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WAYNE COUNTY
COMMON PLEAS COURT
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CAROL WHITE, CLERK
WAYNE COUNTY, OHIO

IN THE COURT OF COMMON PLEAS
WAYNE COUNTY, OHIO

98 CV 0143
CASE NO. _____

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

JUDGE ~~JUDGE WIEST~~

Plaintiff,)

vs.)

CONSENT ORDER

SEAMAN CORPORATION)
1000 Venture Boulevard)
Wooster, Ohio 44691)

Defendant.)

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General, Betty D. Montgomery, (hereinafter "Plaintiff") and Defendant Seaman Corporation 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, law, or liability by Seaman Corporation, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

98-22-406

I. DEFINITIONS

1. As used in this Order, the following terms are defined as follows:
 - a. "Air contaminant source" has the same meaning as that set forth in Ohio Rev. Code §3704.01(C) and Ohio Administrative Code Rules 3745-31-01(D) and 3745-35-01(B)(1).
 - b. "Consent Order", or "Order", means this Order and Final Judgment.
 - c. "Facility" means Defendant Seaman Corporation's fabric coating facility currently located at 1000 Venture Boulevard, Wooster, Wayne County, Ohio.
 - d. "O.A.C." means the Ohio Administrative Code.
 - e. "Ohio EPA" means the Ohio Environmental Protection Agency.
 - f. "Permit to Install", or "PTI", has the same meaning as set forth in O.A.C. Chapter 3745-31.
 - g. "Permit to Operate", or "PTO", has the same meaning as set forth in O.A.C. Chapter 3745-35.
 - h. "Title V permit" has the same meaning as set forth in O.A.C. Chapter 3745-77.

II. JURISDICTION AND VENUE

2. 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.

III. PARTIES

3. 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 concert or privity with any of them with respect to matters addressed herein, who receive actual notice of this Consent Order whether by personal service or otherwise.

IV. SATISFACTION OF LAWSUIT

4. Plaintiff alleges in its Complaint, *inter alia*, that Seaman Corporation has operated numerous coating lines and a gas-fired boiler at the Facility without Permits to Operate such sources in violation of the air pollution control laws and regulations of the State of Ohio. Plaintiff further alleges in its Complaint that Seaman Corporation has modified or installed numerous sources without Permits to Install such sources. In addition, Plaintiff alleges in its Complaint that Seaman Corporation failed to comply with a determination by the Director of Environmental Protection that the company is required to comply with certain recordkeeping and reporting requirements.

5. Compliance with the terms of this Consent Order shall constitute full satisfaction of any administrative and/or civil liability (including injunctive relief and penalties) by Defendant Seaman Corporation, its officers, agents, employees, assigns, successors in interest and any person acting in concert or privity with any of them for (1) all violations alleged in the Complaint; and (2) any claims relating to the Attorney General's investigation, administrative or litigation costs relating to this action. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for violations not identified in this paragraph, including violations which occur after the entry of this Consent Order. Nothing in this Consent Order shall be construed to limit the rights of Seaman Corporation to raise any defenses it may have with respect to any such future State of Ohio actions.

V. INJUNCTION

A. Compliance With Permits and Permitting Requirements.

6. Seaman Corporation agrees to refrain and is permanently enjoined from "installing" or "modifying" any "air contaminant source", as those terms are defined in O.A.C. Rules 3745-31-01(EF), (KK), and (D), at the Facility without first applying for and obtaining a Permit to Install from Ohio EPA in accordance with O.A.C. Rule 3745-31-02(A), unless the source is exempted from the requirement to obtain a Permit to Install by statute or regulation.

7. Seaman Corporation agrees to refrain and is permanently enjoined from operating any "air contaminant source", as that term is defined in O.A.C. Rule 3745-35-01(B)(1), at the Facility without first applying for and obtaining a Permit to Operate from Ohio EPA in accordance with O.A.C. Rule 3745-35-02(A) -- unless the source is exempted from the requirement to obtain a Permit to Operate by statute or regulation, or unless the source is part of a facility that is required to obtain a Title V permit pursuant to O.A.C. Chapter 3745-77.

8. Seaman Corporation agrees and is permanently and immediately enjoined and ordered to comply with the provisions of O.A.C. Chapter 3745-77 to the extent that the provisions of said Chapter are applicable to the Facility.

9. Seaman Corporation agrees and is permanently and immediately enjoined and ordered to comply with all terms and conditions of all Permits to Install, Permits to Operate, and Title V permits which are issued to it for air contaminant sources at the Facility, provided, however, that nothing in this Consent Order shall be construed to limit the rights of Seaman Corporation to challenge or appeal, by way of an action before the Environmental Review

Appeals Commission, the Ohio EPA, or any other appropriate forum, the terms and/or conditions of any permits issued to Seaman Corporation in the future.

B. Compliance With Recordkeeping and Reporting Requirements.

10. Defendant Seaman Corporation agrees and is hereby enjoined and ordered to comply with all applicable recordkeeping and reporting requirements established by the Director of Environmental Protection in accordance with O.A.C. Rule 3745-15-03.

C. Transfer of Electrostatic Precipitator to Ludlow Composites Corporation.

11. Defendant Seaman Corporation agrees and is hereby enjoined and ordered to transfer, within forty-five (45) days of the entry of this Order, all ownership interests in its Powermatic, Eltron Division, Expandable, Supertron Model EMW 421-EHT electrostatic precipitator ("ESP") to Ludlow Composites Corporation, 2100 Commerce Drive, Fremont, Ohio 43420. Defendant Seaman Corporation agrees that certain ancillary equipment which is located at the Facility, owned by Seaman Corporation, necessary for the operation of the ESP, and not otherwise unique to the Facility, will be included with the ESP transfer, including, but not limited to:

- a). six (6) spare grids for the ESP;
- b). certain dilution dampers and controls at the exit of the ESP;
- c). certain spray heads and controls for evaporative cooling purposes;
- d). the main piece of tie-in duct work which transitioned the process duct work to the ESP;
- e). certain transition duct work between the ESP and the exhaust blower; and
- f). the exhaust blower.

Defendant Seaman Corporation further agrees and is hereby enjoined and ordered to deliver, within forty-five (45) days of the entry of this Order, the ESP and equipment to Ludlow Composites Corporation, FOB 2100 Commerce Drive, Fremont, Ohio, provided, however, that the State of Ohio understands and agrees, and shall notify Ludlow Composites Corporation, that (1) the transfer contemplated by this paragraph shall not be considered the sale of a product under Ohio's product liability act/statute; and (2) the ESP and associated equipment are to be provided by Seaman Corporation "AS IS" and that Seaman Corporation makes no representations or warranties with respect to the viability of the ESP and associated equipment and/or the fitness of the ESP and associated equipment for use by Ludlow Composites Corporation.

D. Overcontrol of Organic Compound Emissions from Source K002.

12. Defendant Seaman Corporation agrees and is hereby enjoined and ordered to ensure that organic compound emissions from Source K002 are controlled by the regenerative thermal oxidizer ("RTO") associated with that source at a minimum overall control efficiency (i.e., destruction efficiency multiplied by capture efficiency) of ninety-two percent (92%). Provided, however, this Consent Order shall not be construed to limit the ability of Seaman Corporation to request and receive appropriate air permits for any expansion or modification of any operations or air contaminant sources at the Facility, including Source K002.

E. Overcontrol of Particulate Matter and Organic Compound Emissions from Source K003.

13. Defendant Seaman Corporation agrees and is hereby enjoined and ordered to operate and maintain the control system for particulate matter and organic compound emissions from Source K003 which is in place as of the date of entry of this Order, vent the controlled

particulate matter and organic compound emissions to the RTO associated with that source, and maintain a minimum destruction efficiency of ninety percent (90%). Provided, however, this Consent Order shall not be construed to limit the ability of Seaman Corporation to request and receive appropriate air permits for any expansion or modification of any operations or air contaminant sources at the Facility, including Source K003.

VI. CIVIL PENALTY

14. Defendant Seaman Corporation shall pay a civil penalty of Two Hundred Two Thousand, Seven Hundred Ninety-Nine Dollars (\$202,799.00). Of this amount, the payment of One Hundred Fifty Thousand, Seven Hundred Fifty Dollars (\$150,750.00) is suspended upon the condition that Seaman Corporation complies with the terms of paragraphs 12 and 13 of this Consent Order -- which paragraphs constitute supplemental environmental projects to be undertaken by Seaman Corporation in lieu of the payment of this portion of the civil penalty. Specifically, the payment of Seventy-Four Thousand, Eight Hundred Ninety-Nine Dollars (\$74,899.00) is suspended upon the condition that Seaman Corporation complies with the terms of paragraph 12 of this Order, and Seventy-Five Thousand, Eight Hundred Fifty-One Dollars (\$75,851.00) is suspended upon the condition that Seaman Corporation complies with the terms of paragraph 13 of this Order. The remaining portion of the civil penalty, in the amount of Fifty-Two Thousand, Forty-Nine Dollars (\$52,049.00) shall be paid by delivering a certified checks to Jena Suhadolnik, Administrative Assistant (or her successor), Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, payable to the order of "Treasurer, State of Ohio", in accordance with the following payment schedule:

- Seventeen Thousand Dollars (\$17,000.00) within thirty (30) days of the entry of this Order;
- Seventeen Thousand Dollars (\$17,000.00) within six (6) months of the entry of this Order; and,
- Eighteen Thousand, Forty-Nine Dollars (\$18,049.00) within one (1) year of the entry of this Order.

VII. STIPULATED PENALTIES

15. In the event that Seaman Corporation violates the permanent injunction set forth in paragraphs 6, 7, and 8 herein relating to the installation, modification and operation of air contaminant sources without the necessary permits, paragraph 9 herein relating to compliance with permit terms and conditions, or paragraph 10 herein relating to recordkeeping and reporting requirements, Seaman Corporation 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 in violation of paragraph 6 above, Seaman Corporation shall pay a stipulated penalty of Two Thousand, Five Hundred Dollars (\$2,500.00).
- b. For each air contaminant source operated in violation of Ohio Rev. Code Chapter 3704 and/or O.A.C. Chapters 3745-35 and 3745-77 and paragraphs 7, 8, and 9 above, and for each recordkeeping or reporting violation of paragraph 10 above, Seaman Corporation shall pay a stipulated penalty in accordance with the following schedule:
 - 1. For each day of violation up to thirty (30) days - Two Hundred Fifty Dollars (\$250.00) per day.
 - 2. For each day of violation from thirty-one (31) to sixty (60) days -- Five Hundred Dollars (\$500.00) per day.

3. For each day of violation from sixty-one (61) to ninety (90) days -- One Thousand Dollars (\$1,000.00) per day.
4. For each day of violation over ninety (90) days -- Two Thousand Dollars (\$2,000.00) per day.

Such stipulated penalties shall be paid by delivering certified checks in the appropriate amount, payable to the order of "Treasurer, State of Ohio," to Jena Suhadolnik, Administrative Assistant (or her successor), Office of the Ohio Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

VIII. POTENTIAL FORCE MAJEURE

16. In any action to enforce any of the provisions of this Consent Order, Defendant Seaman Corporation may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons beyond its control such as, by way of example and not limitation, acts of God, unusually severe weather conditions, strikes, acts of war or civil disturbances, or orders of any regulatory agency. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by the parties 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. Acceptance of this Consent Order without an agreed force majeure defense does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

IX. TERMINATION CLAUSE

17. No earlier than two (2) years from the date of the Court's entry of this Consent Order, Defendant may move the Court, pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure, to terminate the injunctive relief provisions contained in paragraphs 6, 7, 8, 9, 10

and 11 of Section V of this Consent Order. Termination of paragraphs 6, 7, 8, 9, 10 and 11 of Section V of this Consent Order shall only be effected by order of the Court upon a showing by Defendant that it has been in compliance with the obligations of this Consent Order for the previous two (2) year period. Plaintiff takes no position with regard to such motion at this time, and reserves any rights it may have to oppose the motion. Such an order may also be granted upon joint motion of the parties.

18. No earlier than one (1) year after Defendant has complied with the injunctive provisions contained in Section V of this Consent Order, Defendant may move the Court, pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure, for an order terminating the stipulated penalty provisions contained in Section VII of this Consent Order. Termination of the aforementioned stipulated penalty provisions shall only be effected by order of the Court upon a showing by Defendant that it has been in compliance with the obligations of Section V for the previous one (1) year period. Plaintiff takes no position with respect to such motion at this time, and reserves any rights it may have to oppose the motion. Such an order may also be granted upon joint motion of the parties.

X. RETENTION OF JURISDICTION

19. The Court will retain jurisdiction of this action for the purpose of enforcing this Consent Order and resolving disputes arising under the Order.

XI. COSTS

20. Defendant Seaman Corporation is hereby ordered to pay the court costs of this action.

IT IS SO ORDERED:

ENTERED THIS 4th DAY OF April, 1998.

Mark H. West

JUDGE, WAYNE COUNTY
COURT OF COMMON PLEAS

APPROVED:

SEAMAN CORPORATION

BY:

Shane A. Farolino

THOMAS M. PARKER, ESQ. (0004956)
SHANE A. FAROLINO, ESQ. (0040310)
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STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

BY:

Susan E. Ashbrook

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Counsel for Defendant

JOURNALIZED

APR 06 1998

BY:

Richard M. ...
(Authorized Representative of Defendant, Seaman Corporation)

CAROL WHITE, CLERK
WAYNE COUNTY, OHIO

TITLE:

President & CEO

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COPY TO ALL COUNSEL

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Regular _____

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By _____

Dep. Clerk