

FILED
IN THE COURT OF COMMON PLEAS
COMMONSUSCARAWAS COUNTY, OHIO

'92 JUL 17 AM 10 11

92CV070317

STATE OF OHIO, ROCKNE W. CLARKE
ex rel. LEE FISHER
ATTORNEY GENERAL OF OHIO,

CASE NO.

JUDGE

S/ROGER G. LILE

Plaintiff,

vs.

AMKO SERVICE COMPANY,

Defendant.

OHIO
ATTY GENERAL
JUL 21 12:30 PM '92
ENVIRONMENTAL
ENFORCEMENT

CONSENT ORDER

The Plaintiff, State of Ohio, ex rel. Lee Fisher, Attorney General of Ohio ("State" or "Plaintiff"), has filed a Complaint against Defendant Amko Service Company (hereinafter "Amko" or "Defendant"), on behalf of the Director of the Ohio Environmental Protection Agency ("Director" or "Ohio EPA") alleging that Defendant has failed to comply with hazardous waste laws and regulations of the State of Ohio as they apply to Amko's waste handling, storage, treatment, and/or disposal practices at its Dover Cryogenic Division facility located at 1250 Davis Street, Dover, Tuscarawas County, Ohio (hereinafter "the facility"). This order is being entered by the Court with the consent of the State and Amko ("the Parties").

THEREFORE, without trial or admission of any issue of law or fact, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. PERSONS BOUND

1. The provisions of this Consent Order shall apply to and be binding upon the State of Ohio and Ohio EPA, and Defendant, its agents, officers, employees, assigns, successors, and those persons in active concert or participation with them. Defendant shall provide a copy of this Consent Order to all such persons described above until such time as the terms of this Consent Order have been complied with and Defendant has submitted certification to Ohio EPA pursuant to OAC Rule 3745-66-15 that the facility has been closed in accordance with the approved closure plan described herein.

II. SATISFACTION OF CLAIMS

2. Except as provided in this paragraph with respect to R.C. §3734.20, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant and any person referenced in paragraph one of this Consent Order for the following:

1. claims alleged in the complaint; and,
2. claims under R.C. §3767.13 arising from Defendant's storage, treatment and/or disposal of 1,1,1-trichloroethane or other hazardous wastes in the hazardous waste management units described in paragraph four (4) of this Consent Order;
3. claims under R.C. Chapter 3734. arising from Defendant's storage, treatment and/or disposal of 1,1,1-trichloroethane in the hazardous waste management units described in paragraph four (4) of this Consent Order.

Except for the claims described in this paragraph, and

notwithstanding compliance with the terms of this Consent Order, nothing in this Consent Order, including the requirement that Defendant pay stipulated penalties for violations of the Consent Order, shall be construed to limit the authority of the State of Ohio to seek any legal or equitable relief against Defendant or any other person, corporation or governmental entity or agency for claims not alleged in the Complaint or for claims which arise from acts or omissions occurring after the entry of this Consent Order. Notwithstanding compliance with the terms of this Consent Order, nothing in this Consent Order shall be construed to preclude the State of Ohio or the Director from seeking any legal or equitable remedy against any person including Defendant pursuant to R.C. §3734.20, or from ordering any person including Defendant to undertake remedial or corrective action, monitoring and/or testing pursuant to R.C. §3734.20 in order to abate and/or remedy pollution or contamination existing at the facility or any other location, if the Director determines that conditions existing at the facility or other location constitute a substantial threat to public health or safety or are causing or contributing to or threatening to cause or contribute to air or water pollution or soil contamination. Defendant reserves all rights it may have to oppose and defend against such claim, relief or remedy and to assert any and all defenses it may have against the State of Ohio or Ohio EPA and/or any person or governmental agency. By consenting to the entry of this Consent Order, Defendant does not admit any of the facts or occurrences alleged in the

complaint.

III. JURISDICTION AND VENUE

3. The Court has both personal and subject matter jurisdiction over Defendant and the claims contained in the Complaint. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 3734. of the Ohio Revised Code and the rules promulgated thereunder. Venue is proper in this Court.

IV. CLOSURE PLAN

4. Defendant is ordered and enjoined to submit to Ohio EPA, within thirty (30) business days of the entry of this Consent Order, an approvable closure plan for closure of the hazardous waste management unit(s) at the facility associated with any areas of contamination resulting from the use, excavation and/or removal of the 2,500 gallon underground storage tank formerly located at the facility and used for the storage of spent 1,1,1-trichloroethane, including but not limited to, the excavation resulting from the removal of such tank, any areas where such tank and contaminated soil piles were stored upon the removal of such tank, and any areas where spent 1,1,1-trichloroethane leaked or spilled onto or into the ground. Such closure plan shall meet the requirements of OAC Rules 3745-66-10 through 3745-66-20 and shall address the outstanding deficiencies noted in the August 23, 1990 Notice of Deficiencies issued to Defendant by Ohio EPA in response to a closure plan for the facility submitted to Ohio EPA by Defendant on March 19, 1990. Such closure plan shall also

include a groundwater monitoring plan.

5. If Ohio EPA notifies Defendant in writing of deficiencies in the closure plan submitted pursuant to paragraph 4 above, Defendant is ordered and enjoined to resubmit a revised approvable closure plan to the Ohio EPA, within thirty (30) business days of receipt of Ohio EPA's written notification of the deficiencies, which closure plan shall address all of the noted deficiencies. Defendant's submission of a revised approvable closure plan does not relieve Defendant from the obligation to submit an approvable closure plan in the first instance. The Director may approve, with conditions, any closure plan submitted by Defendant.

6. Defendant is ordered and enjoined to fully implement the terms and conditions of the closure plan once approved by final action of the Director of Environmental Protection, and to comply with OAC Rules 3745-66-10 through 3745-66-20. Such closure plan approved by final action of the Director shall become an enforceable part of this Consent Order subject to stipulated penalties as provided in paragraph thirteen (13) of this Consent Order.

7. The closure plan described above may be amended or modified pursuant to O.A.C. Rule 3745-66-12 prior to final closure of the facility. The closure plan as amended or modified pursuant to O.A.C. Rule 3745-66-12 shall become an enforceable part of this Consent Order subject to stipulated penalties as provided in paragraph thirteen (13) of the Consent Order.

8. Upon completing implementation of the approved closure plan, Defendant is ordered and enjoined to certify completion of closure in accordance with O.A.C. Rule 3745-66-15.

V. FINANCIAL ASSURANCE

9. Until such time as Defendant certifies to Ohio EPA, pursuant to OAC Rule 3745-66-15, that the hazardous waste management unit(s) described in paragraph four (4) of this Consent Order have been closed in accordance with the specifications in an approved closure plan, and until the Director notifies Defendant that it is no longer required to maintain financial assurance for closure pursuant to O.A.C. Rules 3745-66-42 and 3745-66-43, Defendant is hereby enjoined and ordered to perform the following tasks:

- a) Within thirty (30) days after the entry of this Consent Order, Defendant shall, pursuant to OAC Rule 3745-66-42, submit to Ohio EPA a detailed written estimate of the cost of closing the facility pursuant to Chapter 3734. of the Ohio Revised Code and the rules promulgated thereunder, and shall thereafter comply with said Rule.
- b) Within thirty (30) days after the entry of this Consent Order, Defendant shall have established financial assurance for closure of the facility as provided in one of the options set forth in OAC Rule 3745-66-43 and shall submit documents to Ohio EPA demonstrating such financial assurance,

and shall thereafter comply with such rule.

- c) Within sixty (60) days after the entry of this Consent Order, Defendant shall have obtained liability coverage for any sudden or non-sudden accidental occurrences that may occur during the closure of the facility as required by OAC Rule 3745-66-47, and shall submit to Ohio EPA documents demonstrating such liability coverage, and shall thereafter comply with such Rule.

VI. INJUNCTION

10. Except as provided in this Consent Order, Defendant is hereby ordered and permanently enjoined to refrain from engaging in any future storage, treatment or disposal of hazardous wastes at the facility for which a hazardous waste facility installation and operation permit is necessary pursuant to R.C. Chapter 3734 and the rules promulgated thereunder without first obtaining such a permit from the Ohio Hazardous Waste Facility Board.

11. Defendant is hereby ordered and enjoined to complete within thirty (30) days after the entry of this Consent Order the following tasks associated with Defendant's waste generation, handling, storage and/or disposal practices at the facility:

- a) Submit documents to Ohio EPA demonstrating compliance with and the implementation of hazardous waste generator waste evaluation requirements at the facility as set forth in OAC Rule 3745-52-11; and

- b) Prepare and submit facility annual reports for the years 1984 through 1989 which meet the requirements of OAC Rule 3745-65-75.

VII. CIVIL PENALTY

12. Defendant is ordered and enjoined to pay a civil penalty of Seventy Thousand Dollars (\$70,000.00). This civil penalty shall be paid by certified check made payable to "Treasurer, State of Ohio," which check shall be delivered by mail, or otherwise, to Plaintiff's counsel or his successor, to the Office of the Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, within thirty (30) days of the entry of this Consent Order. This penalty shall be paid into the hazardous waste clean-up fund created by ORC §3734.28.

VIII. STIPULATED PENALTIES

13. In the event Defendant violates any of the terms of this Consent Order, including any closure schedule requirement contained in the approved closure plan described in paragraph four (4) of this Consent Order, Defendant shall be liable for, and is hereby ordered and enjoined to pay, stipulated penalties for such violation(s) according to the following schedule: For each day of each violation or failure to meet a requirement, up to thirty (30) days - Five Hundred Dollars (\$500.00) per day per violation. For each day of each violation or failure to meet a requirement from thirty (30) to sixty (60) days - One Thousand Dollars (\$1,000.00) per day per violation. For each day of each violation or failure to meet a requirement from

sixty-one (61) to ninety (90) days - One Thousand Five Hundred Dollars (\$1,500.00) per day per violation. For each day of each violation or failure to meet a requirement over ninety (90) days - Two Thousand Dollars (\$2,000.00) per day per violation. Except as otherwise provided in this Consent Order, all stipulated penalties shall begin to accrue on the date after performance is due and shall continue to accrue until the day of correction of the non-compliance or completion of the activity.

14. Any payment required to be made pursuant to Section VIII of this Consent Order shall be paid by certified check made payable to "Treasurer, State of Ohio," which check shall be delivered by mail or otherwise to Plaintiff's counsel or his successor at the Office of the Attorney General, Environmental Enforcement Section, 30 East Board Street, 25th Floor, Columbus, Ohio 43266-0410, within forty-five (45) days of the violation or failure to meet the requirements of this Consent Order. This penalty shall be paid into the hazardous waste clean-up fund created by ORC §3734.28. Payment of stipulated penalties pursuant to this Consent Order shall not preclude an action in contempt for violation of this Consent Order. Provided that Defendant has paid any and all stipulated penalties which are owed, the provisions of this Consent Order requiring the payment of stipulated penalties shall terminate upon Defendant's certification of completion of closure pursuant to paragraph eight (8) of this Consent Order and the Director's written confirmation of completion of closure.

IX. POTENTIAL FORCE MAJEURE

15. If Defendant discovers it is or will be unable to comply with any term of this Consent Order, including any milestone deadline in this Consent Order, for any reason, including circumstances beyond its control, it shall notify Ohio EPA of the anticipated delay and reasons therefor within 14 days of the event which Defendant believes will prevent compliance with such term. Upon receipt of such notice Plaintiff may agree to defer compliance with such term or the enforcement thereof. Plaintiff will promptly inform Defendant of its decision in writing. Plaintiff is not bound by oral representations by State employees concerning the validity of Defendant's reason for delay. Any term or milestone deadline of this Consent Order which Plaintiff defers to a later date shall be enforceable to the same extent as the deferred term or milestone. A decision by Plaintiff to defer enforcement of any milestone deadline or stipulated penalties set forth in this Consent Order shall not constitute a waiver of enforcement action with regard to the terms of this Consent Order unless the Plaintiff expressly so agrees.

16. Defendant may raise the question of whether it is entitled to a defense that its conduct was caused by reasons beyond its control such as, by way of example and not limitation, acts of God, unusually severe weather conditions, strikes, acts of war or civil disturbances, or orders of any regulatory agency. While Plaintiff does not agree that such a defense exists, and that it is premature at this time to raise

and adjudicate the existence of such a defense, Defendant may adjudicate the existence of such a defense when a contempt action, if any, is commenced or upon the violation of, or failure to meet, any term of the Consent Order. 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 Defendants 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 13 may render this paragraph void and of no force and effect as to the particular incident involved and may constitute a waiver of Defendant's right to request an extension of its obligations under this Consent Order based upon 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.

X. RETENTION OF JURISDICTION

17. The Court will retain jurisdiction of this action for the purpose of overseeing compliance with the terms and conditions of this Consent Order and for the purpose of enabling any of the parties to apply to the Court at any time

for such further order, direction, or relief as may be necessary or appropriate for the construction or modification of this Consent Order.

XI. INSPECTIONS

18. Defendant is ordered and enjoined to allow authorized employees, representatives and agents 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 to determine the need for corrective and/or remedial action pursuant to ORC Chapter 3734. Nothing in this Consent Order shall limit the rights of Ohio EPA or its agents and employees to conduct routine inspections at the facility pursuant to statute or rule.

XII. NOTICE

19. Except as otherwise specified in this Consent Order, Defendant is ordered to submit to Ohio EPA written notification of completion of any task or requirement set forth in this Consent Order, including any requirement contained in the closure plan described in Article IV of this Consent Order, within seven (7) days of completion of such task or requirement. Such notice along with any other submission to Ohio EPA required herein shall be submitted to:

1. Ohio Environmental Protection Agency
Southeast District Office
Attn: RCRA Group Leader
2195 Front Street
Logan, Ohio 43138

2. Ohio Environmental Protection Agency
Division of Hazardous Waste Management
Attn: Manager, Compliance Monitoring &
Enforcement Section
P.O. Box 1049
1800 WaterMark Drive
Columbus, Ohio 43266-0149

XIII. COSTS

20. Defendant shall pay the costs of this action.

XIV. EFFECTIVE DATE

21. This Consent Order shall be effective upon the date of its entry by the Court.

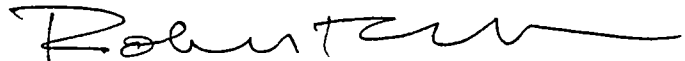
ENTERED THIS _____ DAY OF _____, 19__.

S/ROGER G. LILE

JUDGE, TUSCARAWAS COUNTY COURT OF
COMMON PLEAS

Approved by:

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



AMKO SERVICE COMPANY

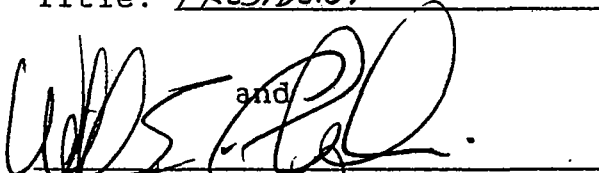
By: Benjamin D. Smallridge

Name: BENJAMIN D. SMALLRIDGE

Title: PRESIDENT

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