



## II. PARTIES

2. The provisions of this Consent Order shall apply and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest and any persons acting in concert or privity with any of them.

## III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant Lincoln Electric has committed numerous violations of the water pollution laws of the State of Ohio arising out of its metal finishing operations located in Cleveland, Ohio. Lincoln Electric has filed an answer denying certain allegations contained in the Complaint. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant Lincoln Electric for all claims under such laws 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.

## IV. JURISDICTION

4. Defendant Lincoln Electric is hereby Enjoined and Ordered to immediately comply with the requirements of Chapter 6111 of the Ohio Revised Code and the rules and regulations adopted under that Chapter and the requirements mandated by the City of Euclid's publicly-owned treatment works ("POTW") approved pretreatment program. In addition, the Defendant is hereby enjoined and ordered

to immediately comply with: (1) all ordinances and regulations of the City of Euclid which are relevant to Lincoln Electric's discharge of water to the City's POTW; (2) all permits issued by the City of Euclid; (3) any contracts or agreements with the City of Euclid; and (4) any "Pretreatment Standard" as that term is defined in 3745-3-01(W).

V. CIVIL PENALTY

5. Defendant Lincoln Electric shall pay to the State of Ohio a civil penalty of fifty-nine thousand dollars (\$59,000.00). The penalty shall be paid by delivering to counsel for Plaintiff a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within thirty (30) days from the date of entry of this Consent Order.

VI. STIPULATED PENALTIES

6. In the event that any discharge by the Defendant Lincoln Electric fails to meet any "Pretreatment Standard" as that term is defined in O.A.C. 3745-3-01(W), the Defendant shall, immediately and automatically, be liable for and shall pay a stipulated penalty of two thousand two hundred and fifty dollars (\$2,250.00) per day per violation of each discharge parameter. With regard to monitoring reports submitted by Defendant Lincoln Electric, a "day of violation" will be construed as the specific day(s) on which violations occur as set forth on the monitoring report(s).

7. In the event that Defendant Lincoln Electric fails to meet any of the other requirements (i.e. all requirements not covered by paragraph 6, above) of this Consent Order, Defendant shall,

immediately and automatically, be liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of failure to meet a requirement, up to thirty (30) days -- Five Hundred Dollars (\$500.00) per day for each requirement not met. For each day of failure to meet a requirement, from thirty-one (31) to sixty days (60) - One Thousand Dollars (\$1,000.00) per day for each requirement not met. For each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days - Two Thousand Five Hundred Dollars (\$2,500.00) per day for each requirement not met. For each day of failure to meet a requirement, over ninety days -- Three Thousand Five Hundred Dollars (\$3,500.00) per day for each requirement not met.

8. Any Stipulated Penalty payment required to be made under the provisions of this Consent Order shall be made by delivering to Plaintiff's counsel a certified check or checks for the appropriate amounts, within thirty (30) days from the date of the failure to meet the requirement of the Consent Order, made payable to "Treasurer, State of Ohio".

#### VII. TERMINATION OF STIPULATED PENALTIES

9. The provisions of this Consent Order set forth in Section VI, requiring the payment of stipulated penalties, may be terminated after Defendant Lincoln Electric has achieved and maintained full compliance with the terms and requirements contained in this Consent Order including the payment of all Stipulated Penalties, for a period of one (1) year after entry of the Consent Order. Termination of stipulated penalties shall be

by Order of the Court, upon application by any party and a demonstration that the conditions set forth in this paragraph have been met.

#### VIII. POTENTIAL FORCE MAJEURE

10. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendant Lincoln Electric may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and the 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 the proceeding to enforce this Consent Order is commenced by the Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances beyond the control of Defendant shall rest with Defendant.

#### IX. RETENTION OF JURISDICTION

11. The Court will retain jurisdiction of this action for the purpose of making any order or decree which it deems appropriate to carry out this Consent Order.

X. COSTS

12. Defendant Lincoln Electric is hereby ordered to pay the costs of this action.

Paul R. Mahia  
JUDGE, COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

APPROVED:

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GERALD E. FUERST/CLERK  
BY [Signature] DEP.

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