

Kern (0034629) (K573)  
Schworer (0036982) (S828)

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

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

Plaintiff,

vs.

JOHNSON & HARDIN COMPANY,

Defendant.

CASE NO. AA209476

JUDGE William Mathews

FILED  
OCT 23 11 10 AM '92  
CLERK OF COURT

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CONSENT ORDER

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WHEREAS, the Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Lee Fisher (hereinafter "Plaintiff") and Defendant Johnson & Hardin Company (hereinafter "Defendant") having consented to the entry of this Order,

WHEREAS, without trial of any issue of fact or law, or admission of any fact or liability on the part of Defendant, for the purpose of disposing of disputed claims in the Complaint and limiting litigation costs 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. Venue is proper in this Court.

## II. PARTIES

2. The provisions of this Consent Order 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. Defendant shall provide a copy of this Consent Order to each contractor it employs to perform work itemized herein, and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work. The Plaintiff provides notice to Defendant that it fully intends to exercise any rights under law it may have to obtain a contempt of court citation against any of Defendant's agents, officers, employees, assigns, successors in interest, or other persons acting in concern or privity with any of them who interferes with or obstructs Defendant's efforts to comply with this Consent Order if Defendant does not comply with this Consent Order.

## III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant has operated its printing facilities in Hamilton County, 3600 Red Bank Road, Cincinnati, Ohio 45227 (hereinafter "Cincinnati facility") and Warren County, Fujitec Drive, Lebanon, Ohio 45036 (hereinafter "Lebanon facility") in such a manner as to result in violations of the air pollution laws of the State of Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil and administrative liability by Defendant for all claims alleged in the Complaint

up to the date of entry of this Order. In addition, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil and administrative liability by Defendant's officers and directors for the violations alleged in Counts One through Twenty-Nine of the Complaint up to the date of entry of this Order. However, nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for claims, conditions or violations not alleged in the Complaint, or for violation of the types of claims alleged in the Complaint which occur after the entry of this Order.

#### IV. PERMANENT INJUNCTION

4. Defendant is hereby enjoined and ordered to comply with the requirements of Chapter 3704 of the Ohio Revised Code and the rules and regulations adopted under that Chapter and to comply with the terms and conditions of any permits to install or permits to operate issued for Defendant's facilities, except that from the entry of this Order until the issuance or final denial of permits to operate for the sources listed in Section V, Defendant may operate the sources listed in Section V if Defendant is in compliance with all the requirements of this Order, including but not limited to the requirements set forth in Section V. Defendant shall obtain a permit to install, in accordance with O.A.C. Rule 3745-31-02, prior to the installation or modification of any air contaminant source at the Cincinnati and Lebanon facilities.

**V. CONTROL PLANS AND COMPLIANCE SCHEDULES**

5. In accordance with the plan and schedule set forth in paragraph 7, Defendant shall install emission control equipment for the six (6) heatset web offset printing lines at the Cincinnati facility (source numbers R001, R002, R003, R004, the 6-Unit Hantscho and the 5-Unit Hantscho) and the two (2) heatset web offset printing lines at the Lebanon facility (the two 8-Unit Harris 1000s). The emission control equipment shall be designed to reduce the organic compound emissions from each printing line oven exhaust by 90% or greater. Defendant shall operate all emission control equipment associated with a printing line whenever the printing line is in operation.

6. On and after September 1, 1993, Defendant shall attain a 90% or greater reduction in the organic compound emissions from each printing line oven exhaust (source numbers R001, R002, R003, R004, the 6-Unit Hantscho and the 5-Unit Hantscho at the Cincinnati facility and the two 8-Unit Harris 1000s at the Lebanon facility).

7. Defendant shall install the emission control equipment referred to in paragraphs 5 and 6 as expeditiously as practicable, but in no event later than the deadlines in the following schedule:

- (a) Submit complete and approvable applications for permits to install (PTI's) by November 15, 1992;
- (b) Issue purchase orders for emission control equipment by November 15, 1992;
- (c) Initiate on-site construction for installation of emission control equipment by May 1, 1993;

- (d) Complete on-site construction or installation of emission control equipment by July 1, 1993; and
- (e) Achieve and demonstrate final compliance by October 1, 1993.

8. By no later than September 1, 1993, Defendant shall have conducted emission tests for the emission control equipment to demonstrate compliance with the 90% organic compound emission reduction requirement specified in paragraphs 5 and 6. The emission tests shall be conducted while the printing lines are operating at maximum capacity and in accordance with test methods and procedures approved by the Ohio EPA and SWOAPCA. Not later than thirty days prior to the proposed test date(s), Defendant shall submit an "Intent to Test" notification to the SWOAPCA. The "Intent to Test" notification shall describe in detail the proposed test methods and procedures, the operating parameters, the time(s) and date(s) of the tests. Failure to submit such notification for review and approval prior to the tests may result in SWOAPCA's refusal to accept the results of the emission tests.

9. Personnel from the SWOAPCA shall be permitted to witness the tests, examine the testing equipment, and acquire data and information necessary to evaluate the sources' operating parameters.

10. A comprehensive written report on the results of the emission tests shall be submitted to the SWOAPCA within thirty days following completion of the tests.

11. Within ten days following each of the deadlines

specified in paragraph 7, Defendant shall submit a written progress report to the Ohio EPA and SWOAPCA. The person submitting these reports shall certify whether or not each applicable requirement was met by the corresponding deadline. If an applicable requirement was not met by the corresponding deadline, the person shall explain in detail why the requirement was not met.

12. Unless otherwise permitted by terms and conditions in permits to operate (PTOs), Defendant shall continue to employ only alcohol replacement fountain solutions, having a composition not exceeding 3.5 percent of volatile organic compound (V.O.C.) on a volume basis, in the six (6) heatset web offset printing lines at the Cincinnati facility (source numbers R001, R002, R003, R004, the 6-Unit Hantscho and the 5-Unit Hantscho) and the two (2) heatset web offset printing lines at the Lebanon facility (the two 8-unit Harris 1000s).

13. Defendant waives any right to object to or appeal any term or provision that requires the operation of the emission controls, required by Paragraphs 5 through 9 of this Section, in permits to operate (PTOs) for the sources listed in paragraph 5.

**VI. CIVIL PENALTY AND SUPPLEMENTAL  
POLLUTION REDUCTION PROJECT**

14. Defendant, pursuant to 3704.06, shall pay to the State of Ohio a cash civil penalty of Two Hundred and Fifty Thousand Dollars (\$250,000.00). The penalty shall be paid by delivering a certified check for that amount, payable to the order of

"Treasurer, State of Ohio" within seven (7) days of entry of this Order.

15. The civil penalty check required under paragraph 14 above shall be delivered to the following address:

Janis Miller (or her successor)  
Administrative Assistant  
Environmental Enforcement Section  
30 East Broad Street, 25th Fl.  
Columbus, Ohio 43266-0410

16. In addition to the cash civil penalty, Defendant is ordered to install and operate emission control equipment, as set forth in Section V of this Order, costing approximately Six Hundred and Fifty Thousand Dollars (\$650,000.00) for sources R001, R002, and R003 at the Cincinnati facility. Defendant is ordered to operate and maintain such equipment thereafter consistent with Section V. The installation and operation of the emission control equipment for these sources will reduce air emissions beyond the requirements of the permits to install (PTIs) for sources R001, R002, and R003 at the Cincinnati facility.

**VII. STIPULATED PENALTIES**

17. In the event that Defendant fails to meet any of the requirements of this Consent Order set forth in Paragraphs 5 through 13, including any scheduled milestone requirement, 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 - Seven Hundred Fifty

Dollars (\$750.00) per day for each requirement not met. For each day of failure to meet a requirement, from thirty-one (31) to sixty days (60) - One Thousand Dollars (\$1,000.00) 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 Seven Hundred and Fifty Dollars (\$1,750.00) per day for each requirement not met. For each day of failure to meet a requirement, over ninety days (90) days - Three Thousand Dollars (\$3,000.00) per day for each requirement not met.

18. Any payment required to be made under the provisions of paragraph 17 of this Order shall be made by delivering to Janis Miller, or her successor, a certified check or checks for the appropriate amounts, within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, made payable to "Treasurer, State of Ohio" and delivered to the address set forth in paragraph 15.

#### VIII. RESERVATION OF RIGHTS

19. Except as provided by Paragraph 13, Defendant reserves all rights of review or appeal with regard to any disposition of an application to Ohio EPA for a permit, provided that all requirements of this Consent Order are unaffected by this reservation.

#### IX. POTENTIAL FORCE MAJEURE

20. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendant may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons entirely beyond its



control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and the Plaintiff 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, if ever, that the proceeding to enforce this Consent Order is commenced by the Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances beyond the control of Defendant shall rest with Defendant. Acceptance of this Consent Order without a force majeure clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

**X. RETENTION OF JURISDICTION**

21. The Court will retain jurisdiction of this action for the purpose of overseeing compliance with this Consent Order.

**XI. PLAINTIFF'S LITIGATIONS COSTS**

22. For Plaintiff's litigation costs in investigating and prosecuting this case, Defendant shall reimburse the Attorney General's Office in the amount of Ten Thousand Five Hundred Dollars (\$10,500.00). This reimbursement shall be paid by delivering a certified check for that amount payable to the order of "Treasurer, State of Ohio" within seven (7) days of entry of this Order in the manner provided for in paragraph 15.

**XII. COSTS**

23. Defendant is hereby ordered to pay the costs of this action.

Will H Jamison  
JUDGE, COURT OF COMMON  
PLEAS OF HAMILTON COUNTY

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

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