

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

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

CASE NO. 1997CV01617
JUDGE _____

Plaintiff,

vs.

THE TIMKEN COMPANY,
Defendant.

FILED
AUG 14 1997
PHIL G. GIAVASIS
STARK COUNTY OHIO
CLERK OF COURTS

CONSENT ORDER

The Complaint in the above captioned matter having been filed herein, and Plaintiff State of Ohio, by its Attorney General Betty D. Montgomery ("Plaintiff"), and Defendant, The Timken Company, ("Timken"), having consented to the entry of this Order, although Defendant Timken has denied and continues to deny any and all legal or equitable liability under any federal, state or local law in connection with this action, in good faith, to avoid expensive and protracted litigation. Nothing in this Order shall be construed as an admission by Defendant Timken of any of the violations of any provisions of Chapter 6111. or any other law or regulation alleged in Plaintiff's Complaint.

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

I. JURISDICTION AND VENUE

1. 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 Timken under Chapter 6111. of the Ohio Revised Code ("O.R.C."), and venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply 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. Defendant Timken is ordered to provide a copy of this Consent Order to each contractor it employs to perform the work itemized herein. Defendant Timken is further ordered to require each general contractor to provide a copy of this Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant Timken has operated its waste water treatment plant and sewer system (“site”) in such a manner as to result in numerous violations of the discharge limitations and monitoring requirements of the National Pollutant Discharge Elimination System (“NPDES”) permits issued by the Director of Environmental Protection and in violation of O.R.C. Chapter 6111. and the rules adopted thereunder.

4. Except as otherwise provided in Section IV, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant Timken for all claims alleged in the Complaint. Nothing in this Section shall apply to new conditions at or new information about the site, or to any violations arising out of acts or omissions first occurring after the effective date of this Consent Order. Nothing in this Consent 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 violations which occur after the filing of the Complaint.

IV. RESERVATION OF RIGHTS

5. Except as otherwise specifically provided under Section III, Plaintiff expressly reserves, and this Consent Order shall be without prejudice to, any civil or criminal claims, demands, rights, or causes of action, judicial or administrative, against Defendant Timken or other appropriate persons for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint. This Consent Order in no way waives any defenses which Defendant Timken may have as to such claims, demands, rights, or causes of

action.

6. Nothing herein shall be construed to relieve Defendant Timken of any obligation to comply with O.R.C. Chapter 6111 including, without limitation, any regulation, permit, license or order issued under this Chapter, and any other applicable federal, state or local statutes, regulations or ordinances, including but not limited to permit requirements.

7. Plaintiff reserves all rights as to any person other than Defendant.

V. PERMANENT INJUNCTION

8. Defendant Timken is hereby permanently enjoined and ordered to immediately comply with the requirements of O.R.C. Chapter 6111. and the rules adopted thereunder, and with its currently effective NPDES permit, No. 31D00021*FD, and any renewals or modifications thereof.

9. Defendant Timken is enjoined and ordered to properly operate and maintain its waste water treatment plant and any associated equipment and structures.

VI. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

10. Performance of the terms of this Consent Order by Defendant Timken is not conditioned on the receipt of any federal or state grants, loans or funds. In addition, Defendant Timken's performance is not excused by the failure to obtain or the shortfall of any federal or state grants, loans or funds, or by the processing of any applications for the same.

VII. EFFECT OF CONSENT ORDER

11. Defendant Timken is ordered, pursuant to O.R.C. Section 6111.09, to pay to the State of Ohio a civil penalty of sixty-eight thousand and thirty-nine dollars (\$68,039). Forty thousand three-hundred and twenty-four dollars (\$40,324) of this total amount shall be paid to Plaintiff within thirty (30) days from the Court's entry of this Consent Order by delivering a certified check for that amount to:

Administrative Assistant
Attorney General's Office
Environmental Enforcement Section
30 East Broad Street, 25th Fl.
Columbus, Ohio 43215-3428
(614) 466-2766

payable to the order of "Treasurer, State of Ohio". The remaining twenty-seven thousand seven hundred and fifteen dollars (\$27,715) of this civil penalty shall be suspended if Defendant Timken fully complies with the requirements of Section VIII of this Consent Order. Should Defendant Timken fail to fully and completely comply with the requirements of Section VIII of this Consent Order by the dates specified therein, then any and all monies required by Section VIII to be spent which have not been so spent by the dates specified therein, up to a maximum total amount of twenty-seven thousand seven hundred and fifteen dollars (\$27,715), shall be paid to Plaintiff, in cash and in the same manner described above, by no later than two (2) months from the dates on which the projects described in Section VIII were required to be completed.

VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

12. In addition to the civil penalty set forth in Section VII, Paragraph 11 of this Consent Order, and in furtherance of the mutual objectives of the State of Ohio and Defendant Timken in improving the environment, Defendant Timken agrees to and is hereby ordered to spend a total of not less than twenty-seven thousand seven hundred and fifteen dollars (\$27,715) in the following manner:

By no later than two (2) months from the effective date of this Consent Order, Defendant Timken shall expend a total of twenty-seven thousand seven hundred and fifteen dollars (\$27,715) black topping the laydown areas and lanes at its Canton, Ohio facility. Plaintiff will give Defendant Timken a dollar for dollar credit for this expenditure towards reduction of the remaining civil penalty of twenty-seven thousand seven hundred and fifteen dollars (\$27,715);

13. When Defendant Timken has fully complied with Section VIII, Paragraph 12 of this Consent Order, or when Defendant Timken has determined that full compliance therewith is not possible, and by no later than three (3) months from the effective date of this Consent Order, Defendant Timken shall notify the Ohio EPA of same and shall include therewith a final itemized summary of the money expended in compliance with Section VIII, Paragraph 12.

14. In the event that Defendant Timken was not able to fully comply with Section VIII, Paragraph 12 of this Consent Order, Defendant Timken shall pay to Plaintiff, in cash, the difference between twenty-seven thousand seven hundred and fifteen dollars (\$27,715) and the total found in the final itemized summary of the money expended in compliance with Section VIII, Paragraph 13. Such payment shall be made in the same manner detailed in Section VII, Paragraph 11 of this Consent Order.

IX. STIPULATED PENALTIES

15. In the event that Defendant Timken fails to meet any of the requirements of Section V of this Consent Order, Defendant Timken shall be liable for a stipulated penalty according to the following payment schedule:

First 30 violations which occur after the effective date of this Consent Order,	Five-hundred dollars (\$500.00) per violation;
From the 31st to the 60th violation which occurs after the effective date of this Consent Order,	Seven-hundred and fifty dollars (\$750.00) per violation;
From the 61st to the last violation which occurs after the effective date of this Consent Order,	One-thousand dollars (\$1000.00) per violation.

16. For the purpose of calculating stipulated penalties for 7-day and 30-day effluent limitation violations under the provisions of this Consent Order, Plaintiff agrees to treat each 7-day effluent limitation violation as one violation, and each 30-day effluent limitation violation as one violation.

17. Any payment required to be made under the provisions of Section IX, Paragraph 15 of this Section shall be made in the same manner detailed in Section VII, Paragraph 11 of this Consent Order.

X. TERMINATION OF STIPULATED PENALTIES

18. The provisions of this Consent Order, set forth in Section IX, Paragraphs 15, 16 and 17, requiring payment of stipulated penalties, shall terminate if Defendant Timken has:

- (1) achieved and maintained compliance with the final effluent limitations contained in its currently effective NPDES permit or any renewals or modifications thereof, for any and all discharges from its WWTP, for a period of one (1) year;
- (2) conducted all required monitoring and sent all required monitoring reports to the Ohio EPA, for a period of one (1) year; and
- (3) paid all penalties, both civil and stipulated, required to be paid pursuant to this Consent Order, and/or has completed all Supplemental Environmental Projects required to be completed pursuant to this Consent Order.

19. For purposes of determining the initiation of the one (1) year compliance period, pursuant to the terms of Section X, Paragraph 18(1) & (2), the parties hereto agree, in the interests of an expedient settlement, that the one (1) year period shall commence, at the earliest:

- (1) On the date six (6) months prior to the date this Consent Order is fully executed by all signatory parties, including the judge, provided that Defendant Timken has been in compliance with Section X, Paragraph 18(1) & (2) during the six (6) months prior to the date this Consent Order is fully executed by all signatory parties, including the judge;
- (2) On the date that this Consent Order is fully executed by all signatory parties, including the judge, if Defendant Timken has not fully complied with Section X, Paragraph 18 (1) & (2) during the six (6) months prior to the date this Consent Order is fully executed by all signatory parties, including the judge.

20. The provisions of this Consent Order requiring payment of stipulated penalties, set forth in Section IX, Paragraphs 15, 16 and 17, shall be terminated when appropriate either by:

- (1) order of the Court, upon application by any Party, upon a determination of the Court that all three (3) provisions required under Section X, Paragraph 18 have been satisfied; or
- (2) upon the filing of a Joint Motion for Termination of Stipulated Penalties by the Parties.

XI. RETENTION OF JURISDICTION

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

XII. COSTS

22. Defendant Timken is hereby ordered to pay the costs of this action.

XIII. CLERK'S ENTRY OF PARTIAL CONSENT ORDER AND FINAL JUDGMENT

23. The parties agree and acknowledge that final approval by the Plaintiff and the Defendant and entry of this Consent Order is subject to the requirements of 40 C.F.R. 123.27(d)(1)(iii), which provides for notice of the lodging of the Consent Order, opportunity for public comment, and the consideration of any public comments. Both Plaintiff and the Defendant reserve the right to withdraw this Consent Order based upon comments received during the public comment period. Defendant shall pay the costs of public notice associated with this Consent Order.

24. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon the signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby 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.

IT IS SO ORDERED:

Entered this 14 day of August:

151 James Hurin
JUDGE, STARK COUNTY, OHIO
COURT OF COMMON PLEAS

A TRUE COPY TESTE:
PHIL G. GIAVASIS, CLERK
By [Signature]
Date 8/14/97

APPROVED:

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

BY: Lauren Angell 5/13/97
LAUREN C. ANGELL (0042615)
Environmental Enforcement Section
30 East Broad Street, 25th Fl.
Columbus, Ohio 43215-3428
Telephone: (614) 466-2766

Attorney for Plaintiff State of Ohio

THE TIMKEN COMPANY

BY: Larry R. Brown
LARRY R. BROWN,
Vice President & General Counsel to
and Authorized Representative of
The Timken Company

Philip C. Schillawski
VAN CARSON (0001324)
PHILIP C. SCHILLAWSKI (0038566)
Squire, Sanders & Dempsey
Suite 4900, 127 Public Square
Cleveland, Ohio 44114-1304
(216) 479-8500

Attorneys for Defendant The Timken
Company