

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO, ex rel.,	:	Case No. 86-CV-1028
ANTHONY J. CELEBREZZE, JR.	:	
ATTORNEY GENERAL OF OHIO,	:	
	:	
Plaintiff,	:	JUDGE MCKAY
	:	
v.	:	
	:	
JOSEPH DEMSEY, et al.,	:	<u>CONSENT ORDER</u>
	:	
Defendants.	:	

MARGARET P. O'BRIEN
 CLERK OF COURTS
 TRUMBULL COUNTY
 DEC 7 10 49 AM '90
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 VOL _____ PAGE _____

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 Joseph Demsey, Demsey Steel Processing A Division of S.T.D. Incorporated and S.T.D. Incorporated (hereinafter "Defendants" unless otherwise specifically referenced), to enforce the State of Ohio's Hazardous Waste, Water Pollution Control and Nuisance statutes and/or rules concerning the waste handling, storage, treatment and disposal practices at the facility located at 1300 South State Street, Girard, Trumbull County, Ohio (hereinafter the "Facility"), and Plaintiff and Defendants 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 parties hereto, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. PERSONS BOUND

1. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, their agents,

officers, employees, assigns, successors, predecessors in interest, and those persons in active concert or participation with them. Defendants shall provide a copy of this Consent Order to each consultant or contractor employed to perform work referenced herein. Defendants shall also provide a copy of this Consent Order to all current and future employees of S.T.D. Incorporated and to any independent contractor employed to handle, store, treat and/or dispose of hazardous wastes generated by S.T.D. until such time as certification is submitted to the Ohio EPA, pursuant to O.A.C. 3745-66-15, that the Facility has been closed in accordance with the specifications in the approved closure plan.

II. SATISFACTION OF LAWSUIT

2. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by the Defendants for all claims alleged in the Complaint. 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 Complaint, including violations which occur after the filing of the Complaint or which involve locations other than the Facility. Furthermore, nothing in this Order shall be construed as to limit the authority of the State of Ohio to undertake any action against any person, including the Defendants, to eliminate or mitigate conditions arising after the date hereof which may present an imminent endangerment to the public health, welfare or the environment.

III. JURISDICTION AND VENUE

3. The Court has jurisdiction over the parties and the subject matter of this case. Venue is proper.

IV. CLOSURE

4. The Defendants are ordered within thirty (30) days after filing of the Consent Order, to submit an approvable closure plan which meets the requirements of O.A.C. Chapter 3745-66, including but not limited to O.A.C. Rules 3745-66-10 through 3745-66-20, to the Director of the Ohio EPA and the Ohio EPA's Northeast District Office for closure of areas where spent pickle liquor handling, treatment, storage and/or disposal occurred at the Facility, including but not necessarily limited to the tank storage area and field tile area.

5. If Ohio EPA notifies the Defendants in writing of deficiencies in part or all of the closure plan submitted pursuant to paragraph 4 above, the Defendants shall resubmit a revised approvable closure plan to the Ohio EPA within thirty (30) days of receipt of Ohio EPA's written notification of the deficiencies. The order to resubmit a revised approvable closure plan does not release Defendants from the order to submit an approvable closure plan in the first instance.

6. The Defendants are enjoined and ordered to fully implement the closure plan as approved by the Ohio EPA in accordance with O.A.C. Chapter 3745-66, including but not limited to O.A.C. Rules 3745-66-13 [time allowed for closure], and R.C. Chapter 3734.

7. The Defendants are enjoined and ordered to certify completion of closure in accordance with O.A.C. Rule 3745-66-15.

8. Until such time as the Defendants certify to the Ohio EPA, pursuant to O.A.C. Rule 3745-66-15, that the Facility has been closed in accordance with the specifications in the approved closure plan, the Defendants are hereby enjoined and ordered to perform the following tasks:

- a. The Defendants shall submit to the Ohio EPA within 30 days after filing of the Consent Order a detailed written estimate of the cost of closing the facility pursuant to O.A.C. 3745-66-42.
- b. The Defendants shall establish financial assurance for closure of the Defendants' facility pursuant to one of the options provided for in O.A.C. 3745-66-43 in accordance with the schedule set forth below. Furthermore, the Defendants shall submit documentation to the Director of the Ohio EPA demonstrating said financial assurance within 10 days after each of the schedule deadlines set forth below. The schedule is as follows:

PERCENTUM OF COST
ESTIMATE OF CLOSURE
PURSUANT TO O.A.C.
RULE 3745-66-42

DEADLINE

Twenty-Five Percent (25%)

Forty-Five (45) Days
from filing of Consent
Order.

Fifty Percent (50%)

Ninety (90) days from
from filing of Consent
Order.

Seventy-Five Percent (75%)

One Hundred and Eighty
(180) days from filing
of Consent Order.

One Hundred Percent (100%)

Two Hundred and Seventy
(270) days from filing of
Consent Order.

V. PERMANENT INJUNCTION

9. The Defendants are hereby permanently enjoined and ordered to comply with O.R.C. Chapters 3734, 6111 and 3767 and rules promulgated thereunder. The Defendants are permanently enjoined from engaging in any future storage, treatment or disposal of hazardous waste without first obtaining, as may be required by law, a hazardous waste facility installation and operation permit from the hazardous waste facility board. The Defendants are permanently enjoined from discharging any industrial waste or other waste into waters of the state without first obtaining, as may be required by law, an NPDES permit issued by the Director of Environmental Protection under R.C. Chapter 6111. The Defendants are enjoined and ordered to comply with the solid waste requirements under R.C. Chapter 3734 and O.A.C Chapters 3745-27 and 3745-31, including by way of illustration and not limitation the requirement to dispose of any lime-stabilized soil generated during closure as solid waste.

VI. CIVIL PENALTY

10. It is hereby ordered that the Defendants shall pay a civil penalty of \$27,500.00. This penalty will be paid into the Ohio Hazardous Waste Cleanup Fund created by O.R.C. Section 3734.28. The penalty shall be paid by certified check or money order 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, in accordance with the following schedule:

<u>PAYMENT</u>	<u>PAYMENT DATE</u>
\$9000.00	Thirty (30) days from filing of Consent Order.
\$9000.00	One (1) year from filing of Consent Order.
\$9500.00	Two (2) years from filing of Consent Order.

VII. STIPULATED PENALTIES

11. In the event that Defendants violate any of the terms of this Consent Order Defendants 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 - One Thousand Dollars (\$1,000.00) per day. For each day of violation or failure to meet a requirement, from thirty-one (31) to sixty (60) days - Two Thousand Dollars (\$2,000.00) per day. For each day of violation or failure to meet a requirement, from sixty-one (61) to ninety (90) days - Three Thousand Dollars (\$3,000.00) per day. For each day of violation or failure to meet a requirement, over ninety (90) days - Five Thousand Dollars (\$5,000.00) per day. Any 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. This penalty shall be paid into the Hazardous Waste Clean-Up Fund created by O.R.C. 3734.28.

VIII. POTENTIAL OF FORCE MAJEURE

12. If any event occurs that causes or may cause a delay of any requirement of this Consent Order applicable to Defendants, Defendants shall notify the Ohio EPA in writing within fourteen (14) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of delay, the measures taken and to be taken by Defendants to prevent or minimize the delay and the timetable by which those measures will be implemented. Defendants will adopt all reasonable measures to avoid or minimize any such delay.

13. In any action by the State of Ohio to enforce any of the provisions of this Consent Order, Defendants may raise at that time the question of whether they are entitled to a defense that their conduct was caused by reasons entirely beyond their 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 Defendants 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, if ever, that the proceeding to enforce this Consent Order is commenced by the State. At that time the burden of proving that any delay was or will be caused by circumstances beyond the control of Defendants shall rest with Defendants. Failure by Defendants to comply with the notice requirements of Paragraph 12 shall constitute a waiver by Defendants of any right they may have to raise such a defense. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances, shall not in any event constitute circumstances entirely beyond the control of Defendants, or serve as a basis for an extension of time under this Consent Order.

IX. RETENTION OF JURISDICTION

14. The Court will retain jurisdiction of this action for the purpose of overseeing compliance with this Consent Order and Chapters 3734 and 6111 of O.R.C. and rules adopted thereunder.

X. INSPECTIONS

15. Defendants are ordered to allow representatives of the Ohio EPA, upon proper identification, to enter upon the Defendants' facility 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. Chapters 3734 and 6111 and rules

promulgated thereunder. Nothing in the Order shall limit the rights of the Ohio EPA or U.S. EPA to conduct regular and inspections or investigations pursuant to statute, regulation or permit.

XI. MISCELLANEOUS

16. Defendants reserve all rights to appeal any action of the Ohio EPA to the Environmental Board of Review as allowed by law.

XII. NOTICE

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

- a. Ohio EPA
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: Mark K. Bergman or his successor
- b. Ohio EPA
Division of Solid and Hazardous Waste Management
P.O. Box 1049
1800 WaterMark Drive
Columbus, Ohio 43266-0149
Attn: Michael Savage or his successor

XIII. COURT COSTS

18. The Defendants shall pay the court costs of this action.

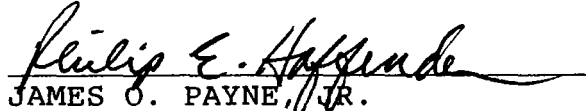
Mr. Mckay

JUDGE MCKAY

12/5/90

APPROVED:

ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO



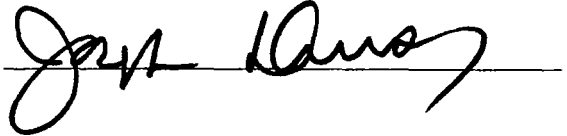
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A DIVISION OF S.T.D.
INCORPATED AND S.T.D.
INCORPORATED

By:



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