



- f. "Permit to Operate" or "PTO" has the same meaning as set forth in Ohio Adm. Code Chapter 3745-35.

## **II. JURISDICTION AND VENUE**

2. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 3704 of the Ohio Revised Code, and venue is proper in this Court.

## **III. PARTIES**

3. The provisions of this Consent Order shall apply to and be binding upon Defendant, its agents, officers, employees, assigns, successors in interest, and, in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure, any person in active concert or participation with it who receives actual notice of this Consent Order whether by personal service or otherwise.

## **IV. SATISFACTION OF LAWSUIT**

4. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendant for all violations alleged in the Complaint. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for violations not specifically alleged in the Complaint, including any violations that occur after the filing of this Consent Order.

## **V. INJUNCTION**

5. Defendant agrees and is hereby enjoined and ordered to comply with R.C. 3704 and the regulations adopted thereunder, including all terms and conditions of all existing and future permits issued pursuant to R.C. Chapter 3704 or rules adopted thereunder and any subsequent renewals or modifications thereafter. Specifically, Defendant agrees to refrain and is

hereby enjoined from "installing" or "modifying" any "air contaminant source," as those terms are defined by Ohio Adm. Code 3745-31-01(LL), (VV) and (D), at the Facility without first applying for and obtaining a Permit to Install from the Director in accordance with Ohio Adm. Code. 3745-31-02. Defendant further agrees and is hereby enjoined from operating any air contaminant source without first complying with the applicable operating permit requirements of the Ohio Adm. Code unless otherwise exempted by OEPA.

6. Defendant agrees and is hereby enjoined and ordered to submit a complete Permit to Install application, in accordance with Ohio Adm. Code Chapter 3745-31, including Ohio Adm. Code rules 3745-31-11 to 3745-31-20 designed to "prevent significant deterioration" of air quality, and obtain a Permit to Install for Rotary Dryer #1 and Rotary Dryer #2, identified by Ohio EPA as emissions units P901 and P902 (formerly known as P001 and P002, respectively). Defendant agrees and is hereby enjoined and ordered to apply Best Available Control Technology (BACT) to Rotary Dryer #1 and Rotary Dryer #2, which shall include installation and operation of a thermal oxidizer to control volatile organic compound and particulate emissions from Rotary Dryer #1 and Rotary Dryer #2. The thermal oxidizer shall be installed in accordance with the following schedule:

Event	Amount of Time	Completion Date*
a. PTI issuance	0	1/15/03
b. Management Review & Budget Authorization All orders placed with vendors (TO and gas company)	30 days	2/14/03
c. Concurrent Activities:		
i. In-Plant prep (concrete pad, electric, gas-line from street, etc.)	< 30 days from b.	3/17/03
ii. Vendor builds TO and completes on-site installation	150 days from b.	7/14/03
iii. Gas company installs gas line (timing based on availability of a gas company work crew and weather conditions)	120+ days from b.	6/16/03
d. Initial equipment shakedown and de-bugging Total time until TO installed/operational (the critical path is the TO construction and installation unless the gas company has difficulties scheduling and completing the gas line installation)	30 days from c.ii. 210+ days from a.	8/13/03
e. On-site compliance demonstration (stack testing) (time required to fine tune the operation of the TO and production processes and schedule/ conduct the required stack testing)	≤ 60 days from d.	10/13/03
f. Submission of final stack test report to Ohio EPA	≤ 30 days from e.	11/11/03

\*Note: All activities are triggered by the issuance of the final PTI, so the dates in the last column for each activity will change accordingly if the date for the PTI issuance changes.

## VI. CIVIL PENALTY

7. Pursuant to R.C. 3704.06, Defendant shall pay to the State of Ohio a total civil penalty of one hundred eighty thousand dollars (\$180,000), which shall be paid as follows:
  - a. By delivering certified checks as follows: twelve (12) checks each, in the amount of twelve thousand dollars (\$12,000.00) per check, payable in equal amounts to the order of "Treasurer, State of Ohio" (Treasurer), in addition to twelve (12) checks each, in the amount of three thousand dollars (\$3,000) per check, payable

in equal amounts to the order of the "Ohio Department of Natural Resources, Division of Forestry, State Forest Fund (Fund No. 509)" (ODNR).

- b. One check shall be paid to the Treasurer and one to ODNR, each on a quarterly basis, in the amounts specified above, starting within 90 days of the date of entry of this Consent Order. Thereafter, checks shall be paid to the Treasurer and to ODNR on a quarterly basis, until 12 such payments have been made to each of the Treasurer and ODNR, or until Defendant has paid the total amount of one hundred forty four thousand (\$144,000) to the Treasurer, and Defendant has paid a total of thirty six thousand (\$36,000) to ODNR, exclusive of interest.
- c. In addition to the base amounts specified above, each payment shall also include an amount equal to the interest that has accrued since the last such quarterly payment on the balance of the penalty remaining after the last such quarterly payment. Interest shall be calculated using the prime rate at the time of payment plus one (1) per cent. Interest calculations shall be made independently for the balances due to the Treasurer and to ODNR each quarter.
- d. All certified checks required under this paragraph shall be delivered to: Jena Suhadolnik, Administrative Assistant (or her successor), Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215-3428.

#### **VII. STIPULATED PENALTIES**

8. In the event that the Defendant violates the injunction set forth in paragraph 5 of this Consent Order, as it pertains to installing or modifying air contaminant sources, Defendant shall be liable for and shall immediately pay stipulated penalties in accordance with the

following schedule:

a. For each air contaminant source installed or modified without first applying for and obtaining a permit to install, Defendant shall pay a stipulated penalty of \$5,000 per source per installation/modification.

b. For each day for which each air contaminant source is operated without first applying for the appropriate operating permit, Defendant shall pay a stipulated penalty of \$1,000 per day per operation per source.

9. In the event that the Defendant violates the injunction set forth in paragraph 5 of this Consent Order, as it pertains to complying with the terms and conditions of all existing and future permits issued pursuant to R.C. Chapter 3704 or rules adopted thereunder and any renewals and modifications thereafter, Defendant shall be liable for and shall immediately pay stipulated penalties in accordance with the following schedule: for each day of each failure to meet a requirement and/or deadline, up to thirty (30) days- two hundred and fifty dollars (\$250.00) shall be paid per day per requirement and/or deadline not met. For each day of each failure to meet a requirement and/or deadline from thirty-one (31) to sixty (60) days- three hundred and seventy five dollars (\$375.00) shall be paid per day per requirement and/or deadline not met. For each day of each failure to meet a requirement and/or deadline after sixty (60) days- five hundred dollars (\$500.00) shall be paid per day per requirement and/or deadline not met.

10. In the event that the Defendant violates the injunction set forth in paragraph 6 of this Consent Order, as it pertains to the installation and operation of a thermal oxidizer for Rotary Dryer #1 and Rotary Dryer #2 in accordance with the requisite schedule, Defendant shall pay stipulated penalties in accordance with the following schedule: for each day of each failure

to meet a requirement and/or deadline, up to thirty (30) days- two hundred fifty dollars (\$250.00) shall be paid per day per requirement and/or deadline not met. For each day of each failure to meet a requirement and/or deadline from thirty-one (31) to sixty (60) days- three hundred and seventy five dollars (\$375.00) shall be paid per day per requirement and/or deadline not met. For each day of each failure to meet a requirement and/or deadline after sixty (60) days- five hundred dollars (\$500.00) shall be paid per day per requirement and/or deadline not met.

11. Any such stipulated penalty shall be paid by delivering to Jena Suhadolnik, Administrative Assistant (or her successor), Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check for the appropriate amount immediately upon the date of the violation, made payable to the Order of "Treasurer, State of Ohio."

#### **VIII. POTENTIAL FORCE MAJEURE**

12. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Defendant shall notify Ohio EPA in writing within thirty (30) days of Defendant's actual or constructive knowledge of the event, describing in detail the anticipated length of the delay, the 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 measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

13. In any action by the Plaintiff to enforce any of the provisions of this Consent Order against Defendant, 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 limitation, acts of God, unusually severe weather conditions, strikes, acts of war or civil disturbances, or availability of

gas company personnel to install the gas connection to Defendant, availability of manufacturer of the oxidizer to ship and install it, ability to secure a reliable stack tester at a specific time and have that company successfully perform the test. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and the Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an action to enforce the terms and conditions of this Consent Order, if any, is commenced by the Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances beyond the control of Defendant shall rest with Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances, shall not constitute circumstances beyond the control of Defendant or serve as a basis for an extension of time under this Consent Order. Failure by Defendant to comply with the notice requirements of Paragraph 12 shall render this paragraph 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 compliance date based on a particular incident does not mean that Defendant qualifies for an extension of a subsequent compliance date or dates. Defendant must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought.

#### **IX. RETENTION OF JURISDICTION**

14. The court will retain jurisdiction of this action for the purpose of enforcing this Consent Order.



**X. COSTS**

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

**XI. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK**

16. Upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is directed to serve upon all parties, notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

**XII. AUTHORITY TO ENTER INTO THE CONSENT ORDER**

17. The signatory for the Defendant represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof.

**IT IS SO ORDERED**

\_\_\_\_\_  
DATE

**/s/ KATHLEEN A. AUBRY**

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JUDGE, WYANDOT COUNTY  
COURT OF COMMON PLEAS

**APPROVED:  
BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO**

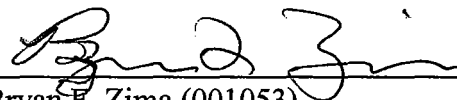
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