

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

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CV92 09 1633

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

Plaintiff,

v.

HARRY C. DENUNE,

and

DIXIE DISTRIBUTING CO., INC.,

Defendants.

: CASE NO. _____
: CLERK OF COURTS _____
: JUDGE ROBB, JR.
: EDWARDS _____

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CONSENT JUDGMENT

The Complaint in the above-captioned case having been filed herein, and the Plaintiff State of Ohio by its Attorney General, Anthony J. Celebrezze, Jr., (hereinafter "Plaintiff") and the Defendants, Harry C. Denune and Dixie Distributing Co., Inc. (hereinafter "Defendants"), having consented to entry of this Consent Judgment.

NOW, THEREFORE, without adjudication of any issues of law or fact, or any admission of any issues of law or fact by Defendants, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION

1.1 This Court has jurisdiction over the subject matter herein pursuant to Chapter 3734 of the Ohio Revised Code. The Complaint states a claim upon which relief can be granted

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against Defendants under this chapter. This Court has jurisdiction over the parties hereto. Venue is proper in this Court.

II. DEFINITIONS

2.1 Unless otherwise defined in this Consent Judgment, the terms used in this Consent Judgment have the same meanings ascribed to them in O.R.C. Chapter 3734 and the "hazardous waste rules," as that term is defined by OAC 3745-50-10(A).

2.2 As used in this Consent Judgment, "the trailers" refers to the seven semi-truck trailers which were brought to the Canal Auto and Truck Yard at 2149 Canal Road, Hamilton!, Ohio by the Defendants and which in November of 1988 were discovered at this location by the Ohio EPA.

2.3 As used in this Consent Judgment, "materials" refers to all materials which were in the trailers as of June 1, 1992.

2.4 As used in this Consent Judgment, "waste" refers to the materials classified as waste pursuant to Attachment 1 of this Consent Judgment.

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III. PAYMENTS

3.1 Defendants shall pay to the State of Ohio a civil penalty of Fifty Thousand Dollars (\$50,000.00) in five consecutive monthly installments of Ten Thousand Dollars (\$10,000.00) each. The first installment shall be paid on or before the two month anniversary date of the entry of this Consent Judgment and the remaining four payments shall be paid on or before the anniversary dates of the Consent Judgment in the four subsequent months. These amounts shall be paid by

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delivering to Janis Miller or her successor in the Attorney General's Office, for payment into the Hazardous Waste Cleanup Fund created by Ohio Revised Code Section 3734.28, certified checks in the amounts set forth in this paragraph made payable to the "Treasurer, State of Ohio."

IV. CLEANUP

4.1 Within ninety (90) days, Defendants shall remove from the trailers, to a facility or facilities authorized under O.R.C. Section 3734.02(F), all waste which was present at Canal Auto and Truck Yard as of August 1, 1992.

4.2 All wastes stored at Canal Auto and Truck Yard shall remain inside a box trailer or trailers until removal to the facility or facilities described in Paragraph 4.1 above. The floors of the trailer(s) shall be lined with plastic. All materials shall be stored according to hazard class. No non-compatibles shall be stored together. Transportation waste from Canal Auto and Truck Yard shall be by special waste or hazardous waste hauler.

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4.3 For all waste which was present at Canal Auto and Truck Yard after August 1, 1992, Defendants shall within six (6) weeks submit to Paul Pardi or his successor in the Southwest District of Ohio EPA, the following: (a) all sample analyses of the waste; (b) waste profile sheets; and (c) manifests and logs for all phases of shipment and storage between Canal Auto and Truck Yard and the facility/facilities to which the waste was removed.

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4.4 With respect to any of the materials identified as

"usable product" in Attachment 1, Defendants shall be allowed to store the materials only as long as they can show that the materials have not been "accumulated speculatively," as that term is defined by O.A.C. Rule 3745-51-01(C)(8). Defendants shall keep an identification number on each container of the materials remaining in their possession. Defendants shall maintain an inventory listing the identification number and contents of each container of materials remaining in their possession after completion of the removal described in Paragraph 4.1 above. Upon the sale, disposal, recycling or other disposition of each container, the date and method of disposition shall also be listed in the inventory. Should a turnover of seventy-five percent (75%) of the materials not occur during any calendar year, Defendants shall, during that calendar year, remove all of the materials to a facility authorized by O.R.C. Section 3734.02(F).

4.5 With respect to all materials remaining in their possession after completion of the removal described in Paragraph 4.1 above, Defendants shall keep containers of the materials closed except when necessary to add or remove materials, and shall not allow the container to leak. Defendants shall weekly inspect the containers to detect any containers which are leading, rusting, or in deteriorated condition and shall document in a log the date and time of each inspection, the names of the inspector, a notation of the observations made, and the date and nature of any remedial actions. Any materials found in leaking, rusty, or

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deteriorated containers shall be transferred to containers in good condition. Defendants shall separate incompatible materials at least eight (8) feet apart and shall prevent their commingling.

4.6 When performing the activities required by this Consent Decree, Defendants shall comply with the procedures of O.A.C. Chapter 3745-52.

4.7 Within ninety (90) days of the removal of the last containerized waste from the trailers, Defendants shall remove all residual hazardous constituents from the trailers in accordance with O.A.C. Rule 3745-66-11(A) and (B). Any floorboards in the trailers which show signs of contamination shall be managed as hazardous wastes unless analytical results indicate that the floorboards are not contaminated. The Defendants shall determine whether any soils beneath the trailers or within the immediate area of the trailers have been contaminated with hazardous wastes from the trailers. hazardous constituents from the trailers in the soils beneath or within the immediate reach of the trailers shall be removed until remaining levels reach background levels for those constituents. Defendants shall submit documentation of completion of the above requirements within fifteen (15) days of their receipt of the test results.

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V. SITE ACCESS

5.1 Defendants shall provide access to the materials in their possession to the Ohio EPA for the purpose of monitoring, photographing, sampling and observing activities carried out

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under this Consent Judgment, monitoring compliance with this Consent Judgment, and monitoring, sampling, photographing and/or inspecting any of the materials. Defendants shall provide the Ohio EPA with access to and copies of any records Defendants are required by the hazardous waste rules or this Consent Judgment to keep. This paragraph shall not be construed to eliminate or restrict any State access which it may otherwise have under State law.

VI. SATISFACTION OF LAWSUIT

6.1 Except as otherwise provided below, compliance with this Consent Judgment shall constitute full satisfaction for Defendants' civil liability under Ohio Revised Code Chapter 3734. arising out of the transportation of hazardous wastes to Canal Auto and Truck Yard in the trailers, and the storage and disposal of hazardous wastes in the trailers at Canal Auto and Truck Yard, including any violations of the Director's Filings and Orders issued to Defendants on January 23, 1989. This Consent Judgment does not release Defendants from liability SEP 14 1992 under Ohio Revised Code Sections 3745.12 and 3734.20 of under EDWARDS S. ROBB, JR. the Comprehensive Environmental Response, Compensation and CLERK Liability Act, 42 U.S.C. 9601 et seq., for costs incurred before entry of this Consent Judgment by the Ohio EPA in responding to or investigating the hazardous wastes stored at the trailers; provided, however, that nothing in this Consent Judgment shall be construed to allow recovery from Defendants of amounts actually recovered from Defendants in Butler County Case Nos. CA90-08-0128 and 0129. This Consent Judgment does

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not release Defendants from any criminal liability nor does it release Defendants from any duties imposed pursuant to any criminal sentence. With respect to hazardous waste removed from the trailers before June 1, 1992, if any, this Consent Judgment does not release Defendants from any liability arising after the time the waste was removed from Canal Auto and Truck Yard.

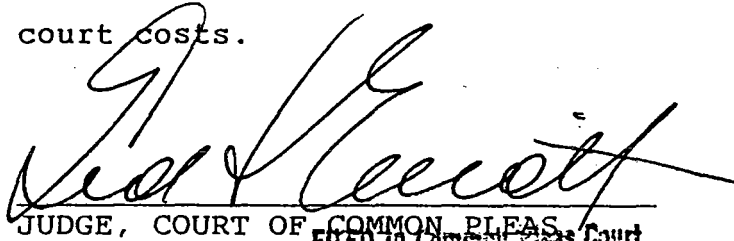
VII. MISCELLANEOUS

7.1 Within seven (7) days, Defendants shall voluntarily dismiss Environmental Board of Review cases 121929 and 121930.

7.2 Unless the Consent Judgment expressly provides otherwise, the provisions and prohibitions of this Consent Judgment and Defendants' duties and obligations under this Consent Judgment become effective upon its entry by the Court.

7.3 The Court retains jurisdiction of this suit for the purpose of making any order or decree which it may deem at any time to be necessary to carry out this Consent Judgment.

7.4 Defendants shall pay court costs.



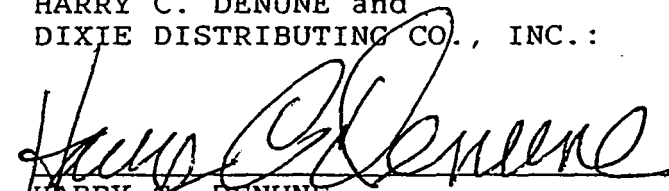
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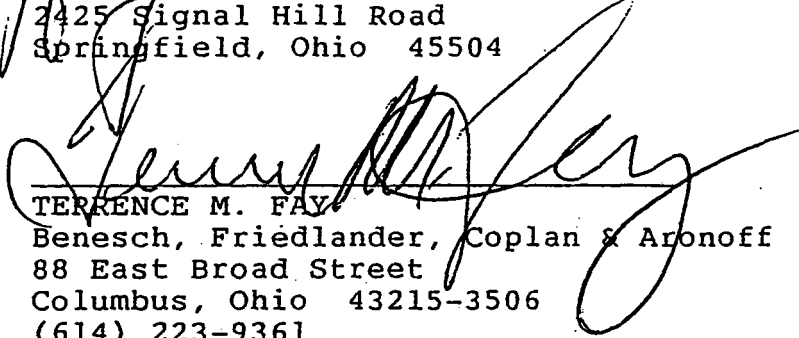
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APPROVED:


ON BEHALF OF DEFENDANTS
HARRY C. DENUNE and
DIXIE DISTRIBUTING CO., INC.:


HARRY C. DENUNE
2425 Signal Hill Road
Springfield, Ohio 45504


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88 East Broad Street
Columbus, Ohio 43215-3506
(614) 223-9361
Counsel for Defendants

ON BEHALF OF PLAINTIFF
STATE OF OHIO EX REL. FISHER:

LEE FISHER

By: 
JACK A. VAN KLEY
MARGARET A. MALONE
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410
(614) 466-2766
Counsel for Plaintiff

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ATTACHMENT 1

STATUS OF DIXIE DISTRIBUTING COMPANY:
MATERIALS CANAL AUTO & TRUCK YARD
HAMILTON!, OHIO

Materials are listed by container number (when available) and the trailer numbers indicated are those in which each container was stored on September 10, 1991.

WASTE

TRAILER #DHT-2

- DD015
- DD040
- DD041
- DD044
- DD049
- DD050
- DD053
- DD054

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TRAILER #DHT-3

- | | | | |
|-------|-------|-------|---------------------|
| DD001 | DD010 | DD028 | DD051 |
| DD002 | DD011 | DD030 | DD052 |
| DD003 | DD012 | DD031 | HDTI-902 |
| DD004 | DD013 | DD032 | HDTI-903 |
| DD005 | DD014 | DD034 | -112 gals. paint |
| DD006 | DD024 | DD035 | -spray cans |
| DD007 | DD025 | DD036 | -98 pts/gals. paint |
| DD008 | DD026 | DD047 | -empty cans |
| | | | DD241 |

TRAILER #HDT-3

- DD185
- DD188
- DD191
- DD192
- DD194
- DD200
- DD203
- DD209
- DD213

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TRAILER #DHT-4

DD023	DD078
DD056	DD079
DD057	DD082
DD059	DD083
DD062	DD085
DD065	DD086
DD070	DD089
DD071	DD090
DD073	DD095
DD075	DD096
DD077	

TRAILER #DHT-5

DD122	DD129
DD130	DD184
DD131	DD216
DD145	DD219
DD174	DD227
DD183	PCB drum

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TRAILER #DHT-6

DD042	DD109
DD058	DD111
DD060	DD112
DD061	DD113
DD067	DD114
DD069	DD117
DD098	DD125
DD099	DD155
DD100	

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TRAILER #HDT-6

DD137
DD138
DD139
DD157
DD159
DD163

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TRAILER #DHT-7

DD127	DD220
DD132	DD224
DD190	DD226
DD204	DD228
DD205	DD229
DD217	DD237
DD218	DD238

USABLE PRODUCT

TRAILER #DH1

All containers releaseable upon satisfaction of protocol requirements.

TRAILER #DHT2

DD016	DD048
DD017	DH-1-501
DD018	DH-1-502
DD020	2-023
DD038	2-024
DD039	2-031
DD043	DH-4-001
DD045	DH-1-503
DD046	-Misc. pts/gals. paint

TRAILER #DHT3

DD009
 DD019
 DD022
 DD027
 DD029
 DD033
 -Ortho Ester
 -Carts of paint

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TRAILER #HDT3

DD186	DD206
DD187	DD207
DD189	DD208
DD193	DD210
DD195	DD211
DD196	DD212
DD197	DD211
DD198	DD242
DD199	DD243
DD201	DD244
DD202	DD245

TRAILER #DHT4

DD063	DD084	DH4-055	DH4-063	DH4-072
DD066	DD088	DH4-056	DH4-064	DH4-074
DD068	DD091	DH4-057	DH4-065	DH4-076
DD072	DD094	DH4-058	DH4-066	DH4-077
DD074	DD103	DH4-059	DH4-067	DH4-078
DD076	DH4-052	DH4-060	DH4-068	DH4-081
DD080	DH4-053	DH4-061	DH4-070	
DD081	DH4-054	DH4-062	DH4-071	

TRAILER #DHT5

DD037	DD172
DD087	DD175
DD093	DD176
DD097	DD177
DD115	DD178
DD128	DD179
DD144	DD180
DD147	DD181
DD150	DD182
DD166	

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TRAILER #DHT6

DD064	DD110	DD126
DD092	DD116	DD148
DD101	DD118	DD149
DD102	DD119	DD151
DD104	DD121	DD152
DD105	DD123	DD153
DD106	DD124	DD154

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TRAILER HDT6

DD120 (empty)	DD156	DD168
DD133	DD158	DD169
DD134 (empty)	DD160 (empty)	DD170
DD135	DD161	DD171
DD136 (empty)	DD162	DD233 (empty)
DD140	DD164	DD236 (empty)
DD141	DD165	6-035 (empty)
DD142	DD167	6-053 (empty)
4-073 (empty)	4-080 (empty)	

TRAILER #DHT7

DD108	DD230
DD143	DD231
DD146	DD232
DD214	DD234
DD215	DD235 (empty)
DD221	DD239
DD222	DD240
DD223	DD246
DD225	

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