

**IN THE SUPREME COURT OF OHIO**

**STATE OF OHIO EX REL.  
WAYNE T. DONER, ET AL.,**

Relators,

v.

**SEAN D. LOGAN, DIRECTOR  
OHIO DEPARTMENT OF  
NATURAL RESOURCES, ET AL.,**

Respondents.

Case No.: 2009-1292

Master Commissioner Campbell

**RELATORS' MOTION TO STRIKE  
RESPONDENT'S PRESENTATION OF EVIDENCE, TABS E-N**

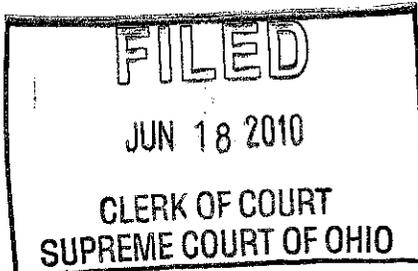
Bruce L. Ingram (0018008)  
*(Counsel of Record)*  
Joseph R. Miller (0068463)  
Thomas H. Fusonie (0074201)  
Kristi Kress Wilhelmy (0078090)  
Martha C. Brewer (0083788)  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008  
Tel.: (614) 464-6480  
Fax: (614) 719-4775  
blingram@vorys.com  
jrmiller@vorys.com  
thfusonie@vorys.com  
kkwilhelmy@vorys.com  
mcbrewer@vorys.com

*Attorneys for Relators*

William J. Cole (0067778)  
*(Counsel of Record)*  
Mindy Worly (0037395)  
Jennifer S.M. Croskey (0072379)  
Assistant Attorneys General  
30 East Broad Street, 26<sup>th</sup> Floor  
Columbus, Ohio 43215  
Tel: (614) 466-2980  
Fax: (866) 354-4086  
william.cole@ohioattorneygeneral.gov  
mindy.worly@ohioattorneygeneral.gov  
jennifer.croskey@ohioattorneygeneral.gov

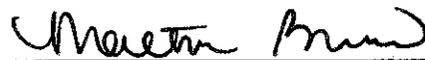
Dale T. Vitale (0021754)  
Rachel H. Stelzer (0083124)  
Daniel J. Martin (0065249)  
Assistant Attorneys General  
Environmental Enforcement Section  
2045 Morse Road # D-2  
Columbus, Ohio 43229  
Tel.: (614) 265-6870; Fax: (614) 268-8871  
dale.vitale@ohioattorneygeneral.gov  
rachel.stelzer@ohioattorneygeneral.gov  
daniel.martin@ohioattorneygeneral.gov

*Attorneys for Respondents*



Relators, by and through counsel, respectfully move this Court to strike Respondent's presentation of evidence at Tabs E-N, filed with this Court on June 1, 2010, on the grounds that the documents do not conform with the authentication requirements of Ohio Rule of Evidence 901 or the presentation of evidence requirements of Supreme Court Practice Rule 10.7. The grounds for this motion are more particularly set forth in the Memorandum in Support submitted herewith.

Respectfully submitted,



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Bruce L. Ingram (0018008)

*(Counsel of Record)*

Joseph R. Miller (0068463)

Thomas H. Fusonie (0074201)

Kristi Kress Wilhelmy (0078090)

Martha C. Brewer (0083788)

Vorys, Sater, Seymour and Pease LLP

52 East Gay Street, P.O. Box 1008

Columbus, Ohio 43216-1008

Tel.: (614) 464-6480

Fax: (614) 719-4775

blingram@vorys.com

jrmiller@vorys.com

thfusonie@vorys.com

kkwilhelmy@vorys.com

mcbrewer@vorys.com

*Attorneys for Relators*

## MEMORANDUM IN SUPPORT

### I. INTRODUCTION

As part of their presentation of evidence, Respondents submitted a selection of Conservation Reserve Program documents (Tabs E-K), 1998 Crop Insurance documents (Tab L), 2003 Crop Insurance documents (Tab M), and 2005 Crop Insurance documents (Tab N). These documents have not been authenticated as required by Ohio Rule of Evidence 901 and fail to meet the appropriate format for presentation to the this Court under Supreme Court Practice Rule 10.7. Accordingly, these documents should be stricken from the record.

### II. LAW AND ARGUMENT

Ohio Rule of Evidence 901 governs the authenticity of evidence and states, “The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” This can be accomplished, for example, by offering testimony of a witness with knowledge of the documents. Ohio Ev. R. 901(B)(1). Evidence that is not properly authenticated may be stricken by the court. *State ex rel. Taft v. Franklin Cty. Court of Common Pleas* (1992), 63 Ohio St.3d 190, 192-193, 586 N.E.2d 114 (court granted motion to strike exhibits in prohibition action because they were not properly authenticated under Evid.R. 902(4)); *State ex rel. Mun. Constr. Equip. Operators’ Labor Council v. Cleveland* 114 Ohio St.3d 183, 2007-Ohio-3831, 870 N.E.2d 1174, at ¶ 39 (striking exhibits that were not self-authenticating pursuant to Evid.R. 902 or authenticated by affidavit pursuant to Evid.R. 901)

Likewise, Supreme Court Practice Rule 10.7, Presentation of Evidence, states the manner in which evidence must be presented to this Court. It states, in relevant part, that outside of the Agreed Statement of Facts, “[a]ll other evidence shall be submitted by affidavits, stipulations,

depositions, and exhibits.” As this Court has explained, “evidence submitted under the Supreme Court Rules of Practice in an original action in this court should comport with the Rules of Evidence.” *State ex rel. Brenders v. Hall* (1995), 71 Ohio St.3d 632, 637, 646 N.E.2d 822, n.1.

Respondents have not satisfied the condition precedent to admissibility for the evidence at Tabs E-N because the documents have not been authenticated. While Ev. R. 902, which governs self-authentication, sets forth a list of exceptions to the requirement of authentication by extrinsic proof, the documents Respondents attempt to introduce do not meet any of the public record exceptions listed in that rule. Further, the documents were not submitted by affidavit, stipulation, deposition or exhibit, as required by this Court. Simply, Respondents have failed to comply with both Ohio Rule of Evidence 901 and Supreme Court Practice Rule 10.7 and the non-compliant documents must be stricken as a result.

### III. CONCLUSION

For the reasons set forth above, Relators respectfully request that this Court strike Respondents presentation of evidence Tabs E-N for failure to comply with the Ohio Rules of Evidence and the Supreme Court Practice Rules.

Respectfully submitted,



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Bruce L. Ingram (0018008)

*(Counsel of Record)*

Joseph R. Miller (0068463)

Thomas H. Fusonie (0074201)

Kristi Kress Wilhelmy (0078090)

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Vorys, Sater, Seymour and Pease LLP

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Tel.: (614) 464-6480

Fax: (614) 719-4775

blingram@vorys.com

jrmiller@vorys.com

thfusonic@vorys.com  
kkwilhelmy@vorys.com  
mcbrewer@vorys.com  
*Attorneys for Relators*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing was served upon the following, via U.S. Mail postage prepaid, this 18th day of June, 2010:

William J. Cole  
Mindy Worly  
Jennifer S.M. Croskey  
Assistant Attorneys General  
30 East Broad Street, 26th Floor  
Columbus, Ohio 43215

Dale T. Vitale  
Daniel J. Martin  
Rachel H. Stelzer  
Assistant Attorneys General  
Environmental Enforcement Section  
2045 Morse Road # D-2  
Columbus, Ohio 43229

*Attorneys for Respondents*



---

Martha C. Brewer