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IN THE COURT OF COMMON PLEAS
CLARK COUNTY, OHIO

STATE OF OHIO, EX REL.	:	CASE NO. 88-CIV-0153
BETTY D. MONTGOMERY	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE MEAGHER
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
HARRY C. DENUNE, et al.,	:	
	:	
Defendants.	:	

CONSENT ORDER

Whereas the Plaintiff, State of Ohio, ex rel. Betty D. Montgomery, Attorney General of Ohio, filed the Complaint in this action against Defendants Harry C. Denune and Dixie Distributing Company to enforce Ohio's hazardous waste laws found in Chapter 3734 of the Revised Code and rules adopted thereunder; and

Whereas the Defendants have represented to the Plaintiff that all containerized hazardous wastes have been removed from the facility, as defined infra; and

Whereas the Plaintiff and the Defendants have agreed to speedily resolve this matter; and

Whereas the Plaintiff and Defendants have consented to the entry of this Order;

THEREFORE, without trial of any issues by the Court or admission by any party as to any wrongdoing of any kind, and upon the consent of the parties hereto,

it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. DEFINITIONS

As used in this Consent Order:

"Consent Order" or "Order" means this Consent Order and Final Judgment Entry and all appendices hereto. In the event of conflict between this Order and any appendix, the Order shall control.

"Defendants" means Harry C. Denune and Dixie Distributing Company. Unless otherwise specifically noted in this Consent Order, any requirement or obligation or liability imposed in this Consent Order upon Defendants is imposed jointly and severally.

"Director" means Ohio's Director of Environmental Protection.

"Facility" refers to the buildings where the alleged treatment, storage, disposal, or other placement of hazardous waste was conducted by Defendants or any one of them, which facilities are located at 116 through 120 West Main Street, 426 East Street, 1075 James Street, and 202 West High Street, Springfield, Clark County, Ohio.

"Ohio EPA" means the Ohio Environmental Protection Agency.

"O.A.C." means the Ohio Administrative Code.

"Plaintiff" means the State of Ohio by and through the Attorney General of Ohio.

"R.C." means the Ohio Revised Code.

II. JURISDICTION AND VENUE

1. The Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapter 3734 and the rules adopted thereunder. This Court has jurisdiction over the parties. Venue is proper in this Court.

III. PERSONS BOUND

2. The provisions of this Consent Order shall apply to and be binding upon the Defendants, their agents, officers, employees, assigns, successors in interest.

IV. SATISFACTION OF LAWSUIT

3. Except as otherwise provided in this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendants to Plaintiff for all claims alleged in the Complaint.

4. Nothing in this Consent Order, including the imposition of stipulated civil penalties if any, shall limit the authority of the State of Ohio to:

- (a) Seek relief for claims or conditions not alleged in the Complaint;
- (b) Seek relief for claims or conditions alleged in the Complaint which occur after the entry of this Consent Order;
- (c) Seek relief for violations, which occur after the date of entry of this Consent Order, including violations of this Consent Order;
- (d) Seek relief for contamination that is discovered by Ohio EPA after the date of the entry of this Consent Order.

V. INJUNCTIVE RELIEF

5. Defendants are ordered and enjoined to comply with all applicable provisions of the Ohio hazardous waste laws and rules as set forth in R.C. Chapter 3734 and O.A.C. Chapters 3745-50 through 3745-69.

VI. PAYMENT PURSUANT TO R.C. § 3734.13

6. Defendants are ordered and enjoined to pay to the State of Ohio, pursuant to §3734.13 Sixty-Five Thousand Dollars (\$65,000.00). This amount shall be paid by delivering to Plaintiff, c/o Matt Sanders, Administrative Assistant, or his successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check in that amount, payable to the order of "Treasurer, State of Ohio" within ten (10) days from the date of entry of this Consent Order. This payment shall be deposited into the hazardous waste clean-up fund created by R.C. § 3734.28.

VII. STIPULATED PENALTIES

7. If Defendants fail to make the payments required pursuant to Section VI above, Defendants are immediately and automatically liable for and are ordered and enjoined to shall pay to Plaintiff immediately a stipulated penalty as follows:

- (a) For each day of each failure to make a payment, up to thirty (30) days after payment is due-200 Dollars (\$200.00).
- (b) For each day of each failure to make a payment, from thirty-one (31) to sixty (60) days after payment is due-400 Dollars (\$400.00)

(c) For each day of each failure to make a payment, over sixty (60) days after a requirement is due to be met-1000 Dollars (\$1000.00).

8. Defendants are ordered and enjoined to pay any required stipulated penalty by delivering to Plaintiff, c/o Matthew Sanders, or his successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check in the amount of the stipulated penalty, payable to the order of "Treasurer, State of Ohio." This penalty shall be deposited into the hazardous waste clean-up fund created by R.C. Section 3734.28.

9. The payment of stipulated penalties by Defendants and the acceptance of such stipulated penalties by Plaintiff pursuant to this Article shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to R.C. Chapter 3734, including civil penalties under R.C. §3734.13, or to otherwise seek judicial enforcement of this Consent Order, for the same violation for which a stipulated penalty was paid or for other violations.

VIII. RETENTION OF JURISDICTION

10. This Court will retain jurisdiction of this action for the purpose of enforcing this Consent Order.

IX. COSTS

11. Defendants are hereby ordered to pay the court costs of this action.

X. ENTRY OF CONSENT ORDER BY CLERK

12. Upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three days of entering the order upon the journal, the clerk is directed to serve upon all parties notice of the order and its date of entry upon the journal and note the service in the appearance docket.

XI. AUTHORITY TO ENTER INTO THE CONSENT ORDER

13. Each signatory for a corporation represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof, and that he/she submits with this Consent Order an authenticated and certified resolution from the corporation establishing that he/she is so empowered.

SIGNED:

J. Meagher
JUDGE MEAGHER

CLARK COUNTY
COURT OF COMMON PLEAS

Aug 2 9 24 AM '95
CLERK OF COURT

FILED

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

By:

Homer Martin Reed
By HOMER MARTIN REED

Harry C. Denune
HARRY C. DENUNE

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STATE OF OHIO:

SS.

COUNTY OF CLARK:

Helen Coil, being first duly cautioned and sworn, deposes and says:

1. That she is the Secretary of Dixie Distributing Company, a corporation organized under the laws of the State of Ohio.

2. That on July 24, 1995, the director of Dixie Distributing Company did take such actions and adopt such resolutions as are described in the Minutes of the Directors attached hereto.

3. That the copy of the Minutes of the Directors attached hereto is a true and accurate copy of the original.

Further affiant saith naught.

Helen Coil

Helen Coil

Sworn to and subscribed in my presence this 24th. day of July, 1995.

Blanche G. Rodgers

Notary Public Blanche G. Rodgers