

*Just Bed*

IN THE COURT OF COMMON PLEAS  
ERIE COUNTY, OHIO

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

Plaintiff,

v.

BUCKEYE PETROLEUM  
CORPORATION, INC.

Defendant.

CASE NO. 88-CV-049

JUDGE ANN MASCHARI

CONSENT ORDER

ERIE COUNTY  
COMMON PLEAS COURT

89 DEC 29 PM 12:35

FILED

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Anthony J. Celebrezze, Jr. (hereinafter "Plaintiff") and Defendant Buckeye Petroleum Corporation, Inc. (hereinafter "Buckeye Petroleum") 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 under Chapter 3704 of the Ohio Revised Code, and 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, successors in interest and any person acting in concert or privity with any of them.

## III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant has operated a natural gas amine sweetening plant in such a manner as to result in numerous violations of the air pollution laws of the State of Ohio. 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. 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.

## IV. COMPLIANCE

4. The natural gas amine sweetening plant located approximately 2.5 miles south of State Route 113 on Florence-Wakeman Road, Erie County, Ohio, is currently not in operation. Should Defendant choose to reopen this facility, Defendant is enjoined and prohibited from doing so without first obtaining a Permit to Operate from the Ohio Environmental Protection Agency ("Ohio EPA)". In Requesting the Permit to

Operate, Defendant shall include a description by which Defendant is to upgrade the facility to gain compliance under Chapter 3704 of the Revised Code. In addition, this application shall contain a schedule for all work to be performed in bringing this facility into compliance with Ohio's Air Pollution Laws. This source shall not be operated until the upgrade of equipment is completed.

This Consent Order does not constitute authorization or approval of the construction of any physical structure or facility, or the modification of any existing facility. Approval for any such construction or modification shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

#### V. CIVIL PENALTY

5. Defendant Buckeye Petroleum shall pay to the State of Ohio a civil penalty of Ten Thousand Dollars (\$10,000.00). The penalty shall be paid in two installments by delivering to counsel for Plaintiff two certified checks, payable to the order of "Treasurer, State of Ohio". The first check, in the amount of Five Thousand Dollars (\$5,000.00) shall be delivered within forty-five days from the date of entry of this Consent Order. The second check, for the same amount, shall be paid within ninety days of the entry of this Order.

## VI. STIPULATED PENALTIES

6. In the event that Defendant reopens the amine sweetening plant without first obtaining a Schedule of compliance as required under Paragraph 4, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of failure to meet a requirement, up to thirty (30) days, Defendant shall be liable for payment of a stipulated penalty of Five Thousand Dollars (\$5,000.00) per day of violation. Defendant shall be liable for an additional stipulated penalty of Five Thousand Dollars (\$5,000.00) per day of violation if failure to comply continues more than sixty (60) days, i.e. Ten Thousand Dollars (\$10,000.00) per day of violation. In the event that failure to comply with the requirements of paragraph 5 continues more than one hundred twenty (120) days, Defendant shall be liable for additional Fifteen Thousand Dollars (\$15,000.00) per day of violation i.e., Twenty-five Thousand Dollars (\$25,000.00) per day of violation.

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

VIII. POTENTIAL FORCE MAJEURE

8. In any action to enforce any of the provisions of this Consent Order Defendant Buckeye Petroleum may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons beyond its control such as, by way of example and not limitation, act of God, unusually severe weather conditions, strikes, acts of war or civil disturbances, or orders of any regulatory agency. While 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. 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

9. 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.

X. COSTS

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

*A. B. Mascher*

JUDGE, COURT OF COMMON PLEAS  
ERIE COUNTY

APPROVED:

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

BY:

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Buckeye Petroleum

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