

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

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

Plaintiff,

and

CITY OF ST. BERNARD,
Plaintiff-Intervenor,

vs.

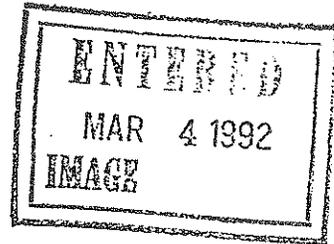
PHTHALCHEM, et al.,

Defendants.

CASE NO. A-8907973

Judge Richard A. Niehaus

CONSENT ORDER



LEGISLATIVE
26 OCT -5 PM 4:12

The State of Ohio, by its Attorney General, at the written request of the Director of Environmental Protection, filed an Amended Complaint seeking injunctive, relief and civil penalties from the Defendants for alleged violations of R.C. Chapters 3734, 3704, and 6111, and the rules adopted thereunder. Plaintiff-Intervenor, the City of St. Bernard, has also filed an Amended Complaint in this Court against the Defendants, which Amended Complaint alleges violations of the same statutes and rules. The City of St. Bernard has also filed a Complaint in federal court, St. Bernard v. Phthalchem, Inc., Case No. C-1-89-618, seeking inter alia enforcement of the Federal Clean Air Act and State Implementation Plan, as well as abatement of an air nuisance. The parties have reached agreement with regard to the issues set forth herein.

THEREFORE, without trial of any issue of law or fact, and without any admission of liability by Defendants for the acts alleged in the Plaintiffs' Complaints, and upon consent of the parties, it is hereby ADJUDGED, ORDERED and DECREED as follows:

I. DEFINITIONS

1. As used in this Order, these terms are defined as follows:

A. "Facility" means the real estate at 266 West Mitchell Avenue described in the attached Exhibit A and the plant and equipment located thereon.

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

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

D. "Site" ^{keep this definition in mind} means the Facility, as well as any location where, as a result of Phthalchem's activities, free phase trichlorobenzene and/or dichlorobenzene is located.

E. "Source" or "Air Contaminant Source" has the same meaning as found in OAC 3745-31-01(D).

F. "Permit-to-Install" or "PTI" means a permit issued pursuant to OAC 3745-31-02, et seq.

G. "Permit-to-Operate" or "PTO" means a permit issued pursuant to OAC 3745-35-02, et seq.

H. "API" means the Agreed Preliminary Injunction, entered by the Court in this case on December 9, 1989.

I. "SWOAPCA" means Southwestern Ohio Air Pollution Control Agency.

J. "O&M Manual" means Operations and Maintenance Manual.

K. "State" means the State of Ohio, including all of its authorized officials and agencies.

L. "City" means the City of St. Bernard, an Ohio municipal corporation.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the parties and the subject matter of this case. Venue is proper in this Court.

III. PERSONS BOUND

3. The provisions of this Consent Order shall apply to and be binding upon: the Defendants and all persons and entities who at any time operate any part or all of the Facility; their respective officers, agents, servants, employees, lessees, assigns, successors in interest, who will be bound regardless of whether Phthalchem dissolves or continues to operate to any degree; and, any other entity or person who receives actual notice of this Order and who is in active concert or participation with any person bound.

4. Defendants Arthur Hopmeier and Paul Hopmeier are bound by paragraphs 42, 43 and 44 of this Consent Order but are bound by the remaining provisions of this Consent Order only so

long as they have a position of authority such that they are authorized by Phthalchem or it is within their ability to implement or oversee the implementation of or hinder or interfere with the implementation of the provisions of this Consent Order.

5. The Defendants shall provide a copy of this Consent Order to each contractor employed to perform the work itemized herein, and shall instruct each general contractor to provide a copy of this Consent Order to each of its subcontractors for such work. The Defendants, including all Persons Bound, shall supply a copy of this Order and any related findings and orders to each new person or entity which falls within the coverage of Paragraph 3 to the extent such person or entity is in the position to hinder or interfere with the implementation of this Order.

IV. SATISFACTION OF LAWSUITS AND RESERVATION OF RIGHTS

6. Except as provided otherwise in this Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any liability, civil or criminal, by Defendants to the Plaintiffs for the claims alleged in the Plaintiffs' Complaints, i.e., the States' Amended Complaint, the City's Amended Complaint, and the City's federal Complaint, Case No. C-1-89-618, pending in the United States District Court for the Southern District Court of Ohio (collectively known as "Complaints"), arising prior to the entry of this Order. The

claims satisfied by this Order also specifically include all wholly past air nuisance conditions arising prior to the entry of this Order whether dates were specifically set forth in the Complaints and all violations of air and water permitting requirements for all sources for which permit applications were submitted by December 31, 1990. This Consent Order also satisfies any claims the Plaintiffs have for response costs incurred prior to the date this Order is entered.

7. This Consent Order shall not be construed to limit the authority of the State of Ohio or the City of St. Bernard to seek relief for claims or conditions not satisfied by this Order, as set out in paragraph 6, nor shall this Consent Order bar the State or the City from bringing any action against the Defendants for any violations or conditions which occur after this Order is entered into, including any action for nuisance, including the reoccurrence of previously existing, yet intermittent nuisance conditions or the occurrence of new nuisance conditions. Nothing herein shall be construed to limit any authority the State or the City may have to undertake any action against any person, including the Defendants, to eliminate or mitigate conditions which may present an endangerment to the public health, welfare or the environment. Nothing herein shall bar or limit any right the State may have to bring any action concerning the Administrative Findings and Orders issued by Ohio EPA on February 19, 1987, or any other action concerning the subject

matter of those Findings and Orders including but not limited to the right to require closure for hazardous waste disposal units which may be discovered as a result of work performed under the Findings and Orders. The City reserves any right it may have to bring an action to enforce the said Administrative Findings and Orders. Defendants reserve any and all defenses which they may have to any such actions brought by either Plaintiff. Nothing in this Order shall limit the State or the City in any action to recover future response costs as defined in CERCLA, 42 U.S.C. 9601, et seq., except that any costs incurred by the City or those acting on its behalf to perform or participate in inspections as described in Section XV, to perform a feasibility study as described in Section XVIII, to review documents, to comment as provided in this Order, and to otherwise monitor or enforce compliance with this Order shall be borne by the City at its sole expense and without recourse for recovery from the Defendants.

8. Nothing in this Consent Order waives, dismisses, satisfies, compromises, settles or otherwise affects Schrenk, et al. v. Phthalchem, Inc., pending in Hamilton County Common Pleas Court, Case No. A-8910248, seeking inter alia, abatement of a nuisance and damages for nuisance. The City shall dismiss with prejudice the federal case, Case No. C-1-89-618. The City shall tender an entry of dismissal of the federal case, executed by the City, to Phthalchem, Inc. concurrent with entry of this Order. The entry will also provide that each party is to bear its own costs.

what
is status
of this?

Nothing in this Order shall be construed as an admission by Defendants of the acts alleged in Plaintiffs' Complaints or of any liability on the part of Defendants for such alleged acts. Except in a proceeding to enforce this Order initiated in this Court by either Plaintiff, nothing herein shall be construed as an admission by Defendants that the terms of this Order are lawful or reasonable. Nothing in this Order shall waive any defense the Defendants may have in Schrenk et al. v. Phthalchem, Inc., Case No. A-8910248, or in any other litigation, pending or future, except in a proceeding to enforce this Order initiated in this Court by either Plaintiff.

9. The City and the State reserve any right they may have to bring an action against the Defendants for past, present or future violations of any federal or state hazardous waste or solid waste law except for violations alleged in the Complaints. No other violation of any hazardous waste or solid waste laws have been resolved by this Order, except those alleged in the Complaints and except as provided in paragraph 34 of this Order. The City reserves any rights it may have to bring any action arising from or related to certain health studies which are in progress. Defendants reserve any and all defenses which they may have to any such actions brought by either Plaintiff.

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

11. Defendants shall not construe any informal advice, guidance, suggestions or comments by the Ohio EPA or any person

→ What is the purpose of this language? - 7 - was it in response to the GW pathway issue?

acting on behalf of Ohio EPA as 'relieving Defendants of their obligation to obtain written approval as required herein or as changing any element or obligation under this Order.

V. CITY'S RIGHT TO ENFORCE THIS ORDER

12. If any Defendant violates any provision of this Order, the City may move the Court for appropriate relief to ensure compliance with any such provision. The Defendants agree that, solely pursuant to this Order, the City has the right to enforce the following provisions of this Order: (1) any provision under which the Defendants owe any duty directly to the City (paragraphs 44, 46, 47, 48, 51 and 56); (2) the terms and conditions of any air permits issued to Phthalchem and the provisions of paragraph 18 of this Order enjoining the Defendants to comply with all air permits; and (3) the nuisance and nuisance per se provisions of this Order if Defendants cause or threaten to cause an air nuisance in the City. If the City acts to enforce this Order, the City shall do so by moving the Court. Nothing in this Order shall be construed to limit any rights the City may otherwise have to enforce any violation by Defendants of any laws, regulations or permits in any other forum or by any other means.

If the City believes that any Defendant has violated any provision of this Order other than paragraphs 13, 14, 44, 47 and 51, it shall provide Defendants written notice of such claim of violation and the parties shall make a good faith effort to resolve all disputes or differences of opinion informally. If,

however, within five (5) days after receipt of such notice, the parties are unable to resolve any dispute informally, the City may seek appropriate relief from the Court. The City may move the Court immediately for appropriate relief for any alleged violations of paragraphs 13, 14, 44, 47 and 51.

If the City moves the Court to enforce any other provision of this Order, including, but not limited to, all provisions of this Order relating to compliance with R.C. 6111 or 3734, including all provisions of Sections VIII, IX or X of this Order and paragraphs 24, 25, 40, 42, 43 and 49 of this Order, the Defendants may raise at that time the defense that the City lacks standing to enforce such provisions. While the City does not agree that such a defense exists, it is hereby agreed that it is premature to raise and adjudicate that issue at this time and that the appropriate point at which to adjudicate the existence of such a defense is at the time a motion to enforce this Order, if any, is filed by the City.

In addition to the right to enforce noted in the first subparagraph of this paragraph 12, and in consideration of the City's agreed dismissal of its federal lawsuit, Case No. C-1-89-618, Defendants agree that: (1) to the extent the City would have, if the federal suit was still pending, the right to enforce any violation by Defendants, pursuant to the Federal Clean Air Act, (Federal Air Pollution Prevention and Control Act, 42 U.S.C. 7401, et seq., as amended); and (2) to the extent that

said violation would also be a violation of this Order, the Defendants will not challenge the City's right to enforce, pursuant to this Order, such violation of this Order in this Court.

VI. PERMANENT INJUNCTION FOR CESSATION OF AIR VIOLATIONS

13. Defendants are hereby permanently enjoined from operating their Facility in a manner which constitutes an air nuisance as prohibited by OAC 3745-15-07. Defendants are also permanently enjoined from operating their Facility in a manner which constitutes an air nuisance under the state, federal or common law.

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

- A. Immediately notify the Ohio EPA (or its designated representative, currently SWOAPCA) and the City of St. Bernard;
- B. The Defendants shall eliminate the cause of the nuisance as quickly as possible, but in no case later than as described herein;
- C. The Defendants shall have up to twelve (12) hours to eliminate and demonstrate that they have identified and eliminated the cause of the nuisance or cease operations of all further operations of all sources which caused or contributed to the nuisance; and
- D. If any operations have ceased Defendants may restart operation of said sources only after the Ohio EPA or

its designated representative, currently SWOAPCA, has inspected the Facility and confirmed that the cause of nuisance has been determined and eliminated.

The following conditions, by way of example, but not limitation, constitute a nuisance per se:

- Phthalchem emitting ammonia in any concentrations equal to or greater than 5 ppm as measured at any point beyond Phthalchem property;
- Phthalchem emitting trichlorobenzene in any concentrations equal or greater than 2 ppm as measured at any point beyond Phthalchem property;
- Phthalchem emitting dichlorobenzene in any concentrations equal or greater than 2 ppm as measured at any point beyond Phthalchem property;
- Phthalchem emitting naphthalene in any concentrations equal or greater than 2 ppm as measured at any point beyond Phthalchem property;
- Phthalchem emitting phthalic anhydride in any concentrations equal or greater than 2 ppm as measured at any point beyond Phthalchem property;
- Phthalchem emitting ammonia in quantities which exceed the emission limit in PTI 14-2075;
- Phthalchem emitting hydrogen sulfide at any point beyond Phthalchem property in such manner or such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property;
- Phthalchem emitting VOCs in concentrations greater than 4.5 ppm as measured at any point beyond Phthalchem property; or
- Phthalchem releasing any other contaminant in any manner which constitutes a nuisance prohibited by OAC 3745-15-07.

"Measured" as used in this paragraph means actual analytical tests or samples and shall require two valid tests or samples showing exceedances during any period not to exceed six hours ("Sampling Period") or one valid reading from a continuous monitoring device showing an exceedance. The equipment used to obtain the test or sample result must be operated properly.

If the City or the State conducts testing or sampling pursuant to this paragraph in response to a complaint, Phthalchem will be given notice of and an opportunity to observe any related subsequent tests or samples which may occur after the initial testing or sampling is conducted extending through the Sampling Period. If the City or State otherwise conducts testing or sampling and an exceedance is measured, Phthalchem will be given notice of and an opportunity to observe any related subsequent tests or samples which may occur after the initial exceedance is measured extending through the Sampling Period. In either instance, said notice and opportunity to observe will be given only if it can be done without delaying or interfering with the prompt investigation or monitoring of conditions. Nothing in this provision constitutes authorization to emit the above named substances. For the purpose of this paragraph, "Phthalchem property" means the property located at 266 West Mitchell.

15. Notwithstanding paragraph 14, the Plaintiffs reserve the right to seek relief from this Court, including shutdown of the Facility, if Phthalchem emits any air

contaminants including the contaminants listed in paragraph 14 at any levels that constitute a nuisance.

16. Paragraph 14 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 seven (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.

VII. AIR PERMITS AND OPERATION AND MAINTENANCE MANUAL

17. Defendants are hereby permanently enjoined from installing or modifying any source without obtaining a PTI prior to commencement of such proposed installation or modification. Defendants are hereby permanently enjoined to comply with OAC Chapter 3745-35. Defendants are hereby enjoined to obtain renewal permits for any existing PTO's which expire, for sources which will continue to operate. In accordance with OAC 3745-31-07, the director may revoke a permit to install or plan approval, if he concludes at any time that any applicable laws have been or are likely to be violated.

18. Defendants are hereby permanently enjoined to fully comply with all applicable statutes and regulations for which Plaintiffs have alleged violations in their Complaints regarding the air sources at the Facility. Defendants are hereby permanently enjoined to fully comply with all air PTI's and PTOs

issued to the Defendants by the Ohio EPA, including any and all terms and conditions associated with those permits.

19. Pursuant to the API, the Defendants submitted numerous permit applications for air sources which the Plaintiffs allege have been installed and operated without permits. On October 22, 1991, the Director of Ohio EPA issued permits to install these sources. On October 29, 1991, the Director of Ohio EPA issued permits to operate these sources.

20. All parties specifically reserve any and all rights they may have under Ohio law to appeal proposed or final actions of the director, including but not limited to appealing proposed or final denials of permit applications or the issuance of any permits.

21. Both the City and Phthalchem have appealed Phthalchem's permits to install and to operate.

22. This Consent Order does not constitute authorization or approval for the operation or installation of any air contaminant source. Approval for any such operation or installation shall be by permit issued by Ohio EPA and such other permits as may be required by applicable federal, state or local laws, rules or regulations.

23. Pursuant to the API, the Defendants submitted an O&M Manual. The Ohio EPA has approved the O&M Manual submitted by Phthalchem on September 26, 1990. Defendants shall update the O&M Manual at least annually, and more often if process or

equipment changes are made which require the Manual to be updated. The updates shall be submitted to Ohio EPA for review. Defendants are enjoined to address in good faith any comments received from the Plaintiffs as submitted by and through Ohio EPA.

with this referring to specifies as generated?

Defendants are enjoined to implement the recommendations contained in the comments received from Ohio EPA if said recommendations are both reasonable and practicable. In the alternative, Defendants may suggest substantially equivalent measures and are enjoined to implement said measures if Ohio EPA agrees that they are substantially equivalent. In the event a dispute arises as to the reasonableness or practicability of the Ohio EPA's recommendations or the substantial equivalency of any alternatives proposed by Defendants, the parties agree that the dispute will be submitted to the Center for Mediation of Dispute, Inc. or any other mediation services agreed to by the parties. The Plaintiffs, jointly, or the State, alone, may initiate the mediation process. Thereafter, the City may participate in the process as a party, if the City elects to do so, on such issues that the State chooses to pursue. If the dispute is not resolved in the mediation process, the mediator shall issue a final report containing findings as to the reasonableness and practicability of the Ohio EPA's recommendations and, if applicable, the substantial equivalency of any alternatives proposed by the Defendants. This report will be admissible in any subsequent

enforcement action. In any subsequent enforcement action, the Plaintiffs shall bear the burden of demonstrating that the Ohio EPA's recommendations are reasonable and practicable while Defendants shall bear the burden of demonstrating that any alternative actions they have proposed are the substantial equivalent of the Ohio EPA's recommendations. If the mediator finds in his report both that the recommendations of Ohio EPA were reasonable and practicable, and that Defendants did not propose a substantially equivalent alternative, Defendants shall have fourteen (14) days to implement the recommendations of Ohio EPA and, if Defendants do so, Plaintiffs may not seek contempt to enforce implementation of Ohio EPA's recommendations. If the mediator finds in his report both that the recommendations of Ohio EPA were reasonable and practicable, and that the Defendants proposed a substantially equivalent alternative, the Defendants shall have fourteen (14) days to implement the alternative. If Defendants do so, Plaintiffs may not seek contempt to enforce implementation of the alternative. If the mediator finds in his report that the recommendations of Ohio EPA were not reasonable and practicable, but the Court thereafter finds that the recommendations of Ohio EPA were reasonable and practicable, the Court may rule that Defendants will be held in contempt conditional upon their failure to implement said recommendations with-in fourteen (14) days of the Court's decision. Each party will bear its own costs of mediation; and the Plaintiffs and

Defendants will each pay 1/2 (one-half) of the mediator's costs. The Defendants are hereby permanently enjoined to implement the provisions of the O&M Manual and to comply with the procedures set forth in the O&M Manual.

24. Phthalchem is permanently enjoined to employ an environmental manager and give such manager proper authority to ensure that the O&M Manual activities are properly performed.

25. Defendants shall develop and implement a training program for all employees with responsibilities and duties under the O&M Manual, both annually and at the time of initial employment, sufficient to ensure that employees are trained, pertinent to their job duties, in O&M Manual requirements.

VIII. INJUNCTION FOR CESSATION OF WASTEWATER VIOLATIONS

26. Defendants are hereby permanently enjoined from installing or modifying any wastewater disposal systems without first obtaining a PTI. Except in accordance with an effective permit issued by the Director of Ohio EPA, Defendants are hereby permanently enjoined from placing pollutants in waters of the State as prohibited by R.C. Chapter 6111. *Could we read the existence of groundwater contain as a continuing violation of 6111?*

27. Defendants are hereby permanently enjoined to fully comply with all applicable statutes and regulations for which Plaintiffs alleged violations in their Complaints, regarding wastewater disposal at the Facility. Defendants are hereby permanently enjoined to fully comply with all wastewater PTI's

issued by the Ohio EPA including any terms and conditions associated with those PTIs.

28. Defendants have submitted to Ohio EPA a permit application for a wastewater pretreatment system including a carbon adsorption unit. On June 20, 1991, the Director of Ohio EPA issued a permit for Phthalchem's wastewater pretreatment system. All parties reserve all rights they may have under Ohio law to appeal proposed or final actions of the Director, including but not limited to issuance, denial or revocation of permits or terms and conditions contained therein.

**IX. INJUNCTION TO CLOSE HAZARDOUS WASTE STORAGE AREA
AND TO COMPLY WITH
HAZARDOUS WASTE REGULATIONS**

29. In their Amended Complaints, the State and City alleged that the Defendants have illegally stored hazardous waste at the Facility. The storage facility where, inter alia, the Defendants allegedly stored hazardous waste in excess of ninety (90) days, is located in the main product and shipping warehouse. Defendants are hereby enjoined to close the alleged storage facility in full compliance with the requirements of ORC Chapter 3734. and OAC Chapter 3745-66. *As the plume emanating from the unit?*

30. Defendants are hereby enjoined to submit an approvable closure plan for the alleged hazardous waste storage facility to the Ohio EPA within ninety (90) days after the entry of this Order. Defendants are enjoined to fully respond to any comments or requests for additional information from the

Plaintiffs by and through the State regarding the closure plan within thirty (30) days of receiving the comments.

31. Upon approval by Ohio EPA of Defendants' closure plan, the Defendants are enjoined to close the storage facility in the manner and pursuant to the time frames set forth in the approved closure plan and any conditions attached to the approval. The parties expressly reserve all rights under applicable law to appeal a proposed or final action by the Ohio EPA regarding Defendants' closure plan.

32. Within sixty (60) days after implementation of the approved closure plan is completed, Defendants shall, pursuant to OAC Rule 3745-66-15, submit to the Director of Ohio EPA its certification and a certification by an independent registered professional engineer that the storage facility has been closed in accordance with the specifications in the approved closure plan.

33. Defendants are enjoined to fully comply with Ohio's requirements for providing an estimate of the cost of closing the storage facility, financial assurance for closure and, if available, liability coverage as set forth in OAC Rules 3745-66-42 through 3745-66-47. Defendants shall submit documentation of their compliance with this paragraph within ninety (90) days after the entry of this Order.

*State
to close
to RCRA
under
an act*

Does this
provide
any grounds for relief?

34. Defendants are permanently enjoined to fully comply with all applicable Ohio hazardous waste laws and regulations for which Plaintiffs alleged violations in their Complaints.

Compliance with the terms of this Section of this Order shall constitute full satisfaction for any claims which arose from the operation of this alleged hazardous waste storage area and for any claims pursuant to OAC Chapters 3745-50, 3745-54 and 3745-65 to the extent such chapters are applicable because of past storage of hazardous waste at this alleged hazardous waste storage facility. However, compliance with the terms of this Section does not constitute full satisfaction of and does not affect any claims pertaining to disposal activities or subsurface contamination.

35. Compliance with this Section does not remove the storage facility area from the purview of the Remedial Investigation being conducted pursuant to Phthalchem's existing administrative consent order. If contamination is found during the Remedial Investigation, additional remediation or removal may be necessary and is not barred by Defendants' compliance with this Section.

X. EMERGENCY REMOVAL

 36. Defendants are hereby enjoined to remove from the groundwater at the site free phase trichlorobenzene and dichlorobenzene which is known, becomes known, or should have been known to the Defendants in the exercise of reasonable care.

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

38. Defendants are hereby enjoined to implement the Emergency Removal Design Plan and its Addendum, including schedules, as approved by Ohio EPA. Defendants shall operate the emergency removal system until cessation of the system is authorized in writing by Ohio EPA, Division of Emergency and Remedial Response after opportunity for comment by the City. The requirements of this Section shall still be binding even if the emergency removal action is incorporated into a final cleanup, in which event the Plaintiffs will retain any ability which they may have to enforce this Section as part of this Order.

39. Defendants are hereby permanently enjoined to submit individual monthly reports detailing the progress of the emergency removal action. These reports shall continue until the emergency removal is completed to the satisfaction of Ohio EPA.

XI. DEED NOTICE, LAND USE AND CONVEYANCE OF TITLE

40. No portion of the Facility shall be used in any manner which could adversely affect the integrity of the emergency removal system. Defendants shall not convey any title, easement or other interest in the Facility without provision for the continued operation and maintenance of the emergency removal system, unless Ohio EPA has approved the cessation of that

system. Within thirty (30) days of the entry of this Order, Defendants shall cause the recording of a restrictive covenant in the chain of title of the Phthalchem property that provides notice of the requirements of this Order and any related Findings and Orders, and the requirement that the emergency removal system continue operation. Such restrictive covenant shall be in the form of the Easement and Declaration of Covenant attached as Exhibit B. This Order shall not be construed as running with the land except as specifically provided for in paragraph 4 of such Easement and Declaration of Covenant.

41. Defendants shall notify Plaintiffs by registered mail at least ninety (90) calendar days prior to any conveyance or intent to convey any interest in the Facility or, if Defendants do not have ninety (90) calendar days notice of any intent to convey such an interest, Plaintiffs shall be given notice as soon as possible but prior to any such conveyance. Before conveying any interest in the Facility, Defendants shall place in the deed an appropriate notice, as to the requirements of this Consent Order, including the requirements in the preceding paragraph. The following language will be deemed adequate if included in a deed of conveyance:

"The property conveyed herein is subject to an Easement and Declaration of Covenant recorded at Official Records Volume _____, Page _____ of the Hamilton County, Ohio records pursuant to a Consent Order entered _____, in Case No. A-8907973."

PHOTO COPY

XII. CIVIL PENALTY AND RESPONSE COSTS

42. Defendants shall pay a civil penalty of one million two hundred and fifty thousand dollars (\$1,250,000.00) to the State of Ohio. Payment shall be made by delivering certified checks or money orders to Susan E. Ashbrook, Assistant Attorney General, 30 E. Broad Street, 25th Floor, Columbus, Ohio 43266-0410 pursuant to the following schedule:

- a. Defendants shall pay fifty thousand dollars (\$50,000.00) for their alleged violations of Ohio's hazardous waste laws within thirty (30) days after the entry of this Order. The payment shall be made payable to the Treasurer of the State of Ohio for payment into the Hazardous Waste Clean-Up fund pursuant to ORC 3734.28.
- b. Defendants shall pay one hundred thousand dollars (\$100,000.00) for their violations of Ohio's water pollution control laws within sixty (60) days after entry of this Order. The payment shall be made payable to the Treasurer of the State of Ohio.
- c. Defendants shall pay one million one hundred thousand dollars (\$1,100,000.00) for their violations of Ohio's air pollution control laws. One hundred thousand dollars (\$100,000.00) shall be paid within ninety (90) days after entry of this Order. The balance shall be paid in four (4) equal installments due in six (6) months intervals after payment of the first \$100,000 installment. The payment shall be made payable to the Treasurer of the State of Ohio.

43. Defendants shall pay fifty thousand dollars (\$50,000.00) as reimbursement of past response costs incurred by Ohio EPA. Payment shall be made within sixty (60) days after the entry of this Order and shall be credited to the State Treasury Immediate Removal Fund created by ORC § 3745.12. Payment shall be made by delivering certified checks or money orders to Susan E. Ashbrook, Assistant Attorney General, Environmental Enforcement Section, 30 East Broad Street, Columbus, Ohio 43266-0410. A copy of the transmittal letter shall be forwarded to Ohio EPA, P.O. Box 1049, Columbus, Ohio 43266-0410, Attn: Pat Campbell, DERR.

44. Within thirty (30) days of the entry of this Order, Defendants shall pay five hundred thousand dollars (\$500,000.00) to the City of St. Bernard for response costs, attorneys fees and payments of other sums of money allegedly due to the City.

XIII. SUBMITTAL OF DOCUMENTS

45. Documents which must be submitted under this Order shall be submitted as follows:

- a. All documents under Sections VI, VII, XIV and XVI 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, Ohio 43266-0149

and to:

Southwestern Ohio Air Pollution Control Agency
Attn: Harry Schwietering
1632 Central Parkway
Cincinnati, Ohio 45210

- b. All documents submitted under Sections VIII and XVI 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 Section X and XI of this Order shall be sent to:

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

and to:

Ohio Environmental Protection Agency
Attn: Kathy Fox
Southwest District Office
40 South Main Street
Dayton, Ohio 45402

- d. All documents submitted under Section IX of this Order shall be sent to:

Ohio Environmental Protection Agency
Attention: Tom Crepeau
Central Office
1800 WaterMark Drive
Columbus, Ohio 43266-0149

and to:

Ohio Environmental Protection Agency
Attention: Dave Combs
Southwest District Office
40 South Main Street
Dayton, Ohio 45402

- e. All documents and notices submitted to Phthalchem under this Order shall be sent to:

Marvin R. Gallisdorfer
Frank Gillette
Donald J. Henz
Phthalchem, Inc.
266 West Mitchell Avenue
Cincinnati, Ohio 45232

46. Plaintiffs may request, and Defendants shall provide, operational documents requested during and connected with inspections, including but not limited to: vacuum drier logs, carbon adsorption strip charts, O&M Manual maintenance records, and production documents. The Plaintiffs, by and through the State, may request additional information or additional documents in order to further monitor the Defendants' compliance with this Consent Order. The City shall reimburse Phthalchem for the reasonable cost of any copies of documents it provides.

47. All documents which the Defendants are required to submit by this Order or the O&M Manual shall concurrently be provided to the City of St. Bernard. The City shall reimburse Phthalchem for the reasonable cost of such copies. The City may elect to cease receiving any category of documents in the future.

48. No documents or information gathered or generated by PEI, Westinghouse, or any other contractor performing any activity pursuant to or connected with this Consent Order constitutes work product. Nor is any such document or

information protected by attorney client privilege, nor is it otherwise privileged or confidential. Except as provided above, nothing in this Order shall prevent the Defendants from having privileged communications with their attorneys or to prevent their attorneys from creating protectable work product. The Defendants may not, however, use such privileges to shield work performed by consultants and contractors pursuant to this Order from production under this Section.

XIV. ENVIRONMENTAL AUDITS AND STACK TESTING

49. Defendants are hereby permanently enjoined to hire an independent consultant to perform an annual environmental audit. The audits shall evaluate all air sources and control equipment at the Facility as to their compliance with the following: ORC Chapter 3704., the regulations promulgated thereunder, the terms and conditions of Phthalchem's air pollution permit(s) to install and permits to operate, the terms and conditions of this Consent Order, and the Operations and Maintenance Manual. The audits shall include summaries of major operational changes at the Facility. The independent consultant is not required to do stack testing as part of the audits. The independent consultant shall notify Ohio EPA's designated representative, currently SWOAPCA, at least one week prior to performing each audit. The independent consultant shall prepare a report summarizing the results of the audit and Defendants shall provide the report to Ohio EPA and SWOAPCA for review and

approval within forty-five (45) days of performing the audit. The Defendants shall not owe stipulated penalties pursuant to paragraph 53 of this Order for violations which are revealed by the audit if such deficiencies are corrected as soon as practicable but no later than ten (10) days of the time the audit reports are submitted to the State. Nothing in this paragraph relieves the Defendants from complying with the O&M Manual. The State may, however, pursue other enforcement options for violations contained in the audit if the State has independent verification of the violations.

50. Defendants shall perform stack testing at Phthalchem in accordance with an Ohio EPA approved protocol at least as follows:

- a. All air contaminant sources shall be tested within three (3) months after issuance of the PTI for such sources and every three (3) years thereafter; and
- b. Ammonia scrubber II (ASII) shall be tested within three (3) months after issuance of the PTI and semi-annually thereafter.

Ohio EPA may require additional testing in accordance with OAC 3745-15-04 or through permit terms and conditions.

XV. CITY'S RIGHT OF INSPECTION

51. Defendants consent that, for a period beginning with the entry of this Order and continuing for a period of twelve (12) months, and thereafter if accompanied by the Ohio EPA or its designated representative, (i.e., SWOAPCA or its successor), the City may have up to three (3) authorized non-lawyer technical representatives enter the Phthalchem Facility. The City's technical representatives may use this entry to help monitor Phthalchem's implementation of, and investigate its compliance with this Order, including the O&M Manual and inspection program and all permit terms and conditions, as well as to investigate complaints against Phthalchem alleged by residents of St. Bernard, or complaints by others, where the subject matter of the complaints by others has or threatens to have an adverse effect on the City or its residents. During such entry, the City's technical representatives shall have access to the same areas and information available to Ohio EPA or its designated representative. Such technical representatives will be designated by the City and identified to Phthalchem. Entry into the Facility by the City's technical representatives under these circumstances shall not be denied. The City's technical representatives shall enter the Facility at their own risk, and must follow all safety rules and regulations of Phthalchem while on the premises. The City's technical representatives must

notify Phthalchem of their presence at or prior to the time of their entry into the Facility. In the event that, after the expiration of the 12 month period noted above, the Ohio EPA and its designated representative, i.e., SWOAPCA or its successor, ceases its local 24-hour a day, seven day a week "Hotline" and all-hour inspection service for citizen response and investigation, (hereinafter referred to as "24-Hour Response"), the City may petition the Court, under its equitable powers, to reinstate the City's 24-hour right of entry unaccompanied by Ohio EPA or its designated representative under this paragraph, during such periods when Ohio EPA and its designated representatives are unavailable, until such time as Ohio EPA or its designated representative resumes or establishes 24-Hour Response.

The City shall make available to Phthalchem: (1) copies of any oral or written complaints about Phthalchem or which reasonably appear to be about Phthalchem, whether made by residents of St. Bernard or by others, within 24-hours after they are received by the City; and (2) copies of test results and a final summary of the findings of each investigation that are generated by the City's technical representatives as a result of visits to Phthalchem, within 24-hours after the City has determined that a violation of this Order has occurred. Nothing in this Order shall be construed to limit whatever rights Defendants otherwise may have to obtain records or information from the City by other means. Nor shall anything in this Order

be construed to limit whatever rights the City may otherwise have to enter and inspect Phthalchem.

52. As part of performing the feasibility study referenced in paragraph 56 of this Order, the City may request, once, a summary of all operational or control equipment changes which increased or have the potential to increase air contaminant emissions at the Facility, which changes occurred from the entry of the Order to the date of the request. Phthalchem will provide to the City such a summary within fourteen (14) days of the City's request.

XVI. STIPULATED PENALTIES

53. Except as otherwise provided in this Order, in the event the Defendants fail to meet the requirements of this Consent Order, the Defendants shall be immediately liable for and shall pay to the State the following stipulated penalties for each twenty-four (24) hour period of violation of each requirement:

- a. For each day of failure to meet a requirement of paragraphs 13, 14, 17, 18 or 19 up to thirty (30) days - one thousand dollars (\$1,000.00) per day for each requirement not met. For each day of failure to meet a requirement of paragraphs 13, 14, 17, 18 or 19 from thirty-one (31) to sixty (60) days - twenty five hundred dollars (\$2,500.00) per day for each requirement not met. For each day of failure to meet a requirement of paragraphs 13, 14, 17, 18 or 19, from sixty-one (61) to ninety (90) days - five thousand dollars (\$5,000.00) per day for each

requirement not met. For each day of failure to meet a requirement of paragraphs 13, 14, 17, 18 or 19, from ninety-one (91) days to one hundred and twenty (120) days - seventy five hundred dollars (\$7,500.00) per day for each day for each requirement not met. For each day of failure to meet a requirement of paragraphs 13, 14, 17, 18 or 19, over one hundred and twenty (120) days - ten thousand dollars (\$10,000.00) per day for each requirement not met.

- b. For each day of failure to meet a requirement of Section VIII or IX, up to thirty (30) days - seven hundred and fifty dollars (\$750.00) per day for each requirement not met. For each day of failure to meet a requirement of Section VIII or IX, from thirty-one (31) to sixty (60) days - fifteen hundred dollars (\$1,500.00) per day for each requirement not met. For each day of failure to meet a requirement of Section VIII or IX, from sixty-one (61) to ninety (90) days - three thousand dollars (\$3,000.00) per day for each requirement not met. For each day of failure to meet a requirement of Section VIII or IX, from ninety-one (91) days to one hundred and twenty (120) days - five thousand (\$5,000.00) per day for each requirement not met. For each day of failure to meet a requirement of Section VIII or IX, over one hundred and twenty (120) days - seventy five hundred dollars (\$7,500.00) per day for each requirement not met.
- c. For each day of failure to meet the requirements of any other Section of this Consent Order other than this Section and paragraph 23, five hundred dollars (\$500.00) per day for each requirement not met.

The Defendants are not permitted to pay stipulated penalties instead of performing their obligations under this Consent Order. Nothing in this Section shall prohibit, alter or in any way limit any ability the Plaintiffs may have to seek any other remedies or sanctions available by virtue of Defendants' violations of this Order or the statutes or rules on which it is based. This includes remedies for contempt or injunctive relief requiring performance of activity or the shutdown of the Facility or any source therein.

54. Any payment required under this Section shall be paid by certified check, payable to the Treasurer of the State of Ohio, sent to: Susan E. Ashbrook, Assistant Attorney General, 30 E. Broad Street, 25th Floor, Columbus, Ohio 43266-0410. All stipulated penalties due under this Section shall be paid within seven (7) days of the date of violation.

XVII. POTENTIAL FORCE MAJEURE

55. In any action to enforce any of the provisions of this Consent Order Defendants may raise at that time the question of whether they are entitled to a defense that their conduct was caused by reasons beyond their control such as, by way of example and not limitation, Acts of God, unusually severe weather conditions, strikes, act of war or civil disturbances, or conflicting orders of any regulatory agencies or courts. 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. Acceptance of this Consent Order without a force majeure clause does not constitute a waiver by Defendants of any rights or defenses they may have under applicable law.

XVIII. FEASIBILITY STUDY FOR AIR CONTROLS

56. The City may at its own expense perform a feasibility study to determine if additional air pollution controls or other actions to reduce air emissions at Phthalchem are technically and economically feasible and submit it to the State. Nothing in this paragraph shall be construed to grant the City any right of access to the Facility to perform a feasibility study beyond that which is otherwise granted by this Order. If the State, after reviewing the study determines that any additional controls or other actions are required by State law, the State may order Defendants to install the required controls or take such other actions as required by such State law. Any such order shall be considered a final appealable action by the Director. If the feasibility study identifies control technology or other actions that would lower emissions, but which are not required by State law, then the State could elect to allow the Defendants to install the control technology or take such other action in exchange for offsetting part of the civil penalty due

to the State pursuant to paragraph 42 above. If the State chooses to allow Phthalchem to offset the civil penalty, the amount of the offset will be set by the State.

XIX. RETENTION OF JURISDICTION

57. The Agreed Preliminary Injunction entered into between the parties is dissolved upon entry of this Order. This Court shall retain jurisdiction of this matter for the purpose of overseeing Defendants' implementation of this Consent Order. Nothing in this Consent Order shall be construed to limit the rights any party may have under Rule 60 of the Ohio Rules of Civil Procedure, including any party's right to seek relief from this Order.

XX. COSTS

58. Defendants shall pay the costs of this action.

XXI. CONFIDENTIALITY

59. Confidentiality of information submitted to Plaintiffs pursuant to this Order shall be treated in accordance with O.A.C. § 3745-49-03. For purposes of such section, the City shall treat as confidential any information which Ohio EPA is required to treat as confidential.

ENTERED THIS 4th DAY OF March, 1992.

for Will - S. Maw
JUDGE RICHARD A. NIEHAUS
Court of Common Pleas
Hamilton County, Ohio

By the signatures below each of the parties named consents to this Order:

LEE FISHER
ATTORNEY GENERAL OF OHIO

Joseph J. Dehner
JOSEPH J. DEHNER
DOUGLAS E. HART
FROST & JACOBS
2500 Central Trust Center
P.O. Box 5715
201 East Fifth Street
Cincinnati, Ohio 45202-4182
Telephone: (513) 651-6800

Counsel for Defendants
Phthalchem, et al.

Susan E. Ashbrook
SUSAN E. ASHBROOK
CHERYL ROBERTO
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street - 25th Floor
Columbus, Ohio 43266-0410
Telephone: (614) 466-2766

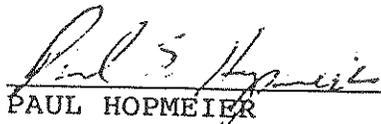
Counsel for Plaintiff
State of Ohio

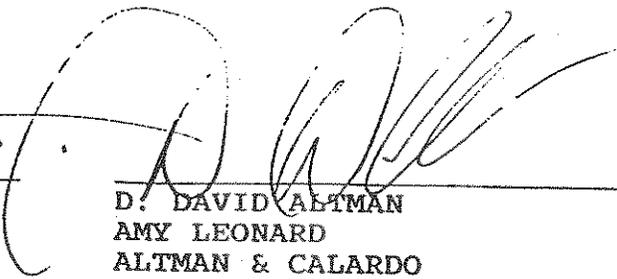
PHTHALCHEM, INC.

By: Mark R. Geiser
AUTHORIZED REPRESENTATIVE
OF PHTHALCHEM

Edward J. Geiser
EDWARD J. GEISER
Director of Law
Authorized Representative
City of St. Bernard


ARTHUR HOPMEIER


PAUL HOPMEIER



D. DAVID ALTMAN
AMY LEONARD
ALTMAN & CALARDO
Suite 1600
414 Walnut Street
Cincinnati, Ohio 45202

Counsel for Plaintiff-Intervenor,
City of St. Bernard

1864R/2406s