

ORIGINAL

IN THE COURT OF COMMON PLEAS CLERK OF COURTS
WASHINGTON COUNTY, OHIO

SEP 21 AM 10:49

STATE OF OHIO, ex rel.	:	WASHINGTON CO. OHIO
LEE FISHER	:	
ATTORNEY GENERAL OF OHIO,	:	Case No. <u>9407 264</u>
Plaintiff,	:	Judge <u>Lane</u>
v.	:	
ELKEM METALS COMPANY	:	
and	:	
AMERICAN MUNICIPAL POWER-OHIO,	:	
INC.,	:	
Defendants.	:	

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Lee Fisher ("Plaintiff") and Defendants Elkem Metals Company ("Elkem") and American Municipal Power-Ohio, Inc. ("AMP-Ohio") 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 Defendants AMP-Ohio and Elkem under Chapter 3704 of the Revised Code ("R.C."). Venue is proper in this Court.

II. PERSONS BOUND

2. The provisions of this Order shall apply to and be binding upon the parties to this action, their agents, officers, employees, assigns and successors in interest.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendants have violated R.C. Chapter 3704 and the rules promulgated thereunder by failing to properly operate and maintain continuous emissions monitoring systems for each of four coal-fired boilers located in Marietta, Ohio, now known as the R.H. Gorsuch Station. During the relevant period of time of the alleged violations, June 1984 through March 1990, Defendant Elkem was the sole owner and operator of what is now the R.H. Gorsuch Station until September 1, 1988. From September 1, 1988 until the present, Defendants Elkem and AMP-Ohio have co-owned the R.H. Gorsuch Station and AMP-Ohio has operated the same. While Defendants do not admit to the allegations in the Complaint, and nothing in this Order should be construed as such an admission, Defendants have agreed to the terms of this Consent Order in order to avoid the costs of litigation. Compliance with the terms of this Order shall constitute full satisfaction of any civil liability of Defendants AMP-Ohio and Elkem for the violations of R.C. Chapter 3704 and regulations adopted thereunder alleged in the Complaint. This Order does not limit the authority of the State of Ohio to seek relief for any claim not alleged in the Complaint, including claims not known at this time or claims for violations of R.C.

Chapter 3704 and regulations thereunder occurring after the filing of this Consent Order. Nothing in the Consent Order shall release Defendants of their obligations to comply with applicable state or local statutes, rules, or ordinances.

IV. DEFINITIONS

4. Unless otherwise stated, all terms used in this Order shall have the same meaning as used in R.C. Chapter 3704 and the regulations adopted thereunder. In addition, the following terms are defined as follows:

- a. "Facility" means the four coal-fired, utility steam generators ("boilers") located at State Route 7 in Marietta, Ohio and known as the R.H. Gorsuch Station.
- b. "O.A.C." means the Ohio Administrative Code.
- c. "P.T.O." means permit to operate.
- d. "R.C." means the Ohio Revised Code.
- e. "Source B001" means the boiler identified by permit no. 0684020037B001.
- f. "Source B002" means the boiler identified by permit no. 0684020037B002.
- g. "Source B003" means the boiler identified by permit no. 0684020037B003.
- h. "Source B004" means the boiler identified by permit no. 0684020037B004.

V. PERMANENT INJUNCTION

5. Defendant agrees to and is permanently enjoined and ordered to operate its continuous emission monitoring systems

("CEMS") for opacity emissions serving sources B001, B002, B003, and B004 in accordance with the terms and conditions of its currently effective permits, and any permit renewals or modifications thereof. Defendant AMP-Ohio shall operate and maintain each such opacity CEMS at the R.H. Gorsuch Station in a manner that ensures data availability greater than 95% and that complies with applicable statutes, regulations, and permit terms and conditions.

VI. CIVIL PENALTY

6. Defendants shall pay to the State of Ohio a civil penalty of seventy-three thousand two hundred fifty dollars (\$73,250). The penalty shall be paid by delivering to Matthew Sanders, Administrative Assistant, or his successor, of the Environmental Enforcement Section, a check or checks for Forty Eight Thousand Two Hundred Fifty Dollars (\$48,250) payable to the order of "Treasurer, State of Ohio" within fifteen (15) days from the date of entry of this Consent Order, and another check or checks for Twenty Five Thousand Dollars (\$25,000) payable to the order of "Treasurer, State of Ohio" on or before January 31, 1995.

VII. ENFORCEMENT COSTS

7. Defendants shall pay the enforcement costs of relator Ohio Attorney General expended in pursuing the instant action, totalling two thousand five hundred dollars (\$2,500) by delivering to Matthew Sanders, Administrative Assistant, or his successor, of the Environmental Enforcement Section, a check for

that amount, payable to the order of "Treasurer, State of Ohio", within thirty (30) days after the entry of the instant 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

8. If Defendant AMP-Ohio fails to meet any of the requirements of this Consent Order set forth in paragraph 5, then Defendant shall immediately and automatically be liable for payment of a stipulated penalty in the amount of one thousand (\$1,000) per day for each violation.

9. If Defendants Elkem and AMP-Ohio fail to meet the requirement of this Consent Order set forth in paragraphs 6 and 7, Defendants shall immediately and automatically be, jointly and severally, liable for payment of a stipulated penalty in the amount of two thousand dollars (\$2,000) per day for each violation.

10. Any payment required to be made under the provisions of paragraphs 8 and 9 of this Order shall be made by delivering to Matthew Sanders, Administrative Assistant, or his successor, a check or checks for the appropriate amounts, payable to the order of the "Treasurer, State of Ohio", within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order.

IX. POTENTIAL FORCE MAJEURE

11. In any proceeding to enforce any of the provisions of this Consent Order, including proceedings to enforce the stipulated penalty provisions set forth at paragraphs 8 and 9, Defendants 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 of any regulatory agencies or courts. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed 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. Nothing in this Consent Order should be construed to constitute a waiver by Defendants of any rights or defenses it may have under applicable law or equity.

X. TERMINATION CLAUSE

12. The provisions of this Consent Order set forth in paragraph 5 shall terminate if AMP-Ohio has (i) achieved and maintained compliance with the provisions of paragraph 5 for any period of twelve (12) consecutive months, beginning on or after the date of entry of this Consent Order, and (ii) the penalties required pursuant to this Consent Order have been paid. Termination of said injunction shall only be effected by Order of

the Court upon application by any party and a demonstration that the two (2) conditions set forth in this paragraph have been met, or upon filing of a joint motion to terminate said injunction.

XI. MISCELLANEOUS

13. This Order shall be effective upon the date of entry hereof by the Court.

14. In addition to service on the attorneys of record, any documents or notices submitted pursuant to this Consent Order shall be submitted to:

Matthew Sanders
Administrative Assistant
Environmental Enforcement
30 E. Broad Street, 25th floor
Columbus, OH 43215-1910

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

16. Defendants AMP-Ohio and Elkem, jointly and severally, shall pay all court costs of this action.


IT IS SO ORDERED.

September 21, 1994
Date


JUDGE, COURT OF COMMON PLEAS

I certify the foregoing to be a true and correct copy of the original.

Charles M. McLeish, Clerk
Common Pleas Court - Court of Appeals
Washington County, Ohio

By 
Deputy Clerk

APPROVED:

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

By: Joan R. Kooistra
Christopher Korleski (0039770)
Joan R. Kooistra (0055226)
Assistant Attorneys General
Environmental Enforcement
30 E. Broad Street, 25th flr.
Columbus, OH 43266-0410
(614) 466-2766

Attorneys for Plaintiff

AMERICAN MUNICIPAL POWER-OHIO,
INC.

By: John W. Bentine
John W. Bentine (0016388)
Chester, Willcox & Saxbe
17 S. High Street, Suite 900
Columbus, Ohio 43215
(614) 221-4000

Attorney for Defendant
AMP-Ohio, Inc.

John W. Bentine
Authorized Representative of
Defendant American Municipal
Power-Ohio, Inc.

ELKEM METALS COMPANY

By: Francis A. King
Francis A. King (0010571)
Vice President and General
Counsel
Elkem Metals Company
PO Box 266
Pittsburgh, PA 15230
(412) 778-3600

Attorney and Authorized
Representative for Defendant
Elkem Metals Company