

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

DIANA ZALESKI  
92 DEC 14 AM 8:33  
SUMMIT COUNTY  
CLERK OF COURTS

STATE OF OHIO,  
*ex rel.* LEE FISHER,  
ATTORNEY GENERAL OF OHIO,

*Plaintiff,*

vs.

ACE PRECISION INDUSTRIES,  
INC., *et al.*,

*Defendants.*

: CASE NO. CV92020447

: JUDGE BAYER

---

CONSENT ORDER BETWEEN PLAINTIFF STATE OF OHIO  
AND DEFENDANT ACE PRECISION INDUSTRIES, INC.

---

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 Defendant Ace to remedy and abate only 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. Allegations in the February 5, 1992 Complaint raised against the four (4) named individuals ("Defendants Wolf") remain intact. The Defendants Wolf, in their individual capacities, are in no way bound by the terms and conditions of this Consent Order. Similarly, the Defendants Wolf, in their individual capacities, are in no way released from any personal liability which they may have regarding each and every allegation raised in Plaintiff's February 5, 1992 Complaint.

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

I. PERSONS BOUND

1. The provisions of this Consent Order shall apply to and be binding upon Defendant Ace, its assigns, successors, and predecessors in interest, and those persons acting on behalf of Defendant Ace or in active concert or participation with Defendant Ace. Defendant Ace 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, Defendant Ace or Defendants Wolf has submitted certification to Ohio EPA pursuant to OAC Rule 3745-66-15 that the facility has been closed in accordance with the approved closure plan described and referenced herein, and the Director acknowledges in writing that the Moe Drive Facility has, in fact, been properly closed.

## II. SATISFACTION OF CLAIMS

2. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant Ace for claims against Defendant Ace alleged in the February 5, 1992 Complaint. Notwithstanding compliance with the terms of this Consent Order, nothing in this Consent Order, including the requirement that Defendant Ace pay stipulated penalties for violations of the Consent Order, shall be construed to limit the authority of the State of Ohio 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 Defendant Ace, pursuant to ORC §3734.20, or from ordering any person, including Defendant Ace, 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 Defendant Ace and the claims contained in the February 5, 1992 Complaint. The Complaint states a claim upon which relief can be granted against Defendant Ace under Chapter 3734. of the Ohio Revised Code and the rules promulgated thereunder. Venue is proper in this Court.

### IV. CLOSURE PLAN

4. Defendant Ace is 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 nine (9) of this Consent Order.

5. 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 nine (9) of this Consent Order.

6. Defendant Ace is 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, Defendant Ace is ordered and enjoined to certify completion of closure in accordance with OAC Rule 3745-66-15.

#### V. INJUNCTION

7. Defendant Ace is 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. Defendant Ace is 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.

8. Defendant Ace is hereby ordered and enjoined, within thirty (30) days after the entry of this Consent Order to

submit documentation to Ohio EPA establishing that Ace Precision Industries, Inc. has applied to the Ohio EPA for a generator identification number as set forth in and pursuant to OAC Rule 3745-52-12 for the Moe Drive facility and the Thomas Road Plant.

#### **VI. STIPULATED PENALTIES**

9. In the event Defendant Ace, or any other person bound by this Consent Order, violates any of the terms of Section IV of this Consent Order, said persons 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.

10. Any payment required to be made pursuant to Section VI 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.

**VII. POTENTIAL FORCE MAJEURE**

11. If Defendant Ace discovers it is 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 its control, it shall notify Ohio EPA of the anticipated delay and reasons therefor within 14 days of the event which Defendant Ace believes 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 Ace of its decision in writing. Plaintiff is not bound by oral representations by State employees concerning the validity of Defendant's 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.

12. Defendant Ace may raise the question of whether it is entitled to a defense that its conduct was caused by reasons beyond its 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, Defendant Ace 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 Defendant Ace shall rest with Defendant Ace. 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 Defendant Ace or serve as a basis for an extension of time under this Consent Order. Failure by Defendant Ace 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 Defendant Ace's right to request an extension of its obligations under this Consent Order based upon such incident. An extension of one compliance date based on a particular incident does not mean that Defendant Ace qualifies for an extension of a subsequent compliance date or dates. Defendant Ace must make an individual showing or proof regarding each incremental step or other requirement for which an extension is sought.

#### VIII. RETENTION OF JURISDICTION

13. The Court will retain jurisdiction of this action as against Defendant Ace for the purpose of overseeing that Defendant Ace complies with the terms and conditions of this Consent Order and complies with ORC Chapter 3734. and the applicable rules adopted thereunder.

#### IX. INSPECTIONS

14. Defendant Ace is 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.

**X. NOTICE**

15. Except as otherwise specified in this Consent Order, Defendant Ace is 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

**XI. COSTS**

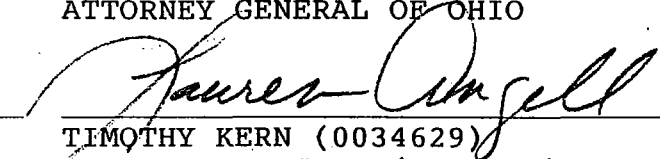
16. Defendant Ace shall pay the costs of this action.

ENTERED THIS 10<sup>th</sup> DAY OF Dec, 1992.

  
\_\_\_\_\_  
JUDGE BAYER, SUMMIT COUNTY COURT  
OF COMMON PLEAS

APPROVED BY:

STATE OF OHIO,  
ex rel. LEE FISHER  
ATTORNEY GENERAL OF OHIO



ACE PRECISION INDUSTRIES, INC.

By: Jerome S. Wolf

Name: JEROME S. WOLF

Title: PRESIDENT

TIMOTHY KERN (0034629)  
LAUREN C. ANGELL (0042615)  
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street - 25th Floor  
Columbus, Ohio 43266-0410  
Telephone: (614) 466-2766



TERRENCE J. STEEL  
1900 First National Tower  
Akron, Ohio 44308-1453

Counsel for Plaintiff  
State of Ohio

Attorney for Defendant  
Ace Precision Industries, Inc.

1130E1/11