

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

FILED
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CRAIG ZIMMERS
CLERK OF COURTS
MONTGOMERY CO., OHIO

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

: CASE NO. 94-0518

:

: JUDGE BARBARA P. GORMAN

:

Plaintiff,

:

:

vs.

: CONSENT ORDER

:

DAYTON ELECTROPLATE, INC. et al.,

:

:

Defendants.

:

Plaintiff, State of Ohio, by its Attorney General, Lee Fisher (hereinafter "Plaintiff"), having filed the Complaint on February 14, 1994 against Defendants, Dayton Electroplate, Inc. and Charles J. Borum (hereinafter "Defendants") alleging violations of Chapter 3734 of the Ohio Revised Code, and the parties having consented to the entry of this Order.

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

I. JURISDICTION

1. The Court has jurisdiction over the parties and subject matter of this action, pursuant to Chapter 3734 of the Ohio Revised Code and the rules adopted thereunder. This Court has jurisdiction over the parties. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted.

II. PARTIES

2. The provision of this Consent Order shall apply and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest and any person acting in concert, privity or participation with them. Defendants shall provide a copy of this Consent Order contractor they employ to perform work itemized herein.

III. SATISFACTION OF LAWSUIT

3. Plaintiff has alleged in its Complaint that Defendants have operated an electroplating facility located at 1030 Valley Street, Dayton, Ohio ("the Facility") in violation of various provisions of the hazardous waste laws of Ohio, as set forth in Chapter 3734 of the Ohio Revised Code and the rules adopted thereunder. Except as provided herein, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for those claims which have been alleged in the Complaint. Notwithstanding the above or other provisions contained in this Consent Order, nothing contained herein shall be deemed an admission by Defendants as to the allegations set forth in the Complaint.

4. Nothing in this Consent Order, including the imposition of stipulated and/or civil penalties, shall limit the authority of Plaintiff to seek relief for claims or conditions not alleged in the Complaint, or to seek any relief for claims, conditions or violations alleged in the Complaint which occur after the entry of this Consent Order. In addition, the Plaintiff hereby specifically reserves the right to take action against any person, including Defendants pursuant to the Comprehensive

Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. §9601, et seq. and/or Ohio Revised Code Sections 3734.20 through 3734.27 for any removal, remedial or corrective actions which are not conducted pursuant to the terms of this Consent Order. The Plaintiff may also, if appropriate, enforce this Consent Order through a contempt action or otherwise for future violations of law which also comprise violations of this Consent Order.

IV. CLOSURE PLAN

5. Defendants agree and are hereby enjoined to perform closure of all hazardous waste management units at the Facility. Such closure shall be performed and completed in accordance with the closure regulations set forth in Ohio Administrative Code ("O.A.C."). Rules 3745-66-10 through 3745-66-20, and shall be in accordance with a closure plan and schedule submitted by the Defendants, as finally approved by Ohio EPA.

6. Within seventy-five (75) days of entry of this Consent Order, Defendants are enjoined and ordered to submit an approvable closure plan to the "Director, Ohio EPA, Attn: Manager, Data Management Section, Division of Hazardous Waste Management, 1800 WaterMark Drive, Columbus, Ohio 43216-3669." If the Director determines that part of all of Defendants' closure plan is deficient, Defendants are enjoined and ordered to resubmit the closure plan in approvable form within thirty (30) days of written notification of deficiency. Upon receipt and review of the revised plan, the Director may approve the revised plan or modify the plan. The modified plan, in that event, shall be the approved closure

plan.

7. Defendants are enjoined and ordered to implement the approved closure plan in accordance with the schedules contained therein and O.A.C. Rule 3745-66-10 through 3745-66-20.

8. Within sixty (60) days of completion of closure, Defendants are enjoined and ordered to submit to the Director, pursuant to O.A.C. Rule 3745-66-15, a certification that the Facility has been closed in accordance with the approved closure plan.

V. SUBMITTAL OF DOCUMENTS

9. Documentation of compliance with the requirements of paragraphs 9, 10 and 11 of Section IV and paragraphs 15 and 17 of Section IX of this Consent Order shall be submitted, within forty-five (45) days of entry of this Consent Order, to: "Manager, Compliance Monitoring and Enforcement Section, Division of Hazardous Waste Management, Ohio EPA, 1800 WaterMark Drive, Columbus, Ohio 43266-0149" and to "RCRA Group Leader, Ohio EPA Southwest District Office, 401 East Fifth Street, Dayton, Ohio 45402.

VI. CIVIL PENALTY

10. Defendants shall pay to the State of Ohio the amount of Five Thousand Dollars (\$5,000.00). This amount shall be paid by delivering a certified check for that amount, payable to the order of "Treasurer, State of Ohio" to Matthew A. Sanders, Administrative Assistant, or a person subsequently designated by the State, at the

Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428. The civil penalty shall be paid in accordance with the following schedule:

1. \$1,000.00 within thirty (30) days of the entry of this Consent Order.
2. \$1,000.00 on or before August 31, 1995.
3. \$1,000.00 on or before November 30, 1995.
4. \$1,000.00 on or before February 29, 1996.
5. \$1,000.00 on or before May 31, 1996.

VII. GENERAL INJUNCTION

11. Defendants agree and are hereby permanently enjoined to conduct any future operations at the Facility located at 1030 Valley Street in compliance with Chapter 3734 of the Ohio Revised Code and the regulations promulgated thereunder. Specifically, Defendants agree and are enjoined to achieve and maintain compliance with all generator requirements set forth at O.A.C. Chapter 3745-52.

12. Until the Director of Ohio EPA notifies the Defendants that financial assurance is no longer required pursuant to O.A.C. Rule 3745-66-43(H), Defendants are enjoined and ordered to comply with the security requirements set forth in O.A.C. Rule 3745-54-14 and/or 3745-65-14.

13. Defendants agree to refrain and are hereby permanently enjoined from treating, storing, and/or disposing of hazardous wastes at the facility located at 1030

Valley Street unless and until such time as Defendants apply and qualify for and receive a hazardous waste facility installation and operation permit to conduct such activities in accordance with Ohio Revised Code Section 3734.05.

14. Within thirty (30) days of entry of this Consent Order, Defendants are enjoined and ordered to maintain compliance with the following requirements: (1) evaluate waste pursuant to O.A.C. Rule 3745-52-11; (2) clearly mark the date upon which accumulation began on each container pursuant to O.A.C. Rule 3745-52-34(A)(2); (3) label each container with the words "Hazardous Waste" pursuant to O.A.C. Rule 3745-52-34(A)(3); (4) keep records pursuant to O.A.C. Rule 3745-52-40; (5) prepare and submit to Ohio EPA an annual hazardous waste generator's report pursuant to O.A.C. Rule 3745-52-41; (6) implement personnel training pursuant to O.A.C. Rule 3745-65-16; (7) prepare a contingency plan pursuant to O.A.C. Rules 3745-65-51 through 3745-65-55; (8) maintain hazardous waste containers in good condition pursuant to O.A.C. Rule 3745-66-71; (9) properly manage containers pursuant to O.A.C. Rule 3745-66-73; (10) conduct weekly inspections of container storage areas pursuant O.A.C. Rule 3745-66-74; and (11) use compatible containers pursuant to O.A.C. Rule 3745-66-72.

VIII. COMPLIANCE WITH APPLICABLE LAWS

15. Nothing herein shall affect Defendants obligation to comply with all applicable federal, state or local laws, regulations, rules or ordinances.

IX. STIPULATED PENALTIES

16. In the event that Defendants violate any of the requirements of the closure plan schedule, Defendants shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of each failure to meet a requirement, up to thirty (30) days - Five Hundred Dollars (\$500.00) per day. For each day of each failure to meet a requirement, from thirty-one (31) to sixty (60) days - One Thousand Dollars (\$1,000.00) per day. For each day of each failure to meet a requirement, from sixty-one (61) days to ninety (90) days - Three Thousand Five Hundred Dollars (\$3,500.00) per day. For each day of failure to meet a requirement, over ninety (90) days - Five Thousand Dollars (\$5,000.00) per day.

17. Any payment required to be made under the provisions of this Section of this Order shall be paid without further orders from the Court and shall be made by delivering a certified check or checks for the appropriate amounts payable to "Treasurer, State of Ohio" within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order to Matthew A. Sanders, Administrative Assistant, or a person subsequently designated by the State, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

X. INSPECTIONS

18. Defendants are ordered to allow representatives 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 O.R.C. Chapter 3734 and rules promulgated thereunder. Nothing in this Order shall limit any right of entry possessed by the Plaintiff.

XI. RETENTION OF JURISDICTION

19. This Court will retain jurisdiction of this action for the purpose of making any order or decree which it deems appropriate to carry out this Consent Order.

XII. COSTS

20. Defendants shall pay all court costs of this action.

XIII. ENFORCEMENT COSTS

21. Defendants are ordered and enjoined to pay the costs of relator Ohio Attorney General expended in pursuing the instant action, totalling One Thousand Dollars (\$1,000.00) 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 Matthew A. Sanders, Administrative Assistant, or a person subsequently designated by the State, Environmental Enforcement Section, 25th Floor, 30 East Broad Street, Columbus, Ohio 43215-3428, 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.

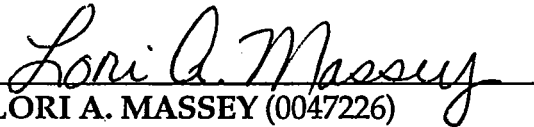
DATED _____, 1995

BARBARA P. GORMAN, JUDGE
MONTGOMERY COUNTY COURT OF
COMMON PLEAS

APPROVED:

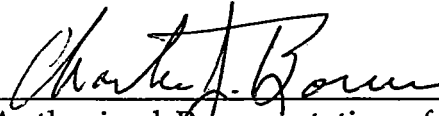
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

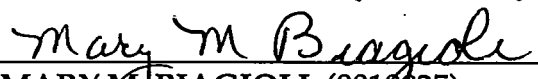
BY:


LORI A. MASSEY (0047226)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
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Telephone: (614) 466-2766

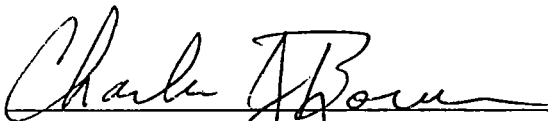
DAYTON ELECTROPLATE, INC.

BY:


Authorized Representative of
Dayton Electroplate, Inc.


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CHARLES J. BORUM