

IN THE COURT OF COMMON PLEAS
MUSKINGUM COUNTY, OHIO

STATE OF OHIO, ex rel.
JIM PETRO,
ATTORNEY GENERAL OF OHIO,

Plaintiff,

vs.

AK STEEL CORPORATION,

Defendant.

CASE NO. CH 2005-0150

JUDGE *Zwelling*

2005 APR -8 PM 1:28
TODD A. GURKLE
CLERK

FILED
MUSKINGUM COUNTY, OHIO
APR 8 2005

CONSENT ORDER AND FINAL JUDGMENT ENTRY

Plaintiff, State of Ohio, ex rel. Jim Petro, Attorney General of Ohio, having filed the Complaint in this action against Defendant to enforce Ohio's hazardous waste and water pollution laws found in Ohio Revised Code ("R.C.") Chapters 3734 and 6111, respectively, and the rules adopted under those chapters in the Ohio Administrative Code ("Ohio Adm. Code"); and Plaintiff and Defendant having consented to the entry of this Order;

WHEREAS, Plaintiff seeks an injunction for Defendant to investigate, to abate and to prevent migration of pollution and contamination and to take other actions at the Facility currently owned by AK Steel Corporation, at 1724 Linden Avenue, Zanesville, Muskingum County, Ohio ("the Facility", as defined in DEFINITIONS), and alleges violations of Ohio hazardous waste and water pollution control laws at the Facility;

WHEREAS, Defendant does not admit the allegations set forth in the Complaint and denies any violation of any state or federal statute, regulation or common law;

THEREFORE, without trial or admission of any issue of law, violation or fact, and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED and

DECREED as follows:

I. DEFINITIONS

As used in this Consent Order:

"Close" or "Closure" means remediation which meets the requirements of Ohio Adm. Code 3745-11 through 3745-20.

"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.

"Contractor" means the individual or individuals or company or companies retained by or on behalf of Defendant to undertake and complete the work required by this Consent Order.

"Defendant" or "Defendant AK Steel" means AK Steel Corporation.

"Director" means Ohio's Director of Environmental Protection.

"Facility" means the property located at 1724 Linden Avenue, Zanesville, Muskingum County, Ohio.

"Ohio EPA" means Ohio Environmental Protection Agency.

"Plaintiff" means the State of Ohio by and through the Attorney General of Ohio.

"Sump" or "No. 4 HP Sump" means the breached 2,200 gallon spent pickle liquor/pickle liquor sump/transfer station tank located in #3 building and its piping and ancillary equipment at the Facility.

II. JURISDICTION AND VENUE

1. The Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapters 3734 and 6111 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

2. The provisions of this Consent Order requiring the payment of civil penalties, stipulated penalties and court costs under this Consent Order shall be binding on Defendant AK Steel and its successors in interest. The injunctive provisions of this Consent Order contained in Article V of this Consent Order and the other provisions of this Consent Order shall apply to and be binding upon the parties to this action, 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. Defendant is ordered and enjoined to provide a copy of this Consent Order to each Contractor, subcontractor and consultant who performs work itemized herein.

IV. SATISFACTION OF LAWSUIT

3. 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.

4. 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 from any person including Defendant for claims or conditions not alleged in the Complaint;
- (b) Seek relief from any person including Defendant for claims or conditions alleged in the Complaint which 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. Section 9601, et seq. and/or R.C. 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.

- (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, human health or the environment.

V. INJUNCTIVE RELIEF

5. Defendant AK Steel's Zanesville Works is ordered and enjoined to comply with all applicable provisions of the Ohio hazardous waste laws and rules (R.C. Chapter 3734 and Ohio Adm. Code Chapters 3745-50 through 3745-69) and R.C. Chapter 6111.

6. Defendant AK Steel is ordered and enjoined to address the No. 4 HP Sump (SWMU 1) release area and associated groundwater contamination in compliance with the requirements of Section VIII of the 42 U.S.C. § 6934 Order issued by U.S. EPA (attached hereto as "Attachment A") and with the requirements of Ohio Adm. Code 3745-55-11 (A) and (B).

7. In the event that Defendant fails to comply with U.S. EPA's Order regarding the No. 4 HP Sump (SWMU 1) release area and associated groundwater contamination within twenty-four (24) months after the entry of this Consent Order, Defendant shall close the No. 4 HP Sump (SWMU 1) in accordance with Ohio Adm. Code 3745-55-10 through 3745-55-20. The closure plan for No. 4 HP Sump (SWMU 1) shall be submitted to Ohio EPA within thirty (30) months after the entry of this Consent Order. Defendant shall implement the closure plan and any Ohio EPA amendments as

approved by Ohio EPA.

8. Upon request, Defendant AK Steel shall submit to Ohio EPA representatives copies of all documents, reports and other correspondence related to the investigation and corrective actions taken by the facility in carrying out the requirements of the 42 U.S.C. § 6934 Order issued by U.S. EPA.

9. Defendant AK Steel is ordered and enjoined from taking any action that would contribute to or increase the contamination on or around the Facility.

VI. VERBAL NOTICE OF SAMPLING AND FIELD ACTIVITY

10. Defendant AK Steel shall provide verbal notice of any and all sampling or field activity to be conducted by Defendant AK Steel or its contractor(s) pursuant to the 42 U.S.C. § 6934 Order issued by U.S.EPA, at least five (5) calendar days prior to the date of the planned activity by contacting Vicki German and Doug Snyder at Ohio EPA's Southeast District Office Divisions of Hazardous Waste Management and Drinking and Ground Water, respectively.

VII. SUBMITTAL OF DOCUMENTS

11. All documents requiring submittal to Ohio EPA pursuant to this Consent Order shall be submitted to the following persons and addresses, or to such persons and addresses as Ohio EPA may hereafter designate in writing:

Ohio EPA
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-0149
Attn: Manager, Compliance Assurance Section
Division of Hazardous Waste Management;

Ohio EPA
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43215-0149
Attn: Enforcement Coordinator, Water Resource Management Section
Division of Surface Water;

Ohio EPA
Southeast District Office
2195 Front Street
Logan, Ohio 43138
Attn: Vicky German or her successor
Division of Hazardous Waste Management; and

Ohio EPA
Southeast District Office
2195 Front Street
Logan, Ohio 43138
Attn: Doug Snyder or his successor
Division of Drinking and Ground Water.

VIII. CIVIL PENALTY

12. Pursuant to R.C. 3734.13(c), Defendant AK Steel shall be assessed a civil penalty in the amount of Sixty Thousand Dollars (\$60,000.00). This amount shall be paid by delivering to Plaintiff, c/o Administrative Assistant, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, a certified 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 may be deposited into the hazardous waste clean-up fund created by R.C. Section 3734.28.

13. Pursuant to R.C. 6111.09, Defendant AK Steel shall be assessed a civil penalty in the amount of Fifteen Thousand Dollars (\$15,000.00). This amount shall be paid by delivering to Plaintiff, c/o Administrative Assistant, Office of the Attorney

General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, a certified 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.

IX. SUPPLEMENTAL ENVIRONMENTAL PROJECT

14. In exchange for Defendant's performance of a Supplemental Environmental Project ("SEP") with a dollar value equal to at least One Hundred Fifty Thousand (\$150,000.00) dollars, the Plaintiff has agreed to reduce the civil penalty payment from One Hundred Thousand (\$100,000.00) dollars to Seventy-five Thousand (\$75,000.00) dollars as set forth in paragraphs 12 and 13 of this Consent Order. Therefore, in lieu of payment of Twenty-five Thousand (\$25,000) dollars, in addition to the Seventy-five Thousand (\$75,000.00) dollars that shall be paid as set for the in paragraphs 12 and 13 of this Consent Order, Defendant shall perform the SEP described as the #1 A&P Line Raw Material Storage Project ("#1 A&P SEP" attached as "Attachment B") at AK Steel's Zanesville Works. Upon completion of the #1 A&P SEP, Defendant shall submit to Ohio EPA a detailed break down of the work and the cost of the work.

15. In the event that Defendant does not perform the #1 A&P SEP or does not spend at least \$150,000.00 to perform the SEP within eighteen (18) months after Entry of this Consent Order, Defendant shall pay Plaintiff the additional Twenty-five Thousand (\$25,000.00) dollars in cash by delivery of two certified checks made payable to order of "Treasurer, State of Ohio" in the amounts of \$20,000.00 (assessed pursuant to R.C. 3734.13(C)) and \$5,000.00 (assessed pursuant to R.C. 6111.09) to Plaintiff, c/o

Administrative Assistant, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

These civil penalty checks shall be submitted to Plaintiff within nineteen (19) months after Entry of this Consent Order.

X. STIPULATED PENALTIES

16. If Defendant AK Steel fails to meet any of the requirements or deadlines contained in Paragraphs 7, 12, 13 and/or 14 of this Consent Order, Defendant AK Steel is immediately and automatically liable for and is ordered and enjoined to pay to Plaintiff immediately a stipulated penalty as follows:

- (a) For each day of each failure to meet the requirements of Paragraphs 7, 12, 13 and/or 14 of this Consent Order up to thirty (30) days - Five Hundred Dollars (\$500.00) per each day for each requirement not met;
- (b) For each day of each failure to meet the requirements of Paragraphs 7, 12, 13 and/or 14 of this Consent Order from thirty-one (31) to sixty (60) days - One Thousand Dollars (\$1,000.00) per day for each requirement not met;
- (c) For each day of each failure to meet the requirements of Paragraphs 7, 12, 13 and/or 14 of this Consent Order over sixty-one (61) days - Two Thousand Dollars (\$2,000.00) per each day for each requirement not met.

17. Defendant AK Steel is ordered and enjoined to pay any required stipulated penalty by delivering to Plaintiff, c/o Administrative Assistant, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400 within fourteen (14) days from the date of the default, a certified check in the amount of the stipulated penalty, payable to the order of "Treasurer, State of Ohio." This penalty may be deposited into the hazardous waste clean-up fund

created by R.C. Section 3734.28 and/or a fund in accordance with R.C. Section 6111.09.

18. The payment of stipulated penalties by Defendant AK Steel and the acceptance of such stipulated penalties by Plaintiff pursuant to this Section shall not be construed to limit Plaintiffs authority to seek additional relief pursuant to R.C. Chapters 3734 or 6111, including civil penalties under R.C. Sections 3734.13 or 6111.09, 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.

**XI. COMPLIANCE WITH APPLICABLE LAWS,
PERMITS AND APPROVALS**

19. All activities undertaken by Defendant AK Steel pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state and local laws, rules and regulations, and permits. For work both on and off the Facility, Defendant AK Steel is ordered and enjoined to obtain all permits or approvals necessary under applicable federal, state or local laws 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 AK Steel is ordered and enjoined to immediately notify the Ohio EPA of the potential conflict. Defendant AK Steel is ordered and enjoined to include in all 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, state or local law or rule.

XII. RETENTION OF JURISDICTION

20. This Court shall retain jurisdiction of this action for the purpose of enforcing Defendant AK Steel's compliance with the terms and conditions of this Consent Order.

XIII. COSTS

21. Defendant AK Steel is hereby ordered to pay the court costs of this action.

XIV. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

22. The parties agree and acknowledge that final approval by the Plaintiff and Defendant, and entry of this Consent Order is subject to the requirement of 40 C.F.R. §123.27(d)(2)(iii), which provides for notice of the lodging of this Consent Order, opportunity for public comment, and the consideration of any public comment. The Plaintiff and Defendant reserve the right to withdraw consent to this Consent Order based on comments received during the public comment period. Defendant shall pay the cost of publishing the public notice within thirty (30) days of receipt of a bill or notice from Ohio EPA.

23. 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.

XV. AUTHORITY TO ENTER INTO THE CONSENT ORDER

24. Each signatory for a 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, and that he/she submits with this Consent Order an authenticated and certified resolution from the corporation establishing that he/she is so empowered. IT IS

SO ORDERED:



JUDGE
MUSKINGUM COUNTY
COURT OF COMMON PLEAS

4805

DATED

APPROVED,

JIM PETRO, ATTORNEY
GENERAL

AK STEEL CORPORATION

By:

By:  11-02-04

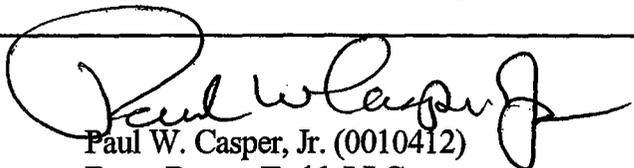

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