

NO GOOD

ENTER

[Signature]
JUDGE RICHARD A. NIEHAUS

DATE: DEC 6 - 1989

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

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

CASE NO. A8907973

JUDGE NIEHAUS

Plaintiff,

and

CITY OF ST. BERNARD,

Plaintiff Intervenor,

vs.

PHTHALCHEM, INC., et al.,

AGREED PRELIMINARY
INJUNCTION

Defendants.

The State of Ohio, on the relation of its Attorney General, Anthony J. Celebrezze, Jr., has filed a Motion for preliminary injunctive relief. The City of St. Bernard has also filed a complaint seeking, inter alia, preliminary injunctive relief. The parties, through their attorneys, consent to the entry of this Preliminary Injunction, in lieu of litigating at this time the issues concerning preliminary injunctive relief raised by the City's complaint and the State's Motion and as an agreed resolution to those issues.

Therefore, without the taking of any evidence, during the pendency of this action and until further order of this Court, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. DEFINITIONS

1. As used in this order, the following terms are defined as follows:

A. "Facility" means Defendant Phthalchem's property located at 266 Mitchell Avenue, Cincinnati, Ohio.

B. "OEPA" or the "Agency" means the Ohio Environmental Protection Agency.

C. "SWDO" means the Southwestern District Office of the Ohio EPA.

D. "Site" means all of Defendant Phthalchem's property located at 266 West Mitchell Avenue, Cincinnati, Ohio, as well as any location where, as a result of Phthalchem's activities, free phase trichlorobenzene and/or dichlorobenzene is located.

II. Preservation of Rights

2. The entry of this Preliminary Injunction is without prejudice to the State's or the City of St. Bernard's right to seek further relief from this Court, including but not limited to further preliminary and/or permanent injunctive relief and civil penalties. Nothing in this Preliminary Injunction shall be deemed an approval by the Plaintiffs of the Defendant's operations. The signing of this Preliminary Injunction is not an admission of liability on the part of the Defendants. This

Preliminary Injunction in no way waives or affects any claims or causes of action which may exist against the Defendants, nor does it waive or affect any defense or counterclaim which the Defendants may have. Nothing in this Preliminary Injunction shall affect the City of St. Bernard's federal complaint filed against Phthalchem.

III. PERSONS BOUND

3. The provisions of this Preliminary Injunction shall apply to and be binding upon the Defendants, their officers, agents, servants, employees, attorneys, successors and assigns, and those persons in active concert or participation with them who receive actual notice of the order whether by personal service or otherwise.

4. The Defendants shall provide a copy of this Preliminary Injunction to each contractor employed to perform the work itemized herein, and each general contractor shall provide a copy of this Preliminary Injunction to each of its subcontractors for such work.

5. Defendant Paul Hopmeier is enjoined as described in this Preliminary Injunction so long as he has a position of authority with Phthalchem such that he is authorized by Phthalchem or it is within his ability to implement or oversee the implementation of or hinder or interfere with the implementation of the provisions of this Preliminary Injunction.

IV. ABATEMENT OF ALLEGED NUISANCE

6. Defendants are hereby enjoined from operating their facility in a manner which constitutes an air nuisance as prohibited by OAC 3745-15-07.

7. Defendants shall submit a complete facility process flow diagram on or before December 1, 1989. The process flow diagram shall include at least the following: a.) a flow schematic; b.) input quantities for all raw materials; c.) all discharge points of waste and recycled materials; d.) working volume; and e.) output volume.

8. Defendants shall submit a full air assessment to Ohio EPA on or before December 22, 1989. The assessment shall describe all air contaminant sources, including fugitive sources, and including sources which could cause or contribute to or may cause or contribute to an air nuisance as prohibited by OAC 3745-15-07. Such sources shall be identified in accordance with and be consistent with the process flow diagram identified in paragraph 7 above, and shall include any and all sources or potential sources of ammonia odors, solvent emissions, VOCs, and blue particulate emissions, including an inventory of fugitive sources. The assessment will be supplemented by the Defendants as required by OEPA within fifteen days of receiving the facility emission test report described in paragraph 12. The assessment shall include at least the following:

A) Design justifications and specifications, as well as any existing manufacturer's specifications, for all sources of air contaminant emissions and all air control equipment;

B) An analysis of the operating efficiency, including duct integrity and capture efficiency of vents, of all sources of air contaminant emissions;

C) An analysis of the integrity of all piping systems, except for piping carrying sewage which is not mixed with industrial wastes and pipes carrying potable water;

D) A statement of emission rates, if known, for each and every source of air contaminant emissions.

9. Defendants are hereby enjoined to submit to Ohio EPA, on or before December 22, 1989 an operation and maintenance manual which fully comports with all of the requirements of this paragraph and which is consistent with the purposes of this agreed preliminary injunction. This manual shall include at least the following:

A) A description of the methods Defendants intend to use to control all air contaminant emissions, which methods ensure compliance with this Agreed Preliminary Injunction and all relevant statutes and regulations.

B) A schedule for and detailed description of inspections by Phthalchem employees for all air contaminant sources, including control equipment and wastewater disposal systems. Said inspections shall ensure that said sources are fully functioning and operational for their intended purpose and shall ensure compliance with this Agreed Preliminary Injunction and all relevant statutes and regulations.

C) Identification of Phthalchem employees responsible for notifying Ohio EPA or its designated representative of any failure or breakdown of control equipment including a description of procedures to be followed by Phthalchem employees in the event of a failure or breakdown. Said procedures shall ensure

that the breakdown or failure is repaired and ensure Phthalchem's compliance with this Agreed Preliminary Injunction and all relevant statutes or regulations.

D) Identification of Phthalchem employees responsible for responding to citizen complaints, including a description of procedures to be followed by Phthalchem employees in the case of complaints by citizens. Said procedures shall ensure that the cause of the complaint is determined and remedied.

E) A schedule for and detailed description of regular maintenance work for all air contaminant sources and wastewater disposal systems. Said schedule and maintenance work shall ensure that all sources and systems are fully functioning and operational for their intended purposes and shall ensure Phthalchem's compliance with this Agreed Preliminary Injunction and all relevant statutes or regulations.

F) An initial review and assessment of the adequacy of all control equipment as well as a means for periodic review and assessments. Said review and assessments shall ensure that such equipment is fully functioning and operational for its intended purpose and shall ensure Phthalchem's compliance with the Agreed Preliminary Injunction and all relevant statutes or regulations.

G) A schedule for and detailed description of the inspection and maintenance of all piping and venting systems, except for piping carrying sewage which is not mixed with industrial waste and pipes carrying potable water. Said inspection and maintenance shall ensure that the integrity of all piping and venting systems is maintained at all times and shall ensure that no releases of air contaminants from these systems occur.

10. Defendants are enjoined to implement and follow the Operation and Maintenance manual as approved by Ohio EPA. The operation manual shall be submitted to the City of St. Bernard as described in Paragraph 24, for comment prior to approval by Ohio EPA.

11. Phthalchem shall install and shall operate an ammonia air monitor in its final scrubber stack if such a monitor can be obtained.

V. FACILITY EMISSION TESTING

12. Defendants are hereby enjoined to implement the protocol for facility emission testing as approved by Ohio EPA. The protocol shall be submitted Phthalchem to the Ohio EPA in final form on December 1, 1989; said submittal shall fully respond to all comments received by Phthalchem from the Plaintiffs. If the Plaintiffs do not agree that the final submittal addresses all outstanding comments, the parties will attempt to resolve all language disputes while maintaining the schedules set forth in the protocol. If Ohio EPA does not finally approve the protocol by noon on December 7, 1989, the parties shall proceed to hearing on December 12, 1989, as to the matters set forth in Section V and VI of this Agreed Preliminary Injunction, including the issue of Phthalchem's operation of air contaminant sources without proper permits. If the test protocol is approved by Ohio EPA, Defendants are enjoined to submit inorganic test data by January 30, 1990. A draft facility emission test report shall be submitted to Ohio EPA by February 15, 1990, and a final facility emission test report shall be submitted to Ohio EPA by February 28, 1990. The testing protocol shall be consistent with the process flow diagram described in paragraph 7. Defendants are enjoined to

implement said protocol no later than beginning the week of December 11, 1989.

VI. AIR PERMITS

13. Defendants are hereby enjoined to submit to Ohio EPA within thirty days of receiving the facility emission test report described in paragraph 12 but in no case later than March 15, 1990, complete, accurate applications for permits to install and operate which are in full compliance with all relevant statutes and regulations, for all existing and proposed air contaminant sources as that term is used in OAC 3745-31-01(D). Said applications shall include process flow diagrams. The Defendants shall submit applications for all sources indicated on the process flow diagram described in paragraph 7, including at least the following: Reactors 1 through 8; Vacuum driers 1 through 4; Chemical Acid Purification Tanks 1 and 2; Alkaline Purification Tanks; Rotary Driers 1 and 2; and the Final Packaging dryer. Defendants are hereby enjoined to dismantle Reactor 9, making it inoperable. Defendants are hereby enjoined from installing or modifying any further sources without first obtaining permits to install and operate from Ohio EPA.

VII. WASTEWATER PERMITS TO INSTALL

14. Defendants have submitted a permit to install application for the wastewater disposal systems at the

facility. Defendants are hereby enjoined to respond to all comments and/or notices of deficiency sent to the Defendants by Ohio EPA within 14 days after receipt. Defendants are hereby enjoined from installing or modifying any wastewater disposal systems without first obtaining a permit to install.

VIII. SURFACE WATER DISCHARGES

15. Except in accordance with an effective NPDES permit Defendants are hereby enjoined from placing pollutants in waters of the State without a permit to do so, as prohibited by R.C. 6111.04.

16. Defendants are hereby enjoined to submit to SWDO, on or before February 28, 1990, a complete and accurate application which is in full compliance with all relevant statutes and regulations for a permit to install application for surface water discharge elimination and/or treatment.

IX. IMMEDIATE REMOVAL ACTION

17. The Plaintiffs' complaints seek immediate removal action with regard to certain contaminants believed to exist at the site, namely any free phase trichlorobenzene and dichlorobenzene. The State's complaint further seeks to prevent the migration/release of trichlorobenzene, dichlorobenzene, ammonia nitrogen, copper, and any potential breakdown products, from the site.

18. Defendants are hereby enjoined to remove all on-site free phase trichlorobenzene and dichlorobenzene which is known

or should have been known to the Defendants in the exercise of reasonable care, or which becomes known, from the groundwater at the site.

19. Defendants are hereby enjoined to prevent the migration/release of trichlorobenzene, dichlorobenzene, ammonia nitrogen, copper, and any potential breakdown products, from Defendant Phthalchem's facility.

20. Defendants are hereby enjoined to submit to SWDO, within four weeks after the entry of this order, accurate and complete detailed engineering plans and implementation schedules in full compliance with all relevant statutes and regulations for the following: a) the removal of on-site free-phase trichlorobenzene and dichlorobenzene which is known or should have been known in the exercise of reasonable care, or which becomes known, and b) the prevention of the migration/release of trichlorobenzene, dichlorobenzene, ammonia nitrogen, and copper, as well as the migration/release of any potential breakdown products, from Defendant Phthalchem's facility.

21. Defendants are hereby enjoined to implement the plans and schedules described in this section, as approved by Ohio EPA.

22. Defendants are hereby enjoined to submit individual monthly reports to SWDO detailing progress of the immediate removal described in this section. Such reports shall continue until the emergency removal is completed to the satisfaction of Ohio EPA.

X. SUBMITTAL OF DOCUMENTS

23. Documents which must be submitted under this order shall be submitted as follows:

a. All documents submitted under Sections IV, V, and VI of this Order shall be sent to:

Ohio Environmental Protection Agency
Attention: Jim Orlemann
Central Office, Division of Air Pollution Control
P.O. Box 1049
1800 WaterMark Drive
Columbus, OH 43266-0149

b. All documents submitted under Sections VII and VIII of this Order shall be sent to:

Ohio Environmental Protection Agency
Attention: Marianne Piekutowski
Southwest District Office
7 East Fourth Street
Dayton, Ohio, 45402

c. All documents submitted under the section IX portion of this order shall be sent to:

Ohio Environmental Protection Agency
Attention: David Mentzer
Central Office
1800 WaterMark Drive
Columbus, OH 43266-0149

and to:

Ohio Environmental Protection Agency
Attention: Bob Princic and Rich Bendula
Southwest District Office
7 East Fourth Street
Dayton, OH 45402

24. All documents submitted by Phthalchem under this order will also be submitted to the consultant selected pursuant to paragraph 29 and to the City of St. Bernard, c/o D. David Altman, Suite 1006, 414 Walnut Street, Cincinnati, OH 45202, for review by the City. The Plaintiffs will have access to all documents, including past and present production and emission records, drafts, raw data, field notes, memoranda, notations and contracts or agreements connected with the implementation of this preliminary injunction. No documents or information gathered or generated by PEI, its agents, employees, representatives or subcontractors, Westinghouse, its agents, employees, representatives or subcontractors, or any other contractor performing any activity pursuant to or connected with this agreed preliminary injunction constitutes work product. Nor is any such document or information protected by attorney client privilege.

XI. CONTROL EQUIPMENT AND OPERATIONAL CHANGES

25. Any operational changes or control equipment changes made prior to permit approval that can affect water or air emissions, either directly or indirectly, are made without approval from Ohio EPA.

26. Defendants shall submit to Ohio EPA and the City of St. Bernard within 5 days of any operational or control equipment changes which could effect the level of air or water contaminant emissions, either directly or indirectly, from the

facility, a detailed explanation for each change. If the Defendants install control equipment, detailed engineering plans will accompany the explanation. Within 5 days of the entry of this order, Defendants shall comply with this paragraph for any changes made from January 1, 1989 to the date this order is entered.

27. The parties hereby agree that Phthalchem has emitted more than 100 tons per year of volatile organic compounds.

XII. RIGHT OF ENTRY

28. Defendants consent that up to a total of three of the City of St. Bernard's authorized technical non-lawyer representatives may enter the Phthalchem facility in order to inspect operations, review records to which they have access pursuant to paragraph 24 and/or to observe work being performed under this order. Such representatives will be designated by the City of St. Bernard and identified as such to Phthalchem. Any such representative shall notify Phthalchem of his or her presence at the Facility by either phoning the Facility at 681-0099 and informing Marvin Gallisdorfer (or such other person as may be identified for this purpose by Phthalchem), or by identifying himself or herself at the main office. Entry into the Facility for this purpose shall not be denied. Entry into the Facility by such representative shall be at such person's own risk, and such representative must follow all safety rules and regulations of Phthalchem while on the premises.

XIII. ENVIRONMENTAL OVERSIGHT CONSULTANT

29. An Environmental oversight consultant (hereinafter "consultant") will oversee Phthalchem's implementation of the operation and maintenance manual and inspection program as well as investigate citizens' complaints. The consultant shall also monitor compliance with all other terms of this injunction. The consultant's duties will in no way replace those duties of Ohio EPA or its designated representative. The consultant will have no managerial or supervisory responsibility over Phthalchem or its employees. The consultant is Q Source. The City of St. Bernard may change consultants, provided said change is approved by the Ohio EPA after opportunity for comment by Phthalchem. Phthalchem shall pay \$10,000.00 per month, for the duration of this injunction, into an escrow account to be administered by the City of St. Bernard. The account shall be used exclusively to pay invoices from the consultant, detailing reasonable time and charges for services rendered pursuant to this section. Copies of the invoices shall be delivered to Phthalchem, with an opportunity for Phthalchem to comment and object to any unreasonable charges before payment is made to the consultant. Any balance remaining in the escrow account at the conclusion of the preliminary injunction shall be returned to Phthalchem. The consultant's communication with Phthalchem shall: a) be limited to that necessary to carry out the consultant's duties;

and b) be closely monitored by the City of St. Bernard, the Ohio EPA and/ or its designated representative. Phthalchem shall not deny the consultant access to any information or data needed to perform his or her duties under this order. The consultant shall notify Phthalchem of his or her presence at the facility by either phoning the facility at 681-0099 and informing Marvin Gallisdorfer (or any such other person designated by Phthalchem for this purpose), or by identifying himself or herself at the main office. Entry into the facility by the Consultant shall not be denied. Any agent of the consultant who enters the facility does so at his or her own risk, and such agent must follow all safety rules and regulations of Phthalchem while on the premises.

XIV. ENFORCEMENT OF THIS ORDER

30. In the event that the company operates in a manner which constitutes a nuisance whether by malfunction, breakdown, or as a result of general operations, then Defendants are immediately enjoined to do the following:

- A. Immediately notify the OEPA or its designated representative and the City of the St. Bernard or its designated representative;
- B. Cease all further operations of any sources which caused or contributed to the violation; and
- C. Restart operation of said sources only after the OEPA or its designated representative has inspected the facility and confirmed that the cause of nuisance has been determined and eliminated.

By way of example, but not limitation, emitting any ammonia in concentrations equal to or greater than 5 ppm as measured at any point off site, emitting trichlorobenzene in any concentrations equal to or greater than 2 ppm as measured at any point off site; emitting dichlorobenzene in any concentration equal or greater than 2 ppms as measured at any point off site, emitting naphthalene in any concentrations equal to or greater than 2 ppms as measured at any point off site, emitting phthalic anhydride in any measurable concentrations as measured at any point off site; emitting ammonia in quantities which exceed the emissions limit in PTI 14-1243; or emitting the above VOCs in concentrations greater than 4.5 ppm as measured at any point off site or by releasing any other contaminant in any manner which constitutes a nuisance prohibited by OAC 3745-1507 shall each constitute a nuisance per se. Nothing in this provision constitutes authorization to emit the above named substances.

31. Paragraph 30 is subject to supplementation by agreement or by Court Order if any information becomes available which reveals that additional constituents are being emitted from the facility. The parties have 7 days from the time either plaintiff proposes supplementation to establish by agreement a nuisance per se standard. If no agreement is reached, either plaintiff may petition the court for appropriate relief.

32. If the Defendants fail to submit complete and accurate air PTI's and PTO's within three days of the time frames established in Section V of this order then Defendants are enjoined to immediately cease operation of all unpermitted sources. If the PTI's and PTO's submitted by Defendants are not complete, accurate and in full compliance with all relevant statutes and regulations, the Defendants are enjoined to immediately cease operation of all unpermitted sources until the Defendants have demonstrated that applications are complete, accurate and in full compliance with all relevant statutes and regulations and the Court orders relief from the injunction.

33. If Defendants fail to timely submit plans or to implement approved plans and schedules as required by Section IX of this order, Defendants are liable for and shall immediately pay stipulated penalties according to the following schedule: Five thousand dollars (\$5,000) for each of the first five (5) days of said failure, seven thousand dollars (\$7,000) for each additional day up to ten (10) days, and the ten thousand (\$10,000) for each additional day thereafter said failure continues.

34. If Defendants fail to timely submit any of the documents described in Section IV, Defendants are liable for and shall immediately pay stipulated penalties according to the following schedule: Five thousand dollars (\$5,000) for each of the first five (5) days of said failure, seven thousand dollars

(\$7,000) for each additional day up to ten (10) days, and ten thousand (\$10,000.00) for each additional day thereafter said failure continues. If Defendants fail to submit the documents within 15 days of the time required in Section IV, then Defendants are enjoined to cease operation until the submittal is made. If Defendants fail to implement the approved manual and/or inspection schedule, defendants are liable for stipulated penalties of seven thousand \$7,000 per each incident which constitutes a violation and for each day said violation continues.

35. If Defendants violate any other Section of this order, they shall be liable for and shall immediately pay stipulated penalties of one thousand dollars (\$1,000) per day for each day of said violation.

36. Any stipulated penalties due under this Preliminary Injunction shall be paid by certified check, payable to "Treasurer, State of Ohio", and mailed to Susan E. Ashbrook, 30 East Broad Street, 25th Floor, Columbus, OH 43266-0410.

XV. POTENTIAL FORCE MAJEURE

37. Acceptance of this Preliminary Injunction without a force majeure clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law. In any action to enforce any of the provisions of this Preliminary Injunction the Defendants 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 Plaintiffs do 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.

XVI. OPERATIONAL CAPACITY

38. Phthalchem shall provide Plaintiffs with weekly reports consisting of daily process activity logs indicating the input quantities of solvent and other raw materials as well as the on/off cycles of each reactor vessel, vacuum dryer, final dryer and purification process. Said activity logs will also include the amount of final daily product dried and the final daily product yield.

XVII. POTENTIAL CESSATION OF OPERATIONS

39. This Agreed Preliminary Injunction does not constitute any agreement or determination as to whether the cessation of operations at the facility is a circumstance under which the Defendants may seek relief pursuant to Civil Rule 60. Should

the Defendants choose to cease operations, they may petition this court at that time for a determination as to whether cessation of operations constitute a circumstance under which Defendants may seek relief from those provisions of this Agreed Preliminary Injunction which are contingent upon further operations of Defendants' facility.

XVIII. TRADE SECRET STATUS

40. Nothing herein shall affect Defendants' right to maintain the confidentiality of trade secrets against third parties. If Defendants wish to assert trade secret protection for any information or document or part thereof they shall so petition the Court by submitting the documents in question along with an explanation of why each such document or piece of information is claimed to be a trade secret, based on those factors enumerated in SARA Sec. 322(B). Said petition shall include a specific description of why each such factor applies. Said petition along with all explanations shall also be submitted to the City of St. Bernard. In deciding whether trade secret protection is warranted, the Court shall apply the standards and procedures provided in SARA Section 322, 42 USC Section 11042 regardless of whether SARA is applicable to the subject matter of the trade secret claim. Petitioning the Court for trade secret protection does not allow Defendants to withhold from the City of St. Bernard or its designated representatives any documents or information to which the City

has access under this order. Pending the Court's determination of trade secrecy, the City and its designated representatives, including the independent consultant, who have access to documents or information for which Defendants have made a request for trade secrecy protection, will sign a confidentiality agreement, a sample of which is attached hereto.

DATE

JUDGE NIEHAUS
Court of Common Pleas
Hamilton County

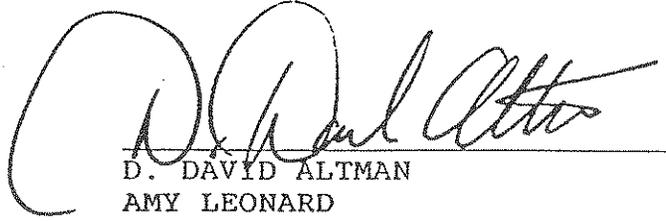
Approved:

ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO

Susan E. Ashbrook per Michael J. Hamm
SUSAN E. ASHBROOK
FRANCES L. FIGETAKIS
CHERYL ROBERTO
Assistant Attorneys General
Environmental Enforcement
Section
30 East Broad Street, 25th Fl.
Columbus, Ohio 43266-0410
(614) 466-2766

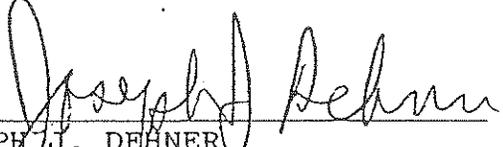
Attorneys for Plaintiff
State of Ohio

Barbara M. Kalb
BARBARA M. KALB
Director of Law
Authorized Representative of the
City of St. Bernard



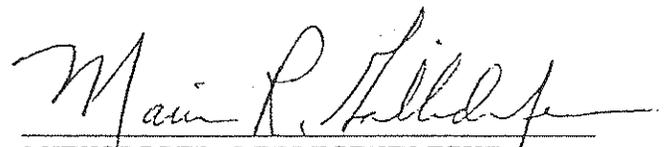
D. DAVID ALTMAN
AMY LEONARD
Suite 1006
414 Walnut Street
Cincinnati, OH 45202

Attorneys for Plaintiff
Intervenor
City of St. Bernard

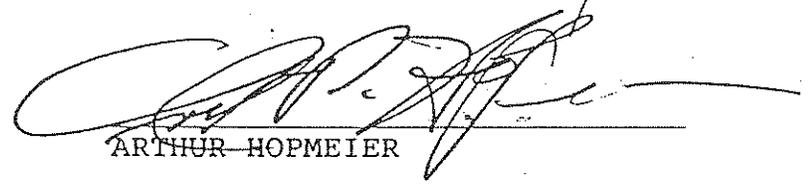


JOSEPH J. DEHNER
VINCENT BARTO
Frost & Jacobs
2500 Trust Cetner
P.O. Box 5715
201 E. 5th Street
Cincinnati, OH 45202-4182

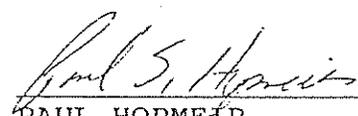
Attorney for Defendants



AUTHORIZED REPRESENTATIVE
OF PHTHALCHEM



ARTHUR HOPMEIER



PAUL HOPMEIER

CONFIDENTIAL DISCLOSURE AGREEMENT

The Undersigned recipient party _____ (the "Undersigned"), recognizes that Phthalchem, Inc. considers the attached material disclosed to the Undersigned in accordance with the proceedings in the State Of Ohio v. Phthalchem, Inc., et al., Case No. A-8907973, Hamilton County Common Pleas Court (hereinafter referred to as "Subject Information") to be confidential.

Phthalchem, Inc. has submitted the Subject Information to the Court, along with an explanation of how and why this material constitutes a trade secret in accordance with the procedures in SARA Section 322. While this claim is being verified and pending a determination by the court, Phthalchem agrees to give to the Undersigned the Subject Information if the Undersigned agrees to keep the Subject Information confidential as follows:

1. The Undersigned agrees to hold in confidence and not to disclose to any third party, any Subject Information received from Phthalchem which is indicated as being disclosed in confidence pursuant to this agreement and which Phthalchem has submitted to the Court for determination of trade secrecy, using the standard and procedure found in SARA Section 322.

2. The Undersigned shall have the right to communicate the information to any of its employees, agents or representatives who are responsible for the evaluation of

said Subject Information but each employee, agent or representative to whom such information is communicated shall be informed of the confidential nature of such information and shall correspondingly be bound to secrecy.

3. The Undersigned agrees to keep Phthalchem. Inc.'s Subject Information segregated from it's own information and from information of others and further agrees to exercise the same standard of care with respect to confidentiality of Phthalchem's information with which it would safeguard its own confidential information.

4. The validity and interpretation of this agreement and the legal relations of the parties to it will be governed by the laws of the State of Ohio. The standard and procedure for the trade secrecy determination will be governed by SARA Section 322.

Notwithstanding this agreement, the Undersigned is relieved of the duties of confidentiality as set forth herein for any information or document or portion thereof:

a. which was known to the Undersigned prior to its receipt from Phthalchem;

b. after it is disclosed to the Undersigned by a third party not pursuant to any confidentiality agreement;

c. which Phthalchem, Inc. or any agent or representative has disclosed to any other person, other than a member of the local emergency planning committee, an officer or employee of the United States or state or local government, an employee of Phthalchem, Inc. or a person who is bound by a confidentiality agreement;

d. for which Phthalchem, Inc. either does not intend to continue to take reasonable measures to protect, or has failed to take reasonable measures to protect its confidentiality;

e. which is required to be disclosed or made available to the public under any federal or state law;

f. for which disclosure is not likely to cause substantial harm to the competitive position of Phthalchem, Inc.;

g. the contents of which are readily discoverable through reverse engineering.

The confidentiality agreement will only apply to subject information which is either pending a trade secrecy determination by the Court pursuant to the Agreed Preliminary Injunction or which has been determined to be a trade secret. This agreement will terminate upon a determination by the Court that said information does not constitute a trade secret.

Accepted and Agreed:

By: _____

Date: _____

Accepted and Agreed:

By: _____

Date: _____