

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

AKZO NOBEL SALT, INC.,
"a.k.a. AKZO SALT, INC.",

Defendant.

: CASE NO.

: JUDGE

290956

: 312 BRIAN J. CORRIGAN
: CONSENT ORDER

The Complaint in the above-captioned matter having been filed against Defendant herein, and Plaintiff State of Ohio by its Attorney General Betty D. Montgomery and Defendant Akzo Nobel Salt, Inc. (a/k/a Akzo Salt Inc.) (hereinafter "Akzo") having consented to the entry of this Order; and

Plaintiff and Akzo having agreed that settlement of this matter is in the public's interest and that entry of this Consent Order is without admission as to allegations set forth in the complaint and to settle and resolve claims which are contested as to validity and amount without further litigation; and

Akzo does not admit the allegations as set forth in the Complaint, and agrees to this Consent Order solely for purposes of settlement of these matters and Akzo denies any violation of State statute and regulation.

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the subject matter herein pursuant to Chapter 6111. of the Ohio Revised Code. The Complaint states a claim upon which relief can be granted against Akzo. This Court has jurisdiction over the parties hereto. Venue is proper in this court.

II. PERSONS BOUND

2. The provisions of this Consent Order shall apply to and be binding upon Akzo, its directors, officers, agents, employees, successors in interest, and assigns and any person, firm, or corporation who is, or will be, acting on behalf of, in concert with or in participation with Akzo for purposes of accomplishing this Consent Order. In the event that Akzo sells or transfers its interest in the Facility, as defined below, it shall provide the purchaser or transferee with a copy of this Order, and shall notify Plaintiff of such sale or transfer. Akzo shall provide a copy of this Consent Order to each contractor or consultant employed to perform work described herein and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work. In all contracts for work performed to carry out the requirements of this Consent Order, Akzo shall incorporate conditions that such work be done in compliance with these requirements. Nothing in this Order shall expand or restrict the provisions in Ohio Civil Rule of Procedure 65(D).

III. SATISFACTION OF LAWSUIT

3. Except as provided herein, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil or administrative liability by Akzo for all claims alleged in the Complaint brought under Chapter 6111 of the Revised Code for violations occurring at Akzo's Class I Non-Hazardous Underground Injection Control (UIC) well and for violations as fully set forth in Count nine of the complaint (in which Akzo discharged process wastewaters from a mine shaft sump pump to a storm sewer), from at least September 30, 1987 until the date of the filing of this Consent Order and as set forth in all the Notices of Violation issued by Ohio EPA's UIC program to Akzo during this time period with regard to the Class I

Non-Hazardous UIC well at the facility located at 2400 Ships Channel, Whiskey Island, Brooklyn Township, Cleveland (hereinafter the "facility"). Nothing in this Consent Order, including the requirement that Akzo pay stipulated penalties for violations of this Consent Order, shall be construed to limit the authority of the State of Ohio to seek injunctive relief or any penalties for claims not alleged in the Complaint or contained in the Notices of Violation referenced herein, including violations which occur after the entry of the Consent Order. Similarly, nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to undertake any action against any person, including Akzo to eliminate or mitigate conditions which may present a threat to the public health, welfare or the environment in addition to what they are otherwise required to conduct under the Consent Order. Nothing herein shall be construed to preclude the State from enforcing legal and applicable statutes or regulations that require Akzo or others to conduct remedial or corrective action, or that require additional monitoring, or that require the installation of Underground Source of Drinking Water ("USDW") monitor wells, or that require Akzo or others to conduct testing at the facility and/or that require Akzo or others to take any other action to address conditions revealed by any submittal made pursuant to this Consent Order, or any conditions presently unknown to Plaintiff. By entry of this Consent Order, Akzo does not waive any rights or remedies it has under Federal or State laws, regulations, or permit requirements to seek modification of any UIC permit subsequent to the entry of this Consent Order.

IV. CALCULATIONS OF TIME

4. The term "days" as used in this Consent Order means calendar days.
5. Unless otherwise stated in this Consent Order, where this Consent Order requires actions to be taken within a specified period of time (e.g. "within thirty days"), this time period shall begin the day after the entry of this Consent Order with this Court.

V. RIGHT OF ENTRY

6. Akzo acknowledges that Plaintiff State of Ohio, its agents and employees are

authorized by statute to enter into and onto the facility at any reasonable time, without a search warrant to inspect the facility for compliance with Chapter 6111, the rules adopted thereunder and this Consent Order. Nothing in this Consent Order shall be construed to limit or expand Plaintiff's statutory or permit authority under Chapter 6111 or the rules adopted thereunder to conduct inspections, surveys and/or take samples.

VI. EFFECT UPON OTHER ACTIONS

7. Nothing in this Consent Order shall be construed to relieve Akzo of any obligation to comply with applicable federal, state or local statutes, regulations or ordinances or shall constitute a waiver or release of any right, remedy, defense or claim against Akzo with regard to any person not a party to this Consent Order.

VII. GENERAL INJUNCTIVE RELIEF

8. Akzo is hereby permanently enjoined and ordered to comply at the facility with all applicable requirements of Chapter 6111 of the Ohio Revised Code, the rules promulgated thereunder, and any permits issued pursuant to that Chapter.

VIII. INJECTION WELL IMPROVEMENTS

9. Akzo shall maintain and continuously operate a system to provide representative measurements of injection pressure, annulus pressure, and flow rate and volume of the injectate at the Class I Well (herein "Continuous Monitoring System"). The results of continuous monitoring of the injection pressure, the annulus pressure, and flow rate and volume shall be submitted in a table format approved by Ohio EPA, presenting such data in no more than four (4) hour incremental readings. The daily maximum surface injection pressure and daily minimum annulus/injection pressure and daily minimum annulus/injection differential pressure shall be submitted on a single graph using contrasting symbols or colors. Akzo shall include the table and graph with its monthly operating reports submitted to the Director pursuant to OAC 3745-34-38(D). Akzo shall operate this Continuous Monitoring System as described herein at all times including both operational and non-operational periods of the

Class I Well. In order to insure that such Continuous Monitoring System is operating, Akzo shall manually inspect such Continuous Monitoring System once every 8 hour shift, and record such manual inspection by requiring its inspector to sign an inspection log maintained for such purpose at the well house. In no case shall the interval between inspections exceed ten (10) hours. If such inspection reveals that the Continuous Monitoring System is not properly operating, Akzo's inspector shall immediately disconnect power from the injection pump and notify appropriate Akzo operations personnel. The time and reason for the pump shutoff shall be recorded by the appropriate Akzo personnel and shall be reported in the monthly operating report, in accordance with OAC Rule 3745-34-38. Akzo shall take all reasonable steps necessary to restore proper operation of the Continuous Monitoring System as quickly as possible. During such periods when the injection pump is disconnected, Akzo shall visually check and manually record the annulus pressure every four (4) hours. Any such Continuous Monitoring System failures shall be noted in the Class I well monthly operating report with appropriate notation that the source of the four hour readings is manual recording. Injection shall not occur into the Class I Well under either of the following circumstances:

- 1) Following discovery that the failure Continuous Monitoring System is not properly functioning until the system is again properly functioning, or
- 2) without the Continuous Monitoring System operational check at least once every eight (8) hour shift.

10. Failure to operate the Continuous Monitoring System shall not be deemed to be a violation for purposes of assessing a stipulated penalty under Section XII. of this consent order under the following conditions: (1) during time periods when the Continuous Monitoring System does not operate due to maintenance or repair of the Continuous Monitoring System and said Continuous Monitoring System is repaired within eight (8) hours; and, (2) during the periods when the Continuous Monitoring System does not operate due to inspection requirements. In no case shall the provisions of this paragraph relieve Akzo of its obligation to inspect the Continuous Monitoring System every 8 hour shift and immediately disconnect power

to the injection pump as described in paragraph 9, or of its obligation to properly maintain the Continuous Monitoring System.

11. Effective immediately upon entry of this Consent Order, Akzo shall retain copies of all monitoring information including calibration and maintenance records, all original recordings of continuous monitoring instrumentation, and copies of all records concerning the nature and composition of all injected fluids until three (3) years after completing well closure in accordance with the closure requirements in the effective permit.

12. Akzo shall comply with Part I of its currently effective Class I Permit by submitting the financial assurance documentation within the time frame required therein. Akzo shall annually adjust the cost estimate for well closure, based on inflation, and shall maintain the estimates at the facility where they shall be readily available for inspection.

13. Akzo shall comply with OAC Rule 3745-34-38(B)(3) and (4) by demonstrating strategic mechanical integrity as defined in OAC Rule 3745-34-34.

14. Akzo shall comply with OAC Rule 3745-34-17 and Part I (E)(11) of its UIC Permit No. UIC-02-18-017-PTO-I by submitting certification statements for all reports submitted to Ohio EPA after the entry by this Court.

IX. INJECTION WELL OPERATING MONITORING AND REPORTING REQUIREMENTS

15. Akzo shall have tested its automatic warning and shut-off system no later than September 16, 1994 and once every twelve months thereafter. Ohio EPA's Division of Drinking and Ground Waters shall be given thirty (30) days notice prior to these tests. Akzo shall allow Ohio EPA personnel to witness these tests unless Ohio EPA waives this opportunity in advance of such tests. Akzo shall certify the results of these tests and submit them to Ohio EPA's Division of Drinking and Ground Waters within thirty (30) days after their completion.

16. Akzo shall comply with the maximum injection pressure and minimum annulus pressure requirements in its currently effective permit and any renewals of future UIC permits thereof.

X. POTENTIAL FORCE MAJEURE

17. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Akzo shall notify the Ohio EPA in writing within ten (10) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Akzo to prevent or minimize the delay and the timetable by which measures will be implemented. Akzo will adopt all reasonable measures to avoid or minimize any such delay.

18. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Akzo may raise that 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 Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Akzo and the Plaintiff 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 that an enforcement action, if any, is commenced by the Plaintiff. At that time, Akzo will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Akzo. 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 Akzo or serve as a basis for an extension of time under this Consent Order. Failure by Akzo to comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved and shall constitute a waiver of Akzo's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one date based on a particular incident does not mean that Akzo qualifies for an extension of a subsequent date or dates. Akzo must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order without a Force Majeure Clause does not constitute

a waiver by Akzo of any rights or defenses it may have under applicable law.

XI. CIVIL PENALTY

19. Pursuant to R.C. Section 6111.09, Akzo shall pay to the State of Ohio the amount of **One Hundred and Thirty-Five Thousand Dollars (\$135,000.00)** by delivering to Plaintiff, c/o Matt Sanders, Administrative Assistant, or his successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, a certified check in that amount, payable to the order of "Treasurer, State of Ohio," within thirty (30) days from the date of entry of this Consent Order.

XII. STIPULATED PENALTIES

20. In the event that Akzo fails to meet any of the deadlines and requirements of this Consent Order set forth in paragraphs nine (9) through fifteen (15) Akzo shall immediately and automatically be liable for and shall within seven (7) days after occurrence of the violation pay a stipulated penalty according to the following payment schedule:

- a) For each day of each failure to meet a deadline or requirement, from one (1) to thirty (30) days--five hundred dollars (\$500.00) per day;
- b) For each day of each failure to meet a requirement, from thirty-one (31) to sixty (60) days--Two Thousand Five Hundred Dollars (\$2,500.00) per day;
- c) For each day of each failure to meet a requirement, from sixty-one (61) to ninety (90) days--Three Thousand Dollars (\$3,000.00) per day; and
- d) For each day of each failure to meet a requirement, over ninety (90) days--Eight Thousand Dollars (\$8,000.00) per day.

21. Any stipulated penalty required to be made shall be paid by delivering to Plaintiff, c/o Matt Sanders, Administrative Assistant, or his successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, a certified check in the amount of the stipulated penalty, payable to the order of "Treasurer, State of Ohio," within thirty (30) days from the date of the

failure to meet the requirement(s) of this Consent Order. The payment of stipulated penalties by Akzo and the acceptance of such stipulated penalties by the State for specific violations pursuant to this paragraph shall not be construed to limit the State's authority to seek additional relief pursuant to O.R.C. Chapter 6111 or to otherwise seek judicial enforcement of this Consent Order; provided, however, that if the State accepts the payment of a stipulated penalty for a violation, such stipulated penalty shall constitute the maximum civil penalty which can be obtained by the State for such violations pursuant to O.R.C. Section 6111.09. Notwithstanding any other language in this paragraph, in the event of a violation the State may choose to refuse Akzo's tendered payment of a stipulated penalty for such violation and seek civil penalties for such violation in accordance with O.R.C. Section 6111.09.

22. The provisions of this Consent Order set forth in paragraphs 20 and 21, requiring payment of stipulated penalties, may be terminated when Akzo has paid all penalties and costs required pursuant to this Consent Order and has complied with all requirements under paragraphs 9 through 15, for a period of one (1) year, commencing May 20, 1995, or for any one (1) year period thereafter. Termination of the aforementioned stipulated penalties shall only be effected by Order of the Court upon application by any party and a demonstration that the two (2) conditions set forth in this paragraph have been met, and a determination that by the Court that the two conditions have been met.

XIII. NOTICE

23. Three (3) copies of any submission to the Ohio EPA as required by this Consent Order shall be delivered to:

Ohio EPA, Division of Drinking and Ground Waters
Attn: UIC Unit Supervisor
P.O. Box 163669
1800 WaterMark Drive
Columbus, Ohio 43216-3669

XIV. MISCELLANEOUS

24. The term "shall" in this Consent Order means "enjoined and ordered" where

applicable.

25. The Court shall retain jurisdiction of this action for the purpose of enforcing compliance with this Consent Order.

26. Akzo shall pay all court costs of this action.

XV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

27. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three days of entering the judgment upon the journal, the clerk is hereby directed to serve upon all parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

Entered this 14TH day of JUNE, 1994.


CUYAHOGA COUNTY
Court of Common Pleas

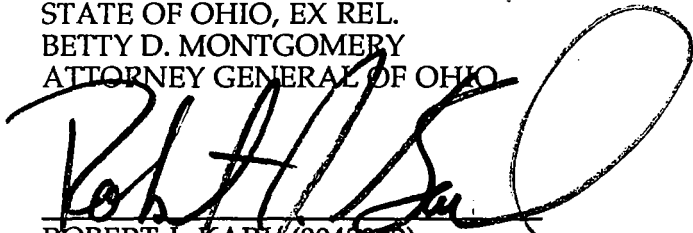

JUDGE, COURT OF COMMON PLEAS

DATE: 6-14-95

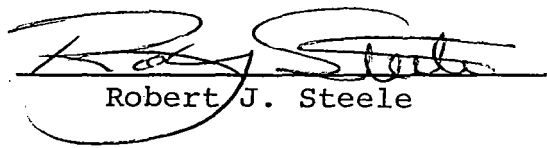
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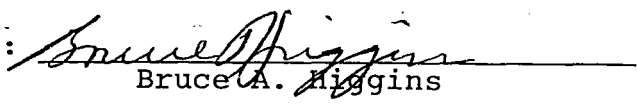
STATE OF OHIO, EX REL.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

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AKZO NOBEL SALT, INC.
"a.k.a. AKZO SALT, INC."

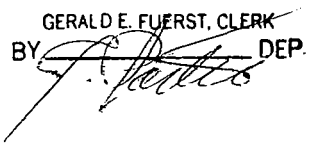
BY: 
Robert J. Steele

BY: 
Bruce A. Higgins

TITLE: Vice President - Production Plant Manager - Cleveland
Authorized representative of AKZO NOBEL SALT, INC. Akzo Nobel Salt Inc.

RECEIVED FOR FILING

JUN 14 1995

GERALD E. FUERST, CLERK
BY:  DEP.