

IN THE COURT OF COMMON PLEAS  
SCIOTO COUNTY, OHIO

SCIOTO COUNTY  
OHIO  
CLERK OF COURTS

00 APR -5 11:10:00

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

CASE NO. 99CIH004

JUDGE LYTTEN

Plaintiff,

vs.

JUDY DIXON,  
CHARLES KERNS,  
TEX KERNS  
and  
GRIFFITH KERNS

**CONSENT ORDER AND FINAL  
JUDGEMENT ENTRY**

Defendants.

WHEREAS, Plaintiff State of Ohio, on relation of Betty D. Montgomery, Attorney General of Ohio, at the written request of the Director of Environmental Protection ("Director"), filed a Complaint commencing this action against Judy Dixon, Charles Kerns, Tex Kerns and Griffith Kerns ("Defendants") to enforce the provisions of Ohio's construction and demolition debris, solid waste, and water pollution control laws set forth in Ohio Revised Code ("R.C.") Chapters 3714., 3734., and 6111. and the rules adopted pursuant to those chapters and to pursue other legal and equitable relief;

NOW THEREFORE, without trial or admission of any issue of law or fact, and upon the 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 subject matter of this action pursuant to R.C. Chapters 3714., 3734., and 6111. and the rules adopted thereunder. The Court has jurisdiction

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

## **II. PERSONS BOUND**

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

## **III. SATISFACTION OF LAWSUIT**

3. Plaintiff alleges in the Complaint that Defendants unlawfully disposed, and/or otherwise conducted, permitted or allowed the open dumping of construction and demolition debris and solid waste, including scrap tires, in Pine Creek and on several of its bordering properties, specifically lots ninety-one (91) through ninety-nine (99) in the Park Place Subdivision, which are owned by the Defendants and are located on Ainsley Avenue, Wheelersburg, Scioto County, Ohio (hereinafter "Kerns' Dump"), in violation of the construction and demolition debris, solid waste and water pollution control 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 for all claims alleged in the Complaint.

## **IV. RESERVATION OF RIGHTS**

4. Nothing in this Consent Order shall limit the authority of the State of Ohio to:

- A. Seek any relief for claims or conditions not alleged in the Complaint;
- B. Seek any relief for violations of law or conditions alleged in the Complaint which 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, and/or R.C. Chapter 6111. to: (1) recover natural resource damages, and/or (2) to order the performance of, and/or recover costs for any removal, 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 the Defendants, to eliminate or mitigate conditions at the Kerns' Dump which may present an imminent threat to the public health or welfare, or the environment.

#### **V. COMPLIANCE WITH APPLICABLE LAWS**

5. Nothing in this Consent Order shall affect Defendants' obligation to comply with all applicable federal, state or local laws, regulations, rules or ordinances. Defendants shall obtain all federal, state or local permits and licenses necessary to comply with this Consent Order.

## **VI. PERMANENT INJUNCTION**

6. The Defendants are hereby ordered and enjoined to immediately comply with all the requirements set forth in Chapters 3714., 3734. and 6111. of the Ohio Revised Code and the terms and conditions of the rules adopted thereunder, except as provided in Section VII. "Compliance Schedule" of this Consent Order.

7. The Defendants are hereby permanently ordered and enjoined from disposing of or otherwise conducting, permitting or allowing the disposal of any construction and demolition debris, solid waste or scrap tires on the ground or into Pine Creek at the Kerns' Dump. The Defendants are hereby permanently ordered and enjoined from burying and/or burning any construction and demolition debris, solid waste or scrap tires at the Kerns' Dump.

## **VII. COMPLIANCE SCHEDULE**

8. Defendants Judy Dixon, Charles Kerns, Tex Kerns and Griffith Kerns agree and are ordered to begin immediately removing all construction and demolition debris, solid waste and scrap tires from the Kerns' Dump and to dispose of such waste in accordance with Chapter 3734 of the Revised Code. Judy Dixon, Charles Kerns, Tex Kerns and Griffith Kerns shall comply with the following work schedule at the Kerns' Dump. Defendants agree to remove and lawfully dispose of four (4) tons of construction and demolition debris, solid waste and scrap tires from the Kerns' Dump every month. Defendants agree to continue removing four (4) tons of waste from the Kerns' Dump until all construction and demolition debris, solid waste and scrap tires are removed from the site and lawfully disposed.

9. Defendants agree to lawfully dispose of the construction and demolition debris, solid waste and scrap tires at a licensed construction and demolition debris facility, licensed solid

waste facility, and/or properly permitted or registered and licensed scrap tire facility in accordance with R.C. Chapters 3714. and 3734.

10. Defendants shall submit to Ohio EPA, Southeast District Office, a description of the type and quantity of construction and demolition debris, solid waste and scrap tires removed from the Kerns' Dump and photocopies of receipts demonstrating that all construction and demolition debris and solid waste was lawfully disposed of and that all scrap tires were transported by a scrap tire transporter that is properly registered under R.C. Section 3734.83 and were lawfully disposed of.

11. Defendants shall keep detailed records of all construction and demolition debris, solid waste and scrap tires removed from the Kerns' Dump. These detailed records shall include, but are not limited to, scrap tire transporter shipping papers; receipts establishing the proper disposal or deposition of scrap tires from the Kerns' Dump at a properly permitted or registered and licensed scrap tire facility in the State of Ohio, an Ohio EPA approved beneficial use location, or an appropriate facility outside of Ohio that is operating in compliance with the applicable regulations of the jurisdiction in which it is located; receipts establishing the proper disposal of construction and demolition debris at a licensed construction and demolition debris facility and/or licensed solid waste facility; and receipts establishing the proper disposal of solid waste at a licensed solid waste facility. These records shall be made available for inspection by Ohio EPA.

#### **VIII. SITE ACCESS**

12. Defendants hereby agree to allow representatives of Ohio EPA and the Scioto County Health District to enter the Kerns' Dump to inspect, investigate, take samples and

pictures, and examine or copy records in order to determine compliance with the terms of this Consent Order and R.C. Chapters 3714., 3734., 6111. and the rules promulgated thereunder. Nothing in this Consent Order limits Ohio EPA's authority under R.C. Chapters 3714., 3734., 6111. or any other statutory authority, to enter any property to determine compliance with this Consent Order, R.C. Chapters 3714., 3734. and 6111. and the rules promulgated thereunder.

#### **IX. MONEY JUDGMENT FOR CLOSURE OF LANDFILL**

13. The State of Ohio acknowledges that the Defendants are presently unable to pay the sums necessary for remediation and clean up of the Kerns' Dump Site. Therefore, at this time, Defendants hereby agree to accept a Fifty Thousand Dollar (\$50,000) lien on each lot owned by the Defendants and located in the Park Place Subdivision, on Ainsley Avenue, in Wheelersburg, Scioto County, Ohio. The specific lots owned by the Defendants in the Park Place Subdivision include, lots 91, 92, 98, and 99 owned by Charles Kerns and lots 94 and 97 owned by Judy Dixon (see exhibit A attached hereto). The State will retain a lien on each of the Defendants lots until such time as the Kerns' Dump is remediated and the Defendants have paid all outstanding costs associated with the cleanup of the Kerns' Dump. These liens constitute a conditional accord and satisfaction of the Kerns' liability for the remediation of the Kerns' Dump. This acceptance is subject to the conditions set out in paragraphs 10 of this Consent Order.

14. Notwithstanding the foregoing provisions, Ohio EPA reserves and retains its right to seek additional injunctive, monetary or other appropriate relief if it determines to its satisfaction that Judy Dixon, Charles Kern, Tex Kern or Grif Kern has acquired the resources necessary to remediate the Kerns' Dump Site according to Ohio law.

## **X. GENERAL PROVISIONS**

15. This Court shall retain jurisdiction over this case for the purpose of making any order or decree which it deems necessary to enforce this Consent Order and for the purpose of resolving disputes arising under this Consent Order.

16. All court costs of this action shall be assessed against the Defendants.

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

18. All citations to the Ohio Administrative Code identified in this Consent Order refer to the most current version of the rule as of the date of filing of this Consent Order.

19. Unless specified otherwise, all documentation required to be submitted pursuant to this order shall be submitted by the Defendants to the following designated individual or his/her successor:

Ohio EPA, Southeast District Office  
Environmental Supervisor, DSIWM  
2195 Front Street  
Logan, Ohio 43138.

## **XI. STIPULATED PENALTIES**

20. In the event that Defendants Judy Dixon, Charles Kerns, Tex Kerns, and Griffith Kerns fail to comply with any of the requirements of this Consent Order, the Defendants shall immediately and automatically, be liable for and shall pay a stipulated penalty in accordance with the following schedule:

21. Defendants shall pay one hundred dollars (\$100.00) per day for each day any requirement of this Consent Order is violated up to thirty (30) days; after thirty (30) days, Defendants shall pay two hundred dollars (\$200.00) per day; after ninety (90) days, Defendants

shall pay four hundred dollars (\$400.00) per day.

22. Stipulated penalties due under this Consent Order shall be paid by certified check or money order, payable to "Treasurer, State of Ohio" and mailed to Jena Suhadolnik or her successor, Administrative Assistant, Office of the Attorney General, Environmental Enforcement Section, 30 East Broad Street – 25<sup>th</sup> Floor, Columbus, Ohio 43266-0410, within ten days of the occurrence of the failure with this Order as described above.

**XII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT ENTRY AND FINAL JUDGMENT BY CLERK**

23. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) 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 the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket. The Clerk shall mail a copy of this Judgment/Order to all counsel of record and to each party not in default who is not represented by counsel and make not of the service in the Appearance Docket.

A copy of the foregoing has been mailed via U.S. mail to the following on this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

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OUT.




IT IS SO ORDERED.

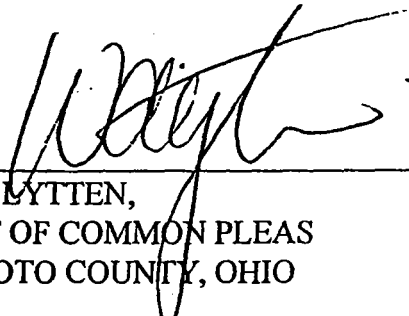
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DATE


APPROVED:

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OF SCIOTO COUNTY, OHIO

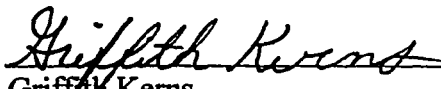
  
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Charles Kerns

  
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