

IN THE COURT OF COMMON PLEAS
HARRISON COUNTY, OHIO
GENERAL DIVISION

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DIANE L. HAZEDORN, CLERK
HARRISON COUNTY, OHIO

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

Plaintiff,

v.

TIMCO TIRE RECYCLING, INC.,

and

TIM JONES,

Defendants.

:
: CASE NO. 98-415-CV
:
: JUDGE KARTO
:
:
: CONSENT ORDER AND
: PERMANENT INJUNCTION
: AS TO DEFENDANTS TIMCO TIRE
: RECYCLING, INC AND TIM JONES
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WHEREAS, Plaintiff State of Ohio, on relation of Betty D. Montgomery, Attorney General of Ohio, at the written request of the Ohio Environmental Protection Agency ("Ohio EPA"), filed a complaint commencing this action against Defendants Timco Tire Recycling, Inc. ("Timco") and Tim Jones 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, Plaintiff and Defendants Timco and Tim Jones consent to the entry of this Consent Order and Permanent Injunction ("Consent Order") without trial of any issue of fact or law, and upon 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 undersigned parties to this action and the subject matter of the Complaint. Venue is proper in this Court.

II. PARTIES BOUND

2. The provisions of this Consent Order shall apply to and be binding upon Defendants Timco and Tim Jones, their successors in interest and assigns, and others to the extent provided by Civil Rule 65(D).

3. Defendants Timco and Tim Jones shall provide a copy of this Consent Order to each general contractor, subcontractor, laboratory, consultant, agent, employee, and person hired by or who will provide work or services related to this Consent Order on behalf of Defendants Timco and Tim Jones.

III. DEFINITIONS

4. The terms used in this Consent Order shall have the same meaning as used in Ohio Revised Code Chapter 3734. and the regulations promulgated thereunder, and R.C. Chapter 3767.

5. The "Timco tire dump" as used in this Consent Order refers to an unpermitted and unlicensed solid waste disposal facility, as defined in R.C. §3734.01(N) and O.A.C. 3745-27-01(C)(11), consisting of a large number of scrap tires deposited onto the surface of the ground at property currently owned by Defendant Tim Jones and located at 77371 Freeport-Tippecanoe Road, Freeport, Harrison County, Ohio.

IV. PERMANENT INJUNCTION

6. Defendants Timco and Tim Jones agree and are ordered and enjoined immediately not to accept scrap tires or other solid wastes for storage or disposal at the Timco tire dump, and to take all actions necessary to prevent the open dumping of scrap tires or other solid waste by any other person at the Timco tire dump.

7. Defendants Timco and Tim Jones agree and are ordered and enjoined to begin immediately removing scrap tires that are dumped at the Timco tire dump and to dispose of such scrap tires in accordance with Chapter 3734 of the Revised Code. Timco and Tim Jones shall comply with the following work schedule at the Timco tire dump:

- Phase I: By August 26, 1998, remove all the scrap tires in tire piles numbered 1 and 4 and dispose of the shredded tires in accordance with Chapter 3734 of the Revised Code.
- Phase II: By October 14, 1998, remove all the scrap tires in tire piles numbered 1A, 21, 23 and 24 and dispose of the shredded tires in accordance with Chapter 3734 of the Revised Code.
- Phase III: By December 9, 1998, remove all the scrap tires in tire pile number 2 and dispose of the shredded tires in accordance with Chapter 3734 of the Revised Code.
- Phase IV: By February 3, 1999, remove all the scrap tires in tire piles numbered 5 and 6 and dispose of the shredded tires in accordance with Chapter 3734 of the Revised Code.
- Phase V: By March 31, 1999, remove the scrap tires in tire piles numbered 3, 7, 15 and 16 and dispose of the shredded tires in accordance with Chapter 3734 of the Revised Code.
- Phase VI: By April 28, 1999, remove all the scrap tires in tire piles numbered 18 and 22 and dispose of the shredded tires in accordance with Chapter 3734 of the Revised Code.

- Phase VII: By May 26, 1999, remove the center one-third of the scrap tires in tire pile number 20 and dispose of the shredded tires in accordance with Chapter 3734 of the Revised Code.
- Phase VIII: By June 23, 1999, remove one-fourth of the scrap tires on the west portion of tire pile number 10 and dispose of the shredded tires in accordance with Chapter 3734 of the Revised Code.
- Phase IX: By August 18, 1999, remove all the scrap tires in tire piles numbered 9 and 9A and dispose of the shredded tires in accordance with Chapter 3734 of the Revised Code.
- Phase X: By October 13, 1999, remove the western one-half of the scrap tires in tire pile number 8 and the eastern one-third of the scrap tires in tire pile number 10 and dispose of the shredded tires in accordance with Chapter 3734 of the Revised Code.
- Phase XI: By December 8, 1999, remove the middle one-third of the scrap tires remaining in tire pile number 10 and the remainder of tire pile number 20 and dispose of the shredded tires in accordance with Chapter 3734 of the Revised Code.
- Phase XII: By February 2, 2000, remove all the scrap tires in tire piles numbered 11 and 19 and dispose of the shredded tires in accordance with Chapter 3734 of the Revised Code.
- Phase XIII: By March 29, 2000, remove all the scrap tires in tire piles numbered 12 and 13 and dispose of the shredded tires in accordance with Chapter 3734 of the Revised Code.
- Phase XIV: By June 14, 2000, remove all the scrap tires in tire piles numbered 14, 17 and the remainder of pile number 8 and dispose of the shredded tires in accordance with Chapter 3734 of the Revised Code.
- Phase XV: By August 9, 2000, remove all the scrap tires remaining in tire pile number 10 and dispose of the shredded tires in accordance with Chapter 3734 of the Revised Code.

The phases described above are identified on the map attached hereto as Attachment A.

8. Timco and Tim Jones shall be temporarily authorized to shred and transport tires only for the purpose of completing the work set forth in paragraph 7, above. Nothing herein

shall constitute the granting of a permit, license, and/or registration to store, recycle or transport tires. When work set forth in paragraph 7, above is completed, Timco and Tim Jones shall not store, recycle or transport tires unless they acquire the proper permits licenses, and/or registrations as set forth in R.C. Chapter 3734.

9. Timco and Tim Jones shall keep detailed records of all scrap tire removal operations conducted at the Timco tire dump. These detailed records shall include, but are not limited to, scrap tire transporter shipping papers, and receipts establishing the proper disposal or deposition of scrap tires from the Timco tire dump at a properly permitted or registered and licensed scrap tire facility in the State of 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. These records shall be made available for inspection by Ohio EPA.

10. Beginning on April 1, 1998, Timco and Tim Jones shall employ mosquito control measures at the Timco tire dump in accordance with OAC Rule 3745-27-60(B)(8), as effective on March 29, 1996, until such time as all scrap tires have been removed from the Timco tire dump. Timco and Tim Jones shall keep detailed records of all mosquito control activities conducted at the Timco tire dump. These records shall be made available for inspection by Ohio EPA.

11. Timco and Tim Jones shall permit access to the Timco tire dump by Ohio EPA for the purpose of conducting inspections of the Timco tire dump to determine compliance with this Consent Order and other applicable regulations.

V. WRITTEN NOTIFICATION

12. Within seven (7) days of completion of each requirement set forth in Paragraph 7 of this Consent Order, Defendants Timco and Tim Jones agree and are ordered and enjoined to submit to the Court and to the Ohio EPA written notice of completion, along with documentation of proper removal and disposal, including receipts. The written notice of completion shall also include documentation of any transfer of scrap tires and/or tire shreds to another person or entity for an authorized beneficial use pursuant to O.A.C. Rule 3745-27-78.

VI. STIPULATED PENALTIES

13. In the event that Defendants Timco, Inc. or Tim Jones fail to comply with any of the requirements of this Consent Order, the Defendants shall, immediately and automatically, be liable for and shall pay a stipulated penalty in accordance with the following schedule:

14. Defendants shall pay one hundred dollars (\$100.00) per day for each day any requirement of this Consent Order is violated up to thirty (30) days; after thirty (30) days, Defendants shall pay two hundred dollars (\$200.00) per day; after ninety (90) days, Defendants shall pay four hundred dollars (\$400.00) per day.

15. Stipulated penalties due under this Consent Order shall be paid by certified check or money order, payable to "Treasurer, State of Ohio" and mailed to Jena Suhadolnik or her successor, Administrative Assistant, Office of the Attorney General, Environmental Enforcement Section, 30 East Broad Street - 25th Floor, Columbus, Ohio 43266-0410, within ten days of the occurrence of the failure to comply with this Order as described above.

VII. TRUST AGREEMENT

16. The Timco Trust is attached to this Consent Order as Attachment B. Defendants Timco and Tim Jones shall deposit \$300.00 dollars on the first day of every month, beginning on August 1, 1998, into the Timco trust fund. Such payments shall be made until the amount in the trust fund meets or exceeds the remaining clean-up costs, as estimated by Ohio EPA.

17. All payments required by paragraph 16, above, shall be by certified check made payable to The Huntington National Bank and shall be submitted to the following address:

Attn: Gary L. Majestic
The Huntington National Bank
232 West Third Street
Dover, Ohio 44622
Re: Timco Tire Trust

18. The Timco Trust provides for language that is identical in substance to O.A.C. Rule 3745-27-17(A) and contains the following additional revisions:

(a) Any monies remaining in the trust fund after completion of the work set forth in paragraph 7 of this Consent Order shall be disbursed to the Ohio EPA for payment into the scrap tire management fund established pursuant to O.R.C. Section 3734.82, or any successor fund identified by the Ohio EPA.

(b) There shall not be any further modifications or amendments to the Timco trust fund without the Director's written approval.

VIII. SITE ACCESS

19. Defendants Timco and Tim Jones agree and consent that Ohio EPA, its employees and agents, shall have full access to the Timco tire dump at all reasonable times without the need for a warrant, as may be necessary for the implementation of this Consent Order. Access under

this Consent Order shall be for the limited purpose of carrying out the following activities and related activities of this Consent Order:

- A. Monitoring the Work, including, but not limited to, taking photos and/or video;
- B. Conducting sampling;
- C. Inspecting and copying non-privileged records, operating logs, contracts, receipts, and/or other documents related to the implementation of this Consent Order; and
- D. Verifying any data and/or other information submitted to the Ohio EPA.

20. To the extent that the Timco tire dump or any other property to which access is required for the implementation of this Consent Order is owned or controlled by persons other than Defendants Timco and Tim Jones, then Defendants Timco and Tim Jones shall use their best efforts to secure from such persons access for Defendants Timco and Tim Jones and the Ohio EPA as necessary to effectuate this Consent Order. Copies of all access agreements obtained by Defendants Timco and Tim Jones shall be submitted to the Ohio EPA within ten (10) days of receipt by Defendants. If any access required to effectuate this Consent Order is not obtained within thirty (30) days of the entry date of this Consent Order, or within thirty (30) days of the date that Ohio EPA notifies Defendants Timco and Tim Jones in writing that additional access beyond that previously secured is necessary, Defendants Timco and Tim Jones shall promptly notify the Ohio EPA in writing of the steps Defendants Timco and Tim Jones have taken to obtain access. The Ohio EPA may, as it deems appropriate, assist Defendants Timco and Tim Jones in obtaining access.

21. Paragraphs 10 and 11 of this Consent Order shall not be construed to eliminate or restrict any State right to seek access to the Timco tire dump which it may otherwise have under Federal or State law.

IX. RESERVATION OF RIGHTS

22. The State of Ohio reserves the right to seek further relief from this Court or any other court, including, but not limited to, further preliminary and/or permanent injunctive relief, civil penalties and cost recovery for work beyond this Consent Order. This Consent Order in no way waives any defenses which Defendants Timco and Tim Jones may have as to such further relief.

23. The State of Ohio expressly reserves, and this Consent Order shall be without prejudice to, any civil or criminal claims, demands, rights, or causes of action, judicial or administrative, the State of Ohio may have or which may in the future accrue against Defendants Timco and Tim Jones or others, regardless of whether such claim, demand, right or cause of action was asserted in the Complaint.

24. Nothing herein shall limit the authority of the State of Ohio to undertake any action against any entity, including Defendants Timco and Tim Jones, to eliminate or control conditions which may present a threat to the public health, safety, welfare or environment, and to seek cost reimbursement for any such action.

25. Nothing herein shall be construed to relieve Defendants Timco and Tim Jones of their obligation to comply with applicable federal, state or local statutes, regulations or ordinances, including but not limited to permit requirements.

26. Nothing herein absolves Defendants Timco and Tim Jones from the duty to comply with this Consent Order.

27. Defendants Timco and Tim Jones reserve all rights that they may have against any other person under all federal, state and local laws, except as may be set forth in a separate agreement or agreements.

X. RETENTION OF JURISDICTION

28. This Court shall retain jurisdiction of this matter for the purpose of overseeing the compliance by Defendants Timco and Tim Jones with this Consent Order.

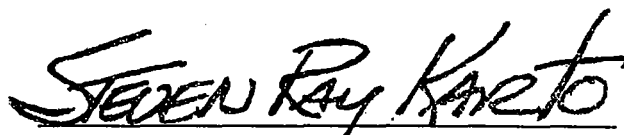
XI. COURT COSTS

29. Defendants Timco and Tim Jones shall pay the costs of this action.

XII. SIGNATORIES

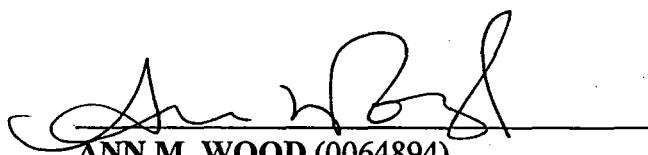
30. The undersigned representative of Defendants understands the terms and conditions of this Consent Order and certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to execute and legally bind Defendants to this document.

SIGNED AT CADIZ, HARRISON COUNTY, OHIO, THIS 10th DAY OF July, 1998.


JUDGE, HARRISON COUNTY
COURT OF COMMON PLEAS

APPROVED BY:

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO



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Attorneys for Plaintiff
State of Ohio



TIM JONES, Defendant
P.O. Box 627
Dover, Ohio 44622

Individually and as the Authorized
Representative of Defendant Timco Tire
Recycling, Inc.

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ATTACHMENT A

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ATTACHMENT A

ATTACHMENT B

TIMCO TRUST AGREEMENT

The "agreement," entered into as of June 10, 1998, by and between Timco, Inc. and Tim Jones (the "Grantors"); and Huntington National Bank, a national bank (the "Trustee").

Whereas, the Ohio EPA, has established certain rules applicable to the Grantor, requiring that the owner or operator of a solid waste facility or a scrap tire transporter provide assurance that funds will be available when needed for remediation of the facility, or for scrap tire transportation.

Where, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the Trustee under this agreement, and the Trustee is willing to act as Trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this agreement:

(a) The term "Grantor" means Timco, Inc. and Tim Jones and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this agreement and any successor Trustee.

(c) The term "Director" means the Director of the Ohio EPA or his designee.

(d) The term "Remediation" means the processing, transporting and/or disposing of scrap tires and/or scrap tire shreds.

Section 2. Identification of facilities and cost estimates. This agreement pertains to the Timco tire dump, which is located at 77371 Freeport-Tippecanoe Road, Freeport, Harrison County, Ohio, and cost estimates identified on attached schedule A, including any adjustments from any updated cost estimates approved by Ohio EPA.

Section 3. Establishment of fund. The Grantor and the Trustee hereby establish a trust fund, the "fund," for the benefit of the Ohio EPA. The Grantor and the Trustee intend that no third party have access to the fund except as herein provided. The fund is established initially as consisting of the property, which is acceptable to the Trustee, described in schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this agreement. The fund will be held by the Trustee, in trust, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Ohio EPA.

Section 4. Payment for remediation. If and when the amount of money in the trust fund meets or exceeds the remaining costs of clean-up, as estimated by the Ohio EPA, the Trustee will make such payments from the fund as the Director will direct, in writing, to provide for the payment of the costs of remediation of the Timco tire dump, including costs of processing, transporting and/or disposing of the scrap tires located at the Timco tire dump. The Trustee will reimburse the Grantor or other persons as specified by the Director from the fund for remediation expenditures, including costs of processing, transporting, and/or disposing of the scrap tires located at the Timco tire dump, in such amounts as the Director will direct, in writing. In addition, the Trustee will refund to the Grantor or other persons such amounts as the Director

specifies in writing. Upon refund, such funds will no longer constitute part of the fund as defined herein.

Section 5. Payments comprising the fund. Payments made to the Trustee for the fund will consist of cash or securities acceptable to the Trustee.

Section 6. Trustee management. The Trustee will invest and reinvest the principal and income of the fund and keep the fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee periodically, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the fund, the Trustee will discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the Grantor, or any other owner or operator of the Timco tire dump, or any of their affiliates as defined in the Investment Company act of 1940, as amended, 15 U.S.C. section 80a-2(a), will not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(b) The trustee is authorized to invest the fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and investment. The Trustee is expressly authorized in its discretion:

(a) To transfer periodically any or all of the assets of the fund to any common,

commingled, or collective trust fund created by the Trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. sections 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee will be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by

another person, or to deposit or arrange for the deposit of any securities issued by the United States government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee will at all times show that all such securities are part of the fund;

(d) To deposit any cash in the fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the fund.

Section 9. Taxes and expenses. All taxes of any kind that may be assessed or levied against or in respect of the fund and all brokerage commissions incurred by the fund will be paid from the fund. All other expenses, proper charges, and disbursements, incurred by the Trustee in connection with the administration of this trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee will be paid from the fund. Expenses, proper charges, and disbursements include fees for legal services, rendered to the Trustee and the compensation of the Trustee to the extent the Grantor fails to compensate the Trustee pursuant to section 12.

Section 10. Annual valuation. The Trustee will annually, not later than thirty days prior to the anniversary date of the establishment of the fund, furnish to the Grantor and to the Director a statement confirming the value of the trust. Any securities in the fund will be valued at market value as of no more than sixty days prior to the anniversary date of establishment of the fund. The failure of the Grantor to object in writing to the Trustee not later than ninety days after the