

IN THE COURT OF COMMON PLEAS
 PORTAGE COUNTY, OHIO

STATE OF OHIO, *ex rel.*
 ANTHONY J. CELEBREZZE, JR.
 ATTORNEY GENERAL OF OHIO,

Plaintiff,

vs.

CAL KOTE, INC., *et al.*,

Defendants.

CASE NO. 89-CV-1174

JUDGE JOSEPH KAINRAD

FILED
 PORTAGE COUNTY
 COURT OF COMMON PLEAS
 MAR 7 2 08 PM '91
 OCTOBER 1990

CONSENT ORDER BETWEEN THE STATE OF OHIO
 AND DEFENDANTS MATT NEMEC AND NOEL BARBER

The Plaintiff, State of Ohio, *ex rel.* Anthony J. Celebrezze, Jr., Attorney General of Ohio ("State" or "Plaintiff"), having filed the Complaint in this action against Defendants Cal Kote, Inc., T-Kote, Inc., Paul Bosley III, Thomas M. Warren, Matt Nemec, Noel Barber, and The Centennial Company, to enforce the State of Ohio's water pollution control and nuisance laws and the rules promulgated thereunder concerning the Defendants' waste handling and disposal practices at the Defendants' facility located at 1095 West Main Street, Kent, Ohio (hereinafter the "facility"), and Plaintiff and Defendants Matt Nemec and Noel Barber having consented to entry of this Order;

Therefore, without trial or admission of any issue of law or of fact, and upon the consent of the Plaintiff and Defendants Matt Nemec and Noel Barber hereto, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

I. PERSONS BOUND

The provisions of this Consent Order shall apply to and be binding upon Defendants Matt Nemec and Noel Barber. Said provisions shall in no way apply to and be binding upon Defendants Cal Kote, Inc., Paul Bosley III, T-Kote, Inc., Thomas M. Warren, or The Centennial Company.

II. SATISFACTION OF LAWSUIT

Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil and/or administrative liability by Defendants Matt Nemec and Noel Barber for all claims against Defendants Matt Nemec and Noel Barber alleged in Count One of the Complaint in this matter. After reasonable inquiry by counsel, the State of Ohio believes that it has alleged in the Complaint all violations, facts, and/or conditions at the facility of which it is currently aware. Upon execution of this Consent Order, the State of Ohio hereby agrees to dismiss Count Two of the Complaint in this matter, without prejudice, as it relates to Defendants Matt Nemec and Noel Barber. Nothing in this Consent Order shall be construed so as to preclude the State of Ohio from proceeding against any party, including Defendants Matt Nemec and Noel Barber, for any removal, remedial or corrective action, monitoring or testing at or in the vicinity of the 1095 West Main Street, Kent, Ohio facility to remediate any soil and/or groundwater contamination caused by rustproofing operations at the facility or to limit the authority of the State of Ohio to seek relief for claims or

conditions not alleged in the Complaint, including violations or conditions which occur after the filing of the Complaint. The State of Ohio hereby specifically reserves the right to proceed against any other party including, but not limited to, Cal Kote, Inc., Paul Bosley III, T-Kote, Inc., Thomas M. Warren, or The Centennial Company for the violations alleged in Count Two of the Complaint, and/or for any removal, remedial or corrective action, monitoring or testing that must be conducted in order to remediate any soil and/or groundwater contamination caused by rustproofing operations at the 1095 West Main Street, Kent, Ohio facility. Furthermore, this Consent Order precludes the State of Ohio from proceeding against or seeking penalties from Defendants Matt Nemec and Noel Barber for the claims alleged in the Complaint in this matter, except as is otherwise provided for in this Consent Order itself.

III. JURISDICTION AND VENUE

The Court has both personal and subject matter jurisdiction over Defendants Matt Nemec and Noel Barber. The Complaint states a claim upon which relief can be granted against Defendants Matt Nemec and Noel Barber under Chapters 6111. and 3767. of the Ohio Revised Code ("ORC") and the rules promulgated thereunder. Venue is proper in this Court.

IV. PERMANENT INJUNCTION

Defendants Matt Nemec and Noel Barber are hereby permanently enjoined and ordered to comply with ORC Chapters 6111. and 3767. and the rules promulgated thereunder.

Defendants Matt Nemec and Noel Barber are also permanently enjoined and ordered to refrain from discharging "industrial waste" or "other wastes" into "waters of the state", as those terms are defined in ORC Section 6111.01, unless the discharging is conducted in accordance with the terms of a permit issued by the Director of Environmental Protection pursuant to ORC Chapter 6111.

This injunction shall not be construed as an injunction for removal, remedial or corrective action, monitoring or testing of any soil or groundwater contamination in the vicinity of the 1095 West Main Street, Kent, Ohio facility or anywhere else.

V. CIVIL PENALTY

It is hereby ordered that Defendants Matt Nemec and Noel Barber shall each pay a civil penalty, pursuant to ORC Section 6111.09, of two thousand five hundred dollars (\$2,500.00), for a total civil penalty of five thousand dollars (\$5,000.00). These civil penalties shall be paid by checks made payable to "Treasurer, State of Ohio," which checks shall be delivered by mail, or otherwise, to Shane A. Farolino, Assistant Attorney General, Office of the Attorney General, Environmental Enforcement Section, State Office Tower, 30 East Broad Street - 25th Floor, Columbus, Ohio 43266-0410. Each Defendant's penalty shall be paid in twenty-five consecutive monthly installments of one hundred dollars (\$100.00) with the first payment being due within thirty (30) days of the Court's entry of this Consent Order.

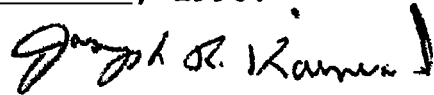
VI. RETENTION OF JURISDICTION

The Court will retain jurisdiction of this action for the purpose of overseeing that Defendants Matt Nemec and Noel Barber carry out the terms and conditions of this Consent Order and comply with ORC Chapters 6111. and 3767. and the rules adopted thereunder.

VII. COURT COSTS

Defendants Matt Nemec and Noel Barber shall each pay one fourth (1/4) of the court costs incurred as of the date of the entry of this Consent Order.

ENTERED THIS _____ DAY OF _____, 1990.



JUDGE JOSEPH KAINRAD
Court of Common Pleas
Portage County, Ohio

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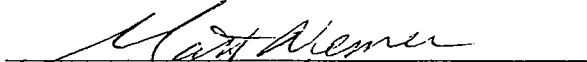


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State of Ohio