

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, ex rel. : CASE NO. 128740  
ANTHONY J. CELEBREZZE, JR., :  
 :  
Plaintiff, :  
 :  
v. : CONSENT JUDGMENT  
 :  
FERRO CORPORATION, :  
 :  
Defendant. :

The Complaint having been filed herein on May 4, 1987 and the parties hereto having consented to the entry of this Consent Judgment, now therefore, before the taking of any testimony and upon the pleadings and stipulation filed with this Court on May 4, 1987 and without admission by Defendant of any facts, violation of law, or culpability, it is ORDERED, ADJUDGED, AND DECREED that:

I.

This Court has jurisdiction of the subject matter herein and of the parties hereto. The Complaint states a claim upon which relief can be granted against Defendant.

II.

The provisions of this Consent Decree shall apply to and be binding upon the parties to this action, their officers, agents, servants, employees, and successors.

III.

Until the Ohio Environmental Protection Agency issues final Permits to Operate for the frit smelters at Defendant's East 56th Street Cleveland plant, designated source numbers P904 through P914, Defendant shall: a) operate the respective frit smelters so that the total particulate emission rate from all continuous frit smelters shall not exceed 12.6 pounds per hour as established by Figure II, Curve P-1 of O.A.C. 3745-17-11 (this limitation is based upon the operation of six (6) frit smelters prior to conversion to oxygen firing at a maximum combined process weight rate of 15,237 lbs/hr and upon the results of the December 31, 1983 stack tests performed by Envisage Environmental, Inc., and b) in accordance with O.A.C. 3745-15-06, immediately notify the Cleveland Division of Air Pollution Control in the event that any emission source, air pollution control equipment, or related facility breaks down in such a manner as to cause the emission of air contaminants in violation of any applicable law.

IV.

Defendant shall pay a civil penalty under R.C. 3704.06(C) in the amount of fifty-eight thousand dollars (\$58,000.00) provided, forty-five thousand dollars (\$45,000.00) of the civil penalty is SUSPENDED upon condition that Defendant establishes and operates a lead monitoring network in accordance with the procedures and time frames set forth in paragraph V below. For

the portion of the penalty not suspended, Defendant shall pay the civil penalty due and owing by delivering to Plaintiff's counsel within thirty days after entry of this Consent Judgment a check drawn to the order of "Treasurer, State of Ohio" for payment into the General Revenue Fund. Should Defendant fail to establish and operate the lead monitoring network as set forth in paragraph V below, Defendant shall be liable for the suspended portion of the penalty. Payment shall be made in the same manner as prescribed for payment of the portion of the penalty not suspended.

V.

Defendant shall establish and operate an ambient total suspended particulates and lead monitoring network in the vicinity of its plant in Cuyahoga Heights, Ohio, in accordance with the procedures and time frames set forth in Attachment I to this Consent Judgment.

VI.

Compliance with the terms of this Consent Judgment shall constitute full satisfaction of any liability of Defendant for the claims alleged in the Complaint and for any other violation of R.C. Chapter 3704 occurring at Defendant's East 56th Street plant before the date of entry of this Consent Judgment of which Plaintiff has notice.

VII.

Nothing herein shall be construed as an admission by Defendant of any fact or violation of law. In particular, without limiting the generality of the foregoing, Defendant does not admit that it has violated any emission standard or limit which applies or applied to its East 56th Street frit smelters.

VIII.

The Court retains jurisdiction of this suit for the purpose of making any order or decree which it may deem at any time to be necessary to carry out this judgment. This Consent Judgment shall terminate upon satisfactory completion by Defendant of all obligations hereunder.

IX.

Defendant shall pay the Court costs of this case.

May 6, 1987  
DATE

Burt W. Thelke  
JUDGE

APPROVED:

[Signature]

RECEIVED FOR FILING

MAY 7 1987

GERALD E. FUERST, CLERK  
BY [Signature] DEP.

JAMES F. ALLEN  
Squire, Sanders & Dempsey  
155 East Broad Street  
Columbus, Ohio 43215  
(614) 224-0922

Attorney for Defendant

THE STATE OF OHIO }  
Cuyahoga County }  
I, GERALD E. FUERST, CLERK OF  
SS. THE COURT OF COMMON PLEAS,  
WITHIN AND FOR SAID COUNTY.  
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY  
(TAKEN AND COPIED FROM THE ORIGINAL Consent  
Judgment Vol 947 Pg 393-Case  
NOW ON FILE IN MY OFFICE.  
WITNESS MY HAND AND SEAL OF SAID COURT THIS 11<sup>th</sup>  
DAY OF May A.D. 1987.  
GERALD E. FUERST, Clerk  
By [Signature] Deputy

ANTHONY J. CELEBREZZE, JR.  
ATTORNEY GENERAL OF OHIO

[Signature]  
DOMINIC J. HANKET  
Assistant Attorney General  
Environmental Enforcement  
Section  
30 East Broad Street, 17th Fl.  
Columbus, Ohio 43266-0410  
(614) 466-2766

Attorney for Plaintiff

3944E

ATTACHMENT I

Ferro shall establish and operate an ambient TSP and lead monitoring network (two site locations) in the vicinity of its plant in Cuyahoga Heights, Ohio. Specifically, the first location (Site A) shall be sited in the vacant lot directly north of the plant property. The second location (Site B) shall be sited on the parking facility located immediately to the east of I-77 and immediately south of the railroad tracks. (The general site locations are shown on the accompanying map.) All hi-volume samplers shall be sited and located in accordance with the requirements of the May 10, 1979 Federal Register (FR), and any subsequent amendments including the March 20, 1984 FR proposed rulings for 40 CFR Parts 50, 53, and 58 (concerning TSP standards, reference methods, and quality assurance). The two (2) site TSP/lead network shall be equipped with hi-volume samplers meeting the reference methods specified in 36 FR 22388 (November 25, 1971); 47 FR 54912 (December 6, 1982); and 48 FR 17355 (April 22, 1983) with the additional requirement that each instrument be equipped with a continuous flow meter (recording transducer). Ferro shall begin the operation of the hi-volume samplers located at sites A and B, as defined above, by no later than October 1, 1987.

Ferro shall operate the monitoring sites on the same schedule as the Ohio air sampling network and in accordance with the following requirements:

- (a) The operating procedures identified in 44 FR 27558 (May 10, 1979) with revisions of 44 FR 65066 (November 9, 1979), 44 FR 72589 (December 14, 1979) and 46 FR 44159 (September 3, 1981) and the "Quality Assurance Handbook for Air Pollution Measurement Systems" Volume I - Principles (EPA-600/9-76-005) and Volume II - Ambient Air Specific Methods (EPA-600/4-77-027a) shall be followed.
- (b) The flow rate of each instrument shall be calibrated every 500 hours of operation and after any instance of major repair or maintenance.
- (c) An operator's logbook shall be maintained for each site location with a format and content as specified in guidance provided by the Ohio EPA.

Ferro shall meet the quality assurance activities specified in 40 CFR Part 58 Appendix B except that one site with collocated hi-volume samplers (Site A as described above) will be maintained. Independent audit results (accuracy) and precision results must be submitted quarterly to the Technical Services Section of the Ohio EPA, Division of Air Pollution Control in Columbus, and the Cleveland Division of Air Pollution Control within 18 days following the end of each calendar quarter beginning with the 3rd

calendar quarter of 1987. Equipment siting and performance specifications must be in accordance with "Ambient Monitoring Guidelines for Prevention of Significant Deterioration (PSD)", EPA-450/4-80-012. Technical Services Section and Ohio EPA field office personnel shall be provided with access to each site location. The site operator and/or supervisor shall accompany the Technical Services Section and/or Cleveland Division of Air Pollution Control personnel on any site inspection or audit and respond to inquiries regarding instrument operations and maintenance.

Appropriate corrective actions must be taken by Ferro following the identification of any problem by the independent auditor, or Technical Services Section or Ohio EPA field office personnel.

All air quality measurement data shall be reported to the Technical Services Section of the Ohio EPA, Division of Air Pollution Control in Columbus, within 18 days following the end of each calendar quarter beginning with the 4th calendar quarter of 1987. All such data shall be submitted on magnetic tapes in SAROAD format in a manner compatible for direct entry into the Ohio EPA Ambient Air Quality Data Handling System, if available. The description and corrective action for any missing data shall be reported in a letter that accompanies the data submission.

TSP filters shall be analyzed for lead according to the methodology specified in the FR 40 CFR Part 50 Appendix G (Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air).

Ferro shall operate these hi-volume samplers for a one year period (October 1, 1987 to September 30, 1988).

Ferro shall make available both the equipment and access to the sites for the Cleveland Division of Air Pollution Control to operate and maintain these hi-volume samplers for an additional year (October 1, 1988 to September 30, 1989).

Ohio EPA understands, however, that Ferro cannot guarantee access by CDAPC to the air sampler installed off its property, but that Ferro will use its best efforts to ensure that CDAPC can have access for the period October 1, 1988-September 30, 1989.

