

IN THE
COURT OF COMMON PLEAS
UNION COUNTY, OHIO

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

Plaintiff,

v.

HARSCO CORPORATION

Defendant.

: CASE NO.

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: JUDGE

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CONSENT ORDER

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COURT OF COMMON PLEAS
UNION COUNTY
Clerk
Warner
CLERK

Plaintiff, State of Ohio, by its Attorney General, Betty D. Montgomery ("Plaintiff"), having filed the Complaint against Defendant Harsco Corporation to enforce Ohio's air pollution control laws set forth in Ohio Revised Code ("O.R.C.") Chapter 3704. and the rules adopted thereunder, and the parties having consented to the entry of this Consent Order,

NOW 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. JURISDICTION AND VENUE

1. The Court has jurisdiction over the parties and the subject matter of this action, pursuant to O.R.C. Chapter 3704. and the regulations adopted thereunder. 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.

I HEREBY CERTIFY THIS TO BE
A TRUE COPY OF THE ORIGINAL
FILED IN THIS OFFICE
Paula B. Warner
CLERK OF COURTS
UNION COUNTY, MARYSVILLE, OHIO
11-22-96

II. PERSONS BOUND

2. The provisions of this Consent Order shall apply to and be binding upon the Defendant to this action, its agents, representatives, officers, directors, employees, subsidiaries or divisions, assigns and successors in interest. In addition, the provisions of this Consent Order shall apply to and be binding upon those persons who receive actual notice of this Consent Order whether by personal service or otherwise who act in concert or participation with any of the entities identified above.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant has engaged in manufacturing operations which have resulted in numerous violations of O.R.C. Chapter 3704. and the regulations adopted thereunder. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for the violations alleged in the Complaint. 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 or for violations of O.R.C. Chapter 3704. and the regulations adopted thereunder which occur after the filing of the Complaint. Further, nothing in this Consent Order shall be construed to relieve the Defendant of its obligation to comply with applicable federal, state or local statutes, regulations or ordinances.

IV. PERMANENT INJUNCTION

4. Defendant is hereby enjoined and ordered to immediately and permanently comply with O.R.C. Chapter 3704. and the regulations adopted thereunder. Specifically, Defendant agrees to refrain and is hereby permanently enjoined from "installing" or "modifying" any "air contaminant source" as those terms are defined by Ohio Administrative Code ("O.A.C.") Rules 3745-31-01(I), (J) and (D) respectively, at its facility without first applying for and obtaining a Permit To Install from the Director of Ohio EPA in accordance with O.A.C. Rule 3745-31-02. In addition, Defendant agrees to refrain and is hereby permanently enjoined from operating any "air contaminant source" as that term is defined by O.A.C. Rule 3745-35-01(B)(1) without first applying for and receiving a Permit To Operate from the Director of Ohio EPA in accordance with O.A.C. Rule 3745-35-02. Further, Defendant agrees and is hereby permanently and immediately enjoined and ordered to comply with all terms and conditions of all Permits To Install and Permits To Operate which are issued to Defendant by the Director of Ohio EPA, including but not limited to all reporting requirements and all emissions limitations.

V. REQUIRED PAYMENT

5. For violations of O.R.C. Chapter 3704, and the regulations adopted thereunder, and pursuant to O.R.C. Section 3704.06(D), Defendant is enjoined and ordered to pay to the State of Ohio the amount of Five Hundred Nineteen Thousand Four Hundred Dollars (\$519,400). It is expressly understood and agreed to that Four Hundred Sixty-Six Thousand Dollars (\$466,000) of such payment is a

negotiated amount determined by reference to (a) the number of air contaminant sources operated by Defendant in violation of applicable emission limitations, (b) the amount of actual emissions over permitted amounts, (c) the length of violation, (d) the toxicity of the pollutant, (e) the sensitivity of the environment, (f) the importance to the regulatory scheme, and (g) the size of the violator. The amount payable on the basis of these factors also takes into account a graduated rate schedule pursuant to which higher rates are imposed depending not only on the extent to which permitted emissions amounts are exceeded but also on the duration of the violation. The remaining portion of the \$519,400 payment, \$53,400, is an administrative penalty determined by reference to the number of sources which were installed without first receiving Permits To Install, and to the number of days during which Defendant operated sources without first receiving Permits To Operate. Defendant shall make the \$519,400 payment by delivering to Plaintiff, c/o Matt Sanders, Administrative Assistant, or his successor, at the office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, 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.

VI. STIPULATED PENALTIES

6. In the event that Defendant fails to comply with any of the requirements imposed by paragraphs 4 and 5 of this Consent Order, the Defendant shall, immediately and automatically, be liable for and shall pay a stipulated penalty

according to the following payment schedule. For each day of failure to meet a requirement, up to thirty (30) days -- Two Thousand Five Hundred Dollars (\$2,500.00) per day for each requirement not met. For each day of failure to meet a requirement, from thirty-one (31) to sixty (60) days -- Five Thousand Dollars (\$5,000.00) per day for each requirement not met. For each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days -- Seven Thousand Five Hundred Dollars (\$7,500.00) per day for each requirement not met. For each day of failure to meet a requirement, over ninety (90) days -- Ten Thousand Dollars (\$10,000.00) per day for each requirement not met.

7. In the event that Defendant violates the permanent injunction set forth in paragraph 4 of this Order relating to the installation, modification and/or operation of air contaminant sources without the necessary permits, Defendant shall be liable for and shall immediately pay stipulated penalties in accordance with the following schedule:

- a. for each air contaminant source installed or modified without first obtaining a permit to install, Defendant shall pay a stipulated penalty of Five Thousand Dollars (\$5,000.00) per source per installation;
- b. for each day for which each air contaminant source is operated without first obtaining a permit to operate, Defendant shall pay a stipulated penalty of Two Thousand Dollars (\$2,000.00) per day of operation per source.

8. In the event Defendant fails to meet any of the requirements of this Consent Order, the Defendant shall immediately and automatically be liable for payment of stipulated penalties imposed by this Order without prior demand by the State of Ohio. Payment of all stipulated penalties shall be paid by Defendant by their

delivering to Plaintiff, c/o Matt Sanders, Administrative Assistant, or his successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a cashier's check in that amount, payable to the order of "Treasurer, State of Ohio," immediately upon the occurrence of the violation giving rise to the penalty.

9. The imposition, payment and collection of stipulated penalties pursuant to violations of this Consent Order shall not prevent the State from pursuing additional remedies, civil, criminal or administrative, for violations of applicable laws.

VII. RETENTION OF JURISDICTION

10. This Court will retain jurisdiction of this action for the purpose of enforcing compliance with this Consent Order.

VIII. COSTS

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

IX. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

12. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, 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.

X. AUTHORITY TO ENTER INTO THE CONSENT ORDER

13. Each signatory for Defendant 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. Each signatory for Defendant shall submit with this Consent Order an authenticated and certified resolution from Defendant establishing that he/she is so empowered to sign for and bind Defendant.

IT IS SO ORDERED

DATE _____

Richard E. Parrott

JUDGE
UNION COUNTY COURT OF
COMMON PLEAS

APPROVED:

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

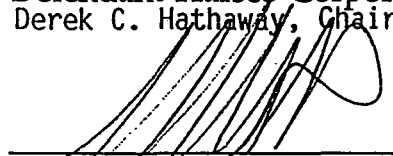


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