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ENVIRONMENTAL
ENFORCEMENT

IN THE COURT OF COMMON PLEAS
MIAMI COUNTY, OHIO

STATE OF OHIO, ex rel.	:	CASE NO. 91-114
LEE FISHER	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE JOHN M. KISTLER
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
HERRMANN'S SERVICE CENTER,	:	<u>CONSENT ORDER</u>
INC.	:	
Defendant.	:	

The State of Ohio by its Attorney General, Lee Fisher, filed a Complaint seeking injunctive relief and a civil penalty for Defendant's alleged violations of Ohio Revised Code Chapter 3704 and the rules adopted thereunder. With regard to these issues, the parties have reached agreement as to the terms of permanent injunctive relief and the payment of a civil penalty.

Therefore, without trial of any issues of law or fact, without admission or denial of any allegation in the Complaint, and upon consent of the parties, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. Jurisdiction and Venue

1. This Court has jurisdiction over the subject matter herein pursuant to Chapter 3704 of the Revised Code of Ohio. This Court has jurisdiction over the parties hereto. The

Complaint states a claim upon which relief can be granted.
Venue is proper in this Court.

II. Persons Bound

2. The provisions of this Consent Order shall apply to and be binding upon Herrmann's, its agents, officers, directors, representatives, servants, employees, assigns, subsidiaries and successors in interest. In addition, this order shall apply to all persons, firms, corporations and other entities acting in privity with Herrmann's and any consultant or contractor hired by Herrmann's to conduct the work required by this Consent Order. Herrmann's shall provide a copy of this Order to each contractor or consultant retained by Herrmann's to perform any of the requirements of this Consent Order, and each general contractor shall provide a copy of this Order to each of its subcontractors for such work.

III. Satisfaction of Lawsuit

3. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendant Herrmann's Service Center for the violations of Ohio Revised Code Chapter 3704 and regulations thereunder alleged in the Complaint.

4. This Order does not limit the authority of the State of Ohio to seek relief for any claim not alleged in the Complaint, including claims not known at this time or future violations of Ohio Revised Code Chapter 3704 and regulations thereunder occurring after the filing of this Consent Order.

IV. Permanent Injunction

5. Defendant is hereby permanently enjoined and ordered to comply with ORC Chapter 3704 and the rules promulgated thereunder. Except as otherwise provided under Section V of this Consent Order, Defendant is permanently enjoined from causing, permitting, or allowing any emissions of air contaminants from Defendant's facility located at 1183 South Market Street, Troy, Ohio without obtaining installation and operating permits issued by the Director of Environmental Protection under ORC Chapter 3704.

V. Air Pollution Control

6. By March 31, 1992, Defendant shall take and/or install reasonably available control measures so as to prevent fugitive dust from becoming airborne. These measures shall include but not be limited to the following:

- a) Scarfire existing unpaved parking areas and roadways, then shape, form, grade, and compact the existing base materials so that positive drainage occurs in a newly formed swaile which starts near the end of Crawford Street and runs in a south to southwestward direction and drains into the existing drainage swaile along Rt. 25(A).
- b) Application of hard limestone chips to be spread, graded, and compacted over all unpaved parking areas and roadways located at the facility to prevent the emission of fugitive dust at all times.
- c) Installation and maintenance of a paved roadway located off Union Street to provide access to the facility's fill area. (See attached map.)

On and after March 31, 1992, Defendant shall maintain and operate such measures to prevent the emission of fugitive dust.

6. Defendant is ordered to submit within thirty (30) days after the filing of this Consent Order, approvable permit to operate applications to the Regional Air Pollution Control Authority (RAPCA) for the following air contaminant sources at its Facility:

<u>Source</u>	<u>Description</u>
F001	unpaved roadways
F002	unpaved parking areas

If any initial application submitted is determined by Ohio EPA and/or RAPCA not to be approvable as submitted Defendant shall resubmit an application which fully responds to any deficiency noted by Ohio EPA and/or RAPCA within thirty (30) days of the date of any written notice of deficiency from Ohio EPA and/or RAPCA. In the event that Defendant fails to resubmit an approvable application for any source of air contaminants after the thirty (30) day period the source in question shall be shut down and no air contaminants shall be emitted from the source until the Director has issued a permit to operate that source.

VI. Civil Penalty

8. It is hereby ordered that the Defendant shall pay a civil penalty of Seven Thousand Five Hundred dollars (\$7,500.00). The penalty shall be paid by certified checks or money order made payable to "Treasurer, State of Ohio", which check shall be delivered by mail or otherwise to Plaintiff's

counsel at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410 according to the following schedule:

<u>Payment</u>	<u>Payment Date</u>
\$3,000.00	Forty-five (45) days from filing of this Consent Order
\$4,500.00	One Hundred and Eighty (180) days from filing of this Consent Order.

VII. Stipulated Penalties

9. In the event that Defendant violates any terms of this Consent Order, 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 Hundred and Fifty Dollars (\$250.00) 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 Hundred Dollars (\$500.00) per day for each requirement not met. For each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days - One Thousand Dollars (\$1,000.00) per day for each requirement not met. For each day of failure to meet a requirement, over ninety (90) days - Two Thousand Dollars (\$2,000.00) per day for each requirement not met.

VIII. NOTICE

10. Any submission to the Ohio EPA as required by this Consent Order, unless otherwise indicated, shall be delivered to:

- a. Regional Air Pollution Control Authority
451 West Third Street
P.O. Box 972
Dayton, Ohio 45422
Attn: D. Curtis Marshall
- b. Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43266-0149
Attn: Bruce Weinberg

IX. Miscellaneous

11. This Order shall be effective upon the date of entry by the Court.

12. Nothing in this Order shall release Defendant of its obligation to comply with applicable state or local statutes, rules or ordinances.

13. This Court shall retain jurisdiction for the purpose of overseeing compliance with the terms of this Order.

14. Defendant shall pay all court costs.

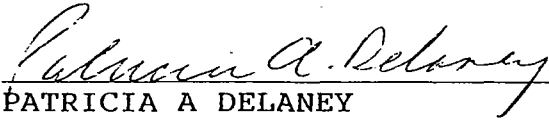
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April 8, 1992

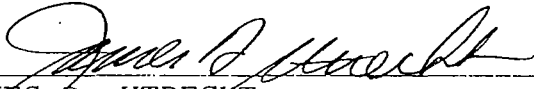
JOHN M. KISTLER, JUDGE

JUDGE KISTLER
Miami County Court of Common
Pleas

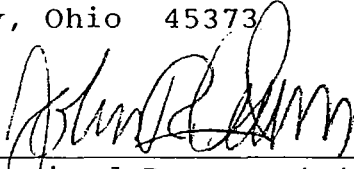
Approved:



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Authorized Representative of
Herrmann's Service Center

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