

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

STATE OF OHIO, ex rel.
ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO

Plaintiff,

vs.

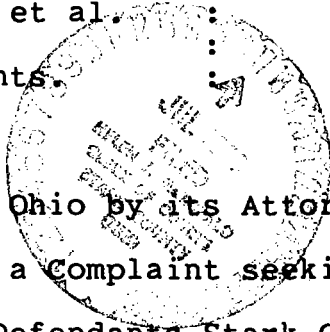
STARK CERAMICS, INC., et al.

Defendants.

CASE NO. 87-303

JUDGE GWIN

CONSENT ORDER



The State of Ohio by its Attorney General, Anthony J. Celebrezze, Jr. filed a Complaint seeking injunctive relief and civil penalties from Defendants Stark Ceramics, Inc., John Stewart, Jr. and Frank Gonzales (hereinafter "Defendants") for violations of Ohio Revised Code ("O.R.C.") Chapters 3734. and 6111. and the rules adopted thereunder.

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

I. JURISDICTION

1. The Court has jurisdiction over the subject matter herein pursuant to O.R.C. Chapter 3734. and 6111. The Complaint states a claim upon which relief can be granted against Defendants under these statutes. The Court has jurisdiction over the parties hereto. Venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply to and be binding upon the Defendants, their agents, officers, employees, assigns, and successors in interest, representatives, consultants, contractors, and/or all persons that act in concert or privity with Defendants. Defendants shall provide a copy of this Consent Order to any contractor, consultant, or other person or entity hired by Defendants to conduct any work required by this Consent Order, and Defendants shall require that such contractor, consultant, person or entity shall provide a copy thereof to any subcontractor retained to conduct any work required by this Consent Order.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendants have operated the Stark Ceramics Facility in such a manner as to result in numerous violations of O.R.C. Chapters 3734 and 6111. Defendants deny these allegations. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendants, their agents, officers, employees, assigns, and successors in interest for the claims under such laws alleged in the Complaint which are based on violations of law occurring prior to the entry of this Order. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the

Complaint, including violations which occur after the entry of this Order. The Consent Order for Preliminary Injunction is terminated and superceded by this Consent Order.

IV. INJUNCTIVE RELIEF

4. The Defendants are enjoined from violation of Chapter 3734 O.R.C., as alleged in Plaintiff's Complaint, and are enjoined to comply with the terms and conditions of any permit, plan approval, or modifications or amendments thereof, issued pursuant to Chapter 3734, and the rules adopted pursuant to Chapter 3734 which are applicable to any activity required or contemplated by this Order, including closure under Chapter 3734 with respect to the Facility described in paragraph 6 below.

5. The Defendants are enjoined from violation of Chapter 6111 O.R.C., as alleged in Plaintiff's Complaint, and are enjoined to comply with the terms and conditions of any permit, or modifications thereof, issued pursuant to Chapter 6111 O.R.C. and the rules adopted pursuant to Chapter 6111 O.R.C. which are applicable to any activity required or contemplated by this Order with respect to wastewater discharges from Stark Ceramics Facility to waters of the state.

V. CLOSURE

6. Defendants shall close the Stark Ceramics "Facility", as that term is defined by Ohio Administrative Rule 3745-50-10(32) and as defined in the subsequent sentence, by implementing a closure plan which is approved by the Director of

Ohio EPA. The Facility includes the A Plant and B Plant lagoons, which are referenced in the Complaint, and all other contiguous land and structures, other appurtenances, and improvements on the land used by Defendants for treating, storing, or disposing of hazardous waste.

Pursuant to the Preliminary Injunction, on November 14, 1988 Defendants submitted a plan for closure. In the event that the plan is not approved by the Director, Defendants shall modify the plan or submit a new plan for approval within 30 days after receiving such written statement in accordance with O.A.C. 3745-66-12(D)(4). Defendants shall comply with the final approved closure plan, any conditions added to the closure plan by the Director of Ohio EPA and any amendments to the closure plan, and these plans as approved, together with any conditions or amendments, shall be fully incorporated into this Consent Order and shall become part of this Consent Order.

Nothing herein shall be construed to limit the rights of Defendants to amend or modify the submitted or approved closure plan pursuant to O.A.C. 3745-66-12(C) and (D).

All plans required by this subsection shall be submitted to the Director of Ohio EPA, as set forth in O.A.C. Rule 3745-66-12(D)(1). Furthermore, a copy of all plans shall be submitted to:

Ohio EPA
Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087

and

U.S. EPA, Region 5
RCRA Permitting Branch
230 South Dearborn
Chicago, Illinois 60604

7a. Defendants shall comply with the following requirements, set forth in O.A.C. Rules 3745-66-42 through 45, at the Stark Ceramics "Facility" within thirty (30) days of entry of this Order.

- (i) Cost estimate for closure, as required by O.A.C. Rule 3745-66-42.
- (ii) Financial assurance for facility closure, as required by O.A.C. Rule 3745-66-43.
- (iii) Cost estimate for post-closure care, as required by O.A.C. Rule 3745-66-44.
- (iv) Financial assurance for post-closure monitoring and maintenance, as required by O.A.C. Rule 3745-66-45.

7b. Defendants shall comply with the following requirements as set forth in O.A.C. Rule 3745-66-47 at the facility within ninety (90) days of entry of this Order:

- (i) Liability requirements, as required by O.A.C. Rule 3745-66-47.

While not relieving Defendants of the obligations imposed by paragraph 7b and while not inferring that Plaintiff is obligated to accept the detailed explanation, if Defendants cannot prove compliance with O.A.C. rule 3745-66-47 within ninety (90) days, Defendants may submit to Plaintiff a detailed explanation as to why such insurance is not available, steps being taken to acquire such insurance, a proposed schedule to

acquire such insurance, and interim measures being taken by Defendants to minimize risks to the environment and to the people of the State during the acquisition of such insurance.

Documentation of the above requirements shall be submitted to the Director of Ohio EPA.

VI. TREATMENT AND ELIMINATION OF WASTEWATER DISCHARGES

8. Defendants are ordered to complete the construction of wastewater treatment facilities to fully eliminate any wastewater discharges, for which a permit is required by O.R.C. Section 6111.04, from the B Plant, as referenced in the Complaint, by the date of entry of this Order and to fully eliminate wastewater discharges, for which a permit is required by O.R.C. Section 6111.04 from the A Plant, as referenced in the Complaint, by October 27, 1989. Furthermore, such wastewater treatment facilities shall be fully constructed and fully operating at the B Plant by the date of entry of this Order and at the A Plant by October 27, 1989. Full operation of the wastewater treatment facilities at the A and B Plants shall be defined as operating as to fully eliminate any wastewater discharges for which a permit is required by O.R.C. Section 6111.04 from the treatment facilities or as to discharge process wastewaters to a publicly owned treatment works under applicable pretreatment regulations.

Nothing herein shall be construed to limit the rights of Defendants to discharge treated wastewater to waters of the State at some time in the future provided Defendants have received all permits required under O.R.C. Chapter 6111 and rules promulgated thereunder prior to any such discharge and such discharge is in accordance with such permits.

9. This Order contemplates that there will be a wastewater discharge to waters of the State before the full elimination of wastewater discharges on or before October 27, 1989. Such wastewater discharge is allowed so long as it is consistent with the terms of this Order. Defendants shall retain the "upset defense" as set forth in 40 CFR §122.41(n) with respect to such wastewater discharge. Defendants have filed an application for an NPDES permit for a wastewater discharge to waters of the State, and the parties are agreed that Ohio EPA will not take any action on the pending application during the period from entry of this Order to October 27, 1989.

Until all wastewater discharges are fully eliminated as required by this paragraph and paragraph 8 above, Defendants shall monitor all discharges in accordance with the following requirements and any wastewater discharges shall comply with the interim effluent limitations as provided for below:

INTERIM EFFLUENT LIMITATIONS AND
MONITORING REQUIREMENTS

CODE	UNITS	PARAMETER	CONCENTRATION Other Units (Specify)		LOADING kg/day		MONITORING REQUIREMENTS	
			30 <u>Day</u>	<u>Max.</u>	30 <u>Day</u>	<u>Max.</u>	Meas. <u>Freq.</u>	Sample <u>Type</u>
00056	GPD	Flow	--	--	--	--	1/wk	24 hr. Total
00530	mg/l	Total Suspended Solids	45	60	--	--	1/wk	Grab
01007	ug/l	Total Barium	600	720	0.016	0.019	1/wk	Grab
01051	ug/l	Total Lead	700	1050	0.019	0.028	1/wk	Grab
01090	ug/l	Total Zinc	1000	1300	0.027	0.035	1/wk	Grab

The pH (Reporting Code 00400) shall not be less than 6.5 S.U. nor greater than 9.0 S.U. and shall be monitored once per week by grab sample.

Grab is defined as a composite sample of one day's discharge.

Test procedures for analysis of pollutants shall conform to regulation 40 C.F.R. 136. [Test procedures for the analysis of pollutants].

The results of all monitoring required by this paragraph shall be submitted to Ohio EPA on or before the 15th of the following month at the following address:

Kelvin Rogers (or his successor)
Ohio Environmental Protection Agency
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087

VII. CIVIL PENALTIES

10. The Defendant is further ordered to pay a civil penalty pursuant to Ohio Revised Code Sections 3734.13 and 6111.09 of One Hundred Thousand Dollars (\$100,000.00). This payment shall be made by tendering checks or money orders to Plaintiff's Attorney or his successor in accordance with the following schedule:

- a. Twenty-Five Thousand Dollars (\$25,000) within thirty (30) days after entry of this Order.
- b. Twenty-Five Thousand Dollars (\$25,000) within one hundred twenty (120) days after entry of this Order.
- c. Twenty-Five Thousand Dollars (\$25,000) within two hundred seventy (270) days after entry of this Order.
- d. Twenty-Five Thousand Dollars (\$25,000) within three hundred sixty (360) days after entry of this Order.

Said checks or money orders shall be made payable to the "Treasurer, State of Ohio" and tendered at the following address:

Attorney General's Celebrezze's Office
Environmental Enforcement Section
30 East Broad Street
Columbus, Ohio 43266-0410
Attention: Timothy Kern

VIII. STIPULATED PENALTIES

11. When the Director of Ohio EPA takes action on the plan for closure submitted by Defendants in accordance with O.A.C. Rule 3745-66-12(D)(4), Defendants shall be liable for and shall pay a stipulated penalty for each day any of the deadlines, milestones or requirements set forth in (1) the Approved Closure Plan or any approved amended closure plan, (2) the Director's action on the Closure Plan or any approved amended closure plan and (3) the applicable portions of O.A.C. Rules 3745-66-10

through 3745-66-20 are not met according to the following payment schedule. For each day of failure to meet a requirement, up to ten (10) days - no penalty. For each day of failure to meet a requirement, from ten (10) to forty (40) days - \$500.00 per day for each requirement not met. For each day of failure to meet a requirement, from forty-one (41) to seventy (70) days - \$1,000.00 per day for each requirement not met. For each day of failure to meet a requirement, from seventy-one (71) to one hundred (100) days - \$2,000.00 per day for each requirement not met. For each day of failure to meet a requirement, from one hundred-one (101) days to one hundred thirty (130) days - \$5,000.00 per day for each requirement not met. Such payment shall be made on Defendants' own initiative or upon request of Plaintiff's attorney at the address listed in paragraph 10.

12. In the event Defendants fail to construct wastewater treatment facilities and/or eliminate wastewater discharges as set forth in paragraph 8 Defendants shall pay a stipulated penalty for each day the requirements set forth in paragraph 8 are not met according to the following payment schedules. For each day of failure to meet a requirement, up to ten (10) days - no penalty. For each day of failure to meet a requirement, from ten (10) to forty (40) days - \$500.00 per day for each requirement not met. For each day of failure to meet a requirement, from forty-one (41) to seventy (70) days - \$1,000.00 per day for each requirement not met. For each day of failure to meet a requirement, from seventy-one (71) to one hundred (100) days - \$2,000.00 per day for each requirement not met. For each

day of failure to meet a requirement, from one hundred-one (101) days to one hundred thirty (130) days - \$5,000.00 per day for each requirement not met. Such payment shall be made on Defendants' own initiative or upon request of Plaintiff's attorney at the address listed in paragraph 10.

13. In the event Defendants fail to comply with any of the effluent limitations, monitoring requirements and/or reporting requirements set forth in paragraph 9, Defendants shall pay a stipulated penalty for each day the limitation or requirement is not met according to the following schedule.

For each day of failure to meet a requirement other than a thirty day effluent limitation, up to thirty (30) days - \$250.00 per day for each requirement not met. For each day of failure to meet a requirement other than a thirty day effluent limitation, from thirty-one (31) to six (60) days - \$500.00 per day for each requirement not met. For each day of failure to meet a requirement other than a thirty day effluent limitation, from sixty-one (61) to ninety (90) days - \$1,000.00 per day for each requirement not met. For each day of failure to meet a requirement other than a thirty day effluent limitation, from ninety-one (91) to one hundred twenty (120) days - \$2,500.00 per day for each requirement not met. Such payment shall be made on Defendants' own initiative or upon request of Plaintiff's attorney at the address listed in paragraph 10.

For the first month's failure to comply with any thirty day effluent limitation, \$1,000. For a second consecutive month's failure to comply with the same thirty day effluent

limitation, \$1,750. For a third consecutive month's failure to comply with the same thirty day effluent limitation, \$2,500. For any consecutive month's failure to comply with the same thirty day effluent limitation after the third consecutive month, \$3,250. Such payment shall be made on Defendants' own initiative or upon request of Plaintiff's attorney at the address listed in paragraph 10.

14. In the event the Defendants fail to comply with the requirements set forth in paragraph 7a concerning cost estimates and financial assurance for closure and post-closure, Defendants shall pay stipulated penalties according to the following schedule. For each day of failure to meet a requirement, up to ten (10) days - no penalty. For each day of failure to meet a requirement, from ten (10) to forty (40) days - \$500.00 per day for each requirement not met. For each day of failure to meet a requirement, from forty-one (41) to seventy (70) days - \$1,000.00 per day for each requirement not met. For each day of failure to meet a requirement, from seventy-one (71) to one hundred (100) days - \$2,000.00 per day for each requirement not met. For each day of failure to meet a requirement, from one hundred-one (101) to one hundred thirty (130) days - \$5,000.00 per day for each requirement not met. Such payment shall be made on Defendants' own initiative or upon request of Plaintiff's attorney at the address listed in paragraph 10.

15. The provisions of this Consent order requiring the payment of stipulated penalties, i.e., Section VIII, paragraphs 11, 12, 13, and 14 shall terminate after Defendants have achieved

compliance with all of the requirements of Sections V and VI of this Order and have paid all penalties, stipulated and civil, required pursuant to this Consent Order. Termination of the stipulated penalties provisions under this paragraph shall be by Order of this Court, upon application by any party and a demonstration that the conditions set forth in this paragraph have been met.

IX. MISCELLANEOUS

16. Within fourteen (14) days from each deadline milestone or completion date required by paragraphs 6, 7a, 7b, 8 and 9 of this Consent Order, Defendants approved closure plan or any approved amended closure plan, the Director's action on the closure plan or any approved amended closure plan, and the applicable provisions of O.A.C. Rules 3745-66-10 through 3745-66-20, Defendants shall submit a written report, stating whether or not Defendants have performed the actions relating thereto, to the following address:

Debby Berg (or her successor)
Ohio Environmental Protection Agency
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087.

17. The Court shall retain jurisdiction of this matter for the purpose of overseeing the implementation of this Order.

18. Nothing herein shall be construed to limit Defendant's rights under chapter 3745 O.R.C. to appeal any action

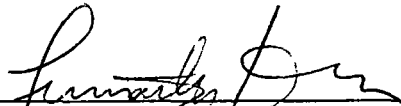
of the Director of Environmental Protection with regard to any permit or closure plan relating to the Facility, as defined in paragraph 6 above, or to any discharge of sewage, industrial waste, or other waste to Osnaberg Ditch.

19. Defendants shall pay the costs of this action.


JUDGE GWIN

APPROVED:

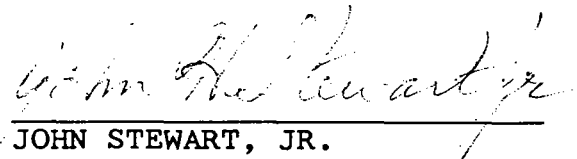
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(614) 466-2766



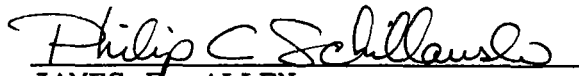
CHARLES A. ROJAS
STARK CERAMICS, INC., By its
Authorized Representative



JOHN STEWART, JR.



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