

FILED
COURT OF COMMON PLEAS
93 SEP 29 PM 2:47

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

State of Ohio, ex rel.	:	Case No. 92-1567
Lee Fisher	:	
Attorney General of Ohio	:	Judge Porter
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
American Carco Corporation,	:	
et al.,	:	
	:	
Defendants.	:	

CONSENT ORDER

Plaintiff, State of Ohio, by its Attorney General, Lee Fisher (hereinafter "Plaintiff"), having filed the Complaint herein against Defendants American Carco Corporation ("ACC") and Richard K. Evans, ("Evans") alleging violations of Chapter 3734 of the Ohio Revised Code and the regulations thereunder, and the parties having consented to the entry of this Order,

NOW THEREFORE, upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

DEC 6 1993

I. JURISDICTION

1. The Court has jurisdiction over the subject matter of this action, pursuant to Chapter 3734 of the Ohio Revised Code and the regulations adopted thereunder. This Court has jurisdiction over the parties. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted.

II. PARTIES

2. The provisions of this Consent Order shall apply to and be binding upon the parties to this action. Defendants shall provide a copy of this Consent Order to any contractor they employ to perform work itemized herein.

III. SATISFACTION OF LAWSUIT

3. Plaintiff has alleged in its Complaint that Defendants ACC and Evans have owned and operated the ACC facility, located at 2800 Ontario Avenue, in Dayton, Ohio, in violation of various provisions of Chapter 3734 of the Ohio Revised Code and the regulations adopted thereunder. Plaintiff's Complaint sought injunctive relief and civil penalties against Defendants. However, Plaintiff hereby confirms that it has agreed not to pursue civil penalties in this matter. Compliance with the terms of this Consent Order shall constitute satisfaction of any liability on the part of

the Defendants for the violations alleged in the Complaint.

4. This Consent Order shall not be construed to act as a bar to the authority of the Plaintiff to seek relief, by separate action, for future violations of law. The Plaintiff may also, if appropriate, enforce this Consent Order through a contempt action or otherwise for future violations of law which also comprise violations of this Consent Order.

5. Nothing in this Order shall be construed to limit the authority of the Plaintiff to seek relief for claims or conditions not alleged in the Complaint or addressed by this Consent Order, or to take any cost recovery, injunctive, or other legal action against any person, including but not limited to any or all Defendants, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. 9601 et seq. and/or O.R.C. Sections 3734.20 through 3734.26.

IV. CLOSURE PLAN

6. Defendants agree and are hereby enjoined to implement and complete closure of the ACC facility in accordance with the closure plan for the ACC facility approved by Ohio EPA on February 18, 1992. Defendants shall implement and complete closure in accordance with paragraphs 8 and 9 of this Consent Order.

7. Within sixty days of completion of closure, Defendants agree and are hereby enjoined to submit to the Director, pursuant to OAC Rule 3745-66-15, a certification that the facility has been closed in accordance with the approved closure plan.

8. Defendants shall initiate closure of the facility in accordance with the approved closure plan as follows:

Evans agrees to promptly use the funds currently available in Society National Bank checking account Number 082533334210, which are the funds remaining in the "Ontario Environmental Fund" created pursuant to the July 25, 1990 Consent Judgment in State of Ohio, et al. v. American Carco Company, et al., Case No. 90-2862, Montgomery County C.P., and any other necessary funds to promptly implement those aspects of the closure plan related to steam cleaning concrete floors or pavements in former hazardous waste storage areas, characterization and analyses of waste water and rinseate, and appropriate disposal thereof.

9. Defendants shall complete closure of the ACC facility using any funds available for such purpose. Further, in the event that Defendant Evans leases the ACC facility, Defendant Evans shall establish with Society National Bank an interest-bearing trust account. Such trust account shall be established for the benefit of Plaintiff and shall be established for the sole purpose of collecting, holding, and providing funds for the completion of the implementation of the closure plan for the ACC

facility. Unless otherwise requested by Plaintiff, any funds deposited in such trust account are to be administered and used for the sole purpose of completing the implementation of the closure plan for the ACC facility. Such trust account shall be administered by Defendant Evans, who shall act as Trustee. Defendant Evans agrees that at least 75% of any monthly lease payments shall be deposited into the trust account. The trust account shall be established by Defendant Evans so as to provide that, on an annual basis, the Trustee shall notify Ohio EPA and its counsel or his successor as to the amount of funds contained in the trust account. Further, the trust account shall be established by Defendant Evans in such a manner that The Trustee may, depending on the amount of funds in the trust account, and only with Ohio EPA's approval, periodically disburse funds from the trust account in order to implement certain aspects of the closure plan. Further, the trust account shall be established in such a way as to provide that if in Ohio EPA's judgment there are sufficient funds to accomplish certain aspects of the approved closure plan, Ohio EPA may require the Trustee to arrange for the implementation of such aspects, and the Trustee shall do so.

10. If the ACC facility is sold or leased by Defendant Evans, such Defendant agrees to notify the Ohio EPA immediately upon such lease or

sale.

V. NOTICE

11. Defendant Evans agrees to provide any notices required under this Consent Order to:

RCRA Group Leader
Ohio EPA, Southwest District Office
Division of Hazardous Waste Management
40 South Main St.
Dayton, Ohio 45402

and

Manager
Compliance, Monitoring, and Enforcement Section
Division of Hazardous Waste Management
Ohio EPA, Central Office
1800 Watermark Dr.
Columbus, Ohio 43266-0149

VI. GENERAL INJUNCTION

12. Defendants agree and are hereby permanently enjoined to conduct any future operations at the facility located at 2800 Ontario Avenue in compliance with Chapter 3734 of the Ohio Revised Code and the regulations promulgated thereunder.

13. Until such time as OEPA determines, pursuant to O.A.C. Rule 3745-66-15, that the facility located at 2800 Ontario Avenue has been properly closed and no longer constitutes a "facility" within the meaning of O.A.C. Rule 3745-50-10(A)(32), ACC and Evans agree and are hereby

enjoined to comply with the security requirements set forth in O.A.C. Rule 3745-65-14.

14. Defendants agree to refrain and are hereby permanently enjoined from treating, storing, and/or disposing of hazardous wastes at the facility located at 2800 Ontario Avenue in Dayton, Ohio, except in compliance with applicable laws.

VII. COMPLIANCE WITH APPLICABLE LAWS

15. Nothing herein shall affect Defendants' obligations to comply with all applicable federal, state or local laws, regulations, rules or ordinances.

VIII. RETENTION OF JURISDICTION

16. This Court will retain jurisdiction of this action for the purpose of overseeing compliance with this Consent Order.

IX. COURT COSTS

17. Defendants shall pay all court costs of this action.

IT IS SO ORDERED


_____ 

JUDGE,
MONTGOMERY COUNTY COURT OF COMMON PLEAS

DATE

APPROVED:

LEE FISHER
ATTORNEY GENERAL OF OHIO

AMERICAN CARCO CORP.

Ch. Korleski
CHRISTOPHER KORLESKI (0039770)
DAVID G. COX (0042724)
Assistant Attorneys General
Environmental Enforcement
Section, 25th Floor
30 E. Broad Street
Columbus, Ohio 43266-0410
(614) 466-2766

Richard K. Evans
RICHARD K. EVANS,
President

RICHARD K. EVANS

Richard K. Evans
RICHARD K. EVANS
458 Partridge Circle
Sarasota, Florida 34236

Charles M. Meyer
CHARLES M. MEYER (0019331)
Santen & Hughes
312 Walnut Street, Suite 3100
Cincinnati, Ohio 45202-4059
(513) 721-4450

Attorney for Defendants