

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

STATE OF OHIO, ex rel.	:	CASE NO. 318504
BETTY D. MONTGOMERY	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE JANET R. BURNSIDE
	:	
Plaintiff,	:	
	:	
v.	:	CONSENT ORDER AND FINAL
	:	JUDGMENT ENTRY
BOYAS EXCAVATING, INC.,	:	
	:	
Defendant.	:	

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Betty D. Montgomery (hereinafter "Plaintiff") and Defendant Boyas Excavating, Inc. ("Defendant") 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, 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 Defendant under Chapter 3734. of the Ohio Revised Code ("R.C."). Venue is proper in this Court.

II. PERSONS BOUND

2. The provisions of this Order shall apply to and be binding upon the parties to this action, their agents, officers, employees, assigns and successors in interest. The provisions of this Order shall also apply to those persons in active concert or participation with the parties, who receive actual notice of the Consent Order whether by personal service or otherwise. Defendant

shall provide a copy of this Consent Order to any key employee, consultant, or contractor employed to perform work pursuant to this Consent Order.

III. SATISFACTION OF LAWSUIT

3. Except as otherwise provided for by this Consent Order or by law, compliance with the terms of this Consent Order shall constitute full and complete satisfaction of Defendant's civil liability to Plaintiff for all claims alleged in Plaintiff's Complaint.

IV. RESERVATION OF RIGHTS

4. Nothing in this Consent Order, 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;
- c. Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;
- d. Bring any action against Defendant 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, or R.C. Chapter 6111. to: (1) recover natural resource damages, or (2) to order the performance of, or recover costs for any removal, remedial or corrective activities not conducted pursuant to the terms of this Consent Order, or both.
- e. Take any action authorized by law against any person, including the Defendant, to eliminate or mitigate conditions at the Nicky Boulevard landfill which may present an imminent threat to the public health or welfare, or the environment.

V. COMPLIANCE WITH APPLICABLE LAWS

5. Nothing in this Consent Order shall affect Defendant's obligation to comply with all applicable federal, state or local laws, regulations, rules, or ordinances. Defendant shall obtain

all federal, state, or local permits and licenses necessary to comply with this Consent Order.

VI. DEFINITIONS

6. Unless otherwise stated, all terms used in this Order shall have the same meaning as used in R.C. Chapter 3734. and the regulations adopted thereunder. In addition, the following terms are defined as follows:

- a. "Director" means the Director of the Ohio Environmental Protection Agency.
- b. "Facility" means the Nicky Boulevard Sanitary Landfill located in the Village of Cuyahoga Heights, Cuyahoga County, Ohio.
- c. "Ohio EPA" means the Ohio Environmental Protection Agency, and its agents.
- d. "R.C." means the Ohio Revised Code.
- e. "O.A.C." means the Ohio Administrative Code.

VII. INJUNCTION

7. Defendant agrees to and is permanently enjoined and ordered to comply with R.C. Chapter 3734. and the regulations promulgated thereunder.

8. Defendant is enjoined and ordered to complete closure of the Facility in accordance with O.A.C. Rule 3745-30-09, pursuant to the following schedule:

- a. By October 31, 1998, Defendant is enjoined and ordered to complete closure of the Facility in accordance with O.A.C. Rule 3745-30-09. Defendant is not required to submit to Ohio EPA a final closure/postclosure care plan, and obtain approval of that plan from the Director prior to beginning closure activities at the Facility, except as otherwise provided in Paragraph 8.b. and 8.c.
- b. By December 31, 1998, or not later than sixty (60) days after the completion of final closure activities, whichever is earlier, Defendant is enjoined and ordered to submit a written certification report to the Ohio EPA in accordance with O.A.C. Rules 3745-30-07(B) and 3745-30-09(H).

- c. Upon Defendant's submittal of the written certification as required by O.A.C. Rule 3745-30-09(H), Defendant is enjoined and ordered to submit an "as built" final closure/post-closure care plan, which shall include all of the information specified in O.A.C. Rule 3745-30-09(A), except for section (A)(5)(h) of O.A.C. Rule 3745-30-09.
9. Defendant is enjoined and ordered to implement a groundwater monitoring program in accordance with O.A.C. Rule 3745-30-08, pursuant to the following schedule:
 - a. By June 30, 1997, Defendant is enjoined and ordered to submit to the Ohio EPA an approvable groundwater monitoring program plan that satisfies the requirements specified in O.A.C. Rule 3745-30-08(A), (B), (C), and (D). If Defendant implements the groundwater monitoring program pursuant to Paragraph 9.b. prior to approval of the plan by the Director, upon the subsequent approval of the plan by the Director, Defendant shall undertake such additional actions as are necessary to comply with the approved plan.
 - b. By October 31, 1997, Defendant is enjoined and ordered to implement a groundwater monitoring program that satisfies the requirements specified in O.A.C. Rule 3745-30-08(A), (B), (C), and (D).
 - c. For the purposes of this Consent Order, the groundwater monitoring program plan is implemented upon the commencement of sampling of the groundwater monitoring wells in accordance with O.A.C. Rule 3745-30-08(D).
 10. Defendant is enjoined and ordered to establish and fund financial assurance for final closure and post-closure care in accordance with O.A.C. Rule 3745-30-11, according to the following schedule:
 - a. By April 30, 1997, Defendant is enjoined and ordered to submit to the Ohio EPA final closure/post-closure care cost estimate that complies with O.A.C. Rule 3745-30-11(A)(1)(a) and (b), and a draft copy of the final closure/post-closure care financial assurance instrument(s) that complies with O.A.C. Rule 3745-30-11(A)(1)(c).
 - b. By June 30, 1997, Defendant is enjoined and ordered to execute final closure/post-closure care financial assurance instrument(s) and to fund the final closure portion of the final closure/post-closure care cost estimate.

c. By October 31, 1997, Defendant is enjoined and ordered to fund the postclosure care portion of the final closure/post-closure care cost estimate.

11. If the Ohio EPA notifies Defendant that part or all of any documents required to be submitted pursuant to this Consent Order are deficient, then Defendant shall resubmit the deficient portions in approvable form within forty-five (45) days of Ohio EPA's notification of deficiency to Defendant. The Ohio EPA may issue an approval of each such document with additional terms and conditions.

12. Upon approval by the Ohio EPA, Defendant is ordered and enjoined to implement and comply with each approved document, including all deadlines and schedules set forth in each approved document.

13. For any of the documents required to be submitted or prepared to achieve compliance with Section VII., Defendant is enjoined and ordered to include sufficient detail, information, and references to support and justify the document's conclusions and to demonstrate compliance with the requirements of the applicable regulations and this Consent Order. Defendant is ordered and enjoined to present such documents in a manner to allow clear understanding of the document's conclusions and supporting justification in order to be readily understood by personnel at the Facility.

VIII. RIGHT OF ENTRY

14. Defendant hereby agrees to allow representatives of Ohio EPA and the Cuyahoga County District Board of Health to enter the Facility 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 rules promulgated thereunder. Nothing in this

Consent Order limits Ohio EPA's authority under R.C. Chapter 3734. or any other statutory authority to determine compliance at the Facility with this Consent Order and R.C. Chapter 3734. and rules promulgated thereunder.

IX. CIVIL PENALTY

15. Defendant shall pay to the State of Ohio a civil penalty of Seventy-Five Thousand Dollars (\$75,000.00). The penalty shall be paid by delivering to Mr. Matthew Sanders, Administrative Assistant, or his successor, of the Environmental Enforcement Section, a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within forty-five (45) days from the date of entry of this Consent Order.

X. STIPULATED PENALTIES

16. If Defendant fails to meet any of the requirements of this Consent Order set forth in Paragraphs 7. through 13., then Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of failure to meet a requirement up to thirty (30) days, Five Hundred Dollars (\$500.00) per day for each requirement not met. For each day of failure to meet a requirement from thirty-one (31) to sixty (60) days, One Thousand Dollars (\$1,000.00) per day for each requirement not met. For each day of failure to meet a requirement from sixty-one (61) to ninety (90) days, One Thousand Five Hundred Dollars (\$1,500.00) per day for each requirement not met. For each day of failure to meet a requirement over ninety (90) days, Two Thousand Dollars (\$2,000.00) per day for each requirement not met.

17. If Defendant fails to meet the requirements of this Consent Order set forth in Paragraphs 15., then Defendant shall immediately and automatically be liable for payment of a

stipulated penalty in the amount of One Thousand Dollars (\$1,000.00) per day for each requirement not met.

18. Any payment required to be made under the provisions of Paragraphs 16. and 17. of this Order shall be made by delivering to Matthew Sanders, Administrative Assistant, or his successor, a certified check or checks for the appropriate amounts, payable to the order of "Treasurer, State of Ohio", within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order.

XI. GENERAL PROVISIONS

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

20. All certified checks submitted pursuant to this Order shall be submitted to:

Mr. Matthew Sanders
Administrative Assistant
Environmental Enforcement
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428

21. All other documents submitted pursuant to this Order shall be submitted to:

Unit Supervisor
Division of Solid and Infectious Waste Management
Northeast District Office
Ohio Environmental Protection Agency
110 East Aurora Road
Twinsburg, Ohio 44087

and

Solid Waste Division
Cuyahoga County Board of Health
One Playhouse Square
1375 Euclid Avenue, 5th Floor
Cleveland, Ohio 44115-1882

22. Any acceptance by the State of Ohio of any payment, document, or other work due hereunder subsequent to the time that the obligation is due under this Consent Order shall not relieve Defendant from the obligation created by this Consent Order.

XII. AUTHORITY TO ENTER INTO THE CONSENT ORDER

23. The signatory for Defendant represents and warrants that he or she has been duly authorized to sign this document and so bind Defendant to all terms and conditions thereof.

XIII. RETENTION OF JURISDICTION

24. The Court will retain jurisdiction of this action for the purpose of making any order or decree which it deems necessary to enforce this Consent Order.

XIV. COSTS

25. Defendant shall pay all court costs of this action.

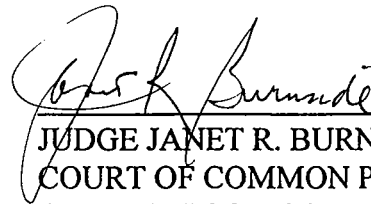
XV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

26. 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 Order upon the journal, the clerk is directed to serve upon all parties notice of the Order and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and to note the service in the appearance docket.

IT IS SO ORDERED.

DATE

2/27/97

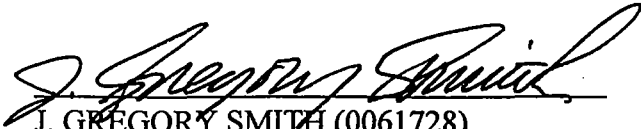


JUDGE JANET R. BURNSIDE
COURT OF COMMON PLEAS
OF CUYAHOGA COUNTY, OHIO

APPROVED:

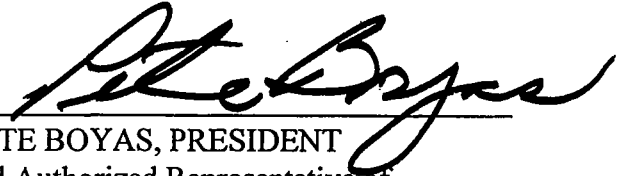
STATE OF OHIO, ex rel.
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BOYAS EXCAVATING, INC.

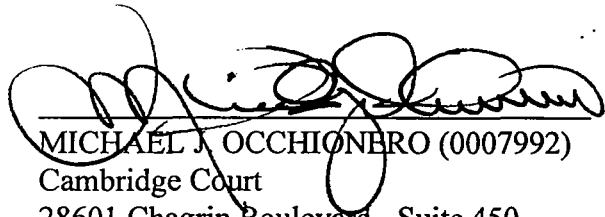


J. GREGORY SMITH (0061728)
ROBERT E. ASHTON (0032276)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
(614) 466-2766

Counsel for Plaintiff



PETE BOYAS, PRESIDENT
and Authorized Representative of
Defendant, Boyas Excavating, Inc.
10055 Sweet Valley Road
Valley View, Ohio 44125



MICHAEL J. OCCHIONERO (0007992)
Cambridge Court
28601 Chagrin Boulevard - Suite 450
Cleveland, Ohio 44122

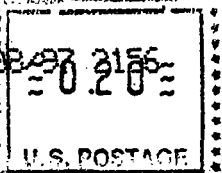
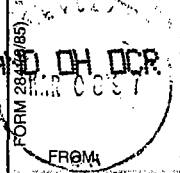
Counsel for Defendant



CASE CV-318504 MAR. 05, 1997

OHIO, STATE OF EX REL
vs.
BOYAS EXCAVATING INC
JUDGE

CLEVELAND OH DCR 1 03/03/97 2156



BURNSIDE, JANET R.

FILING DATE 03/03/97 CONSENT
ORDER AND FINAL JUDGMENT
ENTRY... OSJ FINAL.... VOL
2053 PAGE 867-875.....
NOTICE
ISSUED.....
..... CASE
DISMISSED WITH PREJUDICE
03/03/97

CUYAHOGA COUNTY
COURT OF COMMON PLEAS
GERALD E. FUERST
CLERK OF COURTS
JUSTICE CENTER - COURT TOWER
CLEVELAND, OHIO 44113

TO:

SMITH, J. GREGORY
30 EAST BROAD STREET
25TH FLOOR
COLUMBUS OH4321534



