

FILED
COURT OF COMMON PLEAS

SEP 08 1997

DELORES REED, Clerk
PORTAGE COUNTY, OHIO

IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

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

Case No. 97 CV 0715

JUDGE JOHN A. ENLOW

Plaintiff,

vs.

JAMES H. McMASTERS,

CONSENT ORDER AND FINAL
JUDGMENT ENTRY

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 James H. McMasters ("Defendant McMasters") 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;

WHEREAS, Defendant McMasters has made a demonstration to the State that Defendant McMasters' only income is from a Navy Pension, Social Security Benefits, oil and gas well royalty interest, and One Thousand Dollars per month in rent from a lease involving Defendant McMasters' land that is the subject of this litigation, and that Defendant McMasters has no assets of any substantial worth;

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 McMasters, his agents, officers, employees, assigns, successors in interest, and any person acting in concert, privity or participation with him who receives actual notice of this Consent Order and Final Judgment Entry whether by personal service or otherwise. Defendant McMasters shall provide a copy of this Consent Order and Final Judgment Entry to each contractor he employs to perform work itemized and/or required herein.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in the complaint that Defendant McMasters unlawfully disposed, and otherwise conducted, permitted or allowed the open dumping of scrap tires on Defendant McMasters' property located south of State Route 224 and west of State Route 225, in Lot 4, Atwater Township, Portage County, Ohio (hereinafter referred to as the "McMasters 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 McMasters for all claims alleged in the Complaint.

IV. RESERVATION OF RIGHTS

4. Nothing in this Consent Order and Final Judgment Entry, including the imposition of stipulated or civil penalties, 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 claims 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 McMasters 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, R.C. § 3734.85, 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;
- E. Take any action authorized by law against any person, including Defendant McMasters, to eliminate or mitigate conditions at the McMasters Tire Dump, which may present an imminent threat to the public health and safety and the environment; and
- F. Institute collection proceedings against Defendant McMasters to pay for remediation of the McMasters Tire Dump in the event Defendant McMasters' financial condition changes.

V. COMPLIANCE WITH APPLICABLE LAWS

5. Nothing in this Consent Order and Final Judgment Entry shall affect Defendant McMasters' obligation to comply with all applicable federal, state or local laws, regulations, rules, or ordinances. Defendant McMasters 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 McMasters is ordered and enjoined immediately to cease dumping scrap tires or allowing any scrap tires to be dumped at the McMasters Tire Dump. Defendant McMasters is further ordered and enjoined to take all actions necessary to prevent other persons from dumping scrap tires at the McMasters Tire Dump.

VII. ENTRY OF JUDGEMENT FOR AMOUNT OF FUTURE DAMAGES

7. Judgement is hereby entered against Defendant McMasters in the amount of One Million Seven Hundred Thousand Seven Hundred Ninety-eight and 00/100 Dollars

(\$1,700,798.00) for the costs the State has incurred and will incur in the future to abate the nuisance Defendant McMasters has maintained at the McMasters Tire Dump.

8. Defendant McMasters agrees to the placement of a judgment lien in the amount of One Million Seven Hundred Thousand Seven Hundred Ninety-eight and 00/100 Dollars (\$1,700,798.00) against Defendant McMasters' property located south of State Route 224 and west of State Route 225, in Lot 4, Atwater Township, Portage County, Ohio. Further, Defendant McMasters agrees to assign to the State of Ohio his right to receive the payment of One Thousand Dollars (\$1,000.00) per month in rent from Browning-Ferris Industries of Ohio, Inc. pursuant to a lease agreement involving the property on which the McMasters Tire Dump is situated. Said payments shall be deposited into Fund 4R-5, the Scrap Tire Management Fund.

VIII. RIGHT OF ENTRY

9. Defendant McMasters hereby agrees to allow representatives of Ohio EPA and the Portage County Health Department to enter the McMasters 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.

IX. GENERAL PROVISIONS

10. This Order shall be effective upon the date of entry by the Court.

X. RETENTION OF JURISDICTION

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

XI. COSTS

12. Defendant McMasters is hereby ordered to pay all costs of this action.

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

13. 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.

IT IS SO ORDERED.

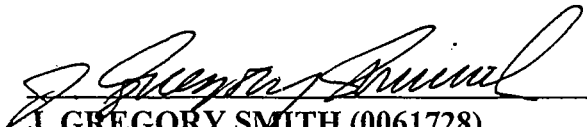
DATE




JUDGE, COURT OF COMMON PLEAS
OF PORTAGE COUNTY, OHIO

APPROVED:

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



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