

SANDUSKY COUNTY  
COMMON PLEAS COURT  
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WARREN P. BROWN  
CLERK

IN THE COURT OF COMMON PLEAS  
SANDUSKY COUNTY, OHIO

STATE OF OHIO, ex rel. JIM PETRO :  
ATTORNEY GENERAL OF OHIO, :

Plaintiff, :

vs. :

B & W WELDING, ET AL., :

Defendants. :

Case No. 03CV000367

JUDGE SHERCK

**CONSENT ORDER AND FINAL JUDGMENT ENTRY**

Plaintiff, State of Ohio, ex rel. Jim Petro, Attorney General of Ohio ("Plaintiff"), having filed the Complaint in this action against Defendants to enforce Ohio's hazardous waste laws found in Chapter 3734 of the Revised Code and rules adopted thereunder; and Plaintiff and Defendants having consented to the entry of this Order;

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

**I. Definitions**

1. As used in this Consent Order:

A. **"Consent Order"** means this Consent Order and Final Judgment Entry.

B. **"Defendants"** means B&W Welding, Inc. and David L. Michael. Unless otherwise specifically noted in this Consent Order, any requirement, obligation or liability imposed in this Consent Order upon Defendants is imposed jointly and

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severally.

- C. **"Director"** means Ohio's Director of Environmental Protection.
- D. **"Effective Date"** means the date the Sandusky County Court of Common Pleas enters this Consent Order.
- E. **"Facility"** refers to the location where all alleged storage or other placement of hazardous waste was conducted by Defendants or any one of them, which Facility is located at 130 County Road 130, Fremont, Sandusky County, Ohio.
- F. **"Ohio EPA"** means the Ohio Environmental Protection Agency.
- G. **"Plaintiff"** means the State of Ohio by and through the Attorney General of Ohio.

## **II. Jurisdiction and Venue**

2. This Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapter 3734 and the rules adopted thereunder. This Court has jurisdiction over the parties. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted.

## **III. Persons Bound**

3. The provisions of this Consent Order shall apply to and be binding upon Plaintiff and Defendants, their agents, officers, employees, assigns, successors in interest and any person acting in concert or participation with them who receives actual notice of this Consent Order whether by personal service or otherwise.

## **IV. Satisfaction of Lawsuit and Reservation of Rights**

4. Except as otherwise provided in this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendants to Plaintiff for all claims alleged in the Complaint.

5. Nothing in this Consent Order, including the imposition of stipulated civil penalties,

shall limit the authority of the State of Ohio to:

- A. Seek relief for claims or conditions not alleged in the Complaint;
- B. Seek relief for claims or conditions alleged in the Complaint that 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 Defendants or against any other person, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. 9601, *et seq.* And/or R.C. 3734.20 through 3734.27 to: (1) recover natural resource damages, and/or (2) order the performance of, and/or recover costs for any removal or remedial or corrective activities not conducted pursuant to the terms of this Consent Order;
- E. Take any action authorized by law against any person, including Defendants, to eliminate or mitigate conditions at the Facility that may present an imminent threat to the public health or safety, or the environment, and to seek cost reimbursement for any such action.

**V. Injunctive Relief**  
**Hazardous Waste Facility Standards**

6. Defendants are ordered and enjoined to comply with all applicable provisions of the Ohio hazardous waste laws and rules as set forth in R.C. Chapter 3734 and Ohio Adm. Code Chapters 3745-50 through 3745-69, and Ohio Adm. Code Chapters 3745-270 and 3745-279.

7. Defendants are ordered and enjoined from storing, treating or disposing of hazardous waste in violation of R.C. 3734.02.

8. Defendants are ordered and enjoined to evaluate all waste generated at the facility to determine if it is hazardous waste as required by Ohio Adm. Code 3745-52-11.

9. Defendants are ordered and enjoined to manage hazardous waste containers in accordance with Ohio Adm. Code 3745-52-34.

#### **VI. Civil Penalty**

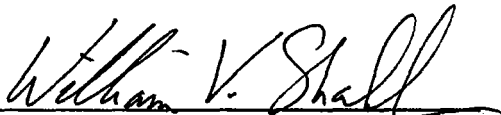
10. Defendants are ordered and enjoined to pay to the State of Ohio a civil penalty in the amount of Twenty Thousand Dollars (\$20,000.00). The penalty shall be paid as follows:

- a. A cashier's or certified check payable to the order of "Treasurer, State of Ohio" in the amount Two Thousand Five Hundred Dollars (\$2,500.00), on October 1, 2004. Thereafter, a cashier's or certified check payable to the order of "Treasurer, State of Ohio" shall be paid on a quarterly basis until the Defendants have paid the total amount of Twenty Thousand Dollars (\$20,000.00).
- b. The Defendant shall pay the amount by delivering it to Plaintiff, c/o Amy Laws, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. This civil penalty shall be deposited into the hazardous waste clean-up fund created by R.C. 3734.28.

Approved:

**Jim Petro**  
**Attorney General of Ohio**

By:



**William V. Shaklee (0075507)**

**Robert W. Cheugh (0017885)**

Assistant Attorney General

Environmental Enforcement Section

30 East Broad Street, 25th Floor

Columbus, Ohio 43215

Telephone: (614) 466-2766

Facsimile: (614) 644-1926

*Attorney for Plaintiff*  
*State of Ohio*

**On behalf of B&W Welding, Inc. and**  
**David L. Michael individually**

By:



**David L. Michael**

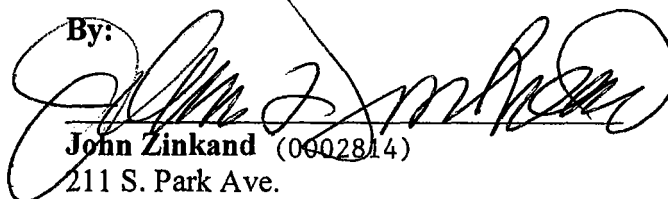
**Chief Operating Officer**

**B&W Welding, Inc.**

130 County Road 130

Fremont, Ohio 43420

By:



**John Zinkand (0002814)**

211 S. Park Ave.

Fremont, Ohio 43420

Phone: (419) 332-5579

Facsimile: (419) 332-5570

*Attorney for Defendant*