

Judge	DCS
Mag. Judge	PPK
Docketed	BW

IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF OHIO  
 EASTERN DIVISION

FILED  
 KENNETH J. MURPHY  
 CLERK  
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U.S. DISTRICT COURT  
 SOUTHERN DIST. OHIO  
 EASTERN DIVISION - COLUMBUS

STATE OF OHIO,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
 ENERGY, et al.

Defendants.

CIVIL ACTION NO. C2 89-732

JUDGE SMITH

**CONSENT ORDER**

WHEREAS, on September 1, 1989, the District Court for the Southern District of Ohio entered a Consent Decree in this matter ("Consent Decree") concerning the Portsmouth Gaseous Diffusion Plant ("PORTS");

WHEREAS, Ohio alleges that the U.S. Department of Energy ("USDOE") and Lockheed Martin Energy Systems, Inc. ("LMES") have violated various requirements of the Consent Decree, state hazardous waste law and regulations under R. C. Chapter 3734 and federal hazardous waste law and regulations under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901, et seq., and USDOE and LMES deny any violation of the same;

WHEREAS, Ohio, USDOE and LMES ("the parties") desire to resolve the alleged violations, and, therefore, have agreed to entry of this Consent Order without the admission or adjudication of any issue of fact or law;

NOW, THEREFORE, it is hereby ordered, adjudged and decreed as follows:

I.

Paragraph 5.2 of the Consent Decree provides in part as follows:

USDOE shall implement the closure plans in accordance with the implementation schedules contained in these plans.

Ohio and USDOE agree and stipulate that "the closure plans" referenced in the foregoing sentence include the approved closure plans, and any approved modifications thereto, for units X-231B and X-701B. Ohio and USDOE further agree and stipulate that the schedules set forth in the approved closure plans, and any approved modifications thereto, for units X-231B and X-701B control over the schedules set forth in the last sentences of paragraphs 5.4 and 5.7 of the Consent Decree.

II.

No later than thirty (30) days from the effective date of this Consent Order, USDOE shall pay to the State of Ohio the sum of one hundred and ninety-three thousand dollars (\$193,000). This sum shall be paid by <sup>DJK jop</sup>certified check payable to the order of the "Treasurer, State of Ohio," which check shall be delivered by mail or otherwise to Matthew Sanders, Administrative Assistant, or his successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, or by electronic funds transfer to the order of "Treasurer, State of Ohio," pursuant to the instructions of Matthew Sanders or his successor. The sum will be paid into the Ohio Hazardous Waste Clean-Up Fund created by

Section 3734.28 of the Ohio Revised Code. This amount is paid, without the admission by USDOE or LMES of any issue of fact or law, in order to resolve disputed matters regarding the alleged conduct of both USDOE and LMES, and to avoid substantial costs of litigation which could be incurred in lieu of such settlement.

The State releases, covenants not to sue and not to bring any action whether civil or criminal or for administrative findings and orders, against the United States or any department or agency thereof, LMES, or any past or present officer, director, official, employee, agent, or contractor (and any past or present officer, director, official, employee, agent or sub-contractor of such contractor) of the United States or LMES with respect to all claims of violation of the Consent Decree, state hazardous waste law and regulations under RC Chapter 3734 and federal hazardous waste law and regulations under RCRA , 42 U.S.C. 6901, et seq., at PORTS known to the Ohio Environmental Protection Agency (OEPA) at the time of entry of this Consent Order. This paragraph also applies to any such claim of violation where all of the following apply: (1) the violation exists on or before the date of entry of this Consent Order; (2) the violation is known to OEPA on or before the date of this Consent Order; (3) the violation continues after the date of entry of this Consent Order; and (4) the violation is being abated under an approved closure plan or pursuant to Section VII of the Consent Decree; however, this paragraph does not apply to any other violation of the Consent Decree or state or federal hazardous waste law or regulation that occurs after the date of entry of this Consent Order. This paragraph does not apply to any claim under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S. C. 9601, et seq. This paragraph does not prevent the issuance, or affect the enforceability, of the administrative consent order (Director's Final Findings and

Orders) issued to USDOE and LMES concerning depleted uranium hexafluoride and lithium hydroxide. Nothing contained herein diminishes or limits Section XVIII of the Consent Decree.

### III.

Neither LMES' execution of this Consent Order nor anything contained herein shall be construed to be an admission by LMES that the obligations set forth in the Consent Decree are applicable to LMES or that LMES was in violation of the Consent Decree. Nothing in this Consent Order shall be construed as an admission by the State that the obligations set forth in the Consent Decree are inapplicable to LMES or that LMES was not in violation of the Consent Decree.

### IV.

It is the position of the State of Ohio that the federal Anti-Deficiency Act, 31 U.S.C. 1341, as amended, does not apply to obligations set forth in this Consent Order and that such obligations are unaffected by any failure by USDOE to obtain adequate funds or appropriations from Congress. It is USDOE's position that the obligations set forth in this Consent Order are subject to the provisions of the Anti-Deficiency Act and are subject to the availability of adequate funds or appropriations from Congress. Ohio and USDOE agree that in any judicial proceeding seeking to enforce the terms of this Consent Order, USDOE may raise as a defense that any noncompliance was caused by the unavailability of adequate funds or appropriations from Congress. While the State of Ohio disagrees that such a defense exists, the State of Ohio and USDOE agree that it is premature to raise and resolve the validity of such positions at this

time.

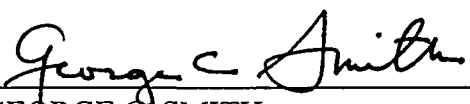
V.

The terms of the Consent Decree shall be unaltered and shall remain in full force and effect in accordance with its terms.

VI.

Each party will bear its own attorney fees as concerns this Consent Order.

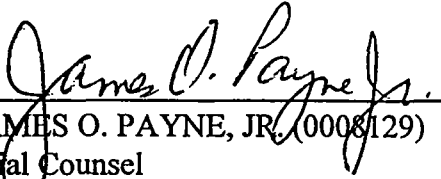
SO ORDERED this 18 day of February, 1998.

  
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GEORGE C. SMITH  
United States District Judge

State of Ohio v. United States Department of Energy, et al., Civil Action No. C2 89-732

APPROVAL ON BEHALF OF PLAINTIFF, STATE OF OHIO:

BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO


  
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State of Ohio v. United States Department of Energy, et al., Civil Action No. C2 89-732

APPROVAL ON BEHALF OF DEFENDANT, UNITED STATES DEPARTMENT OF ENERGY:

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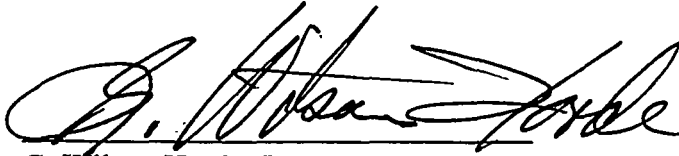
  
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