

IN THE COURT OF COMMON PLEAS  
TRUMBULL COUNTY, OHIO

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

Plaintiff,

v.

H&R PLATING, et al.,

Defendants.

Case No. 92-CV-225

JUDGE ANDREW D. LOGAN

MARGARET R. O'BRIEN  
CLERK OF COURTS  
TRUMBULL COUNTY  
JUN 19 11 51 AM '97  
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VOL. \_\_\_\_\_ PAGE \_\_\_\_\_

CONSENT ORDER AND FINAL JUDGMENT ENTRY

Plaintiff, State of Ohio, ex rel. Betty D. Montgomery, Attorney General of Ohio, having filed the Complaint in this action against Defendants to enforce Ohio's hazardous waste laws found in Ohio Revised Code Chapter 3734 and the rules adopted thereunder, Ohio's water pollution laws found in Ohio Revised Code 6111 and the rules adopted thereunder, and Ohio's air pollution laws found in Ohio Revised Code Chapter 3704 and the rules adopted thereunder; and Plaintiff and Defendants having consented to the 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. DEFINITIONS

As used in this Consent Order:

**“Consent Order”** or **“Order”** means this Consent Order and Final Judgment Entry and all appendices hereto. In the event of conflict between this Order and any appendix, the Order shall control.

**“Defendants”** means H&R Plating, Inc., Paul W. Humenik, Russ A. Schmidt, and Leonard Humenik. Unless otherwise specifically noted in this Consent Order, any requirement or obligation imposed in this Consent Order upon Defendants is imposed jointly and severally.

**“Director”** means Ohio’s Director of Environmental Protection.

**“Facility”** refers to the location where the alleged treatment, storage, disposal, or other placement of hazardous waste was conducted by Defendants or any one of them, which facility is located at 1266 State Route 7 North, Brookfield, Trumbull County, Ohio.

**“Ohio EPA”** means the Ohio Environmental Protection Agency.

**“O.A.C.”** means the Ohio Administrative Code.

**“O.R.C.”** means the Ohio Revised Code.

**“Plaintiff”** means the State of Ohio by and through the Attorney General of Ohio.

## II. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapters 3704, 6111 and 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 them who receives actual notice of this Consent Order whether by personal service or otherwise.

### 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 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 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. INJUNCTIVE RELIEF

1. Defendants are ordered and enjoined to comply with all applicable provisions of the Ohio's hazardous waste laws and rules as set forth in O.R.C. Chapter 3734 and O.A.C. Chapters 3745-50 through 3745-69.

2. Defendants are ordered and enjoined to comply with all applicable provisions of the Ohio's water pollution laws and rules as set forth in O.R.C. Chapter 6111 and O.A.C. Chapters 3745-3, 3745-31, and 3745-33.

3. Defendants are ordered and enjoined from "installing" or "modifying" any "air contaminant source," as those terms are defined in O.A.C. Rule 3745-31-01(C), (I), and (J), at Defendants' Facility without first applying for and obtaining a Permit to Install from the Director of Ohio EPA in accordance with O.A.C. Rule 3745-31-02(A), unless the source is exempted from the requirement to obtain a Permit to Install by the State of Ohio's statutes or regulations.

4. Except as authorized under O.R.C. Section 3704.03(F), Defendants are ordered and enjoined from operating any air contaminant source, as that term is defined in O.A.C. Rule 3745-35-01(B)(1) at Defendants' Facility without first applying for and obtaining a Permit to Operate from Ohio EPA in accordance with O.A.C. Rule 3745-35-02(A), unless the source is exempted from the requirement to obtain a Permit to Operate by the State of Ohio's statutes or regulations.

5. Defendants are ordered and enjoined to comply with all terms and conditions of all Permits to Install and Permits to Operate which are issued to Defendant for air contaminant

sources at Facility and to comply with all applicable provisions of the Ohio air pollution laws and rules as set forth in O.R.C. Chapter 3704 and O.A.C. Chapters 3745-15 through 3745-17, O.A.C. Chapter 3745-21, O.A.C. Chapter 3745-31, and O.A.C. Chapter 3745-35.

#### **VI. HAZARDOUS WASTE COMPLIANCE REQUIREMENTS**

1. Defendants are ordered and enjoined to complete closure at the Facility of the septic tank system and its associated piping and any areas where waste contamination may have migrated in accordance with O.A.C. Rules 3745-66-10 through 3745-66-20.

2. On June 27, 1996, Ohio EPA received a Ground Water Sampling and Analysis Plan (Ground Water Plan) for the Facility. On July 22, 1996, Ohio EPA approved the Ground Water Plan with conditions (Attachment 1). Defendants are ordered and enjoined to implement the Ground Water Plan with the conditions set forth in the July 22, 1996 approval letter.

#### **VII. SUBMITTAL OF DOCUMENTS**

All documents required to be submitted to Ohio EPA pursuant to the terms of this Consent Order shall be submitted to:

1. Ohio EPA-Northeast District Office  
2110 E. Aurora Road  
Twinsburg, Ohio 44087  
Attention: Group Leader, Division of Hazardous Waste Management
2. Director, Ohio Environmental Protection Agency  
P.O. Box 1049  
Columbus, Ohio 43266-1049  
Attention: Manager, Compliance Assurance Section

## VIII. CIVIL PENALTY

1. Defendants are ordered and enjoined to pay to the State of Ohio, pursuant to O.R.C. Sections 3704.06(B) and (C), 3734.13(C), 6111.09(A), a civil penalty in the amount of Forty-Five Thousand Dollars (\$45,000.00). The penalty shall be paid by delivering to Lyndia Jennings, Administrative Secretary, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, certified checks for the amount payable to the order of "Treasurer, State of Ohio."

Payments shall be made according to the following schedule:

- a Five Thousand Dollar (\$5,000.00) payment by March 3, 1997 (Hazardous Waste penalty)
- a Five Thousand Dollar (\$5,000.00) payment by March 3, 1997 (Water Pollution penalty)
- a Five Thousand Dollar (\$5,000.00) payment by June 2, 1997 (Air Pollution penalty)
- a Five Thousand Dollar (\$5,000.00) payment by September 2, 1997 (Air Pollution penalty)
- a Five Thousand Dollar (\$5,000.00) payment by December 1, 1997 (Water Pollution penalty)
- a Five Thousand Dollar (\$5,000.00) payment by March 2, 1998 (Hazardous Waste penalty)
- a Five Thousand Dollar (\$5,000.00) payment by June 1, 1998 (Hazardous Waste penalty)
- a Five Thousand Dollar (\$5,000.00) payment by September 1, 1998 (Water Pollution penalty)
- a Five Thousand Dollar (\$5,000.00) payment by December 1, 1998 (Air Pollution penalty)

## IX. SUPPLEMENTAL ENVIRONMENTAL PROJECT

1. In addition to the civil penalty set forth in Section VIII of this Consent Order, and in furtherance of the mutual objectives of the State of Ohio and Defendants in improving the environment, Defendants are ordered and enjoined to contribute Fifteen Thousand Dollars (\$15,000.00) for the clean-up of school Hazardous Chemical/Waste.

2. Schools in Trumbull County which responded to the One-Time Statewide Hazardous Chemical/Waste Clean-up Program Survey will be contacted by the State. These Trumbull County schools will be notified that Fifteen Thousand Dollars (\$15,000.00) is to be contributed by Defendants for the clean-up program. These Trumbull County schools will also be advised to provide Defendants with (a) documentation of each school's complete hazardous chemical/wastes inventories which need to be cleaned-up and (b) an invoice regarding the cost from the licensed Treatment, Storage, and Disposal (TSD) facility which will be accepting the wastes. Defendants shall then, in their discretion, select the school(s) to be completely cleaned-up and distribute the money up to Fifteen Thousand Dollars (\$15,000.00) directly to the TSDs. Defendants shall submit a copy of each canceled check and invoice to Lyndia Jennings, Administrative Secretary (at the address set forth in Section VIII., paragraph 1) within ten (10) days of the check's return by the bank.

3. In the event that Defendants do not distribute the full Fifteen Thousand Dollars (\$15,000.00) by December 1, 1998 the remaining balance shall be paid to State of Ohio as a civil penalty. This remaining balance shall be paid as set forth in Section VIII., and shall be paid by December 15, 1998.

## **X. RETENTION OF JURISDICTION**

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

## **XI. COSTS**

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

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

1. The parties agree and acknowledge that final approval by Plaintiff and Defendants and entry of this Consent Order is subject to the requirement of 40 C.F.R. §123(d)(1)(iii), which provides for notice of the lodging of this Consent Order, opportunity for public comment, and the consideration of any public comment. Both Plaintiff and Defendants reserve the right to withdraw this Consent Order based on comments received during the public comment period.

2. 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.

## **XIII. AUTHORITY TO ENTER INTO THE CONSENT ORDER**

Each signatory for a corporation represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof, and that he/she warrants that a resolution from the corporation establishes that he/she is so



empowered.

SIGNED:

*Andrew D. Logan*  
 JUDGE ANDREW D. LOGAN  
 TRUMBULL COUNTY  
 COURT OF COMMON PLEAS

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 PAGE 1  
 JUN 18 4 06 PM '97  
 MARGARET R. O'BRIEN  
 CLERK OF COURTS  
 TRUMBULL COUNTY

APPROVED:

BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO

*Timothy J. Kern*  
 TIMOTHY J. KERN (0034629)  
 Assistant Attorney General  
 Environmental Enforcement Section  
 30 East Broad Street, 25th Floor  
 Columbus, Ohio 43215-3428  
 (614) 466-2766

H&R PLATING, INC.

*Leonard Humenik* PRES.

*Paul W. Humenik*  
 PAUL W. HUMENIK

*Russ A. Schmidt*  
 RUSS A. SCHMIDT

*Leonard Humenik*  
 LEONARD HUMENIK

*Robert F. Burkey*  
 ROBERT F. BURKEY  
 BURKEY & BURKEY  
 200 Chestnut Avenue N.E.  
 Warren, Ohio 44483

Attorney for Defendants



State of Ohio Environmental Protection Agency

Northeast District Office

2110 E. Aurora Road  
Troy, Ohio 44087-1969  
(216) 25-9171  
FAX (216) 487-0769

ATTACHMENT 1

George V. Voinovich  
Governor

July 22, 1996

RE: H&R Plating  
OHD 053 145 835  
Trumbull County

CERTIFIED MAIL

Mr. Paul Humenik  
H&R Plating  
1266 State Route 7  
Brookfield, OH 44403

Dear Mr. Humenik:

On June 27, 1996 I received the Groundwater Sampling and Analysis Plan for the H&R Plating, Inc. facility in Brookfield, Ohio. The following conditions are hereby added to this plan:

1. The facility is proposing to evaluate ground water contamination based on the installation of three monitoring wells. Site layout suggests that this is a reasonable step. However, it is important to note that if statistically significant ground water contamination is observed downgradient of the waste management unit (WMU), then H&R Plating will initiate a ground water monitoring program in accordance with rules 3745-65-90 through 3745-65-94 of the OAC.
2. The proposed monitoring network, consisting of three wells, must be installed in such a manner that two of the wells are located in positions downgradient of the WMU. If it is determined that this condition is not met after installation of the monitoring network, then additional monitoring well(s) will be installed such that ground water quality downgradient of the WMU can be evaluated.
3. Decontamination procedures for well drilling equipment will be used such that cross-contamination between wells and between sites will be avoided.
4. Monitoring wells installed in high-traffic areas will have bumper posts installed to protect well integrity.

This plan, including the conditions stated above, should be implemented as soon as possible. Please notify me prior to field activities so that I have the opportunity to be present during these activities.

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Mr. Paul Humenik  
July 22, 1996

H&R Plating has proposed to evaluate site-specific analytical parameters based on one year of quarterly ground water monitoring. Within 30 days of the date of this letter H&R Plating must submit an explanation of the statistical methodology that will be used.

Failure to cite specific violations and deficiencies in this letter does not release H&R Plating from the responsibility of complying with all applicable regulations.

If you have any questions, please call me at 216-963-1217.

Sincerely,

*Robert Almquist*

Robert Almquist  
Environmental Specialist  
Division of Hazardous Waste Management

RA:cl

cc: Harry Courtright, DHWM, NEDO  
Linda Neumann, DHWM, CO  
Montee Suleiman, DHWM, CO  
Jeanette Smith, DHWM, CO  
Rich Kurlich, DDAGW, NEDO  
Tim Kern, Attorney General's Office

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