6, 1998, May 4, 1998, June 1, 1998, July 6, 1998, August 4, 1998, September 1, 1998, October 6, 1998, November 3, 1998, December 1, 1998 and January 5, 1999.

In the event the Attorney General's Office does not receive an installment payment in full on or before any one of the due dates listed above, then Defendant Priority 1 Construction Services, Inc. is enjoined and Ordered to pay the entire balance due of the civil penalty immediately upon default.

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

6. In the event that Defendant Priority 1 Construction Services, Inc. fails to comply with any of the requirements imposed by paragraphs 4 and 5 of this Partial Consent Order, then Defendant Priority 1 Construction Services, Inc. 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, One Thousand Dollars (\$1,000.00) per day per violation;
- b.) for each violation of paragraph 4 (a), Ten Thousand Dollars (\$10,000.00) per violation;
- c.) for each violation of paragraphs 4 (b) through 4 (g), Two Thousand Five Hundred Dollars (\$2,500.00) per day per violation;
- d.) for each violation of paragraph 5a.) or 5b.), Five Hundred Dollars (\$500.00) per day per violation.

7. In the event that Defendant Priority 1 Construction Services, Inc. fails to meet any of the requirements of this Partial Consent Order, then Defendant Priority 1 Construction Services, Inc. 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 Defendant Priority 1 Construction Services, Inc. by its 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," 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 Partial 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**

9. All activities undertaken by Defendant Priority 1 Construction Services, Inc. pursuant to this Partial 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 Priority 1 Construction Services, Inc. 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 Partial Consent Order, Defendant Priority 1 Construction Services, Inc. is ordered and enjoined to

immediately notify the Ohio EPA of the potential conflict. Defendant Priority 1 Construction Services, Inc. is ordered and enjoined to provide a copy of this Partial Consent Order to all its employees and to all the contractors, subcontractors and agents with whom Defendant Priority 1 Construction Services, Inc. contracts to perform asbestos demolitions/renovations. This Partial Consent Order is not a permit issued pursuant to any federal or state or local law or rule.

#### **VIII. RESERVATION OF RIGHTS**

10. Defendant Priority 1 Construction Services, Inc. reserves its rights to raise any defense it may have in the event Plaintiff alleges that Defendant Priority 1 Construction Services, Inc. is not in compliance with the terms of this Partial Consent Order or in the event Plaintiff brings any other action or claim against Defendant Priority 1 Construction Services, Inc., whether specifically reserved herein or otherwise. Nothing contained in this Partial 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 Partial 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 Partial Consent Order or in any other action or claim brought by the State against Defendant Priority 1 Construction Services, Inc. Moreover, Defendant Priority 1 Construction Services, Inc. expressly reserves its rights to seek contribution or indemnification from any and all responsible persons, whether or not those responsible persons are named in this Partial Consent Order as a Defendant.

**IX. RETENTION OF JURISDICTION**

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

**X. COSTS**

12. Defendant Priority 1 Construction Services, Inc. is hereby ordered to pay all court costs of this action.

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

13. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Partial 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.

**XII. AUTHORITY TO ENTER INTO THE PARTIAL CONSENT ORDER**

14. Each signatory for Defendant Priority 1 Construction Services, Inc. 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 Priority 1 Construction Services, Inc. shall submit with this Partial Consent Order an authenticated and certified resolution from Defendant Priority 1 Construction Services, Inc. establishing that he/she is so empowered to sign for and bind Defendant Priority 1 Construction Services, Inc.



IT IS SO ORDERED

DATE \_\_\_\_\_

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

APPROVED:

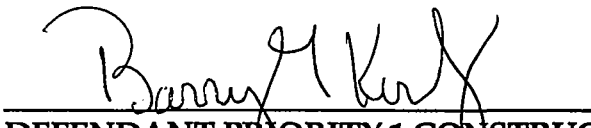
BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO



\_\_\_\_\_  
LORI A. MASSEY (0047226)

DAVID G. COX (0042724)

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



\_\_\_\_\_  
DEFENDANT PRIORITY 1 CONSTRUCTION SERVICES, INC.  
by Authorized Representative

IN THE COURT OF COMMON PLEAS, HAMILTON COUNTY, OHIO

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

:

Case No. A9605621

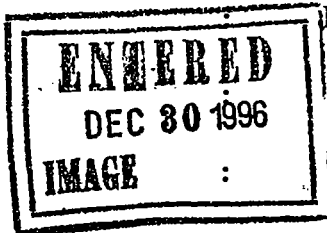
Plaintiff,

JUDGE NEY

COPY

v.

BARRY KIRBY, et al.



ENTER

Defendants.

DEC 30 1996  
*Arthur M. Ney, Jr.*  
ARTHUR M. NEY, JR., JUDGE

//

NOTICE OF VOLUNTARY DISMISSAL

Plaintiff, State of Ohio, by its Attorney General, Betty D. Montgomery, on behalf of the Directors of Environmental Protection and Ohio Department of Health, hereby voluntarily dismisses without prejudice, Defendants Barry Kirby, Grant Kirby and Priority Three Contracting, Inc. pursuant to Rule 41(A)(1) of the Ohio Rules of Civil Procedure. No counterclaim has been served by any Defendant.

Respectfully submitted,

BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO

*David G. Cox*

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**CERTIFICATE OF SERVICE**

This will certify that a copy of the foregoing Notice of Voluntary Dismissal was served by regular United States mail, postage prepaid, this 30th day of December, 1996 on Thomas R. Yocum and Anthony J. Iacofano, 1500 Fourth & Vine Tower, One West Fourth Street, Cincinnati, Ohio, 45202, Attorney for Defendants.

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**REBECCA J. ALBERS**  
Assistant Attorney General