

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, <i>ex rel.</i>)	
LEE FISHER,)	CASE NO. CV239671
)	
Plaintiff,)	JUDGE DANIEL O. CORRIGAN
)	
vs.)	
)	
I. SCHUMANN & COMPANY, <i>et al.</i>)	
)	
Defendants.)	

CONSENT ORDER

Plaintiff, State of Ohio, by its Attorney General, Lee Fisher (hereinafter "Plaintiff"), having filed a Complaint on September 28, 1992 against Defendants I. Schumann & Company and Michael A. Schumann (hereinafter "Defendants") alleging violations of Chapter 3734 of the Ohio Revised Code and the rules adopted thereunder, and the parties having consented to the entry of this Order;

Plaintiff and Defendants have agreed: (1) settlement and resolution of the claims set forth in the Complaint are in the public interest; and (2) filing and entry of this Consent Order is without admission as to fact or liability by Defendants.

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

I. JURISDICTION

1. The Court has jurisdiction over the parties and subject matter of this action, pursuant to Chapter 3734 of the Ohio Revised Code and the rules adopted thereunder. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted.

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, successors in interest and any person acting in concert, privity or participation with them who receive actual notice of this Consent Order whether by personal service or otherwise. A copy of this Consent Order shall be provided to each contractor employed by Defendant Michael A. Schumann to perform closure and ground water monitoring work or employed by Defendant I. Schumann & Company to perform post-closure itemized in Section IV of this Consent Order.

III. SATISFACTION OF LAWSUIT

3. Plaintiff has alleged in its Complaint that Defendants have operated the facility located at 22500 Alexander Road, Bedford, Ohio (hereinafter "the facility") in violation of various provisions of the hazardous waste laws of Ohio, as set forth in Chapter 3734 of the Ohio Revised Code and the rules adopted thereunder. All violations are denied by Defendants. Except as provided in paragraphs 4 and 6 below, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for those claims which have been alleged in the Complaint.

4. Upon approval, by Ohio EPA, of:

- (1) the closure plan and, if necessary, ground water monitoring plans, which all Defendants are jointly and severally ordered to submit, as required by Section IV of this Consent Order;
- (2) detailed closure cost estimates, which all Defendants are jointly and severally ordered to submit, as required by O.A.C. Rule 3745-66-42 and Section V of this Consent Order; and
- (3) financial assurance for closure, which all Defendants are jointly and severally ordered to submit, as required by O.A.C. Rule 3745-66-43 and Section V of this Consent Order,

Defendant I. Schumann & Company's liability to provide all necessary services and property, other than funds, to perform closure (excluding any post-closure phase of closure), as alleged in the Complaint, shall be resolved, satisfied and extinguished. Nevertheless, Defendant I. Schumann & Company continues to be ordered and enjoined to fully fund the financial mechanism for closure and post-closure of the surface impoundment, one (1) former and two (2) present waste piles as detailed in Section IV of this Consent Order, including funding for all costs in the originally approved closure plan, all cost overruns or costs above the originally approved closure and post-closure cost estimates, all costs required by a revised or modified closure plan, and all other costs related to closure and post-closure, as required by O.A.C. Rules 3745-66-43 and 3745-66-45. Furthermore, if post-closure is required, Defendant I. Schumann & Company continues to be ordered and enjoined to perform post-closure, including but not limited to, providing all necessary services, property and funding so that post-closure is implemented. Such post-closure includes all activities required during the post-closure phase, including but not limited to, ground water monitoring, ground water remediation, soil remediation and cap maintenance. Such post-closure activities would also require Defendant I. Schumann & Company to fully comply with the post-closure financial assurance requirements set forth in Section V, paragraph 16. Furthermore, Defendant I.

Schumann & Company continues to be ordered and enjoined to fully comply with all other obligations required by this Consent Order.

5. Defendant Michael A. Schumann receives satisfaction, as set forth in paragraph 3, for any civil liability for the claims alleged in the Complaint upon compliance with the terms of this Consent Order. Thus, Defendant Michael A. Schumann is ordered and enjoined to fully comply with all obligations of this Consent Order and, except as otherwise provided in this paragraph and in paragraph 6 below, is not discharged from the obligation to perform the service of closure and post-closure upon funding of the financial mechanism for closure and post-closure. This Order and injunction includes the obligation for Defendant Michael A. Schumann to fully fund the financial mechanism for closure and post-closure as required by O.A.C. Rules 3745-66-43 and 3745-66-45 and Section V of this Consent Order. Unless post-closure is required as set forth herein, Defendant Michael A. Schumann shall be dismissed with prejudice upon: (1) certification by Ohio EPA of closure of the surface impoundment, and the one (1) former and two (2) present waste piles at the facility; and (2) payment of all civil penalties, costs and, if necessary, stipulated penalties required by this Consent Order.

6. If Defendants are required to conduct post-closure, Defendants shall fund a financial mechanism for post-closure as set forth in paragraph 16. If post-closure is funded at One Hundred and Twenty-Five Per Cent (125%) of the Ohio EPA approved post-closure cost estimate and all civil penalties, costs and, if necessary, stipulated penalties have been paid as required by this Consent Order, Defendant Michael A. Schumann shall be dismissed, with prejudice, from this matter and not obligated to perform post-closure. However, as set forth

in paragraph 4, Defendant I. Schumann & Company is ordered and enjoined to implement post-closure and to fund any cost overruns for the financial mechanism for post-closure.

7. Nothing in this Consent Order, including the imposition of stipulated civil penalties as set forth in Section X of this Consent Order, shall limit the authority of Plaintiff to seek any relief for claims or conditions not alleged in the Complaint, or to seek any relief for the types of claims or conditions alleged in the Complaint which occur after the entry of this Consent Order; provided, however, that Plaintiff would file no new claims under O.R.C. Sections 3745.02(E) and (F) and O.A.C. Chapter 3745-66 for claims and conditions described in the Complaint existing on the entry of this Consent Order, if Defendants are fully complying with this Consent Order and, if Defendants have committed no acts of illegal treatment, storage and disposal of hazardous waste after the date of entry of this Consent Order, other than those acts alleged in the Complaint. In addition, the Plaintiff hereby specifically reserves the right to take action against any person, including, but not limited to Defendants I. Schumann & Company and Michael A. Schumann pursuant to the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. §9601, *et. seq.*, and/or Ohio Revised Code Sections 3734.20 through 3734.27 for any removal, remedial or corrective actions which are not conducted pursuant to the terms of this Consent Order.

IV. CLOSURE PLANS AND GROUND WATER MONITORING

8. Except as provided in Section III, paragraphs 4 and 6, Defendants agree and are hereby enjoined to perform closure, including, if necessary, post-closure, of the surface impoundment, and the one (1) former and two (2) present waste piles located at its 22500 Alexander Road facility in accordance with O.A.C. Rules 3745-66-10 through 3745-66-20 and

to comply with the ground water monitoring requirements for the surface impoundment and one (1) former and two (2) present waste piles in accordance with O.A.C. Rules 3745-65-90 through 3745-65-94.

9. On October 14, 1994, Defendants submitted to Ohio EPA a closure plan for the one (1) former and two (2) present waste piles. This closure plan shall meet the requirements of O.A.C. Rule 3745-66-12. The closure plan shall also comply with the ground water monitoring requirements set forth in O.A.C. Rules 3745-65-90 through 3745-65-94.

10. On October 14, 1994, Defendants submitted to Ohio EPA a new closure plan for the surface impoundment. This closure plan shall meet the requirements of O.A.C. Rule 3745-66-12. The new closure plan for the surface impoundment shall also comply with the ground water monitoring requirements set forth in O.A.C. Rules 3745-65-90 through 3745-65-94. Defendants have incorporated the new closure plan into the closure plan referenced in paragraph 9 of this Consent Order.

11. The closure plan and, if necessary, the ground water monitoring workplan, referenced in paragraphs 9 and 10, are subject to the approval of the Director of Ohio EPA. If the Director determines that Defendants' closure plan and ground water monitoring workplan are deficient, Defendants are enjoined to resubmit, within thirty (30) days of written notification from Ohio EPA, a revised closure plan and/or workplan correcting the deficiencies. Upon receipt and review of the revised plan and/or workplan, the Director may approve the revised plan and/or workplan or modify the plan and/or workplan so that it/they comply(ies) with O.A.C. Rules 3745-66-10 through 3745-66-20 and/or Rules 3745-65-90 through 3745-65-94. The modified plan and/or workplan in that event shall be the approved closure plan and workplan.

12. Upon approval by the Director of Ohio EPA of Defendants' closure plan and ground water monitoring plan, Defendant Michael A. Schumann is enjoined to implement the approved closure plan and ground water monitoring plan in the manner and pursuant to the time frames set forth in the approved closure plan, any conditions attached to the approvals, and O.A.C. Rules 3745-66-13 and 3745-66-15 and Rules 3745-65-90 through 3745-65-94. As set forth in Section III, paragraphs 4 and 5, Defendants, including Defendant I. Schumann & Company, are enjoined to provide the funds necessary to implement the approved closure plan and ground water monitoring plan.

V. FINANCIAL ASSURANCE AND LIABILITY

13. Until such time that the Director notifies the Defendants that it is no longer required, Defendants agree and are hereby enjoined to comply with the financial assurance and liability requirements pursuant to O.A.C. Rules 3745-66-42 through 3745-66-47.

14. Within sixty (60) days of entry of this Consent Order, Defendants shall submit to Ohio EPA a detailed closure cost estimate which is calculated pursuant to O.A.C. Rule 3745-66-42.

15. Within sixty (60) days of entry of this Consent Order, Defendants shall submit to Ohio EPA documentation of financial assurance for closure pursuant to O.A.C. Rule 3745-66-43.

16. Defendants have submitted a clean closure plan to Ohio EPA. Such plan will not require post-closure. However, if Defendants revise or modify their closure plan to include post-closure, Defendants, within sixty (60) days of the submission of the revised or modified closure plan which includes a post-closure plan, shall submit to Ohio EPA a detailed post-

closure cost estimate which is calculated pursuant to O.A.C. Rule 3745-66-44 and documentation of financial assurance for post-closure pursuant to O.A.C. Rule 3745-66-45.

17. Within sixty (60) days of entry of this Consent Order, Defendants shall submit to Ohio EPA documentation demonstrating financial responsibility pursuant to O.A.C. Rule 3745-66-47.

VI. SUBMITTAL OF DOCUMENTS

18. All documents required to be submitted to Ohio EPA pursuant to the terms of this Consent Order shall be submitted to:

1. Ohio EPA-Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087
Attention: RCRA Group Leader
2. Director, Ohio Environmental Protection Agency
P.O. Box 1049
1800 Watermark Drive
Columbus, Ohio 43266-0149
Attn: Manager, Compliance Monitoring & Enforcement Section
Division of Hazardous Waste Management
3. Director, Ohio Environmental Protection Agency
P.O. Box 1049
1800 Watermark Drive
Columbus, Ohio 43266-0149
Attn: Manager, Data Management Section
Division of Hazardous Waste Management (Closure Plan(s) only)

VII. CIVIL PENALTY

19. In resolution of the claims set forth in the Complaint, Defendants shall pay to the State of Ohio a civil penalty in the amount of One Hundred and Ninety Thousand Dollars (\$190,000.00). This amount shall be paid into the Hazardous Waste Clean-up Fund created pursuant to O.R.C. Section 3734.28, according to the schedule set forth in paragraph 20

below, by delivering a certified check(s) for that amount, payable to the order of "Treasurer, State of Ohio" to:

Matthew A. Sanders, Acting Administrative Assistant, or his successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

20. The One Hundred and Ninety Thousand Dollars (\$190,000.00) shall be paid according to the following schedule:

- a first payment of \$40,000.00 within fourteen (14) days of entry of this Consent Order
- a second payment of \$40,000.00 by December 15, 1994
- a third payment of \$40,000.00 by February 15, 1995
- a fourth payment of \$40,000.00 by May 15, 1995
- a fifth payment of \$30,000.00 by August 15, 1995

VIII. GENERAL INJUNCTION

21. Defendants agree and are hereby permanently enjoined to conduct any future operations at the facility located at 22500 Alexander Road in compliance with Chapter 3734 of the Ohio Revised Code and the regulations promulgated thereunder.

22. Until such time as Ohio EPA determines, pursuant to O.A.C. Rule 3745-66-15, that the facility located at 22500 Alexander Road has been properly closed and no longer constitutes a "facility" within the meaning of O.A.C. Rule 3745-50-10(A)(32), Defendants agree and are hereby enjoined to comply with requirements for "facilities" in O.A.C. Chapters 3745-54 and 3745-65.

23. Within twenty (20) days of entry of this Consent Order, Defendants are ordered and enjoined to abate the following outstanding violation at the facility, and comply with the

following requirement: Keep and maintain operating records pursuant to O.A.C. Rule 3745-65-73.

24. Within thirty (30) days from the entry of this Consent Order, the Defendants are ordered and enjoined to submit documentation to the Ohio EPA demonstrating abatement of the outstanding violation and compliance with the law.

IX. COMPLIANCE WITH APPLICABLE LAWS

25. Nothing herein shall affect Defendants' obligation to comply with all applicable federal, state or local laws, regulations, rules or ordinances.

X. STIPULATED PENALTIES

26. In the event that Defendants violate any of the requirements of this Consent Order for which they have an obligation to perform as explained in paragraphs 4, 5 and 6 above, including any milestone requirement in the closure plan schedule, Defendants shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule: For each day of each failure to meet a requirement, up to thirty (30) days - One Thousand Dollars (\$1,000.00) per day. For each day of each failure to meet a requirement, from thirty-one (31) to sixty (60) days - Two Thousand Five Hundred Dollars (\$2,500.00) per day. For each day of each failure to meet a requirement, from sixty-one (61) days to ninety (90) days Five Thousand Dollars (\$5,000.00) per day. For each day of failure to meet a requirement, over ninety (90) days - Seven Thousand Dollars (\$7,000.00) per day.

27. Any payment required to be made under the provisions of paragraph 26 of this Order shall be made by delivering to Plaintiff's counsel at the address in paragraph 19, 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". Such payment shall be deposited into the hazardous waste clean-up account.

XI. POTENTIAL FORCE MAJEURE

28. In any action by Plaintiff to enforce any of the provisions of this Consent Order, including actions to collect stipulated penalties pursuant to ¶26, Defendants may raise at that time the question of whether they are entitled to a defense that their conduct was caused by reasons entirely beyond their control such as, by way of example and not limited to, acts of God, strikes, acts of war or civil disturbances. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendants and 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, if ever, that a proceeding to enforce this Consent Order is commenced by Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances beyond the control of Defendants shall rest with Defendants. Unanticipated or increased cost 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 Defendants or serve as a basis for an extension of time under this Consent Order. An extension of one compliance date based on a particular incident does not mean that Defendants qualify for an extension of a subsequent compliance date or dates. Defendants must make an individual showing of 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 Defendants of any rights or defenses they may have under applicable law.

XII. RETENTION OF JURISDICTION

29. This 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.

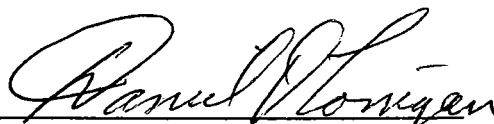
XIII. COURT COSTS

30. Defendants shall pay all court costs of this action.

XIV. ENFORCEMENT COSTS

31. Defendants are ordered and enjoined to pay the costs of relator Ohio Attorney General expended in pursuing the instant action, totalling Twenty-Five Thousand Dollars (\$25,000.00) by delivering a certified check in such an amount for payment into the State Treasury made payable to the order of "Treasurer, State of Ohio" to Matthew A. Sanders, Acting Administrative Assistant, or a person subsequently designated by the State, Environmental Enforcement Section, 25th Floor, 30 East Broad Street, Columbus, Ohio 43215-3428, within fourteen (14) days of entry of this Consent Order. Any check submitted in compliance with this Section shall be in addition to and separate from any check submitted pursuant to any other Section of this Consent Order.

DATED Oct 19, 1994

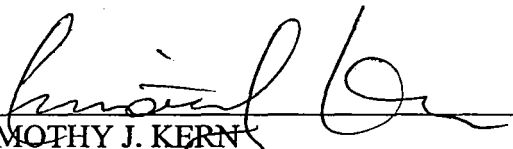

JUDGE DANIEL O. CORRIGAN,
CUYAHOGA COUNTY COURT
OF COMMON PLEAS

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Satisfaction of Judgment was sent by regular U.S. Mail, postage prepaid, on this 6th day of June, 1998, to:

Theodore J. Esborn
McDONALD, HOPKINS, BURKE
& HABER CO., L.P.A.
2100 Bank One Center
600 Superior Avenue, E.
Cleveland, Ohio 44114-2653

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