

FILED

JUL 8 2:37 P.M. '97

IN THE COURT OF COMMON PLEAS
LAWRENCE COUNTY, OHIO

STATE OF OHIO, *ex rel.*
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO,

CASE NO. 097-245

JUDGE

Plaintiff,

vs.

IRONTON IRON, INC.
2520 South Third Street
Ironton, Ohio 45638,

CONSENT ORDER

Defendant.

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio by its Attorney General Betty D. Montgomery (hereinafter "Plaintiff") and Defendant Ironton Iron, Inc. (hereinafter "Defendant") having 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 both personal and subject matter jurisdiction over Defendant. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 6111 of the Ohio Revised Code and the rules promulgated thereunder. Venue is proper in this Court.

II. PERSONS BOUND BY THE ORDER

2. All terms and provisions of this Consent Order shall apply to and be binding upon Defendant and its assigns, successors in interest, agents, representatives, servants, employees, officers, directors, contractors, consultants, subsidiaries or divisions, and/or all persons, firms,

or corporations who are or will be acting in concert or in privity with the Defendant. Defendant shall provide a copy of this Consent Order to each contractor it employs to perform work itemized herein.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant has discharged industrial waste and other wastes in such a manner as to result in violations of the water pollution laws of the State of Ohio. Defendant denies the violations of law and substantive facts alleged in the Complaint. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for the claims under such laws as alleged in the Complaint against Defendant. Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint. Similarly, 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 which may present a threat to the public health, welfare or the environment.

IV. PERMANENT INJUNCTION

4. Defendant is hereby immediately and permanently enjoined and ordered to comply with all applicable provisions of Chapter 6111 of the Ohio Revised Code and the rules promulgated thereunder. Defendant is also permanently enjoined and ordered to comply with Ohio NPDES Permit No. 01D00009*DD and any renewals and modifications of that permit.

V. OTHER INJUNCTIVE RELIEF

5. On October 7, 1996, Defendant obtained a permit to install (PTI) a continuous pH monitor at Defendant's Outfall 009, which has not yet been installed. Defendant shall install and operate this monitor as set forth in the following paragraph.

6. Within sixty (60) days of the Court's entry of this Consent Order, Defendant shall install the continuous pH monitor pursuant to the PTI. Immediately after installation of the monitor pursuant to the PTI, Defendant shall begin taking daily readings of pH and reporting the results monthly to the Ohio EPA in accordance with Ohio NPDES Permit No. 01D00009*DD and any renewals and modifications of that permit. Further, Defendant shall maintain the pH levels in accordance with Ohio NPDES Permit No. 01D00009*DD and any renewals and modifications of that permit and Section 401.17 of Title 40 of the Code of Federal Regulations (40 CFR §401.17), except where excursions are permitted pursuant to 40 CFR §401.17.

VI. CIVIL PENALTY

7. It is hereby ordered that Defendant shall pay to the State of Ohio a civil penalty of Two Hundred Seventy-Two Thousand One Hundred Three Dollars (\$272,103.00). This civil penalty shall be paid by certified check for that amount, made payable to "Treasurer, State of Ohio", which check shall be delivered by mail, or otherwise, to Matthew Sanders, Administrative Assistant, or his successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, within forty-five (45) days of the Court's entry of this Consent Order.

VII. STIPULATED PENALTIES

8. In the event that Defendant fails to meet any of the notification requirements specified in Part III of its Ohio NPDES Permit No. 01D00009*DD and any renewals and modifications of that permit, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty for each failure to notify according to the following payment schedule:

(a) for each day of each failure to meet each requirement, up to thirty (30) days -- Two Hundred Fifty Dollars (\$250.00) per each day for each requirement not met; (b) for each day of each failure to meet each requirement, from thirty-one (31) to sixty (60) days -- Three Hundred Fifty Dollars (\$350.00) per day for each requirement not met; (c) for each day of each failure to meet each requirement, from sixty-one (61) to ninety (90) days -- Five Hundred Dollars (\$500.00) per each day for each requirement not met; (d) for each day of each failure to meet each requirement, from ninety (90) to one hundred twenty (120) days -- Seven Hundred Fifty Dollars (\$750.00) per each day for each requirement not met; (e) for each day of each failure to meet each requirement, over one hundred twenty (120) days -- One Thousand Dollars (\$1000.00) per each day for each requirement not met.

9. In the event that Defendant fails to meet any of the requirements of this Consent Order set forth in paragraphs four (4), five (5) and six (6), including, but not limited to, those requirements which relate to effluent limitations, monitoring, and general conditions, as those requirements are specified in Part I through Part III of its Ohio NPDES Permit No. 01D00009*DD and any renewals and modifications of that permit, but not those notification requirements specified in Part III of such permit, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty for each violation according to the following payment schedule:

(a) for each day of each failure to meet each requirement, up to thirty (30) days -- Two Hundred Dollars (\$200.00) per each day for each requirement not met; (b) for each day of each failure to meet each requirement, from thirty-one (31) to sixty (60) days -- Four Hundred Fifty Dollars (\$450.00) per day for each requirement not met; (c) for each day of each failure to meet each requirement, from sixty-one (61) to ninety (90) days -- One Thousand Dollars (\$1,000.00) per each day for each requirement not met; (d) for each day of each failure to meet each requirement, from ninety (90) to one hundred twenty (120) days--Two Thousand Five Hundred Dollars (\$2,500.00) per each day for each requirement not met; (e) for each day of each failure to meet each requirement, over one hundred twenty (120) days -- Three Thousand Five Hundred Dollars (\$3,500.00) per each day for each requirement not met.

10. Any payment required to be made under the provisions of paragraphs eight (8) and nine (9) of this Consent Order shall be made by delivering to Plaintiff's counsel, in the manner provided for in paragraph seven (7) of this Consent Order, within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, a certified check or checks for the appropriate amount(s), made payable to the order of "Treasurer, State of Ohio".

VIII. TERMINATION OF STIPULATED PENALTIES

11. The stipulated penalties provisions of paragraphs eight (8), nine (9) and ten (10) of this Consent Order may be terminated only after Defendant has paid all penalties required by this Consent Order, is in compliance with the Other Injunctive Relief section of this Consent Order, and has achieved and maintained compliance with all terms and conditions of its Ohio NPDES Permit No. 01D00009*DD and any renewals or modifications thereof for a period of twenty-four (24) consecutive months. For purposes of this Consent Order only, the parties agree

that the twenty-four (24) consecutive month period shall begin on the date which Defendant begins taking daily readings of pH with the continuous pH monitor installed in accordance with paragraph six (6) of this Consent Order. If during the twenty-four (24) consecutive months Defendant fails to comply with any term and/or condition of its NPDES Permit No. 01D00009*DD and any renewals or modifications thereof, the twenty-four (24) consecutive months will begin anew on the first date after such failure that the Defendant is back into compliance with the final effluent limitations contained in its NPDES Permit No. 01D00009*DD, along with the other terms and conditions of said permit, and any renewals or modifications thereof. Any of Defendant's subsequent failures to maintain compliance for twenty-four (24) consecutive months with the final effluent limitations contained in NPDES Permit No. 01D00009*DD, along with the other terms and conditions of said permit, and any renewals or modifications thereof, shall be treated in the same manner as above, with the twenty-four (24) consecutive months beginning anew from the date Defendant comes back into compliance.

12. Termination of the stipulated penalty provisions of paragraphs eight (8), nine (9) and ten (10) of this Consent Order shall only be by order of the Court, upon application by any party, and upon a demonstration that the conditions outlined in paragraph eleven (11) of this Consent Order have been met.

IX. ATTORNEY GENERAL'S ENFORCEMENT COSTS

13. For Plaintiff's Attorney General's enforcement costs in investigating and prosecuting this case, Defendant shall reimburse the Attorney General's Office in the amount of Thirteen Thousand Dollars (\$13,000.00). This reimbursement shall be paid by delivering a certified check for that amount payable to the order of "Treasurer, State of Ohio" within seven (7)

days of Court's entry of this Consent Order in the manner provided for in paragraph seven (7) of this Consent Order.

X. RETENTION OF JURISDICTION

14. The Court will retain jurisdiction of this action for the purpose of enforcing Defendant's compliance with this Consent Order.

XI. COURT COSTS

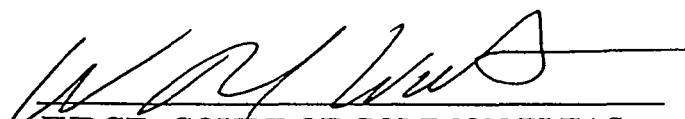
15. Defendant is hereby ordered to pay the costs of this action.

XII. ENTRY OF CONSENT ORDER AND FINAL JUDGEMENT BY CLERK

16. The parties agree and acknowledge that final approval by the Plaintiff and Defendant and entry of this Consent Order is subject to the requirement of 40 CFR §123(d)(1)(iii), which provides for notice of the lodging of this Consent Order, opportunity for public comment, and the consideration of any public comment. Both the Plaintiff and Defendant reserve the right to withdraw this Consent Order based upon comments received during the public comment period.

17. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

IT IS SO ORDERED:



JUDGE, COURT OF COMMON PLEAS,
LAWRENCE COUNTY, OHIO

7/8/99

DATED

Approved:

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

IRONTON IRON, INC.

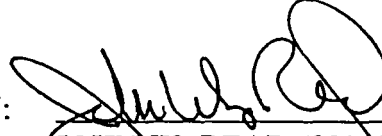
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