

RICHLAND COUNTY  
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LINDA H. FRARY  
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS  
RICHLAND COUNTY, OHIO

STATE OF OHIO, ex rel.	:	CASE NO.: 12-CV-654H
MICHAEL DeWINE	:	
OHIO ATTORNEY GENERAL,	:	JUDGE: James D. Henson
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
	:	<u>CONSENT ORDER</u>
ALLEN J. HOGAN	:	
	:	
Defendant.	:	

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio, by its Attorney General, Michael DeWine ("Plaintiff" or "State"), and Defendant Allen J. Hogan ("Mr. Hogan" or "Defendant") having consented to the entry of this Order;

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

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the Parties and the subject matter of this action pursuant to Revised Code Chapter 3734. Venue is proper in this Court. Solely for purposes of this Consent Order and the underlying Complaint, Defendant does not contest that the Complaint states a claim upon which relief can be granted against Defendant.

## **II. PARTIES**

2. Defendant is the owner and operator of a 27.112 acres of land identified in the records of the Richland County Recorder's Office as parcel numbers 0270502304000 and 0270500604000, and located at 663 5<sup>th</sup> Avenue, Mansfield, Richland County, Ohio (the "Site").

3. Mr. Hogan is an Ohio resident whose address is 663 Fifth Avenue, Mansfield, OH 44905.

4. Defendant is a "person" as that term is defined in R.C. Section 3734.01(G) and Ohio Administrative Code ("OAC") 3745-27-01(P)(3), as amended by OAC 3745-27-01(P)(3) (effective August 15, 2003).

5. The provisions of this Consent Order shall apply to and are binding upon the Parties to this action, and, in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure, their officers, agents, servants, employees, successors in interest, and those persons in active concert or participation with them who receive actual notice of this Consent Order whether by personal service or otherwise.

## **III. SATISFACTION OF LAWSUIT**

6. The State alleges in its Complaint that the Defendant has violated Revised Code Chapter 3734 and OAC Chapter 3745-27. Defendant denies such allegations. The parties have agreed to resolve the disputed issues in this matter without adjudication of any issues of fact or law. Entry into this Consent Order shall constitute full satisfaction of any civil liability for matters addressed in Plaintiff's Complaint.

7. Except as otherwise provided in Paragraph 8 of this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil and

administrative liability of Defendant and his successors in interest and assigns for the claims alleged in the State's Complaint.

8. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief from Defendant for: (A) claims or violations not referenced in the Complaint; (B) any violations arising out of acts or omissions first occurring after the effective date of this Consent Order; or (C) claims or violations under the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. §§9601 et seq., or R.C. 3734.20 through 3734.27 for any emergency, removal, remedial, or corrective actions, or for natural resource damages. Defendant retains all rights, defenses, and/or claims he may legally raise to the extent that the State seeks further relief from Defendant in the future, or in any action brought to enforce the terms of this Consent Order, except that Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim splitting, laches or other defenses based upon any contention that the claims raised by the State in subsequent proceedings were or should have been brought in the instant case.

9. Entering into this Consent Order, the Consent Order itself, or the taking of any action in accordance with the Consent Order and/or any work performed at the Site does not constitute an admission of any liability, wrongdoing, or misconduct on part of the Defendant, their officers, employees, or agents.

10. Nothing herein shall be construed to relieve Defendant of his obligation to comply with all applicable federal, state, or local statutes, regulations, or ordinances including, but not limited to, the applicable permit requirements.



11. Nothing in this Consent Order shall constitute or be construed as a covenant not to sue regarding any claim alleged in the Complaint, or any other claim or cause of action, against any person, firm, trust, joint venture, partnership, corporation, association, or other entity not a signatory to this Consent Order for any liability they may have arising out of, or relating to, the Site including, but not limited to, those identified in the Complaint.

#### **IV. PERMANENT INJUNCTION**

12. Defendant agrees and is ordered and enjoined to comply with Revised Code Chapter 3734 and the rules promulgated thereunder, including, but not limited to, the applicable provisions of OAC Chapter 3745-27 at the Site.

13. Beginning on the date that this Consent Order is entered, nothing shall be brought to/disposed at/placed on the Site unless Defendant receives written permission from the Richland County Health Department and/or the Ohio EPA.

14. Beginning on the last day of the first calendar month after entry of this Consent Order, and continuing every calendar month thereafter until the removal is complete, Defendant shall have removed, by the last day of each calendar month, a cumulative amount of materials, debris, and/or waste equal to or greater than two 30 cubic yard-roll off boxes (i.e., 60 cubic yards or more). The total amount of materials, debris, and/or waste removed will be calculated as the cubic yards removed per calendar month times the number of calendar months since the date of entry of this Consent Order. (For example a total of 60 cubic yards or more must be removed after the first month, 120 cubic yards or more must be removed after the second month, etc.). By the fifteenth day of every other month, Defendant shall provide a report and proof of the material removal for the previous two calendar months to Ohio EPA and the Richland County Department of Health, including, but not limited to, removal and/or disposal receipts from the

removal/disposal site(s) and official weights of the roll off boxes if they are provided to Defendant.

15. All debris and waste removed from the Site shall be disposed of at either a licensed Solid Waste Landfill or a licensed Construction and Demolition Debris landfill or a licensed recycling facility consistent with the permits and licenses for those facilities unless each of the following conditions is satisfied:

- a. Defendant provides a written request to Ohio EPA and the Richland County Health Department prior to removing the materials, debris, and waste from the Site;
- b. Ohio EPA and/or the Richland County Health Department approves the alternative disposal or use of the materials, debris, and waste; such approval not to be unreasonably withheld;
  - a. In the event that Defendant wishes to sell materials at the Site to a private purchaser, including but not limited to selling a vehicle to a private citizen, Defendant does not need prior approval of this sale as long as 1) Defendant provides written notice to the Ohio EPA and/or the Richland County Health Department within five days of the sale that details the sale price, what is being sold and the purchaser; 2) the sale price is fair market value and not for a nominal amount; and 3) the proceeds of the sale are used in accordance with Paragraph iv below.

- c. Receipts are provided to Ohio EPA and the Richland County Health Department of a sale price of the material as well as the amount of materials purchased; and
- d. Any proceeds or payment for the materials, debris, and waste are immediately used for further removal at the Site or paid to Ohio EPA and the Richland County Health Department as an additional civil penalty.

16. Prior to final removal of each 30 yard cubic box, Defendant shall take at least two photos of the box or other container utilized and the debris in the boxes or containers which shall be included with the removal reports required by Paragraphs 14 and 15, above.

17. Within eighteen (18) months after the entry of this Consent Order, Defendant shall have removed and properly disposed of all materials, debris, and waste from the Site. In the event that Defendant wishes to request an extension of time to complete removal, he shall submit a request at least sixty (60) days prior to the expiration of this period. The approval or denial of this request is in the sole discretion of the Richland County Health Department and shall not be appealable in any manner to any tribunal.

18. Upon providing authorizing identification, until all debris is completely removed from the property, the Richland County Health Department and/or Ohio EPA shall inspect the subject site to determine if the site is creating a breeding ground for mosquitos. If the Richland County Health Department and/or Ohio EPA determine that the site is creating a breeding ground for mosquitos, either may instruct Defendant to perform mosquito control measures at the site. Defendant shall, within ten (10) days of being instructed by either the Richland County



Health Department and/or Ohio EPA, abate the breeding grounds through the application of a larvacide or or insecticide to the area by a licensed pest control operator.

#### **V. CIVIL PENALTY**

19. Within thirty (30) days of entry of this Consent Order, Defendant is ordered and enjoined to pay a civil penalty of \$100,000, subject to the provisions set forth in Paragraphs 18, 19 and 20 below. Such payment shall be made by delivering to Martha Sexton, Paralegal, or her successor, Office of the Attorney General, 30 E. Broad St., 25<sup>th</sup> Floor, Columbus, Ohio 43215-3400, a certified check or checks for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

20. The State of Ohio has reviewed Defendant's ability to pay information and, upon information and belief, agrees that Defendant does not have a current ability to pay the civil penalty prescribed in Paragraph 19 at this time.

21. Defendant shall, for five years after entry of this Consent Order, submit his Federal and State tax returns to the Richland County Health Department at the address below by October 18<sup>th</sup> of each year. If Defendant's adjusted gross income (AGI) exceeds \$45,000 for any one year in the five years following the date of this Consent Order, any and all income in excess of the \$45,000 shall be paid toward the civil penalty agreed upon in Paragraph 19 above until paid in full. In the event the civil penalty set forth in Paragraph 19 has not been paid within five years of the entry of this Consent Order, the civil penalty set forth in Paragraph 19 shall be deemed satisfied and paid in full so long as Defendant has not otherwise violated this Order and Defendant has paid and all income in excess of \$45,000 toward the civil penalty,.

22. In the event that Defendant violates this Consent Order in any manner, the entire civil penalty shall immediately become due and owing without further demand by the State.

## **VI. STIPULATED PENALTIES**

23. In the event that Defendant fails to comply with any of the requirements of Sections IV, VI and/or VII herein, with the exception of Paragraph 14 herein, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty in accordance with the following schedule:

- a. Defendant shall pay three hundred dollars (\$300.00) per day for each day any requirement of this Consent Order is violated up to the first thirty (30) days of violation;
- b. For each day any requirement of this Consent Order is violated, between thirty (30) days and ninety (90) days of violation, Defendant shall pay six hundred dollars (\$600.00) per day;
- c. For each day any requirement of this Consent Order is violated, greater than (90) days of violation, Defendant shall pay one thousand dollars (\$1,000.00) per day.

24. In the event that Defendant fails to comply with the requirements of Paragraph 14, or any subpart thereof, of this Consent Order, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty in accordance with the following schedule:

- a. If Defendant fails to provide a(ny) monthly report as referenced above in Paragraph 14 herein, Defendant shall automatically be liable for a civil penalty of one thousand dollars (\$1,000). Defendant shall pay this amount within ten (10) days.
- b. If, as of the end of any calendar month, Defendant has failed to remove the cumulative total of the amount of materials, debris, and waste required to have been removed as of the end of that calendar month, as set out in Paragraph 14 herein, Defendant shall automatically be liable for a civil penalty of ten dollars (\$10) per every cubic yard of the cumulative total of the amount of materials, debris, and waste required to have been removed and which Defendant has failed to remove. Defendant shall pay this amount within ten (10) days.



25. Stipulated penalties due under this Consent Order shall be due and owing without further demand by the State and shall be paid by check or money order, payable to "Treasurer, State of Ohio" and mailed to Martha Sexton or her successor, Paralegal, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

#### **VII. SITE ACCESS**

26. Defendant agrees and consents that Ohio Environmental Protection Agency, the Richland County Health Department, and their employees and agents shall have full access to the Site and any appurtenant property within Defendant's control at all reasonable times, without the need for a warrant, as may be necessary for the implementation of this Consent Order and/or to monitor compliance with this Consent Order and/or Ohio environmental laws. Defendant further agrees and consents that any and all contractors, subcontractors, consultants, or other persons working for or on behalf of Ohio Environmental Protection Agency, and/or the Richland County Health Department shall have full access to the Site and any appurtenant property within Defendant's control at all reasonable times, without the need for a warrant, as may be necessary to perform inspections, assessments, post-closure care, sampling, monitoring, surveying, remediation and/or emergency response work, and/or to remove materials, waste and/or debris.

27. Paragraph 26 of this Consent Order shall not be construed to eliminate or restrict any right Ohio Environmental Protection Agency and/or Richland County Health Department may otherwise have under Federal, State or local law to seek access to the Site.

#### **VIII. NOTICES**

28. All documents required to be submitted under this Consent Order shall be submitted to the following, or their successor:

As to Plaintiff:

Ohio Environmental Protection Agency  
Northwest District Office  
Division of Solid and Infectious Waste Management  
347 North Dunbridge Road  
Bowling Green, Ohio 43402  
Attn: Unit Supervisor, DSIWM

and to:

Mansfield-Ontario-Richland County Health Department  
Attn: Andrea Barnes, R.S. or Matt Work, R.S.  
555 Lexington Avenue  
Mansfield, Ohio 44907  
abarnes@richlandhealth.org

As to Defendant:

Allen Hogan  
663 5<sup>th</sup> Avenue  
Mansfield, Ohio 44903

29. Either Party may change the name or address of its contact person(s) by serving written notice to the other party.

**IX. RETENTION OF JURISDICTION AND WAIVER OF SERVICE**

30. The Court will retain jurisdiction of this action for purposes of enforcing this Consent Order during the effective term thereof. Defendant waives service of the Complaint and summons in this action.

**X. EFFECTIVE DATE**

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

**XI. COURT COSTS**

32. Defendant is hereby ordered to pay all court costs of this action.

## **XII. SIGNATORIES**

33. Each of the undersigned representatives of the Parties represents that he/she is fully authorized to enter into the terms and conditions of this Consent Order and legally bind the respective party to this document.

## **XIII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK**

34. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the Clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the Clerk is 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 current docket.

**IT IS SO ORDERED.**

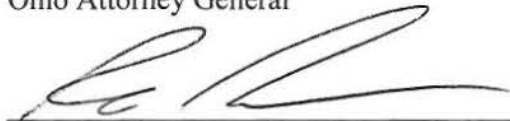
  
\_\_\_\_\_  
Judge James D. Henson  
Richland County Court of Common Pleas

\_\_\_\_\_  
Date



**APPROVED BY:**

**MICHAEL DEWINE**  
Ohio Attorney General



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*In his individual capacity*



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