

Judgment BK

FILED
PORTAGE COUNTY
COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO
Jul 24 10 22 AM '90

STATE OF OHIO, ^{DELORES REED} ex rel. ANTHONY J. CELEBREZZE, JR. ATTORNEY GENERAL OF OHIO,	:	CASE NO. 88 CV 1600
	:	
Plaintiff,	:	JUDGE GEORGE E. MARTIN.
	:	
vs.	:	<u>CONSENT ORDER</u>
	:	
SEAL MASTER CORPORATION, et al.	:	
	:	
Defendant.	:	
	:	

The Plaintiff, State of Ohio, by its Attorney General, Anthony J. Celebrezze, Jr., ("the State" or "Plaintiff"), having filed the Complaint in this civil action against the Defendants, Seal Master Corporation ("Seal Master") and Edward L. Bittle ("Bittle") to enforce the State hazardous waste statutes and rules promulgated thereunder at Seal Master's Kent, Ohio facility located at 368 Martinel Drive, Kent, Ohio (hereinafter "the Seal Master Facility"); and Plaintiff and Defendants having consented to entry of this Decree:

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

I. JURISDICTION AND VENUE

This Court has jurisdiction over the parties and the

subject matter of this civil action. Venue is appropriate in this Court. The Complaint states a claim upon which relief can be granted under Chapter 3734 of the Ohio Revised Code (R.C.) and rules promulgated thereunder.

II. CONTINUING JURISDICTION

This Court shall retain jurisdiction over this action for the purpose of overseeing the implementation of this Consent Order by the Defendants.

III. PERSONS BOUND

All the provisions of this Consent Order shall apply to and be binding upon the Defendants and/or their officers, assigns, or successors. The provisions of Article VII of this Consent Decree shall also apply to agents of, consultants to, and employees of Defendants, in regards to their activities at or on behalf of the Seal Master Facility. Furthermore, so long as the Defendant Bittle retains the position of President of Seal Master or is otherwise authorized by Seal Master to implement the provisions of this Consent Order, Defendant Bittle is ordered to act within the scope of his authority to cause the timely and effective compliance with this Consent Order.

IV. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objective of the Plaintiff and Defendants is to have Defendants fully comply with the state hazardous waste statutes and rules

promulgated thereunder. Nothing in this Consent Order or Seal Master's or Bittle's compliance with it or with hazardous waste statutes and rules shall be considered as evidence that Seal Master ever did or did not take, deposit, treat, store, dispose or otherwise handle hazardous waste.

V. SATISFACTION OF CLAIMS AND EFFECT
UPON OTHER ACTIONS

Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Bittle and/or Seal Master, their officers, employees, and former officers and employees to the State of Ohio, its Attorney General and its Director of Environmental Protection (hereinafter the "State") for all matters alleged in the Complaint. For matters beyond the terms and scope of this Consent Order, or for matters presently unknown to the State, the State reserves the right to take any enforcement action pursuant to any available legal authority, including the right to seek injunctive relief and monetary penalties.

This Consent Order shall not be construed so as to preclude the State from seeking that Seal Master and/or Bittle or others conduct remedial or corrective action or additional monitoring or testing at the Seal Master Facility as a result of Defendants' waste-handling practices at the Seal Master Facility. This Consent Order shall not be construed so as to preclude the State from seeking monetary, injunctive, or other

relief against Seal Master or Bittle for violations other than those referred to in the Complaint. This Consent Order shall also not be construed so as to preclude the State from seeking any form of relief against Seal Master or Bittle as a result of their operation of any facility other than the Seal Master Facility, regardless of when the violation or violations may have occurred. Nothing herein shall be construed to limit the authority of the State of Ohio to undertake any action against any person, including Seal Master or Bittle, to eliminate or mitigate conditions arising after the date hereof which may endanger the public health, welfare or the environment.

VI. CIVIL PENALTY

It is hereby ordered that Seal Master shall pay a civil penalty of Twenty Thousand Dollars (\$20,000.00). This civil penalty shall be paid by check made payable to "Treasurer, State of Ohio", which check shall be delivered by mail, or otherwise, to Bryan Zima or Karen Cleveland at their office at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, within thirty (30) days of the Court's Entry of this Consent Order. This penalty shall be paid into the Ohio Hazardous Waste Cleanup Fund.

VII. GENERAL INJUNCTION

Defendants are permanently enjoined to comply with all laws

and regulations contained in R.C. Chapter 3734 and the rules adopted thereunder and to comply with any hazardous waste permits it may obtain regarding the Seal Master Facility.

VIII. CLOSURE PLAN

Seal Master is ordered to submit an approvable closure plan for the Seal Master Facility that shall comply with the applicable requirements of Sections 3745-66-10 to 3745-66-20 of the Ohio Administrative Code (O.A.C.) to Richard Shank, Director of Environmental Protection, P.O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43266-0149 and Mr. Paul Anderson at the Ohio EPA Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio 44087. This closure plan shall be submitted within sixty (60) days of the entry of this Consent Order. If Ohio EPA notifies Seal Master of deficiencies in the closure plan, Seal Master shall resubmit a closure plan that addresses the noted deficiencies in approvable form within thirty (30) days of OEPA's notification to Seal Master, unless otherwise agreed in writing. No such notice of deficiency of part or all of the plans as contained in first or second submittal of the plans shall be construed to be a violation of this Consent Order unless an approvable response to comments on the second submittal is not made by Seal Master within thirty (30) days of receipt of the comments. Seal Master shall implement the closure plan as approved by Ohio EPA.

IX. FINANCIAL RESPONSIBILITY/FINANCIAL ASSURANCE REQUIREMENTS

Seal Master shall:

- a. within sixty (60) days of the entry of this Consent Order, prepare and keep at the Seal Master Facility a detailed written estimate, as required by O.A.C. Section 3745-66-42, of the cost of closing the Seal Master Facility.
- b. maintain until closure is complete and certified pursuant to O.A.C. 3745-66-15, financial responsibility for closure of the Seal Master Facility in conformity with O.A.C. Section 3745-66-43. Seal Master shall submit proof of compliance with the financial responsibility rules referred to above for closure, to the Director of Environmental Protection at the address specified in Paragraph VIII within ninety (90) days after entry of this Consent Order.

X. WASTE EVALUATION PLAN

Defendants shall develop an approvable written waste evaluation plan for the Seal Master 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 thirty (30) days of entry of the Consent Order. The plan shall address all potentially hazardous waste streams generated

and/or managed at the Seal Master Facility. The written plan shall be subject for review by the Ohio EPA. If the Ohio EPA determines that the plan is not sufficient to achieve compliance with OAC Rule 3745-52-11, the Ohio EPA will notify Defendant in writing of the deficiencies in the plan. Defendant shall resubmit the plan in an approvable form including the required modifications 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 concurrence with the plan and shall fully implement said plan in accordance with the schedules contained therein and shall otherwise maintain compliance with O.A.C. Rule 3745-52-11.

XI. RIGHT OF ENTRY

During the effective time of this Consent Order, not to exceed ninety (90) days after the completion and certification of closure pursuant to Article VIII, of this Consent Decree. Plaintiff and its agents and employees shall have authority to enter, without a search warrant, at any reasonable time, into and onto the Seal Master Facility to inspect, to take photographs and samples, and to observe Defendant conducting its work as required by this Consent Order. This provision in no way limits the Plaintiff's statutory or other authority to conduct inspections and to take photographs and samples.

XII. ANNUAL REPORT

Defendants shall prepare and submit to the Ohio EPA an annual report meeting the requirements of O.A.C. Section 3745-52-41 for the calendar years 1989 and 1990. For years thereafter, if Defendants cannot establish that the Seal Master Facility is a conditionally exempt small quantity generator, Defendants shall prepare and submit such an annual report for any year as required by rule.

XIII. STIPULATED PENALTIES

In the event that Seal Master or Bittle fails to complete sampling of the soil as required by the approved closure plan within ninety (90) days after approval of the closure plan (hereinafter referred to as Penalty Deadline 1), or fails to complete closure as required in the approved closure plan within one hundred eighty (180) days after approval of the closure plan, unless an extension is obtained in accordance with O.A.C. Section 3745-66-13(B)(1) (hereinafter referred to as Penalty Deadline 2), such Defendant 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 either Penalty Deadline 1 or 2, for up to thirty (30) days - Five Hundred Dollars (\$500.00) per day. For each day of each failure to meet either Penalty Deadline 1 or 2, from thirty-one (31) to sixty days (60) - One Thousand Dollars (\$1,000.00) per day. A stipulated penalty for a

failure to meet either Penalty Deadline 1 or 2 or both shall not accrue in excess of a total of Forty-Five Thousand Dollars (\$45,000.00).

Any payment required to be made under the provisions of this paragraph of this Order 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". Such payment shall be deposited into the hazardous waste clean-up account.

In addition to the provisions of Paragraph V of this Consent Order, nothing in this paragraph shall prevent Plaintiff, or affect the rights of Plaintiff, to bring an action in contempt for violations of this Consent Decree, or to bring a civil action seeking injunctive relief or civil penalties for violation(s) of any requirements of R.C. Chapter 3734 which are created or continue as a result of failure to comply with this Consent Order.

XIV. COURT COSTS

Defendants shall pay the court costs of this action.

JUDGE
COURT OF COMMON PLEAS

APPROVED:

ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO

SEAL MASTER CORPORATION

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BY:

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