

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

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

Plaintiff,

v.

T.S. TRIM INDUSTRIES, INC.
59 Gender Rd.
Canal Winchester, Ohio 43110

Defendant.

CASE NO. 97-CVH02-3281

JUDGE DALE CRAWFORD,

CONSENT ORDER

TERMINATION NO. 7
BY [Signature]

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio, by its Attorney General Betty D. Montgomery, and Defendant T.S. Trim Industries, Inc. (hereinafter "TTI") having consented to the entry of this Order,

NOW, THEREFORE, before Answer and without trial or determination of any issue of fact or law, without admission by TTI of any violation of law or of any fact and with full reservation of rights, and upon 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 Administrative Code ("O.A.C.") Chapter 3745-31;
 - c. "Permit to Operate" has the same meaning as set forth in O.A.C. Chapter 3745-35;
 - d. "Title V Permit" has the same meaning as set forth in O.A.C. Chapter 3745-77;

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e. "Facility" means TTI's manufacturing plant located at 59 Gender Rd., Canal Winchester, Ohio 43110.

II. JURISDICTION AND VENUE

2. The court has jurisdiction over the parties and the subject matter of this case. The Complaint states claims upon which relief can be granted against TTI pursuant to R.C. Chapter 3704. 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, including the Defendant, the State of Ohio, the Ohio EPA and the Director of Environmental Protection, their agents, officers, directors, employees, assigns, successors, and any person acting in concert or participation with any of them who receives actual notice of the Consent Order, whether by personal service or otherwise.

IV. SATISFACTION OF LAWSUIT

4. Plaintiff alleges in its Complaint that Defendant TTI 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 TTI for all claims under such laws and regulations which have been alleged in the Complaint, including all violations revealed by all usage and emission reports submitted by TTI and received by the Ohio EPA up to and including the date of entry of this Consent Order.

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, and other relief against Defendant TTI.

6. Nothing in this consent Order shall be construed to relieve Defendant of its obligation to comply with applicable federal, state, or local statutes, regulations, or ordinances.

V. PERMANENT INJUNCTION

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

Specifically, but without limitation, TTI is hereby enjoined and ordered to:

- a. Comply with all of the requirements of Permit to Install No. 01-3803 issued by Ohio EPA to TTI on April 21, 1993, including all modifications thereto;
- b. Refrain from operating any "air contaminant source," as that term is defined in O.A.C. Chapter 3745-35, other than in conformance with the operating parameters specified in the properly filed, timely and complete Title V permit application previously submitted to Ohio EPA on April 29, 1996, as from time to time appropriately modified; and
- c. Comply with all terms and conditions of all Permits to Install and Title V Permit or other Permits to Operate, and all modifications thereto, which shall, during the term of this Consent Order, be issued to TTI.

8. In addition to the requirements of paragraph number 7 of this Order, and until such time as either PTI No. 01-3803 is amended by or a Title V permit is issued by the Director, TTI is enjoined and ordered to comply with the following terms and conditions:

- a. TTI shall maintain a permanent, total enclosure system at its facility whenever sources P007, R019, R020, R021, R024 and/or R025 ("the emissions units") are in operation;
- b. TTI's permanent total enclosure system shall, at all times, be maintained under negative pressure, at a minimum pressure differential that is not less than .004 inch of water recorded by the datalogger, and averaged for one-minute periods during any rolling, 15-minutes whenever any of the emissions units are in

operation;

c. TTI's Solvent Laden Air Fan, used in conjunction with the control system serving these emissions units, shall be operated at a minimum level of 720 shaft revolutions per minute whenever any of the emissions units are in operation;

d. TTI shall continue to maintain and operate continuous monitoring devices and a recorder equivalent to those now in operation which shall simultaneously measure and record the pressure inside and outside the permanent total enclosure system;

e. TTI shall continue to maintain and operate a continuous monitoring device and a recorder equivalent to those now in operation which measures and records the Solvent Laden Air Fan's shaft revolutions per minute;

f. TTI shall install, calibrate, operate and maintain the monitoring and recording devices in accordance with the manufacturer's recommendations, with any modifications deemed necessary by TTI;

g. TTI shall maintain the following information for each day that any of the emissions units are in operation:

i. continuously record the pressure differential of the permanent total enclosure system in inches of water;

ii. continuously record the revolutions per minute of the Solvent Laden Air Fan;

iii. a log or record of operating time for the capture (collection) system, control device, monitoring equipment, and the associated emissions units.

h. TTI shall submit pressure differential deviation (excursion) reports on a quarterly basis that identify all periods of time during which the permanent total enclosure system was not maintained at or above .004 inch of water during any rolling, 15- minute period based on the average one-minute values recorded by the datalogger whenever any of the emissions units are in operation, or shall report that there were no deviations;

i. TTI shall submit fan speed deviation (excursion) reports on a quarterly basis that identify all periods of time during which the Solvent Laden Air Fan's speed was not maintained at 720 revolutions per minute whenever any of the emissions units are in operation, or shall report that there were no deviations;

j. The quarterly reports required by subparagraphs h. and i. above shall be submitted by February 15, May 15, August 15 and November 15 of each year, and cover the previous calendar quarter (October through December, January through March, April through June and July through September).

9. In the event PTI No. 01-3803 is modified to include the requirements as provided for in paragraph number 8 above, or a Title V Permit is issued by the Director to TTI to include the requirements as provided for in paragraph number 8 above, those requirements will be incorporated by the Director in their entirety and without change, and TTI agrees not to appeal to the Environmental Review Appeals Commission or to any court of competent jurisdiction those portions of the PTI modification or the Title V Permit incorporating those requirements listed in paragraphs number 8a. through 8j. above. Thereafter, paragraph 8 will no longer be enforceable as part of this Consent Order.

VI. CIVIL PENALTY

10. Pursuant to R. C. 3704.06, TTI shall pay to the State of Ohio a civil penalty of Two Hundred Ten Thousand and Fifty Dollars (\$210,050.00). Of this amount, \$185,050 shall be paid in cash by delivering a check, payable to the order of "Treasurer, State of Ohio," to Lyndia Jennings or her successor, Administrative Secretary, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428 within thirty (30) days of the date of entry of this Consent Order. The remaining \$25,000 shall be paid in the form of a supplemental environmental project. Specifically, TTI is hereby ordered to deliver a check made payable to the Ohio Department of Natural Resources, Division of Forestry, for the purpose of funding urban area tree-planting projects in Canal Winchester, Franklin County, Ohio, which check shall specify Fund No. 4B8 and which shall be

due within thirty (30) days of entry of this Consent Order.

VII. STIPULATED PENALTIES

11. In the event that TTI violates the permanent injunction set forth in Paragraph 8 of this Consent Order, TTI shall be liable for, and shall immediately pay, stipulated penalties in accordance with the following schedule:

- a. Except as modified in paragraph number 12, if TTI violates any of the provisions of paragraphs 8.a., 8.b. and/or 8.c.:
 - i. For each day of violation, up to the thirtieth (30th) day of said violation - One Thousand Dollars (\$1,000.00) per day per violation;
 - ii. For each day of violation, from the thirty-first (31st) through the sixtieth (60th) day of said violation - Three Thousand Dollars (\$3,000.00) per day per violation;
 - iii. For each day of violation, after the sixtieth (60th) day of said violation - Five Thousand Dollars (\$5,000.00) per day per violation.
- b. If TTI violates any of the provisions of paragraphs 8.d., 8.e. and/or 8.f.:
 - i. For each day of violation, up to the thirtieth (30th) day of said violation - Five-Hundred Dollars (\$500.00) per day per violation;
 - ii. For each day of violation, from the thirty-first (31st) through the sixtieth (60th) day of said violation - Seven Hundred Fifty Dollars (\$750.00) per day per violation;
 - iii. For each day of violation, after the sixtieth (60th) day of said violation - One Thousand Dollars (\$1,000.00) per day per violation.
- c. If TTI violates any of the provisions of paragraph 8.g.:
 - i. For each day of violation, up to the thirtieth (30th) day of said violation - Two-Hundred Fifty Dollars (\$250.00) per day per violation;
 - ii. For each day of violation, from the thirty-first (31st) through the sixtieth (60th) day of said violation - Five Hundred Dollars (\$500.00) per day per violation;

iii. For each day of violation, after the sixtieth (60th) day of said violation
- One Thousand Dollars (\$1,000.00) per day per violation.

d. If TTI violates any of the provisions of paragraphs 8.h., 8.i. and/or 8.j.:

i. For each day of violation, up to the thirtieth (30th) day of said violation
- One Hundred Dollars (\$100.00) per day per violation;

ii. For each day of violation, from the thirty-first (31st) through the
sixtieth (60th) day of said violation - Two-Hundred Fifty Dollars
(\$250.00) per day per violation;

iii. For each day of violation, after the sixtieth (60th) day of said violation
- Five Hundred Dollars (\$500.00) per day per violation.

12. For purposes of paragraph 11.a., stipulated penalties shall not accrue for failing to maintain and/or monitor total enclosure pursuant to paragraphs 8.a. and/or 8.b. during the following conditions:

- a. Stipulated penalties for failing to operate the differential pressure gauge in accordance with paragraph 8.b. shall not accrue during the first seven consecutive operating days of such failure if TTI is operating the Solvent Laden Air Fan in accordance with paragraph 8.c., or;
- b. Stipulated penalties for failure to operate both the differential pressure gauge and the Solvent Laden Air Fan shall not accrue during the first seven consecutive operating days of such failure if TTI measures and monitors total enclosure in accordance with its QA/QC plan as approved pursuant to PTI No. 01-3803.

13. Any payment required to be made under the provisions of this Order shall not be suspended by the Court, in whole or in part, and shall be made by delivering a certified check or checks for the appropriate amounts, payable to "Treasurer, State of Ohio," to Lyndia Jennings or her successor, Administrative Secretary, Office of the Attorney General, Environmental Enforcement Section, 30 E. Broad St., 25th Floor, Columbus, Ohio 43266-0410. Any such payment shall be delivered by TTI within thirty (30) days from the date of violation of the

permanent injunction. The fact that the State of Ohio obtains stipulated penalties under this Section VII for violations of the requirements of this Order does not limit the State's ability to seek enforcement of this Order through contempt or otherwise, nor does it limit the State's ability to seek other civil, administrative, or criminal relief for future violations of law or of this Consent Order.

14. Notwithstanding the provisions of this Section VII, the State may, in its sole and unreviewable discretion, defer, reduce or waive stipulated penalties that have accrued. Where TTI asserts that a deferral, reduction, or waiver of stipulated penalties is appropriate, TTI may timely present to the State evidence supporting such an assertion.

VIII. POTENTIAL FORCE MAJEURE

15. If any event occurs which causes or may cause a delay or violation of any requirement of this Consent Order, TTI shall notify the Ohio EPA, Central District Office, in writing within ten (10) days of the event, describing in detail the anticipated length of the delay or violation, the precise cause or causes of the delay or violation, the measures taken and to be taken by TTI to prevent or minimize the delay or violation and the timetable by which measures will be implemented. TTI will adopt all reasonable measures to avoid or minimize any such delay or violation.

16. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, TTI may raise 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 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 TTI 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 action to enforce the terms and conditions of this Consent Order, if any, is commenced by the Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of TTI shall rest with TTI. 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 TTI or serve as a basis for an extension of time under this Consent Order. Failure by TTI to comply with the notice requirements of Paragraph 15 shall render this Paragraph 16 void and of no force and effect as to the particular incident involved and shall constitute a waiver of TTI's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one compliance date based on a particular incident does not mean that TTI qualifies for an extension of a subsequent compliance date or dates. TTI must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought.

IX. TERMINATION

17. No earlier than 5 years from the date of entry of this Consent Order, TTI may move the Court to terminate this Consent Order if TTI can demonstrate that (1) it has been in continuous compliance with all the requirements of this Consent Order for such 5 year period; and (2) it has been in compliance with all terms and conditions of PTI No. 01-3803 and all subsequent modifications or amendments thereto for such 5 year period; and (3) it has paid all penalties required by this Consent Order for such 5 year period. The Plaintiff takes no position at this time as to such motion and reserves any rights it may have to oppose the motion, including

the basis that 5 years is, in actuality, not an appropriate time period. Termination under this Consent Order shall only be upon written application by any party, and by Order of the Court after the Court has made a determination that the requirements of this paragraph 17 have been satisfied. In no event, however, shall this Consent Order be enforceable after 10 years from the date of entry.

X. COSTS

18. TTI is hereby ordered to pay any court costs of this action.

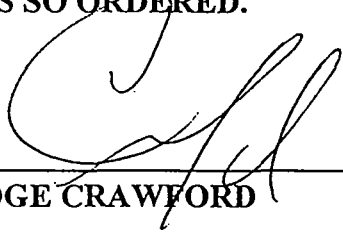
XI. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

19. 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

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

IT IS SO ORDERED.



JUDGE CRAWFORD

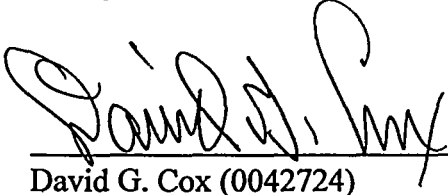
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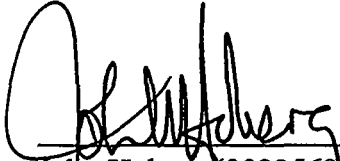
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Approved:

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