

COPY

D. Jones

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

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

Plaintiff,

PREMIUM FINISHES, INC.,

Defendant.

: CASE NO. A 910 2466
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: JUDGE THOMAS NURRE
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CONSENT ORDER

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INTRODUCTION

Plaintiff State of Ohio by its Attorney General, Betty Montgomery, at the written request of the Director of the Ohio Environmental Protection Agency, together with Defendant, Premium Finishes Inc. (hereinafter "Defendant");

WHEREAS, Plaintiff together with the Defendant agree to terminate the Agreed Preliminary Injunction between the State and Premium Finishes, Inc. filed on October 10, 1991 and hereby consent to the entry of this Consent Order; and

WHEREAS, Appendix E to the Remedial Investigation Report, titled the "Baseline Risk Assessment Report", which was prepared as a result of the remedial investigation performed at the Site and approved by Ohio EPA on March 22, 1996, indicates that the Site presents no risk in an industrial or commercial setting;

NOW, THEREFORE, without trial of any issues of fact, without admission of liability, and upon the consent of the Parties hereto, it is ADJUDGED, ORDERED, and DECREED as follows:

I. OBJECTIVES OF PARTIES AND PURPOSE OF CONSENT ORDER

1. In entering into this Consent Order, the mutual objectives of the State of Ohio and Defendant include: (1) terminating the Agreed Preliminary Injunction between the State and Premium Finishes, Inc. filed on October 10, 1991; (2) providing for sampling and reporting as detailed in this Consent Order; (3) prescribing deed restrictions as set forth in this Consent Order; and (4) providing for the payment of Response Costs to the State of Ohio as more fully described herein.

II. JURISDICTION AND VENUE

2. This Court has personal jurisdiction over the Parties and the subject matter of this action. Venue

is proper in this Court for the purposes and duration of this Consent Order. Solely for the purposes of this Consent Order and the underlying Complaint, Defendant agrees that the Complaint states a cause of action against them.

III. DEFINITIONS

3. Unless otherwise stated, all terms used in this Consent Order shall have the same meaning as used in Ohio Revised Code (hereinafter "R.C.") Chapters 3734 and 6111 and the regulations adopted thereunder. In addition, the following terms are defined as follows:

- A. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended.
- B. "Contractor" means a contractor retained by the Defendant pursuant to this Consent Order and any subcontractor, representative, agent, employee, or designee thereof.
- C. "Day" means a calendar day unless expressly stated to be a business day. "Business day" means a day other than a Saturday, Sunday, or State holiday. In computing any period of time under these Orders, where the last day would fall on a Saturday, Sunday, or State holiday, the period of time shall run until the close of the next business day.
- D. "Defendant" means Premium Finishes Incorporated.
- E. "Document" means any record, report, notes, logs, journals, photograph, videotape, correspondence, computer disk or tape, recorded or retrievable information of any kind, including raw data, narrative reports, and any and all documentary evidence, relating to the treatment, storage or disposal, and concerning the investigation and remediation of, hazardous wastes, solid wastes, industrial wastes, other wastes, hazardous substances, hazardous constituents and radioactive wastes at the Site. "Document" shall be construed broadly to promote the effective sharing between the Defendant and Ohio EPA of information and views concerning the work to be performed pursuant to this Order.
- F. "O.A.C." means Ohio Administrative Code.
- G. "Ohio EPA" means the Ohio Environmental Protection Agency and its designated representatives.

- H. "Order" means this Consent Order.
- I. "Parties" means collectively the State of Ohio and the Defendant.
- J. "Plaintiff" means the State of Ohio on the relation of its Attorney General who brought this action upon the written request of the Director of the Ohio EPA.
- K. "Response Costs" means those costs for which the Defendant is required to reimburse Ohio EPA pursuant to paragraph 31 of the Agreed Preliminary Injunction of October 10, 1991.
- L. "R.C." means the Ohio Revised Code.
- M. "Section" means a portion of this Consent Order identified by a roman numeral.
- N. "Site" means the physical facility located at 10448 Chester Road, Cincinnati, Ohio 45215 where treatment, storage, placement, or disposal of Waste Materials, and/or discharge into waters of the State of Waste Materials has occurred, including any other area where such Waste Materials have migrated or threaten to migrate.
- O. "Waste Materials" shall mean (1) any "hazardous waste" as that term is defined under R.C. 3734.01(J); (2) any "solid waste" as that term is defined under R.C. Section 3734.01(E); (3) any "industrial waste" as that term is defined under R.C. Section 6111.01(C); (4) any "other wastes" as that term is defined under R.C. Section 6111.01(D); (5) any "hazardous substances" as that term is defined under Section 101(14) CERCLA, 42 U.S.C. Section 9601(14); and (6) any "hazardous waste constituent" as that term is defined under Rule 3745-50-10(A)(43) of the Ohio Administrative Code ("OAC").
- P. "Work" means all activities Defendant is required to perform under this Consent Order.

IV. PARTIES BOUND

- 4. The provisions of this Consent Order shall apply to and be binding upon the Plaintiff and the Defendant and their respective officers, agents, servants, employees, assigns, successors in interest, and those acting in concert, privity or participation with them.
- 5. The Defendant shall provide a copy of this Consent Order to each Contractor, subcontractor and

consultant employed to perform any of the Work itemized or referenced herein. Defendant shall condition all contracts entered into for performance of the Work contemplated herein upon performance of the Work in conformity with the terms of this Consent Order. Defendant shall ensure that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Order.

6. No change in Corporate ownership or status of Defendant, including, without limitation, any transfer of assets or real or personal property, shall in any way alter Defendant's obligations under this Consent Order. Defendant shall provide a copy of this Consent Order to any subsequent owner or successor prior to transfer of Defendant's ownership rights.

V. CALCULATION OF TIME

7. Unless otherwise stated in this Consent Order, where this Order requires actions to be taken within a specified period of time (e.g. "within thirty days"), this time period shall begin the day after the entry of this Consent Order. In computing any period of time under this Consent Order, where the last day would fall on a Saturday, Sunday or State of Ohio or federal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday or State of Ohio or federal holiday.

VI. PERMANENT INJUNCTION

8. Defendant is hereby permanently ordered and enjoined to perform the Work detailed in this Order. All work to be performed by Defendant pursuant to this Consent Order shall be under the direction and supervision of a qualified environmental Contractor.

A. SAMPLING/ REPORTING

9. Following the date of entry of this Consent Order, Defendant shall take samples at least once per month for the next twelve months at the outfall to the unnamed tributary to Millcreek. Said samples shall be performed in a manner consistent with the previous sampling events performed at the outfall under either the 1991 Agreed Preliminary Injunction between the Parties or the August 11, 1989 Director's Findings and Orders pertaining to this Site.

10. Each sample taken pursuant to paragraph 9 of this Consent Order shall be analyzed for the following constituents: acetone, 4-methyl-2-pentanone, methylene chloride, 2-butanone, toluene, tetrachloroethene, 1,2-dichloroethene, xylenes, trichloroethene, and ethylbenzene.

11. Within ten (10) days of any results or data becoming available, Defendant shall submit to Ohio EPA the results of all sampling, tests or other data, including raw data, generated by the Defendant or on its behalf related to the sampling detailed in this subsection. Defendant shall allow split or duplicate samples to be taken by Ohio EPA of all samples collected by the Defendant. Accordingly, Defendant shall notify the Ohio EPA not less than fourteen (14) days in advance of any sample collection called for under this Consent Order or, in the alternative, Defendant shall submit a schedule for when sampling shall take place for the twelve month period, which must be approved in writing by Ohio EPA.

12. Defendant shall submit to Ohio EPA within five (5) days after Defendant's receipt, any interpretive reports and written explanations concerning such raw data and original laboratory reports.

13. Should Defendant, following submission of any report or document pursuant to this Consent Order, discover any error in any report or raw data, Defendant shall within twenty (20) days of discovery, notify Ohio EPA of such discovery and provide to the Ohio EPA the basis for the error, and the corrected information. In addition, Defendant shall note any significant changes in the

environmental conditions at the Site and notify Ohio EPA within twenty (20) days of such discovery.

14. If for any reason any of the sampling ordered to be performed by this subsection is invalidated by the laboratory, then Defendant is ordered to resample or to take samples for one additional month for each month data is found to be invalid.

B. RESTRICTIONS ON USE/MAINTENANCE OF BLACKTOP AREA

15. For as long as Defendant owns the property located at 10448 Chester Road, Cincinnati, Ohio 45215, Defendant is ordered and enjoined to refrain from using the property for residential purposes and is further ordered and enjoined to maintain the blacktop area, free from significant weathering or fracturing, from the eastern end of its building to the eastern edge of its property. Any further development in this area must receive prior written approval of the Ohio EPA, which may not be unreasonably withheld.

C. DEED RESTRICTIONS

16. In order to ensure the protection of the public health and safety, Defendant shall, within thirty (30) days of the entry of this Consent Order or prior to conveyance of any title, easement or other interest, place restrictions on the title to its property located at 10448 Chester Road, Cincinnati, Ohio 45215: (a) prohibiting the use of said property for residential purposes; (b) prohibiting the removal or penetration of the blacktop area, without prior written approval of the Ohio EPA, from the eastern end of its building to the eastern edge of its property; and (c) requiring maintenance of the blacktop area free of significant weathering or fracturing. The Defendant shall submit proposed language to appear on the deed to the property for Ohio EPA's review and approval. These restrictions are intended, by the Parties, to be a restrictive covenant or an equitable servitude and is further intended by the Parties to run with the land to bind future landowners. The restrictive covenant/equitable servitude shall remain in place until such a time that it can be demonstrated to the Ohio EPA that the property no

longer poses a threat to residential use.

17. Defendant shall, within thirty (30) days of the entry of this Consent Order, record a copy of said Consent Order in the Hamilton County Recorder's Office in the deed of its property located at 10448 Chester Road, Cincinnati, Ohio 45215.

18. Defendant shall notify Ohio EPA of its intent to convey an interest in the facility by certified mail at least ninety (90) days prior to any conveyance.

VII. INSPECTIONS AND ACCESS

19. Ohio EPA, its employees, contractors and agents shall have access at all times to the Site and any other property to which access is required for the implementation of this Consent Order to the extent access to the property is controlled by Defendant. Access under this Consent Order shall be for the purposes of conducting any activity related to this Consent Order including, but not limited to the following:

- a. Monitoring the Work;
- b. Conducting sampling;

No provision of this Consent Order shall be construed to eliminate or restrict any right of the State to seek access to Defendant's property which it may otherwise have under Federal or State law;

20. To the extent that the Site or any other property to which access is required for the implementation of this Consent Order is owned or controlled by persons other than the Defendant, Defendant shall use its best efforts to secure from such persons access for the Defendant as necessary to effectuate this Consent Order. If Defendant enters into any written access agreements then copies of those agreements shall be provided promptly to Ohio EPA. If any access required to effectuate this Consent Order is not obtained within thirty (30) days of the effective date of this Consent Order, Defendant shall promptly notify the Ohio EPA in writing of the steps Defendant has taken to attempt

to obtain access. Ohio EPA may, as it deems appropriate, assist Defendant in obtaining access.

VIII. NOTICES

21. All document(s), including correspondence, progress reports, notifications, or other submissions, required to be submitted under this Consent Order shall be submitted to the following by certified mail or overnight mail unless the Consent Order specifically provides otherwise:

Ohio EPA
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Technical and Programs
Division of Emergency and Remedial Response

Ohio EPA
Southwest District Office
401 East Fifth Street
Dayton, Ohio 45402-2911
Attn: Charles Mellon or his successor.

Either Party may change the name and/or address of its contact person(s) by sending written notice of the change(s) to the other Parties.

IX. PAYMENTS AND REIMBURSEMENTS OF COSTS

22. Within thirty (30) days of entry of this Consent Order in the journal of the Court, Defendant shall pay a total of \$70,537.46 as reimbursement for Response Costs incurred by the State pursuant to the Agreed Preliminary Injunction and this Consent Order. The full amount shall be paid to Ohio EPA by delivering a check in this amount made to the order of "Treasurer of the State of Ohio" and forwarded to Fiscal Officer, Ohio EPA, P.O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43266-0149, ATTN: Edith Long, or her successor. Defendant shall send a copy of the transmittal letter and check

to: the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, 1800 Watermark Drive, Columbus, Ohio 43266-0149, ATTN: Patricia Campbell or her successor, to the Ohio EPA Site Coordinator, and the Assistant Attorney General representing the State in this case.

XI. INDEMNITY

23. Defendant agrees to indemnify, save, and hold harmless the State of Ohio from any and all claims or causes of action, arising from, or related to, events or conditions at the Site, except where the claims or causes of action result from negligent, reckless or intentionally tortious conduct by the Ohio EPA occurring outside of Ohio EPA's exercise of its discretionary functions. Discretionary functions of Ohio EPA shall include, but are not limited to, the Ohio EPA's oversight of the Work performed pursuant to this Consent Order. The State agrees to provide notice to the Defendant within thirty (30) days of receipt of any claim which may be the subject of indemnity as provided in this Section, and to cooperate with the Defendant in the defense of any such claim or action against the State. The State shall not be considered a party to and shall not be held liable under any contract entered into by the Defendant in carrying out the activities pursuant to this Consent Order.

XII. SATISFACTION OF LAWSUIT

24. Except as provided otherwise in this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendant, its officers, agents, employees, servants, assigns, successors in interest and those persons in active concert or participation with them who received actual notice of this Consent Order, for the claims alleged in the State's Complaint and of any obligation imposed upon it by the Agreed Preliminary Injunction of October 10, 1991, which is terminated and superseded by this Consent Order. Nothing in this Section shall apply

to new conditions at or new information about the Site, including information obtained through the sampling taken pursuant to SECTION VI.A. SAMPLING WORK, or to any violations arising out of conditions, acts or omissions occurring after the date of entry of this Consent Order.

XII. RESERVATION OF RIGHTS

25. This Consent Order shall not be construed to limit the authority of the State to seek relief for claims or conditions not alleged in the Complaint. In addition, the State of Ohio reserves the right to bring an action, and this Consent Order shall not bar the State from bringing any action against the Defendant, and any other entity, for any violations of law which may be indicated by the sampling taken pursuant to SECTION VI.A. SAMPLING WORK, of this Consent Order. This Consent Order shall not bar the State from bringing any action against the Defendant for any violations or conditions which occur after the entry date of this Consent Order, and by entering into this Consent Order the Defendant does not waive any rights, claims or defenses which it may have in any such action against any others not a party to this action.

26. Nothing in this Consent Order shall be construed to limit the authority of the State to undertake any action against any entity, including the Defendant, to eliminate or mitigate conditions which may present a threat to the public health, welfare or the environment and to seek cost reimbursement for any such action. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief for claims under CERCLA and for damages to natural resources, and by entering into this Consent Order the Defendant does not waive any rights, claims or defenses which it may have in any such action. This Consent Order in no way waives any defenses which the Defendant may have as to such additional relief.

27. Nothing in this Consent Order shall relieve the Defendant of any obligation to comply with R.C. Chapters 3734 and 6111 including, without limitation, any regulation, license or order issued under

these Chapters, and any other applicable federal, state or local statutes, regulations, or ordinances, including but not limited to permit requirements.

28. The State reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of this Consent Order, including penalties against the Defendant for noncompliance with this Consent Order. In addition, the State reserves the right to bring an action against the Defendant to recover future response costs pertaining to this Site, but not relating to the work performed under the Agreed Preliminary Injunction or the work performed in reviewing the sampling required under this Consent Order. Except as provided herein, the Defendant reserves any rights it may have to raise any legal or equitable defense in any action brought by the State to enforce the terms and conditions of this Consent Order.

29. The State reserves the right to terminate this Consent Order and/or perform all or any portion of the Work or any other measures, including recovery of all response costs, in the event that the requirements of this Consent Order are not wholly complied with within the time frames required by this Consent Order.

30. The State of Ohio reserves all rights as to any person and/or entity, other than the Defendant.

XIII. OTHER CLAIMS

31. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation, not subject to this Consent Order for any liability arising from, or related to, events or conditions at the Site.

XIV. MODIFICATION

32. No modification shall be made to this Consent Order without the written agreement of the Parties and the Court.

XV. RETENTION OF JURISDICTION

33. This Court shall retain jurisdiction of this matter for the purpose of overseeing Defendant's compliance with this Consent Order.

XVI. COURT COSTS

34. Defendant shall pay the court costs of this action.

XVII. AUTHORITY TO ENTER INTO THE CONSENT ORDER

35. By signing this Consent Order, each of the undersigned Parties represents and warrants that he/she has completely read the foregoing, fully understands its contents, and intends to be bound thereby.

36. In addition, in the case of corporations, each signatory 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.

XVIII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

37. The Parties agree and acknowledge that this Consent Order is being made available for public participation under state requirements and in a manner consistent with 40 C.F.R. §123.27(d)(2)(iii), by providing for notice of the lodging of this Consent Order, opportunity for public comment and the

consideration of any public comment. The State of Ohio and the Defendant reserve the right to withdraw consent to this Consent Order upon filing with this Court notice of such withdrawal in the event that the Parties cannot agree to changes proposed by the State of Ohio to this Consent Order as a result of public comment. The right to withdraw consent, as set forth in this paragraph, shall only exist for 30 days after the Consent Order is signed by the Parties, unless otherwise agreed in a joint notice filed by the Parties with the Court. After expiration of the time period for withdrawal of consent as set forth in this paragraph, the Parties agree that this Court may enter this Consent Order, provided no withdrawal of consent has been timely filed with the Court.

38. Upon signing of this Consent Order by the Court, the Clerk of Courts is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the Clerk is hereby directed to serve upon all Parties notice of the judgment and its date of entry upon the journal in the manner prescribed in Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

XIX. EFFECTIVE DATE

39. This Consent Order shall be effective upon the date of its entry by the Court.

ENTERED THIS 28th DAY OF

Aug., 1997.

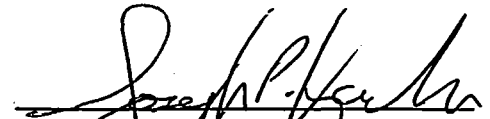
JUDGE

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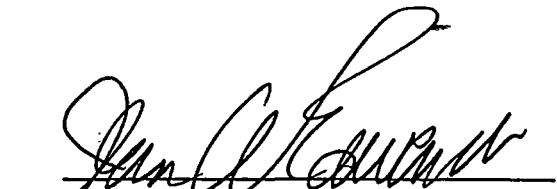
APPROVED

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

BY:

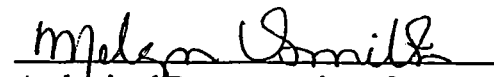


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