

IN THE COURT OF COMMON PLEAS  
FAIRFIELD COUNTY, OHIO

STATE OF OHIO ex rel.  
MICHAEL DEWINE  
OHIO ATTORNEY GENERAL  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, Ohio 43215-3400,

Plaintiff,

v.

NATIONAL METER, INCORPORATED, et al.,

Defendants.

Case No. 09 CV 1557

Judge Berens

2011 FEB -7 AM 11:49  
FILED  
DEBORAH SHALLEY  
CLERK OF COURTS  
FAIRFIELD CO. OHIO

**PARTIAL CONSENT ORDER AND JUDGMENT ENTRY**

Plaintiff, State of Ohio, on relation of its Attorney General ("Plaintiff"), filed the Complaint and Amended Complaints in this action against Defendants to enforce Ohio's hazardous waste laws found in Chapter 3734 of the Revised Code and rules adopted thereunder. Defendants James E. Fosnaugh, Susan F. Fosnaugh and JEF/SFF Rentals, LLC have now consented to the entry of this Partial Consent Order and Judgment Entry.

**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 Partial Consent Order:

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

B. "**Defendants**" mean James E. Fosnaugh, Susan F. Fosnaugh and their corporation known as JEF/SFF Rentals LLC. For the purposes of this Partial Consent Order, "**Defendants**" shall not include National Meter Incorporated and Robert Fosnaugh.

C. **“Director”** means Ohio's Director of Environmental Protection.

D. **“Effective Date”** means the date the Fairfield County Court of Common Pleas enters this Partial Consent Order.

E. **“Facility”** refers to the location where the violations of Ohio's hazardous waste occurred, which Facility is located at 240 Baldwin Drive, Lancaster, Fairfield County, Ohio 43130.

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 and Amended Complaints state claims 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, and Defendants' agents, officers, employees, assigns, successors-in-interest, and any other person who would be bound pursuant to Rule 65(D) of the Ohio Rules of Civil Procedure, including any person acting in concert, privity or participation with it and any purchaser of the Facility 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 Partial Consent Order, compliance with the terms of this Partial Consent Order shall constitute full satisfaction of any civil liability of Defendants to

Plaintiff for all claims alleged in the Complaint and Amended Complaints.

5. Nothing in this Partial 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 and Amended Complaints;

B. Seek relief for claims or conditions alleged in the Complaint and Amended Complaints that occur after the Effective Date of this Partial Consent Order;

C. Enforce violations of this Partial Consent Order through a contempt action or otherwise;

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 Partial Consent Order; or

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.

6. Nothing in this Partial Consent Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged in the Complaint or Amended Complaints, against any person, firm, trust, joint venture, partnership, corporation, association, or other entity not a signatory to this Partial Consent Order.

7. Nothing in this Partial Consent Order shall be construed to relieve any Defendants of their obligations to comply with applicable federal, state, or local statutes, regulations, or ordinances.

8. Nothing herein shall restrict the right of the Defendants to raise any administrative, legal or equitable claim or defense with respect to such further actions reserved by the State in this Section.

However, Defendants 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 or other defenses based upon any contention that the claims raised by the State in the subsequent proceeding were, could, or should have been brought in the instant case.

#### **V. INJUNCTIVE RELIEF**

9. From the effective date of this Partial Consent Order, Defendants are ordered and permanently 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.

#### **VI. CIVIL PENALTY**

10. Within fifteen (15) days of the Effective Date of this Consent Order, Defendants are ordered and enjoined, jointly and severally, to pay to the State of Ohio a civil penalty in the amount of Five Thousand Dollars (\$5,000). This civil penalty payment shall be made by delivering to Plaintiff, c/o Karen M. Pierson, or her successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, a cashier's or certified check, payable to the order of "Treasurer, State of Ohio." The memo portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 330015." This civil penalty shall be deposited into the hazardous waste clean-up fund created by R.C. 3734.28.

**VII. RETENTION OF JURISDICTION**

11. This Court shall retain jurisdiction of this action for the purpose of enforcing this Partial Consent Order.

**VIII. COSTS**

12. Defendants shall pay the court costs of this action.

**IX. ENTRY OF PARTIAL CONSENT ORDER AND JUDGMENT BY CLERK**

13. Upon signing of this Partial 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 a 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 notes the service in the appearance docket.

**X. AUTHORITY TO ENTER INTO THE PARTIAL CONSENT ORDER**

14. The signatory for JEF/SFF Rentals LLC, a corporation represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation, namely JEF/SFF Rentals LLC, to all terms and conditions hereof.

**IT IS SO ORDERED:**

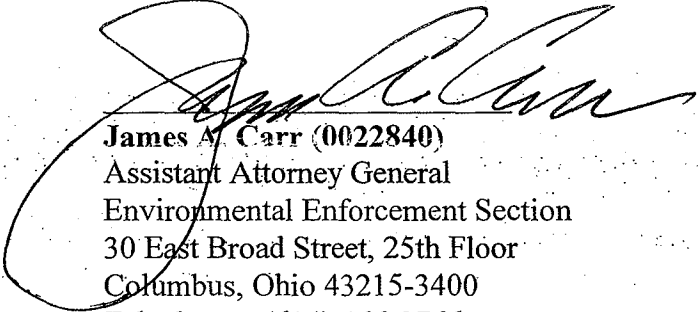
The Court hereby  
the Clerk to serve notice of this  
pursuant to Civil Rule 6  
upon all parties not in default.



**JUDGE BERENS  
FAIRFIELD COUNTY COURT OF  
COMMON PLEAS**

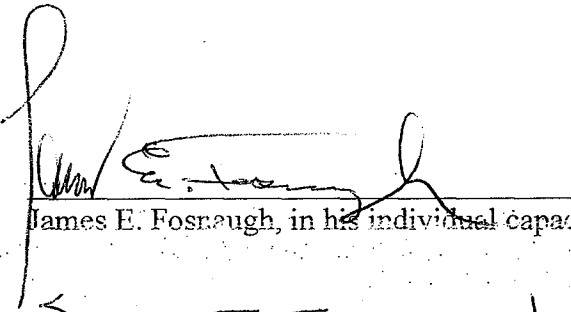
**APPROVED:**

MICHAEL DEWINE  
ATTORNEY GENERAL OF OHIO

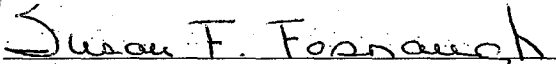


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*Attorney for Plaintiff  
State of Ohio*



James E. Fosnaugh, in his individual capacity



Susan F. Fosnaugh, in her individual capacity

JEF/SFF RENTALS, LLC

by Susan F. Fosnaugh

Print name: Susan F. Fosnaugh

Title: Partner

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