

IN THE COURT OF COMMON PLEAS  
MARION COUNTY, OHIO

STATE OF OHIO, ex rel.  
LEE FISHER  
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

GETMAN BROTHERS  
MANUFACTURING COMPANY,  
a Division of Patent Construction System,

and

PATENT SCAFFOLDING COMPANY,  
"n.k.a. Patent Construction System",  
a Division of Harsco Corporation,

and

HARSCO CORPORATION,

Defendants.

94010

Case No. \_\_\_\_\_

Judge \_\_\_\_\_

COMMON PLEAS COURT  
MARION CO. OHIO  
94 MAR - 1 AM 10:46  
KERRY J. DAVIDS  
CLERK OF COURTS

CONSENT ORDER AND FINAL JUDGMENT ENTRY

The Complaint in the above-captioned matter having been filed against Defendants herein to enforce Ohio's hazardous waste statutes set forth in Revised Code ("R.C.") Chapter 3734 and the rules adopted thereunder concerning the waste handling, storage, treatment and/or disposal practices of Defendants, and Plaintiff State of Ohio upon relation of Lee Fisher, Attorney General of Ohio ("Plaintiff"), and Defendants Getman Brothers Manufacturing Company, Patent Scaffolding Company ("n.k.a. Patent Construction System"), and Harsco Corporation ("Defendants") 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

As used in this Consent Order:

A. **"Approved Closure Plan"** means a closure plan which has been approved by the Director. The approved closure plan may be a closure plan approved by the Director as submitted by Defendants, or a closure plan approved by the Director after being submitted by Defendants and modified by the Director.

B. **"Closure Plan"** means a plan which meets the requirements of O.A.C. Sections 3745-66-11 through 3745-66-16.

C. **"Consent Order"** means this Order and Final Judgment Entry and all appendices hereto. In the event of conflict between this Order and any appendix, the Order shall control.

D. **"Contractor"** means the individual(s) or company or companies retained by or on behalf of Defendants to undertake and complete the work required by this Consent Order. Each contractor and subcontractor shall be qualified to do those portions of the work for which it is retained.

E. **"Defendants"** means Getman Brothers Manufacturing Company, Patent Scaffolding Company ("n.k.a. Patent Construction System"), and Harsco Corporation. Unless otherwise specifically noted in this Consent Order, any requirement, obligation, and/or liability imposed by this Consent Order upon Defendants is imposed jointly and severally.

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

G. **"Facility"** refers to the location where the alleged handling, treatment, storage, disposal, or other placement of hazardous waste was conducted by Defendants or any one of them, which facility is located at 3477 Harding Highway East, Marion County, Marion, Ohio.

H. **"Ohio EPA"** means the Ohio Environmental Protection Agency.

I. **"O.A.C."** means the Ohio Administrative Code.

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

K. **"R.C."** means the Ohio Revised Code.

## II. JURISDICTION AND VENUE

1. The Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapter 3734, Sections 3734.10 and 3734.13 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 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. Defendants shall provide a copy of this Consent Order to each contractor they employ to perform work itemized herein.

### IV. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendants violated numerous provisions of Ohio's hazardous waste statutes and rules in the course of Defendants' activities at their facility located at 3477 Harding Highway East, Marion County, Marion, Ohio ("the facility"), including operation of a hazardous waste facility without a permit. Ohio's environmental hazardous waste statutes and rules are designed to protect Plaintiff State of Ohio, the State of Ohio's natural resources, the environment and the public from the effects of unlawful storage, treatment, transportation, disposal, management, and/or release to the environment of hazardous wastes. Specifically, Plaintiff alleges in its Complaint that Defendants violated the following statutes and rules during the course of their activities at the Marion facility:

- (a) R.C. 3734.02(E): Establishment and operation of a hazardous waste facility without a hazardous waste facility installation and operation permit;
- (b) R.C. 3734.02(F): Storage, treatment, and/or disposal of hazardous waste at unauthorized facilities;
- (c) R.C. 3734.02(F): Transportation of hazardous wastes to unauthorized facilities;
- (d) O.A.C. 3745-68-82: Open burning of hazardous wastes;
- (e) O.A.C. 3745-52-10(E) and 3745-52-11: Failure to determine whether wastes were hazardous wastes before initiating shipments;
- (f) O.A.C. 3745-52-10(E), 3745-52-20, and 3745-52-23(A): Failure to prepare and use hazardous waste manifests;
- (g) O.A.C. 3745-52-10(E) and 3745-52-30: Failure to adequately package hazardous wastes;
- (h) O.A.C. 3745-52-10(E) and 3745-52-31: Failure to properly label packages of hazardous wastes;

- (i) O.A.C. 3745-52-10(E) and 3745-52-32(A): Failure to properly mark packages of hazardous wastes;
- (j) O.A.C. 3745-52-10(E) and 3745-52-32(B): Failure to properly mark containers of hazardous wastes with warning;
- (k) O.A.C. 3745-52-10(E) and 3745-52-33: Failure to placard vehicles carrying hazardous wastes;
- (l) O.A.C. 3745-54-13 and/or 3745-65-13: Failure to analyze hazardous wastes;
- (m) O.A.C. 3745-54-14 and/or 3745-65-14: Failure to maintain security;
- (n) O.A.C. 3745-54-15 and/or 3745-65-15: Failure to develop a written inspection plan, conduct weekly inspections, and record inspection results;
- (o) O.A.C. 3745-54-16 and/or 3745-65-16: Failure to conduct personnel training;
- (p) O.A.C. 3745-54-17 and/or 3745-65-17: Failure to take and document precautions to prevent accidental ignition or reaction of waste;
- (q) O.A.C. 3745-54-31 and/or 3745-65-31: Failure to minimize the risk of fire, explosion and contamination;
- (r) O.A.C. 3745-54-32 and/or 3745-65-32: Failure to have required equipment;
- (s) O.A.C. 3745-54-33 and/or 3745-65-33: Failure to test and maintain equipment;
- (t) O.A.C. 3745-54-34 and/or 3745-65-34: Failure to have access to emergency communication or alarm system;
- (u) O.A.C. 3745-54-37 and/or 3745-65-37: Failure to make arrangements with local authorities;
- (v) O.A.C. 3745-54-51 and 53, and/or 3745-65-51 and 53: Failure to have a contingency plan for emergencies;
- (w) O.A.C. 3745-54-55 and/or 3745-65-55: Failure to designate an emergency coordinator;
- (x) O.A.C. 3745-54-73 and/or 3745-65-73: Failure to keep a written operating record;
- (y) O.A.C. 3745-52-41: Failure to file generator annual hazardous waste reports;
- (z) O.A.C. 3745-54-74 and/or 3745-65-75: Failure to file annual reports;
- (aa) O.A.C. 3745-55-12 and/or 3745-66-12: Failure to have a written closure plan;
- (bb) O.A.C. 3745-55-71 and/or 3745-66-71: Failure to properly store and manage containers of hazardous waste in good condition;
- (cc) O.A.C. 3745-55-73 and/or 3745-66-73: Failure to properly store and manage containers of hazardous waste;

(dd) O.A.C. 3745-55-74 and/or 3745-66-74: Failure to conduct inspections for leaking or deteriorated containers.

The parties hereby acknowledge that, with the exception of the outstanding revised closure plan of Area L and maintaining compliance with the financial assurance requirements of the Ohio Admin. Code, all of the violations cited herein have been corrected and/or complied with by the Defendants.

4. In its Prayer for Relief, Plaintiff requested this Court to, *inter alia*: (1) issue permanent injunctive relief prohibiting and enjoining each Defendant from violating R.C. Chapter 3734 and the rules adopted pursuant thereto; (2) order Defendants to pay into the hazardous waste facility clean-up fund created under R.C. 3734.28 a civil penalty for the violations of R.C. Chapter 3734, as described in each Count of the Complaint, in the amount of ten thousand dollars (\$10,000.00) for each day of each violation, plus ten thousand dollars (\$10,000.00) for each day of each violation occurring subsequent to the filing of the Complaint; and (3) retain jurisdiction of this case for the purpose of enforcing its judgment.

5. Except as otherwise provided in this Article, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendants 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, or for claims or conditions which involve locations other than those at the Facility identified by this Consent Order;
- (c) Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;
- (d) To bring any action against Defendants or against any 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) to enjoin the performance of, and/or recover response 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 Defendants, to eliminate or mitigate conditions at the Facility which may present an imminent threat to the public health or welfare, or the environment.

## **V. INJUNCTIVE RELIEF**

7. With respect to Areas A through K of Defendants closure plan, Defendants have certified closure in accordance with O.A.C. 3745-66-15.
8. With respect to Area L of Defendants closure plan, Defendants submitted a revised closure plan to Ohio EPA on September 13, 1993.
9. Following review of the revised plan, if the revised plan is deficient, Ohio EPA may modify the plan and approve the revised plan as modified by Ohio EPA.
10. Immediately upon receipt of Ohio EPA's approval of the closure plan, either as originally submitted, as revised, or as revised and modified, Defendants are ordered and enjoined to implement the approved closure plan in the manner and pursuant to reasonable time frames as set forth in the approved closure plan and O.A.C. 3745-66-13.
11. Within sixty days of completion of closure, Defendants are ordered and enjoined to submit certification of closure to Ohio EPA, pursuant to O.A.C. 3745-66-15.

## **VI. FINANCIAL ASSURANCE AND RESPONSIBILITY**

12. Plaintiff alleges in its Complaint that Defendants violated O.A.C. 3745-66-42, 3745-66-43 and 3745-66-47 during the course of their activities at the facility. On or about November 30, 1993, Defendants submitted to Ohio EPA documentation demonstrating compliance with the financial assurance requirements set forth in O.A.C. 3745-66-42 through 3745-66-47.
13. Defendants shall maintain compliance with the financial assurance requirements set forth in O.A.C. 3745-66-42 through 3745-66-47.

## **VII. FACILITY ACCESS**

14. As of the date of entry of this Consent Order, Plaintiff and its representatives and contractors shall have access at reasonable times to the Facility, and shall have access to any other property controlled by or available to Defendants to which access is necessary to effectuate the closure actions required by this Order. Nothing in this paragraph shall be construed to diminish any statutory rights and authority for access to the facility by the Director or his authorized representative. Access shall be allowed for the purpose of conduct-

ing activities related to this Order including but not limited to:

- (a) Monitoring the work or any other activities taking place at the Facility;
- (b) Verifying any data or information submitted to Plaintiff;
- (c) Conducting investigations relating to contamination at or near the Facility;
- (d) Obtaining samples;
- (e) Assessing the need for, planning, or implementing additional response actions at or near the Facility;
- (f) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Defendants or their agents, consistent with this Order and applicable law; and/or
- (g) Assisting Defendants' compliance with this Consent Order.

### **VIII. SUBMITTAL OF DOCUMENTS**

15. All required documents shall be submitted to:

Director  
Ohio Environmental Protection Agency  
1800 WaterMark Drive  
Columbus, Ohio 43266-0149  
Attn: Manager, Compliance Monitoring and Enforcement Section  
Division of Hazardous Waste Management

and

Ohio EPA  
Northwest District Office  
347 North Dunbridge Road  
Bowling Green, Ohio 43402  
Attn: DHWM Group Leader.

### **IX. CIVIL PENALTY**

16. Defendants shall pay to the State of Ohio the amount of **One Hundred Thousand Four Hundred Dollars (\$100,400.00)**. This amount shall be paid by delivering to Plaintiff, c/o Matt Sanders, Administrative Assistant, 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 from the date of entry of this Consent Order. This penalty shall be deposited into the hazardous waste cleanup fund created by R.C. Section 3734.28.

## **X. STIPULATED PENALTIES**

17. In the event that Defendants violate any of the requirements of this Consent Order, Defendants shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

- (a) For each day of each failure to meet a requirement, up to thirty (30) days a requirement is due to be met - Five Hundred Dollars (\$500.00) per day.
- (b) For each day of each failure to meet a requirement, from thirty-one (31) to sixty (60) days after a requirement is due to be met - One Thousand Dollars (\$1,000.00) per day.
- (c) For each day of each failure to meet a requirement, from sixty-one (61) days to ninety (90) days after a requirement is due to be met - One Thousand Five Hundred Dollars (\$1,500.00) per day.
- (d) For each day of failure to meet a requirement, over ninety (90) days after a requirement is due to be met - Two Thousand Dollars (\$2,000.00) per day.

The payment of stipulated penalties by Defendants and the acceptance of such stipulated penalties by the Plaintiff for specific violations pursuant to this paragraph shall not be construed to limit the Plaintiff's authority to seek additional relief pursuant to R.C. Chapter 3734 or to otherwise seek judicial enforcement of this Consent Order.

18. Any stipulated penalty required to be made shall be paid by delivering to Plaintiff, c/o Matt Sanders, Administrative Assistant, 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," within thirty (30) days from the date of the failure to meet the requirement(s) of this Consent Order. This penalty shall be deposited into the hazardous waste cleanup fund created by R.C. Section 3734.28.

## **XI. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND APPROVALS**

19. All activities undertaken by Defendants 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, Defendants shall 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, Defendants shall immediately notify Ohio EPA of the potential conflict. Defendants shall 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. PLAINTIFF'S LITIGATION COSTS**

20. For Plaintiff's litigation costs in investigating and prosecuting this case, Defendants shall reimburse the Attorney General's Office in the amount of **Four Thousand Sixty Eight Dollars and Fifty Cents (\$4,068.50)**. This reimbursement shall be paid by delivering a certified check for that amount payable to the order of "Treasurer, State of Ohio," within seven (7) days of entry of this Order in the manner provided for in Provision X, paragraph 18 above.

#### **XIII. RETENTION OF JURISDICTION**

21. This Court will retain jurisdiction of this action for the purpose of enforcing compliance with this Consent Order.

#### **XIV. TERMINATION**

22. The stipulated penalty provisions set forth in Provision X., Paragraph 17 of this Order shall terminate after Defendants have achieved and maintained compliance with all the obligations of this Order, and maintained compliance with the final approved closure plan with respect to Area L, and any renewal or modification thereof, for a period of two (2) years which may begin from the date of the filing of this Order or the date upon which Defendants have paid all penalties pursuant to Part IX and litigation cost pursuant to Part XII of this Order, which ever date is later in time. Termination of this provision of the Order shall be by Order of the Court, upon application by any party and a determination that the conditions set forth in this paragraph have been meet.

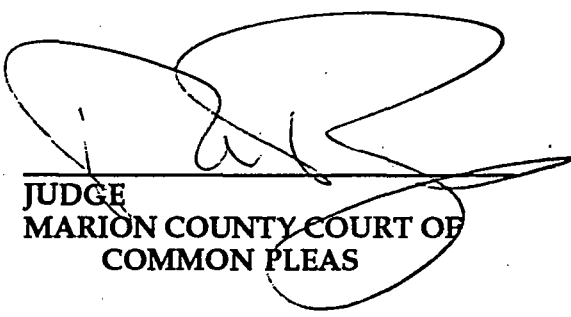
XV. COSTS

23. Defendants are hereby ordered to pay all court costs of this action.

XVI. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

24. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three days of entering the judgment upon the journal, the clerk is hereby 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.

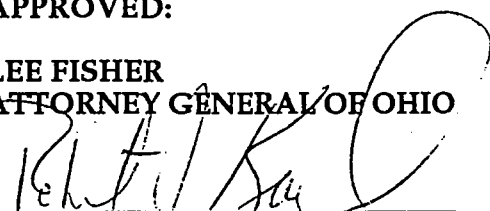
DATED \_\_\_\_\_, 1994



JUDGE  
MARION COUNTY COURT OF  
COMMON PLEAS

APPROVED:

LEE FISHER  
ATTORNEY GENERAL OF OHIO



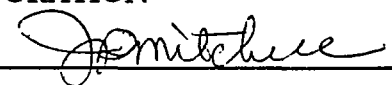
ROBERT J. KARL (0042292)  
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43266-0410  
(614) 466-2766  
Counsel for Plaintiff  
State of Ohio

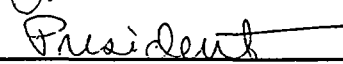
GETMAN BROTHERS MANUFACTURING  
COMPANY, A DIVISION OF PATENT  
CONSTRUCTION SYSTEMS

BY:  \_\_\_\_\_

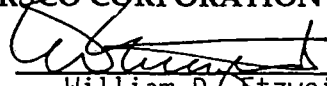
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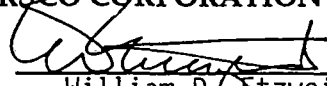
PATENT SCAFFOLDING COMPANY,  
"n.k.a. PATENT CONSTRUCTION  
SYSTEMS", A DIVISION OF HARSCO  
CORPORATION

BY:  \_\_\_\_\_

TITLE:  \_\_\_\_\_

HARSCO CORPORATION

BY:  \_\_\_\_\_

TITLE:  William D. Stzweiler  
Sr. V. P. & COO-Commercial &  
Industrial Products