

IN THE COURT OF COMMON PLEAS
BELMONT COUNTY, OHIO

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

Plaintiff,

v.

A&C CONSTRUCTION CO., INC., et al.

Defendants.

CASE NO. 01-CV-00375

JUDGE JOHN M. SOLOVAN, II

CONSENT ORDER AND
PERMANENT INJUNCTION

FILED
COMMON PLEAS COURT
BELMONT CO., OHIO
2002 AUG 28 PM 4 39
RANDY L. MARPLE
CLERK OF COURTS

WHEREAS, Plaintiff State of Ohio, on relation of Betty D. Montgomery, Attorney General of Ohio, at the written request of the Director of the Ohio Environmental Protection Agency ("Ohio EPA"), filed a complaint commencing this action against A&C Construction Co., Inc., E&T Lawn Service and Tire Recycling, Inc. ("Defendant E&T"), and Earl F. Sturm ("Defendant Sturm") to enforce the provisions of Ohio's solid waste laws set forth in R.C. Chapter 3734 and the rules and regulations promulgated thereunder,

WHEREAS, Plaintiff and Defendants E&T and Sturm agree 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 E&T and Sturm, their successors in interest and assigns, and others to the extent provided by Civ.R. 65(D).

3. Defendants E&T and Sturm 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 E&T and Sturm.

III. DEFINITIONS

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

5. The term "A&C 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 Ohio Adm.Code 3745-27-01(C)(11), consisting of approximately 116,640 scrap tires deposited onto the surface of the ground at property currently owned by Defendant A&C Construction Co., Inc. located at 56805 Ferry Landing Road, Shadyside, Belmont County, Ohio.

6. The term "Director" shall refer to the Director of the Ohio Environmental Protection Agency.

IV. SATISFACTION OF LAWSUIT

7. Plaintiff alleges in the Complaint that Defendants E&T and Sturm unlawfully disposed, and otherwise conducted, permitted, or allowed the open dumping of scrap tires at the A&C tire dump, in violation of the solid waste laws of the State of Ohio, and in a manner that

constitutes a threat to public health and safety and the environment. 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 any civil liability of Defendants E&T and Sturm for all claims alleged in the Complaint. The entry of this Consent Order in no way affects any claim alleged by Plaintiff in the Complaint against Defendant A&C Construction Co., Inc.

IV. PERMANENT INJUNCTION

8. Defendants E&T and Sturm agree and are permanently ordered and enjoined to comply with the scrap tire laws and regulations set forth in R.C. Chapter 3734 and Ohio Adm.Code Chapter 3745-27.

9. Defendants E&T and Sturm agree and are permanently ordered and enjoined to cease the open dumping of scrap tires on the surface of the ground at the A&C tire dump.

10. Defendants E&T and Sturm agree and are permanently ordered and enjoined to pay a combined sum of one hundred dollars (\$100.00) per month into the scrap tire abatement fund created in R.C. 3734.82 for a period of five (5) years from the date of entry of this Consent Order. All payments due under this paragraph shall be paid by certified check or money order, payable to the order of "Treasurer, State of Ohio" and mailed to Jena Suhadolnik or her successor, Administrative Assistant, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215-3428. The first payment shall be received by the Attorney General's Office not later than the 15th day of the first month after entry of this Consent Order. All subsequent payments due under this paragraph shall be received by the Attorney General's Office not later than the 15th day of each month.

V. SITE ACCESS

11. Defendants E&T and Sturm agree and consent that Defendants E&T and Sturm shall in no way hinder Ohio EPA, its employees and agents, in efforts to conduct lawful inspections, investigations, sampling, examination or copying of records to determine Defendants E&T and Sturm's compliance with the terms of this Consent Order and R.C. Chapter 3734. and the rules promulgated thereunder.

12. Nothing in this Consent Order shall be construed to eliminate or restrict Ohio EPA's authority under R.C. Chapter 3734. or any other State or Federal statutory authority, to enter any property, including the A&C tire dump, to determine compliance with this Consent Order and the provisions of R.C. Chapter 3734. and the rules adopted thereunder.

VI. RESERVATION OF RIGHTS

13. 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 E&T and Sturm, regardless of whether such claim, demand, rights or cause of action was asserted in the Complaint.

14. Nothing herein shall limit the authority of the State of Ohio to undertake any action against any entity, including Defendants E&T and Sturm, to eliminate or control conditions that may present a threat to the public health, safety, welfare or environment and to seek cost reimbursement for any such action.

15. Nothing herein shall be construed to relieve Defendants E&T and Sturm of their obligation to comply with applicable Federal, State or local statutes, regulations or ordinances,

including but not limited to permit requirements.

16. Nothing herein absolves Defendants E&T and Sturm from the duty to comply with this Consent Order.

17. Defendants E&T and Sturm reserve all rights that it 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.

18. Nothing in this Consent Order shall constitute or be construed as a release or a covenant not to sue against any entity not a signatory to this Consent Order, including, but not limited to, A&C Construction Co., Inc., for any liability as alleged in the Complaint or for any liability that such entity may have arising out of or relating to the A&C tire dump.

VII. RETENTION OF JURISDICTION

19. This Court shall retain jurisdiction of this matter for the purpose of overseeing the compliance by Defendants E&T and Sturm with this Consent Order.

VIII. COURT COSTS

20. Defendants E&T and Sturm shall pay the costs of this action that are attributable to Defendants E&T and Sturm.

IX. SIGNATORIES

21. The undersigned parties understand the terms and conditions of this Consent Order and certify that they are fully authorized to enter into the terms and conditions of this Consent Order.

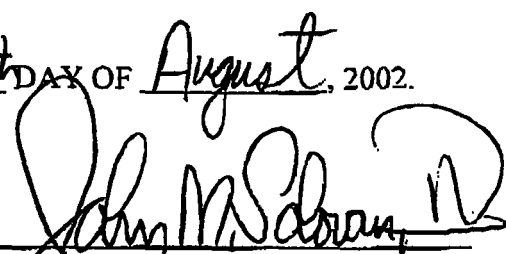
22. The signatory for Defendant E&T represents and warrants that he or she has been duly authorized to sign this document and so bind Defendant E&T to all terms and conditions

herein.

X. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

25. Pursuant to Civil Rule 58, upon entry of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three days of entering the judgment upon the journal, the clerk is hereby directed to serve upon all parties, notice of the judgment and its date of entry upon the journal in manner prescribed by Civil Rule 5(B) and note the service in the appearance document.

SIGNED IN BELMONT COUNTY, OHIO, THIS 28th DAY OF August, 2002.

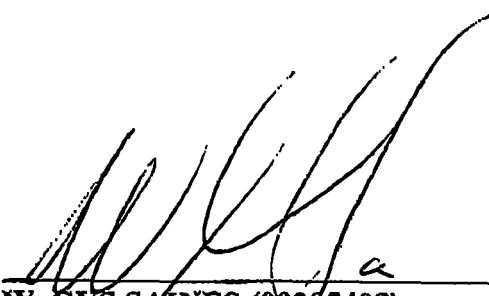

 JUDGE JOHN M. SOLOVAN, II.
 COURT OF COMMON PLEAS
 BELMONT COUNTY, OHIO

APPROVED BY:

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO




SHAUN K. PETERSEN (0072444)
MICHAEL E. IDZKOWSKI (0062839)
 Assistant Attorneys General
 Environmental Enforcement Section
 30 East Broad Street, 25th Floor
 Columbus, Ohio 43215-3428
 (614) 466-2766
Trial Attorneys for Plaintiff



W. GUS SAINES (00305408)
McDERMOTT & BONENBERGER P.L.L.C.
 53 Washington Ave.
 Wheeling, WV 26003
 Phone: (304) 242-3220
Trial Attorney for Defendants
Earl F. Sturm and E&T Lawn Service
and Tire Recycling, Inc.

JOURNALIZED

**CLERK SERVED COPIES ON
 ALL THE PARTIES OR
 THEIR ATTORNEYS**

ENDED


EARL F. STURM, II.
Defendant


Authorized representative of
**E&T LAWN SERVICE AND TIRE
RECYCLING, INC**
Defendant