

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

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MONTGOMERY COUNTY
FILED - COURT Case No.
COMMON PLEAS

92-4541

State of Ohio, ex rel
Lee Fisher
Attorney General of Ohio

Judge

Plaintiff,

v.

Van Dyne Crotty, Inc.

Defendant.



CONSENT ORDER

Plaintiff, State of Ohio, by its Attorney General, Lee Fisher (hereinafter "Plaintiff"), having filed the complaint herein against Defendant Van Dyne Crotty, Inc. (hereinafter Van Dyne Crotty) alleging violations of Chapters 3734. and 6111. 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 subject matter of this action pursuant to Chapters 3734. and 6111. of the Ohio Revised Code and the regulations 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 who receives actual notice of this Consent Order whether by personal service or otherwise. Van Dyne Crotty shall provide a copy of this Consent Order to each contractor it employs to perform work itemized herein and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT

3. Plaintiff has alleged in its Complaint that Van Dyne Crotty has operated a Facility located at 903 Brandt Pike, Dayton, Montgomery County, Ohio in violation of various provisions of the hazardous waste and water pollution control laws of Ohio, as set forth in Chapters 3734. and 6111. of the Ohio Revised Code and the regulations adopted thereunder and that the Facility is subject to Final Findings and Orders of the Director issued on January 18, 1991 pursuant to §§3734.13, 3734.20, 3745.01 and 6111.03 of the Revised Code. Van Dyne Crotty denies the allegations contained in the Complaint and nothing herein shall be construed as an admission by the Van Dyne Crotty of the truth of any of the allegations of fact or law in the Complaint. Compliance with the terms of this

Consent Order shall constitute full satisfaction of any civil liability by Van Dyne Crotty for those claims under such laws and regulations which have been alleged in the Complaint.

4. This Consent Order shall not be construed to act as a bar to the authority of the Plaintiff to seek relief, by separate action, for future violations of law. The Plaintiff may also, if appropriate, enforce this Consent Order, through a contempt action or otherwise for future violations of law which also comprise violations of this Consent Order.

5. This Consent Order shall not be construed so as to preclude the State, pursuant to R.C. §§3734.20 through 3734.27, from seeking to require that Van Dyne Crotty conduct remedial or corrective action or additional monitoring or testing at their facilities as a result of waste handling activities at such facilities, or from seeking reimbursement from Van Dyne Crotty for any such actions or monitoring conducted by Plaintiff.

6. Nothing in this Consent Order shall be construed to limit the authority of the Plaintiff to seek relief for claims or conditions not alleged in the Complaint or addressed by this Consent Order.

INJUNCTION

7. Van Dyne Crotty consents and is hereby ordered and enjoined to comply with the terms of the Director's Final Findings and Orders of January 18, 1991 (or as subsequently modified and approved by Ohio EPA) which are attached hereto as Appendix A and fully incorporated by reference herein as an enforceable portion of this Consent Order.

8. Further, Van Dyne Crotty consents and is hereby ordered and enjoined to comply with the work plan as approved by Ohio EPA (or as subsequently modified and approved by Ohio EPA) which is attached as Appendix B and fully incorporated by reference herein as an enforceable part of this Consent Order.

9. Van Dyne Crotty consents and is hereby ordered and enjoined to submit a written proposal, for Ohio EPA approval, within forty-five (45) days of entry of this Consent Order, detailing an alternative to prevent the further off-property migration of contamination as required by Orders 4 and 5 of the January 18, 1991 Director's Findings & Orders and a schedule of compliance. If said proposal is not approved by Ohio EPA, Van Dyne Crotty is ordered and enjoined to resubmit the proposal, incorporating Ohio EPA's comments, within fifteen (15) days of receipt of the comments. The written proposal, as approved by Ohio EPA, shall become an enforceable part of this Consent Order.

10. Van Dyne Crotty consents and is ordered and enjoined to implement the proposal, as approved by Ohio EPA.

CIVIL PENALTY

11. Van Dyne Crotty is ordered and enjoined to pay a civil penalty to Plaintiff in the amount of Twenty-Five Thousand Dollars (\$25,000.00). Payment shall be made by delivering a certified or cashier's check to Janice Miller, Administrative Assistant (or her successor) at the Office of the Attorney General, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410 for that amount, payable to the order

of "Treasurer, State of Ohio" within ten (10) days of entry of this Consent Order. Such payment shall be deposited into the hazardous waste clean-up account created pursuant to R.C. §3734.28.

STIPULATED PENALTIES

12. Upon receipt of notification of violation or non-compliance with any of the requirements of this Consent Order, Van Dyne Crotty shall immediately and automatically be liable for and shall pay a stipulated penalty to Plaintiff according to the following schedule:

- a.) For each day of each failure to meet a requirement up to thirty (30) days - \$250.00;
- b.) For each day of each failure to meet a requirement from thirty-one (31) to sixty (60) days - \$500.00;
- c.) For each day of each failure to meet a requirement from sixty-one (61) to ninety (90) days - \$1000.00;
- d.) For each day of each failure to meet a requirement from ninety-one (91) to one hundred twenty (120) days - \$2000.00.

Stipulated penalties shall be incurred upon receipt of notice.

13. Any payment required to be made under the provision of paragraph 12 of this Consent Order shall be made by delivering a certified or cashier's check(s) to Janice Miller, Administrative Assistant (or her successor) at Office of the Attorney General, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410 for the appropriate amounts within twenty (20) days from the date of the failure to meet the requirement of

the Consent Order, made payable to "Treasurer, State of Ohio." Such payment shall be deposited into the hazardous waste clean-up account created pursuant to R.C. §3734.28.

POTENTIAL FORCE MAJEURE

14. In any action to enforce any of the provisions of this Consent Order Defendant, Van Dyne Crotty, Inc. may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons beyond its 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 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 it may have under applicable law.

RETENTION OF JURISDICTION

15. This Court will retain jurisdiction of this action for the purpose of overseeing compliance with this Consent Order, until terminated in accordance with this paragraph. Van

Dyne Crotty may file a motion pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure after it has made all payments required by this Consent Order and three (3) years from entry of the Consent Order has lapsed. Ohio EPA may oppose such motion.

COSTS

16. Defendant shall pay all court costs of this action.

10/22/92
Date

J. W. Blattner
Judge

APPROVED BY:

LEE FISHER
ATTORNEY GENERAL OF OHIO

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