

IN THE COURT OF COMMON PLEAS
ASHLAND COUNTY, OHIO

STATE OF OHIO, ex rel
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO
30 E. Broad Street
Columbus, Ohio 43215

Plaintiff

v.

PHILWAY PRODUCTS, INC.
c/o Mahendra Patel
Statutory Agent and President
701 Virginia Avenue
Ashland, Ohio 44805

and

MAHENDRA AND MINAXI PATEL
701 Virginia Avenue
Ashland, Ohio 44805

Defendants

CASE NO. 97-CV-35730

JUDGE _____

97 SEP 18 PM 3:53
JUANITA WRIGHT
CLERK OF COURTS
ASHLAND CO. OHIO

IN

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 Chapter 3734 of the Revised Code and 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 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:

"Approved Closure Plan" means a Closure Plan approved by the Director. The approved Closure Plan may be a Closure Plan approved by the Director as submitted by the Defendants and modified by the Director.

"Closure Plan" means a plan meeting the requirements of Ohio Adm. Code 3745-66-11 through 3745-66-20.

"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.

"Contractor" means the individual(s) or company or companies retained by or on behalf of Defendants to undertake and complete the work required by this Consent Order.

"Defendants" means Philway Products, Inc., Mahendra Patel and Minaxi Patel. Unless specifically noted in this Consent Order, any requirement or obligation or liability 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, or other

placement of hazardous waste was conducted by Defendants or any one of them, particularly, the facility located at 701 Virginia Avenue, Ashland, Ohio 44805 in Ashland County.

"Ohio EPA" means the Ohio Environmental Protection Agency.

"Ohio Adm. Code" means the Ohio Administrative Code.

"Plaintiff" means the State of Ohio by and through the Attorney General of Ohio.

"Post-Closure Plan" means a plan meeting the requirements of Ohio Adm. Code 3745-66-17 through 3745-66-20.

"R.C." means the Ohio Revised Code.

II. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapter 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 in concert, or participation with them. Defendants are ordered and enjoined to provide a copy of this Consent Order to each contractor they employ to

perform work itemized herein.

IV. SATISFACTION OF LAWSUIT

A. 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.

B. Nothing in this Consent Order, including the imposition of stipulated civil penalties, 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 occurring 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. § 9601, et seq. and/or R.C. 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 action 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 that may present an

imminent threat to the public health or welfare, or the environment.

V. CLOSURE AND OTHER INJUNCTIVE RELIEF

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

Closure

2. Within thirty (30) days after entry of this Consent Order, Defendants are ordered and enjoined to submit to the Ohio EPA, at the addresses set forth in Article VII, a Closure Plan in accordance with Ohio Adm. Code 3745-66-10 through 3745-66-20 for the Facility.

3. The Closure Plan shall, at a minimum, address all areas of the Facility where hazardous wastes were stored or treated, including the area of Defendants' Facility where the Defendants stored hazardous waste in an open, leaking, unlabeled roll-off box;

4. Following review of the Closure Plan, if the Ohio EPA determines the Closure Plan is deficient and gives Defendants written notice of the deficiencies in the Closure Plan, the Defendants are ordered and enjoined to submit to Ohio EPA a revised Closure Plan within thirty (30) days of receipt of the notice of deficiencies.

5. Following review of the revised plan, if the Ohio EPA determines the revised Closure Plan is deficient, Ohio EPA may modify the plan and approve the revised plan

as modified by Ohio EPA.

6. Immediately upon receipt of notice of approval by the Ohio EPA of Defendants' Closure Plan, either as originally submitted, as revised, or as revised and modified, Defendants are ordered and enjoined to implement the approved Closure Plan in the manner and pursuant to time frames set forth in the approved Closure Plan and Ohio Adm. Code 3745-66-13.

7. Within sixty days of completion of closure, the Defendants are ordered and enjoined to submit certification of closure to Ohio EPA, pursuant to Ohio Adm. Code 3745-66-15.

Closure Cost Estimate, Financial Assurance and Responsibility

8. Within thirty (30) days of entry of this Consent Order, Defendants are ordered and enjoined to submit to Ohio EPA detailed closure cost estimates calculated pursuant to Ohio Adm. Code 3745-66-42 and 3745-66-44.

9. Within thirty (30) days of entry of this Consent Order, Defendants are ordered and enjoined to submit to Ohio EPA documentation of financial assurance for closure pursuant to Ohio Adm. Code 3745-66-43 and 3745-66-45.

10. Within thirty (30) days of entry of this Consent Order, Defendants are ordered and enjoined to submit to Ohio EPA documentation demonstrating financial responsibility pursuant to Ohio Adm. Code 3745-66-47.

Hazardous Waste Facility Standards

11. Defendants are ordered and enjoined to ensure at all times that employee training is being conducted as required by Ohio Adm. Code 3745-65-16 and

3745-52-34.

12. Defendants are ordered and enjoined to ensure at all times that all waste streams are being evaluated as required by Ohio Adm. Code 3745-52-11.

13. Defendants are ordered and enjoined to ensure at all times that arrangements/agreements with State and local emergency response officials are in place as required by Ohio Adm. Code 3745-65-37.

14. Defendants are ordered and enjoined to ensure at all times that all hazardous waste has been tested in order to determine if the waste is restricted from land disposal and, if the waste is so restricted, that the record keeping requirements are being met as required by Ohio Adm. Code 3745-59-07.

15. Defendants are ordered and enjoined to ensure at all times that the facility is being maintained and operated to minimize the possibility of a fire, explosion or unplanned release of hazardous waste or hazardous waste constituents into the air, soil or surface water which could threaten human health or the environment as required by Ohio Adm. Code 3745-54-31 and/or 3745-65-31.

16. Defendants are ordered and enjoined to ensure at all times hazardous waste is being stored closed except when adding or removing waste to the containers as required by Ohio Adm. Code 3745-55-73(A) and/or 3745-66-73(A).

17. Within thirty (30) days of entry of this Consent Order, Defendants are ordered and enjoined to submit documentation that all hazardous waste storage containers are properly and clearly marked with the accumulation start date and the words "Hazardous Waste" as required by Ohio Adm. Code 3745-52-34(A) and (B).

18. Defendants are ordered and enjoined to ensure at all times that a written inspection plan has been developed and that weekly inspections are being conducted as required by Ohio Adm. Code 3734-54-15 and 3734-65-15.

19. Defendants are ordered and enjoined to ensure at all times that no hazardous waste is being stored greater than ninety (90) days except in accordance with a permit issued pursuant to R.C. 3734.05.

VI. POLLUTION PREVENTION

A. Pollution Prevention Assessment

As outlined below, and with reference to the steps described in the "Ohio Pollution Prevention and Waste Minimization Planning Guidance Manual", (the "manual") Defendants shall complete a pollution prevention assessment at the Facility.

1. Within 45 days from the effective date of this Order, the Defendants shall complete the preliminary assessment, and the pollution prevention plan as described in Chapters 9 and 10 of the Manual. Defendants shall document compliance by submitting a detailed narrative report for review and approval, which includes the pollution prevention plan document and a discussion of methods and results from the preliminary assessment.

2. Within 120 days from the effective date of this Order, Defendants shall complete, a detailed assessment and define pollution prevention options as described in Chapters 11 and 12 of the Manual. Defendants shall document compliance by

submitting a detailed narrative report for review and approval discussing both steps, including methods and results of the detailed assessment and describing all processes that have been prioritized for pollution prevention by the Facility.

3. Within 180 days from the effective date of this Order, the Defendants shall complete, cost considerations, the feasibility analysis and the assessment report as described in Chapters 13, 14 and 15 of the Manual. Defendants shall document compliance by submitting a detailed narrative report, for review and approval, discussing these three steps and describing the pollution prevention activities that have been defined by the Facility. The assessment report shall include items bulleted in Table 7 (Chapter 15) of the Planning Guidance Manual.

4. Within 240 days from the effective date of this Order, the Defendants shall complete implementation of the pollution prevention plan and measure progress as described in Chapters 16 and 17 in the Manual. Defendants shall document compliance by submitting a detailed narrative report for review and approval discussing both steps and covering all pollution prevention activities that have been implemented or selected for implementation by the Defendants. The Defendant retains discretion regarding implementation of identified activities, except for the project described in section VI. B of this Order.

B. Pollution Prevention Supplemental Environmental Project

Defendant shall perform the Supplemental Environmental Project ("SEP") identified as "Automatic Control System for the Electroless Copper Plating Line" according to the criteria set forth in this section:

1. The system shall control and monitor the usage of electrical energy used to heat the tank, and the use of wastewater in the rinse systems. The system shall be designed to continuously monitor the quality of the rinse tanks, and turn on the tanks only when the conductivity of the rinse tank meets a set criteria. The system shall also incorporate a control for the heating system, which will monitor the usage of the heaters, shutting them down when not in use and automatically turn the heaters on two hours before the start of a shift. The system shall also incorporate a master control system located in the chemical laboratory that will network to the electroless plating line and gather data and allow a detailed real time analysis.

2. Defendants shall submit progress reports on the design and construction of the SEP on or before the following dates: October 1, 1997; December 15, 1997; February 1, 1998. Defendants shall complete this project within six (6) months from the effective date of this order. Each of these reports shall contain at least the following information:

- (a) a detailed description of the current state of the SEP;
- (b) itemized costs incurred through the date of the report, with supporting documentation;
- (c) certification of the progress of the SEP and of completion of the SEP pursuant to the terms of these Orders;
- (d) for the SEP Completion Report, a detailed description of the environmental (including water and energy savings) and public health benefits resulting from implementation of the SEP.

VII. SUBMITTAL OF DOCUMENTS

All documents required to be submitted to Ohio EPA pursuant to this Consent Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio EPA
Northwest District Office
347 North Dunbridge Road
Bowling Green, Ohio 43402
Attn: DHWM Group Leader

VIII. CIVIL PENALTY

1. Defendants are ordered and enjoined to pay to the State of Ohio a civil penalty in the amount of Fifty Five Thousand Dollars (\$ 55,000.00).

(a) Twenty thousand dollars of this amount shall be paid by delivering to Plaintiff, c/o Jena Suhadolnik, or her successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, a certified check in that amount, payable to the order of "Treasurer, State of Ohio" within thirty (30) days from the date of entry of this Consent Order . This civil penalty shall be deposited into the hazardous waste clean-up fund created by R.C. 3734.28.

(b) In lieu of paying Fifteen Thousand Dollars (\$15,000.00) of the balance of the

civil penalty, Defendants shall perform the Pollution Prevention Assessment as outlined in section VI.A of this order and the "Ohio Pollution Prevention and Waste Minimization Planning Guidance Manual" referred to therein, within the time limits noted therein. Should Defendants fail to comply with the deadlines or submittal requirements listed in section VI.A of this Order, or fail to complete the assessment, Defendants shall immediately become liable for the Fifteen Thousand Dollars (\$15,000.00), to be paid in the manner described in section VIII.1.(a) above.

(c) In lieu of paying Twenty Thousand Dollars (\$20,000.00) of the balance of the civil penalty, Defendants shall install and operate the supplemental project described in, and in accordance with, the requirements of section VI.B of this Order, within the time limits noted therein. Should Defendants fail to comply with the deadlines or submittal requirements listed in section VI.B of this Order, or fail to complete the supplemental project, Defendants shall immediately become liable for the Twenty Thousand Dollars (\$20,000.00), to be paid in the manner described in section VIII.1.(a) above.

IX. STIPULATED PENALTIES

1. If Defendants fail to meet any of the deadlines contained in this Consent Decree or in the approved Closure Plan, Defendants are immediately and automatically liable for and are ordered and enjoined to pay to Plaintiff a stipulated penalty as follows:

- (a) For each day of each failure to meet a requirement, up to thirty (30) days

after a requirement is due to be met FIVE HUNDRED Dollars (\$500.00) per day per missed deadline.

(b) For each day of each failure to meet a requirement, from thirty-one (31) to sixty (60) days after a requirement is due to be met SEVEN HUNDRED AND FIFTY Dollars (\$ 750.00) per day per missed deadline.

(c) For each day of each failure to meet a requirement, over sixty (60) days after a requirement is due to be met ONE THOUSAND Dollars (\$ 1000.00) per day per missed deadline.

2. Defendants are ordered and enjoined to pay any required stipulated penalty by delivering to Plaintiff, c/o Jena Suhadolnik, or her successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, a certified check in the amount of the stipulated penalty, payable to the order of "Treasurer, State of Ohio." This penalty shall be deposited into the hazardous waste clean-up fund created by R.C. 3734.28.

3. The payment of stipulated penalties by Defendants and the acceptance of such stipulated penalties by Plaintiff pursuant to this Article shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to R.C. Chapter 3734, including civil penalties under R.C. 3734.13, or to otherwise seek judicial enforcement of this Consent Order, for the same violation for which a stipulated penalty was paid or for other violations.

X. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS

All activities undertaken by Defendants pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state and local laws, rules and regulations, and permits. For work both on and off the Facility, Defendants are ordered and enjoined to obtain all permits or approvals necessary under applicable federal, state or local laws and shall submit timely applications and requests for any such permits and approvals. Where such laws appear to conflict with the other requirements of this Consent Order, Defendants are ordered and enjoined to immediately notify the Ohio EPA of the potential conflict. Defendants are ordered and enjoined to include in all contracts or subcontracts entered into for work required under this Consent Order, provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and rules. This Consent Order is not a permit issued pursuant to any federal or state or local law or rule.

XII. RETENTION OF JURISDICTION

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

XIII. COSTS

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

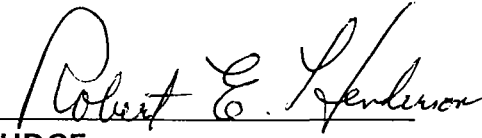
XIV. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

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.

XV. 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 submits with this Consent Order an authenticated and certified resolution from the corporation establishing that he/she is so empowered.

SIGNED:



JUDGE,
ASHLAND COUNTY COURT
OF COMMON PLEAS

Respectfully submitted,

**BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO**

By:

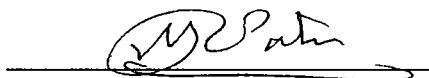


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Attorneys for Plaintiff
State of Ohio

PHILWAY PRODUCTS, INC

By:



Mahendra Patel

By:



Minaxi Patel

By:

