

IN THE COURT OF COMMON PLEAS
SENECA COUNTY, OHIO

STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY,
ATTORNEY GENERAL OF OHIO,
30 East Broad Street
Columbus, Ohio 43215-3428

Plaintiff,

v.

DAN GOUKER
799 East Twp. Road 122
Tiffin, Ohio 44883,

Defendant.

CASE NO. 50852

JUDGE M.P. KELBLEY

CONSENT ORDER

FILED
COMMON PLEAS COURT
SENECA COUNTY, OHIO
98 JUL 23 PM 4: 11
CAROL CLEVELAND
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 and Defendant Dan Gouker 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, and without admission of fact or liability by the Defendant, 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 Defendant under Chapter 3704 of the Ohio Revised Code, and venue is proper in this Court.

II. PARTIES

2. 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 any person acting in concern or privity with any of them.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint, *inter alia*, that Defendant open burned on at least six occasions in Tiffin, Ohio, in violation of the air pollution control laws and regulations of the State of Ohio.

4. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all violations under such laws and regulations 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 alleged in the Complaint, including violations which occur after the entry of this Consent Order. Also, nothing in this Consent Order shall be construed as an admission of fact or liability by Defendant Dan Gouker.

IV. PERMANENT INJUNCTION

5. Defendant is hereby enjoined and ordered to immediately and permanently comply with R.C. 3704 and the regulations adopted thereunder, including but not limited to Ohio Admin. Code Chapter 3745-19. Specifically, but not in any way limiting the scope of this paragraph, Defendant agrees to and is permanently enjoined to refrain from all open burning activities unless such activities are carried out in full compliance with R.C. 3704 and Ohio

V. CIVIL PENALTY

6. In addition to the injunctive relief set forth, Dan Gouker shall pay a civil penalty of one thousand dollars (\$1,000.00). This penalty shall be paid by delivering a certified check to Jena Suhadolnik, Administrative Assistant, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, payable to the order of "Treasurer, State of Ohio," within thirty (30) days of the entry of this Order.

VI. STIPULATED PENALTIES

7. In the event that Defendant fails to comply with any of the requirements imposed by paragraphs five and six of this Consent Order, the Defendant shall immediately and automatically be liable for and pay a stipulated penalty in accordance with the following schedule:

- a) for each violation of paragraph five, five thousand dollars (\$5,000.00) per day per violation;
- b) for each violation of paragraph six, one thousand dollars (\$1,000.00) per day per violation.

8. In the event that Defendant fails to meet any of the requirements of this Consent Order, Defendant shall immediately and automatically be liable for payment of stipulated penalties imposed by this Order without prior demand by the State of Ohio. Payment of all stipulated penalties shall be paid by Defendant by delivering to Plaintiff c/o Jena Suhadolnik, Administrative Assistant, Environmental Enforcement Section, 30 East Broad Street, 25th Floor,

Columbus, Ohio 43215-3428, a certified check payable to the order of "Treasurer, State of Ohio," immediately upon the occurrence of the violation giving rise to the penalty.

9. The imposition, payment and collection of stipulated penalties pursuant to violations of this Consent Order shall not prevent the State from pursuing additional remedies civil, criminal or administrative, for violations of applicable laws.

VII. RETENTION OF JURISDICTION

10. The court will retain jurisdiction of this action for the purposes of enforcing this Consent Order.

VIII. COSTS


11. Defendant Dan Gouker is hereby ordered to pay the costs of this action.

IX. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

12. 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.

IT IS SO ORDERED:

ENTERED THIS 23RD DAY OF JULY, 1998.

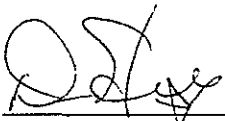


JUDGE M. P. KELBLEY, SENECA COUNTY
COURT OF COMMON PLEAS

APPROVED:

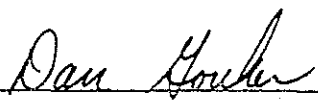
STATE OF OHIO,
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ATTORNEY GENERAL OF OHIO

BY:

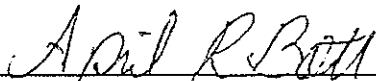


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DAN GOUKER
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