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COMMON PLEAS COURT

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JUDITH A. SAUGBRASS  
SHELBY COUNTY CLERK

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IN THE COURT OF COMMON PLEAS  
SHELBY COUNTY, OHIO

STATE OF OHIO, ex rel. :  
BETTY MONTGOMERY, ATTORNEY )  
GENERAL OF OHIO, :

Case No. 95 CV 206

Plaintiff, :  
):

Judge \_\_\_\_\_

v. :  
):

THE STOLLE CORPORATION, :  
):

Defendant. :

CONSENT ORDER AND FINAL JUDGMENT ENTRY

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

1. As used in this Consent Order:
  - a. "Approved Closure Plan" means the closure plan approved by Ohio EPA on June 2, 1994 and August 31, 1994.
  - b. "Closure Plan" means a plan which meets the requirements of O.A.C. Sections 3745-66-11 through 3745-66-20 or Sections 3745-55-11 through 3745-55-20, as applicable.
  - c. "Consent Order" or "Order" means this Consent Order and Final Judgment Entry and all appendices hereto. In the event of conflict

between this Order and any appendix, the Order shall control.

- d. "Contractor" means the individual(s), company, or companies retained by or on behalf of Defendant to undertake and complete the work required by this Consent Order.
- e. "Defendant" means The Stolle Corporation.
- f. "Director" means Ohio's Director of Environmental Protection.
- g. "Facility" refers to the premises of Stolle Corporation located in Sidney, Shelby County, Ohio, including all of the areas shown more particularly on the map attached and incorporated as Appendix A.
- h. "Ohio EPA" means the Ohio Environmental Protection Agency.
- i. "O.A.C." means the Ohio Administrative Code.
- j. "Plaintiff" means the State of Ohio by and through the Attorney General of Ohio.
- k. "R.C." means the Ohio Revised Code.
- l. "Units" means those portions of the Facility designated "Surface Impoundment" and "Solid Waste Landfill" on the map attached and incorporated as Appendix A.

## **II. JURISDICTION AND VENUE**

2. 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**

3. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, their 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. Defendant is ordered and enjoined to provide a copy of this Consent Order to each contractor they employ to perform work itemized herein.

#### **IV. RELEASE OF CLAIMS AND SATISFACTION OF LAWSUIT**

4. Except as otherwise provided in this Consent Order, compliance with the terms of this Consent Order shall constitute a release from, and full satisfaction of, any and all claims alleged in the Complaint.

5. 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 conditions not alleged in the Complaint;
- b. Seek relief for claims or conditions alleged in the complaint which occur after entry of this Consent Order;
- c. Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;
- d. Bring any action against Defendant or against any other person, under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. §9601, et seq. and/or Ohio Revised Code Sections 3734.20 through 3734.27 to (1) recover natural resource damages, and/or (2) to order the performance of, and/or recover costs for any removal, remedial or corrective activities not conducted pursuant to the terms of this Consent Order; and/or
- e. Take any action authorized by law against any person, including Defendant, to eliminate or mitigate conditions at the Facility which may present an imminent threat to the public health or welfare, or the environment.

#### **V. DELISTING PETITION**

6. Nothing in this Consent Order shall preclude Defendant from seeking a delisting petition for the wastes contained in the units to reclassify them as a non-hazardous waste, pursuant to applicable state and federal laws and regulations.

## **VI. ADMISSION OF LIABILITY**

7. Nothing in this Consent Order shall be construed as an admission of liability by the Stolle Corporation for any claims alleged in Plaintiff's Complaint.

## **VII. CLOSURE AND OTHER INJUNCTIVE RELIEF**

8. Defendant is ordered and enjoined to conduct all activities at the Units in compliance with all applicable provisions of the Ohio hazardous waste laws and rules as set forth in R.C. Chapter 3734 and O.A.C. Chapters 3745-50 through 3745-69.

### Closure

9. The parties acknowledge that Defendant has submitted to Ohio EPA closure plans for the Units identified on the map attached and incorporated as Appendix A. Ohio EPA approved the closure plans on June 2, 1994 and August 31, 1994.

10. Defendant is ordered and enjoined to implement each approved closure plan in the manner and pursuant to the time frames set forth in the approved closure plan and O.A.C. §3745-66-13 or 3745-55-13, as applicable.

11. Within sixty (60) days of completion of closure, the Defendant shall submit certification of closure to Ohio EPA, pursuant to O.A.C. §3745-66-15 or 3745-55-15, as applicable.

## **VIII. ACCESS TO THE REGULATED UNITS**

12. As of the date of entry of this Consent Order, Plaintiff and its representatives and contractors shall have access at reasonable times to the Units for the purposes of implementing this Order, and shall have access to any other property controlled by or available to Defendant to which access is necessary to effectuate the actions required by this Order. Access shall be allowed for the purposes of conducting activities related to this Order including but not limited to:

- a. Monitoring the work or any other activities taking place at the Units;
- b. Verifying any data or information submitted to Plaintiff;
- c. Conducting investigations relating to contamination at or near the Units;

- d. Obtaining samples (Plaintiff will provide split samples upon request by Defendant);
- e. Assessing the need for, planning, or implementing additional response actions at or near the Units;
- f. Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Defendant or their agents, consistent with this Consent Order and applicable law; or
- g. Assessing Defendant's compliance with this Consent Order.

13. Nothing in this Consent Order shall be construed to limit the statutory authority of the Director or his authorized representatives to enter at reasonable times upon any private or public property, real or personal, to inspect or investigate, obtain samples, and examine or copy any records to determine compliance with R.C. Chapter 3734.

#### IX. SUBMITTAL OF DOCUMENTS

14. All documents required to be submitted to Ohio EPA pursuant to this Consent Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio EPA  
 Southwest District Office  
 40 South Main Street  
 Dayton, Ohio 45402  
 Attn: DHWM Group Leader

Mailings:  
 Ohio EPA  
 Division of Hazardous Waste Mgt.  
 P.O. Box 1049  
 Columbus, Ohio 43216-1049  
 Attn: John Schierberl

Hand Delivery/Courier:  
 Ohio EPA  
 Division of Hazardous Waste Mgt.  
 1800 WaterMark Drive  
 Columbus, Ohio 43215-1099  
 Attn: John Schierberl

#### X. CIVIL PENALTY

15. Defendant is ordered and enjoined to pay to the State of Ohio a civil penalty in

the amount of One Hundred Thirty Eight Thousand Eighty Dollars (\$138,080.00). This amount shall be paid by delivering to Plaintiff, c/o Matt Sanders, or his successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a 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.

## **XI. STIPULATED PENALTIES**

16. If Defendant fails to meet any of the deadlines set forth in Paragraphs 8, 11, or 20 of this Consent Order, or set forth in the approved Closure Plan, Defendant shall be immediately and automatically liable for, and is ordered and enjoined immediately to pay to Plaintiff, a stipulated penalty as follows:

- a. For each day of each failure to meet a requirement, up to thirty (30) days after a requirement is due to be met - Two Hundred Dollars (\$200.00).
- b. For each day of each failure to meet a requirement, from thirty-one (31) to sixty (60) days after a requirement is due to be met - Five Hundred Dollars (\$500.00).
- c. For each day of each failure to meet a requirement, over sixty (60) days after a requirement is due to be met - One Thousand Dollars (\$1,000.00).

17. Defendant is ordered and enjoined to pay any required stipulated penalty 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 43215-3428, a certified check in the amount of the stipulated penalty, payable to the order of "Treasurer, State of Ohio." This penalty shall be deposited into the hazardous waste clean-up fund created by R.C. Section 3734.28.

18. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff pursuant to this Article shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to R.C. Chapter 3734, including civil penalties under R.C. §3734.13, or to otherwise seek judicial enforcement of this Consent Order, for the same violation for which a stipulated penalty was paid or for other violations.

## **XII. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS**

19. All activities undertaken by Defendant pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal and state and local laws, rules and regulations, and permits. For work conducted under this Consent Order Defendant is both ordered and enjoined to obtain all permits or approvals necessary under Revised Code Chapter 3734 and shall submit timely applications and requests for any such permits and approvals. Where such laws appear to conflict with the other requirements of this Consent Order, Defendant is ordered and enjoined to immediately notify Ohio EPA of the potential conflict. Defendant is ordered and enjoined to include in all future contracts or subcontracts entered into for work required under this Consent Order, provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and rules. This Consent Order is not a permit issued pursuant to any federal or state or local law or rule.

## **XIII. POLLUTION PREVENTION**

20. Within thirty (30) days from the effective date of this Order, Defendant shall begin a comprehensive pollution prevention program for current facility operations at Plant 2 by initiating a program as described in the Ohio Pollution Prevention and Waste Minimization Planning Guidance Manual, ("Planning Guidance Manual") dated September 30, 1993, following Figure 1 on page 18 of the document and accompanying text. Defendant shall document initiation of the program by submitting to Ohio EPA a formal policy statement, a consensus building plan, a list of the names and titles of the members of a pollution prevention task force, and an outline of preliminary program goals. A copy of the Planning Guidance Manual will be supplied to Defendant by Ohio EPA.

21. Within one hundred eighty (180) days from the effective date of this Order, Defendant shall complete the first four steps (Establish the pollution prevention program; Organize the pollution prevention program; Do a preliminary assessment; and Write the pollution prevention plan) of the Planning Guidance Manual and shall document compliance by submitting a detailed narrative report, for review and approval, that discusses all four steps.

22. Within two hundred forty (240) days from the effective date of this Order, Defendant shall complete steps five and six (Do a detailed assessment; and Define pollution prevention options) of the Planning Guidance Manual and shall document compliance by submitting a detailed narrative report, for review and approval, that discusses both steps and covers all processes which have been prioritized for pollution prevention by Defendant.

23. Within three hundred sixty (360) days from the effective date of this Order, Defendant shall complete steps seven, eight, and nine (Cost considerations; Do feasibility analysis; and Write the assessment report) of the Planning Guidance Manual and shall document compliance by submitting a detailed narrative report, for review and approval, that discusses these three steps and covers the pollution prevention options that have been defined by Defendant.

24. Within four hundred eighty (480) days from the effective date of this Order, Defendant shall complete steps ten and eleven (Implement the pollution prevention plan; and Measure progress: program and project evaluation) of the Planning Guidance Manual and shall document compliance by submitting a detailed narrative report, for review and approval, that discusses both steps and covers all pollution prevention options which have been selected for implementation by Defendant.

25. Notwithstanding the requirements of Article VII of this Consent Order, all reports and other documents required to be submitted pursuant to this Article shall be sent to:

**Mailings:**

Office of Pollution Prevention  
Ohio Environmental Protection Agency  
c/o Anthony Sasson or Megan James  
P.O. Box 1049  
Columbus, Ohio 46216-0149

**Hand Delivery/Courier:**

Office of Pollution Prevention  
Ohio Environmental Protection Agency  
c/o Anthony Sasson or Megan James  
1800 WaterMark Drive  
Columbus, Ohio 43215-1099

#### **XIV. PLAINTIFF'S LITIGATION COSTS**

26. For Plaintiff's litigation costs in investigating and prosecuting this case, Defendant is ordered and enjoined to reimburse the Attorney General's Office in the amount of Ten Thousand Dollars (\$10,000.00). This reimbursement shall be paid by delivering a check for that amount payable to the order of "Treasurer, State of Ohio" with seven (7) days of entry of this Order in the manner provided for in paragraph 15.

#### **XV. RETENTION OF JURISDICTION**

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



## **XVI. TERMINATION**

28. No earlier than three (3) years from the date of entry of this Consent Order, Defendant may move the Court, pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure, to terminate this Consent Order if Defendant can demonstrate that it has been in compliance with the obligations of this Consent Order for such a three (3) year period. Plaintiff takes no position at this time as to such motion and reserves any rights it may have to oppose the motion.

## **XVII. COSTS**

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

## **XVIII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK**

30. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is directed to serve upon all parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

**IT IS SO ORDERED.**

**SIGNED:**

**S/ John D. Schmitt**

**JUDGE**  
**SHELBY COUNTY COURT OF COMMON PLEAS**

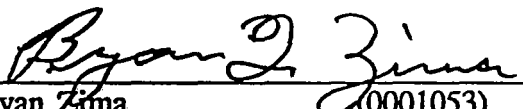
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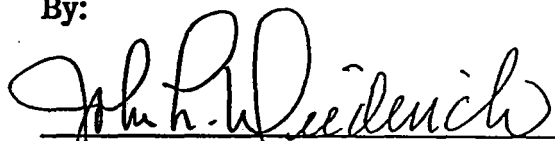
**BETTY MONTGOMERY**  
**ATTORNEY GENERAL OF OHIO**

**STOLLE CORPORATION**

**By:**

**By:**

  
\_\_\_\_\_  
Bryan Zima (0001053)  
Assistant Attorney General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215-3428  
Telephone: (614) 466-2766

  
\_\_\_\_\_  
John L. Diederich  
Stolle Corporation  
1501 Alcoa Building  
Pittsburgh, Pennsylvania 15219-1850

**Attorneys for Plaintiff**  
**State of Ohio**