

COSTS PAID

JOSEPH T. DETERS  
Clerk of the Court of Common Pleas

NOV 16 1990

Karen S. Cleveland (C-607)  
Gertrude M. Kelly  
Jerome H. Kearns (K-019)  
Philip J. Schworer (S-828)

~~DEBERT GERR~~  
~~CINCINNATI, OHIO~~

IN THE  
COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

STATE OF OHIO, ex rel.	:	CASE NO. A9004085
ANTHONY J. CELEBREZZE, JR.	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE SUNDERMANN
30 East Broad Street	:	
Columbus, Ohio 43266-0410,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
QUEEN CITY BARREL COMPANY	:	<u>CONSENT ORDER</u>
1937 South Street	:	
Cincinnati, Ohio 45204,	:	
	:	
Defendant.	:	

WHEREAS, the Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio by its Attorney General Anthony J. Celebrezze, Jr. and Defendant Queen City Barrel Company (hereinafter "Defendant") having consented to the entry of this Order, and

WHEREAS, Plaintiff and Defendant have agreed that settlement of this matter is in the public's interest and that entry of this Consent Order without admission as to fact or liability to settle and resolve claims which are contested as to validity and amount without further litigation, is the most appropriate means of resolving this matter; and

WHEREAS, Defendant has volunteered and Plaintiff has agreed that Defendant shall cease accepting hazardous waste at the facility for treatment, storage and/or disposal.

WHEREAS, Plaintiff and Defendant request that the Court enter this Consent Order;

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

I. JURISDICTION AND VENUE

1. 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 ("ORC") and venue is proper in this Court.

II. PERSONS BOUND

2. The provisions of this Consent Order shall apply and be binding upon the Queen City Barrel Company, their agents, officers, employees, assigns, stockholders and directors. In the event that Defendant sells or transfers its interest in the facility, as defined below, which is the subject of this Consent Decree, it shall advise the purchaser or transferee of the existence of this Decree, and shall notify Plaintiffs of such sale or transfer. Defendant's successors and assigns of the facility which is the subject of this Consent Decree shall be bound by the terms of this Consent Decree. Defendant shall provide a copy of this Consent Order to each contractor or consultant it employs to perform work itemized herein and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work.

### III. SATISFACTION OF LAWSUIT

3. Except as provided herein, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil or administrative liability by Defendant Queen City Barrel Company for all claims against said Defendant alleged in the Complaint or for any violations cited during the inspections conducted on April 26, 1990 and May 2, 1990, with regard to Defendant's facility located at 1937 South Street, Cincinnati, Ohio (hereinafter the "Facility"). Nothing in this Consent Order including the requirement that Defendant pay stipulated penalties for violations of this Consent Order, shall be construed so as to limit the authority of the State of Ohio to seek injunctive relief or any penalties for claims or conditions not alleged in the Complaint, including violations or conditions which occur after the filing of the Complaint. Similarly, nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to undertake any action against any person, including the Defendant, to eliminate or mitigate conditions arising after the date hereof which may present a threat to the public health, welfare or the environment. Nothing herein shall be construed to preclude the State from seeking that the Defendant or others conduct remedial or corrective action or additional monitoring or testing at the facility as a result of their waste handling practices at the facility in addition to what they are

6 otherwise required to conduct under the Consent Order. Nothing herein shall be construed to preclude the State from pursuing claims against the Defendant relating to the disposal of hazardous waste at any landfill or facility or location which is not licensed to dispose of such wastes in violation of ORC 3734.02(F), including any claim for remedial or corrective action or additional monitoring or testing as a result of such disposal. Should remedial or corrective action be required, Plaintiff agrees not to seek a civil penalty through an enforcement action in the incident described in Count Two of Plaintiff's Complaint, although Plaintiff reserves all rights to bring actions for civil penalties for any other incidents.

#### IV. RIGHT OF ENTRY

6 4. Defendant gives, consents to and authorizes Plaintiff State of Ohio, its agents and employees to enter into and onto Defendant's facility at any reasonable time, without a search warrant to observe Defendant conducting the work required by this Consent Order. Nothing in this Consent Order shall be construed to limit Plaintiff's statutory or permit authority under Chapter 3734 or the rules adopted thereunder to conduct inspections, surveys and/or take samples. Nothing in the Order shall limit the rights of the Ohio EPA or U.S. EPA to conduct regular and routine inspections pursuant to statute, regulation, or permit.

V. EFFECT UPON OTHER ACTIONS

5. Nothing in this Consent Order shall be construed to relieve Defendant of the obligation to comply with applicable federal, state or local statutes, regulations or ordinances or shall constitute a waiver or release of any right, remedy, defense or claim against Defendant with regard to any person not a party to this Consent Order.

VI. GENERAL INJUNCTIVE RELIEF

6. Defendant is hereby permanently enjoined and ordered to immediately comply with all applicable requirements of ORC Chapter 3734 of the Ohio Revised Code and the rules promulgated thereunder at its facility. Defendant is permanently enjoined and ordered to refrain from storing or leaving unattended any barrels of hazardous waste on the sidewalk areas adjacent to the facility. Further, Defendant is permanently enjoined and ordered not to transport, store, treat, dispose, or cause to be transported, any hazardous waste to any premises other than those which meet the criteria listed in ORC 3734.02(F).

7. Effective immediately, Defendant is further enjoined as follows:

- a. Defendant shall not allow hazardous waste to accumulate in a roll-off dumpster or other container which may be positioned immediately adjacent to the funnel leading to the underground storage tank. (hereinafter "UST"). Plaintiff acknowledges that Defendant has currently ceased the practice of positioning a roll-off dumpster adjacent to the funnel.

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b. Defendant shall develop an approvable written waste evaluation plan for the Facility which meets the requirements of OAC Rule 3745-52-11 and shall submit to Ohio EPA, for approval, the written waste evaluation plan within forty-five (45) days of the entry of the consent order. The plan shall address any waste which meets the definition of waste contained in OAC Rule 3745-51-02. The plan shall also include the testing of waste from the caustic wash area for all characteristics, including ignitability. The plan shall also include the evaluation required of wastes prior to placement into non-hazardous waste containers. The written plan shall be subject to review by the Ohio EPA. If Ohio EPA determines that the plan is not sufficient to achieve compliance with OAC Rule 3745-52-11, Ohio EPA will notify Defendant in writing of the deficiencies in the plan. Defendant shall resubmit the plan addressing the noted deficiencies within 30 days of receipt of Ohio EPA's written notification of the deficiencies. Defendant shall implement the plan within 10 days of receipt of written notice of Ohio EPA's approval of the plan in accordance with the schedule contained therein and shall otherwise maintain compliance with OAC Rule 3745-52-11.

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c. Defendant shall develop an approvable written personnel training plan for the Facility which meets the requirements of OAC Rule 3745-65-16 and shall submit to Ohio EPA, for approval, the written personnel training plan within forty-five (45) days of the entry of the Consent Order. The plan shall address the training of all personnel such that they are able to perform their duties in a way that ensures compliance with the requirements of OAC Chapter 3745-52 and to respond effectively to emergencies, including, but not limited to, the training of laborers hired on a daily basis and their immediate supervisors. The plan shall address the comments contained in the attachment to Ohio EPA's November 29, 1989 letter to Defendant. (Exhibit 1). The

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written plan shall be subject to review and approval by the Ohio EPA. If Ohio EPA determines that the plan is not sufficient to achieve compliance with OAC Rule 3745-65-16, Ohio EPA will notify Defendant in writing of the deficiencies in the plan. Defendant shall resubmit the plan addressing the noted deficiencies within 30 days of receipt of Ohio EPA's written notification of the deficiencies. Defendant shall implement the plan within 10 days of receipt of written notice of Ohio EPA's approval of the plan in accordance with the schedules contained therein and shall otherwise maintain compliance with OAC Rule 3745-65-16.

- d. Defendant shall develop an approvable written contingency plan for the Facility which meets the requirements of OAC Rules 3745-65-50 through 3745-65-56 and shall submit to Ohio EPA, for approval, the written contingency plan within forty-five (45) days of the entry of the Consent Order. The plan shall address, but not be limited to, the implementation of the plan in response to failure of any containment system or other discharges to the air, soil, surface water or sewer system. The written plan shall be subject to review by the Ohio EPA. If Ohio EPA determines that the plan is not sufficient to achieve compliance with OAC Rules 3745-65-50 through 3745-65-56, Ohio EPA will notify Defendant in writing of the deficiencies in the plan. Defendant shall resubmit the plan addressing the noted deficiencies within 30 days of receipt of Ohio EPA's written notification of the deficiencies. Defendant shall implement the plan according to OAC Rule 3745-65-51 and shall otherwise maintain compliance with OAC Rules 3745-65-50 through 3745-65-56. Defendant shall submit the approved contingency plan to all local police departments, fire departments, hospitals, and local emergency response teams, immediately upon approval by Ohio EPA, in accordance with OAC 3745-65-53.
- e. Defendant shall develop an approvable written general inspection plan and checklists for the Facility which meet the

requirements of OAC Rules 3745-65-15, 3745-66-74 and 3745-66-95 and shall submit to Ohio EPA, for approval, the general inspection plan and checklists within forty-five (45) days of the entry of the Consent Order. The plan and checklists shall address, but not be limited to the drum conveyor, the secondary containment areas and other potential discharge areas, all waste generation points, aisle space, loading and unloading areas and proper container management, including containers at all satellite accumulation areas. The written plan and checklists shall be subject to review and approval by the Ohio EPA. If Ohio EPA determines that the plan and checklists are not sufficient to achieve compliance with OAC Rules 3745-65-15, 3745-66-74, and 3745-66-95, Ohio EPA will notify Defendant in writing of the deficiencies in the plan and checklists. Defendant shall resubmit the plan and checklists addressing the noted deficiencies within 30 days of receipt of Ohio EPA's written notification of the deficiencies. Defendant shall implement the use of said plan and checklists and the schedules contained therein and shall otherwise maintain compliance, as applicable, with OAC Rules 3745-65-15, until Defendant has submitted the closure certification as outlined in paragraph 11. Thereafter, Defendant shall maintain compliance with OAC Rules 3745-66-74 and 3745-66-95.

- f. Defendant shall designate one person to be responsible for all hazardous waste compliance issues at the Facility and shall submit to the Ohio EPA in writing the name and title of said person within forty-five (45) days of entry of the Consent Order. Defendant shall notify Ohio EPA, orally immediately, and in writing within ten (10) days, if the person designated for this responsibility, changes and shall designate a new said person within that said 10 day period.

8. Except with regard to Paragraph 7(f), Defendant QCB shall provide all submittals referenced in paragraph seven to Ohio EPA within forty-five days of the entry of the Consent



Order. If any submittal is found to be deficient, QCB shall resubmit the deficient submittal within thirty (30) days of written notification by Ohio EPA of the deficiencies. Finally, if QCB fails to resubmit any deficient submittal or fails to address all noted deficiencies in the resubmittal within the time frames required herein, QCB agrees to and is ordered to immediately cease all activities related to the deficient submittal until Ohio EPA has received, reviewed, and approved these submittals.

9. Defendant QCB has agreed that, within ninety (90) days of the entry of the Consent Order, Defendant QCB shall cease accepting hazardous waste at the facility for treatment, storage and/or disposal. Following said cessation of accepting hazardous waste at the facility, Defendant QCB shall reject any containers of hazardous waste which do not meet the requirements of an "empty container" as defined in OAC Rule 3745-51-07.

10. Within one-hundred eighty (180) days of the entry of the Consent Order, Defendant QCB shall manifest and send off-site for treatment, storage, or disposal, in accordance with ORC 3734 and the regulations promulgated thereunder, all hazardous waste currently being stored or treated at the facility, regardless of when the hazardous waste was received at the facility, and all hazardous waste received at the facility during the ninety day period following the entry of the Consent Order. Defendant QCB shall submit to Ohio EPA, at

the addresses listed in Section XV, completed copies of these manifests, signed by the receiving facility, within ten (10) days of Defendant's receipt of the completed manifests from the receiving facility.

11. Within thirty (30) days of entry of the Consent Order, Defendant QCB shall submit for approval to the Director of Ohio EPA a closure plan pursuant to OAC Rule 3745-66-12 for the closure of the facility's underground storage tank and the container storage area, as designated on Defendant's hazardous waste facility installation and operation permit issued December 29, 1981, by the Hazardous Waste Facility Board. The closure plan shall conform to all applicable requirements of OAC Rules 3745-66-10 through 3745-66-20 and 3745-66-97. Defendant QCB shall complete closure in accordance with the closure plan and the time-frames contained therein, once approved. Defendant shall submit a written request to the Director of Ohio EPA to withdraw the facility's hazardous waste installation and operation permit pursuant to OAC Rule 3745-50-47 within thirty (30) days of the date Defendant has obtained the closure certification required by OAC Rule 3745-66-15.

#### VII. CIVIL PENALTY

12. Defendant shall pay to the State of Ohio a civil penalty of seventy-five thousand dollars (\$75,000.00). The civil penalty shall be paid in installments by delivering to

counsel for Plaintiff certified checks for the appropriate amounts, payable to the order of "Treasurer, State of Ohio," to be deposited into the hazardous waste clean-up 623 account. The installments are to be paid according to the following schedule:

November 15, 1990 -	\$ 7,500.00
May 15, 1991 -	7,500.00
November 15, 1991 -	10,000.00
May 15, 1992 -	10,000.00
November 13, 1992 -	10,000.00
May 14, 1993 -	15,000.00
November 15, 1993 -	15,000.00

#### VIII. STIPULATED PENALTIES

13. In the event that Defendant fails to meet any of the requirements of this Consent Order set forth in Paragraphs 6, Subparagraphs 7(a) through 7(f), Paragraphs 8, 10 and 11, including any scheduled milestone requirement, plan submittal or re-submittal, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

- a) For each day of failure to meet a requirement, from one to thirty (30) days--seven hundred and fifty dollars (\$750.00) per day;
- b) For each day of failure to meet a requirement, from thirty-one (31) to sixty days (60)--one thousand five hundred dollars (\$1,500.00) per day;
- c) For each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days--two thousand dollars (\$2,000.00) per day; and
- d) For each day of failure to meet a requirement, over ninety days (90) days--three thousand dollars (\$3,000.00) per day.

14. In the event that Defendant fails to meet any of the requirements of this Consent Order set forth in Paragraph 9 Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty of Ten Thousand Dollars (\$10,000.00) per day of violation.

15. Any payment required to be made under the provisions of Paragraphs 13 or 14 of this Order shall not be suspended by the Court, in whole or in part, and shall be made by delivering to Plaintiff's counsel a certified check or checks for the appropriate amounts, within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, made payable to "Treasurer, State of Ohio". The fact that the State of Ohio obtains stipulated penalties under the section for violations of requirements of this Order does not limit the State's ability to seek enforcement of this Order through contempt or otherwise nor does it limit the State's ability to seek other civil/administrative or criminal relief for future violations of law or of this Order.

.IX. POTENTIAL FORCE MAJEURE

16. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Defendant shall notify the Ohio EPA in writing within ten (10) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendant to prevent or minimize the

delay and the timetable by which measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

17. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendant may raise that 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 that an enforcement action, if any, is commenced by the Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant shall rest with Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances shall not constitute circumstances entirely beyond the control of Defendant, or serve as a basis for an extension of time under this Consent Order. Failure by Defendant to comply with the notice requirements of this Paragraph shall render this Paragraph void and of no force and effect as to the particular incident

involved and shall constitute a waiver of Defendant's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one compliance date based on a particular incident does not mean that Defendant qualifies for an extension of a subsequent compliance date or dates. Defendant must make an individual showing or proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order without a Force Majeure Clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

18. All written notifications required pursuant to paragraphs 16 and 17 herein shall be given as provided in Paragraph 22 hereof.

X. TERMINATION OF STIPULATED PENALTIES

19. The provision of this Consent Order set forth in Paragraph 13 requiring the payment of stipulated penalties may be terminated one (1) year after Defendant has completed closure and has submitted for approval to the Director of Environmental Protection its certification of closure as outlined in Paragraph 11, and paid all penalties required under this 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.

XI. WITHDRAWAL OF PERMIT TO TREAT, STORE,  
OR DISPOSE OF HAZARDOUS WASTE

20. Within thirty (30) days of the entry of this Order, Defendant shall notify Ohio EPA, Division of Solid and Hazardous Waste Management, that it has withdrawn its application for a Part B hazardous waste treatment, storage, and disposal permit.

XII. RETENTION OF JURISDICTION

21. The Court shall retain jurisdiction of this action for the purpose of overseeing the Defendant's implementation of this Consent Order.

XIII. STIPULATION OF DISMISSAL OF INDIVIDUAL

22. The parties agree that the individual Defendant, Albert Paul is voluntarily dismissed with prejudice from this action by Stipulation of Dismissal to be filed simultaneously herewith.

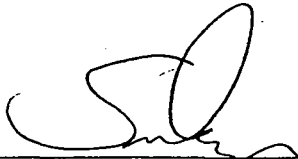
XIV. COSTS

23. Each party in this action shall bear its own costs and attorney fees. Defendant shall pay court costs.

XV. NOTICE

24. Any submission to the Ohio EPA as required by this Consent Order unless otherwise indicated shall be delivered to:

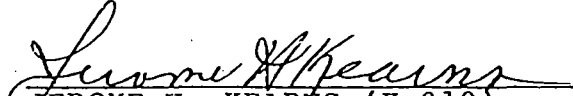
Ohio EPA, Southwest District Office  
40 South Main Street  
Dayton, Ohio 45402-2086  
Attn: Frank Bryant

  
\_\_\_\_\_  
JUDGE, COURT OF COMMON PLEAS


DATE: \_\_\_\_\_  
11/14/90

APPROVED:

ANTHONY J. CELEBREZZE, JR.  
ATTORNEY GENERAL OF OHIO

  
JEROME H. KEARNS (K-019)

  
KAREN S. CLEVELAND, (C-607)  
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Counsel for Defendant  
Queen City Barrel Company

Queen City Barrel Company

  
By: EDWARD PAUL

Title: PRESIDENT

9445E/1-16  
kmh




Karen S. Cleveland (C-607)  
 Gertrude M. Kelly  
 Jerome H. Kearns (K-019)  
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IN THE  
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 HAMILTON COUNTY, OHIO

STATE OF OHIO, ex rel.	:	CASE NO. A9004085
ANTHONY J. CELEBREZZE, JR.	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE SUNDERMANN
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
QUEEN CITY BARREL, CO., et al.	:	<u>STIPULATION OF DISMISSAL</u>
	:	
Defendant.	:	

Plaintiff and Defendants hereby stipulate that the above captioned case is hereby dismissed as to the Defendant Albert Paul, with prejudice, upon agreement of all parties.

  
 JEROME H. KEARNS (K-019)

  
 PHILIP J. SCHWORER (S-828)  
 LAWRENCE H. ELLEMAN (E-019)  
 Dinsmore & Shohl  
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 Queen City Barrel Company  
 and Albert Paul

9445E/17  
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