

IN THE COURT OF COMMON PLEAS
PIKE COUNTY, OHIO

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

Plaintiff,

v.

MILL'S PRIDE
LIMITED PARTNERSHIP
423 Hopewell Road
Waverly, Ohio 45690

Defendant.

CASE NO. 11-CIV-98
JUDGE

CONSENT ORDER

FILED
COMMON PLEAS COURT
-AM. JAN -9 1998 -PM.
John E. Williams
CLERK

Plaintiff, State of Ohio, by its Attorney General, Betty D. Montgomery ("Plaintiff"), having filed the Complaint against Defendant Mill's Pride Limited Partnership ("Defendant") to enforce Ohio's air pollution control laws set forth in R.C. Chapter 3704 and the rules adopted thereunder, and the parties having consented to the entry of this Consent Order,

NOW THEREFORE, without a trial or admission of any issue of law or fact, and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. DEFINITIONS

1. As used in this Consent Order, the following definitions shall apply:
 - a. "Ohio EPA" shall mean the Ohio Environmental Protection Agency and its agents;
 - b. "Permit to Install" has the same meaning as set forth in Ohio Adm. Code Chapter 3745-31;

- c. "Permit to Operate" has the same meaning as set forth in Ohio Adm. Code Chapter 3745-35;
- d. "Facility" means Defendant's manufacturing plant located at 423 Hopewell Road, Waverly, Pike County, Ohio.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the parties and subject matter of this case, pursuant to R.C. Chapter 3704 and the regulations adopted thereunder. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 3704 of the R.C., and venue is proper in this Court.

III. PARTIES

3. The Consent Order is binding upon the parties to this action and upon Defendant's successors and assigns. The injunctive provisions of this Consent Order shall apply to and be binding upon the parties to this action, their agents, representatives, officers, directors, employees, subsidiaries or divisions, assigns and successors in interest and any person acting in concert, privity or participation with them who receive actual notice of this Consent Order whether by personal service or otherwise, as provided pursuant to Rule 65(D) of the Ohio Rules of Civil Procedure.

IV. SATISFACTION OF LAWSUIT

4. Plaintiff alleges in its Complaint that Defendant, Mill's Pride, has violated the requirements of R.C. Chapter 3704 and the regulations promulgated thereunder at its facility. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendant for the claims which have been alleged in the Complaint.

5. Nothing in this Order shall be construed to limit the authority of the State of Ohio to

seek relief for claims or conditions not alleged in the Complaint, including, but not limited to, violations which occur after the date of entry of this Consent Order. Such relief may include, but is not limited to, any appropriate administrative, civil, and/ or criminal enforcement action that seeks injunctive, monetary, or other relief against Defendant.

6. Nothing in this Consent Order shall be deemed an admission by Defendant of any fact or allegation of the Complaint, all of which Defendant specifically denies, and Defendant's participating in this Consent Order shall not be deemed an admission of liability for any purpose. Nothing in this Consent Order shall limit the Defendant's right to defend against any allegation by the Plaintiff of additional violations of law or a violation of this Order.

V. PERMANENT INJUNCTION

7. Defendant is hereby enjoined and ordered to comply immediately and permanently with any applicable requirements or R.C. Chapter 3704 and the rules adopted thereunder.

8. Specifically:

- a. Defendant agrees to refrain and is permanently enjoined from "installing" or "modifying" any "air contaminant source" as those terms are defined in Ohio Admin. Code 3745-31-01(I),(J) and (C), at the Facility without first applying for and obtaining a PTI from Ohio EPA in accordance with Ohio Admin. Code 3745-31-02(A), unless the source is exempted from the requirement to obtain a PTI by applicable state or federal statutes or regulations.
- b. Defendant agrees to refrain and is permanently enjoined from operating any air contaminant source, as that term is defined in Ohio Admin. Code 3745-35-01(B)(1), at the Facility without first applying for and obtaining a PTO from Ohio EPA in accordance with Ohio Admin. Code 3745-35-02(A), unless the source is exempted from the requirement to obtain a PTO by applicable state or federal statutes or regulations.
- c. Defendant agrees and is permanently and immediately enjoined and ordered to comply with all the terms and conditions of all PTIs and PTOs, and all modifications thereto, which shall, during the term of this Consent Order, be

issued or have already been issued to Defendant.

VI. CIVIL PENALTY

9. For violations of R.C. Chapter 3704 and the regulations adopted thereunder and pursuant to R.C. 3704.06, Defendant shall pay to the State of Ohio a civil penalty of One Hundred Forty Thousand dollars (\$140,000.00). Of this amount, One Hundred Thousand Dollars (\$100,000.00) shall be paid in cash by Defendant in two installments of Fifty Thousand Dollars (\$50,000.00) each. The first installment will be due within thirty (30) days of the date of entry of this Consent Order. The second installment will be due within six (6) months of the date of entry of this Consent Order. The installments shall be made by delivering two certified checks, payable to the order of "Treasurer, State of Ohio," to Jena Suhadolnik, or her successor, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

The remaining Forty Thousand Dollars (\$40,000.00) shall be paid in the form of a supplemental environmental project. Specifically, Defendant is hereby enjoined and 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 Ohio. This check shall be due within six (6) months of the date of entry of this Consent Order.

VII. STIPULATED PENALTIES

10. In the event that Defendant fails to comply with any of the requirements imposed by paragraph 8 of this Consent Order, the Defendant shall, be liable for and shall immediately pay a stipulated penalty in accordance with the following schedule:

- a. For each air contaminant source installed or modified without first obtaining

a PTI, Defendant shall pay a stipulated penalty of Five Thousand Dollars (\$5,000.00).

b. For each air contaminant source operated in violation of R.C. Chapter 3704 and Ohio Admin. Code 3745-35, Defendant shall pay a stipulated penalty in accordance with the following schedule:

- (1) For each day of operation without a PTO or in violation of emission limits, up to thirty (30) days--Five Hundred Dollars (\$500.00) per day.
- (2) For each day of operation without a PTO or in violation of emission limits, from thirty-one (31) to sixty (60) days--One Thousand Dollars (\$1,000.00) per day.
- (3) For each day of operation without a PTO or in violation of emission limits, over sixty (60) days--One Thousand, Five Hundred Dollars (\$1,500.00) per day.

11. The Defendant shall immediately 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 a certified check, payable to the order of "Treasurer, State of Ohio," to Jena Suhadolnik, or her successor, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, within thirty (30) days from the date of the violation giving rise to the penalty.

12. 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.

VIII. POTENTIAL FORCE MAJEURE

13. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Defendant shall notify the Ohio EPA in writing within ten (10) days after it becomes

aware of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendant to prevent or minimize the delay and the timetable by which measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delays. An extension of one compliance date based on a particular incident does not mean that Defendant qualifies for an extension of a subsequent compliance date or dates. Failure by Defendant to comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendant's right to request an extension of its obligations under this Consent Order based on such incident. Defendant must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought.

14. In any action by the Plaintiff to enforce any of the provisions of the Consent Order, Defendant may present facts and arguments that 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 limitations, acts of God, strikes, acts of war or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, 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 that an enforcement action, if any, is commenced by the Plaintiff. At that time, Defendant will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of or serve as a basis for the extension of time under this Consent Order. 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.

IX. TERMINATION

15. In the event that Defendant complies with the requirements and injunctions set forth in this Consent Order for a period of three (3) years from the date of the entry of this Consent Order, this Consent Order may be terminated by motion of the Defendant and a subsequent order of this Court. Termination shall be made only upon demonstration (or agreement by both parties) that the requirements of this Consent Order have been satisfied. The Plaintiff reserves its right to oppose any motion by Defendant to terminate this Consent Order.

X. COSTS

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

XI. RETENTION OF JURISDICTION

17. This Court will retain jurisdiction of this action for the purpose of enforcing compliance with this Consent Order.

XII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

18. 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

19. Each signatory for 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 _____



JUDGE
Pike County Common Pleas Court

APPROVED:
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO



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Counsel for Defendant Mill's Pride



Michael Connelley
Mill's Pride Limited Partnership

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