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IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

STATE OF OHIO OFFICE
ATTORNEY GENERAL
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

: CASE NO. 00CV00901
:
: JUDGE ~~JUDGE MITROVIC~~
:
: ~~JUDGE MITROVIC~~

Plaintiff,

vs.

ABB Automation Inc.
(formerly Elsag Bailey Inc.)

Defendant.

DOCKETED

2000 MAY 30 A 11: 44
LYNNE L. MAZEIKA
LAKE CO CLERK OF COURT

FILED

CONSENT ORDER AND FINAL JUDGMENT ENTRY

Plaintiff, State of Ohio, *ex rel.* Betty D. Montgomery, Attorney General of Ohio ("Plaintiff"), having filed the Complaint in this action against Defendant to enforce Ohio's hazardous waste laws found in Chapter 3734 of the Revised Code and the rules adopted thereunder; and Plaintiff and Defendant having consented to the entry of this Order;

NOW 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. "Consent Order" means this Consent Order and Final Judgment Entry and all appendices hereto. In the event of conflict between this Consent Order and any appendix, the Consent Order shall control.
 - b. "Defendant" means ABB Automation Inc. (formerly Elsag Bailey, Inc., a unit of Elsag Bailey Process Automation N.V.), 29801 Euclid Avenue, Wickliffe, Lake County, Ohio 44092.
 - c. "Director" means Ohio's Director of Environmental Protection.

- d. "Effective Date" means the date the Lake County Court of Common Pleas enters this Consent Order.
- e. "Facility" refers to the location where the alleged treatment, storage, disposal, or other placement of hazardous waste was conducted by Defendant, and located at 29801 Euclid Avenue, Wickliffe, Lake County, Ohio.
- f. "Ohio EPA" means the Ohio Environmental Protection Agency.
- g. "Plaintiff" means the State of Ohio by and through the Attorney General of Ohio.

II. JURISDICTION AND VENUE

2. This 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 Plaintiff and Defendant, their agents, officers, employees, assigns, successors in interest and any person acting in concert or participation with them who receives actual notice of this Consent Order whether by personal service or otherwise.

IV. BACKGROUND

4. On June 18, 1996, Ohio EPA performed an inspection of the Facility, which was then owned and operated by Elsag Bailey, Inc., to determine compliance with Ohio's hazardous waste laws as found in Chapter 3734 of the Ohio Revised Code.

5. Subsequent to that inspection, Ohio EPA cited Elsag Bailey, Inc. for a number of alleged violations of rules promulgated under 3734 of the Ohio Revised Code, as set forth in the Complaint filed in this action.

6. Defendant denies the alleged violations occurred.

7. On January 1, 2000, Elsag Bailey, Inc. merged into ABB Automation Inc., a separate unrelated corporation that acquired Elsag Bailey, Inc.

8. On January 13, 2000, Ohio EPA performed an inspection of the Facility to determine

compliance with Chapter 3734 and the rules promulgated thereunder.

9. At this inspection, Ohio EPA found Defendant, ABB Automation Inc. in material compliance at the Facility with all applicable requirements of Chapter 3734.

V. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

10. Plaintiff alleged in its Complaint that Defendant had operated its Facility in such a way as to violate various hazardous waste management laws and rules of the State of Ohio. Except as otherwise provided in this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendant to Plaintiff for all claims alleged in the Complaint.

11. Nothing in this Consent Order shall limit the authority of the State of Ohio to:

- a. Seek relief for claims or conditions not alleged in the Complaint;
- b. Seek relief for claims or conditions alleged in the Complaint that occur after the 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 R.C. 3734.20 through 3734.27 to: (1) recover natural resource damages, and/or (2) order the performance of, and/or recover costs for any removal or remedial activities not conducted pursuant to the terms of this Consent Order; and
- e. Take any action authorized by law against any person, including Defendant, to eliminate or mitigate conditions at the Facility that may present an imminent threat to the public health or safety, or the environment.

VI. CIVIL PENALTY

12. Defendant is ordered and enjoined to pay to the State of Ohio a civil penalty in the amount of Two Hundred Thousand Dollars (\$200,000.00). This amount shall be paid by delivering, within thirty (30) days after the effective date of this Consent Order, to Plaintiff, c/o Jena Suhadolnik, or her successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a cashier's check or certified check for \$200,000.00, payable to the order of "Treasurer, State of Ohio," which shall be deposited into the hazardous waste clean-up fund created by R.C. 3734.28.

VII. MISCELLANEOUS

13. Nothing in this Consent Order shall affect Defendant's obligation to comply with all applicable federal, state or local laws, regulations, rules or ordinances.

VIII. RETENTION OF JURISDICTION

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

IX. COSTS

15. Defendant shall pay the court costs of this action.

X. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

16. Upon the 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.

XI. AUTHORITY TO ENTER INTO THE CONSENT ORDER

17. Each signatory for Defendant Corporation represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof.

IT IS SO ORDERED:

JUDGE

LAKE COUNTY

COURT OF COMMON PLEAS

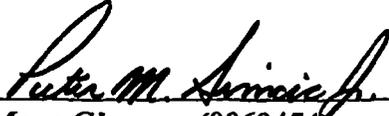
DATE

5/7/00

Approved:

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Attorney General

By:



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State of Ohio

ABB Automation Inc.

By:



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Authorized representative of Defendant ABB
Automation Inc.

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