

DIANA ZALESKI

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

JUL 9 4 09 PM '90

STATE OF OHIO, ex rel. ANTHONY J. CELEBREZZE, JR., ATTORNEY GENERAL OF OHIO,	:	Case No. CV-884-1014
	:	
Plaintiff,	:	JUDGE CAMPBELL
	:	
v.	:	
	:	
AEROSOL SYSTEMS, INC., et al.,	:	<u>CONSENT ORDER</u>
	:	
Defendants.	:	

The Plaintiff, State of Ohio, ex rel. Anthony J. Celebrezze, Jr., Attorney General of Ohio ("State" or "Plaintiff"), having filed the Complaint in this action against the Defendants Aerosol Systems, Inc. ("ASI") and Lloyd T. Flanner (hereinafter "Defendants" unless otherwise specifically referenced), to enforce the State of Ohio's Hazardous Waste and Water Pollution Control statutes and rules concerning the waste handling, storage, treatment and disposal practices at ASI's facility located at 9150 Valley View Road, Macedonia, Summit County, Ohio (hereinafter the "Facility"), and Plaintiff and Defendants having consented to entry of this Order;

Therefore, without trial or admission of any issue of law or of fact, and upon the consent of the parties hereto, 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 the parties to this action, their agents,

officers, employees, assigns, successors, predecessors in interest, and those persons in active concert or participation with them. Defendant ASI shall provide a copy of this Consent Order to each officer, employee, consultant or contractor employed to perform work referenced herein or to handle, store, treat and/or dispose of hazardous wastes generated by Aerosol Systems, Inc. until such time as certification is submitted to the Ohio EPA, pursuant to O.A.C. 3745-66-15, that the Facility has been closed in accordance with the specifications in the approved closure plan.

II. SATISFACTION OF LAWSUIT

2. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by the Defendants for all claims alleged in the Complaint. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint or which involve locations other than the Facility. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions alleged in State ex rel. Celebrezze, v. William Campbell, Aerosol Systems, Inc., et al., Case No. 425955, Medina County Court of Common Pleas. Furthermore, nothing in this Order shall be construed as to limit the

authority of the State of Ohio to undertake any action against any person, including the Defendants, to eliminate or mitigate conditions arising after the date hereof which may present an endangerment to the public health, welfare or the environment.

III. JURISDICTION AND VENUE

3. The Court has jurisdiction over the parties and the subject matter of this case. Venue is proper.

IV. CLOSURE

4. Defendant ASI is ordered within ninety (90) days after filing of the Consent Order, to submit an approvable closure plan which meets the requirements of O.A.C. Chapter 3745-66, including but not limited to O.A.C. Rule 3745-66-12, to the Director of the Ohio EPA and the Ohio EPA's Northeast District Office for remediation of waste contamination at the Facility. If the Director of the Ohio EPA disapproves part or all of the closure plan, Defendant ASI shall resubmit the disapproved portion in approvable form to the Ohio EPA within 30 days of Ohio EPA's notification of disapproval of the plan. Defendant ASI is enjoined and ordered to fully implement the closure plan as approved by the Ohio EPA, including any approved amendments thereto, in accordance with O.A.C. Chapter 3745-66.

5. Until such time as Defendant ASI certifies to the Ohio EPA, pursuant to O.A.C. Rule 3745-66-15, that the Facility has been closed in accordance with the specifications in the approved closure plan, Defendant ASI is hereby specifically enjoined and ordered to perform the following tasks:

- a. Defendant ASI shall submit to the Ohio EPA within 30 days after filing of the Consent Order annual reports for the calendar years 1986, 1987, 1988 and 1989, which meet the requirements of O.A.C. 3745-65-75.
- b. Defendant ASI shall submit to the Ohio EPA within 30 days after filing of the Consent Order a detailed written estimate, of the cost of closing the Facility, pursuant to the requirements contained in O.A.C. 3745-66-42. Revisions to the detailed written estimate of the cost of closing shall be made pursuant to O.A.C. Rule 3745-66-42.
- c. Within 30 days after filing of the Consent Order Defendant ASI shall have established financial assurance for closure of the Facility pursuant to one of the options provided for in O.A.C. 3745-66-43. Furthermore, Defendant ASI shall submit documentation to the Director of the Ohio EPA demonstrating said financial assurance within 45 days after filing of the Consent Order. Updates to the financial assurance shall be made pursuant to O.A.C. Rule 3745-66-43.
- d. Defendant ASI shall comply with O.A.C. Rule 3745-66-12 [closure plan; amendment of plan];
- e. Defendant ASI shall comply with O.A.C. Rule 3745-65-14 [security];
- f. Defendant ASI shall comply with O.A.C. Rule 3745-65-15 [general inspection requirements];
- g. Defendant ASI shall submit to Ohio EPA within thirty (30) days after filing of the Consent Order documentation detailing compliance with O.A.C. Rules 3745-65-14 and 3745-65-15.

V. PERMANENT INJUNCTION

6. Defendants are hereby permanently enjoined and ordered to comply with O.R.C. Chapters 3734 and 6111 and rules promulgated

thereunder. Except as otherwise provided under Section IV herein, Defendants are permanently enjoined from engaging in any future storage, treatment or disposal of hazardous waste without first obtaining, as may be required by law, a hazardous waste facility installation and operation permit from the hazardous waste facility board. Defendants are permanently enjoined from discharging any industrial waste or other waste into waters of the state without first obtaining as may be required by law an NPDES permit issued by the Director of Environmental Protection under R.C. Chapter 6111.

VI. CIVIL PENALTY

7. It is hereby ordered that the Defendants shall pay a civil penalty of seventy-five thousand dollars (\$75,000.00). The penalty shall be paid by certified check or money order made payable to "Treasurer, State of Ohio," which check shall be delivered by mail, or otherwise to James O. Payne, Jr. or his successor at his office at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, within 30 days of filing of this Consent Order. This penalty will be paid into the hazardous waste cleanup fund created by O.R.C. Section 3734.28.

VII. STIPULATED PENALTIES

8. In the event that either Defendant violates any of the terms of this Consent Order, such Defendant shall immediately and automatically be liable for and shall pay stipulated penalties according to the following schedule. For each day of

violation or failure to meet a requirement, up to thirty (30) days - One Thousand Dollars (\$1,000.00) per day. For each day of violation or failure to meet a requirement, from thirty-one (31) to sixty (60) days - Two Thousand Dollars (\$2,000.00) per day. For each day of violation or failure to meet a requirement, from sixty-one (61) to ninety (90) days - Three Thousand Dollars (\$3,000.00) per day. For each day of violation or failure to meet a requirement, over ninety (90) days - Five Thousand Dollars (\$5,000.00) per day. Any payment required to be made pursuant to Section VII 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 James O. Payne, Jr, or his successor at his office at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, within thirty (30) days of the violation or failure to meet the requirement of this Consent Order. This penalty shall be paid into the hazardous waste clean-up fund created by O.R.C. Section 3734.28.

VIII. POTENTIAL OF FORCE MAJEURE

9. If any event occurs which causes or may cause a delay of any requirement of this Consent Order applicable to Defendant ASI, Defendant ASI shall notify the Ohio EPA in writing within fourteen (14) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of delay, the measures taken and to be taken by Defendant ASI to

prevent or minimize the delay and the timetable by which those measures will be implemented. Defendant ASI will adopt all reasonable measures to avoid or minimize any such delay.

10. In any action by the State of Ohio to enforce any of the provisions of this Consent Order, Defendant ASI may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant ASI and the State of Ohio that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time, if ever, that the proceeding to enforce this Consent Order is commenced by the State. At that time the burden of proving that any delay was or will be caused by circumstances beyond the control of Defendant ASI shall rest with Defendant ASI. Failure by Defendant ASI to comply with the notice requirements of Paragraph 10 shall constitute a waiver by Defendant ASI of any right it may have to raise such a defense. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances shall not in any event

constitute circumstances entirely beyond the control of Defendant ASI, or serve as a basis for an extension of time under this Consent Order.

IX. RETENTION OF JURISDICTION

11. The Court will retain jurisdiction of this action for the purpose of overseeing compliance with this Consent Order and Chapters 3734 and 6111 of O.R.C. and rules adopted thereunder.

X. INSPECTIONS

12. Defendant ASI is ordered to allow representatives of the Ohio EPA, upon proper identification, to enter upon the Facility at reasonable times during business hours, 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 O.R.C. Chapters 3734 and 6111 and rules promulgated thereunder. Nothing in the Order shall limit the rights of the Ohio EPA or U.S. EPA to conduct inspections or investigations pursuant to statute or regulation.

XI. MISCELLANEOUS

13. Defendants reserve all rights to appeal any action of the Ohio EPA to the Environmental Board of Review as allowed by law.

XII. NOTICE

14. Any submission to the Ohio EPA as required by this Consent Order unless otherwise indicated shall be delivered to:

- a. Ohio EPA
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: Debby Berg or her successor

b. Ohio EPA
Division of Solid and Hazardous Waste Management
P.O. Box 1049
1800 WaterMark Drive
Columbus, Ohio 43266-0149
Attn: Michael Savage or his successor


XIII. COURT COSTS

15. The Defendants shall pay the court costs of this action.


JUDGE CAMPBELL

ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO

AEROSOL SYSTEMS, INC.
BY:



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Title: Pres.



LLOYD T. FLANNER

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