

FILED  
PREBLE COUNTY, OHIO

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IN THE COURT OF COMMON PLEAS  
PREBLE COUNTY, OHIO

*[Signature]*  
CLERK OF COURTS

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

*Plaintiff,*

vs.

LILLY-RAM INDUSTRIES  
119 E. Dayton Street  
West Alexandria, Ohio

*Defendant.*

: CASE NO.  
:  
: JUDGE  
:  
: CONSENT ORDER BETWEEN  
: THE STATE OF OHIO AND  
: LILLY-RAM INDUSTRIES

OHIO  
ATTY GENERAL  
FEB 3 11 02 AM '92  
ENVIRONMENTAL  
ENFORCEMENT

The Plaintiff, State of Ohio, ex rel. Lee Fisher Attorney General of Ohio ("State" or "Plaintiff"), having filed the Complaint in this action against Defendant Lilly-Ram Industries (hereinafter "Lilly") 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 generation, handling, storage, treatment and/or disposal practices at its former facility located at 119 E. Dayton Street, West Alexandria, Preble County, Ohio (hereinafter the "Facility"), and Plaintiff and Defendant, having consented to entry of this Order;

**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

1. The provisions of this Consent Order shall apply to and be binding upon Defendant Lilly, 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 each consultant or contractor employed to perform work referenced herein. Defendant shall also provide a copy of this Consent Order to all current and future employees of Lilly, and to any independent contractor, employed by Defendant to perform work required under this Consent Order or to handle, store, treat and/or dispose of wastes generated by Lilly at the facility until such time as certification is submitted to the Ohio EPA, pursuant to Ohio Administrative Code ("O.A.C.") Rule 3745-66-15, that the Facility has been closed in accordance with the State of Ohio's hazardous waste laws and the rules promulgated thereunder and the specifications in the closure plan as approved by the Ohio EPA.

## II. SATISFACTION OF LAWSUIT

2. Compliance with the terms of this Consent Order shall constitute full satisfaction of civil liability by the Defendant for all claims alleged against Defendant in the Complaint. 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 including but not limited to any relief pursuant to O.R.C. Section 3734.20 and any relief pursuant to the Comprehensive Environmental Response, Compensation, And Liability Act, 42 U.S.C. 9601. et. seq.

### III. JURISDICTION AND VENUE

3. 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 under Chapter 3734. of the Ohio Revised Code ("ORC") and the rules promulgated thereunder. Venue is proper in this Court.

### IV. CLOSURE

4. Defendant Lilly is enjoined and ordered to fully implement the closure plan, as approved by the Ohio EPA on April 19, 1991, in accordance with O.A.C. Rules 3745-66-10 through 3745-66-20, and to certify completion of closure in accordance with O.A.C. Rule 3745-66-15. The closure plan approved by Ohio EPA on April 19, 1991, and all subsequent approved amendments thereto, shall be incorporated into this Consent Order as if fully re-written herein.

**V. INJUNCTIVE RELIEF**

5. Defendant Lilly is hereby permanently enjoined and ordered to comply with O.R.C. Chapter 3734. and the rules promulgated thereunder.

6. Defendant is also permanently enjoined and ordered to refrain from engaging in any future storage, treatment or disposal of hazardous waste 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 Lilly has removed all waste drums and ceased production at the facility. Until such time as Defendant Lilly certifies to the Ohio EPA, pursuant to O.A.C. Rule 3745-66-15, that the facility has been closed in accordance with the specifications in the approved closure plan, the Defendant is hereby enjoined and ordered to comply with the following rules:

- a) O.A.C. Rule 3745-66-42;
- b.) O.A.C. Rule 3745-66-43;
- c.) O.A.C. Rule 3745-66-47;
- d.) O.A.C. Rule 3745-65-14;
- e.) O.A.C. Rule 3745-65-15;
- f.) O.A.C. Rule 3745-65-73;
- g.) O.A.C. Rule 3745-65-74;
- h.) O.A.C. Rule 3745-65-75.

**VI. CIVIL PENALTY**

8. Defendant Lilly is Ordered to pay to the State of Ohio a civil penalty of Forty-Five Thousand Dollars (\$45,000.00).

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" for that amount within forty-five (45) days from the date of entry of this Consent Order and shall be paid into the Hazardous Waste Clean-Up Fund created by O.R.C. 3734.28.

**VII. STIPULATED PENALTIES**

9. In the event that Defendant Lilly violates any of the terms of this Consent Order with the exception of paragraph 5 above, including any milestone requirement in the closure plan schedule, 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 - Five Hundred Dollars (\$500.00) per day. For each day of each violation or failure to meet a requirement, from thirty-one (31) to sixty (60) days - One Thousand Dollars (\$1,000.00) per day. 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 (\$1,500.00) per day. 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. Any payment required to be made pursuant to Section VII of this Consent Order shall be paid 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 forty-five (45) 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 3734.28.

**VIII. POTENTIAL FORCE MAJEURE**

10. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Defendant Lilly shall notify the Ohio EPA, Southwest District Office, in writing within (10) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendant to prevent or minimize the delay and the timetable by which measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

11. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendant Lilly may raise that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and the Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such

a defense is at the time that an enforcement action, if any, is commenced by the Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant shall rest with Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Defendant or serve as a basis for an extension of time under this Consent Order. Failure by Defendant to comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendant's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one compliance date based on a particular incident does not mean that Defendant qualifies for an extension of a subsequent compliance date or dates. Defendant must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order without a Force Majeure Clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

#### **IX. RETENTION OF JURISDICTION**

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

## X. INSPECTIONS

13. Defendant Lilly is Ordered to allow representatives of the Ohio EPA, upon proper identification, to enter upon Defendant's Facility at any reasonable time for the following purposes, 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 the 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.

## XI. NOTICE

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

- a. Ohio EPA  
Southwest District Office  
40 South Main Street  
Dayton, Ohio 45402  
Attn: David Combs or his 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

## XII. TERMINATION

15. Within thirty (30) days after Defendant Lilly determines it has fully complied with all of the requirements of this Consent Order, it shall submit to Plaintiff a certification of compliance. If Ohio EPA concurs that



Defendant has fully satisfied the requirements of this Consent Order, the parties shall file a joint motion with the Court to terminate this Consent Order. Upon approval of the Court, this Consent Order and the obligations hereunder shall terminate.

16. If Plaintiff does not agree that Defendant Lilly has complied with and/or fully satisfied the requirements of this Consent Order, Defendant Lilly may file a motion pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure requesting that the Court terminate this Order. The Plaintiff reserves all rights to respond to any motion to terminate that Defendant may file.

**XIII. COURT COSTS**

17. Defendant Lilly shall pay the court costs of this action.

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE, PREBLE COUNTY COURT OF  
COMMON PLEAS

LEE FISHER  
ATTORNEY GENERAL OF OHIO



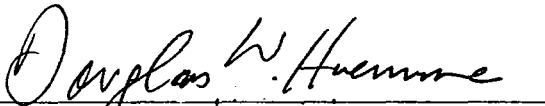
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On Behalf of  
Lilly-Ram Industries  
Douglas W. Huemme, Chairman

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