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N.I.

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, ex rel.  
BETTY D. MONTGOMERY, ATTORNEY  
GENERAL OF OHIO,

Plaintiff,

vs.

ETCHED METAL COMPANY, et al.

Defendants.

CASE NO.

JUDGE

F

291768

307 TIMOTHY J. MC GINTY

CONSENT ORDER AND FINAL JUDGMENT ENTRY

Plaintiff, State of Ohio, by its Attorney General, Betty D. Montgomery (hereinafter "Plaintiff"), having filed the Complaint in this action against Defendants Etched Metal Company and M.E. Ganger (hereinafter "Defendants") to enforce Ohio's hazardous waste laws found in Chapter 3734 of the Revised Code and rules adopted thereunder; Plaintiff and Defendants having consented to the entry of this Order;

THEREFORE, without trial or admission of any issue of law or fact, and the consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

## I. DEFINITIONS

As used in this Consent Order:

"Consent Order" or "Order" means this Consent Order and Final Judicial Entry and all appendices hereto. In the event of conflict between this Order and appendix, the Order shall control.

"Defendants" means Etched Metal Company and M.E. Ganger.

"Facility" refers to the location where the alleged treatment, storage, disposal, or other placement of hazardous waste was conducted by Defendants, which facility is located at 30200 Solon Industrial Parkway, Solon, Cuyahoga County, Ohio.

"OEPA" means the Ohio Environmental Protection Agency.

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

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

"O.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 it who receives actual notice of this Consent Order whether by personal service or otherwise. Defendants agree and are ordered to provide a copy of this Consent Order to each contractor they employ to perform work itemized herein.

### 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 Defendants to Plaintiff for all claims alleged in the Complaint.

2. Nothing in this Consent Order, including the imposition of stipulated civil penalties, shall limit the authority of the State of Ohio to:

- (a) Seek relief for claims or conditions not alleged in the Complaint;
- (b) Seek relief for claims or conditions alleged in the Complaint which occur 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 Defendants or against any other person, under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. Section 9601, et seq. and/or Ohio Revised Code ("O.R.C.") Sections 3734.20 through 3734.27 to: (1) recover natural resource damages,

and/or (2) 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 Defendants, to eliminate or mitigate conditions at the Facility which may present an imminent threat to the public health or welfare, or the environment.

#### V. CIVIL PENALTY

Defendants agree and are ordered to pay to the State of Ohio a civil penalty in the amount of Seventy Thousand Dollars (\$70,000.00). This amount shall be paid by delivering to Plaintiff, c/o Matt Sanders, Administrative Assistant, or his successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check in that amount, payable to the order of "Treasurer, State of Ohio" within thirty (30) days from the date of entry of this Consent Order. This civil penalty shall be deposited into the hazardous waste clean-up fund created by O.R.C. Section 3734.28.

#### VI. GENERAL INJUNCTION

1. Defendants agree and are permanently enjoined to conduct any future operations at the Facility in compliance with O.R.C. Chapter 3734 and the rules promulgated thereunder, including but not limited to all hazardous waste generator requirements set forth at O.A.C. Chapter 3745-52.

## VII. POLLUTION PREVENTION

1. Defendants agree and are ordered to implement the CPS Solvent Cleaning Unit and the Anopur Anodizing Acid Purification Unit projects to minimize the waste streams generated at the Facility. Within forty-five (45) days after the entry of this Order, Defendant shall submit to Ohio EPA for review and approval a description of the solvent cleaning process and the acid purification process. Specifically, the description shall address the requests set forth in Attachment A to this Consent Order and shall include a schedule of implementation of the projects.

2. Defendants agree and are ordered to submit to Ohio EPA for review and approval a final report measuring and documenting the progress/success of the pollution prevention projects. The final report measuring and documenting the progress/success of the pollution prevention projects will be submitted to Ohio EPA one hundred and fifty (150) days after implementation of the solvent cleaning process and the acid purification process, and will discuss the results of the first one hundred and twenty (120) days of operation. The report shall also include, but not limited to the following: a description of the solvent cleaning process and the acid purification process pursuant to this Order, a quantitative description of the reduction of hazardous waste disposal, and a discussion of other benefits of the projects.

3. All documents documenting compliance with this Order shall be submitted to :

Pamela S. Allen, Manager  
Compliance Monitoring and Enforcement Section  
Division of Hazardous Waste Management  
Ohio EPA  
P.O. Box 1049  
Columbus, Ohio 43216-0149

and

Harry Courtright, RCRA Group Leader  
Division of Hazardous Waste Management  
Ohio EPA  
2110 E. Aurora Road  
Twinsburg, Ohio 44087

#### VIII. STIPULATED PENALTIES

1. In the event that Defendants fail to meet any of the requirements contained in Article VI of this Consent Order, Defendants agree and are ordered to pay to Plaintiff, within thirty (30) days of demand, a stipulated penalty as follows:

- (a) For each day of each failure to meet a requirement, up to thirty (30) days a requirement is due to be met - One Thousand Dollars (\$1,000.00).
- (b) For each day of each failure to meet a requirement, from thirty-one (31) to sixty (60) days after a requirement is due to be met - Two Thousand Dollars (\$2,000.00).
- (c) For each day of each failure to meet a requirement, from sixty-one (61) days to ninety (90) days after a requirement is due to be met - Three Thousand Dollars (\$3,000.00).

- (d) For each day of each failure to meet a requirement, over ninety (90) days - Five Thousand Dollars (\$5,000.00).

2. Defendants agree and are ordered to pay any required stipulated penalty by delivering to Plaintiff, c/o Matt Sanders, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check in the amount of the stipulated penalty, payable to the order of "Treasurer, State of Ohio." This penalty shall be deposited into the hazardous waste clean-up fund created by O.R.C. Section 3734.28.

#### IX. POTENTIAL FORCE MAJEURE

In any action by Plaintiff 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 limited to, acts of God, strikes, acts of war or civil disturbances. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendants and Plaintiff 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 a proceeding to enforce this Consent Order is commenced by Plaintiff. 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. Unanticipated or increased cost 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 Defendants or serve as a basis for an extension of time under this Consent Order. Acceptance of this Consent Order without a force majeure clause does not constitute a waiver by Defendants of any rights or defenses they may have under applicable law.

#### **X. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS**

All activities undertaken by Defendants 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 Facility, Defendants agree and are ordered 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, Defendants agree and are ordered to immediately notify the OEPA of the potential conflict.

Defendants agree and are ordered 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.

#### **XI. PLAINTIFF'S LITIGATION COSTS**

For Plaintiff's litigation costs in investigating and prosecuting this case, Defendants agree and are ordered to reimburse the Attorney General's Office in the



amount of Seven Thousand and Five Hundred Dollars (\$7,500.00). This reimbursement shall be paid by delivering a certified check for that amount payable to the order of "Treasurer, State of Ohio" within seven (7) days of entry of this Order in the manner provided for in Article V.

#### **XII. RETENTION OF JURISDICTION**

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

#### **XIII. COSTS**

Defendants agree and are ordered to pay the court costs of this action.


#### **XIV. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK**

Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal.

Within three days of entering the judgment upon the journal, the clerk is directed to serve upon all parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure

and note the service in the appearance docket.

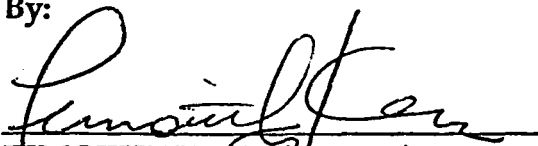
SIGNED:

  
JUDGE  
CUYAHOGA COUNTY  
COURT OF COMMON PLEAS

Respectfully submitted,


BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO


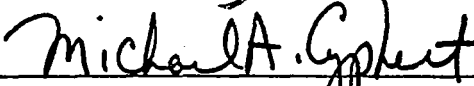
By:

  
TIMOTHY KERN (0034629)  
VICKI LEE DEISNER (0060026)  
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street, 25th Fl.  
Columbus, Ohio 43215-3428  
Telephone: (614) 466-2766

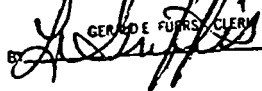
Attorneys for Plaintiff

By:

  
ETCHED METAL COMPANY  
*President*  
(TITLE)  
**M. E. GANGER**  
(NAME-PRINTED OR TYPED)

  
M. E. GANGER  
  
MICHAEL A. CYPHERT (0007086)  
THOMPSON, HINE AND FLORY  
1100 National City Bank Building  
629 Euclid Avenue  
Telephone: (216) 566-5500  
Cleveland, Ohio 44114

Defendants and Defendants' Attorney

RECEIVED FOR FILING  
JUL 25 1995  
  
GERALD E. FURFS, CLERK  
DEP.

Attachment A

CPS Solvent Cleaning Unit

- 1) Please describe the current system cleaning system and/or equipment, and provide a MSDS for the current spray gun cleaning solution. Please also provide a MSDS for the new cleaning solution. In addition, what is actually being cleaned - guns or screens?
- 2) Did The Etched Metal Company evaluate any other pollution prevention projects for the spray gun cleaner? Why was this particular option chosen?
- 3) Has any equipment for this project been purchased or installed yet?
- 4) What is the expected pay-back for this project? Please describe how pay-back was calculated.
- 5) List the component items for the spray gun cleaner.

Anopur Anodizing Acid Purification Unit

- 1) Will the recycled sulfuric acid be pure enough to be reused for its original function? If not, how will the recycled sulfuric acid be used? Will 100% of the recycled acid be reused on site?
- 2) How is the waste sulfuric currently being managed?
- 3) Did The Etched Metal Company evaluate any other pollution prevention projects for the waste sulfuric acid? Why was this particular option chosen?
- 4) Has any equipment for this project been purchased or installed yet?
- 5) What is the expected pay-back for this project? Please describe how pay-back was calculated.
- 6) List the component items for the acid recycling unit.

CASE NO. 291768

JUL 25 1995

ASSIGNED JUDGE Timothy J. McGinty

ESOP N.I.

State of Ohio

VS Etched Metal Company et al.

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| <input type="checkbox"/> 02 REASSIGNED       | <b>D<br/>I<br/>S<br/>P<br/>O<br/>S<br/>I<br/>T<br/>I<br/>O<br/>N</b> | <input type="checkbox"/> 81 JURY TRIAL         | <input checked="" type="checkbox"/> 89 DIS. W/PREJ. |
| <input type="checkbox"/> 03 REINSTATED (C/A) |  | <input type="checkbox"/> 82 ARBITRATION DECREE | <input type="checkbox"/> 91 COGNOVITS               |
| <input type="checkbox"/> 04 REINSTATED       |  | <input type="checkbox"/> 83 COURT TRIAL        | <input type="checkbox"/> 92 DEFAULT                 |
| <input type="checkbox"/> 20 REFEREE          |  | <input type="checkbox"/> 85 PRETRIAL           | <input type="checkbox"/> 93 TRANS TO COURT          |
| <input type="checkbox"/> 40 ARBITRATION      |  | <input type="checkbox"/> 87 DIS. W/O PREJ      | <input type="checkbox"/> 95 TRANS TO JUDGE          |
| <input type="checkbox"/> 65 STAY             |  | <input type="checkbox"/> 88 BANKRUPTCY STAY    | <input type="checkbox"/> 96 OTHER - SUMM JE         |
| <input type="checkbox"/> 69 SUBMITTED        |  |  |   |

NO. JURORS _____	COURT REPORTER _____	<input type="checkbox"/> PARTIAL
START DATE ___/___/___	START DATE ___/___/___	<input checked="" type="checkbox"/> FINAL
END DATE ___/___/___	END DATE ___/___/___	<input checked="" type="checkbox"/> POST CARD

DATE 7 24 1995 (NUNC PRO TUNC ENTRY AS OF & FOR \_\_\_/\_\_\_/\_\_\_) CLERK OF COURTS

Consent Order and Final Judgment Entry

VOL 87 PAGE 901 OSJ (Final)

JUDGE

CIVIL CASE STATUS FORM