



IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STATE OF OHIO EX REL.
BETTY D. MONTGOMERY,
ATTORNEY GENERAL OF OHIO

PLAINTIFF,

v.

MCCREARY CONSTRUCTION

DEFENDANT.

CASE NO. A9702553

JUDGE Tracey

CONSENT ORDER

Plaintiff, State of Ohio, by its Attorney General, Betty D. Montgomery ("Plaintiff"), having filed the Complaint against Defendant McCreary Construction (hereinafter "Defendant") to enforce Ohio's air pollution control laws set forth in Ohio Revised Code ("O.R.C.") Chapter 3704. and the rules adopted thereunder, and the parties having consented to the entry of this Consent Order,

NOW 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. JURISDICTION AND VENUE

1. The Court has jurisdiction over the parties and the subject matter of this action, pursuant to O.R.C. Chapter 3704. and the regulations adopted thereunder. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 3704. of the Ohio Revised Code, and venue is proper in this Court.

II. PERSONS BOUND

2. The provisions of this Consent Order shall apply to and be binding upon the Defendant to this action, its agents, representatives, officers, directors, employees, subsidiaries or divisions, assigns and successors in interest. In addition, the provisions of this Consent Order shall apply to and be binding upon those persons who receive actual notice of this Consent Order whether by personal service or otherwise who act in concert or participation with any of the entities identified above.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant engaged in a demolition operation in violation of O.R.C. Chapter 3704. and the regulations adopted thereunder. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for the violations alleged in the Complaint. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint or for violations of O.R.C. Chapter 3704. and the regulations adopted thereunder which occur after the filing of the Complaint. Further, nothing in this Consent Order shall be construed to relieve the Defendant of its obligations to comply with applicable federal, state or local statutes, regulations or ordinances.



IV. PERMANENT INJUNCTION

4. Defendant is hereby enjoined and ordered to immediately and permanently comply with O.R.C. Chapter 3704. and the regulations adopted thereunder, including but not limited to Ohio Administrative Code ("O.A.C.") Chapter 3745-20. Specifically, but not in any way limiting the scope of this paragraph, Defendant agrees to and is hereby permanently enjoined to:

- a. submit timely and complete notifications of intent to engage in demolition and renovation operations to the proper authority, as required by O.A.C. Rules 3745-20-02 and -03(A).

V. CIVIL PENALTY

5. For violations of O.R.C. Chapter 3704. and the regulations adopted thereunder, Defendant is enjoined and ordered to pay to the State of Ohio a civil penalty in the amount of one thousand dollars (\$1,000.00). The civil penalty shall be paid by Defendant by delivering to Plaintiff, c/o Lyndia Jennings, at the office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, ten certified checks each in the amount of one hundred dollars (\$100.00), payable to the order of "Treasurer, State of Ohio". These checks shall be submitted one a month starting March 1, 1997 and continuing on or before the first of each month. The last payment shall be due on or before December 1, 1997.



VI. STIPULATED PENALTIES

6. In the event that Defendant fails to comply with any of the requirements imposed by paragraphs 4 and 5 of this Consent Order, the Defendant shall, immediately and automatically, be liable for and shall pay a stipulated penalty in accordance with the following schedule:

- a.) for each violation of paragraph 4 (excluding a violation of paragraph 4a.), Two Thousand Dollars (\$2,000.00) per day per violation;
- b.) for each violation of paragraph 4a., Fifteen Thousand Dollars (\$15,000.00) per violation;
- c.) for each violation of paragraph 5, One Thousand Dollars (\$1,000.00) per day per violation.

7. In the event that Defendant fails to meet any of the requirements of this Consent Order, the Defendant shall immediately and automatically be liable for payment of stipulated penalties imposed by this Order without prior demand by the State of Ohio. Payment of all stipulated penalties shall be paid by Defendant by delivering to Plaintiff, c/o Lyndia Jennings, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check in that amount, payable to the order of "Treasurer, State of Ohio," immediately upon the occurrence of the violation giving rise to the penalty.

8. The imposition, payment and collection of stipulated penalties pursuant to violations of this Consent Order shall not prevent the State from pursuing additional remedies, civil, criminal or administrative, for violations of applicable laws.



VII. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS

9. All activities undertaken by Defendant pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal and state and local laws, rules and regulations, licenses and permits. Defendant is ordered and enjoined to obtain all licenses, permits or approvals necessary under applicable federal, state or local laws and shall submit timely applications and requests for any such licenses, permits and approvals. Where such laws appear to conflict with the other requirements of this Consent Order, Defendant is ordered and enjoined to immediately notify the Ohio EPA of the potential conflict. Defendant is ordered and enjoined to provide a copy of this Consent Order to all its employees and to all the contractors, subcontractors and agents with whom Defendant contracts to perform demolition or renovation of any "facility" as defined in O.A.C. Rule 3745-20-01(B)(12). This Consent Order is not a permit issued pursuant to any federal or state or local law or rule.

VIII. RETENTION OF JURISDICTION

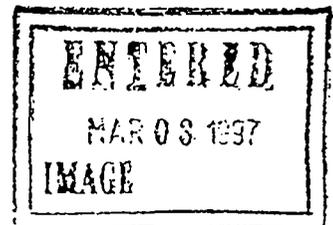
10. This Court will retain jurisdiction of this action for the purpose of enforcing compliance with this Consent Order.

IX. COSTS

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

X. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

12. 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 days of entering the judgment upon the journal, the clerk is directed to serve upon all parties



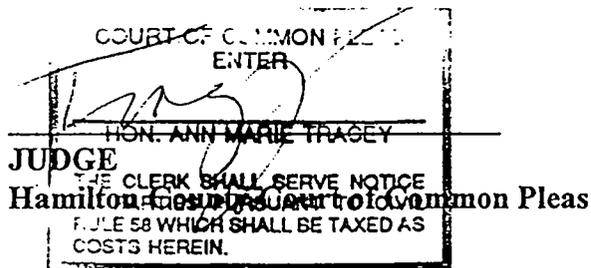
notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

XI. AUTHORITY TO ENTER INTO THE CONSENT ORDER

13. Each signatory for Defendant represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof. Each signatory for Defendant shall submit with this Consent Order an authenticated and certified resolution from Defendant establishing that he/she is so empowered to sign for and bind Defendant.

IT IS SO ORDERED

DATE _____



APPROVED:

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

APRIL R. BOTT (0066463)
ANN M. WOOD (0064894)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
(614) 466-2766

Counsel for Plaintiff

ANDREW McCREARY
5163 Paddock Road
Cincinnati, OH
(513) 281-1818

Personally and as Authorized
Representative for Defendant

