

IN THE
COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO, *ex rel.*,
ANTHONY J. CELEBREZZE, JR.
SUCCEEDED BY LEE FISHER
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

GENERAL AGGREGATES, INC. et al.

Defendants.

CASE NO. 90-CV-1272

JUDGE WYATT MCKAY

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CONSENT ORDER

Whereas, Plaintiff, State of Ohio, by and through its former Attorney General, Anthony J. Celebrezze, Jr., and succeeded by the present Attorney General, Lee Fisher, (hereinafter "Plaintiff"), filed the SECOND AMENDED COMPLAINT herein against DEFENDANTS JOHN FORTUNATO, GENERAL RECYCLING, INC., JAMES BURN, GALE MCCREARY BURN, and GENERAL AGGREGATES, INC. (hereinafter "Defendants") alleging violations of Chapters 3704 and 3734. of the Ohio Revised Code, and regulations promulgated thereunder; and

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

I. JURISDICTION

1. The Court has jurisdiction over the subject matter of this action, pursuant to Chapters 3704 and 3734 of

the Ohio Revised Code and the regulations adopted thereunder.

This Court has jurisdiction over the parties. Venue is proper in this Court. The Complaint states a claim upon which relief may be granted.

II. PARTIES

2. Plaintiff is the State of Ohio upon relation by Lee Fisher, Attorney General for the State of Ohio, at the request of the Director of Ohio Environmental Protection (hereinafter the "Director").

3. The provisions of this Consent Order shall apply to and be binding upon the Defendants to this action, and their agents, officers, employees, assigns, and successors in interest. In addition, this order shall apply to all persons, firms, corporations and other entities having notice of this order and acting in concert, privity or participation with the Defendants.

III. PERMANENT INJUNCTION

4. Defendants are ordered and permanently enjoined from accepting solid waste and hazardous waste, as those terms are defined in Chapter 3734 of the Ohio Revised Code, at their facility located on the east side of Kinsman-Orangeville Road between State Route 88 and Jewell-Greenville Road at 6318 Kinsman-Orangeville Road, Kinsman, Trumbull County, Ohio (hereinafter "Facility").

5. Defendants are ordered and permanently enjoined, without prior authorization from the Director of Ohio Environmental Protection granted pursuant to O.A.C. Section

3745-27-13, from filling, grading, excavating, building, drilling, or mining on the land located at the Facility.

6. Defendants are ordered and permanently enjoined from causing, permitting, or allowing the installation of any new source of air pollutants, as defined at O.A.C. Section 3745-31-01, or causing, permitting, or allowing the modification of an air contaminant source, without first obtaining a permit to install from the Director pursuant to O.A.C. Section 3745-31-02.

7. Defendants are ordered and permanently enjoined from causing, permitting, or allowing the operation or other use of any air contaminant source without first applying for and obtaining a permit to operate from the Director pursuant to O.A.C. Section 3745-35-02.

8. Defendants James Burn and Gale McCreary Burn are ordered and permanently enjoined from participating, in any manner, in the operation of a thermal soil volatilization unit or in the operation of any recycling, reuse or processing of contaminated soil at the Facility.

IV. REMEDIAL ACTIVITIES

9. Defendants are ordered and enjoined to submit to the Director, within thirty (30) days of the entry of this Consent Order, a Soil Sampling and Analysis Plan, the implementation of which will characterize all contaminated soils and areas in which contaminated soil has been or is located. Such Soil Sampling and Analysis Plan must include a schedule for implementation.

10. Defendants are ordered and enjoined to address any deficiencies regarding the Soil Sampling and Analysis Plan, as identified by the Director or his authorized representative in any comments by revising and resubmitting the Soil Sampling and Analysis Plan to incorporate the Director's comments within thirty (30) days of receipt of such comments.

11. Defendants are ordered and enjoined to implement the Soil Sampling and Analysis Plan in accord with the implementation schedule as approved by the Director.

12. If, after implementation of the Soil Sampling and Analysis Plan, the contaminated soils are determined to be hazardous:

a) Defendants are ordered and enjoined to submit, within thirty (30) days of receiving the sample results generated by the Soil Sampling and Analysis Plan, a Hazardous Waste Closure Plan in accordance with Chapter 3734. of the Ohio Revised Code;

b) Defendants are ordered and enjoined to address any deficiencies regarding the Hazardous Waste Closure Plan, as identified by the Director or his authorized representative in any comments by revising and resubmitting the Hazardous Waste Closure Plan to incorporate the Director's comments within thirty (30) days of receipt of such comments; and

c) Defendants are ordered and enjoined to implement the Hazardous Waste Closure Plan in accord with the implementation schedule as approved by the Director.

V. RIGHT OF ENTRY

13. The Director, his authorized representative, or a representative of the Trumbull County Board of Health, upon proper identification, may enter the Facility at any time for the purpose of determining compliance with this Consent Order. This paragraph, in no manner, waives or alters any right-of-access which the Director, his authorized representative, or a representative of the Trumbull County Board of Health may have absent this Consent Order.

VI. SATISFACTION OF LAWSUIT

14. Except as otherwise provided in Section V, "Reservation of Rights", compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of the Defendants for all violations of R.C. Chapters 3704. and 3734. and the rules adopted thereunder which were alleged in the Second Amended Complaint.

VII. RESERVATION OF RIGHTS

15. The State of Ohio specifically reserves the power to seek removal, closure or remediation of the portions of the facility impacted by contaminated soil, at any time in the future in which it deems such action to be necessary.

16. This Order does not limit the power of the State of Ohio to seek relief for any other claims not alleged in the Complaint or for future violations of R.C. Chapters 3704., 3734., and 6111. or the rules adopted thereunder. This Order also does not limit the State of Ohio's authority to pursue any claims pursuant to state or federal hazardous waste laws,

including but not limited to C.E.R.C.L.A., 42 U.S.C. 9601 et seq. and Ohio Revised Code Section 3734.20.

VIII. STIPULATED PENALTIES

17. In the event that the Defendants fail to meet a requirement of Section IV of this Consent Order, Defendants shall be jointly and severally liable for and shall pay a stipulated penalty according to the following payment schedule: for each day of failure to meet each requirement, up to thirty 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 days to sixty days - two thousand five hundred dollars (\$2,500.00) per day for each requirement not met; for each day of failure to meet a requirement, from sixty-one days to ninety days - five thousand dollars (\$5,000.00) per day for each requirement not met; and for each day of failure to meet a requirement, from ninety-one days and thereafter ten thousand dollars (\$10,000.00) per day for each requirement not met.

18. Any payment required to be made under the provisions of Paragraph 17 of this Order shall be made by delivering to Plaintiff's counsel a check or checks for the appropriate amounts, within thirty (30) days from the date of the failure to meet the requirement of the Consent Order, made payable to "Treasurer, State of Ohio," for deposit into the Hazardous Waste Clean-Up Fund created in Section 3734.28 of the Revised Code.

IX. CIVIL PENALTY

19. Defendants John Fortunato, James Burn and Gale McCreary Burn shall be liable for payment of a civil penalty in the amount of five thousand dollars (\$5,000.00) each for a total civil penalty of fifteen thousand dollars (\$15,000.00). Payment shall be made by delivering to counsel for Plaintiff within thirty (30) days after entry of this Consent Judgment, a certified check payable to the "Treasurer, State of Ohio". Four thousand four hundred seventy dollars (\$4,470.00) of such check shall be for deposit into the Hazardous Waste Clean-Up Fund, created in section 3734.28 of the Revised Code.

20. All payments of either stipulated penalties, pursuant to Section VIII above, or for civil penalties, pursuant to Section IX, shall be sent to the following address:

Attorney General's Office
 ATTENTION: Janis Miller, Administrative Assistant
 Environmental Enforcement Section
 30 East Broad Street, 25th Floor
 Columbus, Ohio 43266-0410

X. MISCELLANEOUS

21. The Court shall retain jurisdiction of this matter for the purpose of overseeing the implementation of this Order.

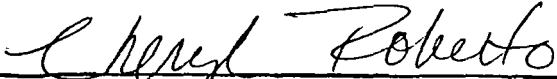
22. Defendants shall pay the costs of this action.

4/23/92
 DATE

W. Wyatt McKay
 JUDGE WYATT MCKAY

Approved:

LEE FISHER
ATTORNEY GENERAL OF OHIO



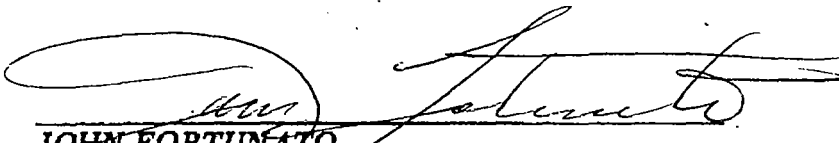
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and General Recycling, Inc.



JOHN FORTUNATO
Individually and as a representative
of General Recycling, Inc.



JAMES BURN
Individually



GALE McCREARY BURN
Individually and as President of
General Aggregates, Inc.

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