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PATRICK F. MEYER
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91 APR 17 AM 8:43

MONTGOMERY COUNTY
FILED - COURT OF
COMMON PLEAS

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

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

Plaintiff, :

vs. :

DAYTON WALTHER CORPORATION :
and VARITY CORPORATION, :

Defendants. :

CASE NO. 90-109 :
JUDGE JOHN M. MEAGHER :

CONSENT ORDER

The Complaint in the above-captioned matter has been filed herein, and the Plaintiff State of Ohio by its Attorney General Lee Fisher (hereinafter "Plaintiff") and Defendant Dayton Walther Corporation (hereinafter "DWC") have consented to the entry of this Order.

NOW THEREFORE, without trial of any issue of fact or law, 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 Defendant DWC under Chapters 3704 and 3767 of the Ohio Revised Code, and venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply to, be binding upon, and inure to the benefit of the State of Ohio and Defendant DWC, its agents, officers, employees, assigns, affiliates, parent companies, successors in interest, and any person acting in concert or privity with it. Defendant DWC shall provide a copy of this Consent Order to any party that purchases or otherwise acquires the Facility, as defined in paragraph 4.a., from Defendant DWC.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that the Defendants have operated and maintained the Facility at the Dayton Casting Center in a manner that has resulted in the commission of violations of the air pollution laws of the State of Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant DWC for all claims alleged in the Complaint. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek and obtain relief for claims not alleged in the Complaint and/or for claims or violations alleged in the Complaint which occur after the entry of this Consent Order.

IV. DEFINITIONS

4. As used in this Consent Order, the following terms are defined as follows:

a. "Facility" or "Site" means Defendant Dayton Walther's property occupying approximately 24 acres and located at 1361 Morris Avenue, Dayton, Ohio 45408 and which is identified by Ohio EPA Premise No. 0857040560.

b. "OEPA" or the "Agency" means the Ohio Environmental Protection Agency.

c. "RAPCA" means the Regional Air Pollution Control Agency as contract agent of the Ohio Environmental Protection Agency and representative of the Montgomery County Combined General Health District.

d. "ORC" means the Ohio Revised Code.

e. "OAC" means the Ohio Administrative Code.

f. "Defendants" means Dayton Walther Corporation and Varsity Corporation, their agents, officers, employees, assigns, successors in interest, and any person acting in concert or privity with them.

V. REVOCATION OF EFFECTIVE PERMITS TO OPERATE

5. Defendant DWC has discontinued operations at the Facility and is maintaining, on its own volition, and will continue to maintain, appropriate 24-hour security measures for as long as it owns the Facility in order to prevent a nuisance. Since the Facility is no longer in operation, Defendant DWC shall submit, within seven days of entry of this

Consent Order, a letter to OEPA and RAPCA requesting that the Permits to Operate for the following air contaminant sources be revoked:

<u>Source Description</u>	<u>Permit No.</u>	<u>Expiration Date</u>
Pyrolysis cleaning furnace	0857040560 N001	No expiration date
Metal Pouring	0857040560 F001	6/30/91
Rotoblast/grinding operations	0857040560 F003	5/21/90
Mold Machine	0857040560 F005	6/30/91
Sand handling/cooling	0857040560 P018	6/1/92
Sand & Bond Transport	0857040560 P019	11/29/91
Inoculation & Pouring	0857040560 P020	6/1/92

6. In addition, Defendant DWC shall submit, within seven days of entry of this Consent Order, a letter withdrawing the applications for Permits to Operate for the following air contaminant sources:

<u>Source Description</u>	<u>Application No.</u>
Water Wash Spray Booth	0857040560 K001
Ford I-Beam Paint Line	0857040560 K002
Coreless Induction Furnace	0857040560 P903
Coreless Induction Furnace	0857040560 P904
Scrap Metal Preheat Furnace	0857040560 P905
Scrap Metal Storage	0857040560 F008

7. A copy of the letter Defendant DWC shall submit to OEPA and RAPCA, pursuant to paragraphs 5 and 6 above, requesting revocation of the Facility's Permits to Operate and withdrawal of the Facility's Permit to Operate applications is attached to this Consent Order as Exhibit A. When the Director of Ohio EPA acts upon Defendant DWC's requests for revocation and proposes to revoke a Permit to Operate, Defendant DWC waives its right to object to the Director's action and to request a hearing before OEPA. When the Director's action revoking a permit to operate is final, Defendant DWC waives its right to contest the lawfulness and reasonableness of the Director's action before the Environmental Board of Review or any court of competent jurisdiction.

VI. RESUMPTION OF OPERATIONS AT THE FACILITY

8. Defendant DWC is ordered and enjoined to comply with all requirements of ORC Chapter 3704. and the rules adopted thereunder if Defendant DWC resumes any operations at the Facility.

9. Defendant DWC is ordered and enjoined to obtain from OEPA permits to operate, as required by O.A.C. Chapter 3745-35, before operating any air contaminant source, as defined by O.A.C. Rule 3745-35-01(B)(1), if Defendant DWC resumes any operations at the Facility. Furthermore, OEPA may require Defendant DWC to obtain a permit to install, as required by O.A.C. Chapter 3745-31, before issuance of a permit to operate

for an air contaminant source at the Facility. In such case, Defendant DWC is ordered and enjoined to obtain the permit to install required by OEPA.

10. Defendant DWC is ordered and enjoined to obtain from OEPA permits to install, as required by O.A.C. Chapter 3745-31, if Defendant DWC installs any air contaminant source or modifies an air contaminant source at the Facility.

VII. CIVIL PENALTY

11. Defendant DWC shall pay to the State of Ohio a civil penalty, pursuant to O.R.C. Section 3704.06, of two hundred and sixty-two thousand, five-hundred dollars (\$262,500.00) by delivering to counsel for Plaintiff a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within forty-five (45) days from the date of entry of this Consent Order.

VIII. RETENTION OF JURISDICTION

12. The Court will retain jurisdiction of this action for purposes of overseeing the implementation of this Consent Order.

XI. COSTS

13. Defendant DWC is hereby ordered to pay the court costs of this action, a copy of which cost sheet is attached as Exhibit B.

XII. NONADMISSION OF LIABILITY

14. Nothing in this Consent Order or any document incorporated herein by reference shall constitute an admission by Defendant DWC of any legal or factual matters set forth in the Complaint, which matters DWC denies.

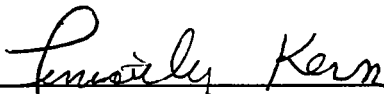
IT IS SO ORDERED.

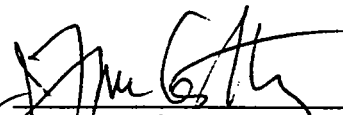

Judge, Court of Common Pleas

Agreed to:

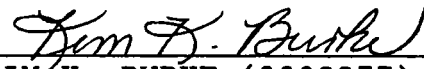
STATE OF OHIO, ex rel.
LEE FISHER
ATTORNEY GENERAL OF OHIO

DAYTON WALTHER CORPORATION


TIMOTHY KERN
CHRISTOPHER KORLESKI
Assistant Attorneys General
30 East Broad Street, 25th Fl.
Columbus, Ohio 43266-0410

By 
(Authorized Representative)
JOSEPH F. MCCARTHY, ASSISTANT SECRETARY
DAYTON WALTHER CORPORATION
38481 HURON RIVER DR.
ROMULUS, MI 48174

Attorneys for Plaintiff


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TAFT, STETTINIUS & HOLLISTER
1800 Star Bank Center
Cincinnati, Ohio 45202

Attorney for Defendant
Dayton Walther Corporation

1904E/32-38

baf

Exhibit "A"

D. Curtis Marshall (or his successor)
R.A.P.C.A.
P.O. Box 972
451 West Third Street
Dayton, Ohio 45422

RE: Ohio EPA source identification Nos. 0857040560 N001, K001,
K002, F001, F003, F005, F008, P018, P019, P020, P903, P904,
P905

Dayton Walther Corporation requests that the Ohio permits
to operate for the following air contaminant sources be revoked
by the Director of the Ohio EPA:

<u>Source Description</u>	<u>Permit No.</u>	<u>Expiration Date</u>
Pyrolysis cleaning furnace	0857040560 N001	'T' status
Metal Pouring	0857040560 F001	6/30/91
Rotoblast/grinding operations	0857040560 F003	5/21/90
Mold Machine	0857040560 F005	6/30/91
Sand handling/cooling	0857040560 P018	6/1/92
Sand & Bond Transport	0857040560 P019	11/29/91
Inoculation & Pouring	0857040560 P020	6/1/92

In addition, Dayton Walter Corporation hereby withdraws its
applications for Ohio permits to operate the following sources:

<u>Source Description</u>	<u>Application No.</u>
Water Wash Spray Booth	0857040560 K001

Ford I-Beam Paint Line 0857040560 K002
Coreless Induction Furnace 0857040560 P903
Coreless Induction Furnace 0857040560 P904
Scrap Metal Preheat Furnace 0857040560 P905
Scrap Metal Storage 0857040560 F008

The above listed air contaminant sources are located at Dayton Walther's foundry at 1361 Morris Avenue, Dayton, Ohio 45408. The Dayton Walther foundry is currently not in operation.

Dayton Walther Corporation

Authorized Representative

cc: James Orlemann (or his successor), D.A.P.C., Ohio EPA,
Central Office

1904E/39-40

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

PATRICK F. MEYER
CLERK OF COURTS

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

Plaintiff,

vs.

DAYTON WALTHER CORPORATION
and VARITY CORPORATION,

Defendants.

STIPULATION AND ORDER OF
DISMISSAL, WITH PREJUDICE
TO REFILING, OF DEFENDANT
VARITY CORPORATION

Pursuant to Ohio Civil Rule 41(a), the parties stipulate and agree to and this Court hereby orders that the Complaint against Varity Corporation is dismissed, with prejudice to refileing.

John M. Meagher

JUDGE JOHN M. MEAGHER

AGREED TO:

Timothy Kern

TIMOTHY KERN
CHRISTOPHER KORLESKI
Assistant Attorneys General
30 E. Broad Street, 25th Floor
Columbus, Ohio 43266-0410

Attorney for Plaintiff

Kim K. Burke

KIM K. BURKE
Taft, Stettinius & Hollister
1800 Star Bank Center
Cincinnati, Ohio 45202

Attorney for Dayton Walther Corporation
1904E/41/kmh

To the Clerk of Courts:
Please serve the attorney for each party and each party not represented by counsel with Notice of Judgment and its date of entry upon the journal.
Jm

Judge