

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

STATE OF OHIO, ex rel.	:	
DAVE YOST	:	
OHIO ATTORNEY GENERAL,	:	CASE NO. CV 2019-03-0899
	:	
Plaintiff,	:	
	:	JUDGE AMY CORRIGALL JONES
v.	:	
	:	
ROGER NEWSOME, et al.,	:	
	:	
Defendants.	:	

CONSENT ORDER AND JUDGMENT ENTRY

The State of Ohio, by its Attorney General and at the written request of the Director of the Ohio Environmental Protection Agency, has filed a Complaint seeking injunctive relief and civil penalties against Defendants Roger Newsome and Newsome & Work Metallizing Company for violations of Ohio’s hazardous and solid waste laws under R.C. Chapter 3734 and the rules adopted thereunder concerning the Defendants’ operation of a hazardous and solid waste facility on the property located at 258 Kenmore Boulevard, Akron, Ohio. The Parties have consented to the entry of this Order.

Therefore, without trial, admission, or determination of any issue of fact or law and with the consent of the Parties hereto, it is ORDERED, ADJUDGED, AND DECREED:

I. DEFINITIONS

1. As used in this Order, the following terms are defined:
 - a. “Buildings 2, 3, and 4 at the Site” are as set out in Exhibit A.
 - b. “Closure Plan” means a closure plan that has been submitted in accordance with Ohio Adm.Code 3745-55-10 through 3745-55-20 and is ultimately approved by the Director. The approved closure plan may be: a closure plan approved by the Director as submitted by Defendants, or a closure plan approved by the Director after being submitted by Defendants and modified by the Director.

- c. **“Defendants”** means Roger Newsome and Newsome & Work Metallizing Company.
- d. **“Director”** means the Director of the Ohio Environmental Protection Agency (“Ohio EPA”) or her designee.
- e. **“Effective Date”** means the date of this Consent Order’s entry by the Court.
- f. **“Order”** means this Consent Order.
- g. **“Parties”** means Plaintiff, the State of Ohio, and Defendants, Roger Newsome and Newsome & Work Metallizing Company.
- h. **“Person”** means an individual, public or private corporation, business trust, estate, trust, partnership, association, federal government or any agency thereof, municipal corporation or any agency thereof, political subdivision or any agency thereof, public agency, interstate body created by compact, any other entity, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.
- i. **“Plaintiff”** means the State of Ohio.
- j. **“Site”** means Defendant Newsome & Work Metallizing Company’s property at 258 Kenmore Boulevard, Akron, Ohio, and identified by the Summit County Auditor as parcel numbers: 6848058, 6814853, 6814852, and 6814850.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the Parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Defendants under Chapter 3734 of the Revised Code, and venue is proper in this Court. Defendants will not challenge the Court’s jurisdiction to enter or enforce this Order.

III. PARTIES BOUND

- 3. Roger Newsome is an individual residing at 710 Pleasant Valley Drive, Akron, OH 44319.
- 4. Newsome & Work Metallizing Company is an Ohio corporation with a business address of 258 Kenmore Boulevard, Akron, OH 44319.
- 5. The provisions of this Order shall apply and be binding only upon Defendants, and, to the extent consistent with Civ.R. 65(D), on Defendants’ agents, officers, employees, assigns, successors in interest and any Person acting in concert or privity with Defendants who receive actual or constructive notice of this Order whether by personal service, by public record filed in the county land record, or otherwise. Defendants shall provide a copy of this Order to any successor in interest and to each key employee, consultant, or contractor employed to perform work referenced herein or to operate the Sites.

6. This Order is a settlement and compromise of disputed claims, and nothing in this Consent Order is to be construed as an admission of any facts or liability.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

7. Plaintiff alleges in its Complaint that Defendants violated various provisions of R.C. Chapter 3734 and the rules adopted thereunder. Defendants deny such allegations. The Parties have agreed to resolve the disputed issues in this matter without adjudication of any issues of fact or law. Compliance with this Order shall constitute full satisfaction of any civil liability of Defendants to Plaintiff for all claims alleged in Plaintiff's Complaint, up to the date of the Court's entry of this Order.

8. 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 Property does not constitute and cannot be admitted as evidence of admission of any liability, wrongdoing, or misconduct on part of Defendants, their officers, employees, or agents by the State or any other person or entity not involved in this case.

9. Notwithstanding Paragraph 7, or any other provision of this Consent Order, the State expressly reserves the right to require submittal of a hazardous waste closure plan for Buildings 2, 3, and 4 at the Site in accordance with Ohio Adm.Code 3745-55-10 through 3745-55-20.

10. Nothing in this Order, including the imposition of stipulated civil penalties for violations of this Order, shall limit the authority of the State of Ohio to:

- a. Seek any legal or equitable relief or civil penalties from Defendants or any other appropriate Person for any claims or violations that occur after the Effective Date;
- b. Seek any legal or equitable relief or civil penalties from Defendants or any other appropriate Person for claims or violations not alleged in the Complaint;
- c. Enforce this Order through a contempt action or otherwise seek relief for violations of this Order;
- d. Take any future legal or equitable action against any appropriate Person, including Defendants, to eliminate or mitigate conditions at the Site that may present a threat to public health or welfare or to the environment in derogation of applicable laws and rules, which State of Ohio has the authority to enforce; and/or,

- e. 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 Revised Code 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, remedial or corrective activities not conducted pursuant to the terms of this Order.

11. This Order does not waive, abridge, settle, compromise, or otherwise impact any other claims in law or equity that the State of Ohio or other Persons may have against Defendants.

12. Except for the signatories to the Order, nothing in this Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged, against any Person not a signatory to this Order for any liability such non-signatory(ies) may have arising out of matters alleged in the Complaint. The State of Ohio also specifically reserves its right to sue any Person that is not a signatory to this Order.

13. Nothing in this Order shall relieve Defendants of their obligations to comply with applicable federal, state, or local statutes, regulations, rules, or ordinances.

14. Nothing herein shall restrict the right of Defendants to raise any administrative, legal, or equitable defense with respect to such further actions reserved by the State in this Section. However, with respect to the actions reserved by the State in this Section, Defendants shall not assert and/or maintain any defense or claim of waiver, *res judicata*, collateral estoppel, issue preclusion, claim splitting, or other defenses based on any contention that Plaintiff's claims in any subsequent judicial or administrative proceeding could or should have been brought in this case.

V. PERMANENT INJUNCTION

15. Defendants are hereby permanently ordered and enjoined to immediately comply with the requirements of R.C. Chapter 3734 and the rules adopted under that Chapter.

VI. SOLID WASTE COMPLIANCE

16. Defendants agree that each is jointly and severally liable for the obligations and requirements in this Order.

17. Defendants are hereby ordered and enjoined to perform the following actions in regard to the solid waste at the Site and comply with Chapter 3734 of the Revised Code and the rules promulgated thereunder:

- a. No later than July 1, 2020, Defendants shall implement the Stockpile Consolidation & Capping Plan attached as Exhibit B, and ensure the construction of the cap system is completed no later than August 31, 2021; in the event that a public health emergency order is issued that prohibits the activities in this paragraph, Defendants can request an extension of the completion date by submitting a written request to the Ohio Attorney's General's Office before the deadline that includes justification for the additional time requested; and,
- b. Within 60 days of completion of the cap system, Defendants shall submit a written certification report from their consultant to Ohio EPA certifying that the cap has been constructed in accordance with the Stockpile Consolidation & Capping Plan attached as Exhibit B.

VII. CIVIL PENALTY

18. Based on its economic review of Defendants' financial condition, Plaintiff agrees to not access a civil penalty in this matter.

VIII. STIPULATED PENALTIES

19. If Defendants fail to comply with any of the requirements of this Order, Defendants will immediately and automatically be liable for and pay stipulated penalties under the following schedule for each failure to comply:

- a. Defendants shall pay one hundred dollars (\$100.00) 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, Defendants shall pay two hundred fifty dollars (\$250.00) per day;
- c. For each day any requirement of this Consent Order is violated greater than (90) days of violation, Defendants shall pay five hundred dollars (\$500.00) per day.

20. Stipulated penalties due under this Order shall be immediately due and owing without demand by the State and shall be paid by check or money order, payable to "Treasurer, State of Ohio" and delivered to Sandra Finan 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.

21. Defendants' payment and Plaintiff's acceptance of such stipulated penalties under this Section shall not be construed to limit Plaintiff's authority, without exception, to seek: 1) additional relief under R.C. Chapter 3734, including civil penalties under R.C. 3734.13; 2) judicial enforcement of this Order for the same violations for which a stipulated penalty was paid; or 3) sanctions for additional remedies, civil, criminal, or administrative, for violations of applicable laws. Further, payment of stipulated penalties by Defendants shall not be an admission of liability by Defendants.

IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

22. Performance of the terms of this Order by Defendants is not conditioned on the receipt of any private, federal or state grants, loans, or funds. In addition, Defendants' performance is not excused by failing to obtain or any shortfall of any private, federal or state grants, loans or funds or by the processing of any applications for the same.

X. POTENTIAL FORCE MAJEURE

22. In any action by Plaintiff to enforce any provision of this Consent Order, Defendants may raise that they are entitled to a defense that their conduct was caused by reasons entirely beyond their control such as, by way of example and not limitations, acts of God, strikes, acts of war or civil disturbances. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendants and Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate time at which to adjudicate the existence of such a defense is when an enforcement action, if any, is commenced by the Plaintiff. If such action is commenced, Defendants shall bear the burden of proving that any delay was caused by circumstances entirely beyond its control. Unanticipated or increased costs associated with the implementation of any requirement of this Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Defendants or serve as a basis for an extension of time under this Consent Order. Failure by Defendants to comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved. It shall be at the option of Plaintiff to construe the failure as a waiver of Defendants' rights to request an extension of their obligations under this Consent Order based on such incident. An extension of one date based on a particular incident does not mean that Defendants qualify for an extension of a subsequent date or dates. Defendants must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order with a Potential Force Majeure Clause does not constitute a waiver by Defendants of any rights or defenses they may have under applicable law.

XI. FACILITY ACCESS

23. As of the Effective Date, Ohio EPA and its representatives and contractors shall have access at reasonable times to the Site, and shall have access to any other property controlled by or available to Defendants to which access is necessary to effectuate the actions required by this Order. Access shall be allowed for the purposes of conducting activities related to this Order including but not limited to:

- a. Monitoring the work or any other activities taking place at the Site;
- b. Verifying any data or information submitted to Ohio EPA;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Defendants or their agents, consistent with this Order and applicable law; or
- g. Assessing Defendants' compliance with this Order.

Nothing in this Order shall be construed to limit the statutory authority of the Director or her authorized representatives to enter at reasonable times upon the Site or any other private or public property, real or personal, to inspect or investigate, obtain samples and examine or copy any records to determine compliance with R.C. Chapter 3734.

XII. SUBMITTAL OF DOCUMENTS

24. All documents required to be submitted to Ohio EPA pursuant to this Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio EPA
Division of Environmental Response and Revitalization
50 West Town Street, Suite 700
Columbus, Ohio 43215
Attn: Hazardous Waste Program Compliance Manager

Ohio EPA
Northeast District Office
Division of Emergency Response and Revitalization
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: Hazardous Waste Program Manager

Ohio EPA
Northeast District Office
Division of Materials and Waste Management
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: Solid Waste Program Manager

XIII. EFFECT OF CONSENT ORDER

25. With the exception of the spent blast material pile capped in accordance with the Stockpile Consolidation & Capping Plan attached as Exhibit B, this Order does not constitute authorization or approval of the construction, installation, modification, or operation of any solid waste or hazardous waste facility, or any building, structure, facility, facility component, operation, installation, disposal or storage site, other physical facility, or real or personal property that stores, discharges, or otherwise manages solid waste or hazardous waste not previously approved by Ohio EPA. Approval for any such construction, installation, modification, or operation shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

XIV. MODIFICATION

26. No modification shall be made to this Order without the written agreement of the parties and the Court.

XV. MISCELLANEOUS

27. Nothing in this Order shall affect Defendants' obligation to comply with all applicable federal, state or local laws, regulations, rules, ordinances, or orders.

28. Any acceptance by the State of Ohio of any payment, document, or other work due subsequent to the time that the obligation is due under this Order shall not relieve Defendants from the obligations created by this Order.

29. Roger Newsome shall inform the Ohio EPA of any change of his personal address and Newsome & Work Metallizing Company shall inform Ohio EPA of any change in the Registered Agent's address and business addresses or telephone numbers, or the cessation of the business that is the subject of this action.

XVI. RETENTION OF JURISDICTION

30. This Court shall retain jurisdiction for the purpose of administering and enforcing this Order.

XVII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

31. Under Rule 58 of the Rules of Civil Procedure, upon signing this 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 Civ.R. 5(B) and note the service in the appearance docket. The failure of the Clerk to serve notice does not affect the validity of this Order.

XVIII. COURT COSTS

32. Defendants are ordered to pay all court costs of this action.

XIX. EFFECTIVE DATE

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

XX. AUTHORITY TO ENTER INTO THE CONSENT ORDER

34. Each signatory represents and warrants he has been duly authorized to sign this document and is fully authorized to agree to its terms and conditions and, in the case of a person signing on behalf of a corporate entity, may so legally bind the corporate entity to all terms and conditions in this document. By signing this Order, each signatory waives all rights of service of process for the underlying Complaint.

35. This Order may be executed in counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which together shall constitute one and the same instrument.

IT IS SO ORDERED.



JUDGE AMY CORRIGALL JONES

APPROVED AND AGREED TO BY:

DAVE YOST
OHIO ATTORNEY GENERAL



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Attorneys for Plaintiff, the State of Ohio

*Attorneys for Defendants Roger
Newsome and Newsome Work &
Metallizing Company*

ROGER NEWSOME

(In his individual capacity)

NEWSOME & WORK METALLIZING
COMPANY

By: _____

Title: _____

Print Name: _____

Defendants

APPROVED AND AGREED TO BY:



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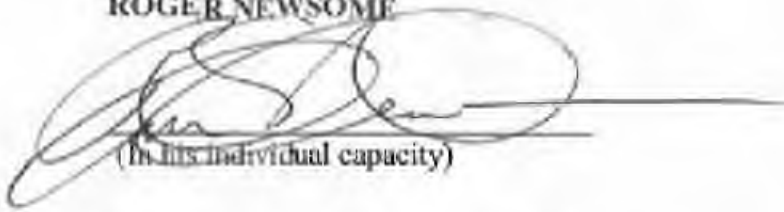
*Attorneys for Defendants Roger
Newsome and Newsome Work &
Metallizing Company*

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OHIO ATTORNEY GENERAL

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Sarah.Anderson@ohioattorneygeneral.gov

Attorneys for Plaintiff, the State of Ohio

ROGER NEWSOME



(In his individual capacity)

NEWSOME & WORK METALLIZING
COMPANY



Title: Pres.

Print Name: Roger Newsome

Defendants

EXHIBIT A



EXHIBIT B

**Newsome & Work Metalizing
258 Kenmore Blvd. – Akron, Ohio**

**Sand Blasting Residual
Stockpile Consolidation & Capping**

Introduction

ENVi Environmental, LLC (“ENVi”) has been engaged by Mr. Roger Newsome with Newsome & Work Metalizing (NWM) to develop a Scope of Work for the consolidation of sand blasting residual material (“Black Beauty”) that is currently stored in an approximate one-acre area in the southern portion on the property utilized by NWM. Five additional stockpiles located in the central portion of the property will also require removal to the larger pile.

Background

NWM conducts sand blasting of large steel parts used in the construction of highway bridges and roadways. Using the Black Beauty product and air-powered abrasive blasting equipment, NWM personnel sand blasts various parts to descale, or deburr, the steel parts to their customer’s specifications. The sand blasting has been conducted in a three-sided structure in the southwestern portion of the property. The sand blasting residuals are stored in the one-acre area following the sand being used to the extent that it no longer possesses the abrasive characteristic. The one-acre area, or stockpile, is non-uniform and has eroded to areas along the eastern, western and southern perimeters.

Scope of Work

- *Consolidate Piles* – Utilizing a front-end loader ENVi operator will remove the five piles of sand blasting residual material from the central area of the property and place the material on to the existing pile. The operator will then grade the adjacent northern, eastern and western areas to remove as much remnant material as possible and add to the existing pile.
- *Establish Grades* – Utilizing an excavator with a grade bucket, ENVi operator will begin to form the northern, southern, eastern and western perimeter of the existing pile. The horizontal limits of the sand blasting residuals will be demarcated along the entire perimeter prior to grading. Except for the north/northeastern, each side of the pile will be graded to an approximate 3:1 slope. The north/northeastern area of the pile is nearly at surrounding grade level. The top of the pile will then be graded toward the north/northeast at an approximate 2% slope and compacted to the extent the material will permit.
- *Erosion Control* – Following grading and establishing side slopes, ENVi personnel will install eight-inch wood chip filter sock along the entire perimeter of the newly formed pile. The filter sock will be staked offset from the toe of slope by approximately two-three feet. ENVi personnel will also install a diversion filter sock (woodchip & yard waste compost blend) along the top of the pile to divert away from the side slopes. Straw or mulch will be applied to the side slopes as a temporary cover.

**Newsome & Work Metalizing
258 Kenmore Blvd. – Akron, Ohio**

**Sand Blasting Residual
Stockpile Consolidation & Capping**

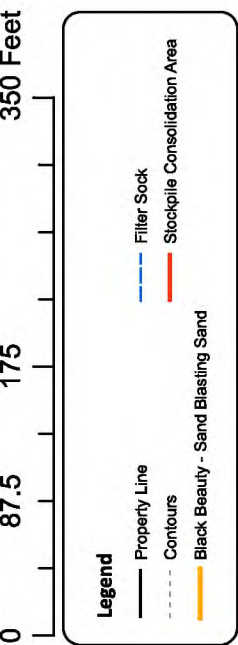
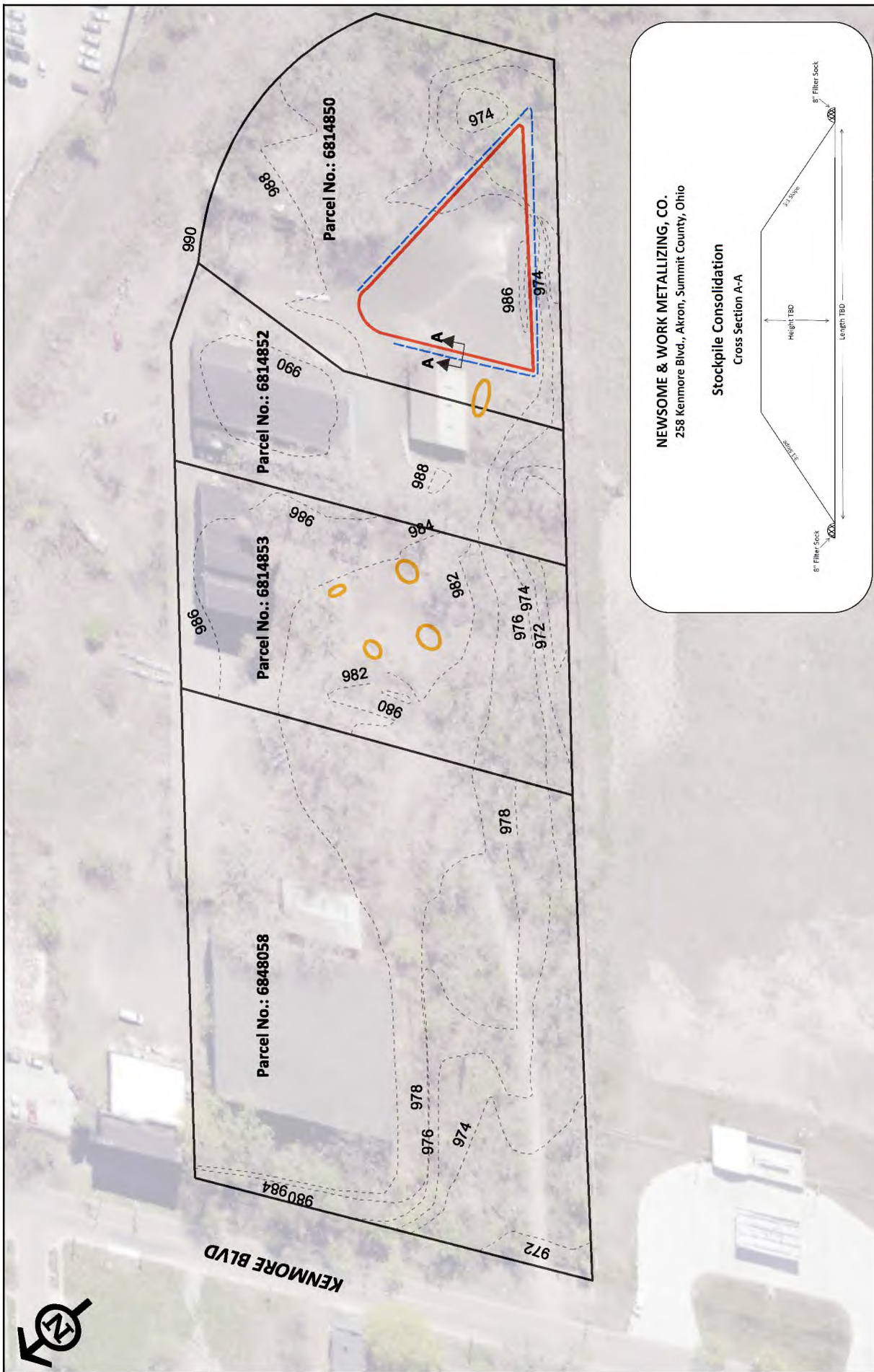
- *Cap Material* – ENVi will source area construction projects/borrow sites for clean silty-soils/clay and begin accumulating such materials in the central area of the NWM property. Approximately 2,750 cubic yards of material will be required to construct a twelve-inch cap over the one-acre area and side slopes. Cap material will be stored in the central area of the property until a sufficient volume is accumulated to justify equipment and operator mobilization.
- *Cap Construction* – Utilizing a front-end loader the cap material will be placed along the southern area. The temporary cover will have been removed from the side slopes. The cap will be constructed by placing nine-inches of material throughout the area and recompacting with dozer to approximately six-inches. The placement of nine inches of material will continue along the top and side slopes and commencing north until the limits of the pile are covered/compacted. A second nine-inch lift of material will be placed and compacted in the same manner over the entire limits – beginning in the southern perimeter and commencing north.
- *Vegetative Layer* – An approximate three-inch layer of vegetative soil will be applied over the capped pile including side slopes. Rye grass seed will be applied to the top of cap and side slopes. Perimeter filter sock will be re-installed.

Schedule

Upon authorization ENVi will mobilize personnel within 14 days to begin pile consolidation, grading and installation of filter sock. Straw or wood mulch will be applied as temporary cover to the side slopes. Concurrently, ENVi will solicit clean silty/clayey soils and begin to accumulate in the central area of the property. It is anticipated that cap construction will not begin until Spring, 2020. It is estimated that cap construction will be completed within 10 days following commencing.

Clarifications

ENVi will solicit clean soils/clay from area projects and/or borrow sites. Information pertaining to the materials origin will be maintained by ENVi and will be made available upon request. The proposed material consolidation and capping is not proposed to be completed in accordance with any performance standard or require Professional Engineering certification. Cap construction will be performed by personnel experienced in landfill cap construction and erosion control practices. Maintenance of the cap following construction will be the responsibility of the owner. A final drawing of the cap, pictures and documentation as to the origin of cap material will be provided as Final Report.



Title:
Newsome & Work Metallizing, Co.
Stockpile Consolidation
 258 Kenmore Blvd.
 Akron, Summit County, Ohio

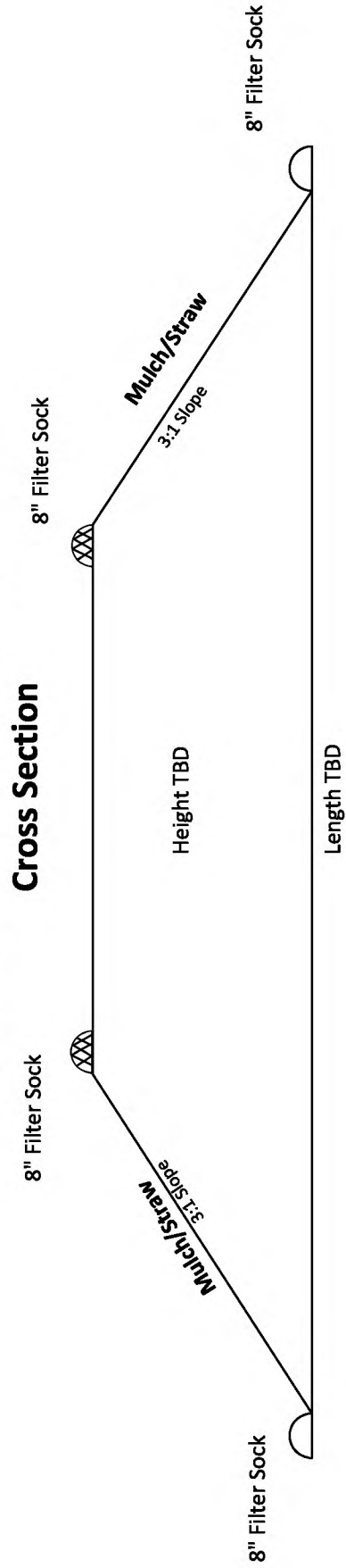
Prepared For:
 Newsome & Work Metallizing, Co.
 258 Kenmore Blvd.
 Akron, Summit County, Ohio

ENVI
 ENVIRONMENTAL, LLC
ENVI Environmental, LLC
 12047 Dewhurst Road, Suite 102
 Elyria, Ohio 44035

1 of 1
 Date: 10/08/19

NEWSOME & WORK METALLIZING, CO.
 258 Kenmore Blvd., Akron, Summit County, Ohio

Stockpile Consolidation/Grading



NEWSOME & WORK METALLIZING, CO.

285 Kenmore Blvd., Akron, Summit County, Ohio

Stockpile Cross Section CAP

