

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. The parties shall not challenge this Court's jurisdiction to enter into and enforce this Consent Order.

II. PARTIES

2. The provisions of this Consent Order shall apply and be binding upon the Defendants to this action and, to the extent provided by law, their agents, officers, employees, assigns, successors in interest and any person acting in concert, privity or participation with Defendants. Defendants shall provide a copy of this Consent Order to each contractor they employ to perform work itemized herein.

III. SATISFACTION OF LAWSUIT

3. Plaintiff has alleged in its Complaint that Defendants have operated a hazardous waste facility located at 5624 Montgomery Road, Cincinnati, Hamilton County, Ohio ("the Facility") in violation of various provisions of the hazardous waste laws of Ohio as set forth in Chapter 3734 of the Ohio Revised Code ("O.R.C.") and the rules adopted thereunder, including those specific alleged violations of R.C. Chapter 3734 set forth in correspondence dated March 29, 1990, June 13, 1990, June 29, 1990, August 1, 1990 and November 14, 1990, from the Southwest District Office of the Ohio EPA addressed to Mr. James V. Fierro, President of Fierro Inc. formerly Jeff Industries, Inc. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil and/or administrative liability of Defendants to the State

of Ohio or any agencies thereof (including, without limitation, the Ohio EPA) for those claims under such laws and rules which have been alleged in the Complaint. It is specifically agreed that by entering into this Consent Order, Defendants are not admitting any of the facts, findings or violations alleged in the Complaint, and Defendants specifically deny such facts, findings and violations.

4. Nothing in this Consent Order, including the imposition of stipulated civil penalties, shall limit the authority of Plaintiff to seek relief for claims or conditions not alleged in the Complaint, or to seek any relief for the types of claims or conditions alleged in the Complaint which occur after the entry of this Consent Order. The Plaintiff here specifically reserves the right to bring any legal or equitable or other action against any person, including, but not limited to Defendants Fierro Inc. formerly Jeff Industries, Inc., and/or James V. Fierro pursuant to the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. § 9601, et seq. and/or Ohio Revised Code Sections 3734.20 through 3734.27 to require performance of removal, remedial or corrective actions at the site pursuant to those statutes which are not conducted under the terms of this Consent Order.

IV. SAMPLING AND ANALYSIS WORK PLAN

5. Defendants are hereby enjoined and ordered to submit an approvable sampling and analysis work plan for the soil located under, adjacent to, and around the old tank system and the drum storage area at Defendants' Facility within sixty

(60) days of entry of this Consent Order. Defendants are enjoined and ordered to include in the work plan a schedule of implementation and provisions for soil sampling and soil borings.

6. Any sampling and analysis work plan is subject to approval of the Ohio EPA. If Ohio EPA disapproves the work plan as submitted by Defendants and provides a written statement of the reasons for the disapproval, Defendants shall modify or submit a new plan for approval that address the deficiencies within thirty (30) days of receipt of the written statement. Upon receipt and review of the revised work plan, the Director may approve the revised work plan or modify the plan. If the Director modifies the work plan, the modified work plan shall become the approved work plan.

7. Defendants are enjoined and ordered to implement the approved work plan in accordance with the approved schedule set forth in the plan within thirty (30) days of receipt of Ohio EPA's approval. Defendants are enjoined and ordered to notify Ohio EPA at least three (3) business days prior to scheduled sampling activities so that a representative of Ohio EPA shall be present if desired by the Ohio EPA. Further, Defendants are enjoined to complete the work plan in accordance with the schedule contained therein. Defendants are enjoined to submit a written report of the results of the sampling and analysis work plan to Ohio EPA for review and approval within thirty (30) days after receipt of the laboratory analyses.

8. If the Director determines that the results of the sampling and analysis work plan indicate the presence of contamination, Defendants are enjoined and

ordered to submit an approvable Closure Plan, in accordance with the Closure Plan requirements set forth in Article V of this Consent Order, for the contaminated soils at Defendants' facility.

V. CLOSURE PLAN

9. If the Director determines that the results of the SAP reveal contamination, Defendants are hereby ordered and enjoined to perform closure of the drum storage area and the area at the rear of the Facility where the old tank system was located in accordance with O.A.C. Rules 3745-66-10 through 3745-66-20 and in accordance with a closure plan submitted by Defendants, as finally approved by Ohio EPA.

10. Within seventy-five (75) days after the Director's determination that contamination is present at the Defendants' facility, as described in Article IV, Paragraph 8 of this Consent Order, Defendants are ordered and enjoined to submit to Ohio EPA an approvable closure plan for the drum storage area and the old tank system area at the rear of the Facility. Said closure plan shall meet the requirements of O.A.C. Rules 3745-66-10 through 3745-66-20.

11. This closure plan is subject to the approval of the Director of Ohio EPA in accordance with O.A.C. Rules 3745-66-10 through 3745-66-20. If the Director determines that Defendants closure plan is deficient, Defendants are enjoined to resubmit a revised closure plan correcting the deficiencies within thirty (30) days of written notification from Ohio EPA. Upon receipt and review of the revised plan,

the Director may approve the revised plan or modify the plan so that it complies with O.A.C. Rules 3745-66-12 through 3745-66-20. If the Director modifies the closure plan, the modified closure plan shall become the approved closure plan.

12. Upon approval by Ohio EPA of Defendants closure plan, as submitted by the Defendants or as modified by the Director to ensure compliance with applicable rules, the Defendants are enjoined to implement the approved closure plan in the manner and pursuant to the time frames set forth in the approved closure plan, any conditions attached to the approvals, and O.A.C. Rules 3745-66-10 through 3745-66-20.

VI. COST OF CLOSURE, FINANCIAL ASSURANCE,
AND FINANCIAL RESPONSIBILITY

13. Within sixty (60) days after the Director's determination that contamination is present at the Defendants' facility, Defendants shall submit to Ohio EPA a detailed closure cost estimate, which is calculated pursuant to O.A.C. Rule 3745-66-42, and a detailed post-closure cost estimate, which is calculated pursuant to O.A.C. Rule 3745-66-44.

14. Within sixty (60) days after the Director's determination that contamination is present at the Defendants' facility, Defendants shall submit to Ohio EPA documentation of financial assurance for closure pursuant to O.A.C. Rules 3745-66-43 and for post-closure pursuant to O.A.C. Rule 3745-66-45.

15. Within sixty (60) days after the Director's determination that contamination is present at the Defendants' facility, Defendants shall submit to Ohio

EPA documentation demonstrating financial responsibility pursuant to O.A.C. Rule 3745-66-47.

VII. SUBMITTAL OF DOCUMENTS

16. All documents required to be submitted to Ohio EPA shall be submitted to: "Manager, Compliance Monitoring & Enforcement Section, Division of Hazardous Waste Management, Ohio Environmental Protection Agency, 1800 WaterMark Drive, Columbus, Ohio 43266-0149" and to "RCRA Group Leader, Ohio Environmental Protection Agency, Southwest District Office, 40 South Main Street, Dayton, Ohio 45402."

VIII. CIVIL PENALTY

17. Defendant shall pay to the State of Ohio the amount of Thirty-five Thousand Dollars (\$35,000.00). The civil penalty amount shall be made according to the following payment schedule:

1. Ten Thousand Dollars (\$10,000.00) within thirty (30) days after the entry of this Consent order;
2. Four Thousand One Hundred Sixty-Six and 66/100 (\$4,166.66) on September 1, 1994;
3. Four Thousand One Hundred Sixty-Six and 66/100 (\$4,166.66) on December 1, 1994;
4. Four Thousand One Hundred Sixty-Six and 67/100 (\$4,166.67) on March 1, 1995;
5. Four Thousand One Hundred Sixty-Six and 67/100 (\$4,166.67) on June 1, 1995;

6. Four Thousand One Hundred Sixty-Six and 67/100 (\$4,166.67) on September 1, 1995; and
7. Four Thousand One Hundred Sixty-Six and 67/100 (\$4,166.67) on December 1, 1995.

These installments shall be paid by delivering certified checks for the appropriate amounts made payable to the order of "Treasurer, State of Ohio" to Matthew A. Sanders, Acting Administrative Assistant, or a person subsequently designated by the State, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428. This penalty shall be paid into the Ohio Hazardous Waste Clean-up Fund created under O.R.C. Section 3734.28.

IX. GENERAL INJUNCTION

18. Defendants are hereby permanently enjoined to comply with Chapter 3734 of the Ohio Revised Code and the rules adopted thereunder. Specifically, Defendants are permanently enjoined to immediately achieve and maintain compliance with all applicable generator requirements set forth in O.A.C. Chapter 3745-52.

19. Defendants are hereby permanently enjoined from storing and/or disposing of hazardous wastes at the Facility until such time as Defendants receive a hazardous waste facility permit authorizing such activities from the Ohio Hazardous Waste Facility Board in accordance with O.R.C. Section 3734.05. Notwithstanding the foregoing, Defendants are not enjoined from generating and

accumulating hazardous waste at the facility in accordance with O.A.C. Rule 3745-52-34 and other applicable O.A.C. Rules.

20. Defendants are permanently enjoined from transporting or causing to be transported any hazardous wastes except to facilities licensed or permitted in accordance with O.R.C. Section 3734.02(F)(1) through (5).

X. COMPLIANCE WITH APPLICABLE LAWS

21. Nothing herein shall affect Defendants' obligations to comply with all applicable federal, state or local laws, regulations, rules or ordinances.

XI. STIPULATED PENALTIES

22. In the event that Defendants violate any of the requirements set forth in Paragraph Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 or 16 of this Consent Order, including any milestone requirement in the closure plan schedule and/or the sampling and analysis work plan, Defendants shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of each failure to meet a requirement, up to thirty (30) days - Three Hundred (\$300.00) per day. For each day of each failure to meet a requirement, from thirty-one (31) to sixty (60) days - Six Hundred Dollars (\$600.00) per day. For each day of each failure to meet a requirement, from sixty-one (61) days to ninety (90) days - Two Thousand Dollars (\$2,000.00) per day. For each day of failure to meet a requirement, over ninety (90) days - Four Thousand Dollars (\$4,000.00) per day.

23. Any payment required to be made under the provisions of this Article of this Consent Order shall be made by delivering a certified check(s) for the appropriate amounts made payable to the order of "Treasurer, State of Ohio" within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order to Matthew A. Sanders, Acting Administrative Assistant, or a person subsequently designated by the State, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

XII. WAIVER OF STIPULATED PENALTY

24. Notwithstanding the provisions of the Consent Order Article XI concerning the payment of stipulated penalties, the State may in its sole and unreviewable discretion defer, reduce or waive stipulated penalties that have accrued. Where Defendants assert a deferral, reduction, or waiver of such stipulated penalties is appropriate, Defendants may timely present to the State evidence supporting such assertion. The State will consider such assertion in good faith. The State's decision regarding deferral, reduction, or waiver of stipulated penalties shall not be subject to judicial review.

XIII. POTENTIAL OF FORCE MAJEURE

25. 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, weather conditions, acts of war, or civil disturbances. While the State of Ohio does not agree that such a defense exists, it is, however, agreed upon by the 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 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 the Defendants, shall rest with the Defendants. 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.

XIV. INSPECTIONS

26. Defendants are enjoined and ordered to allow representatives of the Ohio EPA, upon proper identification, to enter upon the 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. Chapter 3734 and rules adopted thereunder. Nothing in this Order shall limit any right of entry possessed by the Plaintiff or the Ohio EPA under O.R.C. Chapter 3734 and the rules adopted thereunder.

XV. RETENTION OF JURISDICTION

27. This Court will retain jurisdiction of this action for the purpose of overseeing the implementation of, and compliance with, this Consent Order by the Defendants.

XVI. COURT COSTS

28. Defendants are ordered and enjoined to pay all court costs and fees of this action.

XVII. ENFORCEMENT COSTS

29. Defendants are ordered and enjoined to pay the enforcement costs of relator Ohio Attorney General expended in pursuing the instant action, totalling Five Thousand Dollars (\$5,000.00). This payment shall be made according to the following schedule:

1. One Thousand Dollars within thirty (30) days after the entry of this Consent Order;
2. Two Thousand Dollars (\$2,000.00) on September 1, 1994; and
3. Two Thousand Dollars (\$2,000.00) on December 1, 1994.

These installments shall be made by delivering certified checks in such amounts for payment into the State's Treasury made payable to the order of "Treasurer, State of Ohio" to Matthew A. Sanders, Acting Administrative Assistant, or a person subsequently designated by the State, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428. Any checks submitted in compliance with this

Section, shall be in addition to and separate from any check submitted pursuant to any other Section of this Consent Order.

DATED 7/28/94, 1994

E N T E R

[Signature] July 28, 1994
JUDGE, HAMILTON COUNTY COURT
OF COMMON PLEAS RALPH WINKLER, JUDGE

APPROVED:

LEE FISHER
ATTORNEY GENERAL OF OHIO

COPY

BY: *Lori A. Massey*
LORI A. MASSEY (0047226) (M1021)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
(614) 466-2766

FIERRO INC.
(formerly JEFF INDUSTRIES, INC.)

BY: *James V. Fierro*
Authorized Representative of
Defendant Fierro Inc.
(formerly Jeff Industries, Inc.)

BY: *Daniel P. Utt*
DANIEL P. UTT, ESQ. (0036829)
Katz, Teller, Brant & Hild
Suite 2400
255 East Fifth Street
Cincinnati, Ohio 45202-4724
(513) 721-4532

Attorney for Defendants

BY: *James V. Fierro*
JAMES V. FIERRO, Defendant