

*Copy*  
IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

*Entered*  
*10-10-91*  
*Murray*

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

CASE NO. A 910 2446

JUDGE

*Plaintiff,*

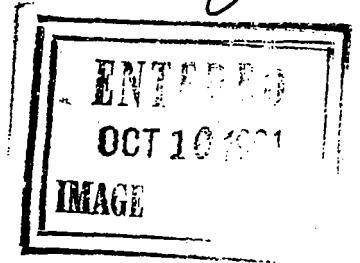
*vs.*

PREMIUM FINISHES, INC.,

*and*

RONALD R. SAVIN,

*Defendants.*



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AGREED PRELIMINARY INJUNCTION BETWEEN THE STATE  
AND PREMIUM FINISHES, INC.

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The State of Ohio by its Attorney General, at the written request of the Director of Environmental Protection, has filed the instant action against Premium Finishes, Inc. ("Premium Finishes" or "PFI") and Ronald R. Savin for violations of Ohio Revised Code ("ORC") Chapters 3734. and 6111. The State and Ronald R. Savin agreed to a Consent Order which was entered by the Judge on September 20, 1991. The State and PFI have reached agreement on the terms of this Agreed Preliminary Injunction.

Therefore, without the taking of any evidence or trial of any issue of law or fact, during the pendency of this action and until further order of this Court, it is hereby **ADJUDGED**. **ORDERED** and **DECREED** as follows:

## I. DEFINITIONS

1. As used in this Injunction, the following terms are defined as follows:

A. "Ohio EPA" or "OEPA" means the Ohio Environmental Protection Agency.

B. "SWDO" means the Southwest District Office of the Ohio EPA.

C. "Site" means the property of Premium Finishes located at 10448 Chester Road, Cincinnati, Ohio 45215 and any other area contaminated or threatened to be contaminated by hazardous waste, industrial waste, or other wastes from the Premium Finishes property.

D. "RI/FS" means Remedial Investigation/Feasibility Study.

E. "SOW" means Statement of Work.

F. "Injunction" means this Agreed Preliminary Injunction.

## II. JURISDICTION AND VENUE

1. The Court has jurisdiction over the parties and the subject matter of this case. Venue is proper in this Court.

## III. PERSONS BOUND

2. The provisions of this Injunction shall apply to and be binding upon PFI, its officers, agents, servants, employees, attorneys, successors and assigns, and those persons in active concert or participation with them who receive actual notice of this Injunction whether by personal service or otherwise.

3. PFI shall provide a copy of this Injunction to each contractor employed to perform the work itemized herein, and each general contractor shall provide a copy of this Injunction to each of its subcontractors for such work.

**IV. RESERVATION OF RIGHTS**

4. The entry of this Injunction is without prejudice to the State's right to seek further relief from this Court, including, but not limited to, further preliminary and/or permanent injunctive relief. This injunction in no way waives or affects any claims the State may have against any entity, including but not limited to Ronald R. Savin.

5. Nothing in this Injunction shall limit the authority of the State to undertake any action against any entity, including PFI, to eliminate or mitigate conditions which may present a threat to the public health, welfare or environment.

6. Nothing in this Injunction shall relieve PFI of its obligation to comply with applicable federal, state or local statutes, regulations, or ordinances.

7. In the event of disapproval of any second submittal under Section VI or VII or any noncompliance with the terms of this Injunction, the State reserves the right to conduct any investigation, remedial or cleanup work at the Site and to recover the costs of such work from PFI.

**V. COMPLIANCE WITH ORC CHAPTERS 6111. AND 3734.  
AND DIRECTOR'S FINDINGS AND ORDERS**

8. PFI is hereby enjoined to fully comply with the Director's Final Findings and Orders issued August 11, 1989 to Premium Finishes, Inc., with the following exception: PFI shall sample on a monthly basis, rather than the weekly basis required in Order number 6.

## VI. WORK TO BE PERFORMED

9. All work performed pursuant to this Section shall be under the direction and supervision of a qualified professional engineer and/or a certified geologist with expertise in groundwater and waste site cleanup. Within 10 days of the employment of any subcontractor or contractor, PFI shall notify Ohio EPA in writing of the identity of such contractor and subcontractors to be used in performing work under this Section.

All submittals required under this Injunction shall, where relevant, be developed in accordance with the National Contingency Plan, 40 CFR Part 300 *et seq.*, as amended, and the most current version of the following guidance documents:

1. Guidance for Conducting Remedial Investigation and Feasibility Studies under CERCLA, Interim Final, OSWER 9355.3-01, October, 1988; EPA/540/G-89/004;
2. Superfund Exposure Assessment Manual, OSWER 9285.5-I, EPA/540/1-88/001, April, 1988;
3. RCRA Groundwater Monitoring Technical Enforcement Guidance Document (TEGD), OSWER 9283.1-2, August, 1988;
4. Remedial Actions for Contaminated Groundwater at Superfund Sites, OSWER 9283.1-2, August, 1988;
5. Data Quality Objectives for Remedial Response Activities, Volume I EPA/540/G-87/004 Example Scenario;
6. ARAR's, Ohio EPA, Division of Emergency and Remedial Response, July, 1991;
7. Guidelines and Specifications for Preparing Quality Assurance Project Plans, Ohio EPA, February, 1990;
8. CERCLA Compliance with Other Laws Manual, OSWER 9234.1-01, March 6, 1988;

9. CERCLA Compliance with Other Laws Manual: Part II, OSWER 9234.1-02, August, 1989;
10. Background Guidance, Ohio EPA, Division of Emergency and Remedial Response, July, 1991;
11. U.S. EPA Integrated Risk Information System (IRIS) Data Base;
12. Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part A), Interim Final, EPA/540/1-89/002, December, 1989;
13. Risk Assessment Guidance for Superfund, Volume II - Environmental Evaluation Manual - Interim Final, OSWER Directive 9285.7-01. EPA/540/1-89/001A, 1989;
14. Exposure Factors Handbook. EPA/600/8-89/043, July, 1989;
15. Health Effects Assessment Summary Tables, DERR 9200 6-303, published quarterly;
16. Ecological Assessments of Hazardous Wastes Sites: A Field and Laboratory Reference, EPA/600/3-89/013, March, 1989;
17. Guidance for Data Usability in Risk Assessment, Interim Final. EPA/540/G-90/008, October, 1990;
18. Guidelines for Carcinogen Risk Assessment. Federal Register, Volume 51, No. 185, September 24, 1986. pp. 33992-34003;
19. Human Health Evaluation Manual, Supplemental Guidance: "Standard Default Exposure Factors", OSWER 9285.6-03, March, 1991; and
20. National Oil and Hazardous Substances Pollution Contingency Plan, Final Rule 40 CFR Part 300, March 8, 1990.

10. Within 45 days of the entry of this Injunction, PFI shall submit to Ohio EPA for approval a Remedial Investigation (RI) Work Plan for the Site which conforms to those portions of the generic RI/FS Statement of Work (SOW) (Attachment 1), which

are relevant to determining the extent, if any, of contamination alleged in paragraph 6 of the Complaint, or water pollution alleged in paragraph 20 of the Complaint. If PFI believes that any portion of the SOW is not relevant, it shall provide a brief explanation in the Work Plan submittal as to why such portion is not relevant.

11. Within 45 days of the entry of this Injunction, PFI shall submit to Ohio EPA for approval a description of the current conditions of the Site, as required by Task 1 of the SOW. PFI may submit this description as part of the Work Plan.

12. Within 45 days of the entry of this Injunction, PFI shall submit to Ohio EPA for approval a report on the pre-investigation evaluation of remedial technologies for the Site, as required by Task 2 of the SOW. PFI may submit this evaluation as part of the Work Plan.

13. PFI shall implement the RI Work Plan upon approval, in accordance with the schedules therein.

14. PFI shall submit to Ohio EPA for comment and approval a draft RI Report in accordance with any schedules contained in the approved Work Plan.

15. Within 45 days of receipt of Ohio EPA's comments on the first draft RI Report, PFI shall submit to Ohio EPA for approval a Final RI Report and, if appropriate, a report on the results of the laboratory and bench scale studies.

16. Within 45 days of Ohio EPA approval of the Final RI Report, PFI shall submit to Ohio EPA for approval a Site specific statement of purpose and a revised description of the current situation based on the results of the RI conducted for the Site.

17. Within 30 days of Ohio EPA approval of the Final RI Report, PFI shall submit to Ohio EPA for approval a Feasibility Study (FS) Work Plan for the Site which conforms to the relevant requirements in the SOW.

18. Within 60 days of Ohio EPA approval of the FS Work Plan, PFI shall submit to Ohio EPA for approval a draft FS Report for the Site.

19. Within 14 days of receipt of Ohio EPA's comments on the draft FS Report, PFI shall submit to Ohio EPA for approval a Final FS Report.

#### **VII. RESUBMITTALS**

20. Every document required to be submitted to Ohio EPA under Section VI is subject to the review and approval of Ohio EPA. If Ohio EPA disapproves part or all of any submittal, PFI shall resubmit the disapproved portion to Ohio EPA in approvable form within 14 days of the date of Ohio EPA's disapproval letter unless Ohio EPA specifies a shorter period of time in that letter. Ohio EPA may impose terms and conditions upon any approval.

### VIII. EXTENSIONS OF TIME

21. Ohio EPA may, for good cause shown, grant PFI an extension of time for any submittal required under Part VI or VII.

### IX. PROJECT COORDINATOR

22. Within 10 days of the entry of this Injunction, PFI shall designate a project coordinator to oversee the work under Section VI and to coordinate with the Ohio EPA project coordinator. To the maximum extent practicable, communications between PFI and Ohio EPA concerning the activities performed under Section VI shall be through the project coordinators.

Without limiting any authority conferred by law on Ohio EPA, the authority of the Ohio EPA project coordinator includes, but is not limited to:

- A. Taking samples in accordance with the terms of the Work Plan required under Part VI, and directing the type, quantity and location of samples to be taken by PFI;
- B. Observing, taking photographs and making such other reports on the progress of the work as the Ohio EPA deems appropriate;
- C. Directing that work stop whenever Ohio EPA determines that activities at the Site may present an imminent and substantial danger to the public health, welfare or environment; and
- D. Reviewing records, files and documents relevant to this Injunction.

23. PFI may change its project coordinator by notifying Ohio EPA in writing at least 7 days prior to the change.



**X. SAMPLING AND DOCUMENT AVAILABILITY**

24. PFI shall make available to OEPA the results of sampling, tests or other data generated by PFI or on their behalf. PFI shall allow split or duplicate samples to be taken by the OEPA of samples collected by PFI. PFI shall notify the OEPA Project Coordinator not less than 30 working days (unless otherwise agreed between the Project Coordinators) in advance of any sample collection.

25. PFI shall preserve during the pendency of this Injunction, and for a minimum of 10 years after its termination, copies of all records and documents within its possession or that of its employees, agents, accountants, contractors or attorneys which relate to work performed under this Injunction. After the 10 year period, PFI shall notify OEPA at least 30 days prior to the destruction of any such documents required to be kept pursuant to this Section. Upon request by OEPA, PFI shall make available to OEPA such records or copies of any such records.

26. PFI shall submit all raw data and all original reports of analytical procedures and results to OEPA by certified mail within 5 business days after PFI receives such raw data and reports from each laboratory involved in the analyses of any samples collected at or near the site.

27. PFI shall submit to OEPA any interpretive reports and written explanations concerning such raw data and original laboratory reports. Such interpretive reports or explanations must be submitted with the original laboratory reports and raw data.

**XI. DEED NOTICE, LAND USE AND CONVEYANCE OF TITLE**

28. PFI shall notify OEPA by registered mail at least 90 calendar days prior to any conveyance or an intent to convey any interest in the Site. Before conveying any such interest, PFI shall place in the deed an appropriate notice as to the condition of the Site.

**XII. INDEMNITY**

29. PFI agrees to indemnify, save and hold harmless OEPA from any and all claims or causes of action arising from, or on account of, acts or omissions of PFI, its officers, employees, receivers, trustees, agents, or assigns, in carrying out any activities pursuant to this Injunction. OEPA shall not be considered a party to and shall not be held liable under any contract entered into by PFI in carrying out the activities pursuant to this Injunction. Consistent with federal, state, and common law, nothing in this Injunction shall render PFI liable for any negligent act or omission of OEPA.

30. PFI shall provide notice to OEPA within 30 days of receipt of any claim which may be the subject of the indemnity in the preceding paragraph, and to cooperate in the defense of any such claim or action against OEPA.

**XIII. REIMBURSEMENT OF COSTS**

31. PFI shall reimburse Ohio EPA for all costs incurred by Ohio EPA in monitoring the performance of the activities and/or work performed by PFI and/or its contractors under this

Injunction and costs incurred in reviewing and commenting on documents regarding performance of activities and/or work. These costs include but are not limited to direct payroll costs (including overtime), indirect or overhead costs, travel costs, contractor costs, sampling costs and laboratory costs. Within 60 days of the end of each calendar year, OEPA may submit to PFI itemized statements of costs of the OEPA for the previous year. Within 60 days of receipt of the itemized statements, PFI shall pay the OEPA costs. If PFI objects to payment of any such costs, it shall state the basis for such objection in writing to OEPA. If OEPA insists on payment of those costs objected to, that matter shall be submitted to the court for resolution. Payment shall be made to the Hazardous Waste Cleanup Fund created by ORC 3734.28 by check payable to "Treasurer, State of Ohio" and shall be forwarded to Michael Mentel, or his successor, in the Ohio EPA Legal Section.

#### **XIV. INSPECTIONS AND ACCESS**

32. OEPA, its employees and agents shall have full access to the Site at all times without the need for any type of warrant for inspection and/or sampling. Nothing herein shall limit the State's statutory authority to inspect and/or sample.

33. To the extent that portions of the Site or areas where work is to be performed are owned by parties other than PFI, PFI shall use its best efforts to obtain voluntary access agreements from the owners, including any agreements necessary to provide access to OEPA and its authorized representatives.

#### XV. MONTHLY PROGRESS REPORTS

34. PFI shall submit written progress reports which describe the activities which have been undertaken during the previous month, and activities which are scheduled for the next month, to OEPA by the tenth day of every month after the entry of this Injunction. At a minimum, these reports shall:

- 1) Identify the Site and activity;
- 2) Describe the status of work at the Site and progress to date;
- 3) Demonstrate the percentage of completion;
- 4) Describe difficulties encountered during the reporting period;
- 5) Describe actions taken to rectify problems;
- 6) Describe activities planned for the next month;  
and
- 7) Identify changes in key personnel.

35. These progress reports shall list target and actual completion dates for each element of activity, including the project completion, and provide an explanation of any deviation from the milestones in the Workplan schedule.

36. These progress reports and any other documents, including correspondence, submitted pursuant to this Injunction shall be sent by certified mail to the following:

Ohio EPA (1 copy)  
P. O. Box 1049  
Columbus, Ohio 43266-0149  
Attn: Technical and Program Support Section, Division  
of Emergency and Remedial Response

Ohio EPA (2 copies)  
Southwest District Office  
40 South Main Street  
Dayton, Ohio 45402  
Attn: Supervisor, Division of Emergency and Remedial  
Response

All correspondence to PFI will be directed to the following:

John Jackson  
England, Hughes, Bell & Co. Ltd.  
Valley Works, Monton Road  
Eccles, Manchester M309HJ  
United Kingdom

Ivan Banks  
10448 Chester Road  
Cincinnati, Ohio 45215

John W. Edwards  
Jones, Day, Reaves & Pogue  
1900 Huntington Center  
Columbus, Ohio 43215

#### **XVI. STIPULATED PENALTIES**

37. Until PFI completes all action as required by this Injunction, PFI shall be liable for and pay the following stipulated civil penalties for the following violations:

a. for each day PFI is late in submitting the monthly report required in Part XIV ("Monthly Progress Reports"), up to ten (10) days - \$250.00 per day, from ten (10) to thirty (30) days - \$500.00 per day, every thirty (30) days - \$1,000.00 per day; and

b. for each day PFI is late in submitting any document as required by Parts VI ("Work to be Performed") and VII ("Resubmittals"), up to ten (10) days - \$500.00 per day, from ten (10) to thirty (30) days - \$1,500.00 per day, over thirty (30) days - \$3,000.00 per day.

38. Any payment required to be made under the provisions of the preceding paragraph shall be made by delivering to Frances L. Figetakis, Assistant Attorney General, or her successor, a cashier's check or checks made payable to "Treasurer, State of Ohio," within forty-five (45) days after occurrence of the violation.

39. This Injunction in no way affects, alters or diminishes the right of the State to pursue further enforcement action and/or penalties for violations of this Injunction.

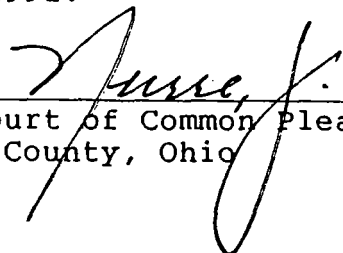
#### **XVII. STAY OF LITIGATION**

40. Upon the entry of this Injunction, the State and PFI agree that all further proceedings between the State and PFI, including discovery, in this case shall be stayed pending further order of this Court. Either party may move to lift this stay.

#### **XVIII. CIVIL PENALTY**

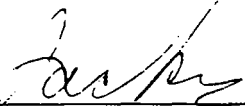
41. Within thirty (30) days of the entry of this Order, Premium Finishes shall pay a civil penalty of thirty thousand dollars (\$30,000.00) to the State of Ohio. Payment shall be made by delivering a certified check or money order to Frances L. Figetakis, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410. The check shall be made payable to "Treasurer, State of Ohio" and shall be credited to the Hazardous Waste Cleanup Fund. This payment shall be in satisfaction of the claims for civil penalty arising out of the State's Complaint.

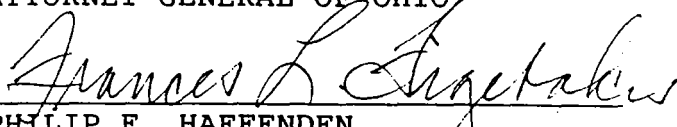
ENTERED THIS 10<sup>th</sup> DAY OF Oct., 1991.


  
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JUDGE, Court of Common Pleas  
Hamilton County, Ohio

HUNTING INDUSTRIAL COATINGS,  
INC.

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

  
\_\_\_\_\_  
JOHN JACKSON  
Authorized Representative  
for Hunting Industrial  
Coatings, Inc., Successor  
In Interest to Premium  
Finishes, Inc.

  
\_\_\_\_\_  
PHILIP E. HAFFENDEN  
FRANCES L. FIGETAKIS  
Assistant Attorneys General  
Office of the Attorney General  
Environmental Enforcement Section  
30 East Broad Street - 25th Floor  
Columbus, Ohio 43266-0410  
Telephone: (614) 466-2766

  
\_\_\_\_\_  
JOHN N. EDWARDS  
Jones, Day, Reaves & Pogue  
1900 Huntington Center  
Columbus, Ohio 43215

Counsel for  
State of Ohio

Counsel for Hunting Industrial  
Coatings, Inc., Successor In  
Interest to Premium Finishes,  
Inc.

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