

ORIGINAL

FILED
COMMON PLEAS COURT
ERIE COUNTY, OHIO
2016 APR 20 AM 11:20
LUVADA S. WILSON
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
ERIE COUNTY, OHIO

STATE OF OHIO, ex. rel.
MICHAEL DEWINE
ATTORNEY GENERAL OF OHIO

Plaintiff,

v.

PACIFIC OIL COOLER
SERVICE OF OHIO, INC.
d/b/a AERO-CLASSICS, INC., et al.

Defendants.

:
:
:
:
:
:
:
:
:
:
:
:

Case No. 2010 CV 0742

Judge Tygh M. Tone

CONSENT ORDER BETWEEN
PLAINTIFF & DEFENDANTS
PACIFIC OIL COOLER
SERVICE OF OHIO, INC. AND
PAUL J. SAURENMAN III

The State of Ohio (“Plaintiff”), upon written request of the Director of Ohio EPA, has filed a Complaint in this action on September 10, 2014 against Defendants Pacific Oil Cooler Service of Ohio, Inc., Paul J. Saurenman III, and Sawmill Realty Investors, LLC to enforce Ohio’s hazardous waste laws found in Chapter 3734 of the Revised Code and the rules adopted thereunder; and Plaintiff and Defendants Pacific Oil Cooler Service of Ohio, Inc. and Paul J. Saurenman III, having consented to the entry of this Order;

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

- 1. As used in this Consent Order:
 - A. “Clean Closure” means the owner or operator has, in closure, either:

J762/840 4/21/16

1. Demonstrated to Ohio EPA's satisfaction that suspected contaminants cannot be detected, cannot be detected above naturally occurring background levels, or cannot be detected above regulatory levels; or

2. Through a risk assessment, demonstrated to Ohio EPA's satisfaction that contamination levels are low enough that they do not pose a threat to human health or the environment.

B. **"Closure Plan"** means a closure plan that has been approved by the Director. The approved closure plan may be a closure plan approved by the Director as submitted by Settling Defendants, or a closure plan approved by the Director after being submitted by Settling Defendants and modified by the Director and/or the Settling Defendants.

C. **"Consent Order"** means this Consent Order and Final Judgment Entry.

D. **"Contractor"** means the individual(s) or company or companies retained by or on behalf of Settling Defendants to undertake and complete the work required by this Consent Order.

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

F. **"Effective Date"** means the date the Erie County Clerk of Courts files this Consent Order.

G. **"Facility"** refers to the facility where the alleged treatment, storage, disposal, or other placement of hazardous waste occurred, which is located at the following address: 1710 Sawmill Parkway, Huron, Ohio, property parcel number 4200918000.

H. **"Hazardous Waste Management Units"** mean the Hazardous Waste Storage Area, where drums of hazardous waste were allegedly stored outside on a

concrete pad at the Facility, and the Chrome Plating Area, where the chrome plating operations were previously conducted inside at the Facility.

I. **“Ohio EPA”** means the Ohio Environmental Protection Agency.

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

K. **“Settling Defendants”** means Pacific Oil Cooler Service of Ohio, Inc. and Paul J. Saurenman III.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, pursuant to Revised Code Chapter 3734 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

3. The provisions of this Consent Order shall apply to and be binding upon Plaintiff and Settling Defendants, and Settling Defendants’ agents, officers, employees, assigns, successors-in-interest, and any other person who would be bound pursuant to Rule 65(D) of the Ohio Rules of Civil Procedure, including any person acting in concert, privity or participation with Settling Defendants who receives actual notice of this Consent Order whether by personal service or otherwise and who will provide work or services on behalf of Settling Defendants related to this Consent Order.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

4. 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 Settling Defendants to Plaintiff for all claims alleged in the Complaint.

5. 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 that 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 Settling Defendants 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: (1) recover natural resource damages, and/or (2) 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 Settling Defendants, to eliminate or mitigate conditions at the Facility that may present an imminent threat to the public health or welfare, or the environment.

6. Nothing in this Consent Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged in the Complaint, against any person, firm, trust, joint venture, partnership, corporation, association, or other entity not a signatory to this Consent Order. The State also specifically reserves its rights against any entity that is not a signatory to this Consent Order.

7. Nothing in this Consent Order shall be construed to limit the statutory authority of the Director or his authorized representatives to enter at reasonable times upon any private or

public property, real or personal, to inspect or investigate, obtain samples and examine or copy any records to determine compliance with R.C. Chapter 3734.

8. Nothing in this Consent Order shall be construed to relieve Settling Defendants of their obligations to comply with applicable federal, state, or local statutes, regulations, or ordinances.

9. Nothing herein shall restrict the right of the Settling Defendants to raise any administrative, legal or equitable claim or defense with respect to such further actions reserved by the State in this Section. However, Settling Defendants 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, or should have been brought in the instant case.

V. CLOSURE AND OTHER INJUNCTIVE RELIEF

Standards for the Management of Hazardous Waste

10. Settling Defendants, jointly and severally, are ordered and enjoined to comply with the requirements of Ohio Adm.Code 3745-55-10 through Ohio Adm.Code 3745-55-20 in closing the Hazardous Waste Management Units at the Facility. The Hazardous Waste Management Units shall be closed in a manner that minimizes the need for further maintenance and controls, and that minimizes or eliminates, to the extent necessary to prevent threats to human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere, and complies with the closure requirements of Ohio Adm.Code 3745-55-10 through 3745-55-20.

Closure

11. On January 9 and 10, 2013, the Settling Defendants' contractor conducted remedial activities at the Hazardous Waste Management Units which consisted of triple washing and rinsing the areas where hazardous waste was managed and collecting the rinsate for offsite disposal. In addition, eight soil borings were completed in the area of the Hazardous Waste Storage Area. In November 2013 and October 2014, additional soil borings were completed.

12. In November 2013, the Settling Defendants' contractor assessed certain floor drains at the Facility to determine if they were pathways for hazardous waste or hazardous constituents from the Chrome Plating Area Hazardous Waste Management Unit. In September 2014, eight soil borings were completed in the vicinity of the Chrome Plating Area Hazardous Waste Management Unit in order to determine if there had been any releases of hazardous waste.

13. In January 2015, the Settling Defendants' contractor excavated soil at the Facility to remove contamination discovered as a result of the analysis of the soil borings.

14. Within thirty (30) days of the Effective Date, Settling Defendants are ordered and enjoined to submit to Ohio EPA, at the addresses set forth in Section VI of this Consent Order, a Closure Plan in accordance with Ohio Adm.Code 3745-55-10 through 3745-55-20 for the Hazardous Waste Management Units at the Facility.

A. After public notice of the Closure Plan and comment pursuant to Ohio Adm. Code 3745-66-12(D)(4), if Ohio EPA determines that the Closure Plan is deficient and gives Settling Defendants written notice of such deficiencies in the Closure Plan, Settling Defendants are ordered and enjoined to submit to Ohio EPA a revised Closure Plan within thirty (30) days of receipt of the notice of deficiencies.

B. Following review of the revised Plan, if Ohio EPA determines that the revised Closure Plan is deficient, Ohio EPA may modify the Plan and approve the revised Plan as modified by Ohio EPA.

C. Immediately upon receipt of notice of approval by Ohio EPA of the Closure Plan, either as originally submitted, as revised, or as revised and modified, Settling Defendants are ordered and enjoined to implement the approved Closure Plan in the manner and time frames set forth in the approved Closure Plan.

15. If Settling Defendants are required to submit an amended Closure Plan to Ohio EPA, the Closure Plan shall be amended in accordance with Ohio Adm.Code 3745-55-12(C). Ohio EPA will approve, revise, or revise and modify the amended Closure Plan as set forth in Paragraph 14, and Settling Defendants shall implement the approved amended Closure Plan as set forth in Paragraph 11.

16. Settling Defendants are ordered and enjoined to amend the approved Closure Plan pursuant to Ohio Adm.Code 3745-55-12 whenever:

- A. Changes in operating plans or facility design affect the Closure Plan; or
- B. There is a change in the expected year of closure, if applicable; or
- C. In conducting partial or final closure activities, unexpected events require a modification of the Closure Plan.

17. Within thirty (30) days of completion of closure, Settling Defendants are ordered and enjoined to submit certification of closure to Ohio EPA, pursuant to Ohio Adm.Code 3745-55-15, and a survey plat, pursuant to Ohio Adm.Code 3745-55-16 (if necessary).

18. All closure and post-closure plans developed for the Facility shall be enforceable under this Consent Order as though fully incorporated herein.

19. Nothing in this Section shall limit Settling Defendants' or any other entity's

rights to appeal any final action of the Director regarding approval, denial or approval with conditions of the Closure Plan to the Environmental Review Appeals Commission.

VI. SUBMITTAL OF DOCUMENTS

20. All documents required to be submitted to Ohio EPA pursuant to this Consent Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio EPA
Division of Materials and Waste Management
50 West Town Street, Suite 700
Columbus, Ohio 43215
Attn: Manager, Compliance Assurance Section

Ohio EPA
Northwest District Office
347 N. Dunbridge Road
Bowling Green, Ohio 43402
Attn: DMWM Manager

VII. CIVIL PENALTY

21. Settling Defendants, jointly and severally, shall pay to the State of Ohio a total civil penalty in the amount of Forty Thousand Dollars (\$40,000.00). The civil penalty required to be paid under this Consent Order shall be paid by delivering to Plaintiff, c/o Scott Hainer, Paralegal, or his successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, a cashier's or certified checks payable to the order of "Treasurer, State of Ohio" and shall include a reference to "A.G. EAGO No. 330230". The civil penalty shall be paid in accordance with the following schedule: 1) Ten Thousand Dollars (\$10,000.00) within thirty (30) days of the Effective Date; 2) Ten Thousand Dollars (\$10,000.00) within ninety (90) days of the Effective Date; 3) Ten Thousand Dollars (\$10,000.00) within one hundred fifty (150) days of the Effective Date; and 4)

Ten Thousand Dollars (\$10,000.00) within two hundred ten (210) days of the Effective Date. This civil penalty shall be deposited into the Environmental Protection Remediation Fund established pursuant to R.C. 3734.281.

22. Should Settling Defendants fail to make payments in full as required by Paragraph 21, the remaining unpaid balance of the total civil penalty, plus applicable interest pursuant to R.C. 131.02(D), shall become immediately due and owing. Any delinquent payments shall accrue interest at the maximum statutory rate under R.C. 5703.47 calculated from the Effective Date.

23. The State reserves the right to file a certificate of judgment lien against Settling Defendants for the remaining unpaid balance of the total civil penalty, plus applicable interest per Paragraphs 21 and 22 above, if the payments are not made in accordance with the payment schedule.

VIII. STIPULATED PENALTIES

24. In the event that Settling Defendants fail to comply with any requirement or deadline contained in Section V. of this Consent Order, or any requirement or deadline contained in any document approved in accordance with this Consent Order, Settling Defendants are liable for and shall pay stipulated penalties in accordance with the following schedule for each failure to comply:

- i. Settling Defendants shall pay three hundred dollars (\$300.00) per day for each day any requirement of this Consent Order is violated up to the first thirty (30) days of violation;
- ii. For each day any requirement of this Consent Order is violated between thirty (30) days and ninety (90) days of violation, Settling Defendants shall pay six hundred dollars (\$600.00) per day;

- iii. For each day any requirement of this Consent Order is violated greater than (90) days of violation, Settling Defendants shall pay one thousand dollars (\$1,000.00) per day.

25. Any payment required to be made under the provisions of this Section of the Consent Order shall be made by delivering to Plaintiff, c/o Scott Hainer, or his successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, a cashiers' or certified checks made payable to the order of "Treasurer, State of Ohio," for the appropriate amount within thirty (30) days from the date of the failure to meet the requirement or deadline of this Consent Order. A letter briefly describing the type of violation, deadline or requirement not met and the date upon which the violation of this Consent Order occurred and a reference to AG EAGO No. 330230 shall accompany the payment of the stipulated penalty.

26. The payment of stipulated penalties and the acceptance of such stipulated penalties by Plaintiff pursuant to this Article shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to R.C. Chapter 3734, including civil penalties under Revised Code 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.

27. The requirement to pay any stipulated penalty as set forth herein is self-executing upon any violation of the terms and conditions of this Consent Order by Settling Defendants. No further demand need be made by Plaintiff.

28. The parties to this Order agree that the stipulated penalties established in Section VIII are coercive in nature, and are designed to ensure Settling Defendants' compliance with the terms of this Order. The parties further agree that the stipulated penalties in this Order are not punishment for past acts or omissions by Settling Defendants regarding the specific terms of this Order.

IX. POTENTIAL FORCE MAJEURE

29. If any event occurs which causes or may cause a delay in Defendants' compliance with any requirement of this Consent Order, Settling Defendants shall notify the Ohio EPA in writing within ten (10) days from when the Settling Defendants knew, or by the exercise of due diligence should have known, of the event. The notification to Ohio EPA shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by the Settling Defendants to prevent or minimize the delay, and the timetable by which those measures will be implemented. Settling Defendants shall adopt all reasonable measures to avoid or minimize any such delay.

30. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Settling Defendants may raise a defense that their conduct was caused by force majeure events that were beyond Settling Defendants' control including, but not limited to, acts of God, strikes, acts of war or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Settling Defendants and the Plaintiff 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, if ever, that a court proceeding to enforce this Consent Order is commenced by the Plaintiff. At that time, Settling Defendants will bear the burden of proving that any delay was or will be caused by circumstances beyond the control of Settling Defendants. Notwithstanding the foregoing, unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or a change in Settling Defendants' financial circumstances, shall not constitute circumstances entirely beyond the control of Settling Defendants or serve as a basis for an extension of time under this Consent Order. Failure by Settling Defendants to timely comply with the notice requirements of this Section shall render this Section void and of no force and

effect as to the particular incident involved and shall constitute a waiver of Settling Defendants' right to request an extension of its obligations under this Consent Order based on such incident. An extension of one date based on a particular incident does not mean that Settling Defendants qualify for an extension of a subsequent date or dates. Settling Defendants must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order without a Force Majeure Clause does not constitute a waiver by Settling Defendants of any rights or defenses it may have under applicable law.

X. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS

31. All activities undertaken by Settling Defendants pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state and local laws, rules, regulations and permits or other. Settling Defendants 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, Settling Defendants are ordered and enjoined to immediately notify Ohio EPA of the potential conflict. Settling Defendants are 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, Settling Defendants 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.

XI. RETENTION OF JURISDICTION

32. This Court shall retain jurisdiction of this action for the purpose of enforcing this Consent Order or in resolving any conflicts concerning the interpretation of this Consent Order.

XII. COSTS

33. Settling Defendants shall pay the court costs associated with this action.

XIII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

34. Upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) 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.

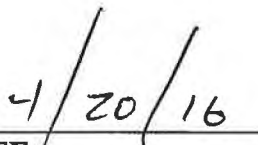
XIV. AUTHORITY TO ENTER INTO THE CONSENT ORDER

35. Each signatory for a corporate entity represents and warrants that he or she has been duly authorized to sign this Consent Order and so bind the entity to all terms and conditions thereof.

IT IS SO ORDERED:



**JUDGE
ERIE COUNTY COURT
OF COMMON PLEAS**



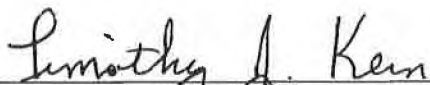
DATE

[SIGNATURE PAGE FOLLOWS]

Approved:

**MICHAEL DEWINE
OHIO ATTORNEY GENERAL**

By:



Brian A. Ball (0078285)
Timothy J. Kern (0034629)
Assistant Attorneys General
Environmental Enforcement Section
Public Protection Division
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
Telephone: (614) 466-5246
Facsimile: (614) 644-1926

Attorneys for Plaintiff State of Ohio

**PACIFIC OIL COOLER SERVICE
OF OHIO, INC.**

By:



Paul "Skid" Saurenman III
President
Pacific Oil Cooler Service of Ohio, Inc.
1677 Curtiss Court
La Verne, California 91750

*Authorized representative of
Defendant Pacific Oil Cooler Service
of Ohio, Inc.*

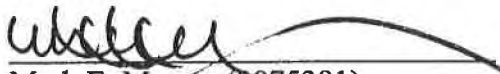
PAUL J. SAURENMAN III

By:



Paul "Skid" Saurenman III
In His Individual Capacity

By:



Mark E. Mercer (0075391)
Shumaker, Loop & Kendrick, LLP
100 Jackson Street
Toledo, Ohio 43604

*Attorney for the Defendant Paul Saurenman III
and Defendant Pacific Oil Cooler Service
of Ohio, Inc.*

Martha A. Sexton

From: Brian A. Ball
Sent: Tuesday, April 26, 2016 9:47 AM
To: Timothy J. Kern
Cc: Martha A. Sexton
Subject: Pacific Oil Cooler

I just got a call from opposing counsel who said the court endorsed this effective date 4/20. I do not have an image of the court's 4/20 endorsement. Can I get a copy of that to send immediately to Don Vogel to start public notice process? Thank you.



Brian A. Ball
Senior Assistant Attorney General
Environmental Enforcement
Office of Attorney General Mike DeWine
Ohio Department of Natural Resources
2045 Morse Road, Building A-3
Columbus, OH 43229
Office number: 614-265-6804
Fax number: 614-268-8871
Brian.Ball@OhioAttorneyGeneral.gov

2010
CV
0742

Confidentiality Notice:

This message is a private communication and may contain privileged information. If you are not the intended recipient, please do not read, copy, or use it, and do not disclose it to others. Please notify the sender of the delivery error by replying to this message, and then delete it from your system. Thank you.