

IN THE COURT OF COMMON PLEAS  
STARK COUNTY, OHIO

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

CASE NO. 1998 CVO 1584  
JUDGE SINCLAIR

Plaintiff,

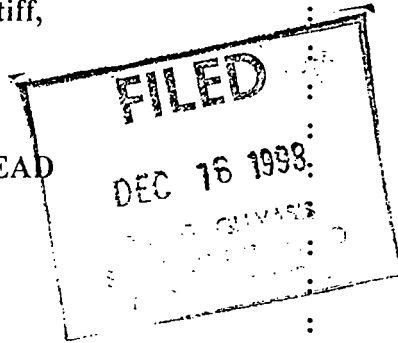
v.

WILBUR OLMSTEAD  
1549 Broadway NE  
East Canton, Ohio

and

BUCKEYE WRECKING INC.  
1800 19th Street, NE  
Canton, Ohio 44714

Defendants.



CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff, State of Ohio, by its Attorney General, Betty D. Montgomery ("Plaintiff"), and Defendants Wilbur Olmstead and Buckeye Wrecking and Transfer Inc. (collectively "Defendants") having consented to the entry of this Order,

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the parties hereto, and without admission of fact or liability by Wilbur Olmstead or Buckeye Wrecking and Transfer Inc., 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 case. The Complaint states a claim upon which relief can be granted against Defendants under Chapter 3704 of the Ohio Revised Code, 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 parties to this action as listed in paragraph three of the Complaint and the First Amended Complaint, and, in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure, their officers, agents, servants, employees, attorneys, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Consent Order whether by personal service or otherwise.

## **III. SATISFACTION OF LAWSUIT**

3. The Plaintiff alleges in its Complaint and its First Amended Complaint that the Defendants have owned and operated businesses in such a manner as to result in violations of the air pollution control laws and regulations of the State of Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of the Defendants to the Plaintiff for the claims alleged in the Plaintiff's Complaints. In addition, compliance with the terms of this Consent Order shall constitute full satisfaction of the Director's Final Findings and Orders, known as In the Matter of Buckeye Wrecking and Transfer Inc., issued to the Defendants on February 16, 1995.

4. This Consent Order shall not be construed to limit the authority of the Plaintiff to seek relief for violations not alleged in the Complaint; nor shall this Consent Order bar the State of Ohio from bringing any action against the Defendants for any violations which occur after the entry of this Order. Nothing in this Consent Order shall be construed to relieve the Defendants'

obligations to comply with applicable federal, state or local statutes, regulations or ordinances.

#### IV. PERMANENT INJUNCTION

5. The Defendants are hereby enjoined and ordered to immediately and permanently comply with R.C. Chapter 3704 and the rules adopted thereunder.

6. Specifically:

- a. Defendants agree and are permanently enjoined from "installing" or "modifying" any "air contaminant source", as those terms are defined in Ohio Admin. Code rule 3745-31-01 (LL), (VV) and (D), at any of Defendants' businesses, without first applying for and obtaining a Permit to Install ("PTI") from Ohio EPA in accordance with Ohio Admin. Code rule 3745-31-02(A), except as otherwise provided by applicable statutes or regulations.
- b. Defendants agree to refrain and are permanently enjoined from operating any air contaminant source, as the term is defined in Ohio Admin. Code 3745-35-01(B)(1), at any of Defendants' businesses without first applying for and obtaining a Permit to Operate ("PTO") from Ohio EPA in accordance with Ohio Admin. Code rule 3745-35-02, except as otherwise provided by applicable statutes or regulations.
- c. Defendants agree to refrain and are permanently enjoined from operating or causing any fugitive dust source, as that term is defined in Ohio Admin. Code rule 3745-17-01(B)(7), unless that source is in full compliance with Ohio Admin. Code rules 3745-17-07 and 3745-17-08 and any control measures specified in the terms and conditions of any PTI or PTO.
- d. Defendants agree to refrain and are permanently enjoined from open burning, as that term is defined in Ohio Admin. Code rule 3745-19-01(G), unless such activities are carried out in full compliance with Ohio Admin. Code chapter 3745-19.
- e. Defendants agree to refrain and are permanently enjoined from any demolition or renovation, and/or handling or disposing of asbestos-containing waste, unless such activities are carried out in full compliance with R.C. Chapter 3710 and Ohio Admin. Code chapter 3745-20. This includes, but is not limited to, complete, accurate, and timely demolition or renovation notifications in accordance with Ohio Admin. Code rule 3745-20-03.

## V. SPECIFIC INJUNCTIVE RELIEF

7. For the purpose of this specific injunctive relief, the term "demolition" means the wrecking, or taking out of any load-supporting structural member of an existing building or structure together with any related handling operations.

8. For the purpose of this specific injunctive relief, the term "renovation" means altering in any way one or more components of an existing building or structure. Operations in which load-supporting structural members are wrecked or taken out are excluded.

9. Defendants agree and are ordered to purchase within sixty days of the filing of this Consent Order and properly maintain and use fire hoses and/or water trucks with hoses sufficient to produce an adequate supply of water to enable full compliance with Ohio Admin. Code rule 3745-17-07 and Ohio Admin. Code rule 3745-17-08 for the maximum number of simultaneous demolitions that Defendants can or will perform. An adequate supply of water from these sources must be used during each and every demolition and/or renovation performed by Defendants.

10. Defendants agree and are ordered to submit to Tom Kalman or his successor, Ohio EPA, Central Office (for all projects in Ohio except for Stark County projects) and/ or Canton Local Air Agency (for all projects in Stark County), three work days prior to the beginning of each month and on the twelfth day of each month, a list of all demolitions and/or renovations to be performed by Defendants within Ohio which are scheduled to occur within that month (hereinafter "the bi-monthly lists"). The bi-monthly lists shall include all demolitions and/or renovations and is not limited to those covered by the Asbestos NESHAP or Ohio Admin.

Code Chapter 3745-20. The bi-monthly lists must include the dates and times, addresses, including the county location of such demolitions and/or renovations, and the name of each demolition site supervisor. In addition, the bi-monthly lists shall be timely updated as the demolition schedules change and for all additions. Any updated revisions to the bi-monthly lists' information shall be submitted to and received by Tom Kalman or his successor, Ohio EPA, Central Office or Canton City Air Pollution Control Division by FAX at least three workdays prior to the beginning of work on any previously listed scheduled activity that may be affected followed by a hard copy revision. Further, for demolitions and renovations scheduled after the submittal of the bi-monthly lists, the notifications required under this paragraph shall be made as soon as the schedule becomes known and in no event less than three workdays prior to the beginning of work. Nothing in this paragraph exempts Defendants from filing regular notifications as required by Ohio Admin. Code rule 3745-20-03.

11. Defendants agree and are ordered to refrain from performing any demolition and/or renovation project requiring asbestos abatement, per Asbestos NESHAP and Ohio Admin. Code Chapter 3745-20, until that project has been completely abated of asbestos, and Defendants have verification of such abatement in writing by a qualified asbestos contractor. This written verification must be submitted by the Defendants and received by the Ohio EPA District Office or delegated agency at least five days prior to the commencement of any demolition and/or renovation. Defendants may commence demolition and/or renovation on the fifth day after the verification is submitted or when Ohio EPA or its delegated agency inspects and clears the site, whichever date is first.

12. Defendants agree and are ordered, within ninety days of the filing of this Consent

Order, to implement a demolition directive and emission control compliance plan as described in Defendants' May 22, 1995 letter to the Canton City Health Department which is attached to this Consent Order as "Attachment A".

13. Defendants agree and are ordered to refrain from any demolition project unless a certified Method Nine opacity reader, as set forth in 40 CFR 60, is on the demolition site to assist in implementing the demolition directive and emission control compliance plan as described in paragraph twelve of this Consent Order. This paragraph shall become effective on April 1, 1999, after the next scheduled training/certification program is conducted in Ohio so that Defendants may have one or more of their personnel trained and certified in Method Nine readings.

#### **VI. CIVIL PENALTY**

14. For violations of R.C. Chapter 3704 and the regulations adopted thereunder and pursuant to R.C. 3704.06, Defendants shall pay to the State of Ohio a civil penalty of eighty-three thousand dollars (\$83,000). Payments shall be made in twelve quarterly installments of six thousand nine hundred sixteen dollars and sixty-six cents (\$6,916.66) per payment. These installments shall be due January 1, 1999, April 1, 1999, July 1, 1999, October 1, 1999, January 1, 2000, April 1, 2000, July 1, 2000, October 1, 2000, January 1, 2001, April 1, 2001, July 1, 2001 and October 1, 2001. Payment shall be made by delivering a certified check payable to the order of "Treasurer, State of Ohio" for the above-stated amount to: Jena Suhadolnik, Administrative Assistant, Office of the Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428. If any payment is more than thirty days late, the remaining amount of the total penalty shall become due on the thirty-first day

after non-payment.

## VII. STIPULATED PENALTIES

15. In the event that the Defendants fail to comply with any of the statutory, administrative, and/or other requirements imposed by paragraphs five through fourteen of this Consent Order, the parties agree that the following penalties for said violation are stipulated as follows:

- a. for each source installed or modified in violation of paragraph 6a, Defendants shall pay five thousand dollars (\$5,000) per violation;
- b. for each violation of paragraph 11, Defendants shall pay ten thousand dollars (\$10,000) per violation;
- c. for each violation of paragraph 6c or 6e, Defendants shall pay five thousand dollars (\$5,000) per day per violation;
- d. for each day after ninety days that Defendants fail to submit and implement the demolition directive and emission control plan as required by paragraph twelve. up to fifteen days. defendant shall pay five hundred dollars (\$500) per day; for each day after fifteen. Defendant shall pay one thousand dollars (\$1,000) per day.
- e. for any other violation of paragraphs five through fourteen. Defendants shall pay five hundred dollars (\$500) per day per violation.

16. The Defendants shall immediately 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 delivering a certified check, payable to the order of "Treasurer, State of Ohio," to Jena Suhadolnik, or her successor, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, within thirty (30) days from the date of the violation giving rise to the penalty.

17. The imposition, payment and collection of stipulated penalties pursuant to violations of this Consent Order shall not prevent the Plaintiff pursuing criminal prosecution. Furthermore, this Section shall not prevent the Plaintiff from exercising its discretion to pursue other civil or administrative remedies for any violations of this Consent Order, except that if Plaintiff seeks and/or accepts the payment of stipulated penalties for a violation, the stipulated penalty shall satisfy all of Plaintiff's claims for civil penalties for that violation.

18. Nothing in this Section shall waive any defenses that the Defendant may have including, but not limited to the defense that a violation of this Consent Order did not occur.

#### **VIII. RETENTION OF JURISDICTION**

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

#### **IX. COSTS**

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



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

21. 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 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 THE CONSENT ORDER**

22. Each signatory for Defendants represents and warrants that he/she has been duly authorized to sign this document and so bind all of the parties identified in paragraph three of the Complaint to all terms and conditions thereof.

**XII. TERMINATION**

23. If there are no violations of this Order hereunder during any consecutive five (5) year period and the civil penalty herein is paid in full, Defendants may apply to the Court for an order terminating all or part of this Consent Order, under Civil Rule 60(B). The Plaintiff reserves the right to oppose such motion.

IT IS SO ORDERED

DATE \_\_\_\_\_

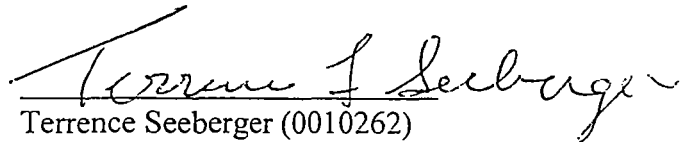
\_\_\_\_\_  
**JUDGE SINCLAIR**  
Stark County Common Pleas Court

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



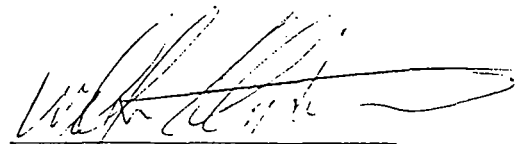
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Counsel for Defendants,  
Wilbur Olmstead and  
Buckeye Wrecking and Transfer Inc.



Wilbur Olmstead  
Personally and for  
Buckeye Wrecking and Transfer Inc.

# ATTACHMENT "A"

## EMISSION CONTROL COMPLIANCE PLAN

BUCKEYE WRECKING IS IMPLEMENTING THE FOLLOWING MEASURES TO INSURE WE ARE IN TOTAL COMPLIANCE WITH OAC 3745-17-07 (B) (1) AND OAC 3745-17-08 (B) (1).

1. ALL DEMOLITION PERSONNEL WILL BE TRAINED IN THE LIMITS ALLOWED IN 3745-17-07 TO LESS THAN 20% OPACITY DURING A 3 MINUTE AVERAGE.
2. ALL DEMOLITION PERSONNEL WILL BE INSTRUCTED IN THE USE OF REASONABLY AVAILABLE CONTROL MEASURES (RACM). WATER OF SUFFICIENT VOLUME AND CORRECT POINT OF APPLICATION WILL BE STRESSED
  - A. ALL TRACK HOE DEMOLITION UNITS WILL BE STOCKED WITH 200' OF FIRE HOSE 1 1/2" TO 1 3/4" WHICH SHOULD GIVE US 90 GALLONS PER MINUTE OF WATER.
  - B. ALL UNITS WILL BE EQUIPPED WITH FIRE HYDRANT ADAPTERS AND A WRENCH.
  - C. AN ADDITIONAL 300' OF HOSE WILL BE AVAILABLE ON THE SITE SUPERVISOR'S TRUCK WITH EXTRA NOZZLES AND ADAPTERS.
3. FIRE HYDRANT LOCATIONS NEAREST TO THE DEMOLITION SITE WILL BE EXPLAINED AND MAPPED FOR THE CREW PRIOR TO LEAVING OUR SHOP.
4. THE SITE SUPERVISOR WILL MAKE A VISUAL INSPECTION OF THE PROPERTY TO DETERMINE THE POTENTIAL FOR FUGITIVE DUST BEFORE ANY DEMOLITION IS STARTED. DEPENDING ON POTENTIAL FOR FUGITIVE DUST WATER (RACM) WILL BE APPLIED TO THE AREA BEFORE ACTUAL DEMOLITION BEGINS. IF ACCESS IS NOT SAFE OR REASONABLE A SECTION WILL BE OPENED AND WATER WILL BE APPLIED BEFORE CONTINUING.
5. ALL DEMOLITION PERSONNEL WILL BE INSTRUCTED IN THE NECESSITY OF STOPPING FURTHER DEMOLITION SHOULD FUGITIVE DUST START TO GET OUT OF CONTROL AND APPROACH 20% OPACITY FOR 1 MINUTE. IT WILL BE THE PRIMARY RESPONSIBILITY OF THE DEMOLITION EQUIPMENT OPERATOR AND SITE SUPERVISOR TO ENSURE THAT FUGITIVE DUST IS UNDER CONTROL.
6. BUCKEYE WRECKING HAS PURCHASED A 500 GALLON WATER TRUCK TO INSURE WATER AVAILABILITY AT ALL JOB SITES. IF WE ARE USING THE WATER TRUCK AND IT BECOMES EMPTY DEMOLITION WILL STOP UNTIL TRUCK IS RE-FILLED AND BACK ON THE SITE PUMPING WATER.
7. SPECIAL TRAINING WILL BE GIVEN TO DEMOLITION MACHINE OPERATORS TO RECOGNIZE THE OPACITY LIMIT OF OAC 3745-17-07.
8. SITE SUPERVISORS WILL ALSO RECEIVE AN ADDITIONAL TRAINING AND REINFORCEMENT OF RESPONSIBILITIES CONCERNING NEGATIVE DUST.

DEMOLITION DIRECTIVE

BUCKEYE WRECKING IS IN THE BUSINESS OF DEMOLITIONS AND BECAUSE OF THAT WE MUST BE AWARE OF ALL LOCAL, STATE AND FEDERAL REGULATIONS THAT PERTAIN TO US. IT IS YOUR RESPONSIBILITY AS EMPLOYEES OF BUCKEYE WRECKING TO ATTEND TRAINING MEETINGS AND STAY ABREAST OF ALL THE REQUIPEMENTS CURRENTLY IN EFFECT. YOU ARE EXPECTED TO ATTEND ALL THE FOLLOWING CLASSES WITHIN THE FIRST 30 DAYS OF EMPLOYMENT. ALL CURRENT EMPLOYEES MUST HAVE CLASSES COMPLETED BY APRIL 30, 1999.

1. NESHAP AWARENESS
2. FUGITIVE DUST CONTROL
3. OSHA SAFE WORKING
  - A. ELECTRIC & GAS (BURIED DANGER)
  - B. TOOLS & EQUIPMENT
  - C. PERSONAL SAFETY ITEMS
  - D. HEAVY EQUIPMENT
4. EPA WATER REGULATIONS PERTAINING TO DEMOLITION
5. WHAT TO DO WHEN THINGS GO WRONG

WE MUST DO THE JOB SAFELY AND WITHIN ESTABLISHED GUIDELINES IN ORDER TO STAY IN BUSINESS AND GROW.