

IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

STATE OF OHIO, ex rel. RICHARD
CORDRAY, ATTORNEY GENERAL

Plaintiff,

v.

YOUNGSTOWN IRON & METAL,
INC., et al.

Defendants.

CASE NO. 07CV3058

JUDGE SWEENEY

Courtroom 2

CONSENT ORDER FOR
PERMANENT INJUNCTION,
CIVIL PENALTY AND
FORFEITURE

The Amended Complaint in the above-captioned matter having been filed, and the Plaintiff State of Ohio by Attorney General Richard Cordray ("Plaintiff") and Defendants Youngstown Iron & Metal, Inc. ("Defendant YIM"), WWW Land, Inc. ("Defendant WWW"), and Metalico Youngstown, Inc. ("Defendant M-Y") (collectively "Defendants") having consented to this Consent Order,

NOW THEREFORE, without trial of any issue of fact or law, without any admission of fact or liability, and upon 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 case. The Complaint states a claim upon which relief can be granted against Defendants under R.C. Chapters 3704 and 3734. Venue is proper in this Court.

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II. DEFINITIONS

2. Unless otherwise stated, all terms used in this Consent Order shall have the same meaning as used in Revised Code Chapters 3704, 3734 and Ohio Administrative Code rules adopted thereunder.

3. As used in this Consent Order, "Facility" means the scrap metal processing facility and all related operations located at 100 Division Street Extension, Youngstown, Ohio 44510.

III. PERSONS BOUND

4. The provisions of this Consent Order shall apply to and be binding upon Defendants, their respective successors in interest and assigns, and others to the extent provided by Civil Rule 65(D). The parties acknowledge that Defendant YIM transferred operation of the Facility to Defendant M-Y on December 9, 2009. In addition, the parties acknowledge that on July 6, 2010 Defendant WWW sold to Defendant M-Y the real property on which the Facility is located.

5. Nothing herein shall be construed to relieve Defendants of their respective obligations to comply with all applicable federal, state, or local statutes, regulations, or ordinances, including but not limited to, applicable permit requirements. The provisions of this Consent Order shall apply to and be binding upon Defendants, and the injunctive provisions of this Consent Order shall apply to and be binding upon Defendants M-Y its officers, agents, servants, employees, and those persons in active concert or participation with them, to the extent provided by law and Civil Rule 65(D).

IV. SATISFACTION OF LAWSUIT

6. The State has alleged that Defendants have violated R.C. Chapters 3704 and 3734, and Ohio Adm. Code Chapters 3745-15, 3745-19, and 3745-27.

7. Except as otherwise provided in Paragraphs Eight and Nine of this Consent Order, compliance with the terms of this Consent Order, as they apply to each Defendant, shall constitute full satisfaction of any civil and administrative liability (including injunctive relief, civil penalties and investigative or other costs or expenses) of such Defendant, and its respective officers, shareholders, agents and employees and respective successors in interest and assigns, for the claims alleged in the State's lawsuit.

V. RESERVATION OF RIGHTS

8. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief from Defendants for claims or violations not referenced or released in this Consent Order, any violations arising out of acts or omissions first occurring after the entry date of this Consent Order, or claims under the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. §9601 et. seq. or R.C. Sections 3734.20 through 3734.27, for any emergency, removal, remedial, or corrective actions. Notwithstanding any provision in this Consent Order to the contrary, each Defendant retains all rights, defenses, and/or claims it may legally raise to the extent that the State seeks further relief from such Defendant in the future, or in any action brought to enforce the terms of this Consent Order.

9. Nothing in this Consent Order, including the imposition of stipulated or civil penalties, shall limit the authority of the State to take any action authorized by law against any person, including any Defendant, to eliminate or mitigate conditions at the

Facility that may present an imminent threat to the public health or welfare.

VI. COMPLIANCE WITH APPLICABLE LAWS

10. Nothing in this Consent Order shall affect the respective obligations of Defendants to comply with all applicable federal, state or local laws, regulations, rules, or ordinances.

11. In the event of a conflict between the terms and conditions of this Consent Order and the Facility's Permit-to-Install No. 02-0926, effective June 11, 1997, the parties agree that the terms and conditions of this Consent Order shall prevail until the new permit-to-install and operate ("PTIO") is issued.

VII. INJUNCTION

12. Defendant M-Y is ordered and enjoined to submit, within ninety (90) days after the entry of this Order for the air contaminant sources at the Facility, a complete, approvable application for the issuance of a permit-to-install and operate ("PTIO"), pursuant to Ohio Adm. Code Chapter 3745-31, to Ohio EPA, through its Northeast District Office, that requires:

- a.) All shredded tramp material (fluff) on site shall be on a concrete pad or in an enclosed container;
- b.) If any storage pile of accumulated shredded tramp material (fluff) or nonferrous shredded materials exceeds nine hundred (900) cubic yards the permittee shall promptly contact Ohio EPA Northeast District Office; the permittee shall then have fourteen (14) days to reduce the identified pile to less than nine hundred (900) cubic yards;
- c.) All shredded tramp material (fluff), ferrous shredded materials, and nonferrous shredded materials shall be kept wetted as needed to control fugitive particulate emissions; and,
- d.) Effective June 1, 2011, all shredded tramp material (fluff), ferrous shredded materials, and nonferrous shredded materials on site shall be on concrete pads, with the exception of material in trucks and/or railcars and

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awaiting shipment.

13. Defendant M-Y agrees to waive any right to contest the lawfulness and/or reasonableness as to the terms and conditions set forth in Paragraph 12 of the Consent Order before the Ohio EPA, the Environmental Review Appeals Commission, or any other court of competent jurisdiction.

VIII. RIGHT OF ENTRY

14. Defendant M-Y hereby agrees to allow representatives of Ohio EPA and/or the Mahoning-Trumbull Air Pollution Control Agency to enter the Facility at reasonable times to inspect, investigate, take samples and pictures, and examine or copy records to determine compliance with the terms of this Consent Order and R.C. Chapters 3734 and 3704 and rules promulgated thereunder. Nothing in this Consent Order limits Ohio EPA's authority under R.C. Chapters 3734 or 3704, or any other statutory authority, to determine Defendants' compliance with this Consent Order and R.C. Chapters 3734 and 3704 and rules promulgated thereunder.

IX. STIPULATED PENALTIES

15. If Defendant M-Y fails to meet any of the requirements of Section VII. (Injunction) of this Consent Order Defendant M-Y shall immediately and automatically be liable for and shall pay a stipulated penalty for their respective requirements according to the following payment schedule:

- a. For each day of failure to meet a requirement up to thirty (30) days, two hundred fifty dollars (\$250.00) per day for each requirement not met.
- b. For each day of failure to meet a requirement from thirty-one (31) to sixty (60) days, five hundred dollars (\$500.00) per day for each requirement not

met.

- c. For each day of failure to meet a requirement from sixty-one (61) to ninety (90) days, seven hundred fifty dollars (\$750.00) per day for each requirement not met.
- d. For each day of failure to meet a requirement over ninety (90) days, one thousand (\$1,000.00) per day for each requirement not met.

16. If Defendants YIM and/or WWW fail to meet any of the requirements of Section X. (Attorney Fees) or Section XI. (Civil Penalty, Forfeiture, and Supplemental Environmental Project) of this Consent Order, Defendants YIM and WWW shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule.

- a. For each day of failure to meet a requirement up to thirty (30) days, two hundred fifty dollars (\$250.00) per day for each requirement not met.
- b. For each day of failure to meet a requirement from thirty-one (31) to sixty (60) days, five hundred dollars (\$500.00) per day for each requirement not met.
- c. For each day of failure to meet a requirement from sixty-one (61) to ninety (90) days, seven hundred fifty dollars (\$750.00) per day for each requirement not met.
- e. For each day of failure to meet a requirement over ninety (90) days, one thousand (\$1,000.00) per day for each requirement not met.

17. Any payment required to be made under the provisions of Paragraph Fifteen of this Order shall be made by delivering to Karen Pierson or her successor,

Office of the Attorney General, 30 E. Broad St., 25th Floor, Columbus, Ohio 43215, a certified check or checks for the appropriate amounts, payable to the order of "Treasurer, State of Ohio," within fifteen (15) days from the date of written notice of the failure to meet the requirement of the Consent Order.

X. ATTORNEY FEES

18. Defendants YIM and WWW are ordered and enjoined to pay enforcement costs of the Ohio Attorney General in the amount of five thousand three hundred dollars (\$5,300) within thirty days after entry of this Consent Order. This payment shall be made by delivering to Karen Pierson, Paralegal, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400 a certified check for the appropriate amount, payable to the order of "Treasurer, State of Ohio" to be deposited into the Attorney General's General Reimbursement Account (also known as CAS Fund 106).

XI. CIVIL PENALTY, FORFEITURE, AND SUPPLEMENTAL ENVIRONMENTAL PROJECT

19. Defendants YIM and WWW are ordered and enjoined to pay to Plaintiff State of Ohio a civil penalty of seventy-five thousand three hundred fifty-five dollars (\$75,355) no later than thirty days after entry of this Consent Order. The civil penalty shall be paid as follows:

- a. Of the civil penalty of seventy-five thousand three hundred fifty-five dollars (\$75,355), fifteen thousand and seventy-one dollars (\$15,071) shall be paid as a supplemental environmental project to the Clean Diesel School Bus Program (Fund 5CD0). Such program has been established by the Director for the purpose of installing, in accordance

with Ohio Environmental Protection Agency guidelines, diesel particulate filters for school buses operated by school districts in the State of Ohio. Money in the fund shall be made available to school districts in accordance with a grant established by the Director. The payment shall be made by delivering a certified check in the amount of fifteen thousand and seventy-one dollars (\$15,071) to the Plaintiff, % Karen M. Pierson or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, payable to the order of "Treasurer, State of Ohio," and indicating in the memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, a reference to "A.G. EAGO No. 305632," as well as specifying that such monies are to be deposited into Fund 5CD0 established by Ohio Environmental Protection Agency for the Clean Diesel School Bus Program.

- b. Of the civil penalty of seventy-five thousand three hundred fifty-five dollars (\$75,355), sixteen thousand three hundred and seventy-nine dollars (\$16,379) shall be paid to the environmental remediation fund, created pursuant to R.C. 3734.281. Payment shall be made by delivering a certified check in the amount of sixteen thousand three hundred and seventy-nine dollars (\$16,379) to the Plaintiff, % Karen M. Pierson or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street,

25th Floor, Columbus, Ohio 43215-3400, payable to the order of "Treasurer, State of Ohio," and indicating in the memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, a reference to "A.G. EAGO No. 305632," as well as specifying that such monies are to be deposited into environmental remediation fund, created pursuant to R.C. 3734.281.

- c. Of the civil penalty of seventy-five thousand three hundred fifty-five dollars (\$75,355), forty-three thousand nine hundred and five dollars (\$43,905) shall be paid to the air fund. Payment shall be made by delivering a certified check in the amount of forty-three thousand nine hundred and five dollars (\$43,905) to the Plaintiff, % Karen M. Pierson or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, payable to the order of "Treasurer, State of Ohio," and indicating in the memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, a reference to "A.G. EAGO No. 305632," as well as specifying that such monies are to be deposited into the air fund.

20. Defendant M-Y is ordered and enjoined to pay to Plaintiff State of Ohio a civil penalty of seven hundred fifty dollars (\$750.00) not later than thirty days after entry of this Consent Order. Payment shall be made as a supplemental environmental project to the Clean Diesel School Bus Program (Fund 5CD0). Such program has been established by the Director for the purpose of installing, in accordance with Ohio Environmental

Protection Agency guidelines, diesel particulate filters for school buses operated by school districts in the State of Ohio. Money in the fund shall be made available to school districts in accordance with a grant established by the Director. The payment shall be made by delivering a certified check in the amount of seven hundred fifty dollars (\$750.00) to the Plaintiff, % Karen M. Pierson or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, payable to the order of "Treasurer, State of Ohio," and indicating in the memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, a reference to "A.G. EAGO No. 305632," as well as specifying that such monies are to be deposited into Fund 5CD0 established by Ohio Environmental Protection Agency for the Clean Diesel School Bus Program.

21. Defendant M-Y is ordered and enjoined to forfeit to Plaintiff State of Ohio two hundred fifty dollars (\$250.00), for the violation of R.C. Chapter 1703 set forth in the Seventh Claim for Relief, not later than thirty (30) days after entry of this Consent Order. Forfeiture is to be made by delivering a certified check to the Plaintiff, % Karen M. Pierson or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, payable to the order of "Treasurer, State of Ohio" and indicating in the memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, a reference to "Secretary of State".

XII. RETENTION OF JURISDICTION AND TERMINATION

22. The Court will retain jurisdiction of this action for the purpose of making any entry, Order or decree which it deems necessary to enforce this Consent Order or providing other appropriate relief in this action.

23. Upon Defendants YIM and/or WWW meeting all of the requirements of Section X. (Attorney Fees), Section XI. (Civil Penalty, Forfeiture and Supplemental Environmental Project), and Section XIII (Costs), the Consent Order shall terminate as to Defendants YIM and WWW without further action of the parties.

24. Upon Defendant M-Y meeting all of its requirements as set out in this Consent Order, the Consent Order shall terminate as to Defendant M-Y without further action of the parties.

XIII. COSTS

25. Defendants YIM and WWW shall pay costs of the Mahoning County Court of Common Pleas in this action.

XIV. ENTRY OF CONSENT ORDER

26. 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 Consent Order upon the journal, the clerk is directed to serve upon all parties notice of the Consent Order and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and to note the service in the appearance docket.

IT IS SO ORDERED:

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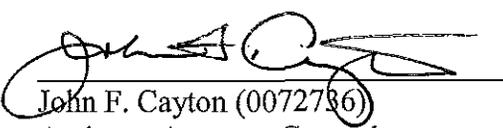


Judge Maureen A. Sweeney
Mahoning County Common Pleas Court

APPROVED BY:

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

BY:



John F. Cayton (0072786)
Assistant Attorney General
1 Government Center, Suite 1340
Toledo, Ohio 43604
(419) 245-2550
Attorney for Plaintiff State of Ohio

YOUNGSTOWN IRON & METAL, INC.

BY:

Joanne L. Wilhelm, its President & CEO

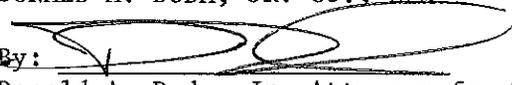
WWW LAND, INC.

BY:

Joanne L. Wilhelm, its President & CEO

DONALD A. DUDA, JR. Co., LPA

By:



Donald A. Duda, Jr. Attorney for Defendants Youngstown Iron & Metal, Inc. and
METALICO YOUNGSTOWN, INC. WWW Land, Inc.

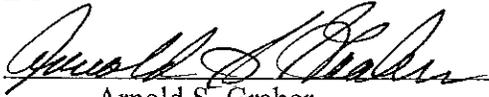
By Arnold S. Graber

CLERK : COPY TO ALL COUNSEL
OR UNREPRESENTED PARTY.

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METALICO YOUNGSTOWN, INC.

BY:



Arnold S. Graber
Secretary

BY:



Maureen Brennan
Baker & Hostetler LLP
3200 National City Center
Cleveland, OH 44114

Attorney for Defendant Metalico Youngstown, Inc.

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