

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

PHILIP R. DIMASIS
CLERK OF COURTS
STARK COUNTY, OHIO
93 JUL 19 PM 12:32

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

Plaintiff,

v.

BUCKEYE PACKAGING COMPANY, INC

Defendant.

CASE NO. *993 CV 01166*

JUDGE *Wise*

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio, by its Attorney General Lee Fisher and Defendant Buckeye Packaging, Inc. (hereinafter "Buckeye") having consented to the entry of this Order,

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

I. JURISDICTION AND VENUE

1. 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 Buckeye pursuant to Chapter 3704. of the Ohio Revised Code ("RC"). Venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply and be binding upon the parties to this action, their agents, officers, employees, assigns, stockholders, directors, successors in interest and any person acting in concert or privity with any of them. Defendant Buckeye shall provide a copy of this Consent Order to each contractor, consultant and/or subcontractor that it employs to perform work-itemized herein.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant Buckeye operated its flexographic printing press plant located at 12223 Marlboro Avenue, N.E., Marlboro, Stark County, Ohio (hereinafter the "facility") in such a manner as to result in violations of the permitting requirements of R.C. 3704 and the terms and conditions of its PTI No. 15-236. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims under such laws alleged in the Complaint.

4. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint including violations which occur after the filing of the Complaint. Such relief may include any appropriate administrative, civil and/or criminal enforcement action that seeks injunctive, monetary or other relief against Defendant Buckeye.

IV. EFFECT UPON OTHER ACTIONS

5. Nothing in this Consent Order shall be construed to relieve Defendant of the obligation to comply with applicable federal, state or local statutes, regulations or ordinances, or shall constitute a waiver or release of any right, remedy, defense or claim against Defendant with regard to any person not a party to this Consent Order.

V. PERMANENT INJUNCTION

6. On and after the date of entry of this Order Defendant Buckeye is hereby enjoined and ordered to comply with the requirements of Chapter 3704 of the Revised Code and the rules adopted thereunder as they apply to Press Nos. 1, 2 and 3 and to comply with the terms and conditions of its permit to install number 15-236 for Press Nos. 1, 2 and 3.

7. For twelve months after the effective date of this Consent Order, Buckeye shall maintain monthly records which list the following information for each coating employed in Press Nos. 1, 2 and 3.

- (a) the company identification of the coating;
- (b) the number of gallons employed;
- (c) The VOC content, in pounds, of VOC per gallon of coating;
- (d) The VOC content, in pounds, of VOC per gallon of coating, minus water;
- (e) the water content, in percent, by volume; and
- (f) the nonvolatile (solids) content, in percent, by volume.

These monthly records, as well as any supporting coating analyses and computations, shall be retained in Buckeye's files for a period of not less than two years and shall be made available to the Director or any authorized representative of the Director for review during normal business hours.

Buckeye shall submit monthly reports to the Canton Air Pollution Control Division, summarizing the following information for each coating employed in Press Nos. 1, 2, and 3 during the previous month: company identification of the coating, the total number of gallons employed, the VOC content (in pounds VOC per gallon of coating, minus water), the water content and the nonvolatile (solids) content. The reports shall be submitted by the fifteenth of each month, and shall cover a reporting period of the previous calendar month.

VI. CIVIL PENALTY

8. Defendant Buckeye shall pay to the State of Ohio a civil penalty of one hundred and two thousand, five hundred dollars (\$102,500). This penalty shall be paid by delivering to counsel for Plaintiff certified checks payable to the order of "Treasurer, State of Ohio" according to the following schedule:

	<u>Due</u>
\$34,166	Within 15 days of the entry of the Order
\$34,167	Within 5 months of first payment
\$34,167	Within 12 months of second payment

VII. STIPULATED PENALTIES

9. In the event that Defendant Buckeye fails to comply with the requirements of paragraphs 6 or 7 of this Consent Decree, Defendant shall immediately and automatically be liable for and shall pay one thousand dollars (\$1,000.00) per day for each day of operation of presses 1, 2 or 3 on which it fails to meet a requirement. In addition to the stipulated penalty of one thousand dollars (\$1,000.00) per day, the Defendant shall also be liable for an additional penalty based upon the extent of the violation according to the following payment schedule:

- a) For each day of operation of presses 1, 2 or 3 violation which results in the Defendant exceeding its annual emissions limit by between two or more tons, up to and including ten tons per year, the Defendant shall pay an additional two hundred fifty dollars (\$250.00) per day.
- b) For each day of operation of presses 1, 2 or 3 which results in the Defendant exceeding its annual emissions limit by greater than ten tons but less than twenty tons per year, the Defendant shall pay an additional five hundred dollars (\$500.00) per day.
- c) For each day of operation of presses 1, 2 or 3 which results in the Defendant exceeding its annual emissions limit by twenty tons per year or more, the Defendant shall pay an additional one thousand dollars (\$1,000.00) per day.

For the purposes of calculating the stipulated penalty for violations of paragraph 6 concerning the exceedance of the annual emission limit, Defendant shall pay the stipulated penalty amount for each day of operation of presses 1, 2 or 3 during the calendar year that it exceeds the limit for that year. If Buckeye exceeds the limit for presses 1, 2 or 3 sometime during a particular month for a given year, -Buckeye shall pay the stipulated penalty on a daily basis for each day of operation of presses 1, 2 or 3 after the fifteenth of that month.

10. Any payment required to be made under the provisions of Paragraphs 6 or 7 shall be made by delivering to Plaintiff's counsel a certified check or checks for the appropriate amounts, within ten (10) days from the date of the failure to meet the requirement of this Consent Order, made payable to "Treasurer, State of Ohio".

11. The requirements for the payment of stipulated penalties set forth in Paragraph 9 or 10 shall be terminated by order of the Court upon a finding by the Court or upon a stipulation of the parties that Defendant has been in compliance with the Paragraph of this Consent Order for which it seeks termination, for an uninterrupted one-year period, beginning after the entry of this Order and that it has paid all stipulated penalties due.

VIII. POTENTIAL FORCE MAJEURE

12. In any action to enforce any of the provisions of this Consent Order, Defendant Buckeye may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons entirely 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 Plaintiff does 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. At that time, the burden of proving that any noncompliance was or will be caused by circumstances entirely beyond the control of Defendant will rest with Defendant. 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.

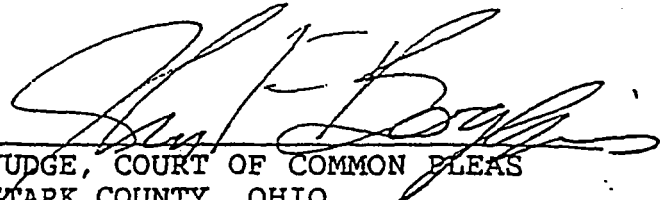
IX. RETENTION OF JURISDICTION

13. The Court will retain jurisdiction of this action for the purpose of making any order or decree which it deems appropriate to carry out this Consent Order.

IX. COSTS

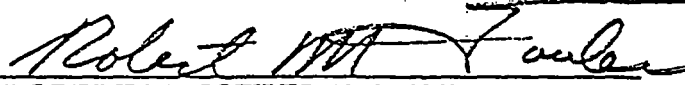
15. Defendant Buckeye is hereby ordered to pay the costs of this action.

ENTERED THIS 20th DAY OF July, 1993.

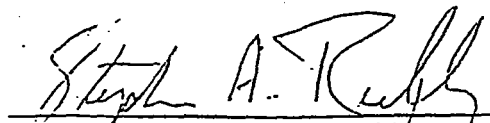

JUDGE, COURT OF COMMON PLEAS
STARK COUNTY, OHIO

Approved:

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

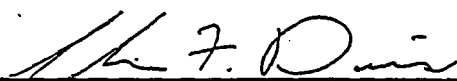

ROBERT M. FOWLER (0025123)
Assistant Attorney General
Environmental Enforcement
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410
(614) 466-2766

Attorney for Plaintiff
State of Ohio



STEPHEN A. REILLY, ESQ.
Day, Ketterer, Raley, Wright & Rybolt
Suite 1602
15 West Broad Street
Columbus, Ohio 43215

Attorney for Defendant
Buckeye Packaging Company, Inc.



JOHN DAVIS
President

Authorized Representative
Buckeye Packaging Company, Inc.