

DIANA ZALESKI
IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO 93 SEP -1 AM 9:23

SUMMIT COUNTY
CLERK OF COURTS

STATE OF OHIO, ex rel. : Case No. CV92020447
LEE FISHER :
ATTORNEY GENERAL OF OHIO, : Judge Maureen O'Connor
 :
Plaintiff, :
 :
v. :
 :
ACE PRECISION INDUSTRIES, :
INC., et al., :
 :
Defendants. :

**CONSENT ORDER BETWEEN PLAINTIFF STATE OF OHIO
AND DEFENDANTS JEROME WOLF, BEVERLY WOLF,
JAMES WOLF AND ERIC WOLF**

The Plaintiff, State of Ohio, ex rel. Lee Fisher, Attorney General of Ohio ("State" or "Plaintiff"), filed a Complaint on February 5, 1992 against Defendants Ace Precision Industries, Inc., ("Defendant Ace"), Jerome S. Wolf, Beverly Wolf, James Wolf and Eric Wolf ("Defendants Wolf"), on behalf of the Director of the Ohio Environmental Protection Agency (hereinafter "Director" or "Ohio EPA"). Said Complaint was filed to enforce the hazardous waste laws and regulations of the State of Ohio as they apply to the five (5) Defendants' waste handling, storage, treatment, and disposal practices at the Defendants' former facility located at 850 Moe Drive, Summit County, Akron, Ohio, (hereinafter "the Moe Drive facility"). Currently, Ace Precision Industries, Inc. is located at and operating from 143 South Thomas Road, Tallmadge, Ohio, (hereinafter "the Thomas Road plant"). This order is being entered by the Court with the consent of Defendants Wolf to (1) remedy and abate the violations of the hazardous waste laws and regulations of the State of Ohio as they are alleged against Defendant Ace in the February 5, 1992 Complaint filed in this matter and (2) resolve the payment of the State's past response costs.

I. PERSONS BOUND

1. The provisions of this Consent Order shall apply to and be binding upon Defendants Jerome Wolf, Beverly Wolf, James Wolf and Eric Wolf, to the extent specifically listed below, and those persons acting on behalf of Defendants Wolf or in active concert or participation with Defendants Wolf. Defendants Wolf shall provide a separate copy of this Consent Order to all such persons described above until such time as all terms of this Consent Order have been complied with.

II. SATISFACTION OF CLAIMS

2. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants Wolf for claims against Defendants Wolf alleged in the February 5, 1992 Complaint and for payment of past response costs related to the State's investigations at the Moe Drive facility. Notwithstanding compliance with the terms of this Consent Order, nothing in this Consent Order, including the requirement that Defendants Wolf pay stipulated penalties for violations of the Consent Order, shall be construed to limit the authority of the State of Ohio, except for the past response costs set forth in paragraph 13, to seek any legal or equitable relief for claims not alleged in the February 5, 1992 Complaint or for violations which occur after filing of this Consent Order. Notwithstanding compliance with the terms of this Consent Order, nothing in this Consent Order shall be construed to preclude the State of Ohio or the Director from seeking any legal and/or equitable remedy against any person, including Defendants Wolf, pursuant to ORC §3734.20, or from ordering any person, including Defendants Wolf, to undertake remedial or corrective action, monitoring and/or testing pursuant to ORC §3734.20 in order to abate and/or remedy pollution or contamination existing at the Moe Drive facility or any other location if the Director determines that conditions existing at the Moe Drive facility or any other location constitute a substantial threat to public health or safety or are causing or contributing to or threatening to cause or contribute to air or water pollution or soil contamination.

III. JURISDICTION AND VENUE

3. The Court has both personal and subject-matter jurisdiction over

Defendants Wolf and the claims contained in the February 5, 1992 Complaint. The Complaint states a claim upon which relief can be granted against Defendants Wolf under Chapter 3734. of the Ohio Revised Code and the rules promulgated thereunder. Venue is proper in this Court.

**IV. PARTIAL CONSENT ORDER BETWEEN DEFENDANTS WOLF
AND CONSENT ORDER BETWEEN DEFENDANT ACE
PRECISION INDUSTRIES, INC.**

4. Plaintiff, State of Ohio, and Defendants Wolf agree that upon entry of this Consent Order the Partial Consent Order which was entered by this Court on December 10, 1992 is terminated by this Court as to Defendants Wolf. J.K. [Signature]

5. Defendants Wolf agree that Defendant Ace Precision Industries, Inc. shall continue to comply with the Ace Precision Consent Order which was entered by this Court on December 10, 1992.

V. CLOSURE PLAN

6. Defendants Jerome Wolf, Beverly Wolf and James Wolf are hereby ordered and enjoined to fully implement the terms and conditions of the closure plan approved by final action of the Director of Environmental Protection on June 12, 1992, and to comply with OAC Rules 3745-66-10 through 3745-66-20. Such closure plan approved by final action of the Director on June 12, 1992 shall become an enforceable part of this Consent Order, and is hereby incorporated into this Consent Order by reference, subject to stipulated penalties provided in paragraph 21 of this Consent Order.

7. The closure plan described above may be amended or modified prior to final closure of the facility pursuant to O.A.C. Rule 3745-66-12. The closure plan as amended or modified pursuant to O.A.C. Rule 3745-66-12 shall become an enforceable part of this Consent Order subject to stipulated penalties as provided in paragraph 21 of this Consent Order.

8. Defendants Jerome Wolf, Beverly Wolf and James Wolf are hereby ordered and enjoined to complete all closure activities in accordance with the

approved closure plan and O.A.C. Rule 3745-66-13. Upon completing implementation of the approved closure plan, Defendants Jerome Wolf, Beverly Wolf and James Wolf are ordered and enjoined to certify completion of closure in accordance with OAC Rule 3745-66-15.

VI. CLOSURE FINANCIAL ASSURANCE

9. Defendants Jerome Wolf, Beverly Wolf, James Wolf and Eric Wolf are hereby enjoined and ordered to establish financial assurance in the amount of \$140,000.00 for closure of the Moe Drive facility as provided in one of the options set forth in OAC Rule 3745-66-43. At no time will Defendants Wolf be required, pursuant to OAC Rule 3745-66-43, to maintain financial assurance at an amount which exceeds \$140,000.00.

10. To implement the closure financial assurance requirement set forth in paragraph 9, Defendants Wolf, by September 15, 1993, shall submit the necessary financial documents, as provided for in one of the options set forth in OAC Rule 3745-66-43, which establish that \$78,000.00 has been set aside for closure financial assurance. Such documents shall be submitted to: Laurie Stevenson, Ohio EPA, Division of Hazardous Waste Management, 1800 WaterMark Drive, Columbus, Ohio 43266. By September 15, 1994, Defendants Wolf shall submit documents, to the address listed above, which establish that an additional \$62,000.00 (for a total of \$140,000.00) has been set aside for closure financial assurance.

11. As provided by O.A.C. Rule 3745-66-43 if at any time Defendants Wolf determine that the value of the closure financial assurance is greater than the total amount of the current closure cost estimate, pursuant to O.A.C. Rule 3745-66-42, Defendants Wolf may submit a written request to the Director for release of the amount in excess of the current closure cost estimate. Upon receipt, review and approval of such a request, the Director will instruct the holder of the financial assurance to transfer to Defendant Jerome Wolf, Beverly Wolf, and James Wolf's post-closure care financial assurance account such funds as the Director has approved to be transferred.

VII. POST-CLOSURE CARE FINANCIAL ASSURANCE

12. Defendants Jerome Wolf, Beverly Wolf, and James Wolf are hereby ordered and enjoined to establish financial assurance in the amount of \$140,000.00 for post-closure care of the Moe Drive facility as provided in one of the options set forth in OAC Rule 3745-66-45 and as further modified by the provisions of this Consent Order. At no time will Defendants Jerome Wolf, Beverly Wolf, and James Wolf be required, pursuant to OAC Rule 3745-66-45, to maintain financial assurance at an amount which exceeds \$140,000.00.

13. To implement the post-closure care financial assurance requirement set forth in paragraph 12, Defendants Jerome Wolf, Beverly Wolf, James Wolf and Eric Wolf authorize Ohio EPA to transfer any money released from Defendant Wolfs' closure financial assurance account and to deposit such money into a post-closure care financial assurance account for the Moe Drive facility. Thus, Defendants Jerome Wolf, Beverly Wolf and Jerome Wolf shall only be required to fund the post-closure care account only when money is released from Defendants closure financial assurance account.

14. When closure of the Moe Drive facility is completed, Defendants Jerome Wolf, Beverly Wolf, James Wolf and Eric Wolf authorize Ohio EPA to transfer any money left in Defendants closure financial assurance account and to deposit such money into Defendants post-closure account.

15. As provided by O.A.C. Rule 3745-66-45 if after closure is completed Defendants Jerome, Beverly Wolf and James Wolf determine that the value of the post-closure financial assurance is greater than the total amount of a current post-closure care cost estimate, pursuant to O.A.C. Rule 3745-66-44, Defendants Jerome Wolf, Beverly Wolf and James Wolf may submit a current post-closure care cost estimate and a written request to the Director for release of the amount in excess of the current closure cost estimate. Upon receipt, review and approval of such a request, the Director will instruct, in writing, the holder of the financial assurance to release to Defendants Wolf such funds as the Director has approved to be released.

16. Defendants Jerome Wolf, Beverly Wolf and James Wolf are hereby

ordered and permanently enjoined to comply with the provisions of O.A.C. 3745-66-45 as further modified by the provisions of this Consent Order.

VIII. INJUNCTION

17. Defendants Wolf are hereby ordered and permanently enjoined to comply with the applicable provisions of O.A.C. Chapter 3745-52 and O.A.C. Rule 3745-51-05 at the Moe Drive facility and the Thomas Road Plant. Defendants Wolf are ordered and permanently enjoined to refrain from engaging in any storage, treatment or disposal of hazardous wastes at the Moe Drive facility and the Thomas Road plant for which a hazardous waste facility installation and operation permit is necessary without first obtaining such a permit from the Ohio Hazardous Waste Facility Board.

IX. RESPONSE COSTS RELATED TO THE STATE'S INVESTIGATION AT THE MOE DRIVE FACILITY

18. The State has incurred Thirteen Thousand Dollars (\$13,000.00) in response costs related to its investigations of the hazardous wastes at the Moe Drive facility. Defendants Jerome Wolf, Beverly Wolf and James Wolf shall pay these costs by delivering certified checks totaling Thirteen Thousand Dollars (\$13,000.00), payable to the order of "Treasurer, State of Ohio", according to the following payment schedule:

1. Payments of Five Hundred and Forty-Two Dollars (\$542.00) on November 1, 1993, February 1, 1994, May 1, 1994, August 1, 1994, November 1, 1994, February 1, 1995, May 1, 1995, August 1, 1995, November 1, 1995, February 1, 1996, May 1, 1996, August 1, 1996, November 1, 1996, February 1, 1997, May 1, 1997, August 1, 1997, November 1, 1997, February 1, 1998, May 1, 1998, August 1, 1998, November 1, 1998, February 1, 1999, and May 1, 1999.
2. A final payment of Five Hundred and Thirty-Four Dollars (\$534.00) on August 1, 1999.

These response costs shall be paid into the Hazardous Waste Cleanup Fund created by O.R.C. Section 3734.28.

X. CIVIL PENALTY

19. Defendants Jerome Wolf, Beverly Wolf and James Wolf shall pay to State of Ohio a civil penalty of Fifty Thousand Dollars (\$50,000.00). The penalty shall be paid by delivering certified checks for that amount, payable to the order of "Treasurer, State of Ohio" according to the following payment schedule:

1. Payments of Two Thousand Eighty-Four Dollars (\$2,084.00) on November 1, 1993, February 1, 1994, May 1, 1994, August 1, 1994, November 1, 1994, February 1, 1995, May 1, 1995, August 1, 1995, November 1, 1995, February 1, 1996, May 1, 1996, August 1, 1996, November 1, 1996, February 1, 1997, May 1, 1997, August 1, 1997, November 1, 1997, February 1, 1998, May 1, 1998, August 1, 1998, November 1, 1998, February 1, 1999, and May 1, 1999.
2. A final payment of Two Thousand Sixty-Eight Dollars (\$2,068.00) on August 1, 1999.

This penalty shall be paid into the Hazardous Waste Clean-up Fund created by O.R.C. Section 3734.28.

20. The response costs and civil penalty checks required by paragraphs 18 through 19 above shall be delivered to the following address:

Janis Miller
Administrative Assistant
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410.

XI. STIPULATED PENALTIES

21. In the event Defendants Jerome Wolf, Beverly Wolf and James Wolf or any other person bound by this Consent Order, violates any of the terms of Section V, VI and VII of this Consent Order, Defendants Jerome Wolf, Beverly Wolf and James Wolf shall be liable immediately, automatically, jointly and severally for, and are hereby ordered and enjoined to pay, stipulated penalties for such violation(s) according to the following schedule: For each day of each violation or failure to meet a requirement,

up to thirty (30) days - Five Hundred Dollars (\$500.00) per day per violation. For each day of each violation or failure to meet a requirement from thirty (30) to sixty (60) days - One Thousand Dollars (\$1,000.00) per day per violation. For each day of each violation or failure to meet a requirement from sixty-one (61) to ninety (90) days - Fifteen Hundred Dollars (\$1,500.00) per day per violation. For each day of each violation or failure to meet a requirement over ninety (90) days - Two Thousand Dollars (\$2,000.00) per day per violation.

22. Any payment required to be made pursuant to Section XI of this Consent Order shall be paid by certified check made payable to "Treasurer, State of Ohio," which check shall be delivered by mail or otherwise to Plaintiff's counsel or his successor at the Office of the Attorney General, Environmental Enforcement Section, 30 East Board Street, 25th Floor, Columbus, Ohio 43266-0410, within thirty (30) days of the violation or failure to meet the requirements of this Consent Order. This penalty shall be paid into the hazardous waste clean-up fund created by ORC §3734.28. Payment of stipulated penalties pursuant to this Consent Order shall not preclude an action in contempt for violation of this Consent Order.

XII. POTENTIAL FORCE MAJEURE

23. If Defendants Jerome Wolf, Beverly Wolf, and James Wolf discovers they are or will be unable to comply with any term of this Consent Order, including any milestone deadline in this Consent Order, for any reason, including circumstances beyond their control, they shall notify Ohio EPA of the anticipated delay and reasons therefor within 14 days of the event which Defendants Jerome Wolf, Beverly Wolf and James Wolf believe will prevent compliance with such term. Upon receipt of such notice Plaintiff may agree to defer compliance with such term or the enforcement thereof. Plaintiff will promptly inform Defendant Jerome Wolf, Beverly Wolf and James Wolf of its decision in writing. Plaintiff is not bound by oral representations by State employees concerning the validity of Defendants' reason for delay. Any term or milestone deadline of this Consent Order which Plaintiff defers to a later date shall be enforceable to the same extent as the deferred term or milestone. A decision by Plaintiff to defer enforcement of any milestone deadline or stipulated penalties set forth

in this Consent Order shall not constitute a waiver of enforcement action with regard to the terms of this Consent Order unless the Plaintiff expressly so agrees.

24. Defendants Jerome Wolf, Beverly Wolf, and James Wolf may raise the question of whether they are entitled to a defense that their conduct was caused by reasons beyond their control such as, by way of example and not limitation, acts of God, unusually severe weather conditions, strikes, or acts of war or civil disturbances. While Plaintiff does not agree that such a defense exists, and that it is premature at this time to raise and adjudicate the existence of such a defense, Defendants Jerome Wolf, Beverly Wolf, and James Wolf may adjudicate the existence of such a defense when a contempt action, if any, is commenced or upon the violation of, or failure to meet, any term of the Consent Order. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendants Jerome Wolf, Beverly Wolf, and James Wolf shall rest with Defendants Jerome Wolf, Beverly Wolf, and James Wolf. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances shall not constitute circumstances entirely beyond the control of Defendants Jerome Wolf, Beverly Wolf, and James Wolf or serve as a basis for an extension of time under this Consent Order. Failure by Defendants Jerome Wolf, Beverly Wolf, and James Wolf to comply with the notice requirements of paragraph 11 may render this paragraph void and of no force and effect as to the particular incident involved and may constitute a waiver of Defendants Jerome Wolf, Beverly Wolf, and James Wolf's right to request an extension of their obligations under this Consent Order based upon such incident. An extension of one compliance date based on a particular incident does not mean that Defendants Jerome Wolf, Beverly Wolf, and James Wolf qualifies for an extension of a subsequent compliance date or dates. Defendants Jerome Wolf, Beverly Wolf, and James Wolf must make an individual showing or proof regarding each incremental step or other requirement for which an extension is sought.

XIII. RETENTION OF JURISDICTION

25. The Court will retain jurisdiction of this action as against Defendants Wolf

for the purpose of overseeing that Defendants Wolf comply with the terms and conditions of this Consent Order and comply with ORC Chapter 3734. and the applicable rules adopted thereunder.

XIV. INSPECTIONS

26. Defendants Wolf are hereby ordered and enjoined to allow employees, representatives and agents of the Ohio EPA, upon proper identification, to enter upon the facility at reasonable times to inspect, investigate, take samples and pictures and examine or copy records in order to determine compliance with the terms of this Consent Order and ORC Chapters 3734. and the rules promulgated thereunder, and to determine the need for corrective and/or remedial action pursuant to ORC Chapters 3734. Nothing in this consent Order shall limit the rights of Ohio EPA or its agents and employees to conduct routine inspections at the facility pursuant to statute or rule.

XV. NOTICE

27. Except as otherwise specified in this Consent Order, Defendants Wolf are ordered to submit to Ohio EPA written notification of completion of any task or requirement set forth in this Consent Order, including any requirement contained in the closure plan described in Section IV of this Consent Order, within seven (7) days of completion of such task or requirement. Such notice along with any other submission to Ohio EPA required herein shall be submitted to:

- a. Ohio Environmental Protection Agency
Northeast District Office
Attn: RCRA Group Leader
2110 East Aurora Road
Twinsburg, Ohio 44087

- b. Ohio Environmental Protection Agency
Division of Hazardous Waste Management
Attn: Manager, Compliance - Monitoring & Enforcement Section
P.O. Box 1049
1800 WaterMark Drive
Columbus, Ohio. 43266-0149.

XVI. COSTS

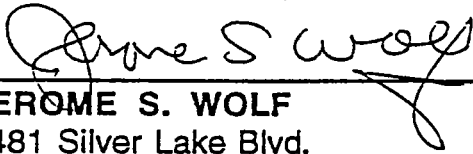
28. Defendants Wolf shall pay the costs of this action.

ENTERED THIS _____ DAY OF _____, 1993.

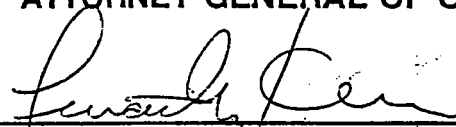
JUDGE MAUREEN O'CONNOR
SUMMIT COUNTY COURT OF COMMON
PLEAS

APPROVED BY:

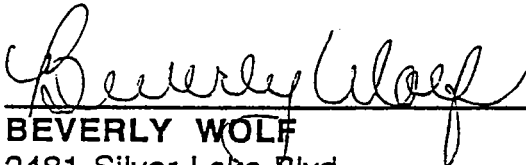
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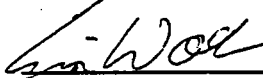


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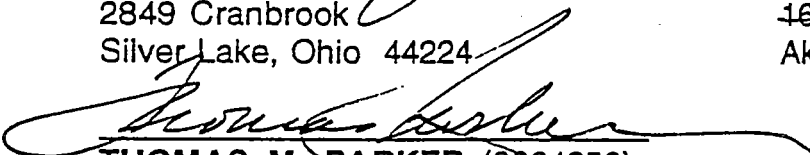
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