

CLERK OF COURTS  
MAHONING COUNTY, OHIO  
SEP 22 1995  
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In the Court of Common Pleas  
Mahoning County, Ohio

State of Ohio, ex rel.,  
Betty D. Montgomery  
Attorney General of Ohio,

Plaintiff,

v.

Sebring Industrial Plating,  
Co., et al.,

Defendants.

Case No. 93-CV-1288

Judge Michael A. Gerchak

Consent Order

The Plaintiff, State of Ohio, ex rel. Betty D. Montgomery, Attorney General of Ohio ("State" or "Plaintiff"), having filed the Complaint in this action against the Defendants Sebring Industrial Plating, Co., Willard Diver and Nicholas Conny ("Defendants") to enforce Ohio's hazardous waste and water pollution laws and rules concerning the waste handling, storage, transportation and disposal practices at Defendants' facility at 546 W. Tennessee Avenue, Sebring, Ohio located in Mahoning County ("Plating Facility" or "Facility"), and Plaintiff and undersigned Defendants having consented to entry of this order;

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, ENJOINED and DECREED as follows:

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p. 301

### I. Persons Bound

1. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest, and any person acting in active concern, privity or participation with them who receives actual notice of this Consent Order whether by personal service or otherwise. Defendants shall provide a copy of this Consent Order to each consultant, contractor or subcontractor employed to perform work referenced herein, including but not limited to handling, storing, treating and/or disposing of hazardous wastes generated by their activities at the Plating Facility or installing a pretreatment facility pursuant to paragraph 7 of this consent order.

### II. Jurisdiction and Venue

2. The Court has jurisdiction over the parties. This court has jurisdiction over the subject matter of this case pursuant to R.C. Chapters 3734 and 6111 and rules promulgated thereunder. Venue is proper in this court. The Complaint states a claim upon which relief can be granted.

### III. Future Civil Penalties, Injunctive Relief and Cost Recovery

3. This Consent Order does not contain civil penalties. As a result, this Consent Order does not satisfy Defendants' liability as to civil penalties. Nothing in this Consent Order, including the imposition of injunctive relief, shall bar the Plaintiff from seeking civil penalties, or further injunctive relief for any of the claims or conditions alleged in the complaint or to recover costs associated with any removal, remedial or corrective activities at the Plating Facility for any of the claims

or conditions alleged in the complaint.

4. Nothing in this Consent Order shall limit the authority of the State of Ohio to:

(a) Seek any legal or equitable relief for violations, claims or conditions not alleged in the Complaint, including violations, claims or conditions which occur after the filing of the complaint;

(b) Seek any legal or equitable relief for violations, claims or conditions alleged in the complaint which occur or exist after the entry of this Consent Order;

(c) Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;

(d) Bring any legal or equitable action against Defendants or against any person, to the extent allowed by law, under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9601, *et seq.*, R.C. Chapter 3734, and/or R.C. Chapter 6111 to: (1) recover natural resource damages, and/or (2) to enjoin the performance of, and/or recover response costs for, any removal, remedial or corrective activities, including but not limited to all aspects of cleanup and closure, at the Plating Facility.

(e) Take any action authorized by law against any person, including Defendants, to eliminate or mitigate conditions at the Plating Facility which may present an imminent threat to the public health or welfare, or the

environment.

#### IV. Wastewater Disposal

5. Defendants are enjoined and ordered to discharge all industrial wastewater to the City of Sebring publicly owned treatment works ("POTW") in a manner consistent with R.C. Chapter 6111 and rules promulgated thereunder, applicable permits and the City sewer use ordinance.

6. Defendants are enjoined and ordered to prevent further discharge to waters of the State.

7. Defendants are enjoined and ordered to install, in accordance with the following schedule, a pretreatment facility and related alterations to the Plating Facility that are designed to provide sufficient "pretreatment" (as defined by Ohio Admin. Code Rule 3745-3-01) to its wastewater being discharged to the Village of Sebring POTW such that Defendants' discharge complies with the applicable requirements of R.C. Chapter 6111, Ohio Admin. Code Rules 3745-3-04, and 3745-3-11(F)(3)(a), and all local limits as they are developed.

Task	Completion Date
(a) Complete the replacement of all existing plumbing related to plating operations at the Plating Facility	September 15, 1995.
(b) Initiate the construction of a new roof for the Plating Facility	June 1, 1996
(c) Complete construction of a new roof for the Plating Facility	July 1, 1996

- |   |                    |
|---|--------------------|
| (d) Submit a complete and approvable Permit to Install ("PTI") application including approvable detail plans and specifications for the pretreatment facility.  | January 1, 1996    |
| (e) Initiate construction of the pretreatment facility.   | March 1, 1996      |
| (f) Complete construction of the pretreatment facility.   | July 1, 1996       |
| (g) Attain compliance with requirements of the PSES of the Electroplating Point Source Category. 40 CFR 413 and Ohio Admin. Code Rules 3745-3-04 and 3745-3-11. | September 30, 1996 |

8. Defendants shall submit, within seven days from the completion date in paragraph 7(d) above, a written report stating whether or not Defendants have performed the action set forth therein.

9. This Consent Order does not constitute authorization or approval of the construction of any physical structure or pretreatment facilities, or the modification of any existing pretreatment works or system. Approval for any such construction or modification shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

V. Site Security

10. Defendants are permanently ordered and enjoined to maintain a fence to secure the Facility.

11. Defendant is ordered and enjoined to post, within seven days of the entry

of this Consent Order, and maintain signs at the facility, as required by OAC 3745-54-14(C) and 3745-65-14(C).

12. Defendants are permanently ordered and enjoined to maintain a cover over the areas in which the hazardous waste is or has been stored and maintain the cover in a manner which prevents any rain or surface water from mixing with the hazardous waste. Any areas which are not yet covered shall be covered in accordance with this paragraph within seven days of the entry of this Consent Order. These steps are not a substitute for full closure and do not limit the State's ability to require closure at some later time.

13. Defendants are permanently ordered and enjoined to provide documentation to Ohio EPA within fourteen days of the entry of this Consent Order that establishes Defendants' compliance with paragraphs 10 and 11 of this Consent Order. That documentary evidence shall include photographs showing the status and condition of the fence and covers.

**VI. Compliance with Applicable Laws:**  
**Permits and Approvals**

14. All activities undertaken by Defendants pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state and local laws, rules and regulations, and permits. For work both on and off the Facility, Defendants shall obtain all permits or approvals necessary under applicable federal, state or local laws and shall submit timely applications and requests for any such permit and approvals. Defendants shall include, in all

contracts or subcontracts entered into for work required under this Consent Order, provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and rules. This Consent Order is not a permit issued pursuant to any federal, state or local law or rule.

#### VII. Stipulated Penalties

15. In the event that Defendants or any of them violates any of the requirements of this Consent Order Defendants shall immediately and automatically be liable for and shall pay stipulated penalties according to the following schedule. For each day of violation or failure to meet a requirement, up to thirty (30) days - One Hundred Dollars (\$100.00) per day. For each day of violation or failure to meet a requirement, from thirty-one (31) to sixty (60) days - Two Hundred Dollars (\$200.00) per day. For each day of violation or failure to meet a requirement, from sixty-one (61) to ninety (90) days - Three Hundred Dollars (\$300.00) per day. For each day of violation or failure to meet a requirement, over ninety (90) days - Five Hundred Dollars (\$500.00) per day. Any stipulated penalty required to be paid pursuant to this article of this Consent Order shall be paid by certified check made payable to the order of "Treasurer, State of Ohio," which check shall be delivered by mail, or otherwise, to Matthew Sanders or his successor at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, within thirty (30) days of the violation or failure to meet the requirement of this Consent Order. Any stipulated

penalty paid pursuant to this paragraph as a result of violations of R.C. Chapter 3734, rules promulgated thereunder, and section V of this Consent Order will be paid to the credit of the state funds designated in R.C. Section 3734.28, as amended. Any stipulated penalty paid pursuant to this paragraph as a result of violations of R.C. Chapter 6111, rules promulgated thereunder and section IV of this Consent Order will be paid to the credit of the state funds designated in R.C. 6111.09, as amended. Any stipulated penalty required to be paid pursuant to this article as a result of violations of any other section of this Consent Order will be paid one half to the credit of the state funds designated in R.C. Section 3734.28, as amended, one half to the credit of state funds designated in R.C. Section 6111.09, as amended.

#### VIII. Inspections

16. Defendants are ordered to allow representatives of the Ohio EPA, upon proper identification, to enter upon the Plating Facility at all times to inspect, investigate, take samples and pictures and examine or copy records in order to determine compliance with the terms of this Consent Order and R.C. Chapters 3734 and 6111 and rules promulgated thereunder. Nothing in this Consent Order shall limit the rights of the Ohio EPA or U.S. EPA to conduct inspections or investigations pursuant to statute or regulations.

#### IX. Notice and Submittal of Documents

17. Any notice or submission to Ohio EPA as required by this Consent Order unless otherwise indicated shall be delivered or mailed to all the following:



- a. Ohio EPA  
Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
Attn: Marlene Emanuelson or her successor  
(216) 425-9171
  
- b. Ohio EPA  
Division of Hazardous Waste Management  
P.O. Box 163669  
1800 WaterMark Drive  
Columbus, Ohio 43216-3669  
Attn: Manager, Compliance Monitoring and Enforcement  
(614) 644-2917
  
- c. Ohio EPA  
Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
Attn: Brian Hall or his successor  
(216) 425-9171
  
- d. Ohio EPA  
Division of Surface Water  
P.O. Box 163669  
1800 WaterMark Drive  
Columbus, Ohio 43216-3669  
Attn: Randy Bournique, or his successor  
(614) 644-2001

X. Court Costs

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

XI. Retention of Jurisdiction

19. This Court shall retain jurisdiction of this action for the purpose of enforcing this Consent Order.

9-21-95  
Date

Michael A. Gerchak / MAG  
Judge Michael A. Gerchak

Approved:

Betty D. Montgomery  
Attorney General of Ohio

Sebring Industrial Plating, Co.

By:

By:

John K. McManus

John K. McManus (0037140)  
Susan C. Kroeger (0059311)  
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43266-0410  
(614) 466-2766

Nicholas Conny

Nicholas Conny, Executive  
Vice President, Sebring Industrial  
Plating Co.

Nicholas Conny  
Nicholas Conny, for himself

Richard C. Ross

Richard C. Ross  
105 East Ohio Avenue  
Sebring, Ohio 44672  
216-938-6121

Attorney for Defendants  
Sebring Industrial Plating, Inc. and  
Nicholas Conny

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BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO,

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SEBRING INDUSTRIAL PLATING,  
CO., et al.,

Defendants.

CASE NO. 93-CV-1288

JUDGE GERCHAK

MAGISTRATE BRYAN

NOTICE OF DISMISSAL  
AS TO DEFENDANT  
WILLARD DIVER.

In accordance with Civ. R. 42(A), Plaintiff hereby files its notice of dismissal as to Defendant Willard Diver. This dismissal is without prejudice and Plaintiff expressly reserves its right to reinstitute this matter in the future.

Respectfully submitted,

BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO



John K. McManus (0037140)  
Susan C. Kroeger (0059311)  
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street - 25th Floor  
Columbus, OH 43266-0410  
614-466-2766

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Notice of Dismissal and Request for Expenses was mailed by regular U.S. Mail, postage prepaid, on this 19th day of September, 1995, to:

Willard Diver  
426 W. Oregon  
Sebring, Ohio 44672

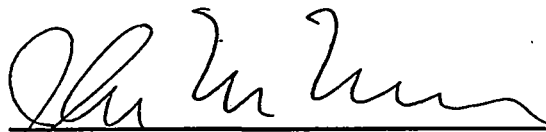
Defendant

Richard C. Ross  
Attorney at Law  
105 East Ohio Avenue  
Sebring, Ohio 44672  
216-938-6121

Attorney for Defendants Sebring Industrial  
Plating, Inc. and Nicholas Conny

T. Keith Randall  
Attorney at Law  
260 East Main Street, Suite 201  
Alliance, Ohio 44601  
216-823-1221

Former Attorney for Defendant Willard Diver



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John K. McManus (0037140)  
Assistant Attorney General