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CLERK OF COURTS
COMMON PLEAS COURT
ASHTABULA CO OH

**IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO**

**STATE OF OHIO, ex rel.
MICHAEL DEWINE,
OHIO ATTORNEY GENERAL,**

Plaintiff,

v.

**ASHTABULA IRON AND METAL
CO., LLC, et al.,**

Defendants.

CASE NO. 2015 CV 0256

JUDGE MARIANNE SEZON

FINAL CONSENT ORDER

Plaintiff, the State of Ohio, through its Attorney General, filed a Complaint for Injunctive Relief and Civil Penalties ("Complaint") against Defendants Ashtabula Iron and Metal Co., LLC, Ashtabula Salvage Co., LLC, Hercules Group, LLC, and Brett A. Muckle, alleging violations of Revised Code Chapters 3734 and 3714 and the rules promulgated thereunder.

Plaintiff and Defendants have agreed to this Consent Order and this Consent Order constitutes resolution of all disputed claims against the Defendants contained in the Complaint.

THEREFORE, without trial or admission of any issue of fact or law, and upon the consent of Plaintiff and Defendants, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

I. DEFINITIONS

1. Unless specifically defined otherwise below, all terms shall have the same meaning as defined in R.C. Chapters 3714 and 3734, and the rules promulgated thereunder. As used in this Consent Order:

A. **“Closure Plan”** means a closure plan that has been 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 and/or the Defendants.

B. **“Consent Order”** means this Consent Order and Final Judgment Entry between Plaintiff and Defendants.

C. **“Contractor”** means the individual(s) or company or companies retained by or on behalf of Defendants to undertake and complete the work required pursuant to this Consent Order.

D. **“Defendants”** means Ashtabula Iron and Metal Co., LLC, Ashtabula Salvage Co., LLC, Hercules Group, LLC, and Brett A. Muckle.

E. **“Director”** means Director of the Ohio Environmental Protection Agency.

F. **“Effective Date”** means the date that the Ashtabula County Clerk of Court enters this Consent Order upon the journal.

G. **“Hazardous Waste Management Units”** means all areas where hazardous wastes were allegedly stored and/or disposed at the Site.

H. **“Ohio EPA”** means the Ohio Environmental Protection Agency.

I. **“Plaintiff”** means the State of Ohio.

J. "Site" means the location where the alleged violations of Ohio's hazardous, solid waste, and/ or construction and demolition debris laws occurred: 1015 West 30th Street (alternative address 2710 West Avenue), Ashtabula, Ashtabula County, Ohio 44004.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapters 3734 and 3714, and the rules adopted thereunder. This Court has jurisdiction over the parties. Venue is proper in this Court. Defendants shall not challenge the Court's jurisdiction to enter or enforce this Consent Order.

III. PERSONS BOUND

3. The provisions of this Consent Order shall apply to and be binding upon Plaintiff, Defendants, and Defendants' agents, officers, employees, assigns, and 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 Defendants who receives actual notice of this Consent Order whether by personal service or otherwise.

IV. SATISFACTION OF LAWSUIT

4. Except as otherwise provided in this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendants and their officers, agents, servants, employees, successors in interest, and those persons in concert or participation with them for all claims alleged in the Complaint.

V. RESERVATION OF RIGHTS

5. Nothing in this Consent Order, including the imposition of stipulated penalties, shall limit the authority of the State of Ohio to:

- A. Seek relief for claims or conditions not alleged in the Complaint;
- B. Seek recovery from any Defendant, except Defendant Muckle, for the costs of any scrap tire removal conducted at the Site before the Effective Date;
- C. Seek relief for claims or conditions alleged in the Complaint that occur after the Effective Date;
- D. Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;
- E. Bring any action against Defendants, except Defendant Muckle, 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 Consent Order;
- F. Take any action authorized by law against any person, including Defendants, to eliminate or mitigate conditions at the Site that may present an imminent threat to the public health or safety, or to the environment.

6. Nothing in this 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, against any person, firm, trust, joint venture, partnership, corporation, association, or other entity not a signatory to this Consent Order.

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

8. Defendants shall retain all rights, defenses, and/or claims each may legally raise

to the extent the State seeks further relief from the Defendants in the future, or in any action brought to enforce the terms of this Consent Order. Entering this Consent Order, the Consent Order itself, or the taking of any action in accordance with this Consent Order 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. However, with respect to the actions reserved by Plaintiff in this Section, Defendants shall not assert, and may not maintain, any defense or claim against the State 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 Plaintiff in the subsequent proceeding were, could, or should have been brought in the instant case.

VI. INJUNCTIVE RELIEF

9. Defendants, jointly and severally, and subject to the exception listed in Paragraph 28, are ordered and enjoined to comply with the requirements set forth this Section.

Standards for the Management of Hazardous Waste

10. Defendants, jointly and severally are ordered and enjoined to comply with the requirements of Ohio Adm.Code 3745-55-10 through Ohio Adm.Code 3745-55-20 in closing the Hazardous Waste Management Units at the Site. The Hazardous Waste Management Units located at the Site include:

- A. An unpermitted container storage area located inside the Maintenance Building at the Site;
- B. An unpermitted container storage area located south of the Maintenance Building at the Site;
- C. An unpermitted container storage area located southwest of the

Maintenance Building at the Site; and

D. An unpermitted container storage area located in an outbuilding along the west side of the Site.

These Hazardous Waste Management Units shall be closed in a manner that minimizes the need for further maintenance and controls, and that minimizes or eliminates, to the extent necessary to prevent threats to human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere, and complies with the closure requirements of Ohio Adm.Code 3745-55-10 through 3745-55-20.

11. Within ninety (90) days of the Effective Date of this Consent Order, Defendants are ordered and enjoined to submit to Ohio EPA, at the addresses set forth in Section VIII of this Consent Order, a Closure Plan in accordance with Ohio Adm.Code 3745-55-10 through 3745-55-20 for the Hazardous Waste Management Units at the Site.

A. After public notice of the Closure Plan and comment pursuant to Ohio Adm. Code 3745-66-12(D)(4), if Ohio EPA determines that the Closure Plan is deficient and gives Defendants written notice of such deficiencies in the Closure Plan, Defendants are ordered and enjoined to submit to Ohio EPA a revised Closure Plan within thirty (30) days of receipt of the notice of deficiencies.

B. Following review of the revised Plan, if Ohio EPA determines that the revised Closure Plan is deficient, Ohio EPA may modify the Plan and approve the revised Plan as modified by Ohio EPA.

C. Immediately upon receipt of notice of approval by Ohio EPA of the Closure Plan, either as originally submitted, as revised, or as revised and modified,

Defendants are ordered and enjoined to implement the approved Closure Plan in the manner and within the time frames set forth in the approved Closure Plan.

12. If circumstances require Defendants to submit an amended Closure Plan to Ohio EPA after commencement and implementation of the final Closure Plan as set forth in Paragraph 11(C) above, the Closure Plan shall be amended in accordance with Ohio Adm.Code 3745-55-12(C). Ohio EPA will approve, revise, or revise and modify the Amended Closure Plan as set forth in Paragraph 11, and Defendants shall implement the approved amended Closure Plan as set forth in Paragraph 11.

13. Defendants are ordered and enjoined to amend the Approved Closure Plan pursuant to Ohio Adm.Code 3745-55-12 whenever:

- A. Changes in operating plans or facility design affect the Approved Closure Plan; or
- B. There is a change in the expected year of closure, if applicable; or
- C. In conducting partial or final closure activities, unexpected events require a modification of the Approved Closure Plan.

14. Within thirty (30) days of completion of closure, Defendants are ordered and enjoined to submit certification of closure to Ohio EPA, pursuant to Ohio Adm.Code 3745-55-15, and a survey plat, pursuant to Ohio Adm.Code 3745-55-16 (if necessary).

15. All closure and post-closure plans developed for the Site shall be enforceable under this Consent Order as though fully incorporated herein.

16. Nothing in this Section shall limit Defendants' or any other entity's rights to appeal any final action of the Director regarding approval, denial or approval with conditions of the Closure Plan to the Environmental Review Appeals Commission.

17. Within ninety (90) days of the Effective Date, Defendants are enjoined and ordered to remove all hazardous waste from the Site, including the computer monitors.

18. Within ninety (90) days of the Effective Date, Defendants are enjoined and ordered to clean up all used oil releases at the Site and comply with Ohio Adm.Code 3745-279-22(D).

19. Defendants are hereby permanently enjoined and ordered to evaluate wastes associated with the performance of all injunctive relief in accordance with Ohio Adm.Code 3745-52-11 and 3745-54-13.

20. Defendants are hereby permanently enjoined and ordered to manage hazardous waste associated with the performance of all injunctive relief in compliance with all applicable provisions of the Ohio hazardous waste laws and rules as set forth in R.C. Chapter 3734, Ohio Adm.Code Chapters 3745-50 through 3745-69, Ohio Adm.Code Chapter 3745-205, Ohio Adm.Code Chapter 3745-256, Ohio Adm.Code Chapter 3745-266, and Ohio Adm.Code Chapters 3745-270 through 3745-279.

Closure & Post Closure Cost Estimate, Financial Assurance and Financial Responsibility

21. Within forty-five (45) days after receipt of notice of the Director's approval of the Defendants' Closure Plan, Defendants are ordered and enjoined to submit to Ohio EPA detailed closure cost estimates which shall be calculated consistent with Ohio Adm.Code 3745-55-42 and 3745-55-44.

22. Within seventy-five days (75) days after receipt of notice of the Director's approval of the Closure Plan, Defendants are ordered and enjoined to submit to Ohio EPA documentation of financial assurance for closure consistent with the requirements of Ohio Adm.Code 3745-55-43 and 3745-55-45.

23. Within seventy-five (75) days after receipt of notice of approval by Ohio EPA of the Closure Plan, Defendants are ordered and enjoined to submit to Ohio EPA documentation demonstrating third party liability coverage consistent with the requirements of Ohio Adm.Code 3745-55-47.

Solid Waste Removal

24. Within one hundred and twenty (120) days of the Effective Date of this Consent Order, Defendants shall cause the removal of all solid waste from the Site and legally dispose of the solid waste at a licensed and permitted solid waste facility. Defendants shall submit receipts from any and all facilities that accepted the solid waste as proof of legal disposal within thirty (30) days of disposal. All receipts must be submitted to Ohio EPA Northeast District Office, c/o Katharina Snyder, 2110 East Aurora Road Twinsburg, Ohio 44087.

25. Defendants must notify Ohio EPA at least seven (7) days prior to any removal action taken pursuant to this Section so that an Ohio EPA representative may be present to observe any work conducted at the Site.

Construction and Demolition Debris Removal

26. Within one hundred and twenty (120) days of the Effective Date of this Order, Defendants shall cause the removal of all construction and demolition debris from the Site and legally dispose of the construction and demolition debris at a licensed and permitted solid waste facility, or licensed construction and demolition debris waste facility. Defendants shall submit receipts from any and all facilities that accepted the construction and demolition debris as proof of legal disposal within thirty (30) days of disposal. All receipts must be submitted to Ohio EPA Northeast District Office, c/o Katharina Snyder, 2110 East Aurora Road, Twinsburg, Ohio

44087.

Scrap Tire Removal

27. Within one hundred and twenty (120) days of the Effective Date of this Order, Defendants shall cause the removal of all remaining scrap tires from the Site and legally dispose of the scrap tires at a licensed and permitted scrap tire facility. Until all remaining scrap tires are removed, Defendants shall properly store scrap tires in accordance with OAC 3745-27-60. Defendants shall submit receipts from any and all facilities that accepted the scrap tires as proof that the facilities received the scrap tires within thirty (30) days of completion of removal. All receipts must be submitted to Ohio EPA Northeast District Office, c/o Katharina Snyder, 2110 East Aurora Road Twinsburg, Ohio 44087.

Ability to Pay for Injunctive Relief

28. Notwithstanding the foregoing, Defendant Brett Muckle's obligation to expend monies for injunctive relief shall not exceed \$150,000. Defendant Muckle's obligation to expend any monies for injunctive relief shall be suspended so long as Defendant Muckle demonstrates that he lacks the financial ability to expend those funds in accordance with Section X of this Consent Order.

VII. FACILITY ACCESS

29. Defendants shall allow Plaintiff and its representatives access at reasonable times to the Site in order to monitor compliance with the requirements by this Consent Order. Access by Plaintiff and its representatives shall be allowed for the purposes of conducting activities related to this Consent 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 Plaintiff;

- 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 Consent Order and applicable law; or
- G. Assessing Defendants' compliance with this Consent Order.

30. Nothing in this Consent Order shall be construed to limit the statutory authority of the Director or his 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. Chapters 3714 or 3734 and the rules promulgated thereunder.

VIII. SUBMITTAL OF DOCUMENTS

31. Unless otherwise specified in this Consent Order, all documents required to be submitted to Ohio EPA pursuant to this Consent Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio EPA
Division of Materials and Waste Management
50 West Town Street, Suite 700
Columbus, Ohio 43215
Attn: Manager, Compliance Assurance Section

Ohio EPA
Northeast District Office
2100 East Aurora Road
Twinsburg, Ohio 44087
Attn: DMWM-HW Manager

Ohio EPA
Northeast District Office
2100 East Aurora Road
Twinsburg, Ohio 44087
Attn: DMWM-SIW Manager

IX. CIVIL PENALTY

32. Pursuant to R.C. 3734.13(C), Defendant Brett Muckle shall pay a civil penalty of Twenty Thousand Dollars (\$20,000), which shall be suspended so long as Defendant Muckle demonstrates he lacks the ability to pay the civil penalty in accordance with Section X of this Consent Order.

33. Pursuant to R.C. 3734.13(C), Defendants Ashtabula Iron and Metal Co., LLC, Ashtabula Salvage Co., LLC, and Hercules Group, LLC shall pay a civil penalty of Four hundred four thousand, six hundred and seventy-one dollars (\$404,671.00), within thirty (30) days of the Effective Date.

34. The civil penalty payment identified in Paragraphs 32 and 33 above shall be made by delivering to Plaintiff, c/o Scott Hainer, Paralegal, or his 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 memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 393630."

35. Should Defendants fail to make payment in full as required by this Section, the remaining unpaid balance of the total civil penalty, plus applicable interest pursuant to R.C. 131.02(D), shall become immediately due and owing. Interest shall accrue interest at the maximum statutory rate under R.C. 5703.47, calculated from the Effective Date.

36. The State reserves the right to file a certificate of judgment lien against

Defendants for the remaining unpaid balance of the total civil penalty, plus applicable interest per Paragraph 35 above, if the full payment is not paid within thirty (30) days of the Effective Date.

X. INABILITY TO PAY DEMONSTRATION

37. Defendant Muckle shall make the inability to pay demonstration set forth in paragraphs 28 and 32 by submitting his annual personal federal and state income tax returns to Plaintiff, c/o William Ulrich, or his successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, and reporting the receipt of any assets and/or monies not reflected on his tax returns—including but not limited to gifts, inheritances, etc. (“unreported income”)—by June 1st for the last preceding calendar year.

A. If the combination of Defendant Muckle’s adjusted gross income and unreported income is more than \$50,000 for the preceding calendar year, then within thirty (30) days of submission of his inability to pay demonstration for that calendar year Defendant Muckle must pay Plaintiff fifty percent (50%) of the amount exceeding \$50,000 towards the required injunctive relief or civil penalty. Any payments made shall be first directed toward injunctive relief until such time as Defendant Muckle’s maximum liability for injunctive relief of \$150,000 has been reached at which time any funds shall be directed toward Defendant Muckle’s civil penalty.

B. Defendant Muckle’s obligations to submit documentation of his inability to expend funds for injunctive relief and/or civil penalty, and to pay a percentage of his income above \$50,000 in a calendar year, shall expire five (5) years from the Effective Date.

XI. STIPULATED PENALTIES

38. In the event that Defendants Ashtabula Iron and Metal Co., LLC, Ashtabula Salvage Co., LLC or Hercules Group, LLC fail to comply with any requirement or deadline contained in Section VI, Section IX, or any requirement or deadline contained in any document approved in accordance with this Consent Order, or Defendant Muckle fails to comply with any requirement or deadline in Paragraph 28, Paragraph 32, or Section X of this Consent Order, Defendants are liable for and shall pay stipulated penalties in accordance with the following schedule for each failure to comply:

A. For each day of each failure to comply with a requirement or deadline of this Consent Order, up to and including thirty (30) days, five hundred dollars (\$500.00) per day for each requirement or deadline not met.

B. For each failure to comply with a requirement or deadline of this Consent Order, from thirty-one (31) to sixty (60) days, one-thousand dollars (\$1,000.00) per day for each requirement or deadline not met.

C. For each day of each failure to comply with a requirement or deadline of this Consent Order, over sixty (60) days, two thousand dollars (\$2,000.00) per day for each requirement or deadline not met.

39. Any payment required to be made under the provisions of this Section (Section XI) of the Consent Order shall be made by delivering to Plaintiff, c/o Scott Hainer, or his 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 or checks made payable to the order of "Treasurer, State of Ohio," for the appropriate amount within thirty (30) days from the date of the failure to meet the requirement or deadline of this Consent Order.

A letter briefly describing the type of violation, deadline or requirement not met and the date upon which the violation of this Consent Order occurred shall accompany the payment of the stipulated penalty.

40. The payment of stipulated penalties by Defendants and the acceptance of such stipulated penalties by Plaintiff pursuant to this Section shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to R.C. Chapters 3714 and 3734, including civil penalties under penalties and injunctive relief pursuant to R.C. 3714.11, 3734.10, and 3734.13(C), or to otherwise seek judicial enforcement of this Consent Order, for the same violation for which a stipulated penalty was paid or for other violations.

XII. RETENTION OF JURISDICTION

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

XII. COSTS

42. Defendants, jointly and severally, shall pay the court costs of this action.

XIII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

43. Upon the 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 notes the service in the appearance docket.

XIV. AUTHORITY TO ENTER INTO THE CONSENT ORDER

44. Each signatory for a corporation, limited liability company, partnership, or trustee represents and warrants that he/she has been duly authorized to sign this document and so bind

that entity to all terms and conditions thereof.

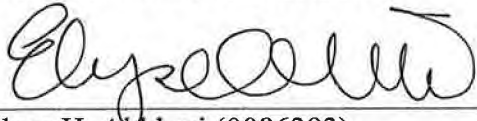
IT IS SO ORDERED.

JUDGE MARIANNE SEZON

**JUDGE MARIANNE SEZON
ASHTABULA COUNTY
COURT OF COMMON PLEAS**

APPROVED:

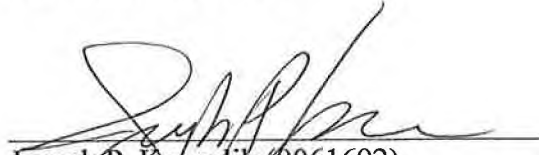
MICHAEL DEWINE
OHIO ATTORNEY GENERAL



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Attorney for Plaintiff

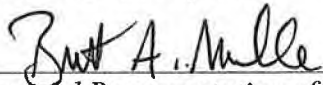
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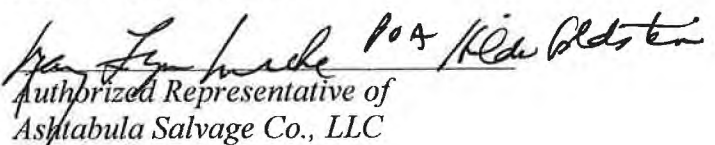
Attorney for Defendants

DEFENDANT ASHTABULA IRON
AND METAL CO., LLC



*Authorized Representative of
Defendant Ashtabula Iron and Metal
Co., LLC*

DEFENDANT ASHTABULA
SALVAGE CO., LLC



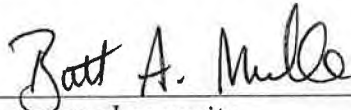
*Authorized Representative of
Ashtabula Salvage Co., LLC*

DEFENDANT HERCULES GROUP,
LLC



*Authorized Representative of
Hercules Group, LLC*

DEFENDANT BRETT A. MUCKLE



In his personal capacity