

COPY

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

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

CASE NO. A 9202448

JUDGE *[Signature]*

Plaintiff,

v.

THE WITT COMPANY,

Defendant.

ENTERED
MAR 6 1992
IMAGE

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 The Witt Company (hereinafter "the Witt Company") having consented to the entry of this Order. This Order shall take effect once signed and entered into the Court's journal.

NOW THEREFORE, without trial of any issue of fact or law, and without admission by the Witt Company of any facts or liability alleged in the Complaint, 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 the Witt Company under Chapter 6111. of the Ohio Revised Code ("O.R.C.") and regulations promulgated thereunder. 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 and their agents, officers, employees, assigns, successors in interest and any person acting in concert or participation with them.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in the Complaint that the Witt Company has operated its metal galvanizing facility in such a manner as to result in violations of applicable pretreatment standards in violation of the water pollution laws of the State of Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of civil liability by the Witt Company to the State of Ohio for all claims alleged in the Complaint. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek or obtain relief for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint.

IV. INJUNCTIVE RELIEF

4. The Witt Company is hereby permanently enjoined and ordered to immediately comply with the requirements of O.R.C. Section 6111.07, OAC Chapter 3745-3, OAC Chapter 3745-31 and any other provision of O.R.C. Chapter 6111 or the regulations

promulgated thereunder, as each or all would apply to any discharge to a publicly owned treatment works ("POTW").

5. The Witt Company is hereby permanently enjoined and ordered to immediately comply with the requirements of Article XV of the Rules and Regulations Governing the Design, Construction, Maintenance, Operation and Use of Sanitary and Combined Sewers in The Metropolitan Sewer District of Greater Cincinnati, Hamilton County, Ohio as issued by the Board of County Commissioners of Hamilton County, Ohio.

V. CIVIL PENALTY

6. The Witt Company shall pay to the State of Ohio a civil penalty of One Hundred Twenty Thousand Dollars (\$120,000) by delivering a certified check for that amount, payable to the order of "Treasurer, State of Ohio" to Janis Miller, Administrative Assistant, Environmental Enforcement Section, or her successor, Office of the Ohio Attorney General, 25th Floor, 30 East Broad Street, Columbus, Ohio 43266-0410, within thirty (30) days from the date of entry of this Consent Order.

VI. STIPULATED PENALTIES

7. In the event that the Witt Company fails to meet any requirement of this Consent Order, other than the requirements pursuant to Section VII, paragraphs 10 through 16, the Witt Company shall be liable for payment of a stipulated penalty according to the following schedule: (1) for each day of each

violation for the first thirty (30) days, the Witt Company shall be liable for a stipulated penalty of One Thousand Five Hundred Dollars (\$1,500.00) per day of each violation; (2) for each day of each violation from thirty-one (31) to sixty (60) days, the Witt Company shall be liable for an additional Two Thousand Five Hundred Dollars (\$2,500.00) per day of each violation; (3) for each day of each violation from sixty-one (61) days to Ninety (90) days, the Witt Company shall be liable for a penalty of Four Thousand Dollars (\$4,000.00) per day of each violation; (4) for each day of each violation beyond ninety (90) days, the Witt Company shall be liable for a stipulated penalty of Five Thousand Five Hundred Dollars (\$5,500.00) per day of each violation.

8. The provisions of this Consent Order set forth in this Section requiring payment of stipulated penalties shall terminate if the Witt Company has achieved and maintained compliance with the applicable discharge limitations for a period of twelve (12) consecutive months, beginning on or after the date of entry of this Consent Order, and has paid all penalties required pursuant to this Consent Order. Termination of the stipulated penalties pursuant to this paragraph shall only be effected by Order of the Court, upon application by any party and a demonstration that the two (2) conditions set forth in this paragraph have been met.

9. Any payment required to be made under this provision shall be made by delivering a certified check or checks for the appropriate amounts, payable to the order of "Treasurer, State of Ohio" to Janis Miller, Administrative Assistant, Environmental

Enforcement Section, or her successor, Office of the Ohio Attorney General, 25th Floor, 30 East Broad Street, Columbus, Ohio 43266-0410, within thirty (30) days from the date of the failure to meet the requirement of the Consent Order.

VII. WASTE MINIMIZATION AND POLLUTION PREVENTION INJUNCTION

10. The Witt Company is ordered and enjoined to achieve technically and economically feasible reductions in the amount of waste generated at the Witt Company's Cincinnati facility. The Witt Company is ordered and enjoined to establish and implement a comprehensive waste minimization and pollution prevention program at the Witt Company facility. This program shall include both hazardous and non-hazardous wastes and shall be generally based upon the concepts set out in the Waste Minimization Opportunity Assessment Manual, EPA/625/7-88/003, dated July 1988, tailored to the operations at the Witt Company. The Witt Company is not obligated to use the specific forms contained in the above referenced manual for developing or implementing its program.

11. No later than ninety (90) days from entry of this Order, The Witt Company is ordered and enjoined to submit to John Albrecht or his successor, Ohio EPA, Division of Water Pollution Control, Pretreatment Unit, a Draft Waste Minimization and Pollution Prevention ("WMPP") Plan for Ohio EPA review and comment. This plan shall include recommended technically and economically feasible options for waste minimization, and

proposed schedules for implementation of technically and economically feasible options.

12. Not later than sixty (60) days after receipt of comments from Ohio EPA, The Witt Company shall submit a final WMPP Plan to John Albrecht or his successor, Ohio EPA, Division of Water Pollution Control, Pretreatment Unit.

13. The Witt Company is ordered and enjoined to implement the waste minimization options identified in the final WMPP Plan by The Witt Company as technically and economically feasible, in accordance with the schedules contained in the plan.

14. The Witt Company's WMPP program shall provide for the continuous evaluation for technically and economically achievable reduction of waste. The WMPP Plan shall include at a minimum, the following elements: planning and organization, assessment strategy, feasibility analysis and implementation strategy, and shall include, as appropriate, current Witt Company WMPP practices. The WMPP program shall also include the following management practices to the extent such practices are technically and economically achievable:

- a. Best efforts by Witt Company's senior management through policy, communications, and resources, to ongoing reductions at each of the facility units, in releases to the air, water, and land and in the generation of wastes.
- b. A quantitative inventory of wastes generated and releases to the air, water and land, measured or estimated at the point of generation or release.
- c. Establishment of priorities, goals, and plans for waste and release reduction taking into account an evaluation of the potential impact of releases on

the environment, and the health and safety of employees and the public.

- d. Education of, and dialogue with, employees and members of the public about waste minimization and pollution prevention activities.
- e. Ongoing reductions of wastes and releases, giving preference first to source reduction, second to recycle/reuse, and third to treatment. These techniques may be used separately or in combination with one another.
- f. Inclusion of waste and release prevention objectives in research and in design of new or modified facilities, processes, and products.
- g. An ongoing program for promotion and support of waste and release reduction by others, such as:
 - i. Sharing of technical information and experience with customers and suppliers;
 - ii. Support of efforts to develop improved waste and release reduction techniques;
 - iii. Participation in efforts to develop comprehensive approaches to the evaluation of environmental, health, and safety impacts of releases;
 - iv. Assisting local governments and others in establishment of waste reduction programs benefiting the general public.
 - v. Implementation of a process for selecting, retaining, and reviewing contractors and manufacturers taking into account sound waste management practices that protect the environment and the health and safety of employees and the public.

15. The Witt Company is ordered and enjoined to submit to John Albrecht or his successor at Ohio EPA by June 30th of each year, for a period of three years from the date of entry of this Order, an annual report for the previous year which summarizes

waste minimization and pollution prevention efforts and accomplishments for the prior calendar year.

16. The Witt Company is ordered and enjoined to maintain records of its achievements towards meeting the management practices for a period of at least five years.

VIII. POTENTIAL OF FORCE MAJEURE

17. In any action by the State of Ohio to enforce any of the provisions of this Consent Order, the Witt Company may raise at that time the question of 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 State of Ohio does not agree that such a defense exists, it is, however, hereby agree upon by the Witt Company and the State of Ohio 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 Ohio. At that time the burden of proving that any delay was or will be caused by circumstances beyond the control of the Witt Company shall rest with the Witt Company. 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 the

Witt Company, or serve as a basis for an extension of time under this Consent Order.

IX. RETENTION OF JURISDICTION

18. The Court will retain jurisdiction of this action for the purpose of overseeing compliance with this Consent Order.

X. COSTS

19. The Witt Company is hereby ordered to pay the Court costs of this action.

20. The Witt Company is ordered to pay the costs of relator Ohio Attorney General expended in pursuing the instant action, totalling Three Thousand Dollars (\$3,000) 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 OF
Hamilton County

APPROVED:

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

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