

FILED
COMMON PLEAS COURT
IN THE COURT OF COMMON PLEAS
SHELBY COUNTY, OHIO
1989 JUL 18 PM 2:24

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

Plaintiff,

v.

THE GARTLAND-HASWELL FOUNDRY
COMPANY, et al.,

Defendants.

CASE NO. 89CV0001
BARBARA GELLY
CLERK

JUDGE JOHN D. SCHMITT

CONSENT JUDGMENT

The Complaint in the above-captioned matter has been filed herein, and the Plaintiff State of Ohio by its Attorney General Anthony J. Celebrezze, Jr. (hereinafter "Plaintiff") and Defendants The Gartland-Haswell Foundry Company and Patrick J. Gartland (hereinafter "Defendants") have 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 under Chapter 3704 of the Ohio Revised Code, and venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Judgment 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. In the event that Defendant Gartland ceases to be employed or otherwise associated with Defendant Company, he shall not be subject to the terms of this Consent Judgment so long as he no longer has any authority to direct the performance of Defendant Company; provided, however, that this provision shall not affect his liability to pay the civil penalty set forth in paragraph 7 of the Consent Judgment or his liability to pay any stipulated penalties under paragraph 8 of the Consent Judgment that have accrued prior to the time of his disengagement from the company as described above. Defendants shall provide a copy of this Consent Judgment to each contractor it employs to perform work itemized herein, and each general contractor shall provide a copy of this Consent Judgment to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that the Defendant has operated its foundry in a manner that has resulted in the commission of numerous violations of the terms and conditions

of its Permit to Operate and in violation of air pollution laws of the State of Ohio. Defendants deny such unlawful activity. Compliance with the terms of this Consent Judgment shall constitute full satisfaction of any civil liability by Defendants for all claims under such laws alleged in the Complaint. Nothing in this Judgment shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint and/or for violations of claims alleged in the Complaint which occur after the entry of the Consent Judgment.

IV. INJUNCTIVE RELIEF

4. From the date of entry of this Consent Judgment until August 1, 1990, Defendants are hereby enjoined and ordered to comply with the following control measures and recordkeeping and reporting requirements for source P901.

(a) The cupola and wet cap scrubber shall be operated and maintained in accordance with the following requirements in order to minimize air contaminant emissions:

- (i) the ratio (by weight) of iron to coke charged to the cupola shall be in the range of 7/1 to 12/1;
- (ii) the lining of the cupola shall be such that the inside open diameter shall not exceed 38 inches;

- (iii) the volumetric flow rate of air to the lower tuyeres of the cupola shall be in the range of 1800 to 3800 cfm;
- (iv) the addition of limestone and coke to the material charged shall be accomplished by use of a fork;
- (v) a spare water pump for the wet cap scrubber shall be maintained as a back up at all times;
- (vi) all efforts shall be taken to ensure that the burden level in the cupola is maintained as even as is practical;
- (vii) three (3) sets of tuyeres shall be operated at all times (2 sets below the melt zone and 1 set 6 feet below the charge door);
- (viii) the metal charge used in the cupola shall be clean scrap, which shall include crushed and washed motor block, #1 machinery scrap, plate and structural steel, railroad rail, automotive crankshafts, form machinery, foundry returns, pig iron and new cast iron; except, that if these materials are not free of significant quantities of oil and grease, these materials shall not be used as charge for the cupola; and,
- (ix) records shall be maintained of the dates and times of the start-ups and shutdowns of the cupola, maintenance conducted on the cupola and wet cap scrubber system (inspection and repair), dates and times of the wet cap scrubber system downtimes and the reason for the equipment failures, the ratio (by weight) of iron to coke charged to the cupola, and the volumetric flow rate of air to the

lower tuyeres of the cupola. (These records shall be available for inspection by Ohio EPA immediately upon request.)

- (b) The Ohio EPA Southwest District Office (hereinafter "SWDO") shall be notified of any breakdown of the pollution control equipment that occurs and such notification shall be made in accordance with OAC rule 3745-15-06.
- (c) By July 1, 1989, Defendant shall install a water flow alarm system on the wet cap scrubber water recirculation system. Water flow alarm system shall trigger an audible alarm upon loss of water flow.

5. Defendants are enjoined and ordered to install and operate a new electric induction furnace or permanently shut down the noncomplying cupola (source P901) according to the following schedule.

- (a) By November 1, 1989, Defendants shall either have proof of the financing needed to purchase and install the new electric induction furnace system and shall submit copies of all financing applications and written approval of the financing arrangements to Ohio EPA or permanently shut down source P901.

(b) If financing is secured, the electric induction furnace shall be installed in accordance with the following schedule:

- (i) By November 1, 1989, Defendants shall submit a Permit to Install (PTI) application with all required fees and copies of all purchase orders for the new electric induction furnace system to Ohio EPA.
- (ii) By April 1, 1990, Defendants shall commence on-site construction of the new electric induction furnace and submit written notification of this fact to Ohio EPA.
- (iii) By June 1, 1990, Defendant shall complete on-site construction of the new electric induction furnace and submit written notification of this fact to Ohio EPA.
- (iv) By August 1, 1990, Defendants shall operate and demonstrate compliance of the new electric induction furnace system and submit written documentation and notification of this fact to Ohio EPA. By this date, Defendants also shall permanently cease operation of the noncomplying cupola.

6. Defendants are permanently enjoined to comply with all the requirements of O.R.C. Chapter 3704., the rules adopted thereunder, and the terms and conditions of any permits, including modifications and renewals, issued pursuant to

Chapter 3704. and the rules adopted thereunder by August 1, 1990 or by the date Defendants permanently shut down source P901, whichever date occurs first.

7. Defendants shall pay to the State of Ohio a civil penalty of fifteen thousand dollars (\$15,000). The penalty shall be paid in seven \$2,000 quarterly payments and one \$1,000 quarterly payment with the first payment to be delivered to counsel for Plaintiff as a certified check, payable to the order of "Treasurer, State of Ohio" within fourteen (14) days from entry of this Consent Judgment. Each of the seven (7) succeeding quarterly payments shall be made within fourteen (14) days of the end of each calendar quarter by delivering to counsel for Plaintiff a certified check, payable to the order of "Treasurer, State of Ohio."

VII. STIPULATED PENALTIES

8. For each day that Defendants fail to meet the requirements and deadlines set forth in paragraphs 4 (a) through 4 (c), 5(a) and 5(b), Defendants shall immediately and automatically be liable for and shall pay a stipulated penalty of five hundred dollars (\$500.00) per day for each violation. Any payment required to be made under the provisions of this paragraph shall be made by delivering to Plaintiff's counsel a certified check or checks for the appropriate amounts, within

forty-five (45) days from the date of the failure to meet the requirements of the Consent Judgment, made payable to "Treasurer, State of Ohio".

VIII. POTENTIAL FORCE MAJEURE

9. In any action to enforce any of the provisions of this Consent Judgment Defendants may raise at that time the question of whether it is (or they are) entitled to a defense that its (or their) conduct was caused by reasons beyond its (or their) 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 order 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 or 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 Judgment without a force majeure clause does not constitute a waiver by Defendants of any rights or defenses they may have under applicable law.

IX. RETENTION OF JURISDICTION

10. The Court will retain jurisdiction of this action for the purposes of overseeing the implementation of this Judgment.

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X. COSTS

11. Defendants are hereby ordered to pay the costs of this action.

John D. Schmitt
JUDGE, COURT OF COMMON PLEAS

APPROVED:

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

THE GARTLAND-HASWELL
FOUNDRY COMPANY

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