

FILED  
COMMON PLEAS COURT  
WAYNE COUNTY, OHIO

IN THE COURT OF COMMON PLEAS  
WAYNE COUNTY, OHIO

98 SEP 11 PM 10:31  
PAUL WHITE  
CLERK OF COURTS

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

Plaintiff,

vs.

CECIL SMITH, et al.

Defendants.

CASE NO. 98-CV-0345

JUDGE JUDGE WIEST

**CONSENT ORDER AND FINAL JUDGMENT ENTRY**

Plaintiff, State of Ohio, *ex rel.* Betty D. Montgomery, Attorney General of Ohio, having filed the Complaint ("State's Complaint") in this action against Defendants Cecil Smith and Buhl and Laura Smith to enforce Ohio's hazardous waste, solid waste and air pollution laws found in Chapters 3734 and 3704 of the Revised Code and rules adopted thereunder; and Plaintiff and Defendants Cecil Smith and Buhl and Laura Smith having consented to the entry of this Order;

WHEREAS, Defendant Cecil Smith owns and operates the transmission repair and salvage and/or junkyard operation located at and in the vicinity of 197 Seville Road and 209 Collier Road, Doylestown, Ohio (hereinafter "the Facility"). Cecil Smith has been doing business as Cecil's Transmission Repair at the Facility. Cecil Smith owns one of the parcels of the real estate that make up the Facility. Cecil's Transmission Repair is located on this parcel which abuts Collier Road. Several fifty-five gallon drums, more than fifty (50) scrap tires, solid waste, construction and demolition debris, clean hard fill, and various scrap materials were or are located on this parcel.

98-24-432

**WHEREAS**, Defendants Buhl and Laura Smith own, jointly or individually, approximately four (4) parcels of the real property that make up the Facility, but do not share ownership of any parcel with Cecil Smith. A flat bed trailer with forty (40) fifty-five gallon drums, other scattered fifty-five gallon drums, more than one thousand (1,000) scrap tires, solid waste, construction and demolition wood, and various scrap materials were or are located on these parcels.

**WHEREAS**, Defendant Cecil Smith stored the forty (40) fifty-five gallon drums on the parcels owned by Defendants Buhl and Laura Smith.

**WHEREAS**, Defendant Cecil Smith stored or disposed of the other scattered fifty-five gallon drums, scrap tires, solid waste, construction and demolition debris, and scrap materials on the parcel owned by Cecil Smith and the parcels owned by Buhl and Laura Smith.

**WHEREAS**, it has been alleged by Defendant Cecil Smith that the Beacon Journal Publishing Company ("the Beacon Journal") generated the alleged waste or materials contained in the fifty-five gallon drums stored on a flat bed trailer at the Facility.

**WHEREAS**, Defendants Buhl and Laura Smith incurred costs to remove and dispose of the alleged drummed waste and alleged contaminated soil, and to investigate the flat bed trailer area pursuant to a sampling and analysis plan ("SAP") approved by Ohio EPA.

**WHEREAS**, Defendants Cecil Smith and Buhl and Laura Smith filed a Complaint against the Beacon Journal alleging nuisance, fraud, and declaratory judgment in Summit County. Defendants and the Beacon Journal have since reached a settlement of that litigation, wherein the Beacon Journal would contribute a sum certain to Defendants toward Defendants'

cleanup costs, contingent on the representation by the State that, based on its present knowledge of the area on which the SAP was conducted, it has no intent to bring an enforcement action against the Beacon Journal for conditions or potential claims stemming from the storage of the drums in the flat bed trailer area.

**THEREFORE**, without trial or admission of any issue of law or of fact, and upon the consent of the Parties hereto, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

### **I. DEFINITIONS**

As used in this Consent Order:

**“Cecil Smith”** means Cecil Smith, individually and d.b.a. Cecil’s Transmission Repair.

**“Consent Order”** means this Consent Order and Final Judgment Entry and all appendices hereto. In the event of conflict between this Consent Order and any appendix, the Consent Order shall control.

**“Contractor”** means the individual(s), company, or companies retained by or on behalf of Defendants Cecil Smith or Buhl and Laura Smith to undertake and complete the work required by this Consent Order.

**“Defendants”** means Cecil Smith, Cecil Smith d.b.a. Cecil’s Transmission Repair, Buhl Smith, and Laura Smith.

**“Director”** means Ohio's Director of Environmental Protection.

**“Effective Date”** means the date the Wayne County Court of Common Pleas enters this Consent Order.

**“Facility”** refers to the location where the alleged storage, disposal, or other placement of hazardous and solid waste, construction and demolition debris, scrap tires, and scrap materials was conducted by Defendants Cecil Smith and Buhl and Laura Smith, or any one of them, which Facility is located at the repair and salvage and/or junk yard operation located at or in the vicinity of 197 Seville Road and 209 Collier Road, Doylestown, Wayne County, Ohio. A map of the Facility is attached as Appendix A.

**“Flat Bed Trailer Area”** means the area where approximately forty (40) fifty-five gallon drums were stored on a flat bed trailer at the Facility.

**“Ohio EPA”** means the Ohio Environmental Protection Agency.

**“Plaintiff”** means the State of Ohio by and through the Attorney General of Ohio.

**“SAP”** means Sampling and Analysis Plan.

**“SAR”** means Sampling and Analysis Report.

## **II. JURISDICTION AND VENUE**

This Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapter 3734 and 3704 and the rules adopted thereunder. This Court has jurisdiction over the Parties. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted.

## **III. PERSONS BOUND**

The provisions of this Consent Order shall apply to and be binding upon Plaintiff, and Defendants, their agents, officers, employees, assigns, successors in interest, and any person acting in concert or participation with them who receives actual notice of this Consent Order

whether by personal service or otherwise. Defendants are ordered and enjoined to provide a copy of this Consent Order to each contractor they employ to perform work itemized herein.

#### IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

1. Except as otherwise provided in this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendants to Plaintiff for all claims alleged in the State's Complaint.

2. Nothing in this Consent Order, including the imposition of stipulated civil penalties, shall limit the authority of the State of Ohio to:

- A. Seek relief for claims or conditions not alleged in the State's Complaint;
- B. Seek relief for claims or conditions alleged in the State's Complaint that occur after the entry of this Consent Order;
- C. Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;
- D. Bring any action against Defendants or against any other person, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9601, et seq. and/or R.C. 3734.20 through 3734.27 to: (1) recover natural resource damages, and/or (2) order the performance of, and/or recover costs for any removal, remedial, or corrective activities not conducted pursuant to the terms of this Consent Order;
- E. Take any action authorized by law against Defendants, or against any other person, for remediation of contaminated ground water at or from the Facility; and
- F. Take any action authorized by law against any person, including Defendants, to eliminate or mitigate conditions at the Facility that may present an imminent threat to the public health or safety, or the environment, and seek cost reimbursement for any such action.

## V. REMEDIATION AND OTHER INJUNCTIVE RELIEF

3. Defendants are ordered and enjoined to comply with all applicable provisions of the Ohio hazardous waste, solid waste, and air pollution laws and rules as set forth in R.C. Chapters 3734 and 3704 and rules adopted thereunder, including but not limited to, R.C. 3734.03 and R.C. 3704.05(G), and Ohio Adm. Code Chapter 3745-19, Ohio Adm. Code Chapters 3745-50 through 3745-69, and Ohio Adm. Code 3745-27-05(C).

4. Defendants are ordered and enjoined from storing or disposing of any hazardous waste without obtaining a hazardous waste permit issued by the Hazardous Waste Facility Board.

5. Defendants are ordered and enjoined from open dumping, open burning, and storing or disposing of any solid waste without obtaining a solid waste permit, license, or other authorization issued by the Director.

### Investigation and Remediation

6. On or about February 27, 1998, Defendants Buhl and Laura Smith submitted to Ohio EPA a Sampling and Analysis Plan ("SAP"), describing the methods to be used to determine the nature and extent of any alleged hazardous waste contamination as to the flat bed trailer area.

7. On or about February 27, 1998, Ohio EPA approved the SAP.

8. On or about March 2, 1998, Defendants Buhl and Laura Smith implemented the SAP.

9. On or about May 11, 1998, Defendants Buhl and Laura Smith submitted to Ohio EPA a Sampling and Analysis Report ("SAR"), entitled "Final Report", that included the

laboratory analyses and evaluation of data collected pursuant to the SAP and concluded that no remediation was necessary.

10. By letter dated May 13, 1998, Ohio EPA reviewed the SAR and concurred that the SAR presents evidence that the flat bed trailer area has been remediated to a degree that meets the closure performance standards of Ohio Adm. Code 3745-66-11, and that no further site activities regarding the flat bed trailer area are required at this time.

**Further Injunctive Relief**

11. Within thirty (30) days after the effective date of this Consent Order, Defendant Cecil Smith is ordered and enjoined to submit a report describing what was found at each of the areas set forth below, the work performed at each area, and the current status of each area. These areas include:

- A. the area where approximately twelve (12) steel fifty-five gallon drums with unknown contents were stored (map area #2);
- B. the area where various rusted steel drums with unknown contents and rubber tubing/hosing were stored (map area #5);
- C. the area where approximately four (4) fifty-five gallon steel drums with unknown contents and one (1) fifty-five gallon plastic drum with unknown contents were stored (map area #6); and
- D. the area where approximately twenty (20) rusted fifty-five gallon steel drums with unknown contents were stored (map area #11).

12. Within ninety (90) days after the effective date of this Consent Order, Defendants Cecil Smith and/or Buhl and Laura Smith are ordered and enjoined to lawfully remove and dispose of any remaining solid waste, including scrap tires and construction and demolition debris, from the Facility in accordance with this Consent Order and Ohio law. Defendant Cecil

Smith is responsible for the waste located on the parcel owned by Cecil Smith and the parcels owned by Buhl and Laura Smith. Defendants Buhl and Laura Smith are responsible for the waste located on parcels owned by Buhl and Laura Smith.

A. Solid Waste

- (1) Defendants Cecil Smith and/or Buhl and Laura Smith shall dispose of the solid waste at a licensed solid waste disposal facility.
- (2) Defendants Cecil Smith and/or Buhl and Laura Smith shall keep records documenting that the solid waste was properly removed and disposed of, including but not limited to copies of receipts for disposal, and shall make such records available to Ohio EPA upon request.
- (3) Within one hundred twenty (120) days after the effective date of this Consent Order, Defendants Cecil Smith and/or Buhl and Laura Smith shall submit to Ohio EPA, Northeast District Office, Division of Solid and Infectious Waste Management, 2110 E. Aurora Road, Twinsburg, Ohio 44087, Attn: DSIWM Unit Supervisor, a written report stating whether Defendants Cecil Smith and/or Buhl and Laura Smith have performed the actions set forth in paragraph 12(A) of this Consent Order, and specify: (1) the date(s) of removal of all solid waste; (2) the method(s) of removal of all solid waste; (3) the destination(s) of all solid waste; (4) the names and addresses of all persons involved in all solid waste removal and disposal operations.

B. Scrap Tires

- (1) Defendants Cecil Smith and/or Buhl and Laura Smith shall have all scrap tires transported from the Facility by a registered scrap tire transporter to a properly permitted or registered and licensed scrap tire facility in Ohio, an Ohio EPA approved beneficial use location, or an appropriate facility outside of Ohio that is operating in compliance with the applicable regulations of the jurisdiction in which it is located, in accordance with Ohio Adm. Code 3745-27-56.
- (2) Defendants Cecil Smith and/or Buhl and Laura Smith shall keep



records of all scrap tire removal activities conducted at the Facility. Record keeping shall include, but is not limited to, scrap tire transporter shipping papers, as set forth in Ohio Adm. Code 3745-27-57, and receipts establishing the proper disposal or deposition of the removed scrap tires. Defendants Cecil Smith and/or Buhl and Laura Smith shall make such records available to Ohio EPA upon request.

- (3) Within one hundred twenty (120) days after the effective date of this Consent Order, Defendants Cecil Smith and/or Buhl and Laura Smith shall submit to Ohio EPA, Northeast District Office, Division of Solid and Infectious Waste Management, 2110 E. Aurora Road, Twinsburg, Ohio 44087, Attn: DSIWM Unit Supervisor, a written report stating whether Defendants Cecil Smith and/or Buhl and Laura Smith have performed the actions set forth in paragraph 12(B) of this Consent Order, and specify: (1) the date(s) of removal of all scrap tires; (2) the method(s) of removal of all scrap tires; (3) the destination(s) of all scrap tires; (4) the names and addresses of all persons involved in all scrap tire removal, transportation, and disposal operations.
- (4) Upon the effective date of this Consent Order and until all the scrap tires are removed from the Facility, Defendants Cecil Smith and/or Buhl and Laura Smith shall implement interim measures at the Facility pursuant to Ohio Adm. Code 3745-27-60(B), including but not limited to, mosquito control as set forth in Ohio Adm. Code 3745-27-60(B)(8).

C. Construction and Demolition Debris

- (1) Defendants Cecil Smith and/or Buhl and Laura Smith shall dispose of the construction and demolition debris at a licensed construction and demolition debris facility or a licensed solid waste disposal facility. Defendant Cecil Smith shall dispose of clean hard fill in accordance with Ohio Adm. Code 3745-400-05.
- (2) Defendants Cecil Smith and/or Buhl and Laura Smith shall keep records documenting that the construction and demolition debris was properly removed and disposed of, including but not limited to copies of receipts for disposal, and shall make such records available to Ohio EPA upon request.

- (3) Within one hundred twenty (120) days after the effective date of this Consent Order, Defendants Cecil Smith and/or Buhl and Laura Smith shall submit to Ohio EPA, Northeast District Office, Division of Solid and Infectious Waste Management, 2110 E. Aurora Road, Twinsburg, Ohio 44087, Attn: DSIWM Unit Supervisor, a written report stating whether Defendants Cecil Smith and/or Buhl and Laura Smith have performed the actions set forth in paragraph 12(C) of this Consent Order, and specify: (1) the date(s) of removal of all construction and demolition debris; (2) the method(s) of removal of all construction and demolition debris; (3) the destination(s) of all construction and demolition debris; (4) the names and addresses of all persons involved in all construction and demolition debris removal and disposal operations.

## VI. SUBMITTAL OF DOCUMENTS

13. All documents required to be submitted to Ohio EPA pursuant to this Consent Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Director  
Ohio Environmental Protection Agency  
P.O. Box 1049  
1800 WaterMark Drive  
Columbus, Ohio 43216-1049  
Attn: Jeanette Smith, Enforcement Section, DHWM and  
Dan Harris, Enforcement Coordinator, DSIWM

Ohio Environmental Protection Agency  
Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
Attn: John Palmer, DHWM and  
DSIWM Unit Supervisor

## VII. STIPULATED PENALTIES

14. This Section shall apply to Defendant Cecil Smith for noncompliance regarding the parcel owned by Cecil Smith and the parcels owned by Defendants Buhl and Laura Smith.

This Section shall only apply to Defendants Buhl and Laura Smith for noncompliance regarding the parcels owned by Buhl and Laura Smith. In the event that there is a failure to comply with any requirement or deadline contained in this Consent Order or any requirement or deadline contained in any document approved in accordance with this Consent Order, Defendants Cecil Smith and/or Buhl and Laura Smith, depending on what parcel(s) on which the noncompliance takes place, are liable for and shall pay stipulated penalties in accordance with the following schedule for each failure to comply:

- A. For each day of each failure to comply with a requirement or deadline of this Consent Order, up to and including thirty (30) days -- One Hundred Dollars (\$100) per day for each requirement or deadline not met.
- B. For each day of each failure to comply with a requirement or deadline of this Consent Order, from thirty-one (31) to sixty (60) days -- Two Hundred Dollars (\$200) per day for each requirement or deadline not met.
- C. For each day of each failure to comply with a requirement or deadline of this Consent Order, over sixty (60) days -- Three Hundred Dollars (\$300) per day for each requirement or deadline not met.

15. Any payment required to be made under the provisions of this Section of the Consent Order shall be made by delivering to Plaintiff, c/o Jena Suhadolnik 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 cashier's or certified check or checks made payable to the order of "Treasurer, State of Ohio", for the appropriate amount within thirty (30) days after the date of the failure to meet the requirement or deadline of this Consent Order. The payment of the stipulated penalty shall be accompanied by a letter briefly describing the type of violation, deadline, or requirement not met, and the date upon which the violation of this Consent

Order occurred. This penalty shall be deposited into the hazardous waste clean-up fund created by R.C. 3734.28.

16. The payment of stipulated penalties by Defendant(s) and the acceptance of such stipulated penalties by Plaintiff pursuant to this Section shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to R.C. Chapter 3734, including civil penalties under R.C. 3734.13, or to otherwise seek judicial enforcement of this Consent Order, for the same violation for which a stipulated penalty was paid or for other violations.

#### **VIII. INDEMNIFICATION**

17. In the event Defendant Cecil Smith fails to comply with any requirement or deadline contained in this Consent Order or any requirement or deadline approved within any document approved in accordance with this Consent Order pertaining to a parcel of property owned by Buhl and Laura Smith, Defendant Cecil Smith agrees to and shall indemnify Defendants Buhl and Laura Smith for any stipulated penalties paid by Buhl and Laura Smith.

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

18. All activities undertaken by Defendants pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws, rules, regulations, and permits. Defendants shall submit timely applications and requests for any such permits and approvals. Where such laws appear to conflict with the other requirements of this Consent Order, Defendants are ordered and enjoined to immediately notify Ohio EPA of the potential conflict. Defendants are ordered and enjoined to include in all contracts or subcontracts entered into for work required under this Consent Order, provisions

stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and rules. This Consent Order is not a permit issued pursuant to any federal, state, or local law or rule.

### X. RETENTION OF JURISDICTION

19. This Court shall retain jurisdiction of this action for the purpose of enforcing this Consent Order.

### XI. COSTS

20. Defendants shall pay the court costs of this action.

### XII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

21. Upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days after 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.

IT IS SO ORDERED:

JOURNALIZED

SEP 14 1998

CAROL WHITE, CLERK  
WAYNE COUNTY, OHIO

Mark H. West  
JUDGE  
Wayne County Court of Common Pleas

9-11-98

COPY TO ALL COUNSEL

Mailed \_\_\_\_\_  
Regular \_\_\_\_\_  
Certified \_\_\_\_\_  
Placed in box \_\_\_\_\_  
By \_\_\_\_\_  
Dep. Clerk

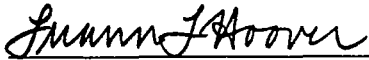
13

444

Approved:

**BETTY D. MONTGOMERY**  
**ATTORNEY GENERAL**

By:



Luann L. Hoover (0062404)  
Susan C. Kroeger (0059311)  
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215-3428  
Telephone: (614) 466-2766  
Facsimile: (614) 644-1926

*Attorneys for Plaintiff*  
*State of Ohio*

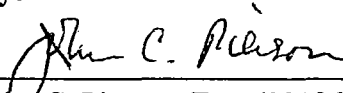
**CECIL N. SMITH AND CECIL N. SMITH d.b.a.**  
**CECIL'S TRANSMISSION REPAIR**

By:



Cecil N. Smith  
209 Collier Road  
Doylestown, Ohio 43230

By:



John C. Pierson, Esq. (0018607)  
O'Neil & Pierson  
Twin Oaks Estate  
1221 West Market Street  
Akron, Ohio 44313-7107

*Attorney for Defendant Cecil N. Smith and*  
*Cecil N. Smith d.b.a. Cecil's Transmission Repair*

**BUHL AND LAURA SMITH**

**By:**

*Buhl Smith*

---

Buhl Smith  
197 Seville Road  
Doylestown, Ohio 44230

**By:**

*Laura Smith*

---

Laura Smith  
197 Seville Road  
Doylestown, Ohio 44230

**By:**

*Jeffrey D. Musselman, Esq.*

---

Jeffrey D. Musselman, Esq. (0068348)  
Taggart, Cox, Hays, Zacour & Lanham  
142 West Liberty Street  
P.O. Box 218  
Wooster, Ohio 44691

*Attorney for Defendants Buhl and Laura Smith*

**APPENDIX A**



