

COMMON PLEAS COURT
WARREN COUNTY OHIO
FILED

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IN THE COURT OF COMMON PLEAS
WARREN COUNTY, OHIO

STATE OF OHIO, ex rel.
LEE FISHER
ATTORNEY GENERAL OF OHIO,

Plaintiff,

vs.

WORTHINGTON CUSTOM
PLASTICS, INC.,

Defendant.

Case No. 93-CV-51102

Judge /S/ P DANIEL FEDDERS.

CONSENT ORDER

The State of Ohio, by its Attorney General Lee Fisher, at the written request of the Director of Environmental Protection, has filed a Complaint seeking injunctive relief and civil penalties from the Defendant for alleged violations of Revised Code Chapter 3704 and the rules adopted thereunder. With regard to these issues, the parties have consented to the entry of this Order and have reached agreement on the terms of permanent injunctive relief and civil penalties contained in this order.

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

I. DEFINITIONS

1. As used in this Order, the following terms are defined as follows:

a. "Emissions" means the release into the ambient air of an air contaminant.

b. "Air Contaminant Source" or "source" has the same meaning as set forth in Ohio Administrative Code Section 3745-31-01(D).

c. "Consent Order" means this Order and all appendices hereto. In the event of conflict between this Order and any appendix, the Order shall control.

d. "Facility" means Defendant's automotive plastics facility located at 4219 U.S. Route 42, Mason, Ohio.

e. "Permit to Install" or "PTI" has the same meaning as set forth in Ohio Administrative Code Chapter 3745-31.

f. "Permit to Operate" or "PTO" has the same meaning as set forth in Ohio Administrative Code Chapter 3745-35.

g. "Install" has the same meaning as set forth in Ohio Administrative Code Section 3745-31-01(I).

h. "Modify" has the same meaning as set forth in Ohio Administrative Code Section 3745-31-01(J).

i. "R.C." means the Ohio Revised Code.

j. "OAC" means the Ohio Administrative Code.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapter 3704. This Court has jurisdiction over the parties. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted.

III. PERSONS BOUND AND NOTICE REQUIREMENTS

3. The provisions of this Consent Order shall apply and be binding upon the Defendant, and to the extent provided by Rule 65(D) of the Ohio Rules of Civil Procedure, its officers, agents, employees, assigns, successors in interest and those acting in concert, privity or participation with it who receives actual notice of this Consent Order, whether by personal service or otherwise.

IV. SATISFACTION OF LAWSUIT AND PRESERVATION OF RIGHTS

4. Except as otherwise provided in this Article, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendant to Plaintiff for the acts set forth in the Complaint.

5. Nothing in this Consent Order shall limit the authority of the State of Ohio to:

a. Seek relief for claims or conditions not alleged in the Complaint;

b. Seek relief for claims or conditions alleged in the Complaint which occur after the entry of this Consent Order or for claims or conditions which involve locations other than those at the Facility; and

c. Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order.

V. COMPLIANCE WITH APPLICABLE LAWS

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, and Defendant shall obtain any federal, state or local permits necessary to comply with this Order.

VI. PERMIT APPLICATIONS

7. No later than July 15, 1993, Defendant shall submit applications for Permits to Install in accordance with OAC Chapter 3745-31 for sources R031 and R032, the cold cleaner attached to R031 and R032, and a test coating booth. If Ohio EPA advises Defendant that its permit applications as originally submitted are not complete and/or approvable, Defendant shall supplement the application to the satisfaction of Ohio EPA pursuant to Paragraph 14 of this Consent Order, so as to make the application complete and/or approvable. Defendant may request additional time to submit permit applications on the basis that more time is necessary to submit complete and/or approvable

applications. However, no additional time for the submission of permit applications may be utilized by Defendant without prior written approval of Ohio EPA.

8. No later than August 16, 1993, Defendant shall submit in accordance with OAC Chapter 3745-35 applications for Permits to Operate Sources R004, R013 through R018 inclusive, R023, R024, R030, R031 and R032, the cold cleaner attached to R031 and R032, and a test coating booth. If Ohio EPA advises Defendant that its permit applications as originally submitted are not complete and/or approvable, Defendant shall supplement the application to the satisfaction of Ohio EPA pursuant to Paragraph 14 of this Consent Order, so as to make the application complete and/or approvable. Defendant may request additional time to submit permit applications on the basis that more time is necessary to submit complete and/or approvable applications. However, no additional time for the submission of permit applications may be utilized by Defendant without prior written approval of Ohio EPA.

9. Provided that Defendant is in compliance with all other terms of this Consent Order, including the submission dates specified in paragraphs 7 and 8 above, Defendant will not be required to cease operating the sources listed in Paragraphs 7 and 8 above pending the Ohio EPA's action on the permit applications.

VII. PERMANENT INJUNCTION

10. Defendant is hereby enjoined from installing or modifying at the facility any air contaminant source without obtaining a PTI prior to commencement of the installation or modification. Except as authorized in paragraph 9, Defendant is also enjoined to comply with OAC Chapter 3745-35 at the facility. Defendant is further enjoined to timely submit complete renewal applications in accordance with Section VIII of this Consent Order prior to expiration of any PTO for any source which Defendant continues to operate at the facility.

11. Except as authorized in paragraph 9, Defendant is hereby permanently enjoined to comply with R.C. Chapter 3704 and the rules promulgated thereunder, and Defendant is hereby permanently enjoined to fully comply with all air PTI's and PTO's issued by the Ohio EPA to the Defendant for air contaminant sources at the facility, including any and all terms and conditions associated with those permits.

VIII. AIR PERMITS

12. If Ohio EPA notifies Defendant that there are any sources at the Defendant's facility which are not properly permitted, Defendant shall submit complete permit applications within ninety (90) days for those sources; provided, however, that if Ohio EPA advises Defendant that any of its permit applications as originally submitted are not complete and/or

approvable, Defendant shall supplement the applications to the satisfaction of Ohio EPA pursuant to paragraph 14 of this Consent Order so as to make the application complete and/or approvable. Defendant may request additional time to submit permit applications on the basis that more time is necessary to submit complete and/or approvable applications. However, no additional time for the submissions of permit applications may be utilized by Defendant without the prior written approval of Ohio EPA.

13. Nothing in this Consent Order shall be construed to restrict or affect the authority of the Director, under R.C. Chapter 3704, to take any actions relating to Permits to Operate or Permits to Install for Defendant's facility which may impose obligations different from those specified in this Consent Order. In accordance with R.C. § 119.06(C), Defendant may continue to operate air contaminant sources for which PTO renewal applications have been timely submitted to Ohio EPA pending Ohio EPA action on the applications. In the event different obligations are imposed through the issuance of permits by Ohio EPA for Defendant's facility, such obligations shall supersede those obligations in the Consent Order which are rendered inconsistent and Defendant shall not be determined to be in violation of this Consent Order for complying with those different obligations.

IX. RESPONSES TO OHIO EPA COMMENT LETTERS

14. If the Ohio EPA sends to Defendant any comment letters, or requests for further information, regarding any documents required under this Order (including but not limited to air permits or intent to test forms) Defendant shall respond in within thirty (30) days, unless this order specifies a longer response time. Ohio EPA may extend Defendant's response time. Defendant's obligations to respond to Ohio EPA comments or notices shall be deemed to begin on the business day following actual receipt by Defendant of said comments or notices.

X. SUBMITTAL OF DOCUMENTS

15. Documents which must be submitted under this Order shall be submitted as follows:

a. All documents submitted to the Ohio EPA shall be sent to:

Ohio Environmental Protection Agency
Attention: James Orlemann
Central Office, Division of Air Pollution Control
P.O. Box 1049
1600 WaterMark Drive
Columbus, Ohio 43266-0149

and to:

Hamilton County Department of Environmental Services,
Air Quality Permits
c/o John Keenan
1632 Central Parkway
Cincinnati, Ohio 45210

b. All documents submitted to Worthington Custom Plastics shall be sent to:

Mr. Jeff Markland
Worthington Custom Plastics
4219 U.S. Route 42
Mason, Ohio

XI. CIVIL PENALTY

16. Pursuant to R.C. 3704.06, Defendant Worthington Custom Plastics shall pay to the State of Ohio the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00). This amount shall be paid by delivering to Plaintiff, in care of the Administrative Assistant, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, a certified check in that amount, payable to the order of "Treasurer, State of Ohio" within thirty (30) days from the date of entry of this Consent Order.

XII. POLLUTION PREVENTION

A. Deionization Systems

17. Defendant shall install an automatic deionization system along with a deionization storage and repressurization system on the power washer on its Torrid Line, R031 and R032, at its Mason, Ohio facility within six (6) months of the entry of this Consent Order. This systems will recycle waste water and will reduce significantly the amount of contaminants otherwise discharged to the Mason City Wastewater Treatment Plant.

Defendant shall notify Ohio EPA within thirty (30) days of completion of the installation of this system.

B. Water Based Paints

18. Worthington Custom Plastics agrees to research usage of water-based paints for at least sixteen (16) colors of solvent-based paints which may otherwise be used at its facility. Defendant will conduct a testing program on the feasibility of using water-based paints in lieu of solvent based paints with a resulting elimination or reduction of the VOC content of the coatings. Defendant further agrees to report its progress in this regard to the Ohio EPA, Division of Air Pollution Control, every one hundred eighty (180) days following the entry of this Consent Order for a period of three (3) years. If the results of these efforts are acceptable, Defendant will seek to employ those paints in its production processes.

C. Waste Generation Evaluation

19. Defendant also agrees to evaluate its waste generation practices at its facility and to define its pollution prevention options. Defendant further agrees to document its efforts in this regard by preparing a report to Ohio EPA setting forth a narrative of its efforts according to the following schedule:

a. within one (1) year of the entry of this Consent Order, Defendant shall report on its efforts to assess each source of pollution of its facility;

b. within two (2) years of the entry of this Consent Order, Defendant shall provide details of the options it has considered to reduce or prevent pollution at its facility with respect to each waste source identified in the first annual report; and

c. within three (3) years of the entry of this Consent Order, Defendant shall report on the measures it has taken toward implementing waste reduction and pollution prevention practices at its facility.

XIII. POTENTIAL FORCE MAJEURE

20. In any action to enforce any of the provisions of this Consent Order Defendant 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 conflicting orders of any regulatory agencies or courts. 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 a force majeure clause does not constitute a waiver by

Defendant of any rights or defenses it may have under applicable law or equity.

XIV. TRADE SECRET STATUS

21. Nothing in this Consent Order shall be construed to alter or waive the ability that the Defendant would otherwise have to obtain confidential treatment for trade secret information submitted pursuant to these Orders.

XV. RETENTION OF JURISDICTION

22. This Court will retain jurisdiction of this action for the purpose of making any order or decree which it deems appropriate to carry out this Consent Order.

XVI. PLAINTIFF'S LITIGATION COSTS

23. Defendant shall reimburse the Attorney General's Office in the amount of Three Thousand Five Hundred Dollars (\$3,500.00) for Plaintiff's litigation costs in investigating and prosecuting this case. This amount shall be paid by delivering a certified check, payable to the order of "Treasurer, State of Ohio" to the office of the Attorney General, in care of the Administrative Assistant Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, within thirty (30) days of the Entry of this Consent Order.

XVII. COSTS

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

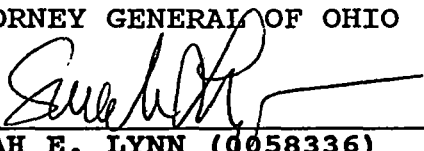
DATED July , 1993



JUDGE
WARREN COUNTY
COURT OF COMMON PLEAS

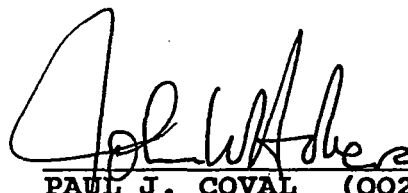
Respectfully submitted,

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ATTORNEY GENERAL OF OHIO



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