

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

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

Plaintiff,

vs.

PERMA-FIX OF DAYTON, INC., fka,
CLARK PROCESSING, INC.

Defendant.

CASE NO. 95-3654

JUDGE DENNIS LANGER

FILED
COURT OF COMMON PLEAS
95 DEC -7 AM 10:28
MONTGOMERY CO., OHIO

CONSENT ORDER AND FINAL JUDGMENT ENTRY

Plaintiff, State of Ohio, ex rel. Betty D. Montgomery, Attorney General of Ohio, having filed the Complaint in this action against Defendant to enforce Ohio's hazardous waste laws found in Chapter 3734 of the Revised Code and rules adopted thereunder; and Plaintiff and Defendant having consented to the 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. DEFINITIONS

As used in this Consent Order:

"Background Investigations Program" means the provisions of R.C. §§3734.40 through 3734.47 and rules adopted thereunder.

"Consent Order" or "Order" means this Consent Order.

"Defendant" means Perma Fix of Dayton, Inc., formerly known as Clark Processing Inc.

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

"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

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. The Complaint states a claim upon which relief can be granted.

III. PERSONS BOUND

The provisions of this Consent Order shall apply to and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest and any person acting in concert, privity or participation with them who receives actual notice of this Consent Order whether by personal service or otherwise.

IV. SATISFACTION OF LAWSUIT

1. 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 Defendant to Plaintiff for all claims alleged in the Complaint.

2. Nothing in this Consent Order, including the imposition of stipulated

civil penalties, 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) Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;

V. COMPLIANCE WITH BACKGROUND INVESTIGATION REQUIREMENTS

Defendant is ordered and enjoined to comply with the "Background Investigations Program".

VI. CIVIL PENALTY

Defendant is ordered and enjoined to pay to the State of Ohio a civil penalty in the amount of Thirty-Five Thousand Dollars (~~\$35,000.00~~), payable as follows:

Defendant shall pay Six Thousand Five Hundred Dollars and No Cents (\$6,500.00) to the State within thirty (30) days after entry of this Consent Order. Beginning ninety (90) days after entry of this Consent Order and every ninety (90) days thereafter, Defendant shall pay to the State Two Thousand Three Hundred Twelve Dollars and Fifty Cents (\$2,312.50) for eight such payments until these additional \$2,312.50-payments total Eighteen Thousand Five Hundred Dollars (\$18,500.00). In lieu of payment of the Ten Thousand Dollar (\$10,000) balance of the Thirty-Five Thousand Dollar Civil Penalty, Defendants shall perform the Environmental Improvement Project described in Article VII. Civil penalties shall be paid 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 43266-0410, a certified check in that amount, payable to the order of "Treasurer, State of Ohio" within thirty (30) days from the

date of entry of this Consent Order . This civil penalty shall be deposited into the hazardous waste clean-up fund created by O.R.C. Section 3734.28.

VII. ENVIRONMENTAL IMPROVEMENT PROJECT

1. Defendant is enjoined and ordered to develop and implement an Environmental Improvement Project ("Project") consisting of one or more community service projects to be conducted in Montgomery County where Defendant has a Facility. Defendant shall expend at least Ten Thousand Dollars (\$10,000.00) in execution of the Project.

2. Defendant shall develop the Project in coordination with the Ohio EPA, Southwest District Office and the Solid Waste Management District having jurisdiction over the community or communities in which the Project(s) is (are) conducted. Within sixty (60) days of entry of this Consent Order, Defendant shall submit to Ohio EPA for review and approval, a work plan detailing the proposal for the Project(s). Within thirty (30) days of receipt from Ohio EPA of a written notice of disapproval, listing deficiencies. Defendant shall submit a revised plan addressing the deficiencies noted in the disapproval notice.

3. The work plan shall set forth a schedule of implementation with a completion date of no more than twenty (20) months after approval of the Project(s) by Ohio EPA.

4. Any public notice or advertisement of the Project(s) shall state that Defendant has agreed to conduct the Project pursuant to this Consent Order.

5. Defendant is ordered and enjoined to complete the Project(s) and expend all funds required in connection therewith within twenty (20) months after approval of the Project(s) by Ohio EPA. In the event that Defendant fails to make all expenditures required in this Article within twenty (20) months after approval of the Project(s) by Ohio EPA, Defendant shall pay the unexpended balance to the State of Ohio as a civil penalty in accordance with Article VI of this Consent Order.

VIII. STIPULATED PENALTIES

Defendant Clark Processing agrees to comply with the requirements of Article V of this Consent Order. If Defendant fails to provide the documents and/or information requested pursuant to the Background Investigations Program or otherwise fails to comply with the Background Investigations Program within ten (10) business days after Defendant's receipt of written notice from the State requesting information or such longer time period stated in the written notice, Defendant will be ordered, enjoined, and required to pay to Plaintiff a stipulated penalty of One Hundred Twenty and No/100 Dollars (\$120.00) per day for each day after any violation of any time requirements set forth above. However, nothing in this Consent Order will be construed or will shorten the response time permitted or required under the applicable regulations and statutes in Ohio or limit the remedies or actions the state may take, other than imposing stipulated penalties, within the ten-day or stated longer period.

IX. RETENTION OF JURISDICTION

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

X. COSTS

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

XI. AUTHORITY TO ENTER INTO THE CONSENT ORDER

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:

JUDGE DENNIS LANGER
MONTGOMERY COUNTY
COURT OF COMMON PLEAS

APPROVED:

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

By:

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