

IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO

FILED
LUCAS COUNTY

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

Plaintiff,

vs.

MAUMEE REFINING, INC., et al.,

Defendants.

: Case No. 850719
:
: JUDGE KNEPPER
:
: JACK VAN KLEY (6637)
: DAVID I. SCHIFF
: Assistant Attorneys General
: Environmental Enforcement
: Section.
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:

CONSENT JUDGMENT BETWEEN PLAINTIFF
STATE OF OHIO AND DEFENDANTS MAUMEE
REFINING, HAROLD GRISE, AND DANIEL GRISE

The State of Ohio (hereinafter "Plaintiff") on relation of its Attorney General, Anthony J. Celebrezze, Jr., filed a Complaint seeking injunctive relief and civil penalties from Defendants Maumee Refining, Inc., Harold Grise, and Daniel Grise (hereinafter "Defendants"). The State later amended its Complaint to include Frontier Chemical Waste Process, Inc. as a Defendant in this action. This Consent Judgment constitutes the final Order of this Court regarding the issues of civil penalties and of injunctive relief only against Defendants Maumee Refining, Inc., Harold Grise and Daniel Grise.

The issues of civil penalty and of injunctive relief as to Frontier Chemical Waste Process, Inc. are the subject of a separate Order:

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

1. This Court has jurisdiction over the subject matter herein pursuant to Chapter 3734 of the Ohio Revised Code. The Complaint states a claim upon which relief can be granted against Defendants under this statute. This Court has jurisdiction over the parties hereto. Venue is proper in this Court.

2. The provisions of this Consent Judgment shall apply and be binding upon the parties to this action, their officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of the Consent Judgment.

3. Plaintiff alleges in its Amended Complaint that Defendants have violated various provisions of the hazardous waste rules of the State of Ohio. Defendants deny these allegations and nothing herein shall be construed as an admission of the truth of any of the allegations of fact or law in the Amended Complaint. Compliance with this Consent Judgment shall be full satisfaction for Defendants' liability for the alleged violations.

4. Defendants are permanently enjoined and prohibited from violating the Ohio hazardous waste statute or rules.

5. Pursuant to Ohio Revised Code Section 3734.13(C), each Defendant is assessed a civil penalty of Eight Thousand Dollars (\$8,000.00)

for a total of Twenty-Four Thousand Dollars (\$24,000.00). The payment of this civil penalty is suspended contingent upon each Defendant's compliance with paragraphs 6 through 8 of this Consent Judgment. Should any Defendant violate any of the provisions of paragraphs 6 through 8, the Defendant who committed the violation shall pay Four Thousand Dollars (\$4,000.00) of the penalty within thirty (30) days after receiving notice of the violation from the State of Ohio if there is concurrence that a violation has occurred, or, in the absence of concurrence, within thirty (30) days of a final determination by the Court of such violation. Should a defendant violate any of the provisions of paragraphs 6 through 8 a second time after receiving notice of his earlier violation, the Defendant who committed the subsequent violation shall pay the remaining Four Thousand Dollars (\$4,000.00) of the civil penalty assessed against him by this Consent Judgment within thirty (30) days after concurrence or a final determination of the subsequent violation. The civil penalty payments shall be made by delivering to Plaintiff's counsel, or his successor in the Office of the Attorney General, for payment into the Hazardous Waste Cleanup Special Account created by the Ohio Revised Code Section 3734.28, certified check(s) in the proper amount made payable to the order of "Treasurer, State of Ohio". Defendants waive all rights they might have to contest the imposition of these penalties except the defense that the violation of the Consent Judgment did not occur. Plaintiff reserves whatever rights it has in contempt or otherwise to seek redress for violations of this Consent Judgment or Ohio Revised Code Chapter 3734, whether or not the violations have triggered the reinstatement of the suspended penalties described in this paragraph.

6. Defendants are enjoined and prohibited from personally or collectively treating, storing, or disposing of hazardous waste¹ in Ohio, from personally or collectively controlling a business which treats, stores or disposes of hazardous waste in Ohio, and from exercising or having authority to exercise control or management authority over the hazardous waste treatment, storage or disposal aspect of any business which operates a facility located in Ohio for the treatment, storage or disposal of hazardous waste.

7. Defendants shall provide the Ohio Environmental Protection Agency (Ohio EPA) with thirty (30) days advance written notice before "participation"² in any business which owns or operates a facility located in Ohio that receives, stores, recycles, transports, sells or disposes of waste oil.³ This notification shall include the name and address of the facility, the results of an acceptance analysis of each waste oil stream expected to be handled at the facility, and a description of each such waste oil stream and

¹ "Hazardous waste" as used herein has the meaning given to it in the Ohio Revised Code Section 3734.01.

² "Participation" means to exercise, or to have the authority to exercise control or management authority over the receipt, storage, recycling, sale, or disposal of waste oil in Ohio. "Participation" also includes the ownership by a defendant, or by one or more defendants collectively, of a controlling interest in a business which operates a facility in Ohio for the receipt, storage, recycling, sale, or disposal of waste oil.

³ "Waste oil" as used herein means used oil and off-specification oil products.

the process by which it was generated. "Acceptance analysis" shall have the meaning given to it in paragraph 8 below. Acceptance analyses shall be regularly performed on waste streams coming into the facility. In addition to the acceptance analyses to be conducted on the waste oil streams, Defendants shall perform gas chromatographic fingerprinting on each load of waste received at the facility and each load taken away from the facility. Defendants shall not accept any load of waste oil containing chlorinated solvents. Defendants shall keep accurate records of all oil materials sales, including the customer and date and amount of sale. Defendants shall retain for inspection by the State of Ohio all acceptance analyses, results of fingerprinting, and records of oil materials sales. Each such document shall be retained for a period at at least five years.

8. If Defendants, individually or collectively, manage, control or own a controlling interest in a business located outside Ohio which intends to sell or dispose of waste oil in Ohio from a waste oil stream, or if defendants personally intend to sell or dispose of waste oil in Ohio from a waste oil stream, they must give Ohio EPA written notice of the intended sale or disposal at least seven (7) days prior to the delivery into Ohio of any waste oil from the stream. This notification shall include the names and addresses of the recipients of the waste oil, a description of the waste oil, the process by which it was generated, and the results of an "acceptance analysis" on a representative sample of the waste oil. The "acceptance analysis" shall include the bottom sludge and water (BS&W) test, a PCB test, a chlorinated solvent gas chromatographic test (not broad spectrum), a BTU determination, a

total ash determination, and the results of an analysis to determine heat value, as well as the end use for the waste oil intended by the recipient. In addition to the acceptance analyses to be conducted on each waste stream, any such business shall perform gas chromatographic fingerprinting on each load of waste oil sold or disposed of in Ohio. Defendants shall not deliver waste oil to any location in Ohio so as to violate any of Ohio's statutes or regulations.

9. Any notification, analyses, or information required by this Consent Judgment to be provided to Ohio EPA shall be provided to the section or division of Ohio EPA administering the Ohio hazardous waste rules or to such other section or division which Ohio EPA designates in writing.

10. By executing this Consent Judgment, Plaintiff does not discharge, release, or in any way affect any right, demand, claim, or cause of action which Plaintiff has, or may have, against any party other than the Defendants, and the State herein expressly reserves for further enforcement all rights, demands, claims, and causes of action which it has, or may have, against any other Defendant in this action.

11. The Court retains jurisdiction of this suit for the purpose of making any order or decree which it may deem at any time to be necessary to carry out this Consent Judgment.

12. Defendants shall pay one-half of the court costs of this action.

Richard W. Knepper

HONORABLE RICHARD W. KNEPPER
JUDGE, COURT OF COMMON PLEAS

APPROVED:

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

MAUMEE REFINING, INC.

By: *Jack Van Kley*
JACK VAN KLEY (6637)
DAVID I. SCHIFF
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street
Columbus, Ohio 43215
(614) 466-2766

By: *Daniel C. Grise, Pres.*
Daniel C. Grise, President

Date: *10/2/86*

Harold I. Grise
Harold I. Grise

Date: *10/1/86*

Daniel C. Grise
Daniel C. Grise

Date: *10/2/86*

By: *Richard T. Sargeant*
RICHARD T. SARGEANT (7706)
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(419) 241-6000

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

State of Ohio,

Plaintiff,

vs.

Maumee Refining, Inc.,
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Defendants.

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Case No. 85-0719

HON. RICHARD W. KNEPPER

OPINION AND JUDGMENT ENTRY

This matter is before the Court upon the motion of defendants Maumee Refining, Inc., Harold Grise and Daniel Grise to strike the State's demand for a jury trial. Upon due consideration of the arguments presented by the parties and an examination of the relevant law it is the determination of this Court that defendants' motion is well-taken and the same is hereby granted.

On March 18, 1985, the State of Ohio filed a complaint against Maumee Refining, its general manager, Harold Grise, and its president, Daniel Grise. The plaintiff, State of Ohio, accuses the defendants of numerous violations of Chapter 3734 of the Ohio Revised Code: The Solid and Hazardous Wastes Act. Subsequently, the State filed an amended complaint adding an additional defendant, Frontier Chemical Waste Process, Inc. In each complaint, the State seeks injunctive

relief, prohibiting the defendants from continuing their conduct and practices which are allegedly in violation of the Act, pursuant to O. R. C. §3734.10. The State also seeks the imposition of a civil penalty against each defendant of \$10,000 for each day of each violation, also pursuant to O. R. C. §3734.10 of the Act. The State, in its amended complaint, demanded a jury trial in order to determine the amount of the penalty to be assessed against each defendant. Now, pursuant to Ohio Civil Rule 39 (A) (2), defendants move to strike the State's jury demand on the basis that there is no issue triable of right by jury.

Article 1 §5 of the Ohio Constitution provides that:

"[t]he right to trial by jury shall be inviolate except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury."

It is well settled in Ohio that this constitutional provision merely guarantees the right to a trial by jury in those causes of action in which the right was recognized at common law previous to the adoption of the Constitution. Belding v. State, ex rel. Heifner, 121 Ohio St. 393 (1929). However, the right can be extended to other actions in which a jury was not required at all at common law or to actions which did not exist at common law. But the right must be granted by the legislative provision creating and governing the action, because in the absence of a grant of trial by jury in such actions, no right to a jury will be found. See Gunsaulis v. Pettit, 46 Ohio St. 27, 28-29 (1888); Renee v. Sanders, 160 Ohio St. 279, 282 (1953); McIntyre v. Northern Ohio Properties, 64 Ohio App.2d 179, 185 (1979).

O. R. C. §3743.13 (C), under which the State

of Ohio seeks to have a civil penalty assessed against the defendants, provides in pertinent part:

[i]f the director [of environmental protection] determines that any person is violating or has violated this chapter, . . . the director may . . . request in writing that the attorney general bring a civil action for appropriate relief, including a temporary restraining order, preliminary or permanent injunction, and civil penalties in any court of competent jurisdiction . . . the court may impose upon the person a civil penalty of not more than ten thousand dollars for each day of each violation of this chapter

There is no indication in this section that a jury is authorized to assess the amount of the potential penalty. Neither is there any indication elsewhere in Chapter 3734 that a party to an action arising under the Act has any right to demand a jury. Thus, it being quite obvious that the Act creates a new statutory cause of action which was non-existent before the adoption of the Ohio Constitution and it being also evident that the General Assembly did not provide for a trial by jury in actions under the Act, this Court can only conclude that the State has no right to a jury in the present matter. "Where a statute sets forth a new civil right, the legislature may grant a concomitant right to jury trial, but need not do so." South v. Toledo Edison Co., unreported, 85-083, 6th Dist. Ct. App., March 21, 1986.

JUDGMENT ENTRY

It is hereby ORDERED, ADJUDGED and DECREED that the motion of defendants Maumee Refining, Harold Grise and Daniel Grise to strike the plaintiff State of Ohio's jury demand is hereby GRANTED.

May 19, 1986


Richard W. Knepper, Judge