

IN THE COURT OF COMMON PLEAS
WARREN COUNTY, OHIO

41 SEP 19 7A 5:54

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

Plaintiff,

v.

~~██████████~~ TECHNOLOGY, INC.,

Defendant.

CASE NO. 47009
JUDGE NEAL B. BRONSON

CONSENT ORDER

The Complaint in the above-captioned matter has been filed herein, and the Plaintiff State of Ohio by its Attorney General Lee Fisher (hereinafter "Plaintiff") and Defendant Concrete Technology, Inc., (hereinafter "Defendant") have 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, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. STATEMENT OF PURPOSE

1. In entering into this Consent Order (hereinafter "Order" or "Consent Order"), the mutual objective of the Plaintiff and Defendant is to have the Defendant fully comply with all State air pollution laws and regulations.

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. All the terms and provisions of this Consent Order shall apply to and be binding upon the parties, their assigns, agents, officers, employees, successors in interest, representatives, servants, directors, contractors, consultants, subsidiaries or divisions, and/or all persons, firms, partnerships or corporations who are or will be acting in concert or privity with the Defendant. Defendant shall provide copies of this Order to all contractors or consultants performing any work, response, remedial or corrective action called for by this Order, and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work. Should Defendant transfer any ownership or any other property interest in the facility located at 95 Mound Park Drive ("the Facility") or the real estate upon which the Facility is located to any person not a party to this Consent Order, Defendant shall provide a copy of this Consent Order to the transferee.

IV. SATISFACTION OF LAWSUIT

4. Plaintiff alleges in its Complaint that the Defendant has operated the Facility in a manner that has resulted in the violation of air pollution laws of the State of Ohio. Compliance with the terms of this Consent Order shall

constitute full satisfaction of any civil liability by Defendant for all claims under such laws alleged in the Complaint. 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, for violations of claims alleged in the Complaint which occur after the entry of the Consent Order, or for violations of this Consent Order.

V. PERMANENT INJUNCTION

5. Defendant is permanently enjoined to comply with all the requirements of O.R.C. Chapter 3704., the rules adopted thereunder, and the terms and conditions of any permits, including modifications and renewals, issued pursuant to Chapter 3704. and the rules adopted thereunder.

6. On and after the filing of this Consent Order, Defendant shall limit visible emissions of fugitive dust from the sandblasting operation to ten percent (10%) opacity as a six-minute average, utilizing Method 9 as found at 40 CFR 60, Appendix A.

VI. COMPLIANCE SCHEDULE

7. Defendant shall install wet blast injectors and canopies for the sandblasting operation that will satisfy the conditions in Attachment A. Defendant is enjoined and ordered to comply with the following milestones in accordance with the following schedule:

<u>Milestone</u>	<u>Compliance Date</u>
(a) Submit a complete application for a permit to install that satisfies the conditions in Attachment "A".	3 weeks from filing of <u>Consent Order</u>
(b) Submit a complete application for a permit to operate that satisfies the conditions in Attachment "A".	3 weeks from filing of <u>Consent Order</u>
(c) Commence construction of work required to comply with milestone 7(h) below.	<u>Filing of Consent Order</u>
(d) Commence use of wetblast injection system for all sandblasting operations.	<u>Filing of Consent Order</u>
(e) Complete installation of one dust control canopy	<u>Filing of Consent Order</u>
(f) Complete installation of second dust control canopy	<u>Filing of Consent Order</u>
(g) Complete construction of work required to comply with milestone 7(h) below.	<u>Filing of Consent Order</u>
(h) Achieve and maintain final compliance with visible emission limit of ten (10) percent opacity as a six minute average utilizing Method as found at 40 CFR 60, Appendix A, and with conditions in Attachment A of this Consent Order.	<u>Filing of Consent Order</u>

VII. RIGHT OF ENTRY

8. During all times when actions relating to this Consent Order are undertaken, Defendant shall allow the Plaintiff, its agents, representatives and employees and the Southwestern Ohio Air Pollution Control Agency ("SWOAPCA"), and its agents, representatives and employees to enter at reasonable times, onto the property and buildings of the Facility to inspect the operation and maintenance of the Facility. Nothing herein

shall limit Plaintiff authority under R.C. Chapter 3704 to conduct inspections.

VIII. CIVIL PENALTY

9. Defendant shall pay a civil penalty of one hundred and sixteen thousand, five hundred dollars (\$116,500.00) to the Plaintiff by delivering to James O. Payne, Jr. (or his successor) certified checks payable to the order of "Treasurer, State of Ohio" for deposit into the General Revenue Fund, in accordance with the following schedule:

<u>PAYMENT</u>	<u>PAYMENT DATE</u>
\$60,000.00	Thirty (30) days from the filing of Consent Order;
\$56,500.00	Six (6) months from filing of Consent Order.

IX. STIPULATED PENALTIES

10. For each day, up to thirty (30) days, that Defendant fails to comply with any requirement or deadline set forth in Paragraphs 6 or 7, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty of Five Hundred Dollars (\$500.00) per day for each day of non-compliance. For each day, between 31 and 60 days, that Defendant fails to comply with any such requirement or deadline, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty of One Thousand Dollars (\$1000.00) per day for each day of each violation. For each day, after 61 days, that Defendant fails to comply with

any such requirement or deadline, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty of Two Thousand Five Hundred Dollars (\$2500.00) per day for each day of each violation. Any payment required to be made under the provisions of this paragraph shall be made by delivering to James O. Payne, Jr. (or his successor) a certified check for the appropriate amounts, within fourteen (14) days from the date of the failure to meet the requirements of the Consent Order, made payable to "Treasurer, State of Ohio" for deposit into the General Revenue Fund.

X. POTENTIAL OF FORCE MAJEURE

11. If any event occurs which causes or may cause a delay of any requirement of this Consent Order applicable to Defendant, Defendant shall notify the Ohio EPA in writing within fourteen (14) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of delay, the measures taken and to be taken by Defendant to prevent or minimize the delay and the timetable by which those measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

12. In any action by the State of Ohio 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 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

State of Ohio does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and the State of Ohio 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, if ever, that the proceeding to enforce this Consent Order is commenced by the State. At that time the burden of proving that any delay was or will be caused by circumstances beyond the control of Defendant shall rest with Defendant. Failure by Defendant to comply with the notice requirements of Paragraph 11 shall constitute a waiver by Defendant of any right it may have to raise such a defense. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances shall not in any event constitute circumstances entirely beyond the control of Defendant, or serve as a basis for an extension of time under this Consent Order.

XI. RETENTION OF JURISDICTION

13. The Court will retain jurisdiction of this action for the purposes of overseeing compliance with this Judgment.

XII. MISCELLANEOUS

14. All reports and plans submitted to Plaintiff, pursuant

to this Consent Order shall be sent to:

Frank Stoy or successor
Southwestern Ohio Air Pollution Control Agency
1632 Central Parkway
Cincinnati, Ohio 45210

and

James Orlemann or successor
Division of Air Pollution Control
Ohio Environmental Protection Agency
1800 WaterMark Drive
Columbus, Ohio 43266-0149

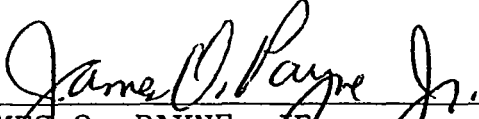
17. Defendant shall pay court costs in this action.

15/ Neal B. Bronson

JUDGE BRONSON
WARREN COUNTY COURT OF
COMMON PLEAS

APPROVED:

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



JAMES O. PAYNE, JR.
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Fl.
Columbus, Ohio 43266-0410

Attorney for Plaintiff



CHARLES E. HILGEMAN
President
Concrete Technology, Inc.
95 Mound Park Drive
Springboro, Ohio 45066



J. WRAY BLATTNER
Thompson, Hine, & Flory
2000 Courthouse Plaza, N.E.
P.O. Box 8801
Dayton, Ohio 45401-8801

Attorney for Concrete
Technology, Inc.

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kmh

ATTACHMENT A.

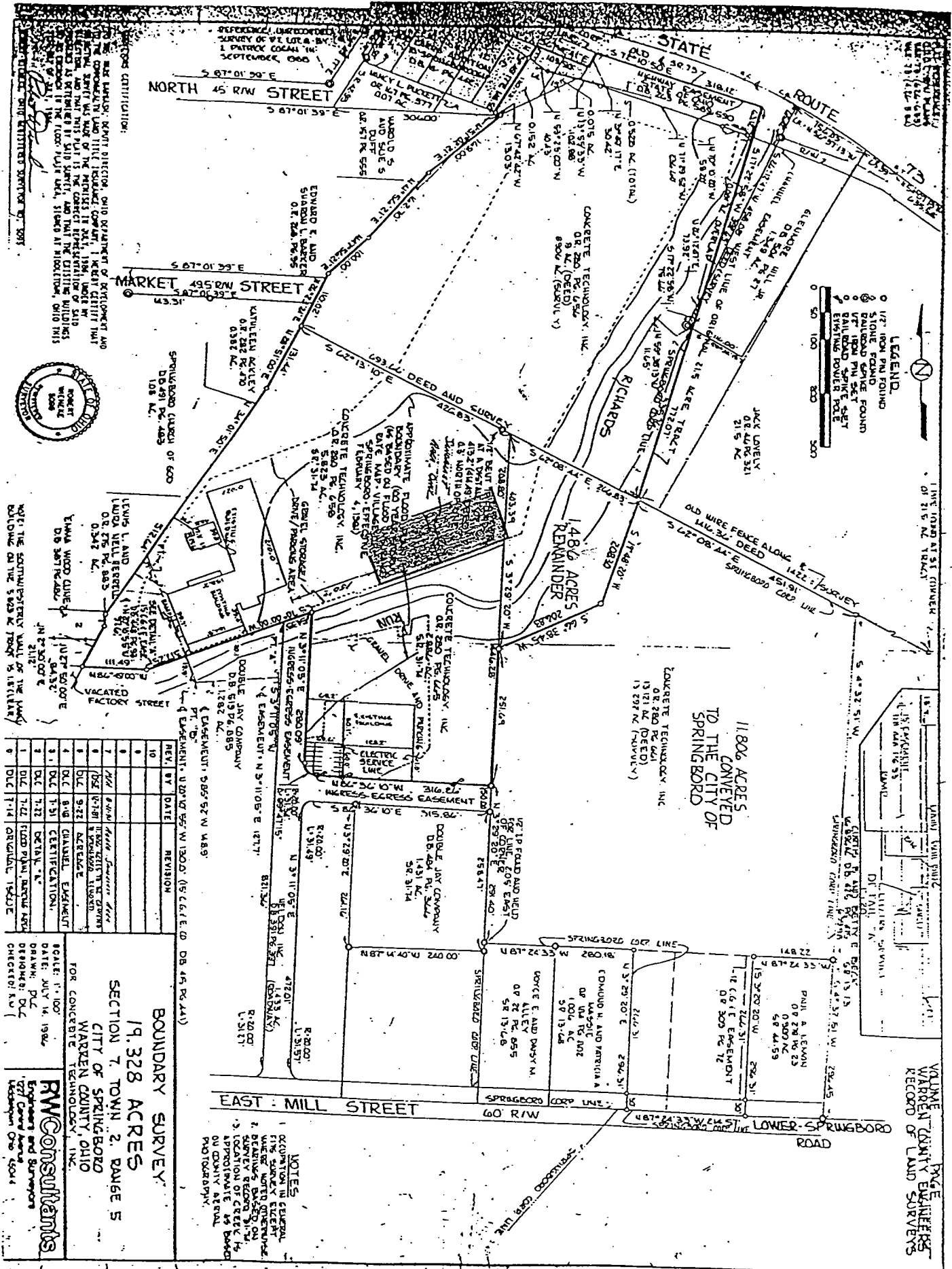
1. Best Available Technology for this source is represented by the following requirements:
 - a. Concrete Technology shall only use special Ottawa #4 silica sand in its operations and shall not use or recycle spent or used sand for sandblasting.
 - b. The visible emissions of fugitive dust shall not exceed ten (10) percent opacity for a six minute average, utilizing Method 9 as found in 40 CFR 60, Appendix A, from the sandblasting operation.
 - c. A moveable or fixed sturdy canopy designed for maximum fugitive dust control shall be used at all times blasting is in progress.
 - d. Each sandblaster shall be equipped with a water spray system, a flow meter to indicate the amount of water flow and a lock for the water flow rate control valve to assure the operator will maintain the proper water flow rate. Concrete Technology shall maintain a minimum water flow rate of 8 ounces/minute for each water spray system.
 - e. Wet blasting shall be conducted at all times, including brush or final cleaning of the panels. No blasting shall be conducted when water (in sufficient quantities to control dust emissions) cannot be supplied to the blasting apparatus.
 - f. Debris generated from the blasting of panel(s) shall be removed or dampened to a point where it will not become airborne prior to the start of blasting of the next panel(s).
2. The amount of architectural precast concrete panels to be sandblasted shall not exceed 1,131,075 ft² of panel area per year.
3. The sandblasting shall be confined to the specific areas designated on the facility site plan set forth in Attachment B.
4. Concrete Technology shall maintain daily records of the square footage of panels blasted and, for each water spray system, the minimum water flow rate in gallons per minute and the amount of water employed. Concrete Technology shall maintain monthly records indicating the number of panels blasted and the amount of sand used. Concrete Technology shall submit semi-annual

ATTACHMENT A (con't)

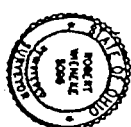
reports to the Ohio EPA field office attaching and compiling the above information. The reports shall be submitted by February 15 and August 15 of each year and shall cover the previous six calendar months.

5. There shall be no unenclosed storage of spent silica sand.
6. Concrete Technology shall comply with O.A.C. Rule 3745-15-07 prohibiting air pollution nuisances.

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kmh



THE SURVEYOR, DEPT. OF REVENUE, OHIO DEPARTMENT OF REVENUE AND PUBLIC SAFETY, HAS REVIEWED THIS SURVEY AND CERTIFICATE THAT THE SURVEY IS CORRECT AND THAT THE BOUNDARIES SHOWN THEREON ARE CORRECTLY LOCATED AND THAT THE SURVEY IS IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO.



NOTICE: THE SURVEYOR'S VALUE FOR THE LAND SHOWN ON THIS SURVEY IS SUBJECT TO THE DETERMINATION OF THE STATE TAX COMMISSION.

REV. BY	DATE	REVISION
1	01/15/02	INITIAL SURVEY
2	02/15/02	REVISION
3	03/15/02	REVISION
4	04/15/02	REVISION
5	05/15/02	REVISION
6	06/15/02	REVISION
7	07/15/02	REVISION
8	08/15/02	REVISION
9	09/15/02	REVISION
10	10/15/02	REVISION
11	11/15/02	REVISION
12	12/15/02	REVISION

SCALE: 1"=100'
 DATE: JULY 14, 1994
 DRAWN: P.L.C.
 CHECKED: D.L.C.
 CHECKED: A.V.

FOR CONCRETE TECHNOLOGY, INC.

RWC Consultants
 Engineers and Surveyors
 1077 Camp Avenue
 Westport, Ohio 44091

BOUNDARY SURVEY
 19,328 ACRES
 SECTION 7, TOWN 2, RANGE 5
 CITY OF SPRINGBORO
 WARREN COUNTY, OHIO

NOTES
 1. OCCUPATION IN GENERAL
 2. THE SOURCE OF ALL INFORMATION
 3. THE SURVEY WAS MADE BY
 4. THE SURVEYOR HAS REVIEWED
 5. THE SURVEY AND CERTIFICATE
 6. THAT THE SURVEY IS CORRECT
 7. AND THAT THE BOUNDARIES
 8. SHOWN THEREON ARE CORRECTLY
 9. LOCATED AND THAT THE SURVEY
 10. IS IN ACCORDANCE WITH THE
 11. LAWS OF THE STATE OF OHIO.

CONCRETE TECHNOLOGY, INC.
 11,806 ACRES
 CONVEYED
 TO THE CITY OF
 SPRINGBORO

DOUBLE JAY COMPANY
 1,431 AC.
 58,314

EDMUND H. AND AMERICA A. WASSILE
 1,004 AC.
 50,134

BOUCE E. AND DORIS M. ALLEY
 27 AC.
 58,134

PAUL A. LEMON
 08,28 AC.
 58,415

VOLUME 19,328
 RECORD OF LAND SURVEYS
 PAGE ENGINEERS
 WARREN COUNTY SURVEYS