

IN THE COURT OF COMMON PLEAS FEB 4 AM 11:29

ALLEN COUNTY, OHIO

ROBERT M. OWENLAP
CLERK OF COURT
ALLEN COUNTY, OHIO

STATE OF OHIO, ex rel. :
 ANTHONY J. CELEBREZZE, JR., :
 ATTORNEY GENERAL OF OHIO, : Case No. 83-CIV-0037
 Plaintiff, : Judge Michael A. Rumer
 vs. :
 TRANSVAC, DIVISION OF : CONSENT JUDGMENT AND ENTRY
 INTERDYNE CORP., et al., :
 Defendants. :

I.

This cause came on to be heard upon the filing of a Complaint and related Motions demanding, among other things, Preliminary and Permanent injunctive relief against various alleged violations by Defendants of Revised Code Chapter 3734, and the Regulations adopted thereunder, which laws govern the handling, storage and transportation of hazardous wastes, as well as the establishment, maintenance and operation of hazardous waste facilities. By Order of this Court of January 26, 1983, the demands for Preliminary and Permanent Injunctive relief were consolidated.

The Complaint also demands Civil Penalties for alleged violations of said laws by Defendants. This Consent Judgment and Entry does not address Plaintiff's demand for Civil Penalties, the entitlement and amount of which shall be set down for trial upon motion of Plaintiff, at the Court's earliest convenience.

II.

In entering this Consent Judgment and Entry, Defendants neither admit nor deny the facts of the Complaint, nor Plaintiff's entitlement to the ~~permanent injunctive~~ relief contained herein.

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III.

The Court finds and concludes that it has jurisdiction to hear this cause, as well as to Order the permanent injunctive relief contained within this Consent Judgment and Entry.

IV.

Based on the foregoing, and by agreement of all the parties hereto through their respective counsel, it is hereby ORDERED, ADJUDGED AND DECREED that Defendants shall commence removal and disposal of all "hazardous wastes" as that term is defined in Ohio Administrative Code 3745-51-03 presently located at the TransVac, Division of Interdyne Corporation site at 1046 North Jefferson Street, Lima, Ohio, according to the following terms and conditions:

TERMS AND CONDITIONS

1. By February 18, 1983, Defendants shall complete a process of sorting all hazardous wastes according to Defendant's best judgment of similarity of contents and constituents. By this process, Defendants shall attempt to identify, from records and other available information, the nature of said hazardous wastes so as to enable Defendants to dispose of said hazardous wastes at facilities licensed to accept same, pursuant to Revised Code Section 3734.02(F).

2. By February 28, 1983, Defendants shall cause all known "generators", as that term is defined by Ohio Administrative Code 3745-50-10(27), of hazardous wastes on the TransVac site in Lima, Ohio, to inspect said hazardous wastes to further assist Defendants in identifying said wastes by both constituents

and generators. In this regard, Defendants shall identify said wastes by generator and constituents, and shall record said identities by appropriate markings on drums and in a written log, both to be accomplished in a manner approved by the authorized representative of the Ohio Environmental Protection Agency. To the extent that this generator identification process enables Defendants to further refine the sorting of hazardous wastes called for in above Term and Condition No. 1, Defendants shall, by February 28, 1983, further sort said wastes by contents and constituents.

3. a) By March 4, 1983, Defendants shall select a laboratory to conduct such waste analyses as deemed necessary by the authorized representative of the Ohio EPA for proper disposal of the hazardous wastes.

b) The selection of the laboratory -- and the scope of work to be performed by same, including sampling techniques and quality assurance and quality control -- shall be subject to the approval of the authorized representative of the Ohio EPA. Approval by the Ohio EPA shall not be unreasonably withheld.

c) In order to assure the integrity of the analytical process, Defendants shall notify the authorized representative of the Ohio EPA prior to the taking of samples, and shall permit the representative to both observe the sampling process and split samples as he/she deems appropriate.

d) To the extent that wastes can be identified to the written satisfaction of the authorized Ohio EPA representative,

said wastes may be sampled on a composite and/or representative basis. In this regard, the parties hereto recognize that the sampling and analytical process may be subject to modification during the course of said process.

4. By March 25, 1983, Defendants shall submit to the authorized representative of the Ohio EPA for written approval the laboratory waste analyses and/or other analyses obtained from generators, which will enable Defendants to remove and properly dispose of the hazardous wastes at the TransVac site.

5. By April 8, 1983, Defendants shall submit to the authorized representative of the Ohio EPA for written approval a plan for disposal of the hazardous wastes at the TransVac site. Such plan shall contain, at a minimum, the following:

- a. The use of a manifest system, approved by the representative of Ohio EPA, wherein TransVac signs off as the generator of the hazardous wastes (such not to be construed as an admission or representation that Defendants are the original generators of hazardous wastes);
- b. The destination of said wastes for disposal, and evidence of the approval of the proposed receiving sites for said wastes;
- c. The method and means whereby said wastes will be transported;
- d. Evidence that Defendants have obtained from the U.S.E.P.A. an "emergency generator number"; and
- e. A certification that the authorized representative of the Ohio EPA will be contacted prior to the shipment of any hazardous wastes, and advised as to the date and time of said shipments;

To the extent that Defendants have an opportunity to sell any raw product, or recycle any wastes instead of disposing same, such is permissible under the terms of this Order, provided such sale and/or recycling is set forth in the plan referred to in this Term and Condition, and that the removal of such wastes from the site is manifested per this Term and Condition.

6. By April 15, 1983, the plan referred to in above Term and Condition No. 5 shall be implemented, with all hazardous wastes removed from the TransVac site by this date.

7. By May 2, 1983, Defendants shall submit a plan to the authorized representative of the Ohio EPA for approval for testing for and removal and lawful disposal of any surface and subsurface soils which may be contaminated with hazardous wastes. In this regard, Defendants agree that Ohio EPA may, upon reasonable notice, enter the premises and conduct such tests as it deems appropriate to inspect, test and analyze surface and subsurface soils.

V.

In addition to the provisions of above branch IV of this Consent Judgment and Entry, Defendants agree to maintain the presence of the guard posted pursuant to this Court's Order of January 26, 1983, until such time as Defendants make other arrangements for security, approved in writing by the authorized representatives of the Ohio EPA, by means of either a fence around the premises, or the placement of

of a private twenty-four hour a day guard hired by Defendants. In this regard, payment for the guard presently at the site shall be determined per this Court's January 26, 1983 Order.

VI.

In order to provide this Court and Plaintiff with continuing information as to Defendants' compliance with this Consent Judgment and Entry, Defendants shall submit to this Court and to Plaintiff's counsel by Friday of each week until all provisions herein have been complied with, a report outlining the activities of Defendants in accomplishing the goals set forth herein.

VII.

The parties hereto, and the Court, recognize that as this case develops further injunctive relief may be appropriate to address concerns not expressly set forth herein, or to modify the Orders set forth herein. Therefore, either party may at any appropriate time move this Court to expand and/or modify this Consent Judgment and Entry.

VIII.

In addition to the mandatory injunctive relief set forth herein, Defendants are Ordered to refrain from violating the provisions of Ohio Revised Code Chapter 3734, and the regulations adopted thereunder, insofar as same are not in conflict with this Consent Judgment and Order. In particular, Defendants are permanently enjoined from disposing of any hazardous wastes outside of the terms of this Consent Judgment and Entry; and from bringing any further hazardous wastes onto the TransVac site until and unless such activity is approved by law.

IX.

This Consent Judgment and Order, containing permanent injunctive relief, is binding on all the Defendants in both their individual and corporate capacities, and upon all employees, agents, servants, assigns, and other persons and entities acting in concert therewith. Costs of this action shall be assessed after the determination of Plaintiff's demand for civil penalties.

M. Michael A. Rumer
JUDGE MICHAEL A. RUMER

APPROVED:

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TransVac, Division of
Interdyne Corp., Lucke
and Stough

THE STATE OF OHIO, } SS CERTIFICATE OF COPY
Allen County, }

I, ROBERT H. DUNLAP, Clerk of the Court of Common Pleas within and for the aforesaid County and State do hereby certify that the foregoing is a true and correct copy of the original document now on file in said Clerk's office.

IN WITNESS WHEREOF, I have here unto set my hand and affixed the seal of said Court at Lima, Ohio, this 17th day of February, A. D. 1983

(SEAL)

ROBERT H. DUNLAP

Clerk
Deputy