

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

STATE OF OHIO, ex rel.,
LEE FISHER
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

TRINITY INDUSTRIES, INC.,

Defendant.

CASE NO. A93 C 4869

JUDGE WILLIAM MORRISEY

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Lee Fisher (hereinafter "Plaintiff") and Defendant Trinity Industries, Inc. (hereinafter "Trinity") having consented to the entry of this Order,

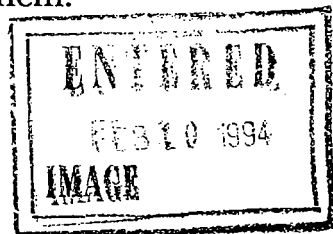
NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 6111 of the Ohio Revised Code, and venue is proper in this Court.

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 or privity with any of them.



III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant has operated its manufacturing plant located at 11861 Mosteller Road, Cincinnati in such a manner as to result in numerous violations of the discharge limitations and general condition of the NPDES Permit issued to it by the Director of Ohio EPA and in violation of the water pollution laws of the State of Ohio. Trinity denies all allegations. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims under such laws alleged in the Complaint. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint and Consent Order.

IV. COMPLIANCE SCHEDULE

4. Defendant Trinity, as to its plant, is hereby Enjoined and Ordered to immediately comply with the requirements of Chapter 6111 of the Ohio Revised Code and the terms and conditions of the rules and regulations adopted under that Chapter and its currently effective NPDES Permit No. IIN00069*DD. (OH0009547) and any renewals or modifications thereof. Trinity shall maintain compliance with final effluent limitations and schedule for submitting monthly operating reports contained in its currently effective NPDES permit and any renewals or modifications thereof.

V. CIVIL PENALTY

5. Defendant Trinity shall pay to the State of Ohio a civil penalty of two hundred and fifty thousand dollars (\$250,000). The penalty shall be paid by

delivering to Janis Miller, Administrative Assistant, or her successor, Environmental Enforcement Section, 25th Floor, 30 East Broad Street, Columbus, Ohio 43215 a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within ninety (90) days from the date of entry of this Consent Order.

VI. STIPULATED PENALTIES

6. In the event that Defendant Trinity fails to meet any of the requirements of this Consent Order set forth in Section IV pertaining to achieving and maintaining compliance with the final effluent limitations contained in its NPDES permit or pertaining to complying with the schedule for submitting monthly operating reports, the Defendant shall immediately and automatically be liable for payment of a stipulated penalty of One Thousand Dollars (\$1,000.00) per day of each violation of said requirement. The Defendant shall be liable for an additional stipulated penalty of Two Thousand Dollar (\$2,000.00) each day beyond the first thirty (30) days of violation if the failure to comply continues for more than thirty (30) days, i.e. Three Thousand Dollars (\$3,000.00) per day of each violation. In the event that failure to comply with the requirements of Section IV continues more than sixty (60) days, Defendant shall be liable for an additional Two Thousand Dollars (\$2,000.00) each day beyond the first sixty (60) days of violation if the failure to comply continues for more than sixty (60) days, i.e., Five Thousand Dollars (\$5,000.00) per day of each violation. If Defendant, Trinity complies with all terms of its effective NPDES permit in accordance with Section IV of this Order

for 12 consecutive months, the requirements set forth in Section V, para. 6, of this Consent Order shall terminate.

7. Any payment required to be made under the provisions of Paragraphs 7 or 8 of this Order shall be made by delivering to Janis Miller, Administrative Assistant, or her successor, Environmental Enforcement Section, 25th Floor, 30 East Broad Street, Columbus, Ohio 43215 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".

VII. POLLUTION PREVENTION

8. Within 30 days from the effective date of this Order, Defendants shall begin a comprehensive pollution prevention program for current facility operations by initiating a program as described in the *Ohio Pollution and Waste Minimization Planning Guidance Manual* (Planning Guidance Manual) dated September 30, 1993, following Figure 1 on page 18 of the document and accompanying text. Defendants shall document initiation of the program by submitting to Ohio EPA a formal policy statement, a consensus building plan, a list of the names and titles of the members of a pollution prevention task force, and an outline of preliminary program goals. A copy of the Planning Guidance Manual will be supplied to Defendants by Ohio EPA.

9. Within 90 days from the effective date of this Order, Defendants shall complete the first four steps (Establish the pollution prevention program, Organize the pollution prevention program, Do a preliminary assessment; and Write the pollution prevention plan) of the Planning Guidance Manual and

shall document compliance by submitting a detailed narrative report, for review and approval, that discusses all four steps.

10. Within 210 days from the effective date of this Order, Defendants shall complete steps five (5) and six (6) (Do a detailed assessment; and Define pollution prevention options) of the Planning guidance Manual and shall document compliance by submitting a detailed narrative report, for review and approval, that discusses both steps and covers all processes which have been prioritized for pollution prevention by Defendants.

11. Within 330 days from the effective date of this Order, Defendants shall complete steps seven (7), eight (8), and nine (9) (Cost considerations; Do feasibility analysis; and Write the assessment report) of the Planning Guidance Manual and shall document compliance by submitting a detailed narrative report, for review and approval, that discusses these three steps and covers the pollution prevention options that have been defined by Defendants.

12. Within 420 days from the effective date of this Order, Defendants shall complete steps ten (10) and eleven (11) (Implement the pollution prevention plan; and Measure progress: program and project evaluation) of the Planning Guidance Manual and shall document compliance by submitting a detailed narrative report, for review and approval, that discusses both steps and covers all pollution prevention options which have been selected for implementation by Defendants.

13. All reports and other documents required to be submitted pursuant to this Article shall be sent to:

Office of Pollution Prevention
Ohio Environmental Protection Agency
c/o Anthony Sasson or Megan James
P. O. Box 1049
1800 WaterMark Drive
Columbus, Ohio 43266-0149

VIII. POTENTIAL FORCE MAJEURE

14. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Defendant shall notify the Ohio EPA in writing within ten (10) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendant to prevent or minimize the delay and the timetable by which measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

15. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendant may raise whether it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and the 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 that an enforcement action, if any, is commenced by the Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant shall rest

with Defendant. Unanticipated or increased costs 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 Defendant, or serve as a basis for an extension of time under this Consent Order. Failure by Defendant to comply with the notice requirements of Paragraph 14 shall render this Paragraph void and of no force and as to the particular incident involved and shall constitute a waiver of Defendant's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one compliance date based on a particular incident does not mean that Defendant qualifies for an extension of a subsequent compliance date or dates. Defendant must make an individual showing or 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 Defendant of any rights or defenses it may have under applicable law.

IX. RETENTION OF JURISDICTION

16. The 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.

X. COSTS

17. Defendant Trinity is hereby ordered to pay the costs of this action.

18. Defendant Trinity is ordered to pay the costs of Relator Ohio Attorney General in pursuing the instance action, totalling \$16,000 by delivering a certified check in such an amount for payment into the State

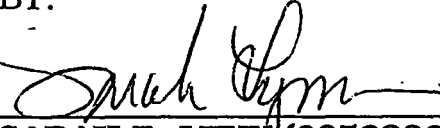
Treasury made payable to the order of "Treasurer, State of Ohio" to Janis Miller, Administrative Assistant, or her successor, Environmental Enforcement Section, 25th Floor, 30 East Broad Street, Columbus, Ohio 43215, within thirty (30) days after the entry of the instant Consent Order. Any check submitted 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.



JUDGE, COURT OF COMMON PLEAS
HAMILTON COUNTY

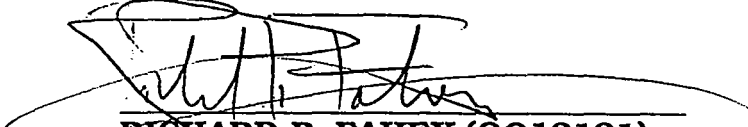
APPROVED:

STATE OF OHIO, ex rel.
LEE FISHER
ATTORNEY GENERAL OF OHIO

BY:


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