

MAY 03 2012

LINDA K. FANKHAUSER, CLERK
PORTAGE COUNTY, OHIO

IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

STATE OF OHIO, ex rel.
MICHAEL DEWINE
OHIO ATTORNEY GENERAL

Plaintiff,

v.

PROCEX, LTD.

Defendant.

Case No. 2009 CV 01702

Judge Laurie J. Pittman

**CONSENT ORDER AND FINAL
JUDGMENT ENTRY**

Plaintiff, State of Ohio, by its Attorney General, filed a Complaint seeking injunctive relief and civil penalties from Defendant Procex, Ltd. for alleged violations of Ohio Revised Code (R.C.) Chapter 3704 and the rules promulgated thereunder;

Plaintiff and Defendant have consented to the entry of this Consent Order;

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

I. JURISDICTION AND VENUE

1. The Court has both personal and subject matter jurisdiction over the Parties. The Complaint states a claim upon which relief can be granted, and venue is proper in this Court for the purposes and duration of this Order.

II. PERSONS BOUND

2. The provisions of this Consent Order shall apply to and be binding upon the Parties to this action in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure.

III. DEFINITIONS

3. "ARAQMD" means the Akron Regional Air Quality Management District.

4. "Order" refers to this Consent Order.
5. "Defendant" means Procex, Ltd.
6. "Director" means the Director of the Ohio Environmental Protection Agency.
7. "Facility" is defined in Ohio Administrative Code ("Ohio Adm.Code") 3745-15-01(Q) and is used herein to refer to Defendant's operations at 880 Cherry Street in Kent, Portage County, Ohio.
8. "Ohio EPA" means the Ohio Environmental Protection Agency.
9. "Emissions units P003, P005 and P007" refer to the three electric inductors used to heat metal parts coated with rubber and other materials in order to facilitate removal of the coatings, and to any associated operations.
10. "Emissions unit P006" refers to the salt bath designed to remove residual coating material left in place after treatment by the electric inductors, and to any associated operations.
11. "Emissions unit N001" refers to the natural gas-fired burnoff oven currently permitted to remove paint coatings from salvageable metal parts.
12. All other terms not specifically defined herein, are defined, to the extent applicable, in accordance with the definitions provided in R.C. Chapter 3704 and Ohio Adm.Code Chapters 3745-15 and 3745-17.

IV. PERMANENT INJUNCTIVE RELIEF

13. Except as otherwise provided in this Order, Defendant is hereby ordered and enjoined to comply with R.C. Chapter 3704, the rules promulgated thereunder, and any orders of the Director.
14. Except as otherwise provided in this Order, Defendant is hereby enjoined and ordered to comply with Ohio Adm. Code 3745-15-07. Defendant agrees and is hereby enjoined to cease operation of emissions unit P006, after obtaining a Permit to Install ("PTI")

exemption for emissions unit N001 under the research and development provisions of Ohio Adm.Code 3745-31-03(A)(3)(d), and continuing after receipt of the Permit to Install and Operate (“PTIO”) described in paragraph 20. Ohio EPA agrees to issue the exemption within fifteen business days of receipt of an acceptable request for exemption from Defendant. Defendant reserves the right to submit a PTIO application in order to attempt to obtain a PTIO allowing for the re-start of emissions unit P006. Defendant shall not re-start emissions unit P006 unless and until Defendant obtains a PTIO for emissions unit P006. Defendant also agrees and is hereby enjoined to implement the interim control measures in paragraph 15. If violations of Ohio Adm.Code 3745-15-07 occur after implementation of the selected measure, Ohio EPA reserves its right to require additional measures that may be necessary for compliance with Ohio Adm.Code 3745-15-07, in addition to the stipulated penalties that will be assessed pursuant to Section VII of this Order.

15. Defendant shall implement the following interim measures to ensure that odors, if any, are sufficiently minimized or eliminated during the time from entry of this Order to the time emissions units P003, P005, and P007 are brought into compliance per paragraph 16 of the Order and emissions unit P006 is shut down, unless otherwise specified in the following:

- a. Defendant shall have a supervisor, foreman, or other similarly responsible employee who is trained on the proper operation and maintenance of all emissions units and associated equipment work on the night shift for thirty (30) days to enhance/enforce all prescribed measures for improving smoke capture;

- b. Defendant shall continue to train and solicit improvements for smoke capture by conducting monthly "all-employee" meetings for discussions on better ways to reduce smoke and improve capture;
- c. While emissions units P003, P005, and P007 are in operation, Defendant shall employ continuous water sprays to rubber recycle bins to reduce smolder smoke, or shall quench smolder smoke from removed rubber coatings by immersion in water-filled recycle bins;
- d. Defendant shall employ portable smoke hogs connected directly to scrubber duct work to assist in emission capture/containment at reclaim steel bins;
- e. Defendant shall employ any reasonably available measures to improve emission capture at satellite stations away from inductor hoods; and
- f. Defendant shall clean the existing scrubber and screens on an as needed, but no less than quarterly, basis to ensure maximum emission control efficiency of the existing scrubber.

16. By no later than November 30, 2012, Defendant agrees and is hereby enjoined and ordered to have implemented:

- a. an improved and effective air pollution capture system for the collection of the particulate emissions from emissions units P003, P005, and P007, and associated operations, that is designed using good engineering practice to minimize or eliminate visible particulate emissions so as not to exceed a visible emission limitation of 20 percent opacity (1) as a 3-minute average for any fugitive emissions escaping at any building opening such as windows and doors per Ohio Adm.Code 3745-17-07(B)(1), and (2) as a 6-minute average for any

uncontrolled emissions escaping at building ventilation roof stacks per Ohio Adm.Code 3745-17-07(A)(1);

- b. an effective ductwork and exhaust fan to transfer the collected emissions from the air pollution capture system for all four emissions units to air pollution control equipment; and
- c. air pollution control equipment that is designed using good engineering practice with sufficient capacity to handle the total exhaust gas flow rate from emissions units P003, P005, and P007 and that meets (1) a total hourly particulate emissions limitation of 1.65 pounds per hour (the sum of the individual allowables from Ohio Adm.Code 3745-17-11(B)(1) of 0.551 pound per hour for each of emissions units P003, P005 and P007) for any operating scenario of emissions units P003, P005, and P007 during operation and (2) a visible particulate emission limitation of 20 percent opacity, as a 6-minute average, except for one 6-minute time block in any hour when an opacity up to 60 percent is permitted, per Ohio Adm.Code 3745-17-07(A)(1).
- d. Compliance with Ohio Adm.Code Rule 3745-17-07(A)(1), shall be determined using the procedures in U.S. EPA Method 9 of 40 CFR Part 60, Appendix A and Ohio Adm.Code 3745-17-03(B)(1). Compliance with 3745-17-07(B)(1) shall be determined using the procedures in Ohio Adm.Code 3745-17-03(B)(3).

17. By no later than November 30, 2012, Defendant agrees and is hereby enjoined and ordered to improve the air pollution capture system for emissions units P003, P005, and P007, and bring emissions units P003, P005, and P007 into compliance with Ohio Adm.Code 3745-17-07(A)(1) and 3745-17-11(B)(1). Defendant is further enjoined to demonstrate compliance pursuant to the testing procedures in paragraph 18 of this

Order. Defendant shall maintain compliance with Ohio Adm.Code 3745-15-07, 3745-17-11(B)(1) and 3745-17-07(A)(1) thereafter.

18. By no later than March 15, 2013, Defendant agrees and is hereby enjoined and ordered to conduct emission testing using the following procedures to measure the particulate emissions rate from the stack of the air pollution control equipment that will serve emissions units P003, P005, and P007 in order to demonstrate compliance with a total hourly particulate emissions limitation of 1.65 pounds per hour (the sum of the individual allowables from Ohio Adm.Code 3745-17-11(B)(1) of 0.551 pound per hour for each of emissions units P003, P005, and P007) and a visible particulate emission limitation of 20 percent opacity, as a 6-minute average, except for one 6-minute time block in any hour when an opacity up to 60 percent is permitted, per Ohio Adm.Code 3745-17-07(A)(1):

- a. The following test methods shall be employed to demonstrate compliance with the total hourly particulate emission limitation: Methods 1 through 5 of 40 CFR Part 60, Appendix A, and Ohio Adm.Code 3745-17-03(B)(8) and (B)(10). The test shall be conducted while emissions units P003, P005, and P007 are (i) processing parts that are representative of worst-case particulate emissions, and (ii) operating at or near their maximum capacities, unless otherwise specified or approved by Ohio EPA or ARAQMD.
- b. The U.S. EPA Method 9 test of 40 CFR Part 60, Appendix A and Ohio Adm.Code 3745-17-03(B)(1) shall be employed to measure visible emissions during all or a portion of the testing for particulate emissions. Defendant agrees and is hereby enjoined to operate emissions units P003, P005, and P007 on the date of the particulate emission testing, to be mutually agreed upon by Defendant and ARAQMD, for at least one hour during daylight hours so that proper visible emission readings can be taken.
- c. Not later than thirty (30) days prior to the proposed test date(s), Defendant shall submit an "Intent to Test" notification to ARAQMD. The "Intent to Test" notification shall describe in detail the proposed test methods and procedures, the emissions units' operating parameters, the time(s) and date(s) of the test(s), and the person(s) who will be conducting the test(s). Failure to submit such notification for review and approval prior to any

test may result in Ohio EPA's or ARAQMD's refusal to accept the results of the emission test.

- d. Personnel from Ohio EPA and/or ARAQMD shall be permitted to witness the tests, examine the testing equipment, and acquire data and information necessary to ensure that the operation of the emissions units and the testing procedures provide a valid characterization of the emissions from the emissions units and/or the performance of the control equipment.
 - e. A comprehensive written report on the results of the emission test shall be signed by the person or persons responsible for the test and submitted to ARAQMD within thirty (30) days following the completion of any test. Defendant may request additional time for the submittal of the written report, where warranted, with prior approval from ARAQMD.
19. By no later than March 15, 2013, Defendant agrees and is hereby enjoined to submit to ARAQMD complete and updated permit applications for a PTIO for each of emissions units P003, P005, and P007 that identify the emission limitations as set forth in this Order for each respective emissions unit. The Director agrees to review and process the applications in accordance with Ohio Adm.Code Chapter 3745-31.
20. Within ninety (90) days of receiving the PTI exemption as described in paragraph 14, Defendant agrees and is hereby enjoined to submit to ARAQMD a complete and updated permit application for a PTIO Modification for emissions unit N001 to allow emissions unit N001 to incinerate metal parts with bonded rubber and/or adhesives, to be more specifically described in the application for modification. The Director agrees to review and process the modification application in accordance with Ohio Adm.Code Chapter 3745-31.
21. Within 30 days from the entry of this Order, Defendant agrees and is hereby enjoined and ordered to continue to keep closed/sealed all presently inactive building vents, except those building vents attached to ventilation fans that are necessary for proper building and worker ventilation. In the event that the closure or seal is compromised

such that it allows for the escape of emissions, Defendant shall notify ARAQMD and close/reseal the stack within ten (10) days. If Defendant cannot complete closure/seal within ten (10) days, Defendant shall provide a written explanation to ARAQMD and include an expeditious schedule for completion. In no event shall Defendant exceed any applicable emissions limit provided for by this Order, by regulation or by permit term.

22. Beginning sixty (60) days from the entry of this Order, and every sixty (60) days thereafter, Defendant shall submit a progress report to ARAQMD identifying the progress made toward compliance with this Order. 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.

V. SUBMITTAL OF DOCUMENTS

23. All documents required to be submitted to Ohio EPA pursuant to this Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio Environmental Protection Agency
Division of Air Pollution Control
Attn: Bruce D. Weinberg
Environmental Manager, Enforcement Section
Lazarus Government Center, Suite 700
50 West Town Street
Columbus, Ohio 43215

and

Akron Regional Air Quality Management District
Attn: Russ Risley
146 South High Street, Suite 904
Akron, Ohio 44308

VI. CIVIL PENALTY

24. Pursuant to and in accordance with R.C. 3704.06, Defendant is enjoined and ordered to pay a total civil penalty of Ten Thousand Dollars (\$10,000) to the State of Ohio within two years of the date of this Order. Such penalty shall be paid as follows:

- a. Defendant shall fund a supplemental environmental project ("SEP") by making a contribution in the amount of Two Thousand Dollars (\$2,000) to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). By April 30, 2014, Defendant shall tender a certified check payable to the order of "Treasurer, State of Ohio" for Two Thousand Dollars (\$2,000). The certified check shall specify that such monies be deposited in Fund 5CD0 established by Ohio EPA for the Clean Diesel School Bus Program Fund.
- b. Defendant shall pay the remaining Eight Thousand Dollars (\$8,000) by cashier's or certified check payable to the order of "Treasurer, State of Ohio" by April 30, 2014.
- c. Defendant reserves the right to make the payments described in paragraphs 24.a and 24.b at any time before April 30, 2014.
- d. Payments shall be delivered via certified check, together with a letter identifying Defendant, to Martha Sexton or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 393149."

VII. STIPULATED PENALTIES

25. Except as otherwise provided in paragraph 25 of this Order, in the event that Defendant fails to comply with any requirement or deadline contained in this Order or any requirement or deadline contained in any document approved in accordance with this Order, Defendant is liable for and shall on its own accord pay stipulated penalties without demand or notice by the State of Ohio in accordance with the following schedule for each failure to comply:

- a. For each day of each failure to comply with any requirement or deadline of this Order up to and including the first thirty (30) days of each failure, five hundred (\$500.00) per day for each requirement or deadline not met.
- b. For each day of each failure to comply with a requirement or deadline of this Order for days thirty-one (31) to sixty (60) days of each failure, seven hundred fifty dollars (\$750.00) per day for each requirement or deadline not met.
- c. For each day of each failure to comply with a requirement or deadline of this Order for each day over sixty (60) days of each failure, one thousand dollars (\$1000.00) per day for each requirement or deadline not met.

26. If Defendant fails to comply with any requirement or deadline contained in this Order or any requirement or deadline contained in any document approved in accordance with this Order, Defendant will not be assessed a stipulated penalty for the period from the date of discovery of the failed compliance to the date of correction of the compliance failure if:

- a. Defendant notifies Ohio EPA and/or ARAQMD in writing of any instance of failed compliance with this Order within twenty-four (24) hours of discovery of the compliance failure;
- b. Defendant corrects the deficiency within seven (7) business days of discovery of the compliance failure;
- c. Within ten (10) business days Defendant submits to Ohio EPA and ARAQMD a letter identifying:

- i. The deficiency that occurred and the compliance failure;
- ii. When the deficiency was been corrected; and,
- iii. What measures were taken to correct the deficiency.

If Defendant fails to notify Ohio EPA or fails to correct the deficiency within seven days, stipulated penalties will accrue from the date of deficiency. Ohio EPA and/or ARAQMD may agree to extend these deadlines upon written request demonstrating good cause.

27. Any payment required to be made under the provisions of Section VII of this Order shall be made by delivering to Plaintiff, c/o Martha Sexton or her successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, a cashier's or certified check or checks made payable to the order of "Treasurer, State of Ohio" for the appropriate amount within thirty (30) days from the date of the failure to meet the requirement or deadline of this Order. The payment of the stipulated penalty shall be accompanied by a letter briefly describing the type of violation, deadline, or requirement not met and the date(s) upon which the violation of this Order occurred. The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "Procex, Ltd. A.G. EAGO No. 393149."

28. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff pursuant to this Section shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to R.C. Chapter 3704, including civil penalties under R.C. 3704.06, or to otherwise seek judicial enforcement of this Order for the same violation for which a stipulated penalty was paid or for other violations.

VIII. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS

29. All activities undertaken by the Parties pursuant to this Order shall be undertaken in accordance with the requirements of all applicable federal, State, and local laws, rules and regulations. Where such laws appear to conflict with this Order, Defendant is ordered and enjoined to notify Ohio EPA of the potential conflict. This Order is not a permit issued pursuant to any federal, State, or local law or rule.

IX. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

30. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendant to the Plaintiff for the claims alleged in the Plaintiff's Complaint and up to the date of the Court's entry of this Order.

31. This 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 Order bar the State from bringing any action against Defendant for any violations that occur after the entry of this Order. Plaintiff expressly reserves, and this Order shall be without prejudice to, any claims, demands, rights or causes of action, judicial or administrative, that Plaintiff may have or which may in the future accrue against Defendant or others, regardless of whether such claim, demand, right or cause of action was asserted in the Complaint.

32. Nothing herein shall be construed to relieve Defendant of its obligations to comply with applicable federal, State or local statutes, regulations, or ordinances.

X. MODIFICATION

33. No modification shall be made to this Order without the written agreement of the Parties.

XI. RETENTION OF JURISDICTION

34. The Court will retain jurisdiction of this action for the purpose of administering and enforcing Defendant's compliance with this Order.

XII. TERMINATION OF CONSENT ORDER

35. After Defendant has paid the civil penalty, performed all injunctive portions of this Order, and is operating in substantial compliance, Defendant may move the Court, pursuant to Civ. R. 60(B) to terminate this Order in totality. Plaintiff reserves the right to raise objections to any such motion and contest the appropriateness of any such request to terminate the Order.

XIII. POTENTIAL FORCE MAJEURE

36. In any subsequent action by Plaintiff to enforce any of the provisions of this Order, Defendant may raise that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control (i.e., force majeure).

37. If any event occurs that causes or may cause a delay in Defendant's compliance with any requirement of this Order, Defendant shall notify Ohio EPA, in writing, within ten (10) days of the event and request an extension of time to complete its obligation, 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. Ohio EPA shall not unreasonably withhold its consent to an extension of time. Defendant will adopt all reasonable measures to avoid or minimize any such delay. Failure by Defendant to comply with the notice requirements of this paragraph shall constitute a waiver of Defendant's right to request an extension of its obligations under this Order based on such incident.

XIV. COSTS

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

XV. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

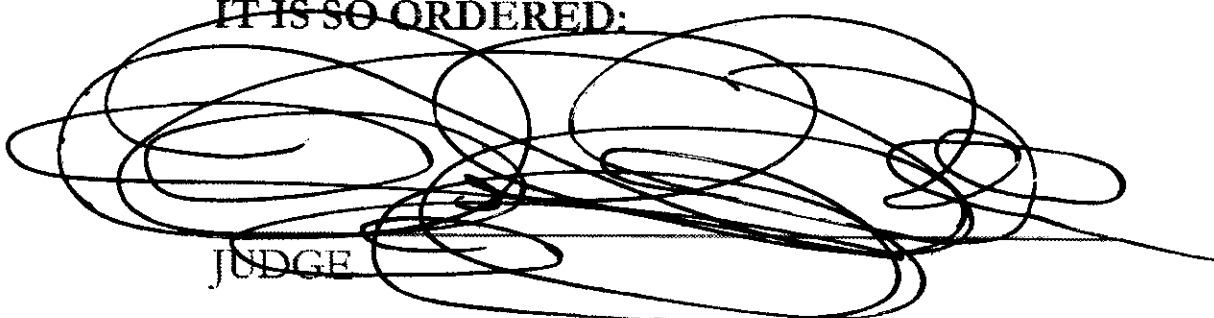
39. Pursuant to Civ. R. 58, upon signing of this Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is directed to serve notice of the judgment upon all parties, including its date of entry upon the

journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

XVI. SIGNATORIES

40. The signatory for Defendant Procex, Ltd. represents that he is fully authorized to enter into the terms and conditions of this Order and to legally bind Defendant to the Order.

IT IS SO ORDERED:



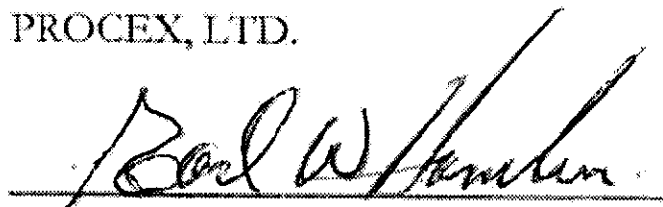
JUDGE

5.11.12


Date

APPROVED:

PROCEX, LTD.



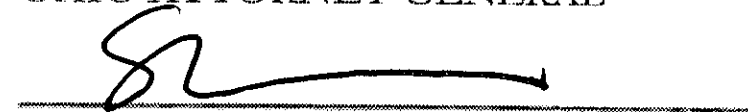
*Authorized Representative of Defendant
Procex, Ltd.*



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