

IN THE COURT OF COMMON PLEAS  
FAIRFIELD COUNTY, OHIO

STATE OF OHIO, ex rel  
ANTHONY J. CELEBREZZE, JR.  
ATTORNEY GENERAL OF OHIO

CASE NO. 88 CV FB 0057

JUDGE JOHN D. MARTIN

Plaintiff,

vs.

CITY OF LANCASTER, et al.

Defendants.

FILED  
SEP 24 9 21 AM '90

ROBERT W. LACEY  
CLERK OF COURTS  
FAIRFIELD CO. OHIO

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Anthony J. Celebrezze, Jr. (hereinafter "Plaintiff") and Defendant Lancaster Electro Plating, Inc. (hereinafter "Defendant LEP") having consented to the entry of this Order,

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

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over Defendant LEP and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Defendant LEP under Chapter 6111 of the Ohio Revised Code, and venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply and

be binding upon Plaintiff and Defendant LEP, their agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them.

Defendant LEP shall provide a copy of this Consent Order to each contractor it employs to perform work itemized herein, and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work.

### III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Amended Complaint that Defendant LEP has operated Buildings One and Two in such a manner as to result in numerous violations of the water pollution laws of the State of Ohio and the City of Lancaster. Although LEP has denied and continues to deny any and all legal or equitable liability in connection with this action, the parties have entered into this Consent Order in good faith to avoid expensive and protracted litigation. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability for Defendant LEP for all claims alleged against Defendant LEP in the Amended Complaint up to the date of filing of this Consent Order and for any violations of the third paragraph of the special conditions on page 5 of LEP's Permit to Install No. 01-1581 up to the date of filing of this Consent Order. This satisfaction expressly includes violations alleged in the Amended Complaint which continued to occur between the filing of the Amended Complaint and the Consent Order. 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 Amended Complaint.

IV. PERMANENT INJUNCTION

4. Defendant LEP is hereby enjoined and ordered to comply with the requirements of Chapter 6111 of the Ohio Revised Code and the rules and regulations adopted under that Chapter, including but not limited to O.A.C. Rules 3745-3-04 [prohibited discharges] and 3745-3-11 [electroplating; categorical pretreatment standards].

5. Defendant LEP is enjoined and ordered to comply with the laws and regulations of the City of Lancaster governing pretreatment of discharges of wastewater into the Lancaster publicly owned treatment works ("Lancaster POTW") and sewers and conveyance appurtenances discharging thereto, including but not necessarily limited to Chapter 916 of the Codified Ordinances of the City of Lancaster. Defendant LEP is enjoined and ordered to comply with any permit and renewal or modification thereof issued to Defendant LEP by the City of Lancaster governing the discharge of wastewater into the Lancaster POTW and the sewers and conveyance appurtenances discharging thereto.

6. Defendant LEP is hereby enjoined to properly operate and maintain its wastewater treatment plants and any associated equipment and structures as required by law.

V. FLOOR OPERATION AND MAINTENANCE

7. Within thirty (30) days from entry of this Consent Order, Defendant LEP shall submit to Ohio EPA an approvable plan for the hard plumbing of Buildings One and Two, for the cleaning and sealing of all sumps, for eliminating standing process wastewater, for providing secondary containment of chrome, and for providing routine inspection of the chemical storage areas. The plan shall include the following:

- a. a floor plan identifying all sumps;
- b. a description of the method for cleaning and sealing the sumps and for cleaning spills to the trenches;
- c. a schedule for cleaning and sealing all sumps as expeditiously as practicable but not later than twelve (12) months from plan approval;
- d. a schedule for inspecting and maintaining all sump liners on at least an annual basis to ensure the sump liners prevent wastewater from coming into contact with the concrete wall of the sump;
- e. a description of the location of all chemical storage areas and the type and amount of chemicals stored at each such area;
- f. a description of the proposed method for secondary containment of chrome and a description of the routine inspection procedure for the chemical storage areas;
- g. a schedule for the hard plumbing of Building One to be completed not later than one (1) year from plan approval;
- h. a schedule for the hard plumbing of Building Two to be completed not later than three (3) years from plan approval;
- i. a description of the location of all floors where standing process wastewater currently exists; and

- j. a schedule for eliminating all standing process wastewater as expeditiously as practicable but not later than, for Building One, one (1) year from plan approval and, for Building Two, three (3) years from plan approval.

8. If Ohio EPA notices Defendant LEP in writing of deficiencies in the plan, Defendant LEP shall resubmit the deficient portions in approvable form to Ohio EPA within thirty (30) days of Ohio EPA's notification of the deficiencies. The duty to resubmit a revised approvable plan does not release Defendant LEP from the duty to submit an approvable plan in the first instance.

9. Defendant LEP shall comply with the plan as approved by Ohio EPA.

#### VI. CIVIL PENALTY

12. Defendant LEP shall pay to the State of Ohio a civil penalty of ninety thousand dollars (\$90,000.00). The penalty shall be paid by delivering to counsel for Plaintiff certified checks or cashier checks for the following amounts, payable to the order of "Treasurer, State of Ohio", in accordance with the following schedule:

\$5000	30 days from entry of Consent Order
12,142.85	6 months from entry of Consent Order
12,142.85	12 months from entry of Consent Order
12,142.85	18 months from entry of Consent Order
12,142.85	<del>18</del> 24 months from entry of Consent Order
12,142.85	30 months from entry of Consent Order
12,142.85	36 months from entry of Consent Order
12,142.90	42 months from entry of Consent Order.

The above payments in the stated amounts include interest.

## VII. STIPULATED PENALTIES

13. In the event that Defendant LEP violates any of the limitations on its discharges into the City of Lancaster wastewater treatment facility Defendant LEP 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 - Two Hundred Fifty Dollars (\$250.00) per day. For each day of violation or failure to meet a requirement, from thirty-one (31) to sixty (60) days - One Thousand Dollars (\$1,000.00) per day. For each day of violation or failure to meet a requirement, from sixty-one (61) to ninety (90) days - Fifteen Hundred Dollars (\$1,500.00) per day. For each day of violation or failure to meet a requirement, from ninety (90) days to one hundred twenty (120) days - Two Thousand Five Hundred Dollars (\$2,500.00) per day. For each day of violation or failure to meet a requirement, over one hundred and twenty (120) days - Five Thousand (\$5000) Dollars. For the purpose of calculating stipulated penalties under the provisions of this paragraph of this Order only, any single exceedance of a daily discharge limitation may not result in more than one (1) four-day average discharge limit exceedance.

14. In the event that Defendant LEP violates any of the terms of this Consent Order, other than discharge limitations, Defendant LEP 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 - Two Hundred Fifty Dollars (\$250.00) per day. For each day of violation or failure to meet a requirement, from thirty-one (31) to sixty (60) days - One Thousand Dollars (\$1,000.00) per day. For each day of violation or failure to meet a requirement, from sixty-one (61) to ninety (90) days - Fifteen Hundred Dollars (\$1,500.00) per day. For each day of violation or failure to meet a requirement, from ninety (90) days to one hundred twenty (120) days - Two Thousand Five Hundred Dollars (\$2,500.00) per day. For each day of violation or failure to meet a requirement, over one hundred and twenty (120) days - Five Thousand (\$5,000.00) Dollars.

15. Any stipulated penalty 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 forty-five (45) days of the violation or failure to meet the requirement of this Consent Order. Nothing herein shall prevent Plaintiff from pursuing other remedies for enforcement of this Consent Order.

16. The provisions of this Consent Order set forth in paragraph 13 requiring payment of stipulated penalties shall terminate if LEP has achieved and maintained compliance with the applicable discharge limitations on discharges into the City of Lancaster wastewater treatment plant for a period of one (1) year and has paid all penalties required pursuant to this Consent Order. Termination of the stipulated penalties in paragraph 13 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. For purposes of determining the initiation of the one year compliance period, the parties hereto agree that the one (1) year compliance period may begin on March 1, 1990.

VIII. POTENTIAL OF FORCE MAJEURE

17. In any action by the State of Ohio to enforce any of the provisions of this Consent Order, LEP 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 LEP 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 that



an enforcement action, if any, is commenced by Ohio. At that time the burden of proving that any delay was or will be caused by circumstances beyond the control of LEP shall rest with LEP. 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 LEP, or serve as a basis for an extension of time under this Consent Order.

#### IX. INSPECTIONS

18. Defendants LEP is ordered to allow employees, representatives, and agents of the Ohio EPA, upon proper identification, to enter upon the Defendant LEP's facilities 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 O.R.C. Chapter 6111. and the rules promulgated thereunder. Nothing in this Consent Order shall limit the rights of the Ohio EPA or U.S. EPA to conduct inspections or investigations pursuant to statute or regulation.

#### X. NOTICE

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

1. Ohio EPA  
Division of Water Pollution Control  
Central District Office  
2305 Westbrook Dr. Bldg. C.  
Columbus, OH 43228  
Attn: William McCarthy or successor
2. Ohio EPA  
Division of Water Pollution Control  
P.O. Box 1049  
1800 WaterMark Drive  
Columbus, Ohio 43266-0149  
Attn: Heidi Sorin or successor

#### XI. MISCELLANEOUS

20. LEP reserves any rights to appeal actions of the Director of Ohio EPA under R.C. Chapter 3745 or of the City of Lancaster under applicable law. The parties reserve and do not waive any and all legal and equitable rights, remedies and defenses that may be available for violation or enforcement of this Consent Order.

#### XII. RETENTION OF JURISDICTION

21. The Court will retain jurisdiction of this action for the purpose of making any order or decree which it deems appropriate to carry out this Consent Order.

#### XIII. COSTS

22. Defendant LEP shall bear its own court costs and pay a pro rata portion of the State's court costs according to LEP's

share of all Defendants' court costs incurred in this action as of the date of entry of this Consent Order.

*John D. Martin*

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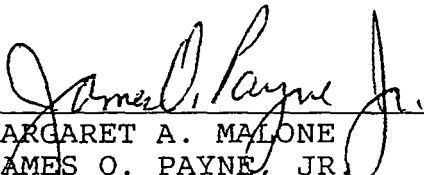
JUDGE JOHN D. MARTIN

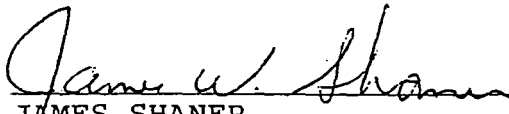
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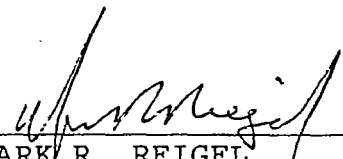
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