

IN THE COURT OF COMMON PLEAS
MIAMI COUNTY, OHIO

FILED
MIAMI COUNTY
COMMON PLEAS COURT

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JAN A. NOTTINGER
CLERK OF COURTS

STATE OF OHIO, ex rel. :
MICHAEL DeWINE : Case No. 10-762
OHIO ATTORNEY GENERAL :
 :
Plaintiff, :
 :
v. :
 :
CAP INDUSTRIES, INC. :
dba CUSTOM AEROSOL PACKAGING :
 :
Defendant. :

CONSENT ORDER AND FINAL JUDGMENT ENTRY

Plaintiff, State of Ohio, on relation of its Attorney General ("Plaintiff"), having filed the Complaint in this action against Defendant CAP Industries, Inc. to enforce Ohio's hazardous waste laws found in Chapter 3734 of the Revised Code and rules adopted thereunder; and Plaintiff and Defendant having consented to the entry of this Order;

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

I. DEFINITIONS

1. As used in this Consent Order:
 - a. "**Consent Order**" means this Consent Order and Final Judgment Entry.
 - b. "**Defendant**" means CAP Industries, Inc.
 - c. "**Director**" means Ohio's Director of Environmental Protection.
 - d. "**Effective Date**" means the date the Miami County Court of Common Pleas enters this Consent Order.

e. "Facility" refers to the location where the alleged violations of Ohio's hazardous waste laws occurred: 543 Staunton Street, Piqua, Miami County, Ohio.

f. "Ohio EPA" means the Ohio Environmental Protection Agency.

g. "Plaintiff" means the State of Ohio.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapter 3734 and the rules adopted thereunder. This Court has jurisdiction over the parties. Venue is proper in this Court. Defendant shall not challenge the Court's jurisdiction to enter or enforce this Consent Order.

III. PERSONS BOUND

3. The provisions of this Consent Order shall apply to and be binding upon Plaintiff and Defendant, and Defendant's agents, officers, employees, assigns, successors-in-interest, and any other person who would be bound pursuant to Rule 65(D) of the Ohio Rules of Civil Procedure, including any person acting in concert, privity or participation with Defendant who receives actual notice of this Consent Order whether by personal service or otherwise.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

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

5. Nothing in this Consent Order, including the imposition of stipulated civil penalties, 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 that occur after

the Effective Date of this Consent Order;

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

d. Bring any action against Defendant or against any other person, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. 9601, *et seq.*, and/or R.C. 3734.20 through 3734.27 to: (1) recover natural resource damages; and/or (2) order the performance of, and/or recover costs for any removal or remedial or corrective activities not conducted pursuant to the terms of this Consent Order;

e. Take any action authorized by law against any person, including Defendant, to eliminate or mitigate conditions at the Facility that may present an imminent threat to the public health or safety, or to the environment.

6. Nothing in this Consent Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged in the Complaint, against any person, firm, trust, joint venture, partnership, corporation, association, or other entity not a signatory to this Consent Order.

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

8. Nothing herein shall restrict the right of the Defendant to raise any administrative, legal or equitable claim or defense with respect to such further actions reserved by the State in this Section. However, Defendant shall not assert and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim

splitting or other defenses based upon any contention that the claims raised by the State in the subsequent proceeding were, could, or should have been brought in the instant case.

V. INJUNCTIVE RELIEF

9. From the effective date of this Consent Order, Defendant is ordered and permanently enjoined to comply with all applicable provisions of the Ohio hazardous waste laws – R.C. Chapter 3734 and Ohio Adm. Code Chapters 3745-50 through 3745-69, 3745-270, and 3745-279.

VI. CIVIL PENALTY

10. Defendant is ordered and enjoined to pay to the State of Ohio a civil penalty in the amount of Thirty-Five Thousand Dollars (\$35,000) according to the following payment schedule:

- a. First payment of Four Thousand, Three Hundred Seventy-Five Dollars (\$4,375) due within thirty (30) days of the Effective Date.
- b. Payments of Four Thousand, Three Hundred Seventy-Five Dollars (\$4,375) due no later than the following dates: March 15, 2012; June 15, 2012; September 15, 2012; December 15, 2012; May 15, 2013; September 15, 2013; and December 15, 2013.

11. These civil penalty payments shall be made by delivering to Plaintiff, c/o. Martha Sexton, Paralegal, or her successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, a cashier's or certified check, payable to the order of "Treasurer, State of Ohio."

VII. STIPULATED PENALTIES

12. In the event that Defendant fails to comply with any of the requirements of Sections V or VI of this Consent Order, the stipulated penalties contained herein shall apply for the purpose of coercing compliance and Defendant is liable for and shall immediately pay stipulated penalties in accordance with the following schedule for each failure to comply:

- a. The first time Defendant violates the terms or conditions of this Consent Order, Defendant shall be liable for One Thousand, Five Hundred Dollars (\$1,500.00) for each day of violation.
- b. The next time Defendant violates the terms or conditions of this Consent Order, Defendant shall be liable for Two Thousand, Seven Hundred and Fifty Dollars (\$2,750.00) for each day of violation.
- c. For every occurrence that Defendant violates the terms or conditions of this Consent Order following the second violation, Defendant shall be liable for Five Thousand Dollars (\$5,000.00) for each day of each violation.

13. Any payment required to be made under the provisions of this Section of the Consent Order shall be made by delivering to Plaintiff, c/o Martha Sexton, Paralegal, or her successor, ~~Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East~~ Broad Street, 25th Floor, Columbus, Ohio 43215, a cashier's or certified check made payable to the order of "Treasurer, State of Ohio," for the appropriate amount within thirty (30) days from the date of the violation of the terms and conditions of this Consent 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 upon which the violation occurred. The memo portion of the check, or some other prominent location on the transmittal letter or documentation,

shall include a reference to "A.G. EAGO No. 346339."

14. The requirement to pay any stipulated penalty as set forth herein is self-executing upon any violation of the terms and conditions of this Consent Order by Defendant. No further demand need be made by Plaintiff.

15. 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 3734, including civil penalties under R.C. 3734.13, or to otherwise seek judicial enforcement of this Consent Order, for the same violation for which a stipulated penalty was paid or for other violations.

VIII. RETENTION OF JURISDICTION

16. This Court shall retain jurisdiction of this action for the purpose of enforcing this Consent Order.

IX. COSTS

17. Defendant shall pay the court costs of this action.

X. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

18. Upon signing of this Consent 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 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 notes the service in the appearance docket.

XI. AUTHORITY TO ENTER INTO THE CONSENT ORDER

19. Each signatory for a corporate entity represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation to all terms and conditions

thereof, and that he/she submits with this Consent Order an authenticated and certified resolution from that entity establishing that he/she is so empowered.

XII. TERMINATION

20. No earlier than two (2) years after the entry of this Consent Order, and only after the Defendant has paid all civil and/or stipulated penalties that are or may be due, Defendant may move the Court pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure, to terminate this Consent Order. Plaintiff takes no position with regard to such motion at this time, and reserves its rights to oppose the motion.

[SIGNATURE PAGE FOLLOWS]

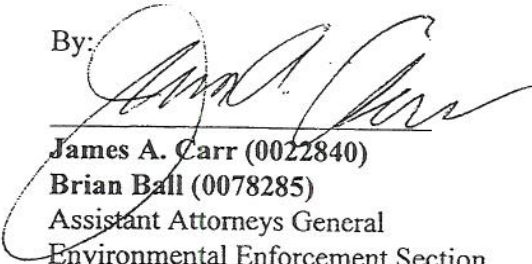
IT IS SO ORDERED:

Christopher Gee, Judge
JUDGE CHRISTOPHER GEE
MIAMI COUNTY COURT OF
COMMON PLEAS

APPROVED:
MICHAEL DEWINE
OHIO ATTORNEY GENERAL


CAP INDUSTRIES, INC.
dba CUSTOM AEROSOL PACKAGING

By:


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*Attorneys for Plaintiff
State of Ohio*

By:


Robert Heckman (BY TDH PER AUTHORIZATION)
Authorized Representative of CAP Industries, Inc.

Print name: ROBERT HECKMAN

Title: PRESIDENT

By:


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Attorney for the Defendant