

COMMON PLEAS COURT

1992 FEB 10 PM 1:46

IN THE  
COURT OF COMMON PLEAS  
MEDINA COUNTY, OHIO

FILED  
KATHY FORTNEY  
MEDINA COUNTY  
CLERK OF COURTS

State of Ohio, et al  
Lee Fisher  
Attorney General of Ohio

Plaintiff

v.

William L. Campbell, Jr.,  
Executor of the  
Estates of William L.  
Campbell, Sr. and  
Florine O. Campbell, et al

Defendants

and

Aerosol Systems, Inc., et al

Defendants and Third  
Party Plaintiffs,

v.

Board of County Commissioners  
of Medina County, Ohio,  
et al,

Third Party Defendants

Visiting Judge  
Joseph E. Cirigliano

Case No. 42595

OHIO  
ATTY GENERAL  
FEB 5 11 57 AM '92  
ENVIRONMENTAL  
ENFORCEMENT

CONSENT ORDER  
BETWEEN STATE OF OHIO  
AND  
TRU-FIT PRODUCTS CORPORATION

RECEIVED JAN 27 1992  
FEB 13 11 00 PM '92  
OHIO  
ATTY GENERAL  
ENVIRONMENTAL  
ENFORCEMENT

## I. INTRODUCTION

WHEREAS, Plaintiff State of Ohio's Fourth Amended Complaint was filed on or about November 28, 1990, and Counts One through Four allege regulatory violations only against the Estates of William L. Campbell, Sr. and Florine O. Campbell as owners and operators of the Montville Landfill ("Facility"), as represented by William L. Campbell, Jr., Executor; and

WHEREAS, Counts Five, Six, Seven, Ten and Eleven of the Fourth Amended Complaint allege various statutory and common law causes of action directly against Defendant Tru-Fit Products Corporation ("Tru-Fit"); and

WHEREAS, Plaintiff State of Ohio alleges in Counts Five and Ten of the Fourth Amended Complaint that Tru-Fit's use of the Facility constitutes a violation of various provisions of Chapter 3734. of the Ohio Revised Code; and

WHEREAS, Count Six of the Fourth Amended Complaint alleges that the Facility is a nuisance; Count Seven of the Fourth Amended Complaint alleges violations of various provisions of Chapter 6111. of the Ohio Revised Code; and Count Eleven of the Fourth Amended Complaint alleges that the manner in which Tru-Fit used the Facility constitutes a common law ultrahazardous activity for which liability may be imposed; and

WHEREAS, Tru-Fit has denied all of the material allegations against it in the State of Ohio's Fourth Amended Complaint; and

WHEREAS, a Remedial Investigation and Feasibility Study has been performed to assess releases of hazardous substances from

the Facility and to evaluate remedial actions to address the releases; and

WHEREAS, the State of Ohio reached a decision on the final remedy for the facility which is embodied in the Decision Document dated March 19, 1991; and

WHEREAS, the State of Ohio has incurred response costs in addressing releases of hazardous substances from the facility and will incur additional response and oversight costs; and

WHEREAS, Tru-Fit and Plaintiff State of Ohio desire to fully settle and compromise past, present and future claims alleged or which could have been alleged in the Fourth Amended Complaint;

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:

## II. JURISDICTION

A. The Court has jurisdiction over the subject matter pursuant to Chapters 3734 and 6111 of the Ohio Revised Code and rules adopted thereunder. The Court has jurisdiction over the parties hereto. The Complaint states a claim upon which relief can be granted. This Court has jurisdiction to issue this Consent Order and the Parties shall not challenge this Court's jurisdiction to enter and enforce this Consent Order. Venue is proper in this Court.

### III. PARTIES BOUND

A. This Consent Order applies to and is binding only upon the undersigned Parties, and their successors and assigns. The undersigned representatives of each Party to this Consent Order certifies that he or she is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this Consent Order and to execute and legally bind that Party to the provisions of this Consent Order.

### IV. EFFECTIVE DATE

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

### V. SATISFACTION OF LAWSUIT

A. The Fourth Amended Complaint alleges that, Tru-Fit placed or caused to be placed solid and/or hazardous waste and/or industrial waste at the Facility in such a manner as to result in violations of the solid and hazardous waste and water pollution control laws of the State of Ohio and to create an environmental condition at the Facility which constitutes a substantial threat to the public health or safety, is causing or contributing to or threatening to cause or contribute to air pollution and/or is creating a common law public nuisance, and a statutory nuisance which requires substantial remediation. Plaintiff State of Ohio, including the Ohio Environmental Protection Agency, has incurred response costs in addressing releases of hazardous substances from the facility and will

continue to incur oversight costs in the future. Compliance with the terms of this Consent Order shall constitute full satisfaction of any past, present and future civil liability of Tru-Fit for all claims alleged or which could have been alleged in the Fourth Amended Complaint.

The signing of this Consent Order by Tru-Fit is neither an admission nor denial of the allegations contained in Plaintiff's Fourth Amended Complaint. Notwithstanding any provision of this Consent Order, the State of Ohio shall retain its rights to seek relief from Tru-Fit for any acts or omissions giving rise to liability occurring after entry of this Consent Order.

#### VI. INJUNCTION

A. Within thirty (30) days after entry of this Consent Order, Tru-Fit is ordered and enjoined to purchase a thirty year annuity through the Westfield Insurance Companies with present day cash value of \$100,000.00, the terms of which are subject to the approval of Plaintiff and Ohio EPA. The annuity shall be for the benefit of and payable to Ohio EPA. The annuity shall provide Ohio EPA with annual payments in amounts agreed to by the parties for thirty (30) consecutive years. The first payment shall be due on or before December 31, 1994 and thereafter on or before December 31 of each consecutive year for the life of the annuity with any additional accrued amounts paid to Ohio EPA at the conclusion of the 30th year. In the event the annuity fails for any reason, the Westfield

Insurance Companies are ordered and enjoined to pay to the Ohio EPA all sums owing less any prior payments.

B. Tru-Fit is ordered and enjoined to serve a copy of the annuity agreement on Beverly Yale Pfeiffer, Assistant Attorney General, or her successor, at 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410.

C. Payments made pursuant to the provisions of paragraph A of this Article shall be made in the form of a certified or cashier's check payable to: Treasurer, State of Ohio and sent to Fiscal Officer, Division of Emergency and Remedial Response, OEPA, 1800 WaterMark Drive, Columbus, Ohio 43226. A copy of such check shall be sent to Debra Clinkscale, Division of Emergency and Remedial Response, OEPA, 1800 WaterMark Drive, Columbus, Ohio 43226.

#### VII. RETENTION AND AVAILABILITY OF INFORMATION

A. Tru-Fit is ordered and enjoined to retain all documents in its possession relating to the characteristics or presence of waste at the Facility until such time as: 1. Plaintiff approves of destruction; or 2. the documents are provided to Plaintiff.

#### VIII. COSTS OF THE ACTION

A. Tru-Fit is ordered and enjoined to pay fifty-percent (50%) of the court costs, if any, from July 2, 1991 until the Court's entry of this Consent Order.

## IX. CONTRIBUTION PROTECTION

A. CERCLA. In consideration of the mutual promises of Tru-Fit set forth in this Consent Order, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by Plaintiff, Plaintiff agrees that Tru-Fit shall be entitled to protection from actions for contribution as afforded by CERCLA Section 113(F)(2), 42 U.S.C. §9613(F)(2).

B. OHIO REVISED CODE. In consideration of the mutual promises of Tru-Fit set forth in this Consent Order and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by Plaintiff, Plaintiff agrees that Tru-Fit shall be entitled to protection from actions for contribution as afforded by Ohio Revised Code §2307.32(F). For purposes of Ohio Revised Code §2307.32(F), the contribution protection granted to Tru-Fit is given in good faith by Plaintiff, and fully discharges Tru-Fit from all liability or contribution to any other party to the Montville Landfill litigation, whether currently named as a party or named as a party in the future.

## X. WAIVER OF CIVIL PENALTIES

A. In consideration of the mutual promises of Tru-Fit, set forth in this and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by Plaintiff, Plaintiff agrees to waive any and all claims for civil penalties as to Tru-Fit, which were or which could have been asserted in the Fourth Amended Complaint.

XI. WAIVER OF OTHER MONETARY CLAIMS CLAUSE

A. COMPENSATORY DAMAGES. In consideration of the mutual promises of Tru-Fit, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by Plaintiff, Plaintiff agrees to waive all claims for compensatory damages as to Tru-Fit, which were or which could have been asserted in the Fourth Amended Complaint.

B. PUNITIVE DAMAGES. In consideration of the mutual promises of Tru-Fit, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by Plaintiff, Plaintiff agrees to waive all claims for punitive damages as to Tru-Fit, which were or which could have been asserted in the Fourth Amended Complaint.

C. NUISANCE TAX. In consideration of the mutual promises of Tru-Fit, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by Plaintiff, Plaintiff agrees to waive all claims for the Nuisance Tax as to Tru-Fit, which were or which could have been asserted in the Fourth Amended Complaint.

D. RESPONSE COSTS. In consideration of the mutual promises of Tru-Fit, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by Plaintiff, Plaintiff agrees to waive all claims for past, present, and future response costs as a Tru-Fit, which were or which could have been asserted in the Fourth Amended Complaint.

E. OVERSIGHT COSTS. In consideration of the mutual promises of Tru-Fit, and for good and valuable consideration,



the receipt and sufficiency of which is acknowledged by Plaintiff, Plaintiff agrees to waive all claims for oversight costs as to Tru-Fit, which were or which could have been asserted in the Fourth Amended Complaint.

**XII. NATURAL RESOURCES DAMAGES**

A. In consideration of the mutual promises of Tru-Fit, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by Plaintiff, Plaintiff agrees to waive all claims for Natural Resources Damages arising out of or emanating from the Facility at any time, prior to Ohio EPA's approval of completion of the capital construction aspect of the remedy as to Tru-Fit. Compliance with the terms of this Consent Order by Tru-Fit shall constitute its fair share reimbursement and/or payment to Plaintiff for Natural Resources Damages, if any, caused by Tru-Fit in relation to the Facility.

**XII. RETENTION OF JURISDICTION**

The Court will retain jurisdiction of this action for the purpose of making any order it deems appropriate to carry out the terms of this Consent Order.

January 31, 1992  
Date

Joseph E. Cirigliano  
Joseph E. Cirigliano  
Visiting Judge,  
Court of Common Pleas,  
Medina County

LEE FISHER  
ATTORNEY GENERAL OF OHIO

BY

Beverly Yale Pfeiffer /rojr  
BEVERLY YALE PFEIFFER  
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Columbus, Ohio 43266-0410  
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TRU-FIT PRODUCTS CORPORATION

X Charles E. Workman  
Authorized Representative

JANUARY 29, 1992  
Date

Charles E. WORKMAN  
Authorized Representative  
Name (Printed/Typed)

Chief Administrative Officer  
Authorized Representative  
Title

460 Lake Road, Medina, OH 104425  
Authorized Representative  
Address

SAME as above  
Tru-Fit Products Corporation  
Address

Westfield Insurance Companies

X Edward J. Frantz Vice Pres.  
Authorized Representative

1/29/92  
Date

EDWARD J. FRANZ  
Authorized Representative  
Name (Printed/Typed)

VICE-PRESIDENT  
Authorized Representative  
Title  
1 Park Circle  
Westfield Center, Ohio 44251  
Authorized Representative  
Address