

FILED
COURT OF COMMON PLEAS
MAR 13 1998

IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

DELORES REED, Clerk
PORTAGE COUNTY, OHIO

STATE OF OHIO, ex rel.	:	CASE NO. 89-CV-1841
ATTORNEY GENERAL OF OHIO,	:	
	:	JUDGE JOSEPH KAINRAD
Plaintiff	:	
	:	
vs.	:	<u>CONSENT ORDER AS TO PLAINTIFF'S</u>
	:	<u>AND DEFENDANT, TOMPKINS</u>
TOMPKINS CORPORATION, et al.,	:	<u>CORPORATION AND LEONARD</u>
	:	<u>TOMPKINS</u>
Defendant	:	

Plaintiff, State of Ohio, by its Attorney General, Betty D. Montgomery (hereinafter "Plaintiff"), having filed the Complaint on December 6, 1989 and Amended Complaint on February 11, 1991 against Defendants, Leonard H. Tompkins, Minnie E. Tompkins and Tompkins Corporation alleging violations of Chapter 3734 of the Ohio Revised Code, and the parties Tompkins Corporation and Leonard Tompkins (hereinafter referred to as Defendants) having consented to the entry of this Order. The term Defendants hereinafter shall be interpreted as meaning Defendants Leonard Tompkins and Tompkins Corporation only.

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. This Court has jurisdiction over the parties. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted.

II. PARTIES

2. The provision of this Consent Order shall apply and be binding upon the parties



to this action, the agents, officers, employees, assigns, successors in interest and any person acting in concert, privity or participation with them. Defendants shall provide a copy of this Consent Order to the contractor they employ to perform work itemized herein.

III. SATISFACTION OF LAWSUIT

3. Plaintiff has alleged in its Complaint that Defendants have operated a facility located at 1313 Middlebury Road, Kent, Portage County, Ohio ("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. Except as provided herein, 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. Notwithstanding the above or other provisions contained in this Consent Order, nothing contained herein shall be deemed an admission by Defendants as to the allegations set forth in the Complaint.

4. Nothing in this Consent Order, including the imposition of civil penalties, shall limit the authority of Plaintiff to seek relief for claims or conditions not alleged in the Complaint or to seek any relief for claims, conditions or violations alleged in the Complaint which occur after the entry of this Consent Order. In addition, the Plaintiff hereby specifically reserves the right to take action against any person, including Defendants pursuant to the Comprehensive Environmental Response Compensation of 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. The Plaintiff may also, if appropriate, enforce this Consent Order through a contempt action or otherwise for future violations of law which also comprise violations of this Consent Order.

IV. REMOVAL OF HAZARDOUS WASTES AND REMEDIATION OF FACILITY

5. Within two hundred and seventy (270) days of the entry of this Consent Order, Defendants are enjoined and ordered to remove all containers of hazardous wastes from the Facility and transport them to a permitted hazardous waste facility. Such removal and transportation shall be accordance with Chapter 3734 of the Ohio Revised Code ("O.R.C.") and all applicable hazardous waste regulations.

6. Within three hundred (300) days of entry of this Consent Order, Defendants are enjoined and ordered to prepare and submit to the Ohio Environmental Protection Agency ("Ohio EPA") a Sampling and Analysis Plan ("SAP"). The SAP shall describe the methods to be used to determine the nature and extent of any hazardous waste contamination in the area where hazardous wastes have been stored, i.e., the Quonset Hut. The SAP shall contain a schedule for implementation of the sampling/analysis of the above described above.

7. The SAP is subject to the approval of the Ohio EPA. If Ohio EPA does not approve the SAP submitted by Defendants and provides Defendants with a written statement of deficiencies, Defendants are enjoined and ordered to revise the SAP or submit a new SAP for approval that addresses the stated deficiencies within sixty (60) days of receipt of such a written statement. Upon receipt and review of the revised SAP, the Ohio EPA may approve the SAP or approve the SAP with modifications. The modified SAP, in that event, shall become the approved SAP.

8. Within thirty (30) days of the Ohio EPA's approval of the SAP, Defendants are enjoined and ordered to implement the approved SAP.

9. Within ninety (90) days after the receipt of the analytical results generated by

implementation of the approved SAP, Defendants are enjoined and ordered to submit a report containing the findings of the sampling and analyses, which includes the laboratory analyses and evaluation of data, to Ohio EPA for review and approval.

10. If upon review of the report the Ohio EPA determines that hazardous waste contamination exists at the area(s) subject to the SAP, Defendants are enjoined and ordered to submit a closure plan which shall meet the requirements of Ohio Administrative Code ("O.A.C.") Rules 3745-66-10 through 3745-66-20.

11. Within thirty (30) days after an Ohio EPA determination that contamination exists at the Facility, Defendants are enjoined and ordered to submit a closure plan for approval to the "Director, Ohio EPA, Attn: Manager, Data Management Section, Division of Hazardous Waste Management, 1800 WaterMark Drive, Columbus, Ohio, 43216-3669." If the Director determines that part or all of Defendants' closure plan is deficient, Defendants are enjoined and ordered to resubmit the closure plan in approvable form within thirty (30) days of written notification of deficiency. Upon receipt and review of the revised plan, the Director may approve the revised plan or modify the plan. The modified plan, in that event, shall be the approved closure plan.

12. Defendants are enjoined and ordered to implement the approved closure plan in accordance with the schedules contained therein and O.A.C. Rule 3745-66-10 through 3745-66-20.

13. Within sixty (60) days of completion of closure, Defendants are enjoined and ordered to submit to the Director, pursuant to O.A.C. Rule 3745-66-15, a certification that the Facility has been closed in accordance with the approved closure plan.

V. SUBMITTAL OF DOCUMENTS

14. Documentation of compliance with the requirements of paragraphs 5,6,9,10,11 and 13 of Section IV of this Consent Order shall be submitted to: "Manager, Compliance Monitoring and Enforcement Section, Division of Hazardous Waste Management, Ohio EPA, 1800 WaterMark Drive, Columbus, Ohio 43266-0149" and to RCRA Group Leader, Ohio EPA Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio 44087.

VI. COMPLIANCE WITH OHIO HAZARDOUS WASTE LAWS

15. Defendants agree and are hereby permanently enjoined to conduct any future operations at the Facility located at 1313 Middleburg Road in compliance with Chapter 3734 of the Ohio Revised Code and the regulations promulgated thereunder.

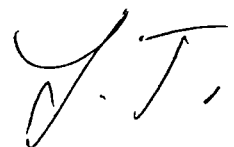
16. Defendants agree to refrain and are hereby permanently enjoined from treating, storing, and/or disposing of hazardous wastes at the facility located at 1313 Middleburg Road unless and until such time as Defendants apply and qualify for and receive a hazardous waste facility installation and operation permit to conduct such activities in accordance with Ohio Revised Code Section 3734.05.

VII. COMPLIANCE WITH OTHER APPLICABLE LAWS

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

VIII. INSPECTIONS

18. Defendants are ordered to allow representatives of the Ohio EPA, upon proper identification, to enter upon the Facility at reasonable 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 O.R.C. Chapter 3734 and rules promulgated thereunder. Nothing in this

A handwritten signature in black ink, appearing to be 'J.T.', is located in the bottom right corner of the page.

Order shall limit any right of entry possessed by the Plaintiff.

IX. FACILITY SECURITY

19. Defendants are ordered and enjoined to prevent the unknowing entry, and minimize the possibility of the unauthorized entry, of persons or livestock onto the active portion of the facility in accordance with O.A.C. Rule 3745-65-14. To accomplish same, Defendants are ordered and enjoined to close and lock the Quonset Hut with a padlock and provide a key to Ohio EPA representatives.

X. FINANCIAL CONDITION INVESTIGATION

20. The State of Ohio is hereby authorized to conduct an investigation concerning the financial status of Defendants. Defendants are hereby ordered and enjoined to cooperate in this investigation. Defendants are ordered to submit a sworn financial statement by February 28, 1998.

21. After receipt and review of the financial statements, and upon the request of the State, Defendants are ordered and enjoined to appear at deposition to ascertain Defendants financial condition. Defendants are ordered and enjoined to produce any financial documentation requested by the State at the deposition, to the extent that same is available to them.

XI. RETENTION OF JURISDICTION

22. 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.

XII. COSTS

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

DATED _____, 1997

Joseph R Kainrad

JOSEPH KAINRAD, JUDGE
PORTAGE COUNTY COURT OF
COMMON PLEAS

APPROVED:

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

BY: *Lori A. Massey*

LORI A. MASSEY (0047226)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
Telephone: (614)466-2766

BY: *Leonard Tompkins*
Authorized Representative
of Tompkins Corporation

Robert McNamara
ROBERT McNAMARA
McNamara & Freeman Co., L.P.A.
12370 Cleveland Ave., N.W.
P.O. Box 867
Uniontown, Ohio 44685
(330)699-6703
Attorney for Defendants, Leonard Tompkins
and Tompkins Corporation

Leonard Tompkins
LEONARD H. TOMPKINS

rm:tompkin2.cnt:rec:sls

L-T-