

IN THE  
COURT OF COMMON PLEAS  
STARK COUNTY, OHIO

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

CASE NO. 1993 CV 00287

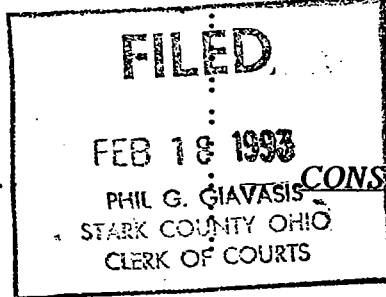
JUDGE *Klide*

Plaintiff,

v.

MCA SIGN COMPANY, *et al.*

Defendants.



CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio ("State") by its Attorney General, Lee Fisher, and Defendants MCA Sign Company and Brian Mollet (hereinafter referred to collectively as "Defendants") 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

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 Defendants under Chapter 3734. of the Ohio Revised Code ("RC"), and venue is proper in this Court.

II. PARTIES

The provisions of this Consent Order shall apply to and be binding upon the parties to this action, their agents,

officers, employees, assigns, stockholders, board of directors, successors in interest, heirs, legatees, and any person acting in concert or privity with any of them. Defendants are ordered to provide a copy of this Consent Order to each general contractor and/or consultant they employ to perform the work itemized herein. Defendants are also ordered to require each general contractor and/or consultant to provide a copy of this Consent Order to each of its subcontractors and/or subconsultants for such work.

### III. SATISFACTION OF LAWSUIT

A. The State alleges in its Complaint that Defendants own and/or operate a manufacturing plant for printed materials located north-northwest of Walnut Road and west of First Street, S.W., Massillon, Stark County, Ohio (hereinafter referred to as the "First Street facility") in such a manner as to result in numerous violations of the hazardous waste laws of the State of Ohio, *i.e.*, RC Chapter 3734. and the rules adopted thereunder.

B. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims alleged in the Complaint.

C. The signing of this Consent Order by Defendants shall not be construed as an admission of the allegations contained in the State's Complaint.

D. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief for violations which occur after the filing of the Complaint, or not alleged

in the Complaint, regardless of when said violations occurred.

E. Nothing in this Consent Order shall be construed to limit the State from requiring Defendants, pursuant to the provisions of RC Chapter 3734. and the rules adopted thereunder, and/or any federal law, to initiate appropriate corrective action to address contamination of the groundwater, surface water and/or soils at the First Street facility, or to recover costs incurred by the State for such remediation to which the State is entitled pursuant to state and/or federal law.

#### IV. RIGHT OF ENTRY

A. Defendants acknowledge that the State, its agents and employees, are authorized by law to enter into and onto the Defendants' First Street facility, without a search warrant, to inspect the facility's operations, to take soil, water and other samples, to interview employees, and/or to observe Defendants' conducting the work required by this Consent Order, and agree to, and are ordered to refrain from any conduct that would interfere with the performance of such regulatory duties.

B. Nothing in this Consent Order shall be construed to limit the State's statutory or permit authority under RC Chapter 3734. and the rules adopted thereunder to conduct inspections, surveys and/or take samples, and/or to review facility records.

#### V. EFFECT UPON OTHER ACTIONS

Nothing in this Consent Order shall be construed to relieve Defendants of the obligation to comply with applicable federal,

state or local statutes, regulations or ordinances, or shall constitute a waiver or release of any right, remedy, defense or claim against Defendants with regard to any person not a party to this Consent Order.

**VI. PERMANENT INJUNCTION**

Defendants are hereby permanently enjoined and ordered to immediately comply with the requirements of RC Chapter 3734. and the rules adopted thereunder.

**VII. OTHER INJUNCTIVE RELIEF**

A. Defendants are enjoined and ordered to close the parking lot/wastepile area, located in the area northeast of the MCA Sign Company building directly adjacent to First Street, S.W., at the First Street facility in accordance with Rules 3745-66-10 through 3745-66-20 of the Ohio Administrative Code ("Code").

B. Within thirty (30) days of the Court's entry of this Consent Order, Defendants are enjoined and ordered to submit to the Ohio EPA a closure plan for the parking lot/wastepile area, located in the area northeast of the MCA Sign Company building directly adjacent to First Street, S.W., at the First Street facility that meets the requirements of OAC Rule 3745-66-12. The closure plan shall include, *inter alia*, a schedule of compliance. In addition, the closure plan shall include a site specific hydrogeological survey as set forth in the Attachment to this Consent Order. In the event that the survey reveals groundwater contamination resulting from the improper waste disposal practices of Defendants or if during closure, soil

contamination is detected at the soil/groundwater interface, Defendants are enjoined and ordered to amend the closure plan to include groundwater monitoring in accordance with OAC Rules 3745-65-90 through 94. In the absence of a showing of such contamination, additional groundwater monitoring will not be required. Defendants are enjoined and ordered to commence implementation of the approved closure plan within five (5) days after receipt of written approval from the Ohio EPA and to complete implementation of the approved closure plan in accordance with the time frames, i.e., schedule of compliance, contained therein and OAC Rule 3745-66-13.

C. In the event that the Ohio EPA determines that Defendants failed to clean close the First Street facility, Defendants are enjoined and ordered to conduct post closure care, in accordance with OAC Rule 3745-66-17, of the parking lot/wastepile area, located in the area northeast of the MCA Sign Company building directly adjacent to First Street, S.W., at the First Street facility for a period of thirty (30) years from the date of the Ohio EPA's determination.

D. 1. Defendants are enjoined and ordered to comply with OAC Rules 3745-66-42, 3745-66-43, 3745-66-46 and 3745-66-47 as they pertain to the closure of the parking lot/wastepile area, located in the area northeast of the MCA Sign Company building directly adjacent to First Street, S.W., at the First Street facility. Within thirty (30) days of the Court's entry of this Consent Order, Defendants are enjoined and ordered to submit to the Ohio EPA, pursuant to Article X, documentation of compliance with said rules.

2. In the event that the Ohio EPA determines that Defendants failed to clean close the parking lot/wastepile area, located in the area northeast of the MCA Sign Company building directly adjacent to First Street, S.W., at the First Street facility Defendants are enjoined and ordered to comply with OAC Rules 3745-66-44, 3745-66-45, 3745-66-46 and 3745-66-47. Within thirty (30) days of the Ohio EPA's determination that Defendants failed to clean close the First Street facility, Defendants are enjoined and ordered to submit to the Ohio EPA, pursuant to Article X, documentation of compliance with said rules.

E. Defendants are immediately, *i.e.*, upon the Court's entry of this Consent Order, enjoined and ordered to clearly mark the date upon which each period of accumulation begins on each container of hazardous waste at the First Street facility, and to ensure that said date is visible for inspection in accordance with OAC Rule 3745-52-34(A)(2).

F. Defendants are immediately, *i.e.*, upon the Court's entry of this Consent Order, enjoined and ordered to maintain their hazardous waste records at the First Street facility in accordance with OAC Rule 3745-52-40.

G. Defendants are immediately, *i.e.*, upon the Court's entry of this Consent Order, enjoined and ordered to maintain the proper aisle space for the hazardous waste storage area at the First Street facility in accordance with OAC Rule 3745-65-35.

H. Defendants are immediately, *i.e.*, upon the Court's entry of this Consent Order, enjoined and ordered to make the

appropriate arrangements/agreements with local authorities for possible emergencies related to the handling of hazardous waste at the First Street facility in accordance with OAC Rule 3745-65-37.

I. Defendants are immediately, *i.e.*, upon the Court's entry of this Consent Order, enjoined and ordered to manage the hazardous waste containers at the First Street facility in accordance with OAC Rule 3745-66-73.

J. Defendants are immediately, *i.e.*, upon the Court's entry of this Consent Order, enjoined and ordered to inspect the hazardous waste storage areas at the First Street facility in accordance with OAC Rule 3745-66-74.

#### VIII. MISCELLANEOUS INJUNCTIVE PROVISIONS

In the event Defendants are notified by the Ohio EPA that any or all of the documents submitted to achieve compliance with Article VII are unsatisfactory in whole or in part, Defendants are enjoined and ordered to amend and submit to the Ohio EPA a revised document, or documents, incorporating all of the required modifications or additions within thirty (30) days after receipt of the Ohio EPA's notification requiring modifications or additions. Where the Director of Environmental Protection approves the revision, Defendants are enjoined and ordered to implement the revised document, or documents, within five (5) days after receiving written approval from the Ohio EPA.

#### IX. POTENTIAL FORCE MAJEURE

In any action to enforce any of the provisions of this

Consent Order, Defendants may raise at that time the question of whether they are entitled to a defense that their conduct was caused by reasons beyond their control such as, by way of example and not limitation, act of God, unusually severe weather conditions, strikes, acts of war or civil disturbances, or orders of any regulatory agency. While the State does not agree that such a defense exists, it is, however, hereby agreed upon by the parties 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. Acceptance of this Consent Order without a *force majeure* clause does not constitute a waiver by Defendants of any rights or defenses they may have under applicable law.

X. REPORTING REQUIREMENT

Unless otherwise stated in this Consent Order, within seven (7) days from the completion date of any task set forth in this Consent Order, Defendants are ordered to submit a written statement identifying whether they have performed the tasks set forth therein and any documentation pertaining to the completion of said tasks to:

1. Director  
Ohio Environmental Protection Agency  
Attn: Manager, Compliance Monitoring  
& Enforcement Section  
Division of Hazardous Waste Management  
1800 WaterMark Drive  
P. O. Box 1049  
Columbus, Ohio 43266-0149; and



2. Ohio Environmental Protection Agency  
Northeast District Office  
Attn: RCRA Group Leader  
Division of Hazardous Waste Management  
2110 East Aurora Road  
Twinsburg, Ohio 44087.

**XI. EFFECT OF CONSENT ORDER**

This Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing hazardous waste facility. Approval for any such construction or modification shall be by permit issued by the Director of Environmental protection or other such permits as may be required by applicable federal, state or local laws, rules or regulations.

**XII. CIVIL PENALTY**

Defendants are ordered to pay to the State, pursuant to RC Section 3734.13(C), a civil penalty of seventy thousand dollars (\$70,000.00). The civil penalty shall be paid by delivering to the State's attorney, and/or his successor, a certified check for the above amount, payable to the order of "Treasurer, State of Ohio", to be deposited into the hazardous waste clean-up fund, within seven (7) days of the Court's entry of this Consent Order.

**XIII. STIPULATED PENALTIES**

A. In the event that Defendants fail to meet any of the provisions of this Consent Order set forth herein, Defendants shall immediately and automatically be liable for payment of a stipulated penalty in accordance with the following payment schedule:

1. For each day of each failure to meet a provision, up to thirty (30) days--five hundred dollars (\$500.00) per day per violation;
2. For each day of each failure to meet a provision, from thirty-one (31) to sixty (60) days--one thousand dollars (\$1,000.00) per day per violation;
3. For each day of each failure to meet a provision, from sixty-one (61) to ninety (90) days--two thousand dollars (\$2,000.00) per day per violation; and
4. For each day of each failure to meet a provision, over ninety (90) days--four thousand dollars (\$4,000.00) per day per violation.

B. Any payment required to be made under the provisions of Paragraph A of this Article are deemed not to be suspended by the Court, in whole or in part, and shall be made by delivering to Plaintiff's attorney, and/or his successor, a certified check, or checks, for the appropriate amounts, within seven (7) days from the date of the failure to meet any requirement of this Consent Order, made payable to "*Treasurer, State of Ohio*".

#### XIV. RETENTION OF JURISDICTION

The Court will retain jurisdiction of this action for the purpose of enforcing the terms and provisions of this Consent Order.

#### XV. COSTS

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

Entered this 18<sup>th</sup> Day of February, 1993.

1st Harry E. Klide  
JUDGE, COURT OF COMMON PLEAS  
STARK COUNTY, OHIO

APPROVED:

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ATTORNEY GENERAL OF OHIO

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Attorney for Defendants  
MCA Sign Company and Brian Mollet

Sam Mollet, Pres. MCA  
SAM MOLLET IV, as the authorized  
representative of Defendant MCA Sign Company

Brian Mollet  
BRIAN MOLLET, individually

1362E.2-12

## ATTACHMENT

Additional site-specific hydrogeological information must be gathered to document the possibility, or lack thereof, of groundwater contamination attributed to the hazardous waste disposal practices at MCA Sign Company's First Street facility. Four (4) borings shall be drilled, one (1) in each direction from, and at the limits of, the waste management area. The depth to the uppermost saturated zone shall be determined. Documentation of the stratigraphy of sediments from the 6 foot mark down to the saturated zone shall be made. Groundwater samples shall be taken from all four (4) borings via a Hydropunch (Edge and Cordry, 1989) or other method approved by the Ohio EPA for evidence of groundwater contamination or lack thereof. In addition, sampling shall be completed for Method 8240 Volatile Organic parameters as well as total lead, total chromium, and total cadmium.

Shallow contamination at the First Street facility may pose a certain risk to human health and/or the environment if it escapes to the Tuscarawas River and/or other discharge points via storm sewers or other preferential pathways--thereby becoming contaminated surface water. MCA Sign Company shall investigate the sewer systems and all known excavated areas at the site to determine the likely routes of preferential contaminant movement and their ultimate discharge points.

The results of the investigations shall be submitted to the Ohio EPA for review and approval. Ground water shall be considered contaminated if non-naturally occurring organics are detected or if inorganic values are detected above background groundwater quality.

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