

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

SUMMIT COUNTY
CLERK OF COURTS
Jan 4 3 43 PM '94

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

CASE NO. CV 92-08-3271
JUDGE WILLIAMS

DIANA ZALESKI

Plaintiff,

vs.

STEEL PRODUCTS CORPORATION
OF AKRON and WILLIAM
McCRACKEN,

CONSENT ORDER

Defendants.

Plaintiff, State of Ohio, by its Attorney General, Lee Fisher (hereinafter "Plaintiff"),
having filed the Complaint against Defendants Steel Products Corporation of Akron and
William McCracken (hereinafter "Defendants") alleging violations of Chapter 3734 of the Ohio
Revised Code, and the parties having consented to the entry of this Order,

NOW THEREFORE, without the trial of any issue of fact or law, and upon the consent
of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION

1. The Court has jurisdiction over the parties and subject matter of this action,
pursuant to Chapter 3734 of the Ohio Revised Code 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.

II. PARTIES

2. 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, privity or participation with them. Defendants shall provide a copy of
this Consent Order to each contractor they employ to perform work itemized herein.

III. SATISFACTION OF LAWSUIT

3. Plaintiff has alleged in its Complaint that Defendants have engaged in steel fabricating at a facility located at 1699 Commerce Drive, Akron, Ohio ("the Facility") in violation of various provisions of the hazardous waste laws of Ohio, as set forth in Chapter 3734 of the Ohio Revised Code and the rules adopted thereunder. Except as provided herein, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for those claims which have been alleged in the Complaint.

4. Nothing in this Consent Order, including the imposition of stipulated civil penalties, shall limit the authority of Plaintiff to seek relief for claims, conditions, or violations not alleged in the Complaint, or to seek any relief for claims, conditions or violations alleged in the Complaint which occur after the entry of this Consent Order. In addition, the Plaintiff hereby specifically reserves the right to take action against any person, including Defendants pursuant to the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. §9601, et seq. and/or Ohio Revised Code Sections 3734.20 through 3734.27 for any removal, remedial or corrective actions which are not conducted pursuant to the terms of this Consent Order through a contempt action or otherwise for future violations of law which also comprise violations of this Consent Order. Notwithstanding the terms of this paragraph, the provisions of Articles IX, X and XIII of this Consent Order are binding only upon the Defendants.

5. Defendants shall submit, within forty-five (45) days from the date of entry of this Consent Order, an approvable closure plan which meets the requirements of the O.A.C. Rules 3745-55-10 through 3745-55-20 and/or 3745-66-10 through 3745-66-20, to the Director of the Ohio EPA and the Ohio EPA's Northeast District Office for the investigation and remediation of waste contamination at all locations at the Facility where hazardous wastes were stored, disposed of, and/or treated. If the Director of the Ohio EPA disapproves part or all of the revised closure plan, the Defendants shall resubmit an approvable closure plan to the Ohio EPA, pursuant to O.A.C. 3745-55-12 and/or 3745-66-12, within thirty (30) days of Ohio

EPA's notification of disapproval of the closure plan. Upon approval by Ohio EPA of the Defendants' closure plan, Defendants are ordered to implement the approved closure plan in the manner and pursuant to the time frames set forth in the approved closure plan and OAC Rule 37455-66-13. Within sixty (60) days of completion of closure, Defendants shall submit certification of closure to Ohio EPA, pursuant to O.A.C. Rule 3745-66-15.

V. PERMANENT INIUNCTION

6. Defendants are hereby permanently enjoined and ordered to comply with all applicable provisions contained in Chapter 3734 of the Ohio Revised Code and the rules promulgated thereunder including, but not limited to, the generator requirements contained in O.A.C. Rules 3745-52, with respect to all future waste handling activities at the facility. Defendants are also permanently enjoined and ordered to refrain from engaging in any future storage, treatment or disposal of hazardous waste for which a hazardous waste facility installation and operation permit is necessary without first obtaining such a permit from the Hazardous Waste Facility Board. Further, until such time as Defendants certify to the Ohio EPA, pursuant to O.A.C. 3745-55-15 and/or 3745-66-15, that the facility has been closed in accordance with the specifications in the approved closure plan and O.A.C. Rules 3745-66-10 through 3745-66-20, Defendants are hereby enjoined and ordered to perform the following tasks:

- A. Defendants shall submit to the Ohio EPA, within forty-five (45) days from the date of entry of this Consent Order, a detailed written estimate of the cost of closing the Facility pursuant to Chapter 3734 of the Ohio Revised Code and the rules promulgated thereunder, as required by O.A.C. 3745-55-42 and/or 3745-66-42.
- B. In the event the Facility is sold to a non-party to this lawsuit, then within forty-five (45) days of the closing of such sale; the Defendants shall submit to the Ohio EPA, documentation demonstrating that the Defendants have established financial assurance for the closure of the facility, as required by O.A.C. 3745-55-43 and/or 3745-66-43.

7. Until the Director of Ohio EPA notifies the Defendants that financial assurance is no longer required pursuant to O.A.C. Rule 3745-66-43(H), Defendants are enjoined and

ordered to comply with the security requirements set forth in O.A.C. Rule 3745-6-14.

VII. COMPLIANCE WITH APPLICABLE LAWS

8. Nothing herein shall affect Defendants' obligation to comply with all applicable federal, state or local laws, regulations, rules or ordinances.

VIII. SUBMITTAL OF DOCUMENTS

9. Documentation of compliance with the requirements of paragraphs 6 and 7 of Sections IV and V of this Consent Order shall be submitted to "Manager, Compliance Monitoring and Enforcement Section, Division of Hazardous Waste Management, Ohio EPA, 1800 WaterMark Drive, Columbus, Ohio 43266-0149" and to "RCRA Group Leader, Ohio EPA Northeast District Office, 2110 Aurora Road, Twinsburg, Ohio 44087."

IX. CIVIL PENALTY

10. Defendants shall pay to the State of Ohio the Amount of Twenty Thousand Dollars (\$20,000.00). This payment shall be made in six quarterly installments of \$3,333.00. The first installment shall be paid within thirty (30) days from entry of this Order with the following payments to be made every three months thereafter. These amounts shall be paid by delivering a certified check for that amount, payable to the order of "Treasurer, State of Ohio", the first check due within thirty (30) days from the date of entry of this Consent Order, to Matt Sanders, Administrative Assistant, or a person subsequently designated by the State, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410. In the event that the Facility is sold to a non-party to this action, the outstanding balance of the civil penalty shall be paid in lump sum. This accelerated payment shall be made thirty days from the date of closing of the sale and transfer of the Facility to the purchaser.

X. STIPULATED PENALTIES

11. In the event that Defendants violate any of the requirements of this Consent Order, including any milestone requirement in the closure plan schedule, Defendants shall

immediately and automatically be jointly and severally liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of each failure to meet a requirement, after ten (10) days and up to thirty (30) days - Three Hundred Dollars (\$300.00) per day. For each day of each failure to meet a requirement, from thirty-one (31) to sixty (60) days - Six Hundred Dollars (\$600) per day. For each day of each failure to meet a requirement, from sixty-one (61) days to ninety (90) days - Eight Hundred Dollars (\$800.00) per day. For each day of failure to meet a requirement, over ninety (90) days - One Thousand Dollars (\$1000.00) per day.

12. Any payment required to be made under the provisions of this Section of this Order shall be made by delivering to Plaintiff's counsel a certified check or checks for the appropriate amounts payable to "Treasurer, State of Ohio" within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order to Matt Sanders, Administrative Assistant, or a person subsequently designated by the State at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410. The Plaintiff may, in its sole and unreviewable discretion, waive any stipulated penalties required under the terms of this Consent Order.. The payment of stipulated penalties by Defendants and the acceptance of such stipulated penalties by the State for specific violations pursuant to this paragraph shall not be construed to limit the State's authority to seek additional relief pursuant to O.R.C. Chapter 3734 or to otherwise seek judicial enforcement of this Consent Order.

XI. INSPECTIONS

13. Defendants are ordered to allow representatives of the Ohio EPA, upon proper identification, to enter upon the facility at reasonable times, 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 rules promulgated thereunder. Nothing in this Order shall limit any right of entry possessed by the Plaintiff.

XII. RETENTION OF JURISDICTION

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

XIII. COURT COSTS

15. Defendants are ordered and enjoined to pay all court costs of this action.

XIV. POTENTIAL FORCE MAJEURE

16. If any event or condition occurs which causes or may cause a delay of any requirement of Sections and/or of this Consent Order, Defendants shall notify the Ohio EPA, Division of Hazardous Waste Management, Attention: Manager, Hazardous Waste Enforcement Section, 1800 WaterMark Drive, Columbus, Ohio 43266-0149, in writing within ten (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 Defendants to prevent or minimize the delay and the timetable by which measures will be implemented. The ten (10) day period shall commence when any of Defendants officers, agents, employees, assigns, contractors, consultants, or any person acting in concert or privity with any of the above-referenced entities, either become aware of the event or shall have become aware of the event through the exercise of job duties, contractual responsibilities or otherwise. Defendants will adopt all reasonable measures to avoid or minimize any such delay. Upon receipt of the notice from the Defendants as required in this Section, Plaintiff may agree to waive or defer one or more milestone deadlines herein or the enforcement thereof. In the event the Plaintiff does not agree to defer or waive the milestone deadline date, Plaintiff agrees that the penalties under such milestone date shall be tolled until Plaintiff informs Defendants of its decision in writing. A decision by Plaintiff to waive or defer any milestone deadline of this Consent Order shall not be a bar to any enforcement action for Defendants' failure to meet the date of the milestone as deferred. Such deferred milestone date shall be considered enforceable in place of the date specified in the milestone and shall be subject to the same stipulated penalty provisions as the

original milestone date. A decision by Plaintiff to defer enforcement of any milestone deadline or stipulated penalty set forth in this Consent Order shall not constitute a waiver of enforcement action with regard to the terms of this Consent Order, unless Plaintiff expressly so agrees.

17. In any action by the State of Ohio to enforce any of the provisions of this Consent Order, Defendants 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, civil disturbances and orders or actions of any court or regulatory agency. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed upon by Defendants and the State of Ohio 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 action to enforce the terms of this Consent Order is commenced by Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances beyond the control of Defendants shall rest with the Defendants. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order shall not constitute circumstances entirely beyond the control of Defendants or serve as a basis for an extension of time under this Consent Order. Failure by Defendants 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.

18. In the event the Facility or any part thereof is leased to an unrelated third-party not named in this action ("Lessee"), Plaintiff will not hold Lessee responsible under Revised Code Chapter 3734 for any cost, expenses, fees, and penalties associated in any way with the cleanup of the Facility provided that Lessee does not exacerbate the contamination as it exists at the site as of the date of entry of this Consent Order, does not obstruct the investigation or clean up efforts by any person, and cooperates fully with persons performing environmental investigation or clean up efforts at the Facility.

DATE

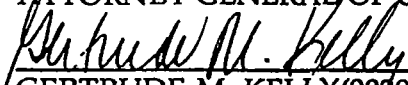
JUDGE WILLIAMS

DATE


JUDGE WILLIAMS

Approved:


LEE FISHER
ATTORNEY GENERAL OF OHIO


GERTRUDE M. KELLY(0039768)
ROBERT E. ASHTON(0032276)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410
(614)466-2766

STEEL PRODUCTS CORPORATION OF AKRON AND WILLIAM McCracken

By 
JAMES L. RENCH (0020436)
JEFFREY KNOLL(0056031)
1512 Ohio Edison Building
76 South Main Street
Akron, Ohio 44308

Attorneys for Defendants Steel Products Corporation of Akron and William McCracken


WILLIAM McCracken
On behalf of Steel Products
Corporation of Akron
as its Chairman