

In the Court of Common Pleas
Cuyahoga County, Ohio

306435

State of Ohio, ex rel.
Betty D. Montgomery,
Attorney General of Ohio

Case No. _____

Plaintiff,

Judge ~~309~~ ~~JUDITH KILBANE-KOCH~~

vs.

Chemical Solvents, Inc.,

Defendant.

Consent Order and Final Judgment Entry

Plaintiff, State of Ohio, ex rel. Betty D. Montgomery, Attorney General of Ohio, 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 rules adopted thereunder; and Plaintiff and Defendant having consented to the entry of this Order;

Therefore, without trial 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" 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.

(b) "**Defendant**" means Chemical Solvents, Inc.

(c) "**Director**" means Ohio's Director of Environmental Protection.

(d) "**Facilities**" means both the Denison Road Facility and the Jennings Road Facility

(e) "**Ohio EPA**" means the Ohio Environmental Protection Agency.

(f) "**O.A.C.**" means the Ohio Administrative Code.

(g) "**Plaintiff**" means the State of Ohio by and through the Attorney General of Ohio.

(h) "**R.C.**" means the Ohio Revised Code.

(i) "**The Denison Road Facility**" refers to the Defendant's hazardous waste facility located at 1010 Denison Road, Cleveland, Cuyahoga County, Ohio.

(j) "**The Jennings Road Facility**" refers to the Defendant's hazardous waste facility located at 3751 Jennings Road, Cleveland, Cuyahoga County, Ohio.

2. Except as otherwise defined in paragraph 1, all terms shall have the meaning defined in R.C. Chapter 3734 and rules adopted thereunder in effect at the time of the entry of this decree.

II. Jurisdiction and Venue

3. 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.

III. Persons Bound

4. The provisions of Section V and VI 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, 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. Satisfaction of Lawsuit

5. 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.

6. 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 claims or conditions not alleged in the Complaint;
- (b) Seek relief 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. 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.

(e) Take any action authorized by law against any person, including Defendant, to eliminate or mitigate conditions at the Facilities which may present an imminent threat to the public health or welfare, or the environment.

7. Nothing in this Consent Order, including payment of stipulated penalties, shall constitute by Defendant an admission of fact or liability or constitute a waiver of any defense in law or in equity, now or in any future enforcement action, lawsuit or otherwise.

V. Injunctive Relief

8. Defendant is ordered and enjoined to comply 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 and referenced under Section VI herein.

VI. Hazardous Waste Facility Standards

9. Defendant is ordered and enjoined from storing any hazardous waste except in accordance with the Hazardous Waste Facility permits issued for its Facilities or, for wastes generated at the Facilities, in accordance with OAC 3745-52-34.

10. Defendant is ordered and enjoined from storing hazardous wastes restricted from land disposal under OAC 3745-59-30 through 3745-59-35, except in

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accordance with OAC 3745-59-50 or in accordance with any exemption which the Director may choose to issue pursuant to R.C. 3734.02(G).

11. Defendant is ordered and enjoined from treating any hazardous waste except in accordance with the Hazardous Waste Facility permits issued for its Facilities or in accordance with any exemption which the Director may choose to issue pursuant to R.C. 3734.02(G).

12. Defendant is ordered and enjoined from marketing hazardous waste fuel to anyone other than those persons described by OAC 3745-58-42(A) or in accordance with any exemption which the Director may choose to issue pursuant to R.C. 3734.02(G).

13. Defendant is ordered and enjoined to maintain documentation that employee training is being conducted as required by OAC 3745-65-16 and 3745-52-34.

14. Defendant is ordered and enjoined to either resolve or report to the Director any manifest discrepancies discovered by Defendant, as required by OAC 3745-65-72.

15. Defendant is ordered and enjoined to sign and date all hazardous waste manifests, as required by OAC 3745-54-71 and 3745-65-71.

16. Defendant is ordered and enjoined, prior to transporting any equipment used in the storage, treatment or disposal of hazardous waste to an off-site storage, treatment or disposal facility, to conduct closure on the equipment to be transported in accordance with OAC 3745-55-13 and 3745-66-13, all other applicable sections of the Ohio Administrative Code and its Hazardous Waste Facility permits.

17. Defendant is ordered and enjoined, prior to the installation of any new tank systems or components thereof, to obtain and maintain the certification of the design as required by OAC 3745-55-92 and 3745-66-92.

18. Defendant is ordered and enjoined, prior to the operation of any new tank systems or components thereof, to obtain and maintain the certification of the installation as required by OAC 3745-55-92 and 3745-66-92.

19. Defendant is ordered and enjoined to provide and maintain secondary containment for all tank systems and components thereof which are required to have secondary containment, in accordance with OAC 3745-55-93 and 3745-66-93.

20. Defendant is ordered and enjoined to keep all containers holding hazardous waste closed, except when it is necessary to add or remove waste, as required by OAC 3745-55-73(A) and 3745-66-73(A).

21. Defendant is ordered and enjoined to implement its contingency plan(s) at its Facilities in the event of a fire, explosion or release of hazardous waste or hazardous waste constituents which could threaten human health and the environment as required by OAC 3745-54-51(B) and 3745-65-51(B).

22. Defendant is ordered and enjoined to maintain documentation that inspections are being conducted, as required by OAC 3745-54-15, 3745-55-74, 3745-55-95, 3745-65-15, 3745-65-33, 3745-66-74 and 3745-66-95 and to make such documentation available during inspection of the Facilities by Ohio EPA personnel. For purposes of this paragraph only, for documentation described by this paragraph that is more than one year old at the time of the inspection, Defendant may request

that it be allowed to supply the requested documentation within 48 hours of the request. If the inspector agrees to allow the Defendant 48 hours to supply the requested documentation, it shall constitute compliance with this paragraph if the requested documentation or a copy thereof is provided within 48 hours of the request for such documentation. This paragraph shall not be construed to limit the State's authority to inspect or otherwise gain access to documentation in accordance with state law.

23. Within sixty (60) days after entry of this Consent Order, Defendant is ordered and enjoined to submit to the Cleveland Fire Department and/or the Cleveland Board of Building Standards and Building Appeals a fire safety plan. The plan shall include a schedule for implementation. Defendant is ordered and enjoined to obtain the approval or acceptance of such plan by the Cleveland Fire Department and/or the Cleveland Board of Building Standards and Building Appeals. Upon approval, Defendant is ordered and enjoined to implement the plan as approved or accepted and in accordance with the schedule contained in the plan. Compliance with this paragraph does not necessarily constitute compliance with OAC 3745-54-31 and 3745-65-31.

24. Defendant is ordered and enjoined to inspect the fencing at its facilities at least every seven days and to repair any holes in or under its fence within twenty-four hours of observing any hole, as required by OAC 3745-54-14 and 3745-65-14.

VII. Civil Penalty

25. Defendant is ordered and enjoined to pay to the State of Ohio a civil penalty in the amount of Fifty Seven Thousand Dollars (\$57,000), payable as follows:

26. Defendant shall pay Forty Two Thousand Dollars (\$42,000) to the State within thirty (30) days after entry of this Consent Order. In lieu of payment of the Fifteen Thousand Dollar (\$15,000) balance of the Fifty Seven Thousand Dollar Civil Penalty, Defendants shall perform the Environmental Improvement Project described in Section VIII. Civil penalties shall be paid 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 43266-0410, a certified check in that amount, payable to the order of "Treasurer, State of Ohio." This civil penalty shall be deposited into the hazardous waste clean-up fund created by O.R.C. Section 3734.28.

VIII. Environmental Improvement Project

27. Defendant is enjoined and ordered to develop and implement an Environmental Improvement Project ("Project") consisting of removal and treatment or disposal of hazardous waste from any school in the Cleveland Public School District, as selected by the Defendant with the concurrence of Ohio EPA. Defendant is enjoined and ordered to expend at least Fifteen Thousand Dollars (\$15,000.00) in removal and treatment or disposal of the hazardous waste removed from the schools. Defendant shall document the expenditures related to the

C removal and treatment or disposal of the hazardous waste removed from the schools.

28. Any public notice or advertisement of the Project(s) issued by Defendant shall state that Defendant has agreed to conduct the Project pursuant to this Consent Order. Such public notice or advertisement may also state that Defendant and Plaintiff have worked cooperatively in order to reach this agreement.

29. Defendant is ordered and enjoined to notify Ohio EPA, Northeast District office, Division of Hazardous Waste Management, in writing at least ten days in advance of any actions taken in the removal and treatment or disposal of the hazardous waste removed from the schools

30. Defendant is ordered and enjoined to complete the Project and expend all funds required in connection therewith within six (6) months after the entry of this Consent Order. In the event that Defendant fails to make all expenditures required in this Section within six (6) months after the entry of this Consent Order, Defendant shall pay the unexpended balance to the State of Ohio as a civil penalty in accordance with Section VII of this Consent Order. Payment of the unexpended balance shall be made within seven months (7) of the entry of this Consent Order.

31. Defendant is ordered and enjoined submit to Ohio EPA, Northeast District office, Division of Hazardous Waste Management, within seven (7) months of the entry of this Consent Order, the documentation of the expenditures incurred in the removal and treatment or disposal of the hazardous waste removed from the schools.

IX. Stipulated Penalties

32. In the event that Defendant or other persons bound by this Consent Order fails to meet any of the requirements of this Consent Order set forth in Paragraphs 16, 17, 18 and 23 of Section VI, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty for each violation according to the following payment schedule: (a) for each day of each failure to meet each requirement, 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 each requirement, 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 each requirement, from sixty-one (61) to ninety (90) days -- One Thousand Five Hundred Dollars (\$1,500.00) per each day for each requirement not met; (d) for each day of each failure to meet each requirement, from ninety-one (91) to one hundred twenty (120) days-- Two Thousand Hundred Dollars (\$2,000.00) per each day for each requirement not met; (e) for each day of each failure to meet each requirement, over one hundred twenty (120) days -- Three Thousand Five Hundred Dollars (\$3,500.00) per each day for each requirement not met.

33. In the event that Defendant or other persons bound by this Consent Order fails to meet any of the requirements of this Consent Order set forth in Paragraphs 10, 11, 12, 13, 14, 15, 19, 20, 21, 22 and 24 of Section VI, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty for each violation according to the following payment schedule: (a) for each day of each failure to meet

each requirement, up to thirty (30) days -- Fifty Dollars (\$50.00) per each day for each requirement not met; (b) for each day of each failure to meet each requirement, from thirty-one (31) to sixty (60) days-- One Hundred Fifty Dollars (\$150.00) per day for each requirement not met; (c) for each day of each failure to meet each requirement, from sixty-one (61) to ninety (90) days -- Two Hundred Dollars (\$200.00) per each day for each requirement not met; (d) for each day of each failure to meet each requirement, from ninety-one (91) to one hundred twenty (120) days--Two Hundred Fifty Dollars (\$250.00) per each day for each requirement not met; (e) for each day of each failure to meet each requirement, over one hundred twenty (120) days -- Three Hundred Fifty Dollars (\$350.00) per each day for each requirement not met.

34. In the event that Defendant or other persons bound by this Consent Order fails to meet any of the requirements of this Consent Order set forth in Paragraph 9 of Section VI, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty for each violation according to the following: (a) for violations of Paragraph 9 involving storage of hazardous waste generated off-site in areas for which Defendant has no permit, Defendant shall pay Stipulated Penalties in accordance with the schedule contained in Paragraph 32; (b) for all other violations of Paragraph 9, Defendant shall pay Stipulated Penalties in accordance with the schedule contained in Paragraph 33.

35. 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 43266-0410, 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.

36. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff pursuant to this Section 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. Any civil penalty imposed for a violation or violations for which defendant has paid stipulated penalties under this Consent Order shall be reduced in the amount of the stipulated penalties paid.

X. Termination

37. No earlier than two (2) 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 the injunctive relief and stipulated penalty provisions of this Consent Order if Defendant can demonstrate that it has been in substantial compliance with the obligations of this Consent Order for such a two (2) year period. The Plaintiff takes no position at this time as to such motion and reserves any rights it may have to oppose the motion including the basis that two (2) years is, in actuality, not an appropriate period of time.

XI. Compliance with Applicable Laws, Permits and Approvals

38. 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 both on and off the Facilities, Defendant 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 is ordered and enjoined to immediately notify the Ohio EPA of the potential conflict. Defendant 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 or state or local law or rule. Nothing in this Consent Order shall be construed to constitute an exemption under R.C. 3734.02(G). Nothing in this Consent Order limits the director's authority to issue or deny an exemption under R.C. 3734.02(G).

XII. Plaintiff's Litigation Costs

39. 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 Twenty Eight Thousand Dollars (\$28,000.00). 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 43266-0410, a certified check in that amount, payable to the order of "Treasurer, State of Ohio" within thirty (30) days of entry of this Order.

XIII. Retention of Jurisdiction

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

XIV. Costs

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

XV. Notice and Submission of Documents

42. Any notice or submission of documents required of Defendant by the terms of this Consent Order shall, unless otherwise indicated by the terms of this Consent Order, be delivered to the following addresses:


- (a) Ohio EPA
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: Nyall McKenna or his successor
(216) 425-9171
- (b) Ohio EPA
Division of Hazardous Waste Management
P.O. Box 163669
1800 WaterMark Drive
Columbus, Ohio 43216-3669
Attn: Manager, Compliance Monitoring and Enforcement
(614) 644-2917
- (c) Hazardous Waste Supervisor
Environmental Enforcement Section
30 East Broad Street, 25th Fl.

Columbus, Ohio 43266-0410

XVI. Entry of Consent Order and Judgment by Clerk

43. Upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three 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.

Signed:

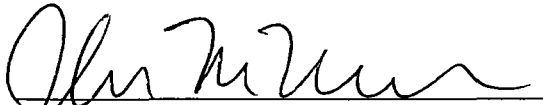


Judge
Cuyahoga County
Court of Common Pleas

Respectfully submitted,

Betty D. Montgomery
Attorney General of Ohio

By:



John K. McManus (0037140)

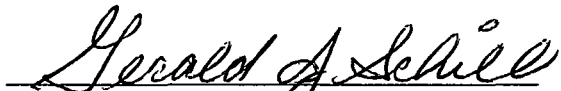
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MAY 01 1996

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By *M. Heister* Dep.