

IN THE COURT OF COMMON PLEAS
FULTON COUNTY, OHIO

FILED
FULTON COUNTY
COURT OF COMMON PLEAS
JUL 9 1991
Mary Stapp
CLERK

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

Plaintiff,

vs.

FULTON INDUSTRIES, INC.
135 E. Linfoot Street
Wauseon, Ohio 43567-0377

Defendant.

:CASE NO. 91CV134

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:JUDGE

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:CONSENT ORDER BETWEEN

:THE STATE OF OHIO AND

:FULTON INDUSTRIES

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1. The Plaintiff, State of Ohio, on relation of its Attorney General Lee Fisher ("State" or "Plaintiff"), having filed the Complaint in this action against Defendant Fulton Industries, Inc. (hereinafter "Fulton" or "Defendant") at the request of the Director of Environmental Protection ("OEPA" or "Ohio EPA"), to enforce the State of Ohio's hazardous waste laws and the rules promulgated thereunder concerning Defendant's hazardous waste handling, storage, treatment and/or disposal practices at its facility located at 135 East Linfoot Street, Wauseon, Fulton County, Ohio (hereinafter the "Facility"), and Plaintiff and Defendant, having consented to entry of this Order;

2. 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, ADJUDGED and DECREED as follows:

I. PERSONS BOUND

3. The provisions of this Consent Order shall apply to and be binding upon Defendant Fulton, its agents, officers, employees, assigns, successors in interest and those persons in active concert or participation with Defendant. Defendant shall provide a copy of this Consent Order to all current and future employees of Fulton and to any independent contractor employed by Defendant who are to perform work required under this Consent Order or to handle, store, treat and/or dispose of wastes generated by Fulton.

II. SATISFACTION OF LAWSUIT

4. Compliance with the terms of this Consent Order shall constitute full satisfaction of civil liability by Defendant Fulton for all claims alleged against Defendant in the Complaint. Defendant denies the allegations of the Complaint, and nothing herein shall be construed as the admission of the truth of any such allegations. Nothing in this Consent Order shall be construed to either limit the authority of the State of Ohio to seek relief, or relieve the Defendant from, liability for claims or conditions not alleged in the Complaint, including violations or conditions which occur after the filing of the Complaint or which involve locations other than the facility. Furthermore, nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to undertake any action against any person, including Defendant, to eliminate or mitigate conditions at the facility arising after the date hereof which may present a threat to the

public health, welfare or the environment, or to seek relief for claims or conditions relating to any contamination of waters of the State caused by conditions at Defendant's facility that occurred prior to the date of filing of this Consent Order.

III. JURISDICTION AND VENUE

5. 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 Fulton under Chapter 3734. of the Ohio Revised Code ("O.R.C.") and the rules promulgated thereunder. Venue is proper in this Court.

IV. INJUNCTIVE RELIEF

6. Immediately upon the entry of this Consent Order, Defendant Fulton is permanently enjoined and ordered to comply with all applicable provisions of O.R.C. Chapter 3734. and all applicable rules promulgated thereunder, except for O.A.C. Rules 3745-65-16 and 3745-65-52. The Defendant is also permanently enjoined and ordered to refrain from engaging in any future storage, treatment and/or disposal of hazardous waste at the facility without first obtaining, as may be required by law, a hazardous waste facility installation and operation permit pursuant to O.R.C. Chapter 3734.

7. Defendant Fulton is enjoined and ordered to submit to Ohio EPA, within forty-five (45) days of entry of this Order, documentation demonstrating compliance with O.A.C. Rule 3745-65-16.

8. Defendant Fulton is enjoined and ordered to submit to Ohio EPA, within forty-five (45) days of entry of this Order, documentation demonstrating compliance with O.A.C. Rule 3745-65-52.

9. Upon such demonstration, Defendant is permanently enjoined and ordered to maintain compliance with O.A.C. Rule 3745-65-16. Upon such demonstration, Defendant is permanently enjoined and ordered to maintain compliance with O.A.C. Rule 3745-65-52.

V. CIVIL PENALTY

10. Defendant Fulton is ordered to pay to the State of Ohio a civil penalty of Twenty-Six Thousand Dollars (\$26,000.00). The penalty shall be paid by delivering to counsel for Plaintiff, or his/her successor, a certified check payable to the order of "Treasurer, State of Ohio" in the amount of Thirteen Thousand Dollars (\$13,000.00) within thirty (30) days from the date of entry of this Consent Order, and by delivering to counsel for Plaintiff, or his/her successor, a certified check payable to the order of "Treasurer, State of Ohio" in the amount of Thirteen Thousand Dollars (\$13,000.00) within sixty (60) days from the date of entry of this Consent Order. Both certified checks shall be paid into the Hazardous Waste Clean-Up Fund created by O.R.C. Section 3734.28.

VI. STIPULATED PENALTIES

11. In the event that Defendant Fulton violates any of the terms of Paragraphs 7, 8 and 10 of this Consent Order Defendant shall, immediately and automatically, be liable for and shall

pay stipulated penalties according to the following schedule. For each day of each violation or failure to meet a requirement, up to thirty (30) days - Three Hundred Dollars (\$300.00) per day per requirement not met. For each day of each violation or failure to meet a requirement, from thirty-one (31) to sixty (60) days - One Thousand Dollars (\$1000.00) per day per requirement not met. For each day of each violation or failure to meet a requirement, from sixty-one (61) to ninety (90) days - One Thousand Five Hundred Dollars (\$1500.00) per day per requirement not met. For each day of each violation or failure to meet a requirement, over ninety (90) days - Two Thousand Five Hundred Dollars (\$2,500.00) per day per requirement not met. Any payment required to be made pursuant to Section VI of this Consent Order shall be paid upon demand by certified check made payable to "Treasurer, State of Ohio," which check shall be delivered by mail, or otherwise, to David G. Cox or his successor, at his office at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street - 25th Floor, Columbus, Ohio 43266-0410, within thirty (30) days of the violation or failure to meet the requirement of this Consent Order. This penalty shall be paid into the Hazardous Waste Clean-Up Fund created by ORC Section 3734.28.

VII. RETENTION OF JURISDICTION

12. The Court will retain jurisdiction of this action for the purpose of overseeing Defendant Fulton's compliance with this Consent Order and O.R.C Chapter 3734. and the rules adopted thereunder.

VIII. INSPECTIONS

13. Defendant Fulton is ordered to allow representatives of the Ohio EPA, upon proper identification, to enter upon Defendant's facility at any reasonable time for purposes of, including but not limited 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 the rules promulgated thereunder. Nothing in this Order shall limit the rights of the Ohio EPA or U.S. EPA to conduct regular and inspections or investigations pursuant to statute, regulation or permit.

IX. NOTICE

14. Any submission to the Ohio EPA as required by this Consent Order unless otherwise indicated shall be delivered to:

- a. Ohio EPA
Northwest District Office
1035 Devlac Grove Drive
Bowling Green, Ohio 43402
Attn: Janet Leite or her successor

- b. Ohio EPA
Division of Solid and Hazardous Waste Management
P.O. Box 1049
1800 WaterMark Drive
Columbus, Ohio 43266-0149
Attn: Pam Allen or her successor

X. COURT COSTS

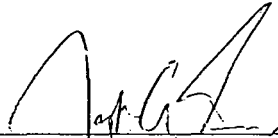
15. Defendant Fulton shall pay the court costs of this action.


Date:

7.9.91

JUDGE, FULTON COUNTY COURT OF
COMMON PLEAS

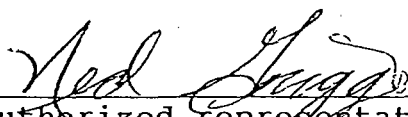
LEE FISHER
ATTORNEY GENERAL OF OHIO


JOSEPH A. GREGG
Eastman & Smith
800 United States Building
Toledo, Ohio 43604-1141


DAVID G. COX
Assistant Attorney General
Environmental Enforcement
Section
30 East Broad Street - 25th
Floor
Columbus, Ohio 43266-0410
(614) 466-2766

Attorney For Defendant
Fulton Industries

Attorney for Plaintiff
State of Ohio

 V.P. Mfg.
Authorized representative of
Fulton Industries

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