

IN THE  
COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

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

Plaintiff,

v.

GOULD INC.,

Defendant.

CASE NO.

JUDGE

-  
258415

091 STUART A. FRIEDMAN  
CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio ("State") by its Attorney General, Lee Fisher, and Defendant Gould Inc. (hereinafter referred to as "Gould") having consented to the entry of this Order,

***NOW THEREFORE***, without trial of any issue of fact or law, and upon consent of the parties hereto, it is hereby ***ORDERED, ADJUDGED AND DECREED*** as follows:

**I. JURISDICTION AND VENUE**

The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Defendant Gould under Chapter 3734. of the Ohio Revised Code ("RC"), and venue is proper in this Court.

**II. PARTIES**

A. The provisions of this Consent Order shall apply and be binding upon the parties to this action, their agents, officers, employees, assigns, stockholders, board of directors,

successors in interest, heirs, legatees, and any person acting in concert or privity with any of them.

B. Defendant Gould's agents, officers, employees, assigns, stockholders, board of directors, successors in interest, heirs, legatees or employees of agents or consultants engaged to carry out work pursuant to this Consent Order shall only be responsible to take action under this Consent Order in their respective corporate capacities and shall not, by operation of this Consent Order, be personally responsible for the obligations under this Consent Order.

C. Defendant Gould is ordered to provide a copy of this Consent Order to each general contractor and/or consultant it employs to perform the work described herein. In addition, Defendant is ordered to require each general contractor and/or consultant to provide a copy of this Consent Order to each of its subcontractors and/or subconsultants for such work.

### III. SATISFACTION OF LAWSUIT

A. The State alleges in its Complaint that Defendant Gould owned and/or operated, or otherwise engaged in the management of hazardous waste at the manufacturing plant located at 18901 Euclid Avenue, Cleveland, Cuyahoga County, Ohio (hereinafter referred to as the "Euclid Avenue facility") in such a manner as to result in violations of the hazardous waste laws of the State of Ohio, *i.e.*, RC Chapter 3734. and the rules adopted thereunder. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims alleged in

the Complaint.

B. Nothing in this Consent Order shall be construed as an admission of fact or law by Defendant Gould and shall have no effect on any other administrative, civil and/or criminal proceeding pertaining to the Euclid Avenue facility, including any action by the State to require corrective action at the Euclid Avenue facility and/or the Lake County Sanitary Landfill.

C. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief for violations which occur after the filing of the Complaint, or which are not alleged in the Complaint, regardless of when any such violations may have occurred.

D. Nothing in this Consent Order shall be construed to limit the State of Ohio from requiring Defendant Gould, pursuant to the provisions of RC Chapter 3734. and the rules adopted thereunder, and/or any federal law, to initiate appropriate corrective action to address contamination of the groundwater, surface water and/or soils at the Euclid Avenue facility and/or the Lake County Sanitary Landfill if and to the extent Defendant may lawfully be compelled to perform corrective action under such laws and/or rules, or to recover costs incurred by the State for such remediation to which the State may be entitled pursuant to state and/or federal law.

#### IV. EFFECT UPON OTHER ACTIONS

A. Nothing in this Consent Order shall be construed to relieve Defendant Gould of the obligation to comply with applicable federal, state or local statutes, regulations or

ordinances, or except as expressly stated herein, shall constitute a waiver or release of any right, remedy, defense or claim by or against Defendant with regard to any person not a party to this Consent Order.

B. Nothing in this Consent Order or discussions regarding the responsibility of Defendant Gould or other persons shall be construed in any manner to constitute or represent an allocation or division of responsibility between said Defendant and any other person(s) for matters addressed in this Consent Order.

#### V. PERMANENT INJUNCTION

Defendant Gould is hereby permanently enjoined and ordered to immediately comply with the requirements of RC Chapter 3734. and the rules adopted thereunder at the Euclid Avenue facility for matters addressed in Articles VI and VII.

#### VI. OTHER INJUNCTIVE RELIEF

A. Within thirty (30) days after the Court's entry of this Consent Order, Defendant Gould is enjoined and ordered to submit to the Ohio EPA an approvable work plan for Area A at the Euclid Avenue facility that meets the closure performance standards set forth in Rules 3745-66-11 and 3745-66-14 of the Ohio Administrative Code ("OAC"). In addition, said plan shall contain a schedule of compliance for completion of the work outlined therein and a groundwater monitoring program capable of determining the impact of Area A on, at least, the uppermost aquifer underlying the Euclid Avenue facility pursuant to OAC Rules 3745-65-90 through 3745-65-94. Defendant

is enjoined and ordered to begin implementation of the approved work plan within five (5) working days after receipt of written approval from the Ohio EPA and to complete implementation of the approved plan in accordance with the timeframes, *i.e.*, schedule of compliance, contained therein.

B. Within thirty (30) days after the Court's entry of this Consent Order, Defendant Gould is enjoined and ordered to submit to the Ohio EPA an approvable work plan for Area B at the Euclid Avenue facility that meets the closure performance standards set forth in OAC Rules 3745-66-11 and 3745-66-14. In addition, said plan shall contain a schedule of compliance for completion of the work outlined therein and a groundwater monitoring program capable of determining the impact of Area B on, at least, the uppermost aquifer underlying the Euclid Avenue facility pursuant to OAC Rules 3745-65-90 through 3745-65-94. Defendant is enjoined and ordered to begin implementation of the approved work plan within five (5) working days after receipt of written approval from the Ohio EPA and to complete implementation of the approved plan in accordance with the timeframes, *i.e.*, schedule of compliance, contained therein.

C. Defendant Gould is enjoined and ordered to begin implementation of the closure plan for the soil storage pile area at the Euclid Avenue facility, approved by the Director with modifications April 30, 1992, within thirty (30) days from the Court's entry of this Consent Order and to complete implementation of the plan in accordance with the timeframes,

*i.e.*, schedule of compliance, contained therein and/or OAC Rule 3745-66-13.

D. In the event that during implementation of the closure plan for the soil storage pile area at the Euclid Avenue facility identified in Article VI, Paragraph C, it is determined by either the Ohio Environmental Protection Agency ("Ohio EPA") or Defendant Gould, on their own or with the assistance of the other, that circumstances at the Euclid Avenue facility have changed in relation to the Article VI, Paragraph C closure plan (for example, without limiting the generality of this paragraph, the soil contamination beneath the former soil storage pile area was not caused by the former soil storage piles), Defendant may submit an amended closure plan or if the Ohio EPA makes such determination, Defendant Gould is enjoined and ordered to submit to the Ohio EPA an amended closure plan, *i.e.*, to amend the closure plan identified in Article VI, Paragraph C, in accordance with OAC Rule 3745-66-12(C) within thirty (30) days after written notice of the Ohio EPA's determination is received by Defendant. Defendant is enjoined and ordered to begin implementation of the approved amended closure plan within five (5) days after receipt of written approval from the Ohio EPA and to complete implementation of the approved plan in accordance with the timeframes, *i.e.*, schedule of compliance, contained therein and/or OAC Rule 3745-66-13.

E. Defendant Gould is enjoined and ordered to provide to the Ohio EPA, as part of the closure plan for the soil storage

pile area at the Euclid Avenue facility, a cost estimate, financial assurance and liability insurance for the final closure of the storage pile area in accordance with OAC Rules 3745-66-42, 3745-66-43 and 3745-66-47, respectively, within thirty (30) days from the Court's entry of this Consent Order.

F. Within sixty (60) days of completion of the closure of the soil storage pile area at the Euclid Avenue facility, Defendant Gould is enjoined and ordered to submit to the Ohio EPA, by registered mail, a certification that said area has been closed in accordance with the specifications in its closure plan approved by the Ohio EPA as set forth in Article VI, Paragraph B in accordance with OAC Rule 3745-66-15.

G. In the event Defendant Gould fails to achieve a "clean closure", as determined by the Ohio EPA under applicable statutes and regulations, of the soil storage pile area at the Euclid Avenue facility, Defendant is enjoined and ordered to amend the closure plan identified in Article VI, Paragraph C in accordance with OAC Rule 3745-66-12(C) and to conduct post-closure monitoring of said area in accordance with OAC Rule 3745-66-17 for thirty (30) years after the completion of closure of the soil storage pile.

H. In the event Defendant Gould is required to perform post-closure monitoring of the soil storage pile area at the Euclid Avenue facility, Defendant is enjoined and ordered to provide to the Ohio EPA, as part of its amended closure plan submitted pursuant to Article VI, Paragraph F, a cost estimate and financial assurance for the post-closure care of said area

in accordance with OAC Rules 3745-66-44 and 3745-66-45, respectively, within thirty (30) days from the submittal of the closure certification required by OAC Rule 3745-66-15.

VII. MISCELLANEOUS INJUNCTIVE PROVISIONS

A. In the event Defendant Gould is notified, in writing, by the Ohio EPA that any or all of the documents submitted to achieve compliance with Article VI are unsatisfactory in whole or in part, Defendant is enjoined and ordered to revise and submit to the Ohio EPA a revised document, or documents, incorporating all of the required revisions within thirty (30) days after receipt of the Ohio EPA's written notification requiring such revisions. Where the Ohio EPA approves the revised document(s) or the revised document(s) with modifications, Defendant is enjoined and ordered to commence implementation of the revised and/or modified document(s) within five (5) working days after receiving written approval from the Ohio EPA, in accordance with the time frames, *i.e.*, schedule of compliance, contained therein and/or OAC Rule 3745-66-13.

B. In the event Defendant Gould is notified, in writing, by the Ohio EPA that any supplemental field, laboratory and/or other investigative work is required for any and or all of the documents submitted to maintain compliance with Article VI, Defendant is enjoined and ordered to complete said work, revise the necessary document(s) and submit the revised document, or documents, to the Ohio EPA incorporating the results of the required supplemental work within thirty (30) days after



completion of said work, unless the Ohio EPA specifies, in writing, a longer period of time. Where the Ohio EPA approves the revised document(s) or the revised and/or modified document(s) with modifications, Defendant is enjoined and ordered to commence implementation of the revised and/or modified document(s) within five (5) working days after receiving written approval from the Ohio EPA, in accordance with the time frames, i.e., schedule of compliance, contained therein and/or OAC Rule 3745-66-13.

#### VIII. POTENTIAL FORCE MAJEURE

In any action to enforce any of the provisions of this Consent Order, Defendant Gould may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons beyond its control such as, by way of example and not limitation, act of God, unusually severe weather conditions, strikes, acts of war or civil disturbances, or orders of any regulatory agency. While the State does not agree that such a defense exists, it is, however, hereby agreed upon by the parties that it is premature at this time to raise and adjudicate the existence of such a defense, and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an enforcement action, if any, is commenced. Acceptance of this Consent Order without a *force majeure* clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

#### IX. REPORTING REQUIREMENT

In accordance with Articles VI and VII, Defendant Gould is

ordered to submit the documents identified in said Articles to the Ohio EPA's Central Office, DHWM, Attn: Manager, Compliance Monitoring and Enforcement Section, 1800 WaterMark Drive, P. O. Box 1049, Columbus, Ohio 42366-0149; with an additional copy to the Ohio EPA's Northeast District Office, DHWM, Attn: RCRA Group Leader, 2110 E. Aurora Road, Twinsburg, Ohio 44087-1969.

**X. EFFECT OF CONSENT ORDER**

This Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing hazardous waste facility. Approval for any such construction or modification shall be by permit issued by the Director of Environmental protection or other such permits as may be required by applicable federal, state or local laws, rules or regulations.

**XI. RESERVATION OF RIGHTS**

A. The signing of this Consent Order by Defendant Gould shall not be construed to be a waiver by Defendant of any right to appeal a final action of the Director pertaining to the Euclid Avenue facility, as said action relates to the requirements set forth in this Consent Order, issued pursuant to the Ohio Revised Code.

B. In the event that the parties cannot agree on any matter required pursuant to Articles VI and/or VII, the State reserves all rights to take any lawful or necessary action including, but is not limited to, the issuance of a final order, and Defendant reserves its right to seek review of such actions as allowed by Ohio EPA regulations and/or the Ohio

Revised Code, or as otherwise allowed by law, including the right to seek relief from a court or the Ohio EPA from the accrual of stipulated penalties during an appeal of a final action of the Director.

C. The State takes no position as to any attempt by Defendant Gould, pursuant to Article XI, Paragraph B, to seek relief from a court or the Ohio EPA from the accrual of stipulated penalties during an appeal of a final action of the Director. However, the State reserves any and all rights it may have to oppose any such attempt.

#### XII. CIVIL PENALTY

Defendant Gould is ordered to pay to the State, pursuant to RC Section 3734.13(C), a civil penalty of two hundred eleven thousand dollars (\$211,000.00). The civil penalty shall be paid by delivering to the State's attorney, and/or his successor, a certified check for the above amount, payable to the order of "Treasurer, State of Ohio", to be deposited into the hazardous waste clean-up fund, within seven (7) days of the Court's entry of this Consent Order.

#### XIII. ENFORCEMENT COSTS

Defendant Gould is ordered to pay to the Ohio EPA one thousand five hundred dollars (\$1,500.00). Said amount represents 1/4 of the enforcement costs incurred by the Ohio EPA in the above-captioned action. The enforcement costs shall be paid by delivering to Pat Campbell, Fiscal Officer/DERR, Ohio EPA, P. O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43266-0149, or her successor, a certified check for the

above-stated amount, payable to the order of the "Treasurer, State of Ohio", to be deposited into the Hazardous Waste Special Clean-Up Account, within seven (7) days of the Court's entry of this Consent Order.

**XIV. ATTORNEY GENERAL COSTS**

Defendant Gould is ordered to pay to the Attorney General of Ohio thirty-seven thousand five hundred dollars (\$37,500.00). Said amount represents 3/4 of the costs incurred by the Attorney General's office in the above-captioned action. These costs shall be paid by delivering to the State's attorney, and/or his successor, a certified check for the above-stated amount, payable to the order of the "Treasurer, State of Ohio", to be deposited into the Ohio Attorney General's Special Reimbursement Fund, No. 612, Program No. 5718, within seven (7) days of the Court's entry of this Consent Order.

**XV. STIPULATED PENALTIES**

A. In the event that Defendant Gould fails to meet any of the provisions of this Consent Order set forth herein, Defendant shall be liable for payment of a stipulated penalty in accordance with the following payment schedule:

1. For each day of each failure to meet a provision, up to thirty (30) days--five hundred dollars (\$500.00) per day per violation;
2. For each day of each failure to meet a provision, from thirty-one (31) to sixty days (60)--seven hundred fifty dollars (\$750.00) per day per violation;
3. For each day of each failure to meet a provision, from sixty-one (61) to ninety

(90) days--one thousand dollars  
(\$1,000.00) per day per violation; and

4. For each day of each failure to meet a provision, over ninety days (90) days--two thousand dollars (\$2,000.00) per day per violation.

B. Any payment required to be made under the provisions of Paragraph A of this Article shall be made by delivering to the State's attorney, and/or his successor, a certified check, or checks, for the appropriate amounts, within seven (7) days from the date of the failure to meet any requirement of this Consent Order, made payable to "*Treasurer, State of Ohio*".

**XVI. TERMINATION OF STIPULATED PENALTIES**

A. The provisions of this Consent Order set forth in Article XV, Paragraphs A and B requiring the payment of stipulated penalties shall be terminated upon a demonstration by Defendant Gould that: 1. it has complied with all the terms and conditions of this Consent Order, and 2. it has paid the civil penalty, enforcement costs, Attorney General costs and any stipulated penalty due and owing as required by this Consent Order.

B. Defendant Gould may not seek termination of the stipulated penalty section of this Consent Order for at least thirty-six (36) months, i.e., three (3) calendar years, from the date it certifies closure of the storage pile area of the Euclid Avenue facility, in accordance with OAC Rule 3745-66-15.

C. Termination of the stipulated penalty section of this Consent Order shall only be by order of the Court upon

application by any party, and a demonstration that the conditions outlined in Article XVI, Paragraphs A and B have been met.

**XVII. RETENTION OF JURISDICTION**

The Court will retain jurisdiction of this action for the purpose of enforcing the terms and provisions of this Consent Order.

**XVIII. COSTS**

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

Entered this 28 day of SEPTEMBER 1993.



JUDGE, COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

APPROVED:

LEE FISHER  
ATTORNEY GENERAL OF OHIO



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Attorney for Defendant  
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*C. R. Bush*

**CRAIG R. BUSH, ESQ.**

Authorized Representative of  
Defendant Gould Inc.

RECEIVED FOR FILING

SEP 28 1993

GERALD E. FUERST

*[Signature]*

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THE STATE OF OHIO Cuyahoga County	} CLERK OF THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY.
I HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY THE ORIGINAL COPY FROM THE ORIGINAL	
September 28, 1993	
FILED IN MY OFFICE	
September 28, 1993	
GERALD E. FUERST, Clerk	
<i>[Signature]</i> Deputy	