

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION**

STATE OF OHIO, *ex rel.* MARC DANN,
ATTORNEY GENERAL OF OHIO

Plaintiff,

v.

THE CHAMPION COMPANY,

Defendant.

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CASE NO. 3:06-CV-210

JUDGE THOMAS M. ROSE

MAGISTRATE JUDGE
SHARON L. OVINGTON

CONSENT ORDER

I. INTRODUCTION

Plaintiff State of Ohio, by and through its Attorney General, Marc Dann, at the written request of the Director of the Ohio Environmental Protection Agency, together with Defendant The Champion Company, acting upon advice and recommendation of their respective counsel, (the "Parties") hereby consent to the entry of this Consent Order to resolve the above-captioned proceeding.

NOW, THEREFORE, without trial of any issues of fact, without admission of liability, and upon the consent of the Parties hereto, it is ADJUDGED, ORDERED, and DECREED as follows:

II. JURISDICTION AND VENUE

1. The Court has jurisdiction over the undersigned parties to this action and the subject matter of the Complaint. Venue is proper in this Court. The Parties shall not challenge the Court's jurisdiction to enter and enforce this Consent Order.

III. PARTIES BOUND

2. The provisions of this Consent Order shall apply to and be binding upon the Parties, their successors in interest and assigns, and others to the extent provided by Civil Rule

65(d). The undersigned representative of each party to this Consent Order certifies that he or she is fully authorized by the Party or Parties whom she or he represents to enter into the terms and conditions of the Consent Order and to execute and legally bind that Party or Parties to it. This Consent Order is in settlement and compromise of disputed claims, and nothing in this Consent Order is to be construed as an admission of any facts or liability, which liability Defendant expressly denies.

IV. DEFINITIONS

3. "Effective Date" is the date this Consent Order is filed by the Court.

4. "Person" means those entities set forth in 42 U.S.C. § 9601(21) and R.C. 1.59, and includes Defendant.

5. "Response Costs" means all direct and indirect costs incurred by the State conducting removal actions at the Champion Site, including, but not limited to, payroll costs, contractor costs, travel costs, oversight costs, enforcement-related costs (both legal and technical), laboratory costs, sampling costs, costs of reviewing or developing plans, reports or other items, and the enforcement costs of the Ohio Attorney General's Office in representing Ohio EPA in this action.

6. "Past Response Costs" means Response Costs incurred prior to and up through the Effective Date of this Consent Order

7. "State" or "State of Ohio" means the Ohio EPA as represented by the Ohio Attorney General's Office.

8. "Champion Site" or "Site" as used in this Consent Order means the manufacturing facility located at 400 Harrison Street, Springfield, Clark County, Ohio, where treatment, storage, placement, or disposal of Waste Material and/or release or discharge into waters of the State or the environment of Waste Material has allegedly occurred, including any other area where such Waste Material has allegedly migrated or threatened to migrate.

9. "Waste Material" shall mean (1) any "hazardous waste" as that term is defined

under R.C. § 3734.01(1); (2) any “solid waste” as that term is defined under R.C. § 3734.01(E); (3) any “industrial waste” as that term is defined under R.C. § 6111.01 (C); (4) any “other wastes” as that term is defined under R.C. § 6111.01(0); (5) any “hazardous substances” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); and (6) any “hazardous waste constituent” as that term is defined under O.A.C. § 3745-50-10(A)(43).

V. SATISFACTION OF LAWSUIT

10. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendant and its successors in interest and assigns to Plaintiff for all claims alleged in the Complaint regarding the payment of Past Response Costs.

VI. RESERVATION OF RIGHTS

11. Nothing in this Consent Order or the Complaint 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 Effective Date 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: (a) recover natural resource damages, and/or (b) order the performance of, and/or recover Response Costs for, any removal or remedial or corrective activities conducted after the Effective Date of this Consent Order; and
- E. Take any action authorized by law against any person, including Defendant, to eliminate or mitigate conditions at the Champion Site that may present an imminent threat to the public health or safety, or the environment.

12. Nothing herein shall restrict the right of the Defendant to raise any administrative, legal, or equitable claim or defense with respect to such further actions. However, except for the Past Response Cost claim satisfied as set forth in paragraph 10, above, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim splitting, or other defenses based upon any contention that the claims raised by the State in the subsequent proceeding were, could have been, or should have been, brought in the instant case.

13. Nothing herein shall be construed to relieve the Defendant of its obligation to comply with applicable federal, state or local statutes, regulations or ordinances, including, but not limited to, permit requirements.

14. Defendant reserves all rights that it may have against any other Person under all federal, state, and local laws, except as may be set forth in a separate agreement or agreements.

15. The State of Ohio reserves all rights that it may have against any Person other than Defendant.

VII. REIMBURSEMENTS OF PAST RESPONSE COSTS

16. Defendant shall pay \$67,000 as reimbursement for Past Response Costs incurred by the State prior to and up through the Effective Date of this Consent Order. Payment shall be made as set forth in Subparagraphs A, B and C and shall be in the form of certified or cashier's checks made payable to "Treasurer, State of Ohio."

A. No later than thirty (30) days after the Effective Date, payment in the amount of \$32,000 shall be sent to Martha Sexton, Paralegal, or her successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400 to be deposited into the Ohio EPA Hazardous Waste Special Cleanup Account.

B. No later than thirty (30) days after the Effective Date, payment in the amount

of \$1,500 shall be sent to Martha Sexton, Paralegal, or her successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400 to be deposited into the Attorney General's General Reimbursement Account (also known as CAS Fund 106).

C. No later than ninety (90) days after the Effective Date, payment in the amount of \$33,500 shall be sent to Martha Sexton, Paralegal, or her successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400 to be deposited into the Ohio EPA Hazardous Waste Special Cleanup Account.

17. Defendant shall send a copy of the transmittal letter and a copy of the checks to the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, ATTN: Steven Snyder or his successor, to the Ohio Site Coordinator, Randy Watterworth, or his successor, and the Assistant Attorney General representing the State in this case.

VIII. MODIFICATION

18. No modification shall be made to this Consent Order without the written agreement of the Parties and the Court.

IX. RETENTION OF JURISDICTION

19. This Court shall retain jurisdiction of this matter for the purpose of overseeing the compliance by Defendant with this Consent Order.

X. AUTHORITY TO ENTER INTO THE CONSENT ORDER

20. 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 a resolution from the corporation establishing that he/she is so empowered.

XI. COURT COSTS

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

SO APPROVED BY:

**MARC DANN,
ATTORNEY GENERAL OF OHIO**

/s/ Timothy J. Kern
TIMOTHY J. KERN (0034629)
Principal Assistant Attorney General
Public Protection Division
30 East Broad Street
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*Trial Counsel for Plaintiff
State of Ohio*

/s/ Stephen N. Haughey
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Facsimile: (513) 651-6981
shaughey@fbtlaw.com

*Trial Counsel for Defendant
The Champion Company*

The undersigned Defendant hereby consents to the foregoing Consent Order in *State of Ohio v. The Champion Company*, Case No. 3:06-CV-210.

THE CHAMPION COMPANY

By: /s/ Dimitri Gianakopoulos
(signature)

Dimitri Gianakopoulos
(print name)

Title: Exec. Vice President

Date: May 1, 2008

SO ORDERED THIS SEVENTH DAY OF MAY, 2008.

s/Thomas M. Rose

JUDGE THOMAS M. ROSE
United States District Judge

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

**State of Ohio, ex rel. MARC DANN,
Attorney General of Ohio**

Plaintiff,

-vs-

Case No.: 3:06-cv-210

The Champion Company,

Defendant.

JUDGE THOMAS M. ROSE

JUDGMENT IN A CIVIL CASE

Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

That defendant take nothing. Defendant shall pay \$67,000 as reimbursement for Past Response Costs incurred by the State prior to and up through the Effective Date of this Judgment.

Date: May 7, 2008

JAMES BONINI, CLERK

By: s/P. Butler
Phil Butler, Deputy Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

**State of Ohio, ex rel. MARC DANN,
Attorney General of Ohio**

Plaintiff,

-vs-

Case No.: 3:06-cv-210

The Champion Company,

Defendant.

**NOTICE OF DISPOSAL PER SOUTHERN DISTRICT OF OHIO LOCAL RULES
79.2(a)(b) AND 79.3(e)**

The above captioned matter has been terminated on May 7, 2008

If applicable to this case, the disposal date will be six (6) months from the above termination date.

Rule 79.2(a) Withdrawal by Counsel:

All models, diagrams, depositions, photographs, x-rays and other exhibits and materials filed in an action or offered in evidence shall not be considered part of the pleadings in the action, and unless otherwise ordered by the Court, shall be withdrawn by counsel without further Order within six (6) months after final termination of this action.

Rule 79.2(b) Disposal by the Clerk:

All models, diagrams, depositions, x-rays and other exhibits and materials not withdrawn by counsel shall be disposed of by the Clerk as waste at the expiration of the withdrawal period.

Rule 79.3(e)

Sealed or confidential documents shall be disposed of in accordance with Rule 79.2

JAMES BONINI, CLERK

By: s/P. Butler
Phil Butler, Deputy Clerk