

IN THE
COURT OF COMMON PLEAS
PICKAWAY COUNTY, OHIO

SHARON K. CLINE
CLERK OF COURTS

CASE NO. 189-COM-000001

STATE OF OHIO, *ex rel.*
ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO,

Plaintiff,

JUDGE WILLIAM AMMER

v.

GEORGE E. STANTON, *et al.*,
dba BIG THREE WELDING,

Defendants.

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio by its Attorney General Lee Fisher and Defendant George E. Stanton (hereinafter referred to as "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

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 ("RC") and venue is proper in this Court.

II. PARTIES

The provisions of this Consent Order shall apply and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest and any

person acting in concert or privity with any of them.

Defendant is enjoined and ordered to provide a copy of this Consent Order to each contractor and/or consultant he employs to perform work itemized herein, and each general contractor and/or consultant shall provide a copy of this Consent Order to each of its subcontractors and/or subconsultants for such work.

III. SATISFACTION OF LAWSUIT

A. Plaintiff State of Ohio alleges in its Complaint that Defendant operated an auto repair shop located at 9391 Welch Road, Orient, Pickaway County, Ohio (hereinafter referred to as the "*Welch Road facility*") in such a manner as to result in numerous violations of the hazardous waste law of the State of Ohio, *i.e.*, RC Chapter 3734. and the rules adopted thereunder. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims alleged in the Complaint. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief for violations which occur after the filing of the Complaint, or not alleged in the Complaint, regardless of when they occurred.

B. Nothing in this Consent Order shall limit the State of Ohio from requiring Defendant, pursuant to the provisions of RC Chapter 3734. and the rules adopted thereunder, to initiate appropriate corrective action to address contamination of the groundwater, surface water and/or soils at the Welch Road 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

Defendants is ordered to give consent to Plaintiff State of Ohio, its agents and employees to enter into and onto Defendant's facility at a reasonable time, without a search warrant, to inspect, to take soil, water and other samples or to observe Defendant's conducting the work required by this Consent Order. Nothing in this Consent Order shall be construed to limit Plaintiff's statutory or permit authority under Chapter 3734. or the rules adopted thereunder to conduct inspections, surveys, review records and/or take samples.

V. EFFECT UPON OTHER ACTIONS

Nothing in this Consent Order shall be construed to relieve Defendant 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 Defendant with regard to any person not a party to this Consent Order.

VI. INJUNCTIVE RELIEF

A. Defendant is hereby permanently enjoined and ordered to immediately comply with the requirements of RC Chapter 3734. and the rules adopted thereunder, and to cease operating a hazardous waste facility at 9391 Welch Road, Orient, Pickaway County, Ohio once closure is completed.

B. Defendant is enjoined and ordered to submit to the Director of Environmental Protection, or his designee, within

one hundred eighty (180) days of the Court's entry of this Consent Order, the results of all sampling performed by Defendant's consultant(s) and/or contractor(s), along with all documentation pertaining to the storage, treatment, disposal and/or transportation of the hazardous waste at the Welch Road facility by said consultant(s) and/or contractor(s).

C. Defendant is enjoined and ordered to have his consultant(s) and/or contractor(s), or their designee(s), drain all the 55-gallon drums at the Welch Road facility including the drums in the pole barn, within one hundred eighty (180) days of the Court's entry of this Consent Order, and to properly transport, store, treat and/or dispose of said hazardous waste by a licensed hazardous waste transporter and/or facility.

D. Defendant is enjoined and ordered to remove the "RCRA" empty 55-gallon drums from the Welch Road facility, and to properly dispose of said drums at a licensed sanitary landfill, approved by the Director of Environmental Protection or his designee, within one hundred eighty (180) days of the Court's entry of this Consent Order.

E. Defendant is enjoined and ordered to implement the closure plan approved and issued by the Director of Environmental Protection March 26, 1991 in accordance with the terms and special conditions set forth therein.

F. Defendant is enjoined and ordered to close the Welch Road facility in accordance with the closure plan approved by the Director of Environmental Protection and OAC Rules 3745-66-11 through 3745-66-20.

G. Defendant is enjoined and ordered to provide to the Director of Environmental Protection, or his designee, a detailed written cost of closing the Welch Road facility in accordance with OAC Rule 3745-66-42 within one hundred eighty (180) days of the Court's entry of this Consent Order.

H. Defendants are enjoined and ordered to establish financial assurance and obtain liability insurance for closure of the Welch Road facility in accordance with OAC Rule 3745-66-43 and 3745-66-47, respectively, within one hundred eighty (180) days of the Court's entry of this Consent Order.

VII. REPORTING REQUIREMENT

Within seven (7) days from the completion date of each task set forth in Article VI, Defendant is ordered to submit a written report stating whether he has performed the action set forth therein and any documentation pertaining to the completion of said task to the Ohio EPA's Central Office, DSHWM, Enforcement Section, 1800 WaterMark Drive, Columbus, Ohio 42366-0149; with a carbon copy to Ohio EPA's Central District Office, 2305 Westbrook Drive, P. O. Box 2198, Columbus, Ohio 43266-2198.

VIII. 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.

IX. POTENTIAL FORCE MAJEURE

In any action to enforce any of the provisions of this Consent Order, Defendant may raise at that time the question of whether he is entitled to a defense that his conduct was caused by reasons beyond his 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 Plaintiff 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 a dispute arises and/or an enforcement action, if any, is commenced. Acceptance of this Consent Order without a force majeure clause does not constitute a waiver by Defendant of any rights or defenses he may have under applicable state law.

XI. Stipulated Penalties

A. In the event Defendant fails to meet any of the requirements of Article VI set forth herein, Defendant shall be liable for payment of a stipulated penalty according to the following payment schedule:

1. For each day of each failure to meet a requirement, up to thirty (30) days--one hundred dollars (\$100.00) per day;
2. For each day of each failure to meet a requirement, from

thirty-one (31) to sixty (60)
days--two hundred dollars
(\$200.00) per day.

3. For each day of each failure to meet a requirement, from sixty-one (61) to ninety (90) days--three hundred dollars (\$300.00) per day.
4. For each day of each failure to meet a requirement, over ninety (90) days--four hundred dollars (\$400.00) per day.

B. Any payment required to be made under the provisions of Paragraph A of this Article shall be made by delivering to Plaintiff's attorney, or his successor, a certified check or checks for the appropriate amounts, within ten (10) days from the date of the failure to meet the requirement of this Consent Order, made payable to "*Treasurer, State of Ohio*". Nothing in this Consent Order shall be deemed by the Court to suspend said payment, or payments, in whole or in part.


XII. RETENTION OF JURISDICTION

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

XIII. COSTS

Defendants is ordered to pay the costs of this action.

Entered this 29 Day of March, 1991.



JUDGE WILLIAM AMMER,
PICKAWAY COUNTY COURT OF
COMMON PLEAS


APPROVED:

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


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