

FILED  
LUCAS COUNTY

JUN 24 4 06 PM '96

IN THE COURT OF COMMON PLEAS  
LUCAS COUNTY, OHIO  
CLERK OF COURTS

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

Plaintiff,

v.

ARTHUR HERRICK

and

TEEBUR ENTERPRISES,

Defendants.

: CASE NO. 95-1088

: JUDGE MARK S. SCHMOLLINGER

: 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 Arthur Herrick and Teebur Enterprises ("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, 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 ("RC") and 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.

**III. SATISFACTION OF LAWSUIT**

3. Plaintiff alleges in its Complaint that Defendants failed to properly report, handled

and disposed of asbestos from a facility located at 641 South St. Clair Street, Toledo, Ohio in violations of the asbestos regulations of the State of Ohio, Ohio Administrative Code ("OAC") Chapter 3745-20.

4. Compliance with the terms of this Order shall constitute full satisfaction of any civil liability by Defendants for the violations alleged in the Complaint.

5. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for claims not alleged in the Complaint, including violations of RC Chapter 3704 and regulations thereunder which occur after the filing of the Complaint.

#### **IV. EFFECT UPON OTHER ACTIONS**

6. Nothing in this Consent Order shall be construed to relieve Defendant of the obligation to comply with applicable federal, state or local statutes, regulations or ordinances, or shall constitute a waiver or release of any right, remedy, defense or claim against Defendants with regard to any person not a party to this Consent Order.

#### **V. DEFINITIONS**

7. Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in RC Chapter 3704 and the regulations adopted thereunder. In addition, the following terms are defined as follows:

- a. "Facility" means the building located at 641 South St. Clair Street, Toledo, Ohio.
- b. "Ohio EPA" means the Ohio Environmental Protection Agency, and its agents including the City of Toledo Department of Public Utilities, Division of Environmental Services.

#### **VI. PERMANENT INJUNCTION**

8. Defendants agree to and are permanently enjoined and ordered to comply with RC Chapter 3704 and the regulations promulgated thereunder. Specifically, Defendants agree to and are permanently enjoined to conduct future asbestos handling and disposal in accordance with OAC Chapter 3745-20.

#### **VII. OTHER INJUNCTIVE RELIEF**

9. Except in case of an emergency renovation operation as defined by OAC Rule 3745-20-01, Defendants shall submit to the Ohio EPA Division of Air Pollution Control and the Toledo Department of Public Utilities, Division of Environmental Services at least ten days prior to any asbestos removal operation in Ohio subject to OAC Chapter 3745-20, a written report describing the location and quantity of all known asbestos to be removed during the operation and the methods to be used for the preparation of the area and the removal of the asbestos. The report shall include a copy of the notification required to be submitted pursuant to OAC Rule 3745-20-03 and a description of the following:

- a. the method of determining the location and quantity of the asbestos to be removed;
- b. a description of the type and condition of material containing asbestos to be removed;
- c. the planned sequence and schedule for the asbestos removal;
- d. the equipment to be used for asbestos removal and air quality monitoring;
- e. the asbestos packaging procedures;
- f. the decontamination procedures; and
- g. the waste disposal procedures.

10. In case of an emergency renovation operation, Defendants shall submit the required written notification pursuant to OAC Rule 3745-20-03 for the asbestos renovation operation as early as possible before the renovation commences. Such notice shall include an explanation of why the situation constitutes an emergency renovation operation and as much of the information outlined above in paragraph seven that is available.

11. Following the submittal of any report required under paragraph seven above, Defendants shall immediately notify Toledo Department of Public Utilities, Division of Environmental Services concerning (a) the location and quantity of any additional asbestos which will be removed during the asbestos removal operation, and (b) any deviation in the schedule or methods used for asbestos removal and disposal.

12. Within ten days following the completion of any asbestos removal operation subject to OAC Chapter 3745-20, Defendants shall submit to the Ohio EPA Division of Air Pollution Control and the Toledo Department of Public Utilities, Division of Environmental Services a written report describing the procedures employed for disposal of all asbestos removed during the operation. The report shall also include a description of the following:

- a. the date of completion of the asbestos removal operation;
- b. the quantity of asbestos removed;
- c. the asbestos packaging procedures;
- d. the location of the asbestos disposal and disposal procedures employed at such location; and
- e. verification of the acceptance of the asbestos at the location described in subparagraph (d) immediately above, including a copy of the shipping manifest employed.

#### **VIII. CIVIL PENALTY**

13. Defendants shall pay to the State of Ohio a civil penalty of Two Thousand Dollars (\$2,000.00), in accordance with the following payment schedule. The penalty shall be paid by delivering to Matthew Sanders, Administrative Assistant, or his successor, of the Environmental Enforcement Section, on or before July 10, 1996, a certified check for one thousand dollars (\$1,000.00), payable to the order of "Treasurer, State of Ohio"; and on or before January 8, 1997, a certified check or checks for the remaining one thousand dollars (\$1,000.00), payable to the order of "Treasurer, State of Ohio".

#### **IX. STIPULATED PENALTIES**

14. If Defendants fail to meet any of the requirements of this Consent Order set forth in paragraphs 8 through 12, then Defendant shall immediately and automatically be liable for payment of a stipulated penalty in the amount of \$2,000.00 per day for each violation.

15. If Defendants fail to meet the requirement of this Consent Order set forth in paragraph 13, then Defendants shall immediately and automatically be liable for payment of a

stipulated penalty in the amount of \$1000.00 per day for each violation.

16. Any payment required to be made under the provisions of Paragraphs 14 and 15 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.

**X. COSTS**

17. Defendants shall pay all court costs of this action.

**XI. MISCELLANEOUS**

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

19. All certified checks submitted pursuant to paragraphs 13 and 16 shall be submitted

to:

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

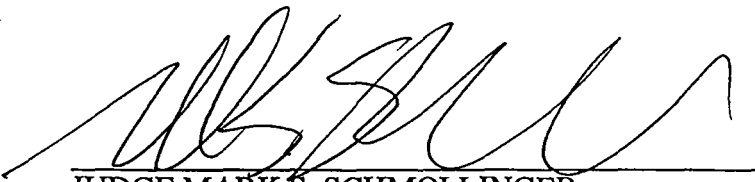
20. All other documents submitted pursuant to this Order shall be submitted to:

Ohio Environmental Protection Agency  
Division of Air Pollution Control  
Attn: Michael Ahern or his successor  
1600 WaterMark Drive  
Columbus, Ohio 43215-1034

and

David Leffler or his successor  
Toledo Department of Public Utilities, Division of Environmental Services  
International Park  
26 Main Street  
Toledo, Ohio 43605-2032

IT IS SO ORDERED.



JUDGE MARK S. SCHMOLLINGER  
LUCAS COUNTY COURT OF COMMON PLEAS

6/21/96  
DATED

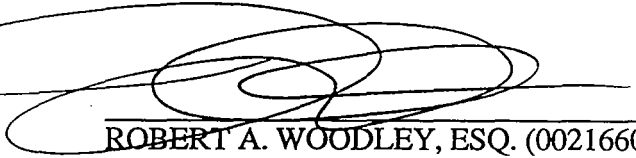
APPROVED:

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



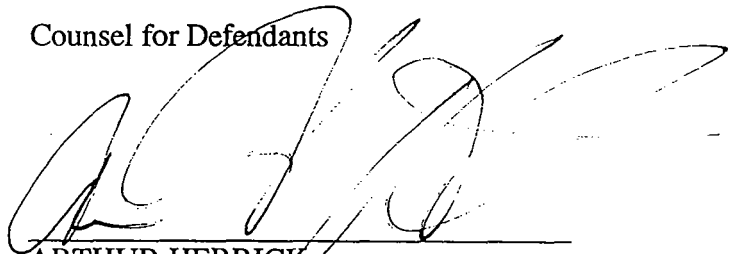
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DEFENDANTS HERRICK AND  
TEEBUR ENTERPRISES  
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Counsel for Defendants



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Toledo, Ohio 43609

Individually and as Authorized  
Representative of Teebur Enterprises, Inc.