

IN THE COURT OF COMMON PLEAS  
MARION COUNTY, OHIO

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

Plaintiff

v.

GLEN-GERY CORP.

Defendant

CASE NO.

98 CV 0400

JUDGE

CONSENT ORDER

COMMON PLEAS COURT  
MARION CO. OHIO  
98 SEP 22 PM 1:39  
KELLY J. DAVIDS  
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 Glen-Gery Corporation ("Glen-Gery") for alleged violations of Revised Code Chapter 3704 and the rules promulgated thereunder, and both parties have consented to the entry of this Order.

Therefore, without trial, admission, or determination of any issue of fact or 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 Glen-Gery's brick manufacturing facility located one-half mile south of State Route 309 on Township Rd. 9, Tully Township, Marion County, Ohio.
  - 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.

## **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, their officers, agents, servants, employees, 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. Defendant denies such allegations. The parties have agreed to resolve the disputed issues in this matter without adjudication of any issues of fact or law. Entry into this Consent Order shall constitute full satisfaction of any civil liability of the Defendant, its officers, employees, and agents, to the Plaintiff for the claims alleged in the Plaintiff's Complaint.

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. Except as otherwise provided in this Consent 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. Except as otherwise provided in this Consent Order, Defendant is hereby ordered to 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 Permits to Operate and Title V permits, and any subsequent renewals or modifications thereafter. Specifically, the Defendant agrees to refrain and is hereby permanently enjoined from "installing" or "modifying" any air contaminant source, as those terms are defined by O.A.C. 3745-31-01(I) and (J), 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 without first complying with the requirements of O.A.C. Chapter 3745-77, as applicable.

7. Defendant is enjoined and ordered to increase the height of the tunnel kiln stack to 130 feet in accordance with sound engineering practices and in accordance with the following schedule.:

- |    |                               |  |
|----|-------------------------------|--|
| a. | Award contracts               | w/in 10 days of entry  |
| b. | Complete on-site construction | December 1, 1998   |
| c. | Achieve final compliance      | March 15, 1999 or no later than one-hundred thirty-five days after a Permit To Install for the tunnel kiln is issued, whichever is later |

8. Defendant is enjoined and ordered to conduct a performance test on the tunnel kiln in accordance with O.A.C. 3745-15-04 and in accordance with the following schedule:

a. On or before December 1, 1998 or no later than thirty days after a Permit To Install for the tunnel kiln is issued, whichever is later, Defendant shall submit an Intent to Test ("ITT") notification to Ohio EPA's Northwest District Office. The ITT notification shall describe in detail the proposed test methods and procedures, the emissions unit operating parameters, the time(s) and date(s) of the test(s), and the person(s) who will be conducting the test(s).

b. Failure to submit such notification for review and approval prior to the test(s) may result, in the sole discretion of Ohio EPA, in the Ohio EPA's Northwest District Office's refusal to accept the results of the emission test(s).

c. Personnel from Ohio EPA's Northwest District Office shall be permitted to witness the test(s), examine the testing equipment, and acquire data and information necessary to ensure that the operation of the emissions unit and the testing procedures provide a valid characterization of the emissions from the emissions unit and/or the performance of the control equipment.

d. On or before January 15, 1999 or no later than seventy-five days after a Permit To Install for the tunnel kiln is issued, whichever is later, Defendant shall conduct the stack test in accordance with both the ITT and O.A.C. Rule 3745-15-04.

e. On or before February 15, 1999 or no later than one-hundred five days after a Permit To Install for the tunnel kiln is issued, whichever is later, Defendant shall submit to Ohio EPA's Northwest District Office a comprehensive written report on the results of the emissions test(s), which shall be signed by the person or persons responsible for conducting and performing the test. Defendant may request additional time for the submittal of the written report, where warranted, with prior approval from Ohio EPA's Northwest District Office.

9. On or before 90 days after the effective date of this Consent Order, Defendant is ordered to submit to Ohio EPA's Northwest District Office a comprehensive written report on the results of the emissions tests conducted on the Facility's primary, secondary, and tertiary crushing, screening, and conveying operations, which emissions tests were conducted on July 14, 1998. Said report shall be signed by the person or persons responsible for conducting and

performing the test. Ohio EPA may grant additional time to submit said report, where warranted, upon written request of Defendant submitted to Ohio EPA's Northwest District Office.

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

10. Pursuant to R. C. 3704.06, the Defendant shall pay to the State of Ohio a civil penalty in the amount of Two Hundred Twenty Nine Thousand One Hundred Sixty Six Dollars (\$229,166). Payment shall be made by delivering a certified check payable to the order of "Treasurer, State of Ohio" for the above-stated amount to: Jena Suhadolnik, Administrative Assistant, Office of the Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, within thirty (30) days of the entry of this Consent Order.

#### **VII. STIPULATED PENALTIES**

11. In the event that the Defendant fails to comply with any of the requirements of paragraphs number 7, 8, 9 and/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 -- Five Hundred Dollars (\$500.00) per day for each requirement not met. For each day of failure to meet a requirement, from thirty-one (31) to sixty (60) days -- Seven Hundred Fifty Dollars (\$750.00) per day for each requirement not met. For each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days -- One Thousand Five Hundred Dollars (\$1,500.00) per day for each requirement not met. For each day of failure to meet a requirement, over ninety (90) days -- Two Thousand Five Hundred Dollars (\$2,500.00) per day for each requirement not met.

12. In the event that the Defendant violates the permanent injunction set forth in paragraph 6 of this Consent Order relating to the installation, modification and/or operation of air contaminant sources without the necessary permits or relating to the Best Available Technology requirements for each air contaminant source contained within each respective source's applicable permit, the Defendant shall be liable for and shall immediately pay stipulated penalties in accordance with the following schedule:

- a. for each air contaminant source installed or modified without first obtaining a permit to install, Defendant shall pay a stipulated penalty of Five Thousand Dollars (\$5,000.00) per source per installation/modification;
- b. for each day for which each air contaminant source (except any air contaminant source for which Glen-Gery has submitted and Ohio EPA has received as of the date of entry of this Consent Order an application for a Title V operating permit) is operated without first obtaining the appropriate operating permit, Defendant shall pay a stipulated penalty of Two Thousand Five Hundred Dollars (\$2,500.00) per day of operation per source.

13. In the event the Defendant fails to meet any of the requirements of paragraphs number 6 through 10 of this Consent Order, 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.

14. Notwithstanding the provisions of this section, the State may, in its sole and

unreviewable discretion, defer, reduce, or waive stipulated penalties that have accrued. Where Defendant asserts that a deferral, reduction, or waiver of stipulated penalties is appropriate, Defendant may timely present to the State evidence supporting such an assertion.

15. The imposition, payment and collection of stipulated penalties pursuant to violations of this Consent Order shall not prevent the State from pursuing additional remedies, for violations of applicable laws, provided, however, that any other monetary relief obtained by the State for such future violations shall be reduced in an amount equal to the stipulated penalties for those identical violations which are actually paid by Defendant in accordance with this Consent Order.

#### **VIII. TERMINATION CLAUSE**

16. No earlier than three (3) years after Defendant has complied with the injunctive provisions contained in paragraphs 6 through 9 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 paragraphs 6 through 9 of this Consent Order and the stipulated penalties provisions contained in paragraphs 11 through 15 of this Consent Order. Termination of paragraphs number 6 through 9 and 11 through 15 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 paragraphs number 6 through 9 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, PTOs and Title V 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, including the basis that three years is, in actuality, not an appropriate time period. Such an order may also be granted upon joint motion of the parties.

#### **IX. RETENTION OF JURISDICTION**

17. The Court will retain jurisdiction of this action for purposes of enforcing this Consent Order during the effective term thereof.

#### **X. GENERAL PROVISIONS**

18. Nothing in this Consent Order is intended to create any rights or causes of action in or for any party other than the State of Ohio, nor shall it be entered, construed, or used by any party other than the State of Ohio in any proceeding of any kind. This Consent Order is entered into by Defendant without admission of fact, law, violation, or liability (which Defendant specifically denies), and Defendant reserves the right to deny and challenge in any other proceeding or action any finding of fact or conclusion of law set forth in this Consent Order.

#### **XI. COURT COSTS**

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

#### **XII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK**

20. 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.

#### **XIII. AUTHORITY TO ENTER INTO THE CONSENT ORDER**

21. Each signatory for the Defendant represents and warrants that he/she has been



duly authorized to sign this document and so bind the corporation to all terms and conditions thereof.

**IT IS SO ORDERED**

**JUDGE ROBERT S. DAVIDSON**


\_\_\_\_\_  
**DATE**

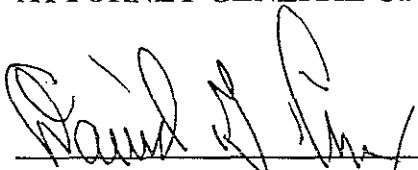
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**JUDGE, COURT OF COMMON PLEAS  
MARION COUNTY**


**APPROVED:**

**GLEN-GERY  
CORPORATION**

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

  
\_\_\_\_\_  
George Robinson,  
Vice-President/Production  
Defendant Glen-Gery Corp.

  
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