

IN THE COURT OF COMMON PLEAS  
COLUMBIANA COUNTY, OHIO



STATE OF OHIO, ex rel.  
BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO  
30 East Broad Street  
Columbus, Ohio 43266-0410

CASE NO. 95-CV-689  
JUDGE DAVID TOBIN

Plaintiff,

v.

ELJER MANUFACTURING, INC.  
17120 Dallas Parkway, Suite 205  
Dallas, Texas 75248-1115,

Defendant.

CONSENT ORDER

**FILED**  
DEC 8 1995  
COLUMBIANA COUNTY  
COMMON PLEAS COURT  
ANTHONY J. DATTILIO, Clerk

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Betty D. Montgomery (hereinafter "Plaintiff") and Defendant Eljer Manufacturing, Inc. (hereinafter "Eljer") having consented to the entry of this Order,

NOW THEREFORE, without trial or admission by Eljer of any issue of fact, law, liability, or responsibility and upon 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. "Air contaminant source" or "source" have the same meanings as set forth in ORC §3704.01(C) and OAC Rules 3745-15-01(W) and 3745-35-01(B)(1).
  - b. "Consent Order" or "Order" means this Order and Final Judgment.
  - c. "Facility" means Defendant Eljer's plumbing fixture manufacturing facility and all related operations

SCANNED

located at 921 South Ellsworth Avenue, Salem,  
Columbiana County, Ohio.

- d. "OAC" means the Ohio Administrative Code.
- e. "Ohio EPA" means the Ohio Environmental Protection Agency.
- f. "ORC" means the Ohio Revised Code.

## 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 the parties to this action, their 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 them who receive actual notice of the order whether by personal service or otherwise.

## IV. SATISFACTION OF LAWSUIT

4. Plaintiff alleges in its Complaint, *inter alia*, that Defendant Eljer has operated two Whiting cupola furnaces ("Sources P901 and P902") and a cleaning cabinet ("Source P039") at 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 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 which occur after the filing of this Consent Order. Further, nothing in this Order shall be deemed or construed to be an admission by Eljer of any issue of law or fact, or of any liability or responsibility for the violations in the Complaint.

#### V. INJUNCTION

5. In the event that any emission source or air pollution control equipment associated with Sources P901, P902, or P039 breaks down in such a manner as to cause the emission of air contaminants in violation of any applicable law, Defendant Eljer agrees and is permanently and immediately enjoined to comply with all applicable provisions of the malfunction rule set forth at OAC Rule 3745-15-06(B).

6. Defendant Eljer hereby agrees and is immediately and permanently enjoined to comply with all applicable provisions of OAC Rule 3745-17-08(B) requiring the application of reasonably available control measures to prevent fugitive dust from becoming airborne. This injunction shall apply to any of Eljer's fugitive dust sources associated with Sources P901 and P902.

7. When operating the stacks serving Source P039, and the roof monitors from the bag house filter for Sources P901 and P902 (which also constitute "stacks" within the meaning of OAC Rule 3745-17-01(B)(19)) , Defendant Eljer hereby agrees and is permanently and immediately enjoined to comply with all applicable

provisions of OAC Rule 3745-17-07(A), regarding restrictions on visible particulate emissions.

8. Defendant Eljer agrees and is hereby permanently and immediately enjoined to operate source P039 in compliance with OAC Rule 3745-17-11. Specifically, Defendant Eljer is hereby enjoined and ordered to limit its stack particulate emissions from Source P039 to 16.4 pounds per hour.

9. Defendant Eljer agrees and is hereby permanently enjoined to comply with all terms and conditions of any operating permits, including Title V operating permits, issued for sources P039, P901, and P902; provided, however, that Defendant retains any rights it may have under ORC Section 3745.04 to seek a stay of such terms and conditions.

10. Defendant Eljer agrees to refrain and is hereby permanently enjoined from operating Sources P039, P901, and/or P902 in such a manner as to result in a violation of OAC Rule 3745-15-07.

#### **VI. CIVIL PENALTY**

11. Defendant Eljer shall pay a civil penalty of Seventy-Five Thousand Dollars (\$75,000). The penalty shall be paid by delivering a certified check to Matthew Sanders, Administrative Assistant (or his successor), Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, payable to the order of "Treasurer, State of Ohio", within 30 days after Eljer receives actual notice of the entry of this Order.

## **VII. ENFORCEMENT COSTS**

12. Defendant Eljer is ordered to pay the enforcement costs of relator Ohio Attorney General expended in pursuing the instant action, totaling One Thousand Dollars (\$1,000), by delivering to Matthew Sanders, Administrative Assistant (or his successor), Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check for that amount, made payable to the order of "Treasurer, State of Ohio", within (30) days after Eljer receives actual notice of the entry of the Consent Order. Any check submitted in compliance with this section shall be in addition to and separate from any check submitted pursuant to any other section of this Consent Order.

## **VIII. STIPULATED PENALTIES**

13. In the event Eljer violates any of the permanent injunctions set forth in paragraphs 5, 6, 7, 8, 9, and/or 10, Eljer shall be liable for and shall immediately pay stipulated penalties in accordance with the following schedule:

- a) For each day of each violation, up to 30 days, \$500 per day;
- b) For each day of each violation, from 31 to 60 days, \$1000 per day;
- c) For each day of each violation, over 60 days, \$2000 per day.

Any such stipulated penalty shall be paid by delivering a certified check in the appropriate amount, to Matthew Sanders, Administrative Assistant (or his successor), Environmental Enforcement Section, 30 East Broad Street, 25th Floor,

Columbus, Ohio 43215-3428, a certified check for that amount, made payable to the order of "Treasurer, State of Ohio".

#### IX. POTENTIAL FORCE MAJEURE

14. In any proceeding to enforce any of the provisions of this Consent Order, including proceedings to enforce the stipulated penalty provisions set forth at paragraph 13, Eljer 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, Acts of God, unusually severe weather conditions, strikes, acts of war or civil disturbances, or conflicting orders or activities of any regulatory agencies or courts. 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, if any, that Plaintiff seeks enforcement of this Order. Acceptance of this Consent Order without a force majeure clause does not constitute a waiver by Eljer of any rights or defenses it may have under applicable law or equity.

#### X. RETENTION OF JURISDICTION

15. The court will retain jurisdiction of this action for the purpose of enforcing this Consent Order and resolving disputes hereunder. However, in the event Eljer complies with the injunctions set forth in paragraphs 5, 6, 7, 8, 9, and/or 10, above, for a period of two years from the date of entry of this Order, and if Eljer has complied with all other requirements of this Order, Defendant shall be eligible

and may move the Court for a termination of the injunctions with which it has complied. Any such termination of the injunction shall occur only by order of this Court, upon application by Defendant, and after a demonstration (or agreement by both parties) that the conditions set forth in this paragraph have been met.

**XI. COSTS**

16. Defendant Eljer is hereby ordered to pay the costs of this action.

ENTERED THIS 7 DAY OF 12, 1995.

  
JUDGE, COLUMBIANA COUNTY  
COURT OF COMMON PLEAS


APPROVED:


ELJER MANUFACTURING, INC.

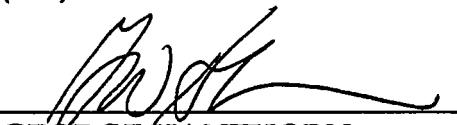
STATE OF OHIO,  
BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO

BY:


BY:

  
(Name) Brooks Sweeney  
(Title) Vice President - Finance  
Eljer Manufacturing, Inc.  
17120 Dallas Parkway, Suite 205  
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(214) 407-2600

  
CHRISTOPHER KORLESKI (0039770)  
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GEORGE HANTHORN  
Vice President, General Counsel,  
and Secretary  
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State of Ohio }  
Columbiana County SS } ANTHONY I. DATTILO, Clerk of Court of Common Pleas  
within and for the County of Columbiana and the State of Ohio, do hereby certify  
that the foregoing is truly read and copied from the original now on file in said  
Clerk's office.

IN TESTIMONY WHEREOF I have hereunto subscribed my  
name and affixed the seal of said Court, at Columbus, Ohio  
this 14 day of December, 1995  
  
Deputy