

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

STATE OF OHIO, ex rel.  
BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

CAPITAL RESIN CORP.,

Defendant.

CASE NO.

JUDGE:

CONSENT ORDER

8-11-12 10012

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
98 DEC 29 PM 4:30  
CLERK OF COURTS

Plaintiff, the State of Ohio, by its Attorney General Betty D. Montgomery, at the written request of Donald R. Schregardus, the Director of Environmental Protection, has filed a Complaint seeking injunctive relief and civil penalties from Defendant Capital Resin Corp. ("Capital Resin") for violations of Revised Code Chapter 3704 and the rules promulgated thereunder, and both parties have consented to the entry of this Order in settlement of the complaint.

Therefore, without trial or determination of any issue of fact, law, or liability, and without admission by Defendant Capital Resin of any liability or violation of law, and upon the consent of the parties hereto, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

**I. DEFINITIONS**

1. As used in this Order, the following terms are defined as follows:
  - a. "Facility" means Defendant Capital Resin's manufacturing facility located at 324 Dering Avenue, Columbus, Franklin County, Ohio 43207 (hereinafter "the Facility")
  - b. "Ohio EPA" means the Ohio Environmental Protection Agency.
  - c. "Director" means the Director of Environmental Protection.

- d. "Air contaminant source" or "source" has the same meaning as set forth in R.C. 3704.01(C) and Ohio Administrative Code ("O.A.C") 3745-31-01(D) and 3745-35-01(B)(1).
- e. "Permit to Operate" or "PTO" has the same meaning as set forth in O.A.C. Chapter 3745-35.
- f. "Permit to Install" or "PTI" has the same meaning as set forth in O.A.C. Chapter 3745-31.
- g. "Title V Permit" has the same meaning as set forth in O.A.C. Chapter 3745-77.
- h. "VOC" has the same meaning as set forth in O.A.C. Chapter 3745-21.
- i. "HAP" has the same meaning as set forth in R.C. 3704.01(L).

## **II. JURISDICTION AND VENUE**

2. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim for which relief can be granted, and venue is proper in this Court.

## **III. PERSONS BOUND**

3. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and, in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure, their officers, agents, servants, employees, attorneys, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Consent Order whether by personal service or otherwise.

## **IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS**

4. The Plaintiff alleges in its Complaint that the Defendant has owned and operated the Facility in such a manner as to result in violations of the air pollution control laws and regulations of the State of Ohio. Compliance with the terms of this Consent Order shall

constitute full satisfaction of any civil liability of the Defendant to the Plaintiff for the claims alleged in the Plaintiff's Complaint. Defendant enters into this Consent Order for the purpose of settling disputed claims and without admission of liability or fact.

5. This Consent Order shall not be construed to limit the authority of the Plaintiff to seek relief for violations not alleged in the Complaint, nor shall this Consent Order bar the State of Ohio from bringing any action against the Defendant for any violations which occur after the entry of this Order. Nothing in this Consent Order shall be construed to relieve the Defendant of its obligations to comply with applicable federal, state or local statutes, regulations, or ordinances.

#### **V. PERMANENT INJUNCTION**

6. The Defendant is hereby enjoined and ordered to immediately and permanently comply with R.C. Chapter 3704 and the regulations adopted thereunder, including all terms and conditions of all existing and future Permits to Install and operating permits, and any subsequent renewals or modifications thereafter. Specifically, the Defendant is hereby permanently enjoined from installing or modifying any air contaminant source, as those terms are defined by O.A.C. 3745-31-01(GG) and (MM), at the Facility without first applying for and obtaining a Permit To Install from the Director in accordance with O.A.C. 3745-31-02, and Defendant is hereby permanently enjoined from operating any air contaminant source at the Facility without first complying with the requirements of O.A.C. Chapters 3745-31, 3745-35 and/or 3745-77 as applicable, unless otherwise exempt. In addition, Defendant is enjoined and ordered to properly operate and maintain each air contaminant source and piece of control equipment at the facility in accordance with all permits issued to each respective source and control equipment.

## **VI. POLLUTION PREVENTION PROJECT**

7. Defendant is enjoined and ordered to complete a Pollution Prevention Project by installing a solid paraformaldehyde feed handling (SPH) system to reduce wastewater generation as described in paragraph 8 below. Defendant is enjoined and ordered to purchase, install and operate the SPH system in accordance with the following schedule:

- a. submit a complete and approvable permit to install application(s) for the project and for Source Nos. P004 and P016 within 60 days of entry of this Order.
- b. Purchase and commence installation within 90 days of issuance of the PTI(s).
- c. Render system operational within 225 days of issuance of the PTI(s).
- d. Submit a report demonstrating compliance with the requirements of Paragraph number 8 of this Order to DAPC for review and approval within 260 days of issuance of the PTI(s).

The report required by paragraph d. shall include documentation of the project, such as, receipts for costs, descriptions of any changes in the process as a result of implementing the project, waste generation if disposed, amount of wastewater generated, water and energy use, labor, or other associated costs or savings, and the Defendant's evaluation of the success of the project.

8. Defendant is enjoined and ordered to reduce distillate generation annually by 60% on Defendant's 153 product line compared to the distillate that would have been potentially generated by the prior manufacturing system. The 60% reduction shall be demonstrated by Defendant in accordance with the calculation methodology attached as Exhibit A.

9. Defendant is enjoined and ordered to maintain records in accordance with the requirements of Exhibit A, which requirements are incorporated herein as if fully restated.

## VII. CIVIL PENALTY

10. Pursuant to R. C. 3704.06, the Defendant shall pay to the State of Ohio a civil penalty of Two Hundred Twelve Thousand Seven Hundred Thirty Eight Dollars (\$212,738.00). Of this amount, \$140,00.00 of the civil penalty shall be paid in cash as described below and the remaining \$72,738.00 shall be paid in the form of the Pollution Prevention Project described in paragraphs number 7, 8 and 9. Defendant is enjoined and ordered to pay the \$140,000 amount in six installments by delivering six certified checks, the first in the amount of \$23,333.35 and the remaining five of equal amounts of \$23,333.33 each, payable to the order of Treasurer, State of Ohio, to Jena Suhadolnik or her successor, Administrative Assistant, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428. This first installment shall be received on or before 30 days after entry of this Order, the second installment received on or before 120 days after entry of this Order, the third installment received on or before 210 days after entry of this Order, the fourth installment received on or before 300 days after entry of this Order, the fifth installment received on or before 390 days after entry of this Order and the sixth installment received on or before 480 days after entry of this Order. In the event Defendant fails to make any of the installment payments on or before its respective due date, the Defendant shall pay the entire remaining installments immediately upon the failure to make any timely installment payment. In the event Defendant does not completely comply with any of the requirements of paragraph number 8 of this Order, then Defendant shall pay to the State of Ohio \$72,738 in the manner and to the person described herein immediately upon Defendant's failure to comply with paragraph 8.

## VIII. STIPULATED PENALTIES

11. In the event that the Defendant fails to comply with any of the requirements imposed by paragraphs 7, 9 or 10 of this Consent Order, including any milestone date therein, the 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 -- Two Hundred Fifty Dollars (\$250.00) per day for each requirement not met. For each day of failure to meet a requirement, from thirty-one (31) to sixty (60) days -- Five Hundred Dollars (\$500.00) per day for each requirement not met. For each day of failure to meet a requirement, over sixty-one (61) days -- One Thousand Dollars (\$1,000.00) per day for each requirement not met.

12. The Defendant shall immediately and automatically be liable for payment of stipulated penalties imposed by this Consent Order without prior demand by the State of Ohio. Payment of all stipulated penalties shall be paid by the Defendant by their delivering to the Plaintiff, c/o Jena Suhadolnik, Administrative Assistant, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check in that amount, payable to the order of "Treasurer, State of Ohio," immediately upon the occurrence of the violation giving rise to the penalty.

13. The imposition, payment and collection of stipulated penalties pursuant to violations of this Consent Order shall not prevent the State from pursuing additional remedies, civil, criminal or administrative, for violations of applicable laws.

**IX. RETENTION OF JURISDICTION**

14. The Court will retain jurisdiction of this action for purposes of enforcing this Consent Order, unless termination in accordance with Section X occurs.

**X. TERMINATION CLAUSE**

15. No earlier than three (3) years after Defendant has complied with the injunctive provisions contained in paragraph 6 of this Consent Order, Defendant may move the Court, pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure, to terminate the injunctive relief provisions contained in paragraph 6 of this Consent Order. Termination of paragraph number 6 shall only be effected by order of the Court upon a showing by Defendant that (1) it has been in continuous compliance with all the requirements of paragraph number 6 of this Consent Order for such three year period; and (2) it has been in compliance with all terms and conditions of all applicable PTIs and operating permits and all subsequent modifications or amendments thereto for a three consecutive year period; and (3) it has paid all penalties required by this Consent Order for such three year period. Plaintiff takes no position with regard to such motion at this time, and reserves any rights it may have to oppose the motion. Such an order may also be granted upon joint motion of the parties.

**XI. POTENTIAL FORCE MAJEURE**

16. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Defendant shall notify the Ohio EPA, Central District Office, in writing within ten (10) days of the event or as soon as practical, describing 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 measures will be implemented.

Defendant will adopt all reasonable measures to avoid or minimize any such delay.

17. In any action by the 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 entirely beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. 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 entirely 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 entirely 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 16 shall render this Paragraph 17 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.



**XII. COURT COSTS**

18. The Defendant is hereby ordered to pay all court costs of this action.

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

19. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three 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.

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

20. Each signatory for the parties represents and warrants that he/she has been duly authorized to sign this document and so bind the party to all terms and conditions thereof.

**IT IS SO ORDERED**

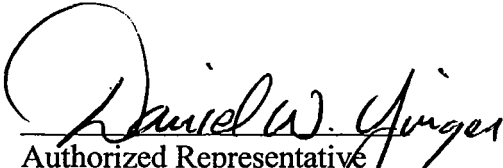
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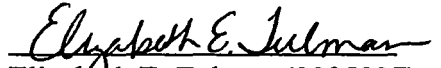
  
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JUDGE, COURT OF COMMON PLEAS  
FRANKLIN COUNTY

**APPROVED:**

**CAPITAL RESIN CORP.**

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

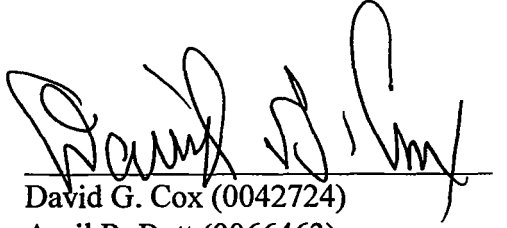
  
Authorized Representative  
Defendant Capital Resin Corp.

  
Elizabeth E. Tulman (0005927)  
Vorys, Sater, Seymour and Pease  
52 E. Gay Street  
P. O. Box 1008  
Columbus, Ohio 43216-1008  
Telephone: (614) 464-6400

and

William D. Hayes (0037240)  
Vorys, Sater, Seymour & Pease  
Suite 2100, Atrium Two  
221 E. Fourth Street  
P. O. Box 0236  
Telephone: (513) 723-4000  
Cincinnati, Ohio 45201-0236

*Attorneys for Defendant*

  
David G. Cox (0042724)  
April R. Bott (0066463)  
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215-3428  
Telephone: (614) 466-2766  
*Attorneys for Plaintiff, State of Ohio*

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## EXHIBIT A

In order to demonstrate compliance with Section VI of this decree, Defendant is ordered and enjoined to create and maintain the following records. These records shall be maintained at the facility and made available to Ohio EPA for inspection as requested.

(A) The Defendant (hereinafter "CRC") shall maintain records of the following information on a quarterly basis:

1. weight of CRC 153 raw material or CRC 153g raw material in each batch (by type), in pounds;
2. weight of actual distillate produced for each batch, in pounds;
3. total weight of CRC 153 raw material for all batches, in pounds;
4. calculation of total weight of potential distillate produced from all batches of CRC 153, in pounds, based upon a potential yield of 90%, and using the following equation:

$$(\text{total weight of CRC 153 raw material}) \times 0.1 = \text{weight of potential distillate from CRC 153}$$

5. total weight of CRC 153g raw material for all batches, in pounds;
6. calculation of total weight of potential distillate produced from all batches of CRC 153g, in pounds, based upon a potential yield of 78%, and using the following equation:

$$(\text{total weight of CRC 153g raw material}) \times 0.22 = \text{weight of potential distillate from CRC 153g}$$

7. total weight of potential distillate produced from CRC 153 and CRC 153g, in pounds;
8. total weight of actual distillate produced for all batches of CRC 153 and CRC 153g, in pounds;
9. calculation of the percent reduction in distillate, using the following equation:

$$(\text{wt. potential}_q - \text{wt. actual}_q) / \text{wt. potential}_q \times 100\% = \%DR_q$$

where:

wt. potential<sub>q</sub> = total weight of the potential distillate produced from CRC 153 and CRC 153g during the quarter (from item 7 above)

wt. actual<sub>q</sub> = total weight of actual distillate produced during the quarter (from item 8 above)

%DR<sub>q</sub> = % distillate reduction for the quarter

10. calculation of the year-to-date percent reduction in distillate, using the following equation:

$$(\text{wt. potential}_{\text{ytd}} - \text{wt. actual}_{\text{ytd}}) / \text{wt. potential}_{\text{ytd}} \times 100\% = \% \text{DR}_{\text{ytd}}$$

where:

wt. potential<sub>ytd</sub> = total weight of the potential distillate produced from CRC 153 and CRC 153g during the calendar year

wt. actual<sub>ytd</sub> = total weight of actual distillate produced during the calendar year

%DR<sub>ytd</sub> = % distillate reduction for the calendar year

(B) The Defendant shall submit semi-annual reports to the Ohio EPA, Central District Office. The semi-annual reports shall be submitted by January 31 and July 31 of each year. The first report shall be submitted by no later than July 31, 2000. The reports shall contain the following information:

1. the year-to-date percent reduction in distillate resulting from the production of CRC 153 and CRC 153g; and
2. the calculated, total year-to-date amount of wastewater reduced (in pounds and gallons) from the production of CRC 153 and CRC 153g.