

FILED
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IN THE COURT OF COMMON PLEAS
WASHINGTON COUNTY, STATE OF OHIO

STATE OF OHIO, ex rel.	:	CASE NO. 97 OT 322
BETTY D. MONTGOMERY	:	
ATTORNEY GENERAL OF OHIO	:	
	:	
PLAINTIFF	:	JUDGE BOYER
	:	
v.	:	
	:	
MARIETTA INDUSTRIAL	:	CONSENT ORDER
ENTERPRISES	:	
	:	
DEFENDANT	:	

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 Marietta Industries Enterprises ("Marietta") for 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 Marietta's ferro-alloy processing facility and all related operations located at Route 4, Box 179-1A, Marietta, Washington 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, and, in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure, their officers, agents, servants, employees, attorneys, 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 numerous violations of the air pollution control laws and regulations of the State of Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of the Defendant 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. 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. The Defendant is hereby enjoined and ordered to immediately and permanently comply with R.C. Chapter 3704 and the regulations adopted thereunder, including all terms and conditions of the Defendant's currently effective Permits to Install and Permits to Operate, 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. In addition, the Defendant agrees to refrain and is hereby permanently enjoined from operating any air contaminant source without first applying for and receiving a Permit To Operate from the Director in accordance with O.A.C. 3745-35-02. Further, the Defendant agrees and is hereby permanently and immediately enjoined and ordered to comply with all terms and conditions of all Permits To Install and Permits To Operate which are issued to the Defendant by the Director, including but not limited to all reporting requirements, all reasonably available control measures and all emissions limitations.

VI. PRELIMINARY INJUNCTIVE RELIEF

7. Defendant is enjoined and ordered to properly operate and maintain each air contaminant source and piece of control equipment at the facility. In addition, Defendant is

enjoined and ordered to develop a Best Management Plan ("BMP") in accordance with the following:

- a. Defendant is enjoined and ordered to submit, within 30 days of entry of this Consent Order, a Best Management Plan to the Director for the Director's review and approval. The BMP shall contain a description of the training program to be used by Defendant in training all of its existing and new employees on how to properly operate and maintain all of Defendant's air contaminant sources and air pollution control equipment.
- b. Immediately upon the Director's approval of the BMP, Defendant is enjoined and ordered to train all of its existing and new employees responsible for operating and/or maintaining each air contaminant source and piece of control equipment in accordance with the BMP.
- c. Defendant shall submit, within 10 days of the completion of each employee's training under the BMP, a certification indicating whether the employee passed or failed the training program under the BMP.
- d. Defendant's new and existing employees responsible for operating and/or maintaining each air contaminant source and piece of control equipment shall be trained under the BMP every six months.
- e. No air contaminant source or piece of control equipment shall be operated or maintained by an employee who has failed the BMP training.

8. Defendant is enjoined and ordered to submit, within 30 days of entry of this Consent Order, PTI applications to the Director for Source No. F011 and for the source located near the Briquette Plant . Defendant is enjoined and ordered to submit, within 60 days of entry of this Consent Order, a PTI application to the Director for the material handling areas located throughout the ferro-alloy division.

9. In addition to the requirements of paragraph number 7, Defendant is enjoined and ordered to, immediately upon entry of this Consent Order, properly operate and maintain all existing and new air pollution control equipment at its facility for all of its existing and new air

contaminant sources.

10. Defendant is enjoined and ordered to bring Source Nos. F002 and F014 into compliance with all applicable law and permits in accordance with the following schedule:

<u>TASK</u>	<u>DATE</u>
a. Purchase street sweeper	date of entry of Consent Order
b. Purchase new water truck	date of entry of Consent Order
c. Hire new employee to perform sole job of watering roadways and parking lots	date of entry of Consent Order

Defendant is enjoined and ordered to maintain daily water usage reports which shall describe (a) the times, both beginning and ending times, on which roadways and parking lots were watered, (b) the number of gallons of water used on roadways and used on parking lots, (c) the name of the employee who watered the roadways and parking lots, and (d) the day the roadways and parking lots were watered. Defendant is enjoined and ordered to maintain daily street sweeper reports which shall describe (a) the times, both beginning and ending times, on which roadways and parking lots were swept, (b) the name of the employee who swept the roadways and parking lots, and (c) the day the roadways and parking lots were swept. Defendant is enjoined and ordered to make the water and sweeper reports available for inspection and review upon request of Ohio EPA, and to maintain these reports at its facility for a period of three consecutive years.

11. Defendant is enjoined and ordered to conduct a stack test on Source No. P901 in accordance with O.A.C. 3745-15-04 and in accordance with the following schedule:

- a. On or before 30 days after entry of this Order, Defendant shall submit an Intent to Test ("ITT") notification to Ohio EPA's Southeast 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 Southeast District Office's refusal to accept the results of the emission test(s).

c. Personnel from Ohio EPA's Southeast 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 60 days after entry of this Order, Defendant shall conduct the stack test in accordance with both the ITT and O.A.C. Rule 3745-15-04.

e. On or before 90 days after entry of this Order, Defendant shall submit to Ohio EPA's Southeast 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 Southeast District Office.

12. Defendant is enjoined and ordered to bring Source No. P903 into compliance with

all applicable law and permits in accordance with the following schedule:

a. Defendant is enjoined and ordered to submit, immediately upon entry of this Consent Order, a complete and approvable PTI application.

b. On or before 30 days after issuance of the PTI for Source No. P903, Defendant shall submit an Intent to Test ("ITT") notification to Ohio EPA's Southeast District Office preparatory to conducting a stack test in accordance with O.A.C. 3745-15-04. 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).

c. 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 Southeast District Office's refusal to accept the results of the emission test(s).

d. Personnel from Ohio EPA's Southeast 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.

e. On or before 30 days after issuance of the PTI for Source No. P903, Defendant shall install a screen slide on Source No. P903.

f. On or before 60 days after issuance of the PTI for Source No. P903, Defendant shall conduct a stack test in accordance with both the ITT and O.A.C. Rule 3745-15-04.

g. On or before 90 days after issuance of the PTI for Source No. P903, Defendant shall submit to Ohio EPA's Southeast 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 Southeast District Office.

13. Defendant is enjoined and ordered to bring Source Nos. P914 and P916 into compliance with all applicable law and permits in accordance with the following schedule:

a. On or before February 28, 1998, Defendant shall submit an Intent to Test ("ITT") notification to Ohio EPA's Southeast District Office preparatory to conducting a stack test in accordance with O.A.C. 3745-15-04. 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 Southeast District Office's refusal to accept the results of the emission test(s).

c. Personnel from Ohio EPA's Southeast 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 March 31, 1998, install reasonably available control technology to demonstrate compliance with O.A.C. 3745-17-08.

e. On or before March 31, 1998, Defendant shall conduct a stack test in

accordance with both the ITT and O.A.C. Rule 3745-15-04.

f. On or before April 28, 1998, Defendant shall submit to Ohio EPA's Southeast 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 Southeast District Office.

14. Defendant is enjoined and ordered to bring Source Nos. P925, P926 and P927 into compliance with all applicable law and permits in accordance with the following schedule:

a. Defendant is enjoined and ordered to submit, immediately upon entry of this Consent Order, a complete and approvable PTI modification application.

b. On or before the date of entry of this Order, Defendant shall submit an Intent to Test ("ITT") notification to Ohio EPA's Southeast District Office preparatory to conducting a stack test in accordance with O.A.C. 3745-15-04. 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).

c. 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 Southeast District Office's refusal to accept the results of the emission test(s).

d. Personnel from Ohio EPA's Southeast 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.

e. On or before January 31, 1998, Defendant shall conduct a stack test in accordance with both the ITT and O.A.C. Rule 3745-15-04.

f. On or before March 31, 1998, Defendant shall submit to Ohio EPA's Southeast 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 Southeast District Office.

VII. CIVIL PENALTY

15. Pursuant to R. C. 3704.06, the Defendant shall pay to the State of Ohio a civil penalty of One Hundred Twenty Seven Thousand Four Hundred Dollars (\$127,400.00). Of this amount, \$77,400 shall be paid in cash by delivering certified checks, payable to the order of "Treasurer, State of Ohio," to Jena Suhadolnik or her successor, Administrative Assistant, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428. The \$77,400 shall be paid in eighteen equal monthly installments of \$4,300 each, beginning on the first Monday of February, 1998 and continuing each month thereafter until the total \$77,400 is paid. The remaining \$50,000 shall be paid in the form of a supplemental environmental project. Specifically, Defendant is hereby ordered to deliver a certified check made payable to the Ohio Department of Natural Resources, Division of Forestry, for the purpose of funding urban area tree-planting projects in Marietta, Washington County, Ohio, which check shall specify the appropriate Fund No. and which shall be due within thirty (30) days of entry of this Consent Order.

VIII. STIPULATED PENALTIES

16. Except as otherwise provided in paragraph 17, in the event that the Defendant fails to comply with any of the requirements imposed by paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, and/or 15, 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 -- Two Thousand Five Hundred Dollars (\$2,500.00) per day for each requirement not met. For each day of failure to meet a requirement, from thirty-one (31) to sixty (60) days -- Five

Thousand Dollars (\$5,000.00) per day for each requirement not met. For each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days -- Seven Thousand Five Hundred Dollars (\$7,500.00) per day for each requirement not met. For each day of failure to meet a requirement, over ninety (90) days -- Ten Thousand Dollars (\$10,000.00) per day for each requirement not met.

17. 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 is operated without first obtaining a permit to operate, Defendant shall pay a stipulated penalty of Two Thousand Five Hundred Dollars (\$2,500.00) per day of operation per source;
- c. for each day for which each air contaminant source does not comply with the Best Available Technology requirement contained in its respective permit, Two Thousand Dollars (\$2,000.00) per day per source.

18. In the event the Defendant fails to meet any of the requirements 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.

19. 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.

IX. RETENTION OF JURISDICTION

20. The Court will retain jurisdiction of this action for purposes of enforcing this Consent Order.

X. COURT COSTS

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

XI. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

22. 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.

XII. AUTHORITY TO ENTER INTO THE CONSENT ORDER

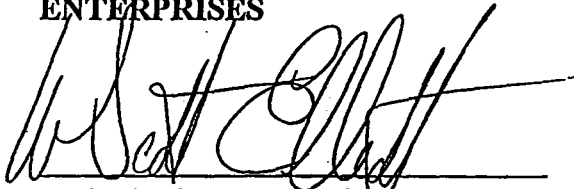
23. Each signatory for the Defendant represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof.

IT IS SO ORDERED

DATE

APPROVED:

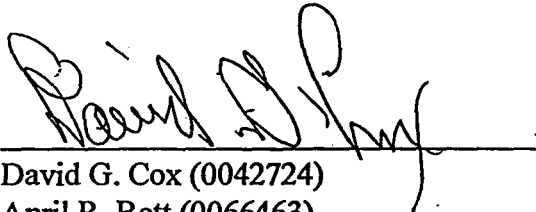
**MARIETTA INDUSTRIES
ENTERPRISES**



Authorized Representative
Defendant Marietta Industries
Enterprises

JUDGE, COURT OF COMMON PLEAS
WASHINGTON COUNTY

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



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Attorneys for Plaintiff State of Ohio

IN THE COURT OF COMMON PLEAS
WASHINGTON COUNTY, STATE OF OHIO

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

CASE NO. 97 OT 322 WASHINGTON CO. OHIO

PLAINTIFF

JUDGE BOYER

v.

MARIETTA INDUSTRIAL
ENTERPRISES

ENTRY AND ORDER

DEFENDANT

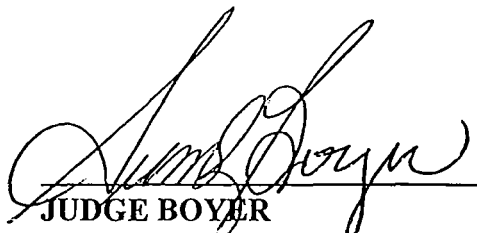
This matter is before the Court on the parties' joint motion to modify paragraph number 15 of the Consent Order entered in this matter on December 22, 1997. The Court finds the motion well taken and hereby modifies paragraph number 15 of the Consent Order to read:

“... for the purpose of funding urban area tree-planting projects in Marietta and Belpre, Washington County, Ohio . . .”

The consent order shall remain in full force and effect in all other respects.

SO ORDERED.

DATE



JUDGE BOYER
WASHINGTON COUNTY COURT OF
COMMON PLEAS

NOTICE TO CLERK OF COURTS
FINAL APPEALABLE