

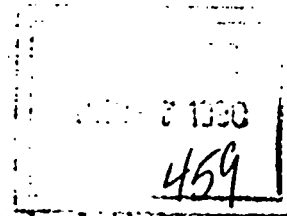
IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

STATE OF OHIO, ex rel.  
ANTHONY J. CELEBREZZE, JR.  
ATTORNEY GENERAL OF OHIO,  
  
Plaintiff,

vs.

HILTON DAVIS CHEMICAL CO.  
d/b/a Hilton Davis Co.,  
Defendant.

CASE NO. A9010929  
JUDGE  
CONSENT ORDER



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 Hilton Davis Chemical d/b/a Hilton Davis Co. (hereinafter "Defendant") to enforce the State of Ohio's hazardous waste statutes and rules concerning the Defendant's waste handling practices at its manufacturing facility located at 2235 Langdon Farm Road, Cincinnati, Hamilton County, Ohio (hereinafter the "manufacturing facility"), and Plaintiff and Defendant having consented to entry of this Order:

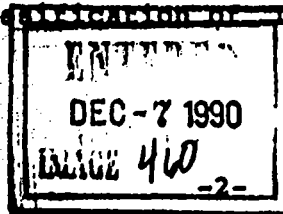
Therefore, without trial or admission of any issue of law or of fact, and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED and DECREED as follows:

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, successors and assigns. Defendant shall provide a copy of this Consent Order to current and future employees of Hilton Davis Chemical Co., d/b/a Hilton Davis Co., having responsibility for waste handling practices at the manufacturing facility and to any independent contractor employed to handle, store, treat and/or dispose of hazardous wastes on-site generated by Defendant until such time as this Consent Order is terminated in accordance with the provisions provided under Section VIII.

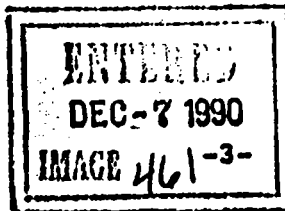
II. SATISFACTION OF LAWSUIT

2. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by the Defendant for those claims alleged in the Complaint occurring on or before November 5, 1990 with regard to tank system inspection, reporting, certification, assessment and construction requirements, the proper storage of hazardous waste in containers, the proper marking of containers and tanks storing hazardous waste, manifest requirements, certification of closure requirements, and all claims based on whether Tank 721 is a tank regulated under the provisions of O.A.C. 3745-66-90, claims involving manifest violations based on the alleged improper classification of "Hopikem Dye Still Bottoms",



claims involving secondary containment requirements for certain hazardous waste tanks, claims based on the adequacy of the contingency plan and personnel training program, and any claims relating to the cement pad underlying and adjacent to the hazardous waste fuel tanks including ancillary equipment associated therewith; provided, the remediation of any chronic spills or leaks associated with the cement pad underlying and adjacent to the hazardous waste tanks and ancillary equipment associated therewith shall be addressed by the Consent Decree in the case of State of Ohio, ex rel. Anthony J. Celebrezze, Jr. vs. Sterling Drug, Inc. et al., Case No. A8608219, by closure of the tanks and cement pad pursuant to R.C. Chapter 3734 and rules adopted thereunder, or by both methods. Nothing in this Consent Order shall be construed as resolving any claims that the State of Ohio may have against Defendant involving the four lagoons located at the manufacturing facility.

Except as noted above, 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. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for violations which occur after the filing of the Consent Order. Nothing herein shall limit the State of Ohio from requiring Defendant pursuant to and in accordance with the provisions of Chapter 3734 and 6111 of the Revised Code, and rules adopted thereunder, to initiate



appropriate corrective action to address contamination of the groundwater and surface water or soils at the manufacturing facility, or to recover costs incurred by the State for such remediation to which the State is entitled pursuant to state or federal law.

### III. JURISDICTION AND VENUE

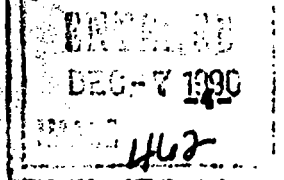
3. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 3734 of the Ohio Revised Code and the Rules promulgated thereunder.

### IV. PERMANENT INJUNCTION

4. Defendant is hereby permanently enjoined and ordered to comply with all applicable provisions contained in Chapter 3734. of the Ohio Revised Code and the rules promulgated thereunder with respect to its waste handling activities at its manufacturing facility.

5. Defendant shall manifest and handle "Copikem Dye Still Bottoms" hereinafter generated or handled at its manufacturing facility as an F005 waste.

6. Defendant shall comply with the requirement of O.A.C. 3745-52-34(A) concerning the marking and labelling of containers. Within thirty days after entry of this order, Defendant shall demonstrate to Ohio EPA, in writing, its compliance with the requirements of O.A.C. 3745-52-34(A)



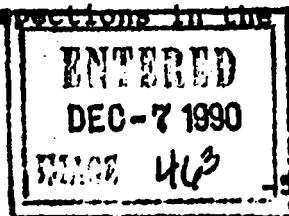
concerning marking and labelling tanks and containers. Should Ohio EPA determine that this written demonstration does not meet the requirements of O.A.C. 3745-52-34(A), Defendant shall resubmit the written demonstration correcting all deficiencies within forty-five days after receipt of written notice from the Ohio EPA with reasons that such demonstration is deficient.

**V. CIVIL PENALTY**

7. It is hereby ordered that the Defendant Hilton Davis Company shall pay a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00). 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 Dominic J. Hasket, 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 thirty (30) days of filing of this Consent Order. This penalty shall be paid into the Ohio Hazardous Waste Cleanup Fund created by O.R.C. Section 3734.28.

**VI. STIPULATED PENALTIES**

8. In the event that Defendant: (a) fails to conduct inspections at least once each operating day of its aboveground portions of the tank system at its manufacturing facility to detect corrosion or release of waste from such system, and to document such inspections in the operating record of the



manufacturing facility in the manner required by O.A.C. 3745-66-95; (b) fails to close any container holding hazardous waste, except when necessary to add or remove waste, as required by O.A.C. 3745-66-73(A); or (c) fails to comply with paragraphs 5 and 6 of this Consent Order, Defendant 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 set forth in this paragraph, up to thirty (30) days - Two Hundred and Fifty Dollars (\$250.00) per day. For each day of violation or failure to meet a requirement set forth in this paragraph, from thirty-one (31) to sixty (60) days - Seven-Hundred and Fifty Dollars (\$750.00) per day. For each day of violation or failure to meet a requirement set forth in this paragraph, from sixty-one (61) to ninety (90) days - One Thousand Dollars (\$1,000.00) per day. For each day of violation or failure to meet a requirement set forth in this paragraph, over ninety (90) days - Twenty-Five Hundred Dollars (\$2,500) per day.

Stipulated penalties assessed pursuant to this order shall not be suspended in whole or in part except as may be provided in Paragraph VII. Recovery of a stipulated penalty shall not limit the State of Ohio to seek a contempt action against Defendant or to pursue appropriate civil or criminal sanctions, including penalties, for violations of any of the law or rules referenced in this consent order. Penalties for the commission of one violation shall in no event exceed \$10,000.

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Any payment required to be made pursuant to this section of the Consent Order shall be paid by certified check made payable to "Treasurer, State of Ohio," which check should be delivered by mail, or otherwise, to Dominic J. Hanket, 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 requirements of this Consent Order. This penalty shall be paid into the Hazardous Waste Clean-up Fund created by O.R.C. Section 3734.28.

**VII. POTENTIAL FORCE MAJEURE**

In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendant may raise at that time that it is entitled to a defense that its conduct was caused by reasons beyond its control, such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While Plaintiff does not agree that such a defense exists, it is hereby agreed upon by Defendant and the State of Ohio that it is premature at this time to adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at that time that an enforcement action or contempt action, if any, is commenced by the State of Ohio. At that time, the burden of proving that any delay was or will be caused by circumstances beyond the control of the Defendant

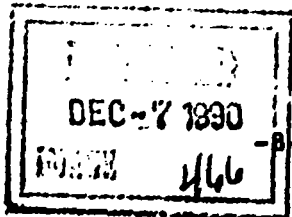
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shall rest with Defendant. Acceptance of this Consent Order with a potential force majeure provision does not limit any other rights which Defendant may have in the event of an enforcement or contempt action by Plaintiff to enforce the provisions of this Consent Order.

#### VIII. RETENTION OF JURISDICTION

9. The Court will retain jurisdiction of this action for the purpose of overseeing Defendant's compliance with this Consent Order and Chapter 3734. of the Revised Code and rules adopted thereunder. No earlier than one year from the date of entry of this Consent Order, the Defendant may move the Court, pursuant to Civ. R. 60(B), to terminate Defendant's obligation to pay stipulated penalties as set forth in Section VI of this Consent Order if Defendant can demonstrate that it has been in compliance with the obligations described in paragraphs (a) through (c) of Section VI of this Consent Order for a period of twelve consecutive months. Plaintiff takes no position as to such motion and reserves any rights it may have to oppose the motion.

No earlier than two years from the date of entry of this Consent Order, the Defendant may move the Court, pursuant to Civ. R. 60(B), to terminate the permanent injunction provisions of paragraphs 4 through 6 of Section IV of this Consent Order if Defendant can demonstrate that it has been in compliance with the obligations of this Consent Order for such a two year





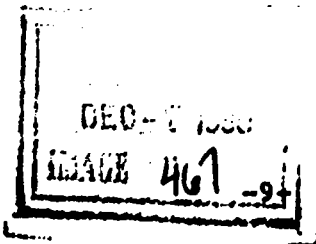
period. Plaintiff takes no position as to such motion and reserves any rights it may have to oppose the motion.

#### IX. INSPECTIONS

10. Defendant is ordered to allow representatives of the Ohio EPA, upon proper identification, to enter upon the Defendant's manufacturing 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 promulgated thereunder. Nothing in the Order shall limit the rights of the Ohio EPA or U.S. EPA to conduct regular and routine inspections, or take samples pursuant to statute, regulation or permit.

#### X. COMPLIANCE WITH APPLICABLE LAWS

11. Nothing herein shall affect Defendant's obligation to comply with all applicable federal, state, or local law, regulation, rule or ordinance. Nothing herein shall affect any of the terms or conditions existing under the October 20, 1986 Consent Decree entered in the case of State of Ohio, ex. rel. Anthony J. Celebrezze, Jr., v. Sterling Drug Inc., et al., Case No. A8608219, in the Court of Common Pleas, Hamilton County, Ohio.



IX. COURT COSTS

12. The Defendant shall pay the court costs of this action.

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*Jalan*

DATE

JUDGE

Approved:

Respectfully submitted,

ANTHONY J. CELEBREZZE, JR.  
ATTORNEY GENERAL OF OHIO

*Dominic J. Harket (H601)*

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By *Mark R. Miller, Manager of Environmental Affairs / SNH*

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