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IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

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| STATE OF OHIO, ex rel. | : | CASE NO. 89-3841 |
| ANTHONY J. CELEBREZZE, JR. | : | |
| ATTORNEY GENERAL OF OHIO | : | JUDGE BROWN |
| | : | |
| Plaintiff, | : | |
| | : | |
| vs. | : | |
| | : | <u>CONSENT ORDER BETWEEN THE</u> |
| DAYTON PAINT & COATINGS, | : | <u>STATE OF OHIO AND THE</u> |
| INC. et al., | : | <u>K. A. PENDLETON CO., INC.</u> |
| | : | |
| Defendants. | : | |

FILED - COURT OF
 COMMON PLEAS
 MONTGOMERY COUNTY, OHIO
 90 DEC 13 AM 10:22
 CLERK OF COURT

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 Dayton Paint & Coatings, Inc., Timothy A. Blase, Stanley D. Hardy, and K. A. Pendleton Co., Inc., to enforce the State of Ohio's hazardous waste laws and the rules promulgated thereunder concerning the Defendants' alleged waste handling practices at the Dayton Paint & Coatings, Inc. facility located at 213 North Beckel Street, Dayton, Ohio 45403 (hereinafter the "Facility"), with the case against Defendants Dayton Paint & Coatings, Inc., Timothy A. Blase and Stanley D Hardy still proceeding along a normal litigation course, and Plaintiff and Defendant K. A. Pendleton Co., Inc. 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 Plaintiff and Defendant K. A. Pendleton Co., Inc. hereto, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. PERSONS BOUND

The provisions of this Consent Order shall apply to and be binding upon Defendant K. A. Pendleton Co., Inc., its agents, officers, employees, assigns, successors, and predecessors in interest. Said provisions shall in no way apply to and be binding upon Defendants Dayton Paint & Coatings, Inc., Timothy A. Blase, or Stanley D. Hardy.

II. SATISFACTION OF LAWSUIT

Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil and/or administrative liability by Defendant K. A. Pendleton Co., Inc. for all claims against Defendant K. A. Pendleton Co., Inc. alleged in the Complaint. After reasonable inquiry by counsel, the State of Ohio believes that it has alleged in the Complaint all violations, facts, and/or conditions at the Facility of which it is currently aware. Nothing in this Consent Order shall be construed so as to preclude the State of Ohio from seeking an injunction for removal, remedial or corrective action, monitoring or testing at the Dayton Paint & Coatings, Inc. 213 North Beckel Street, Dayton, Ohio facility from Defendant K. A. Pendleton Co., Inc. or any other person or to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint, including violations or conditions which occur after the filing of the Complaint. The State of Ohio hereby specifically reserves the right to proceed against any other party including, but not limited to,

Dayton Paint & Coatings, Inc., Timothy A. Blase, or Stanley D. Hardy for the violations alleged in the Complaint, any removal, remedial or corrective action, monitoring or testing that must be conducted at the Dayton Paint & Coatings, Inc. 213 North Beckel Street, Dayton, Ohio facility, or any costs incurred by the Ohio EPA under O.R.C. 3734.20 through 3734.27 in connection with the instant enforcement action.

III. COVENANT NOT TO SUE

In consideration of the fulfillment of the obligations imposed upon Defendant K. A. Pendleton Co., Inc. by this Consent Order, including payment of the civil penalty as set forth in Section VI, the State of Ohio hereby covenants not to sue or bring any judicial or administrative action against Defendant K. A. Pendleton Co., Inc., its agents, officers, employees, assigns, successors and predecessors in interest, arising out of the violations, facts, and/or conditions alleged in the Complaint, which Complaint is believed to allege, after reasonable inquiry by counsel, all violations, facts and/or conditions at the Facility of which the State of Ohio is currently aware. Nothing in this Covenant Not To Sue shall be construed so as to limit the authority of the State of Ohio to bring a subsequent judicial or administrative action as provided for in Section II of this Consent Order.

IV. JURISDICTION AND VENUE

The Court has both personal and subject matter jurisdiction over Defendant K. A. Pendleton Co., Inc. The Complaint states

a claim upon which relief can be granted against Defendant K. A. Pendleton Co., Inc. under Chapter 3734. of the Ohio Revised Code ("O.R.C.") and the rules promulgated thereunder. Venue is proper in this Court.

V. PERMANENT INJUNCTION

Defendant K. A. Pendleton Co., Inc. is hereby permanently enjoined and ordered to comply with O.R.C. Chapter 3734. and the rules promulgated thereunder.

VI. CIVIL PENALTY

It is hereby ordered that Defendant K. A. Pendleton Co., Inc. shall pay a civil penalty of Four Thousand Dollars (\$4,000.00). This civil penalty shall be paid by check made payable to "Treasurer, State of Ohio," which check shall be delivered by mail, or otherwise, to Edward S. Dimitry, at his office at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, in accordance with the payment schedule set forth below. This penalty shall be paid into the hazardous waste clean-up fund created by O.R.C. 3734.28 and shall be paid as follows:

| <u>PAYMENT</u> | <u>PAYMENT DATE</u> |
|----------------|--|
| \$2,000.00 | Thirty (30) days from filing of Consent Order. |
| \$2,000.00 | Ninety (90) days from filing of Consent Order. |

VII. RETENTION OF JURISDICTION

The Court will retain jurisdiction of this action for the purpose of overseeing that Defendant K. A. Pendleton Co., Inc.

carries out the terms and conditions of this Consent Order and complies with O.R.C. Chapter 3734. and the rules adopted thereunder.

VIII. TERMINATION CLAUSE

No earlier than two (2) years from the date of the Court's approval of this Consent Order, Defendant may move the Court, pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure, to terminate the permanent injunction provisions of Section V of this Consent Order if the Defendant can demonstrate that it has been in total compliance with the obligations of this Consent Order for such a two (2) year period. The Plaintiff takes no position as to such motion and reserves any rights it may have to oppose the motion including the basis that two (2) years is, in actuality, not an appropriate time period.

JUDGE

ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO

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