

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO, ex rel.,
JIM PETRO
ATTORNEY GENERAL OF OHIO,
30 East Broad Street, 25th Floor
Columbus, Ohio 43215

Plaintiff,

vs.

THOMAS STEEL
STRIP CORPORATION,
Delaware Avenue, N.W.
Warren, Ohio 44485

Defendant.

CASE NO. 04-CV-84

JUDGE Kontos

CONSENT ORDER

WHEREAS, the Plaintiff State of Ohio, on relation of its Attorney General (hereinafter referred to as "Plaintiff"), having filed a complaint in this matter against Defendant, Thomas Steel Strip Corporation (hereinafter referred to as "Defendant"), on behalf of the Director of the Environmental Protection Agency, to enforce the State of Ohio's water pollution control laws and the rules and regulations thereunder; and

WHEREAS, the Plaintiff and Defendant hereby consent to the entry of this Consent Order.

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

I. JURISDICTION AND VENUE

1. The Court has both personal jurisdiction over the parties and subject matter jurisdiction over the case pursuant to R.C. Chapter 6111. The Complaint states a claim upon which relief can be granted against Defendant under R.C. Chapter 6111 and the rules and regulations promulgated thereunder. Venue is proper in this Court.

II. PERSONS BOUND

2. All terms and provisions of this Consent Order shall apply to and be binding upon Defendant, Defendant's agents, officers, employees, assigns, successors in interest, and any other person acting in concert and/or in privity with any of them.

3. Defendant shall provide a copy of this Consent Order to each engineer, operator, and general contractor and/or consultant employed to perform any and all work itemized herein. Defendant shall require each general contractor to provide a copy of this Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

4. Plaintiff alleges in its Complaint that Defendant has operated its wastewater treatment plant (hereinafter referred to as "WWTP") in such a manner as to result in violations of the water pollution control laws of the State of Ohio and of its National Pollutant Discharge Elimination System (hereinafter referred to as "NPDES") permits, Permit Nos. 3IC00056*FD and 3IC00056*GD. NPDES Permit No. 3IC00056*FD was issued to Defendant on September 19, 1996, and became effective on November 1, 1996. NPDES Permit No. 3IC00056*GD was issued to Defendant on June 28, 2002, and became effective on August 1, 2002. Specifically, Plaintiff alleges in its

Complaint that Defendant did not comply with the numerical effluent limitations and monitoring requirements contained in its NPDES Permits, No. 3IC00056*FD and No. 3IC00056*GD. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims of violations alleged in the Complaint.

5. Nothing in this Consent Order shall be construed so as to limit the authority of Plaintiff to seek relief against other appropriate persons for claims or conditions alleged in the Complaint. Nothing in this Consent Order shall be construed so as to limit the authority of Plaintiff to seek relief against Defendant or any other appropriate persons for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint, nor shall anything in this Consent Order limit the right of Defendant to raise any defenses it may have for such claims. Similarly, nothing in this Consent Order shall be construed so as to limit the authority of Plaintiff to undertake any action against any person, including Defendant, to eliminate or mitigate conditions that may present a threat to the public health, welfare, or the environment.

IV. PERMANENT INJUNCTION

6. Except as otherwise provided in this section, Defendant is immediately ordered to comply with the applicable provisions of Ohio's water pollution control law, R.C. Chapter 6111, the rules and regulations promulgated thereunder, the terms and conditions of any permit that may be issued to Defendant by the Director of Ohio EPA, including without limitation its currently effective NPDES Permit No. 3IC00056*GD, and any renewal or modification of such permit. All renewals, modifications or changes

to Defendant's NPDES Permit approved by the Director of Ohio EPA and/or effective after the entry of this Consent Order shall be deemed to be incorporated in full and made an enforceable part of this Consent Order.

7. Defendant is immediately ordered to achieve compliance with the initial effluent limitations for outfall 3IC00056001 (hereinafter referred to as "Outfall 001"), as specified in its NPDES Permit No. 3IC00056*GD, Part I.A., and any renewal or modification thereof.

8. Defendant is ordered to achieve and maintain compliance with the final effluent limitations for Outfall 001, as specified in its NPDES Permit No. 3IC00056*GD, Part I.A., and any renewal or modification thereof, in accordance with the following schedule:

a. Within twenty days of the date of execution of this Consent Order, Defendant shall submit to Ohio EPA an approvable NPDES permit modification application requesting that the effective date for the final effluent limitations for Outfall 001 in NPDES Permit No. 3IC00056*GD, Part.I.A., be accelerated. Said application shall consist of a written letter requesting that the limitations be accelerated. A formal application including sampling and analytical results is not required.

b. Within seventy days of Defendant's submittal of an NPDES permit modification application, Defendant shall attain compliance with the final numerical effluent limitations for Outfall 001 in NPDES Permit No. 3IC00056*GD, and any renewal or modification thereof.

c. No later than April 1, 2004, Defendant shall submit to Ohio EPA for Ohio EPA's approval a complete report evaluating whether Defendant's wastewater

treatment system and its components are operating properly and/or if improvements to the system are warranted. This report will include but not be limited to evaluating Defendant's compliance with its NPDES permit. Defendant will identify improvements, if any, that are warranted, and shall provide a schedule to implement any such improvements. The implementation schedule, as submitted by Defendant and approved by Ohio EPA, will become a binding and enforceable part of this Consent Order.

V. SUBMITTAL OF DOCUMENTS

9. All documents required to be submitted to Ohio EPA under this Consent Order shall be submitted to:

Ohio EPA
Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087
Attn.: Ern Gomes, or his successor

VI. CIVIL PENALTY

10. Within thirty (30) days of the effective date of this Consent Order, Defendant is ordered to pay to the State of Ohio a civil penalty of Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00). The civil penalty payment shall be paid by corporate check for the appropriate amount, made payable to "Treasurer, State of Ohio", which check shall be delivered by mail, or otherwise, to Jena Suhadolnik, Administrative Assistant, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

11. In lieu of an additional civil penalty of Fifty Thousand and no/100 Dollars (\$50,000.00) and in furtherance of the mutual objectives of the State of Ohio and Defendant in improving the water of the State as well as the environment, Defendant, within thirty days of the effective date of this Consent Order, agrees to pay Fifty Thousand and no/100 Dollars (\$50,000.00) to support the Mahoning River, Ohio, Environmental Dredging Project being supervised by the United States Army Corps of Engineers. Payment shall be in the form of a corporate check, payable to the Non-Federal sponsor of the project, Eastgate Regional Council of Governments, which check shall be delivered by mail, or otherwise, to John Getchey, Executive Director, at the Eastgate Regional Council of Governments, 5121 Mahoning Avenue, Austintown, Ohio 44515. Defendant may request a simple accounting explaining how the funds were utilized to support the Environmental Dredging Project.

VIII. STIPULATED PENALTIES

12. In the event that Defendant fails to meet any of the deadlines and requirements of Paragraphs 8.a., 8.c., 10, or 11 of this Consent Order, Defendant shall pay a stipulated penalty for each failure according to the following payment schedule:

- (1) For each day of each failure to meet each deadline or requirement, up to thirty (30) days – Five Hundred Dollars (\$500.00) per day for each deadline or requirement not met;
- (2) For each day of each failure to meet each deadline or requirement, from thirty-one (31) to sixty (60) days – Seven Hundred Fifty

Dollars (\$750.00) per day for each deadline or requirement not met; and

- (3) For each day of each failure to meet each deadline or requirement, over sixty-one (61) days – One Thousand Dollars (\$1,000.00) per day for each deadline or requirement not met.

13. Effective from the date of compliance as set forth in paragraphs 7 and 8.b. of this Consent Order, in the event Defendant violates the numerical effluent limitations specified in its NPDES Permit No. 3IC00056*GD, Part I.A., or any modification or renewal thereof, Defendant shall pay a stipulated penalty for each violation according to the following payment schedule:

- (1) For each violation of a numerical effluent limitation, up to thirty (30) violations – Five Hundred Dollars (\$500.00) per day per violation;
- (2) For each violation of a numerical effluent limitation, from thirty-one (31) to sixty (60) violations – Seven Hundred Fifty Dollars (\$750.00) per day per violation; and
- (3) For each violation of a numerical effluent limitation, over sixty-one (61) violations – One Thousand Dollars (\$1,000.00).

For the purposes of this paragraph 13, each failure to comply with a Monthly discharge limitation, a Weekly discharge limitation or a Daily discharge limitation shall count as one violation.

14. Any payment for Stipulated Penalties required to be made under Section VIII of this Consent Order shall be made by delivering to Jena Suhadolnik, or her successor, at the address set forth in Section VI, paragraph 10, within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, a corporate check or checks for the appropriate amount(s), made payable to the order of "Treasurer, State of Ohio". Defendant shall also state in writing the specific failure of the Consent Order that was not complied with, and the date(s) of non-compliance. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff for specific violations under this Consent Order shall not be construed to limit Plaintiff's authority to seek judicial enforcement of this Consent Order.

IX. TERMINATION OF STIPULATED PENALTIES

15. The provisions of this Consent Order, set forth in Section VIII, Paragraphs 12 and 13, requiring payment of stipulated penalties, may be terminated upon a demonstration by Defendant that: (1) it has completed the requirements outlined in Section IV of this Consent Order; (2) it has paid all penalties required by this Consent Order; and (3) it has achieved and maintained compliance with the final effluent limitations in its effective NPDES permit along with the other terms and conditions of said permit, and any renewals or modifications thereof for twelve (12) consecutive months, after the date of entry of this Consent Order.

16. Termination of the stipulated penalty section of this Consent Order shall only be by order of the Court upon application by any party, and a demonstration that the conditions outlined in Paragraph 15, above, have been met.

X. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

17. Performance of the terms of this Consent Order by Defendant is not conditioned on the receipt of any federal or state grant or loan funds. In addition, Defendant's performance is not excused by the failure to obtain any federal or state grant or loan funds, or by the processing of any applications for the same.

XI. MISCELLANEOUS

18. Nothing in this Consent Order shall affect Defendant's obligation to comply with all applicable federal, state, or local law, regulation, rule, or ordinance. Defendant shall obtain any and all federal, state, or local permits necessary to comply with this Consent Order.

19. Defendant shall inform the Ohio EPA of any change of its business addresses or telephone numbers.

XII. POTENTIAL FORCE MAJEURE

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

21. In any action by Plaintiff to enforce any of the provisions of this Consent Order, Defendant may raise that it is entitled to a defense that its conduct was caused by reasons beyond its control such as, by way of example and not limitations, acts of God, strikes, acts of war, or civil disturbances. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and 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 Plaintiff. At that time, Defendant will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or a change in Defendant's financial circumstances, shall not constitute circumstances entirely beyond the control of Defendant or serve as a basis for an extension of time under this Consent Order. Failure by Defendant 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 Defendant's 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 Defendant qualifies for an extension of a subsequent date or dates. Defendant 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 Defendant of any rights or defenses it may have under applicable law.

XIII. RETENTION OF JURISDICTION

22. The Court will retain jurisdiction of this action for the purpose of enforcing and administering Defendant's compliance with this Consent Order.

XIV. COURT COSTS

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

XV. EFFECTIVE DATE AND TERMINATION

24. This Consent Order shall be effective upon the date of its entry by the Court. This Consent Order may be terminated by the Court upon demonstration that all of its requirements have been satisfied.

XVI. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

25. The parties agree and acknowledge that final approval by Plaintiff and Defendant and entry of this Consent Order is subject to the requirements of 40 C.F.R. 123.27(d)(1)(iii), which provides for notice of the lodging of the Consent Order, opportunity for public comment, and the consideration of any public comments. Both Plaintiff and Defendant reserve the right to withdraw this Consent Order based upon comments received during the public comment period. Defendant shall pay the costs of public notice within thirty (30) days of receipt of a bill or notice from the State of Ohio.

26. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon the signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the 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.

XVII. SIGNATORIES

27. Each of the undersigned representatives for the Parties represents that he/she is fully authorized to enter into the terms and conditions of this Consent Order and legally bind the respective Party to this document.

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IT IS SO ORDERED.

Peter J. Kentos
JUDGE, COURT OF COMMON PLEAS
TRUMBULL COUNTY

3/22/04
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MARGARET H. O'BRIEN
CLERK OF COURTS
TRUMBULL COUNTY

APPROVED:

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ATTORNEY GENERAL

THOMAS STEEL STRIP
CORPORATION

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