

Jan 29 '91

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

DIANA ZALESKI

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

CASE NO. 8910023
JUDGE JAMES E. MURPHY

SUMMIT COUNTY
CLERK OF COURTS

Plaintiff,

CONSENT DECREE

vs.



SALES, INC.
et al.

Defendants

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The Plaintiff, State of Ohio, by its Attorney General, Anthony J. Celebrezze, Jr., ("the State" or "Plaintiff"), having filed the Complaint, which was duly amended, hereinafter called the "Complaint," in this civil action against the Defendants, Chemequip Sales, Inc. (Chemequip), and Leland H. Menke (Menke) and Richard C. Yates, Jr. (Yates) to enforce the State hazardous waste and water pollution control statutes and rules promulgated thereunder at Defendants' Facility located at 1004 Swartz Road, Akron, Ohio (hereinafter "the Chemequip Facility"); and Plaintiff having agreed to voluntarily dismiss this action, without prejudice, against Yates such that none of the terms of this Consent Decree apply to Yates; and Plaintiff and Defendants Menke and Chemequip (hereinafter referred to as "Defendants") having consented to entry of this Decree:

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

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I. JURISDICTION AND VENUE

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This Court has jurisdiction over the parties and the subject matter of this civil action. Venue is appropriate in this Court. The Complaint states a claim upon which relief can be granted under Chapter 3734 of the Ohio Revised Code (R.C.) and rules promulgated thereunder.

II. CONTINUING JURISDICTION

This Court shall retain jurisdiction over this action for the purpose of enforcing the provisions of this Consent Decree, which jurisdiction shall be invoked by motion.

III. PERSONS BOUND

This Consent Decree shall apply to and be binding on the Plaintiff State of Ohio and each of the Defendants, jointly and severally, together with their heirs, executors, administrators, successors and assigns.

IV. STATEMENT OF PURPOSE

In entering into this Consent Decree, the mutual objective of the Plaintiff and Defendants is to have Defendants fully comply with the state's hazardous waste and water pollution statutes and rules promulgated thereunder. Nothing herein shall be construed to mean that Defendants have violated any such statutes or regulations in the past or that they are doing so at present. This includes, without limitation, any and all regulations pertaining to hazardous waste treatment, storage and disposal facilities.

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V. SATISFACTION OF CLAIMS AND EFFECT
UPON OTHER ACTIONS

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Compliance with the terms of this Consent Decree shall constitute full satisfaction of any civil liability of Defendants to the State of Ohio, its Attorney General and its Director of Environmental Protection (hereinafter the "State") for all claims alleged in the Complaint.

Except as noted above, 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. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for violations which occur after the filing of the Consent Order. Nothing herein shall limit the State of Ohio from requiring Defendants pursuant to and in accordance with the provisions of Chapters 3734 and 6111 of the Revised Code, and rules adopted thereunder, to initiate appropriate corrective action to address contamination of the groundwater and surface water or soils at the manufacturing facility, or to recover costs incurred by the State for such remediation to which the State is entitled pursuant to state or federal law, provided such actions are necessary despite compliance with the terms of this Consent Decree.

VI. CIVIL PENALTY

It is hereby ordered that Defendants shall pay a civil penalty in either one of two amounts: (1) Ten Thousand Dollars (\$10,000.00), payable in one lump sum within sixty (60) days of

the Court's entry of the Consent Decree, or (2) Eleven Thousand Dollars (\$11,000.00), payable over two years as follows: The penalty shall be paid in eight equal installments of One Thousand Three Hundred Seventy-Five Dollars (\$1,375). The first installment shall be paid within thirty (30) days of the Court's entry of the Consent Decree. The remaining installments shall be paid every three months thereafter on or before the last day of the third month following the month in which the last payment was made. This civil penalty shall be paid by check made payable to "Treasurer, State of Ohio", which check shall be delivered by mail, or otherwise, to Bryan Zima or Cheryl Roberto or their successors at their office at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410. This penalty shall be paid into the Ohio Hazardous Waste Cleanup Fund.

VII. GENERAL INJUNCTION

Defendants are permanently enjoined to comply with all laws contained in R.C. Chapter 3734 and 6111 and the rules adopted thereunder and to comply with any hazardous waste or waste water permits it may obtain regarding the Chemequip Facility, and expressly including those laws and rules which apply to a small quantity generator of hazardous waste, unless and until Defendants can demonstrate to the Director or his authorized representative that the Chemequip Facility qualifies as a conditionally-exempt small quantity generator of hazardous waste.

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VIII. CLOSURE PLAN

Defendants are ordered to submit a closure plan for the underground storage tanks and the leach bed system at the Chemequip Facility that shall comply with the requirements of Sections 3745-66-10 to 3745-66-20 of the Ohio Administrative Code (O.A.C.) to Richard Shank, Director of Environmental Protection, or his successor, P.O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43266-0149, to the attention of Thomas A. Crepeau, Division of Solid and Hazardous Waste Management, and to Mr. Greg Taylor or his successor at the Ohio EPA Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio 44087. This closure plan shall contain provisions for ground water monitoring that meet the requirements of O.A.C. Sections 3745-65-90 through 3745-65-94 and shall be submitted within sixty (60) days of the entry of this Consent Decree. If Ohio EPA finds deficiencies in the closure plan, Defendants shall resubmit a closure plan that addresses the noted deficiencies in approvable form within forty-five (45) days of OEPA's notification to Defendants at the Chemequip Facility. Following submittal of revised closure plan, Ohio EPA will either approve the plan as submitted or approve the closure plan with conditions which address the deficiencies in the plan. In accordance with the schedule of implementation contained in therein, Defendants shall implement the closure plan as approved by Ohio EPA and any conditions imposed by Ohio EPA in accordance with O.A.C. Section 3745-66-13.

Defendants shall also submit with the closure plan an approvable sampling and analysis plan for the bank area at the rear of the parking area to determine the extent of contamination within sixty (60) days of the entry of this Consent Decree. The plan shall have a schedule of implementation. If the results of the sampling and analysis plan show that hazardous wastes have been disposed at the bank area, the closure plan shall be revised to include the bank area. The closure plan shall be completed within 180 days of notification of approval by the Ohio EPA, unless an extension thereof is approved by the Ohio EPA pursuant to O.A.C. Section 3745-66-14(B)(1).

IX. FINANCIAL RESPONSIBILITY/FINANCIAL ASSURANCE REQUIREMENTS

Defendants shall:

- a. within sixty (60) days of the entry of this Consent Decree, prepare and keep at the Chemequip Facility a detailed written estimate, as required by O.A.C. Section 3745-66-42, of the cost of closing the Chemequip Facility.
 - b. maintain until closure is complete and certified pursuant to O.A.C. Section 3745-66-15, financial responsibility for closure of the Chemequip Facility in conformity with O.A.C. Section 3745-66-43.
- Defendants shall submit proof of compliance with O.A.C. Section 3745-66-43, based upon the original

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closure cost estimate, to the Director of Environmental Protection at the address specified in Paragraph VIII within thirty (30) days after the date upon which the Ohio EPA notifies Defendants of its approval of the closure plan. If as a result of revisions to the closure plan, the estimated cost of closure changes, Defendants shall revise the closure cost estimate in accordance with O.A.C. Section 3745-66-42(C). Defendants shall then establish sufficient financial assurance in accordance with O.A.C. Section 3745-66-43 for the revised closure plan within sixty (60) days after the date upon which revision of the closure cost estimate is due.

X. WASTE EVALUATION PLAN

Defendants shall develop an approvable written waste evaluation plan for the Chemequip Facility which meets the requirements of O.A.C. Section 3745-52-11 and shall submit to Ohio EPA, for approval, the written waste evaluation plan within sixty (60) days of entry of the Consent Decree. The plan shall address all potentially hazardous waste streams generated and/or managed at the Chemequip Facility. The written plan shall be subject to review by the Ohio EPA. If the Ohio EPA determines that the plan is not sufficient to achieve compliance with O.A.C. Section 3745-52-11, the Ohio EPA will notify Defendants in writing of the deficiencies in the plan. Defendants shall resubmit the plan in an approvable form

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including the required modifications within forty-five (45) days of receipt of Ohio EPA's written notification of the deficiencies. Defendants shall implement the plan within ten (10) days of receipt of written notice of Ohio EPA's concurrence with the plan and shall fully implement said plan in accordance with the schedules contained therein and shall otherwise maintain compliance with O.A.C. Section 3745-52-11.

XI. RIGHT OF ENTRY

From and after date of journalization of this Consent Decree, and until not later than ninety (90) days from the date that closure is certified as provided O.A.C. Section 3745-66-15, the State and its authorized agents and employees shall have authority to enter onto the Chemequip Facility, without the necessity of a search warrant, at any reasonable time during normal business hours, to take photographs, samples, and otherwise to observe operations and conditions at the facility. This provision is in addition to any statutory or other authority that the State may have to inspect, observe or sample at the facility.

XII. STIPULATED PENALTIES

In the event that Defendants fail to complete a closure plan or revised closure plan within the time limits specified in Paragraph VIII of this Consent Decree, or fails to meet deadlines contained in the schedule of implementation in the closure plan, or fails to complete closure as required in the

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approved closure plan within one hundred eighty (180) days after approval of the closure plan, unless an extension is obtained in accordance with O.A.C. Section 3745-66-13(B)(1), Defendants shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

- (1) For each day of each failure to meet any deadline for up to thirty (30) days, Five Hundred Dollars (\$500.00) per day;
- (2) For each day of each failure to meet any deadline, for thirty-one (31) to ninety (90) days, One Thousand Dollars (\$1,000.00) per day; and
- (3) For each day of each failure to meet any deadline for more than ninety (90) days, One Thousand Five Hundred Dollars (\$1,500.00) per day.

Any payment required to be made under the provisions of this paragraph of this Order shall be made by delivering to Plaintiff's counsel 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 Decree, made payable to "Treasurer, State of Ohio". Such payment shall be deposited into the hazardous waste clean-up account.

In addition to the provisions of Paragraph V of this

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Consent Decree, nothing in this paragraph shall prevent ¹⁴²² PAGE 565 Plaintiff, or affect the rights of Plaintiff, to bring an action in contempt for violations of this Consent Decree, or to bring a civil action seeking injunctive relief or civil penalties for violation(s) of any requirements of R.C. Chapter 3734 which are created or continue as a result of failure to comply with this Consent Decree.

XIII. NOTIFICATION

"Notification" by OEPA as used in Articles VIII and X means notification in writing sent by certified mail, return receipt requested, to Chemequip Sales, Inc., 1004 Swartz Road, Akron, Ohio 44319 with a copy to Brent L. English, Esq., 140 Public Square, 611 Park Building, Cleveland, Ohio 44114.

XIV. POTENTIAL FORCE MAJEURE

In any action to enforce any of the provisions of this Consent Order Defendants may raise at that time 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, act 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, it is, however, hereby agreed upon by the parties 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

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a defense is at the time that an enforcement action, if any, is commenced. Acceptance of this Consent Order without a force majeure clause does not constitute a waiver by Defendants of any rights or defenses it may have under applicable law. 1422 PAGE 566

XV. COURT COSTS

Defendants shall pay the court costs of this action. Court costs shall not include attorneys' fees or other litigation expenses.

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IT IS SO ORDERED.

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[Signature]
JUDGE JAMES E. MURPHY
COURT OF COMMON PLEAS

APPROVED:

ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO

CHEMEQUIP SALES, INC.

BY *[Signature]*
BRYAN LIMA
CHERYL ROBERTO
Assistant Attorney General
Environmental Enforcement
30 East Broad Street, 25 Fl.
Columbus, Ohio 43266-0410
(614) 466-2766

BY: *[Signature]* 1-24-91
MARY JEAN MENKE, President.

[Signature] 1-24-91
LELAND H. MENKE, Personally

[Signature] 1/24/91
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Attorney for Defendants

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