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FRED J. CARTOLANO, JUDGE

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STATE OF OHIO, ex rel.	:	CASE NO. A9202033
LEE FISHER	:	
ATTORNEY GENERAL OF OHIO	:	JUDGE CARTOLANO
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
AYER ELECTRIC, INC., et al.	:	
	:	
Defendants.	:	

AGREED ORDER AS TO DEFENDANT GRACE L. AYER

The instant matter is before the Court upon Plaintiff State of Ohio's civil Charges in Contempt against Defendants Ayer Electric, Inc., Donald Ayer, and Grace L. Ayer. The Court being duly informed, finds that the State and Defendant Grace L. Ayer have consented to the entry of this Order. The parties state that Grace L. Ayer was named as a defendant in the instant matter solely

because of her ownership of the Duck Creek Site. She has represented to Plaintiff that at the time of the acts alleged herein that she had no knowledge of any material facts concerning barrels transported to the Duck Creek Site from the Batavia Site and had no such knowledge until the filing of this action; and that she has not had any involvement with the barrels; and that she has no knowledge of facts and circumstances regarding the allegations regarding Third Party Defendants in this matter. Moreover, Defendant Grace L. Ayer has represented to Plaintiff that she has only minimal assets available for the cleanup. Furthermore, Defendant Grace L. Ayer represents to Plaintiff that she took no active role in the purchase of the site at 3434 Duck Creek Road and that she has not received rent from Ayer Electric, Inc. or Donald Ayer for use of the property. Furthermore, the parties both believe that Grace L. Ayer's husband, Donald Ayer, personally or through his company Ayer Electric, Inc., or both, is responsible for transportation of the barrels to the Duck Creek site; that he so transported the barrels to the Duck Creek Site without Grace L. Ayer's knowledge or consent; that control of the Duck Creek Site has rested primarily in Donald Ayer; and that control over the failure to correct the violations alleged in this matter at the Duck Creek Site rests primarily in Donald Ayer.

WHEREFORE, it is hereby Ordered and Adjudged that:

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I. DEFINITIONS

As used in this Consent Order:

"Batavia Site" means all areas where hazardous waste was stored, treated, or disposed of at the site at 2698 Williamsburg-Batavia Pike, Batavia, Ohio.

"Closure Plan" means a plan which meets the requirements of O.A.C. §§3745-66-11 through 3745-66-20.

"Closure" means implementation of the Closure Plan as approved by the Ohio EPA.

"Consent Order" or "Order" means this Agreed Order of Contempt and Civil Penalty as to Defendant Grace L. Ayer.

"Defendant" means and means only Defendant Grace L. Ayer.

"Director" means Ohio's Director of Environmental Protection.

"Duck creek site" means all areas where hazardous waste was stored, treated or disposed of at the Ayer Electric, Inc. Site at 3434 Duck Creek Road, Cincinnati, Ohio.

"Ohio EPA" means the Ohio Environmental Protection Agency.

"O.A.C." means the Ohio Administrative Code.

"Parties" means Plaintiff and Defendant, as defined in this Order.

"Plaintiff" means the State of Ohio by and through the Attorney General of Ohio.

"R.C." Means the Ohio Revised Code.

II. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapter 3734 and the rules 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.

III. PERSONS BOUND

The provisions of this consent order shall apply to and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest and any person acting in concert, privity or participation with them who receives actual notice of this consent order whether by personal service or otherwise.

IV. SATISFACTION OF LAWSUIT

1. Except as otherwise provided in this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendant Grace L. Ayer to Plaintiff for all claims alleged in the Complaint and the Amended Complaint in this action and Charges In Contempt.

2. Nothing in this Consent Order shall limit the authority of the State of Ohio to:

(a) seek relief for claims or conditions not alleged in the Complaint and Amended Complaint.

(b) seek relief for claims or conditions alleged in the Complaint or Amended Complaint which Defendant Grace L. Ayer causes after the entry of this Consent Order;

(c) enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;

(d) bring any action against Defendant or against any other person, under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9601, et seq. and/or Ohio Revised Code §§ 3734.20 through 3734.27 to order the performance of, and/or recover costs for any removal, remedial or corrective activities not conducted pursuant to the terms of this Consent Order.

(E) take any action authorized by law against any person, including Defendant, to eliminate or mitigate conditions at the facility which may present an imminent threat to the public health or welfare, or the environment.

3. Nothing in this Consent Order, shall be construed to constitute full or

partial satisfaction of any liability, civil, criminal, or other, of Donald Ayer, Ayer Electric, Inc., and/or Luke Leonard, to Plaintiff for any claims alleged in the Amended Complaint and/or Charges In Contempt.

V. OBLIGATIONS OF DEFENDANT GRACE L. AYER

(1) By March 15, 1994, and pursuant to R.C. §3734.13, Defendant Grace L. Ayer shall pay to Plaintiff State of Ohio Three Thousand Two Hundred Fifty Dollars and No Cents (\$3,250.00) for violations alleged in Counts One through Ten of Plaintiff's Amended Complaint for which this Court has found Defendant Grace L. Ayer liable in the July 6, 1993 Amended Entry Granting Motion for Partial Summary Judgment Against Ayer Defendants. The penalty shall be paid by delivering to counsel for the State, at the Environmental Enforcement Section, Office of the Attorney General, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, a certified check in the amount of the penalty, payable to the order of the "Treasurer, State of Ohio."

(2) Within ninety (90) days from the date of receipt from Plaintiff of a notice of default by Donald Ayer or Ayer Electric, Inc., Defendant Grace L. Ayer shall apply for an appropriate order from the domestic relations court or other tribunal to compel Donald Ayer or Ayer Electric, Inc. to fulfill their closure obligations within a reasonable time not to exceed thirty (30) days from the time

that such order is obtained; and upon failing to do so, Defendant Grace L. Ayer shall submit a closure plan for the Duck Creek Site within one hundred fifty (150) days from receipt of the initial notice of default by Donald Ayer or Ayer Electric, Inc., and complete closure of the Duck Creek Site within the time schedule contained in the closure plan approved by the Ohio EPA or within sixty (60) days from approval of the closure plan by Ohio EPA, whichever is longer.

2. For the purposes of this article and order, "Default by Donald Ayer or Ayer Electric, Inc." shall mean that following the filing by Plaintiff of a motion for contempt against Donald Ayer and Ayer Electric, Inc. and a ruling thereon by the Court of Common Pleas requiring Donald Ayer, alone or in conjunction with others, to complete closure, Donald Ayer and Ayer Electric, Inc. have not:

(a) submitted a closure plan for the Duck Creek Site within a time ordered by the Court, or if no time period is specified in the order, within thirty (30) days from such ruling;

(b) submitted a revised closure plan for the Duck Creek Site within a time ordered by the Court, or if no time period is specified in the order, within thirty (30) days after receiving a notice of deficiencies from the Ohio EPA; or

(c) completed closure of the Duck Creek Site within a time ordered

by the Court, or if no time period is specified in the order, within the time schedule contained in the closure plan approved by Ohio EPA or within sixty days from approval of the closure plan by Ohio EPA, whichever is longer;

3. Grace L. Ayer's obligations under this order would relate only to the Duck Creek Facility, and not the Batavia Site, and do not include any penalties, fines or assessments against Donald Ayer or Ayer Electric, Inc.;

4. Upon entry of this order, Plaintiff agrees to enforce against Grace L. Ayer the obligations arising under this order and not to enforce the obligations arising under the July 6, 1993 Amended Entry Granting Motion For Partial Summary Judgment entered by Judge Cartolano on July 6, 1993; Plaintiff further acknowledges that Grace L. Ayer has no liability as to the Batavia Site based upon Plaintiff's present understanding of the evidence.

5. In signing this Consent Order, Grace L. Ayer does not acknowledge any wrongdoing whatsoever and she denies the allegations set forth in the Amended Complaint;

VI. EFFECT ON PRIOR ORDERS

1. Nothing in this Order shall release or reduce the liability of Ayer Electric, Inc. or Donald Ayer for either the Duck Creek Road or Batavia Site under

the July 6, 1993 Amended Entry Granting Motion for Partial Summary Judgment Against Ayer Defendants. Nothing in this Order shall be construed as an adjudication of or limit upon the civil penalty which may be assessed upon Ayer Electric, Inc. or Donald Ayer for the violations of either under Counts One through Ten of the Plaintiff's Amended Complaint. Nothing in this Order shall be construed as a release or reduction or adjudication of any liability of Ayer Electric, Inc. or Donald Ayer may have as a result of Charges in Contempt filed against them by Plaintiff. Except as provided in this article, the provisions of the July 6, 1993 Amended Entry Granting Motion for Partial Summary Judgment Against Ayer Defendants remains in full force and effect.

VII. PLAINTIFF'S ENFORCEMENT COSTS

By March 15, 1994, Defendant Grace L. Ayer is ordered to pay to the Attorney General of Ohio the amount of Five Hundred Dollars (\$500.00), as the Plaintiff's costs, including attorneys fees, associated with prosecution of the instant civil contempt action as to Defendant Grace L. Ayer. These costs shall be paid by delivering to counsel for the State, at the Environmental Enforcement Section, Office of the Attorney General, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, a certified check in the amount of the penalty, payable to the order of the "Treasurer, State of Ohio."

VIII. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS

All activities undertaken by Defendant Grace L. Ayer pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal and state and local laws, rules and regulations, and permits. For work both on and off the Duck Creek Site, Defendant is ordered and enjoined to obtain all permits or approvals necessary under applicable federal, state or local laws and shall submit timely applications and requests for any such permits and approvals. Where such laws appear to conflict with the other requirements of this consent order, Defendant is ordered and enjoined to immediately notify the Ohio EPA of the potential conflict. Defendant is ordered and enjoined to include in all contracts or subcontracts entered into for work required under this Consent Order, provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and rules. This Consent Order is not a permit issued pursuant to any federal or state or local law or rule.

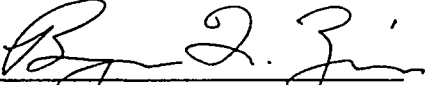
IX. RETENTION OF JURISDICTION

This Court will retain jurisdiction of this action for the purpose of enforcing this Consent Order.


SIGNED:

JUDGE FRED J. CARTOLANO
Hamilton County Court of Common
Pleas

Approved:


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