



IN THE
COURT OF COMMON PLEAS,
SUMMIT COUNTY, OHIO

ANNA ZALESKI
AUG 28 11 33 AM '99

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

CIV. CASE NO. CV. 89 08 2396
JUDGE James P. Winter

Plaintiff,

v.

SCHOTT METAL PRODUCTS COMPANY,
et al.,

CONSENT ORDER

Defendants.

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 Defendants Schott Metal Products Company and Samuel C. Schott (hereinafter referred to as "Defendants") having consented to the entry of this Order,

NOWHEREFORE, 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 Defendants under Chapter 3734. of the Ohio Revised Code ("RC") and venue is proper in this Court.

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, stockholders, directors, successors in interest and any person acting in concert or privity with any of them. Defendants shall provide a copy of this Consent Order to each contractor and/or consultant it employs to perform work itemized herein and each general contractor and/or consultant shall provide a copy of this Consent Order to each of its subcontractors and/or subconsultants for such work.

III. SATISFACTION OF LAWSUIT

3. Plaintiff State of Ohio alleges in its Complaint that Defendants operated a manufacturing company located at 2225 Lee Drive, Akron, Summit County, Ohio (hereinafter referred to as the "Lee Drive facility") in such a manner as to result in violations of the hazardous waste law, i.e., RC Chapter 3734. of the State of Ohio and the rules adopted thereunder. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims alleged in the Complaint. The signing of this Consent Order by Defendants is neither an admission or denial of the allegations contained in Plaintiff's Complaint. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for violations which occur after the filing of the Consent Order Complaint.

BLR. rjr/

IV. RIGHT OF ENTRY

4. Defendants give consent to Plaintiff State of Ohio, its agents and employees to enter into and onto Defendants' facility at a reasonable time, without a search warrant, to inspect, to take soil, water and other samples ^{and} to observe

Defendants 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.

V. EFFECT UPON OTHER ACTIONS

5. Nothing in this Consent Order shall be construed to relieve Defendants 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 Defendants with regard to any person not a party to this Consent Order.

VI. PLAINTIFF'S NOTICE PROVISION

6. Plaintiff does hereby provide notice to Defendants that it fully intends to exercise any rights under law it may have to obtain a contempt of court citation against any Schott Metal Products Company agent, assign, employee, officer, successor in interest or other person acting in concert or privity with any of them who interferes with or obstructs Defendants' efforts to comply with this Consent Order, if Defendants do not comply with this Consent Order.

VII. INJUNCTIVE RELIEF

7. Defendants are hereby permanently enjoined and ordered to ~~immediately~~ ^{fol.} _{rqjr/} comply with the requirements of RC Chapter 3734, and the terms and conditions of the rules adopted thereunder, and to cease operating a hazardous waste facility once closure is completed.

8. Defendants are further enjoined as follows:
- a. Submit an approvable closure plan which meets the criteria set forth in Rule 3745-66-12 of the Ohio Administrative Code ("OAC");
 - b. Submit an approvable plan for a groundwater monitoring program which meets the criteria set forth in OAC Rules 3745-65-90 through 3745-65-94;
 - c. Implement the groundwater monitoring plan approved by the Ohio EPA in accordance with the Schedule of Implementation contained in the approved groundwater monitoring plan, i.e., institute a groundwater monitoring program;
 - d. Close the active portion of the Lee Drive facility in accordance with the closure plan approved by the Director of Environmental Protection and OAC Rule 3745-66-13;
 - e. Provide a detailed written estimate of the cost of closing the Lee Drive facility in accordance with OAC Rule 3745-66-42 within 30 days from the Court's entry of this Consent Order;
 - f. Establish financial assurance for closure of the Lee Drive facility in accordance with OAC Rule 3745-66-43 within 30 days of the Court's entry of this Consent Order; and
 - g. Demonstrate financial responsibility for bodily injury and property damage to third persons caused by sudden and non-sudden accidental occurrences arising from operations at the Lee Drive facility in accordance with OAC Rule 3745-66-47 within 90 days from the Court's entry of this Consent Order.

VIII. CONSTRUCTION SCHEDULE

9. Defendants are enjoined and ordered to complete closure of the Lee Drive facility and to implement a groundwater monitoring program to be described in the closure plan and groundwater monitoring plan approved by the Ohio EPA in accordance with the following schedules:

Closure of the Lee Drive Facility

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Engage the services of a consultant.	<i>see</i> 30 ¹⁵ days from the Court's entry of this Consent Order.
(b) Submittal of a closure plan for approval to the Director of Environmental Protection.	<i>see</i> 60 ⁴⁵ days from the Court's entry of this Consent Order.
(c) Closure of the hazardous waste management unit(s) at the Lee Drive facility.	180 days from Defendants' receipt of written approval of the closure plan from the Director of Environmental Protection.

Groundwater Monitoring Program

<u>TASK</u>	<u>COMPLETION DATE</u>
(d) Submittal of groundwater monitoring plan which contains a Schedule of Implementation to Ohio EPA.	<i>see</i> 30 ⁴⁵ days from the Court's entry of this Consent Order.
(e) Provision for resubmittal of a revised groundwater monitoring plan based upon receipt of comments from the Ohio EPA.	<i>see</i> 30 ¹⁵ days from Defendants' receipt of written comments from the Ohio EPA.

(f) Implementation of the approved groundwater monitoring plan.

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~~15~~ days from
Defendants' receipt
of written approval
of the groundwater
monitoring plan
from Ohio EPA.

10. The closure plan referenced in Subparagraphs 9(a) through 9(c) shall include, *inter alia*, the approved groundwater monitoring plan required by Subparagraphs 8(b) and 8(c). Further, once approved by the Director of Environmental Protection, both the closure plan and the groundwater monitoring plan are enforceable as part of this Consent Order.

IX. REPORTING REQUIREMENT

11. Within seven (7) days from the completion date of each milestone in Subparagraphs 8(d) through 8(g), 9(a) through 9(f), and the Schedule of Implementation outlined in the approved groundwater monitoring plan Defendants shall submit a written report stating whether they have performed the action set forth therein and any documentation of completion of said milestone dates, to Ohio EPA's Central Office, DSHWM, Enforcement Section, 1800 WaterMark Drive, Columbus, Ohio 42366-0149 with a carbon copy to Ohio EPA's Northeast District Office, 2110 E. Aurora Road, Twinsburg, Ohio 44087.

X. COMMITMENT OF DEFENDANT

12. Defendants are ordered and agree to undertake and ensure performance of its obligations under this Consent Order, and are further ordered and agree to perform all said obligations at their expense.

XI. EFFECT OF CONSENT ORDER

13. This Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing hazardous waste facility. Approval for any such construction or modification shall be by permit issued by the Director of Environmental Protection or other such permits as may be required by applicable federal, state or local laws, rules or regulations.

XII. CIVIL PENALTY

14. Defendants shall pay to the State of Ohio a civil penalty of ^{BE rgr/} ~~twenty-five~~ ^{BE O rgr/} thousand dollars (\$25,000.00). The civil penalty shall be paid by delivering to counsel for Plaintiff a certified check for the above amount, payable to the order of "Treasurer, State of Ohio," to be deposited into the hazardous waste clean-up fund, within thirty (30) days from the Court's entry of this Consent Order.

XIII. STIPULATED PENALTIES

15. In the event that Defendants fail to meet any of the requirements of this Consent Order set forth in Paragraph 7, Subparagraphs 8(a) through 8(g), 9(a) through 9(f) and the Schedule of Implementation contained in the approved groundwater monitoring plan, including any scheduled milestone requirement, Defendants 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, up to thirty (30) days--one thousand dollars (\$1,000.00) per day;

- (b) For each day of failure to meet a requirement, from thirty-one (31) to sixty days (60)--two thousand dollars (\$2,000.00) per day;
- (c) For each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days--three thousand Dollars (\$3,000.00) per day; and
- (d) For each day of failure to meet a requirement, over ninety days (90) days--four thousand dollars (\$4,000.00) per day.

16. Any payment required to be made under the provisions of Paragraph 15 of this Consent Order are deemed not to 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 thirty (30) days from the date of the failure to meet the requirement of the Consent Order, made payable to "*Treasurer, State of Ohio*".

XIV. MISCELLANEOUS PROVISION

17. The parties hereto acknowledge and agree that the signing of this Consent Order by Defendants does not constitute a waiver of Defendants' rights to contest an action, or proposed action, of the Director of Environmental Protection, as it pertains to the review of the closure plan and groundwater monitoring plan to be submitted by Defendants under the terms of this Consent Order, before the Ohio Environmental Protection Agency, the Ohio Environmental Board of Review and/or any court of competent jurisdiction.


XV. RETENTION OF JURISDICTION

18. 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.

XVI. COSTS

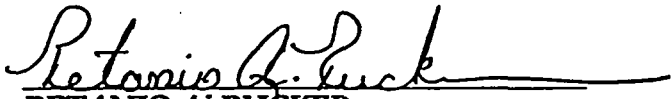
19. Defendants are hereby ordered to pay the costs of this action.

Entered this 28 Day of Aug, 1990.


JUDGE JAMES P. WINTER,
COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO


APPROVED:

ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO


RETANIO A. RUCKER
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Attorney for Defendants
Schott Metal Products Company
and Samuel C. Schott


SAMUEL C. SCHOTT
President

Authorized Representative
Defendant Schott Metal Products Company


SAMUEL C. SCHOTT
(In his individual capacity)

Subsequent Contempt Order

DIANA ZALESKI

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SUMMIT COUNTY
CLERK OF COURTS

IN THE
COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

State of Ohio, ex rel.
Lee Fisher
Attorney General of Ohio,

Case No. CV 89 08 2396

Judge Jane Bond

Plaintiff,

v.

ORDER AS TO THE STATE'S CIVIL
CHARGES IN CONTEMPT

Schott Metal Products Co., et al.,

Defendants.

The instant matter is before the Court upon Plaintiff State of Ohio's ("State") Civil Charges in Contempt Against Defendants Schott Metal Products Company and Samuel C. Schott (hereinafter at times collectively referred to as "Defendants"). The Court being duly informed finds that the State and Defendants have consented to the entry of this Order.

Its is hereby ordered as follows:

1. Defendants have not fully complied with the terms of the August 28, 1990 Consent Order and, by virtue thereof, admit that they are in contempt of said Order.

2. By September 15, 1993, Defendants are ordered to remit to the Clerk of Courts, Summit County, Ohio for the Court of Common Pleas a certified check in the amount of two hundred and fifty dollars (\$250.00), pursuant to §2705.05 of the Ohio Revised Code ("RC"), for Defendants' failure to comply with all terms and conditions of this Court's August 28, 1990 Consent Order.

3. Within thirty (30) days of the Court's entry of this Order, Defendants are ordered to pay to the State a stipulated penalty of twenty thousand dollars (\$20,000.00), pursuant to Article XIII of the August 28, 1990 Consent Order. The stipulated penalty shall be paid by delivering to the attorney for the State, or his successor, a certified check for said amount, payable to the order of the "Treasurer, State of Ohio", to be deposited into the hazardous waste clean-up fund. The penalty shall be delivered to the State's attorney at the following address: Environmental Enforcement, 30 East Broad Street, 25th fl., Columbus, Ohio 43266-0410.

4. Within thirty (30) days of the Court's entry of this Order, Defendants are ordered to pay to the Attorney General of Ohio the enforcement costs associated with the prosecution of the civil contempt action *sub judice* in the amount of five thousand dollars (\$5,000.00). Said costs shall be paid by delivering to the attorney for the State, or his successor, a certified check for said amount, payable to the order of the "Treasurer, State of Ohio", to be deposited into the Ohio Attorney General's Special Reimbursement Fund, No. 612, Program No. 5718. Such costs shall be delivered to the State's attorney at the address listed in Order No. 3 above.

I certify this to be a true copy of the original
Diana Zaleski, Clerk of Courts

 Deputy

5. Defendants, pursuant to Article VII, Paragraph No. 7 of the August 28, 1990 Consent Order, are ordered to comply with RC Chapter 3734. and the rules adopted thereunder pertaining to the management of hazardous waste at 2225 Lee Drive, Akron, Summit County, Ohio (hereinafter referred to as the "Lee Drive facility") and the closure of the hazardous waste management unit(s) at said facility.

6. Defendants are ordered to begin implementation of their revised closure plan within ten (10) days after receiving written approval of said plan from the Director of Environmental Protection ("Director").

7. Within thirty (30) days of the Court's entry of this Order, Defendants, pursuant to Article VII, Paragraph No. 8f of the August 28, 1990 Consent Order and Rules 3745-55-43 and/or 3745-66-43 of the Ohio Administrative Code ("OAC"), are ordered to establish financial assurance for the cost of closing the hazardous waste management unit(s) at the Lee Drive facility and to submit such information to the Ohio Environmental Protection Agency ("Ohio EPA"), Northeast District Office, Division of Hazardous Waste Management ("DHWM"), 2210 East Aurora Road, Twinsburg, Ohio 44087; with a notice of submittal of said item to the Ohio EPA's Central Office, DHWM, Enforcement Section, 1800 WaterMark Drive, P.O.Box 0149, Columbus, Ohio 43266-0149.

8. Within thirty (30) days of the Court's entry of this Order, Defendants, pursuant to Article VII, Paragraph No. 8g of the August 28, 1990 Consent Order and OAC Rules 3745-55-47 and/or 3745-66-47, are ordered to demonstrate to the Ohio EPA their financial responsibility for bodily injury and property damage to third persons caused by sudden and non-sudden accidental occurrences arising from operations at the Lee Drive facility. Said demonstration shall be submitted to the Ohio EPA at the addresses listed in Order No. 7 above.

9. In the event Defendants are required by the Ohio EPA to address any alterations, changes, deficiencies, deletions or revisions in the revised closure plan, revised closure cost estimate, groundwater plan, financial assurance documentation and/or financial responsibility documentation, Defendants are ordered to revise and to submit said documents to the Ohio EPA within thirty (30) days of receipt of written notice from the Ohio EPA that such revisions are required.

10. The provisions of this Court's August 28, 1990 Consent Order remain in full force and effect, including, but not limited to, Article XIII of said Order. In addition, said Article shall apply and be binding as to Order Nos. 5 through 9 set forth herein.

11. Compliance with the terms of this Order shall constitute full satisfaction of any civil liability by Defendants for the allegations set forth in the State's Civil Charges in Contempt filed with the Court April 28, 1993, and all violations up to and including the Court's entry of this Order. It is understood by the parties that nothing herein shall be construed to excuse Defendants' future compliance, *i.e.*, beginning the day following the Court's entry of this Order, with RC Chapter 3734., the rules adopted thereunder, the August 28, 1990 Consent Order and this Order.

12. Defendants are ordered to pay the court costs associated with this civil

contempt action.

The Court shall retain jurisdiction of this civil contempt action for the purpose of enforcing the terms and provisions of this Order and the August 28, 1990 Consent Order.


No further order is required. Entered this _____ day of _____, 1993.

COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

Judge Jane Bond


Approved:

LEE FISHER
ATTORNEY GENERAL OF OHIO



Retanio A. Rucker (0039744)
Assistant Attorney General

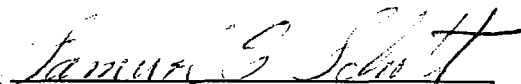
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Attorney for Defendants


Samuel C. Schott, President
Schott Metal Products, Inc.


Samuel C. Schott, Individually