

FILED  
COMMON PLEAS COURT

IN THE COURT OF COMMON PLEAS  
TUSCARAWAS COUNTY, OHIO

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ROCKWELL CLARKE  
CLERK OF COURTS

STATE OF OHIO, ex rel.	:	CASE NO. 89-CV 040129
LEE FISHER	:	
	:	JUDGE ROGER G. LILE
Plaintiff,	:	
	:	
vs.	:	
	:	
SIMONDS INDUSTRIES, INC. et al.	:	
	:	
Defendants.	:	

CONSENT DECREE

The Complaint in the above-captioned case having been filed herein, and the Plaintiff, State of Ohio, by its Attorney General, Lee Fisher (hereinafter "Plaintiff") and the Defendants Simonds Industries, Inc., (hereinafter "Simonds") Simonds Cutting Tools, Household Manufacturing Incorporated, fka Wallace Murray Corporation, nka Eljer Manufacturing, Inc., (hereinafter collectively "Defendants"), having consented to the entry of this Consent Decree;

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

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter herein, pursuant to R.C. Chapters 3734. and 6111. regulations adopted thereunder. The Complaint states a claim upon which

relief can be granted against the Defendants under those statutory provisions. This Court has jurisdiction over the parties hereto. Venue is proper in this Court.

## II. PERSONS BOUND

2. The provisions of this Consent Decree shall apply to and be binding upon the Defendants, their officers, employees, assigns, and successors in interest. Defendants shall provide a copy of this Consent Decree to any consultants who will perform any work pursuant to this Consent Decree. Defendants shall also provide a copy of this Consent Decree to all employees who are responsible for Defendants complying with the hazardous waste and water pollution control laws. Defendants shall be responsible for the acts of any of their agents, officers, directors, employees, assigns, contractors and consultants which violate or cause the Defendants to violate the terms of this Consent Decree, and for those in active concert or participation with Defendants who receive actual notice of this Consent Decree, whether by personal service or otherwise. Defendants shall not raise as a defense to any action to enforce this Consent Decree the failure of any of its agents or employees to take such action as shall be required to comply with the provisions of this Consent Decree.

### III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendants violated various sections of Ohio Revised Code Chapters 3734 and 6111 and the regulations adopted thereunder. These allegations include, but are not limited to, that Defendants: established and operated a hazardous waste treatment, storage or disposal facility by operating two surface impoundments which received hazardous wastes without a permit at a plant now owned by Simonds, located at 641 Heller Drive, Newcomerstown, Tuscarawas County, Ohio (hereinafter "Simonds Plant"); failed to close the impoundments in conformance with Ohio's hazardous waste laws and regulations; failed to comply with Ohio's laws and regulations for generators of hazardous waste; discharged industrial wastes and/or wastes into the groundwater and the Tuscarawas River without a permit from the Director of Environmental Protection; discharged its wastewater into an unpermitted wastewater treatment system; and caused hazardous waste to be disposed at facilities that were not permitted to dispose of hazardous waste.

4. On April 4, 1989, September 7, 1989, April 6, 1990, and September 30, 1991, the Ohio Environmental Protection Agency ("Ohio EPA") issued Notice of Violations letters ("NOVs") to Simonds, notifying Simonds that it was Ohio EPA's position that Ohio's hazardous waste laws and rules were being violated at the Simonds Plant. The NOVs set forth the specific statutes and rules that Ohio EPA alleged were violated. Since

receipt of these NOVs Simonds has taken actions to address the majority of the violations alleged by the Ohio EPA in the NOVs. The remaining violations will be addressed by the successful performance of this Consent Decree.

5. On June 25, 1990, Simonds filed with the Director of the Ohio EPA a request pursuant to OAC 3745-27-13 (as later revised by plans submitted August 10, 1990), seeking authorization to excavate a former solid waste landfill located at the Simonds Plant (hereinafter, "the August 10 Plan"). On September 6, 1990, the Director issued to Simonds findings and orders, authorizing Simonds to excavate the solid waste landfill. On February 21, 1991, Simonds filed with the Director a request to modify the August 10 Plan, to allow on-site treatment of certain materials excavated from the solid waste landfill. In or about March 1991, the State alleged that during excavation Simonds failed to comply with the Director's findings and orders and created new hazardous waste management units. Simonds denies that it violated the Director's findings and orders or that it created new hazardous waste management units. Nevertheless, Simonds agreed to modify the closure plan required by Paragraph 12 of this Consent Decree, and the February 21, 1991 request to modify the August 10 Plan, in order to address the State's concerns relating to the solid waste landfill remediation work, including, but not limited to, the new hazardous waste management units that the State alleges were created at the Simonds Plant. The State agrees that the completion of the work set forth in the closure plan required

by Paragraph 12 of this Consent Decree and the August 10 Plan as modified by the February 21, 1991 request, will resolve the alleged violations of the Director's findings and orders and relating to the new hazardous waste management units allegedly created at the Simonds Plant.

6. Defendants do not admit any of the allegations set forth in the Complaint, paragraph 3 above, the NOVs referred to in paragraph 4 above, and the violations referenced in paragraph 5 above, and specifically deny any violations of law. Plaintiff acknowledges that Defendants' agreement to the terms of this Consent Decree does not constitute an admission of any of the foregoing allegations nor an admission of liability by Defendants. The parties stipulate that this Consent Decree is entered into for the purpose of settlement only and that neither the fact that a party has entered into this Consent Decree nor any of the facts set forth herein shall be used for any purpose in this or any other proceeding except to enforce the terms hereof by the parties to this Consent Decree.

7. Unless otherwise provided for by this Consent Decree, compliance with the terms of this Consent Decree shall constitute satisfaction of Defendants' civil and administrative liability to Plaintiff for all claims alleged in the Complaint. Except as provided in paragraphs 8 and 9 below, Plaintiff hereby releases Defendants, and covenants not to sue or bring any administrative or civil action against Defendants

with respect to the claims for relief contained in the Complaint, the allegations in paragraph 3, the allegations in the NOV's referenced in paragraph 4 above, and the allegations referenced in paragraph 5 above.

8. This Consent Decree does not prevent the State from seeking further relief for groundwater contamination or other contamination caused by Defendants that may be discovered after the entry of this Consent Decree. Except as provided in the following paragraph, nothing in this Consent Decree shall be construed to release Defendants from any liability Defendants may have pursuant to R.C. §3734.20 through §3734.27 or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq, including any liability of Defendants for future response or oversight costs incurred by the State.

9. If the Defendants close the surface impoundments and ditch system, identified in the approved closure plan attached hereto as Exhibit I, in accordance with the approved closure plan and achieve the closure performance standards established pursuant to O.A.C. 3745-66-11, and Defendants certify completion of closure in accordance with O.A.C. 3745-66-15 and paragraph 13 below, the State of Ohio will not order the Defendants to undertake remedial or corrective action pursuant to R.C. §3734.20 with respect to the hazardous constituents in the surface impoundment and ditch system which are dealt with in the approved closure plan. The State is not precluded from

issuing any order, or seeking any relief pursuant to R.C. §3734.20 to address hazardous constituents in the surface impoundments and ditch system that are not addressed in the closure plan or to address any hazardous constituents, whether or not addressed in the closure plan, which migrate from the surface impoundments or ditch system.

10. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for claims not contained in paragraph 7, above.

#### IV. CIVIL PENALTY

11. Defendants shall pay the State of Ohio a civil penalty in the amount of One Hundred and Seventy Thousand Dollars (\$170,000.00) within thirty (30) days of the filing of this Consent Decree. These monies shall be deposited in the Hazardous Waste Clean Up account pursuant to R.C. 3734.28. Payment shall be made by tendering a bank cashier's check to Janis Miller, Administrative Assistant, or her successor at 30 East Broad Street, 25th Floor, Environmental Enforcement Section, Columbus, Ohio 43266-0410. Said check shall be made payable to the "Treasurer, of the State of Ohio".

#### V. INJUNCTION

12. Within the time periods set forth therein, the Defendants shall implement the approved closure plan, which

includes a groundwater quality assessment plan for the two surface impoundments and ditches at the Simonds Plant. A copy of the approved closure plan and the Director of Environmental Protection's approval is attached hereto as Exhibit I.

13. Within 60 days of completion of closure Simonds shall submit a certification of closure in accordance with O.A.C. 3745-66-15.

14. Within 30 days Simonds shall evaluate all waste that Simonds generates in order to determine if the waste is hazardous, as required by O.A.C. 3745-52-11. Simonds shall submit documentation of this evaluation to Ohio within 60 days of the filing of this Consent Decree.

15. The Defendants are hereby permanently enjoined from treating, storing and/or disposing of hazardous waste at a location that is not a permitted hazardous waste facility pursuant to R.C. Chapter 3734, except in compliance with Ohio laws and rules.

16. Simonds shall establish and maintain a detailed cost estimate for closure and post-closure of the surface impoundments and ditch system and a financial assurance mechanism for closure and post closure care of the surface impoundments and ditch system and liability insurance as required by O.A.C. 3745-66-42 through 3745-66-47. Simonds shall submit information to the Director of Environmental Protection demonstrating compliance with O.A.C. 3745-66-42 through 66-46 within thirty (30) days, and with O.A.C. 3745-66-47 within forty-five (45) days, of the filing of this Consent Decree.



17. Simonds shall maintain a contingency plan at its facility that meets the requirements of O.A.C. 3745-65-51 through 65-53.

18. Simonds shall establish, maintain, and document, personnel training for its employees as required by O.A.C. 3745-65-16.

19. Simonds shall conduct and document weekly inspections of its container storage areas as required by O.A.C. 3745-66-74.

20. On an annual basis from the date of the filing of this Consent Decree, Simonds shall conduct leak testing of its HCL storage tank system which meets the requirements of O.A.C. 3745-66-93 and submit the results of this testing to Teri Martin of the Ohio EPA's Southeast District Office.

21. Simonds has submitted applications for a permit to install ("PTI") and a national pollutant discharge elimination system permit ("NPDES") for the discharge and/or treatment of process waste water generated at the Simonds Plant to the Director of Environmental Protection, Ohio EPA, 1800 WaterMark Drive, Columbus, Ohio 43266-0149, and Ohio EPA, Southeast District Office, Ohio EPA, 2195 Front Street, Logan, Ohio 43138.

22. Upon receipt of any and all permits identified in the proceeding paragraph, Simonds shall comply with all conditions and requirements contained within said permits.

23. Simonds shall cease discharge of their wastewater to the surface impoundments no later than two weeks after the final issuance of its NPDES permit referenced in paragraph 21, above.

24. Defendants are permanently enjoined to comply with R.C. Chapter 3734. and all regulations adopted thereunder.

25. Defendants are permanently enjoined to comply with R.C. Chapter 6111. and all regulations adopted thereunder' and permits issued thereto.

#### VI. GENERAL PROVISIONS

26. This Court shall retain jurisdiction of this matter for the purpose of making any order or decree which it deems necessary to carry out this Consent Decree.

27. All court costs of this action shall be assessed against the Defendants.

#### VII. TERMINATION

28. Within thirty (30) days after Defendants determine they have fully complied with all of the requirements of this Consent Decree, they shall submit to Plaintiff a certification of compliance. If Ohio EPA concurs that Defendants have fully satisfied the requirements of this Consent Decree, the parties shall file a joint motion with the Court to terminate this Consent Decree. Upon approval of the Court, this Consent Decree and the obligations hereunder shall terminate.

29. If Plaintiff does not agree that Defendants have complied with this Consent Decree, the Defendants may file a motion pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure requesting that the Court terminate this Consent

Decree. The Plaintiff reserves all rights to respond to any motion to terminate that Defendants may file.

S/ROGER G. LILE

HON. ROGER G. LILE, JUDGE  
COURT OF COMMON PLEAS  
TUSCARAWAS COUNTY

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