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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

CLERK OF DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION  
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UNITED STATES OF AMERICA, )  
)  
and )  
)  
THE STATE OF OHIO, )  
)  
Plaintiffs, )  
)  
v. )  
)  
HOGE LUMBER COMPANY, )  
)  
Defendant. )  
\_\_\_\_\_ )

Case No. 3:95 CV 7044  
JUDGE DAVID A. KATZ

PARTIAL CONSENT DECREE

WHEREAS, Plaintiff, the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency, filed a Complaint in this action against Defendant, Hoge Lumber Company ("Hoge"), alleging that Hoge violated and continues to violate Section 113(b) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(b), and the Federally-approved and enforceable regulations comprising the State of Ohio Air Pollution Implementation Plan ("Ohio SIP"), approved at 40 C.F.R. Part 52, Subpart KK (1994).

Plaintiff, the State of Ohio, by its Attorney General, Betty D. Montgomery, at the written request of the Director of Environmental Protection, filed a Complaint in Intervention in this action against Defendant Hoge, alleging violations of the Act similar to those alleged by Plaintiff, the United States. In addition, the State alleged violations of Ohio's air compliance statute, R.C. Chapter 3704.

The violations pled in this action arise from Plaintiffs' allegations of excess emissions of particulate matter from the operation of Boiler B004 at Hoge's wood finishing plant in New Knoxville, Ohio. Pursuant to the authority of Section 113(b) of the Act, 42 U.S.C. § 7413(b), Plaintiffs seek injunctive relief and the imposition of civil penalties for violations of the Act. This Decree resolves only Plaintiffs' claims for injunctive relief; Plaintiffs' claims for civil penalties are not affected by the entry of this Consent Decree.

Plaintiffs, the United States and the State, and Defendant Hoge (collectively referred to as the "Parties") agree, and this Court finds, that partial settlement of this matter is in the public interest and that entry of this Partial Consent Decree is the most appropriate means of resolving the issue of injunctive relief in this matter. Hoge enters into this Decree without admitting the allegations alleged by the Plaintiffs. This Decree represents a compromise and settlement of disputed claims, and shall not be construed as an admission of liability, law or fact. This Decree does not resolve the issue of civil penalties in this matter.

NOW THEREFORE, before taking testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ORDERED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the parties and the subject matter of the action filed by the United States pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b). The Complaints state a claim upon which relief can be granted under the Act. Venue properly lies in this Judicial District under 28 U.S.C. §§ 1391(b) and 1395(a).

2. This Court has jurisdiction over the parties and the subject matter of the action filed by the State pursuant to 42 U.S.C. § 7604 and 28 U.S.C. § 1367.

II. DEFINITIONS

3. Terms used in this Decree that are defined in the Act, 42 U.S.C. §§ 7401 et seq., and the Federally approved and enforceable regulations comprising the Ohio SIP shall have the meanings contained therein. Whenever the terms listed below are used in this Decree, the following definitions shall apply:

a. "Adequate demonstration of compliance" shall mean that an emissions unit adequately demonstrates compliance with the applicable emissions limits when the measured emission rate is below the applicable limits and when the emissions unit was operated under worst case emission conditions, including operation at the maximum rated capacity or maximum permitted capacity, during the stack test.

b. "Boiler B004" shall mean Air Source No. 0306000120 -- B004, which is a wood-fired boiler located at Hoge Lumber Company's Facility in New Knoxville, Ohio.

c. "Defendant" or "Hoge" shall mean Hoge Lumber Company.

d. "Facility" shall mean Hoge Lumber Company, located at 701 South Main Street, New Knoxville, Ohio.

e. "NWDO" shall mean the Ohio EPA, Northwest District office, Division of Air Pollution Control, 347 North Dunbridge Road, P.O. Box 466, Bowling Green, Ohio, 43402.

f. "Ohio EPA" shall mean the Ohio Environmental Protection Agency.

g. "Ohio SIP" shall mean the Ohio State Implementation Plan for air pollution control, as approved by U.S. EPA.

h. "Partial Consent Decree," "Consent Decree" or "Decree" shall mean this Partial Consent Decree and all appendices hereto, including all modifications to the Consent Decree that are made pursuant to Paragraph 51 hereof.

i. "PTI" shall mean, generally, a permit to install issued by Ohio EPA pursuant to O.A.C. Chapter 3745-31, and, specifically, the PTI issued to Hoge by Ohio EPA on May 25, 1983, which sets forth an emission limitation for Boiler B004 of .20 lb/MMBTU.

j. "PTO" shall mean a permit to operate issued by Ohio EPA pursuant to O.A.C. Chapter 3745-35.

k. "Stack test" shall mean a measurement of the amount of any pollutant emitted by a source of air emissions, including but not limited to particulate matter, that is

conducted in accordance with U.S. EPA-approved test methods found in 40 C.F.R. Part 60, Appendix A. All particulate matter tests shall be conducted using reference methods 1 through 5 in 40 C.F.R. Part 60, Appendix A. All stack tests for particulate matter shall be conducted while burning wood waste from the facility with the lowest heat content and highest ash content while operating Boiler B004 at its maximum rated capacity, or maximum permitted capacity.

l. "State" shall mean the State of Ohio and all its departments, agencies and instrumentalities.

m. "United States" shall mean the United States of America and all its departments, agencies and instrumentalities.

n. "U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

### III. APPLICABILITY

4. The provisions of this Decree shall apply to and be binding upon Hoge and all other persons or entities referenced in Federal Rule of Civil Procedure 65(d), and its successors and assigns, and shall be binding upon the United States and the State.

5. No change in ownership or corporate status shall in any way alter the responsibilities of Hoge under this Decree. In the event of any conveyance of title, easement, or other interest in the Facility, Hoge shall continue to meet all obligations under this Decree.

6. Subject to the termination of this Decree pursuant to Paragraph 52, if Hoge proposes to sell or transfer any real property or operations subject to this Decree, including but not limited to Boiler B004, Hoge shall notify U.S. EPA and Ohio EPA in the manner specified in

40 C.F.R. § 270.72(a), prior to the conveyance of title, easement, or any other interest, including a leasehold interest, in the Facility. At least sixty (60) days prior to any conveyance of the Facility or any real property or operations remaining at the Facility that are subject to this Decree, Hoge shall provide a copy of this Decree to any person or entity to which Hoge intends to make such conveyance, and shall advise the party receiving the conveyance, in writing, that the Facility is the subject of this Decree. The notice shall set forth the case caption and index number, and the Court having jurisdiction.

7. Hoge shall notify each contractor retained to perform work required by this Decree of all requirements herein relevant to that contractor's activities to be performed, including all relevant work schedules and reporting deadlines, and shall provide each such contractor a copy of this Decree. Hoge shall further require that each such contractor notify in writing each subcontractor retained to perform work required by this Decree of all requirements therein applicable to the work to be performed by that subcontractor, and shall provide each such subcontractor a copy of this Decree.

8. Subject to the provisions of Sections VIII and IX, in any action to enforce this Decree, Hoge shall not raise as a defense, the failure by any of its officers, directors, agents, servants, employees, successors, assigns, contractors and consultants to take actions necessary to comply with the provisions hereof. Hoge reserves its rights against any such person or entity whose acts cause or permit it to violate the terms of this Decree. Hoge shall be responsible for the acts of its officers, directors, agents, servants, employees, successors and assigns, who

violate, cause or permit Hoge to violate the terms of this Decree, and remains responsible for compliance with all terms of this Decree.

#### IV. OBJECTIVES OF THIS CONSENT DECREE

9. The objectives of this Decree are:

a. to require Hoge to achieve and maintain compliance with the Act and regulations promulgated thereunder, including the Ohio SIP, the Ohio statute, R.C. Chapter 3704, and the PTI for Boiler B004 at its Facility;

b. to establish a schedule under which Hoge shall design, construct, operate and maintain air pollution control equipment in connection with its operation of Boiler B004, as specified in this Decree; and

c. to require Hoge to operate and maintain at its Facility the air pollution control equipment constructed pursuant to this Decree to ensure that Hoge maintains compliance with the Act and regulations promulgated thereunder, including the Ohio SIP, and the Ohio statute, R.C. Chapter 3704.

It is not the objective of this Decree to resolve the Plaintiffs' civil penalty claims against Hoge.

The Plaintiffs hereby reserve their right to seek civil penalties against Defendant for all violations of the Act, the Ohio SIP, and the Ohio Statute (R.C. Chapter 3704), which Plaintiff contend are ongoing.

V. CLEAN AIR ACT COMPLIANCE AT BOILER B004

10. Installation of Air Pollution Control Technology:

a. Hoge shall design, install, operate, and thereafter maintain a dry electrostatic precipitator ("ESP") to control the particulate matter emissions from Boiler B004. Hoge shall retain the existing Breslove mechanical collector and shall locate the ESP downstream from the existing Breslove mechanical collector. Hoge shall design the ESP such that Boiler B004 can adequately demonstrate and maintain compliance with a particulate matter emission limit of 0.20 pound of particulate matter per million British thermal units of heat input ("lb/MMBTU").

b. The schedule for each task for the design, installation and operation of the ESP is as follows:

<u>TASK</u>	<u>WEEKS AFTER ENTRY OF CONSENT DECREE</u>
(1) FINALIZE CONTRACT FOR DRY ESP	5 weeks
(2) COMPLETE DESIGN ENGINEERING	9 weeks
(3) COMMENCE ON-SITE CONSTRUCTION	12 weeks
(4) COMPLETE THE MANUFACTURE, FABRICATION AND/OR ACQUISITION OF DRY ESP	26 weeks
(5) COMPLETE FOUNDATION CONSTRUCTION	26 weeks
(6) ESP DELIVERY	27 weeks



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|--|------------------------------------|
| (7) COMPLETE THE INSTALLATION OF THE ESP AND ALL ASSOCIATED EQUIPMENT (THE ESP CONTROL SYSTEM) | 30 weeks                           |
| (8) INITIATE OPERATION OF THE ESP CONTROL SYSTEM   | 32 weeks                           |
| (9) SUBMIT INTENT TO TEST  | at least 30 days before stack test |
| (10) PERFORM STACK TEST  | 36 weeks                           |
| (11) SUBMIT STACK TEST REPORT  | 30 days after stack test           |

Hoge reserves the right to shut down Boiler B004 and/or cease operating Boiler B004 at any time, pursuant to Paragraph 15.

c. No later than thirty (30) days after initiating operation of the ESP control system, Hoge shall conduct a particulate matter stack test for Boiler B004. Hoge shall submit an Intent To Test to U.S. EPA and Ohio EPA at least 30 days prior to conducting this and any other stack test conducted pursuant to this Decree.

d. Emissions Limitation:

(1) If the stack test required by Paragraph 10.b and c. adequately demonstrates compliance with the emissions limit of 0.20 lb/MMBTU heat input, within thirty days after its receipt of the stack test report, Hoge shall submit an application to Ohio EPA for a PTO for Boiler B004 or, if applicable, an application for a permit under Title V of the Act. If Hoge fails to submit to Ohio EPA a complete and timely permit application, it shall cease operation of Boiler B004 until Ohio EPA receives a complete application.

(2) If the stack test required by Paragraph 10.b and c. demonstrates an emission rate greater than 0.20 lb/MMBTU heat input, but less than 0.24 lb/MMBTU, Hoge shall adequately demonstrate compliance with the PTI within sixty (60) days after Hoge's receipt of the stack test report. If Hoge fails to make an adequate demonstration that Boiler B004 is in compliance with the PTI within this time period, Hoge shall cease operation of Boiler B004, unless Plaintiffs agree in writing to a specific extension of that time period, based on Plaintiffs' review of steps being taken by Hoge to bring the Boiler into compliance with the Ohio SIP and the Act. If Hoge makes an adequate demonstration of compliance with the PTI, it shall apply for an applicable permit in accordance with Paragraph 10.d.1.

(3) If the stack test required by Paragraph 10.b. and c. demonstrates an emission rate greater than 0.24 lb/MMBTU, Hoge shall discontinue operation of Boiler B004, except to conduct additional stack tests, until Hoge makes an adequate demonstration that Boiler B004 is in compliance with the PTI.

(4) Nothing in Paragraphs 10.d.2. and 3. shall preclude Hoge from applying for any other compliance option available under the federally-approved Ohio SIP and the Act, including but not limited to an application to Ohio EPA for a modification of the PTI emission limit, which Ohio EPA will review in accordance with the federally-approved Ohio SIP and the Act. Nothing in Paragraph 10 excuses Hoge from meeting any deadline for any permit application

under the federally-enforceable Ohio SIP or the Act. Hoge shall send copies of any application filed pursuant to Paragraph 10 to U.S. EPA when it submits the application to the State. If Hoge elects to pursue an alternate compliance option under this subparagraph, such application shall not excuse or delay Hoge's obligation to meet timely any other applicable requirement of this Decree or the Act, the Ohio SIP and Ohio statute, including the requirements of Paragraphs 10.d.2. and 3. If Ohio EPA issues a modified PTI, pursuant to the federally-approved Ohio SIP and the Act, the emissions limitation in that PTI shall be enforceable under this Decree in place of the limit in the current PTI. Until issuance of any modified PTI, the emissions limit in the current PTI remains in effect.

11. Hoge shall achieve, adequately demonstrate, and thereafter maintain continuous compliance with the applicable emission limitation in the PTI and the Ohio SIP by the date of the stack test conducted pursuant to Paragraph 10.b. and c. (or the applicable date under Paragraph 10.d.2).

12. Continuous Opacity Monitoring System: No later than sixty days after entry of this Decree, Hoge shall install and begin operation of a continuous opacity monitoring system on Boiler B004 that meets the requirements of 40 C.F.R. Part 60, Appendix B, Performance Specification 1, Section 4. Hoge shall perform certification testing of the continuous opacity monitoring system no later than 30 days after completion of the system's construction in accordance with the requirements of 40 C.F.R. Part 60, Appendix B, Performance Specification

1. Hoge shall notify Plaintiffs no later than 30 days prior to initiation of certification tests, and Plaintiffs shall be permitted to examine the system equipment and witness certification tests. Hoge shall provide copies of the test results as set forth in Section VI. Certification of the continuous opacity monitoring system shall be granted upon determination by U.S. EPA and Ohio EPA that the system meets all requirements of 40 C.F.R. Part 60, Appendix B, Performance Specification 1, including but not limited to Section 5.1.9, and ORC Section 3704.03(I). Following its installation, Hoge shall operate the continuous opacity monitoring system during all periods of operation of Boiler B004.

13. Additional Monitoring Requirements: Hoge shall continuously monitor primary and secondary voltage and current levels for each section of the ESP and shall comply with the levels specified by the manufacturer for the proper operation and performance of the ESP. Hoge shall establish an operating log for the ESP in which Hoge shall record the primary and secondary voltage and current for each section of the ESP. Hoge shall record the data at least once every 8 hours that Hoge operates Boiler B004. Hoge shall maintain the ESP operating log at the Facility for the duration of this Decree.

14. Operation and Maintenance Plan:

a. No later than sixty (60) days after completing installation of the ESP and all associated equipment, as set forth in Paragraph 10.b., Hoge shall submit an Operations and Maintenance ("O&M") Plan to U.S. EPA and Ohio EPA for their review and comment. The purpose of the O&M Plan is to minimize particulate emissions through the implementation of technically sound inspection, maintenance, repair, record keeping and reporting procedures; and

it shall address Boiler B004 and all air pollution control and other equipment associated with its operation. The O&M Plan shall address all such equipment, whether or not it is installed pursuant to this Decree.

b. Hoge shall, within fourteen (14) days of receipt, respond to all comments received on the proposed O&M Plan from both U.S. EPA and Ohio EPA, including any additional adjustments or changes suggested, and submit a revised O&M Plan to U.S. EPA and Ohio EPA for their review and comment.

c. Within one week after receiving any additional comments from U.S. EPA and Ohio EPA to its completed O&M Plan, Hoge shall implement the O&M Plan and shall continue thereafter to apply the O&M Plan to its operations.

d. If equipment changes are made after Hoge implements the approved O&M Plan, Hoge shall notify U.S. EPA and Ohio EPA sufficiently in advance of such changes to enable Hoge to submit any proposed modifications to the O&M Plan to U.S. EPA and the Ohio EPA for their review and comment, no later than fourteen (14) days before implementing such equipment changes. Hoge shall implement, and continue thereafter, any modifications to the O&M Plan.

15. Hoge may elect to achieve and maintain compliance at any time by shutting down Boiler B004. If Hoge does so, it shall stop operating Boiler B004 and shall dismantle Boiler B004. If Hoge elects to achieve compliance through this option, it shall notify U.S. EPA and Ohio EPA in writing no later than ten days after this decision. Hoge shall certify in this letter that it shall not operate any other boiler or other means of burning wood at its facility

without obtaining prior Ohio EPA and U.S. EPA approval and complying with all applicable permitting requirements. If Hoge elects to comply under this Paragraph, it is not excused from nor may it delay its obligation to meet timely any other applicable requirement of this Decree or the Act, the Ohio SIP and Ohio statute, including the requirements of Section V.

#### VI. ADDITIONAL RECORD-KEEPING AND REPORTING REQUIREMENTS

16. Hoge shall submit copies of the completed design engineering drawings and specifications for the ESP to U.S. EPA and Ohio EPA within fourteen (14) days after their completion.

17. Within thirty (30) days after performing any stack test under this Decree, Hoge shall submit the stack test report to U.S. EPA and Ohio EPA.

18. Within 30 days after the certification testing of the continuous opacity monitoring system, set forth in Paragraph 12, Hoge shall submit copies of the test results to U.S. EPA and Ohio EPA.

19. Hoge shall maintain records of all data obtained by the continuous opacity monitoring system, installed pursuant to Paragraph 12, including, but not limited to, percent opacity on an instantaneous (one-minute) basis, daily zero-span calibration checks, and manual calibration adjustments. Hoge shall maintain all records required by Paragraph 13.

20. Hoge shall submit reports to U.S. EPA and NWDO of Ohio EPA within thirty days following the end of each calendar quarter, documenting all instances of opacity values in excess of the limitations specified in O.A.C. Rule 3745-17-07, detailing the date, commencement and completion times, duration, magnitude (percent opacity), reason (if known), and corrective

action(s) taken (if any) of each six (6) minute block average above the applicable opacity limitation(s). Hoge shall use the exceedance summary report format in 40 C.F.R. § 60.7(d). These quarterly excess emission reports shall be submitted by January 30, April 30, July 30, and October 30 of each year and shall address the data obtained during the previous calendar quarter. These reports shall also document any continuous opacity monitoring system downtime while the emissions unit was on line (date, time, duration, and reason), along with any corrective action(s) taken. These reports shall provide the emissions unit operating time during the report period and the date, time, reason and corrective action(s) taken for each time period of emissions unit and control equipment malfunction. The total operating time for the emissions unit and the total operating time of the analyzer while the emissions unit was on line also shall be included in the quarterly report. If there are no excess emissions during the calendar year, Hoge shall submit a statement to that effect along with the emissions unit operating time during the reporting period and the date, time, reason, and corrective action(s) taken from each time period of emissions unit control equipment, and/or monitoring system malfunction.

21. Hoge shall also submit the following written quarterly reports to U.S. EPA and Ohio EPA, providing the following information: a. beginning thirty days after entry of this Decree and for every calendar quarter thereafter, all deadlines and other terms of this Decree that it was required to meet during the reporting period, whether Hoge met these requirements, the reasons for any noncompliance, and all steps being taken to remedy the noncompliance, all construction performed during the quarter related to this Decree, and a projection of work to be performed pursuant to this Decree during the following quarter (Notification to U.S. EPA and

Ohio EPA of any anticipated delay shall not, by itself, excuse the delay); and b. beginning ninety days after the initiation of operation of the ESP, and for every calendar quarter thereafter, Hoge shall submit quarterly deviation reports identifying all periods of noncompliance with the manufacturer's required primary and secondary voltage and current levels of the ESP, as monitored pursuant to Paragraph 13. These quarterly reports shall be submitted by January 30, April 30, July 30, and October 30 of each year and shall address the data obtained during the previous calendar quarter.

22. All reports or other submissions pursuant to this Section shall be signed and certified by a duly authorized managerial level employee of Hoge having knowledge of the report's contents in accordance with the provisions of Paragraph 39. Hoge shall not object to the admissibility in evidence of any such report in any proceeding to enforce this Decree.

#### VII. STIPULATED PENALTIES

23. Unless excused under Sections VIII and IX, if Hoge fails to comply with the following requirements of this Decree, it shall pay the following stipulated penalties to the United States and the State as set forth in this Section:

a. For each day that Hoge fails to meet a deadline established by Paragraphs 10.b.. (for each of tasks 1, 3, 5, 8 and 10), Hoge shall pay the following stipulated penalties:

Days 3-15	\$ 500.00 per day
Days 16-30	\$1,500.00 per day
After 30 Days	\$5,000.00 per day



b. For each day that Hoge fails to submit any report, notification, document, or certification, required pursuant to Paragraphs 10, 12, 13, 14, and Section VI of this Decree, Hoge shall pay the following stipulated penalties:

Days 3-15	\$ 500.00 per day
Days 16-30	\$1,000.00 per day
After 30 Days	\$1,500.00 per day

c. For each day of failure to conduct any monitoring required pursuant to Paragraphs 12 and 13, or to implement its O&M Plan under Paragraph 14, Hoge shall pay the following stipulated penalties:

Days 3-15	\$ 500.00 per day
Days 16-30	\$1,000.00 per day
After 30 Days	\$1,500.00 per day

d. For each day that Hoge fails to achieve and demonstrate compliance, as required by Paragraph 11, it shall pay the following stipulated penalties:

Days 3-15	\$1,000.00 per day
Days 16-30	\$3,500.00 per day
After 30 Days	\$7,500.00 per day

No stipulated penalty shall accrue under this subparagraph, for any day that Boiler B004 is not operating, provided that Hoge certifies pursuant to Paragraph 39 that the boiler was not operating.

e. If Hoge fails to cease operations of Boiler B004 as required by Paragraphs 10 or 15, it shall pay a stipulated penalty of:

Days 3-15	\$1,000 per day
Days 16-30	\$3,500 per day
After 30 Days	\$7,500 per day

f. If Hoge fails to conduct any other stack test under this Decree within the required time period and according to all applicable testing requirements, it shall pay a stipulated penalty as set forth in Paragraph 23.a for each day it fails to conduct such tests.

24. The stipulated penalties herein shall be in addition to, and shall in no way limit, other remedies or sanctions available to the United States or the State by reason of Hoge's failure to comply with the requirements of this Decree, the Act or the Ohio SIP.

25. Failure by either the United States or the State to demand stipulated penalties shall have no effect on the accrual of such penalties.

26. Hoge shall pay stipulated penalties to the United States and the State, as set forth below, by the 15th day of the month following the demand of either Plaintiff for stipulated penalties for a violation of this Decree.

27. Payment of stipulated penalties and any payments under Paragraph 28 of this Decree shall be as follows:

a. For each payment, Hoge shall make:

(1) 50% payable to the United States, and

(2) 50% payable to the State.

b. Hoge shall pay all penalties under this Section to the United States by cashier's or certified check, made payable to the "Treasurer, United States of America," and delivered to the United States Attorney for the Northern District of Ohio, at the following address:

Office of the United States Attorney  
Northern District of Ohio  
Four Seagate  
Suite 308  
Toledo, Ohio 43604-2624

A copy of the check and the letter tendering such check shall be mailed to the United States and U.S. EPA at the addresses set forth in Paragraph 40 of this Decree.

c. Hoge shall pay all penalties under this Section to the State by cashier's or certified check, made payable to the "Treasurer, State of Ohio," and delivered to Lyndia Jennings (or her Successor), Administrative Assistant, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215-3428.

d. Hoge shall enclose with all checks a letter identifying the case name, court, docket number, specific stipulated penalty provision involved, and a description of the violation(s) of this Decree for which the stipulated penalties are being tendered.

28. Interest shall accrue on any stipulated penalty, or any portion thereof, that is overdue, at the rate set by 31 U.S.C. § 3717, and shall continue to accrue until the penalty is paid. A late payment handling charge of \$20.00 shall be imposed after thirty (30) days, with an additional charge of \$10.00 for each subsequent thirty (30) day period over which an unpaid

balance remains. In addition, a six (6) percent per annum penalty shall be applied on any principal amount not paid within ninety (90) days after payment is due.

29. Hoge shall not deduct its payment of any stipulated penalty provided for in this Section for any tax purpose or otherwise obtain any favorable tax treatment of, or for, such penalty payment.

#### VIII. FORCE MAJEURE AS BETWEEN HOGE AND THE UNITED STATES

30. If any event occurs that causes or may cause Hoge to violate any provision of this Decree, Hoge shall notify the United States in writing within five (5) days of the date on which Hoge learns of such event; provided, that failure of the ESP installed under this Decree to operate as designed shall not be a force majeure event. The notice shall describe in detail the anticipated length of time the violation may persist, the precise cause or causes of the violation, the measures taken or to be taken by Hoge to prevent or minimize the violation and the timetable by which those measures will be implemented. Hoge shall adopt all reasonable measures to avoid or minimize any such violation. Hoge's failure to comply with the notice requirements of this Section shall render this Section void and of no effect as to the particular incident involved, and shall constitute a waiver of Hoge's right to obtain an extension of time for its obligations under this Section based on such incident.

31. If the United States agrees that the violation has been or will be caused by a force majeure event, it may agree to extend the time for performance of such requirement for a period not to exceed the actual delay resulting from such circumstances, and stipulated penalties shall not be due to the United States for said delay. Hoge shall bear the burden of proving that

any delay was caused by circumstances beyond the control of Hoge, or any entity controlled by or under the common control of Hoge.

32. Force majeure for purposes of this Decree is defined as an event arising from causes beyond the control of Hoge or the control of any entity controlled by Hoge, including its consultants and contractors, that delays or prevents the performance of any obligation under this Decree. Nothing in this section is intended to relieve Hoge of its duty to use all due diligence to complete the requirements of this Decree in a timely manner or of Hoge's obligation to meet the applicable emissions limitation in the Ohio SIP, its current PTI, or any PTO for Boiler B004. Unanticipated or increased costs or expenses associated with the implementation of actions called for by this Decree or changed financial circumstances shall not, in any event, be a force majeure event and shall not serve as a basis for changes in this Decree or extensions of time under this Decree. Failure to apply for a required permit or approval, or to provide in a timely manner all information required to obtain a permit or approval necessary to meet the requirements of this Decree, are not force majeure events.

33. Compliance with any requirement of this Decree by itself shall not constitute compliance with any other requirement. An extension of one compliance date based on a particular incident does not result in an extension of a subsequent compliance date or dates. Hoge must make an individual showing of proof regarding each delayed incremental step or other requirement for which an extension is sought.

IX. POTENTIAL FORCE MAJEURE AS BETWEEN HOGE AND  
THE STATE OF OHIO

34. If any event occurs that causes or may cause Hoge to violate any provision of this Decree, Hoge shall notify Ohio EPA in writing within five (5) days of the date on which Hoge learns of such event; provided, that failure of the ESP installed under this Decree to operate as designed shall not be a force majeure event. The notice shall describe in detail the anticipated length of time the violation may persist, the precise cause or causes of the violation, the measures taken or to be taken by Hoge to prevent or minimize the violation, and the timetable by which those measures will be implemented.

35. In any action by the State of Ohio to enforce any provisions in this Decree, Hoge may raise that 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 Hoge 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 that an enforcement action, if any, is commenced by the State of Ohio. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Hoge, shall rest with Hoge. Unanticipated or increased costs associated with the implementation of any action required by this Consent Decree, or changed financial circumstances shall not constitute circumstances

entirely beyond the control of Hoge, or serve as a basis for an extension of time under this Decree. Failure by Hoge to comply with the notice requirements of this Paragraph shall render this paragraph void and of no force and effect as to the particular incident involved and shall constitute a waiver of Hoge's right to request an extension of its obligations under this Decree based on such incident. An extension of one compliance date based on a particular incident does not mean that Hoge qualifies for an extension of a subsequent compliance date or dates. Hoge must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Decree without a Force Majeure clause as to the State of Ohio does not constitute a waiver by Hoge of any rights or defenses it may have under applicable law, including Force Majeure. This Section of the Consent Decree relates solely to the State of Ohio, and does not affect any rights of the United States.

#### X. INSPECTIONS

36. Until termination of this Decree, U.S. EPA and the State and their respective representatives, contractors, consultants, and attorneys shall have the authority to enter the Facility at reasonable times upon proper presentation of credentials to the manager or managers of the Facility for the purposes of:

- (a) monitoring the progress of activities required by this Decree;
- (b) verifying any data or information submitted to U.S. EPA and/or the State in accordance with the terms of this Decree;
- (c) conducting any sampling or testing that U.S. EPA or the State believes necessary to determine Hoge's compliance with this Decree; or
- (d) otherwise assessing Hoge's compliance with this Decree.

This provision in no way limits or affects any rights of entry and inspection held by either U.S. EPA or the State pursuant to applicable federal or state laws or regulations.

#### XI. NOTICES AND SUBMISSIONS

37. Whenever, under the terms of this Decree, notice is required to be given or a document is required to be submitted by one Party to another, such notices or submissions shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to all listed individuals, and their successors.

38. Unless otherwise specified herein, Hoge's notifications to or communications with U.S. EPA and the State shall, with respect to each Plaintiff, be deemed submitted to that Plaintiff on the date they are postmarked and sent by certified mail, return receipt requested.

Otherwise, such notifications and communications will be deemed submitted to each Plaintiff on the day they are received by that Plaintiff. Unless otherwise specified herein, each notification to or communication with Hoge from any Plaintiff shall be deemed submitted to Hoge on the date it is postmarked and sent by certified mail, return receipt requested. Otherwise, such notifications and communications will be deemed submitted to Hoge on the day they are received by Hoge.

39. All notifications and submissions required of Hoge under this Decree by shall be signed by a responsible agent of Hoge and shall include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false



information, including the possibility of fine and imprisonment for knowing violations.

40. Except as specified otherwise herein, all written notifications or communications between the Parties relating to this Decree shall be addressed as follows:

As to the United States:

[By U.S. Mail]  
Chief, Environmental Enforcement Section  
U.S. Department of Justice  
Re: 90-5-2-1-1890  
P.O. Box 7611  
Washington, D.C. 20044

OR

[By Overnight/Courier]  
Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
Re: 90-5-2-1-1890  
U.S. Department of Justice  
1425 New York Ave., N.W.  
Washington, D.C. 20005

As to U.S. EPA:

Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard (CA-29A)  
Chicago, Illinois 60604-3590

Chief, Air Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard (AE-17J)  
Chicago, Illinois 60604-3590

As to the State:

James Orlemann  
DAPC  
Ohio EPA  
1800 Watermark Drive  
Columbus, Ohio 43216

Jan Tredway  
NWDO  
Ohio EPA  
347 N. Dunbridge Rd.  
Bowling Green, Ohio 43402

As to Hoge:

John Hoge  
Hoge Lumber Company  
700 South Main Street  
New Knoxville, Ohio 45871

John P. Gartland  
Richard P. Fahey  
Arder & Hadden  
One Columbus, 10 West Broad Street  
Columbus, Ohio 43215

XII. GENERAL PROVISIONS

41. Neither the United States nor the State, by its consent to the entry of this Decree, warrant or aver in any manner that Hoge's complete compliance with this Decree will result in compliance with the provisions of the Act, its implementing regulations, any permit, or this Decree. Notwithstanding U.S. EPA and Ohio EPA review and approval of any plans formulated pursuant to this Decree, Hoge shall remain solely responsible for compliance with the Act, its implementing regulations, and this Decree.

42. This Decree is not a permit; compliance with its terms does not guarantee compliance with all applicable federal, State, and local laws and regulations.

43. Except as expressly provided for herein, this Consent Decree is without prejudice to and shall not be construed as a waiver or limitation of any rights, remedies, powers, or authorities, whether statutory or regulatory, legal or equitable, civil or criminal, administrative or judicial, that the Plaintiffs have pertaining to Hoge's compliance with any requirements of this Decree, or any requirements of the Clean Air Act, or any other statutory, regulatory or common law authority or permit condition. Plaintiffs reserve the right to object to the issuance of any new air permit, emission limitation or permit condition for the Hoge facility.

44. Compliance with this Decree shall in no way affect or limit the obligation of Hoge to comply with all current and future federal, State and local laws, regulations, ordinances, and permit conditions, and any order of any court.

45. This Decree does not limit the ability of the United States or the State to pursue their respective rights and remedies under any law or regulation or any Order of this Court.

46. This Decree does not release, waive, limit, or impair in any manner the claims, rights, remedies or defenses of the United States, the State, or any other State or locality against any person or entity that is not a party to this Decree.

47. Hoge acknowledges that it has been advised that it also may be subject to the applicable requirements of Section 120 of the Act, 42 U.S.C. § 7420, providing for assessment of non-compliance penalties.

48. Each Party shall bear its own costs and attorney's fees in this action. Hoge specifically waives any claims, if applicable, for costs, fees or expenses incurred in this action, including claims under 28 U.S.C. § 2412 (Equal Access to Justice Act), as amended.

49. The Parties intend that the provisions of this Decree shall be severable. If any provisions are found unenforceable, the remaining clauses shall remain in full force and effect.

50. The Court shall retain jurisdiction after entry of this Decree to modify or enforce its terms or to take any action necessary or appropriate for its construction or execution.

51. Any modification of this Decree must be in writing, signed by each of the Parties, and approved by this Court before it becomes effective.

52. This Court may terminate this Decree following the motion of any of the Parties, after certification by Hoge to the United States, the State and the Court that Hoge has complied with all provisions of this Decree, the Act and the regulations promulgated pursuant thereto for twelve (12) consecutive calendar quarters following entry of this Decree, and has paid all stipulated penalties due; provided, the United States and the State shall each be provided an opportunity to advise the Court as to the propriety of any motion to terminate.

53. The public shall receive notice of this Decree and an opportunity to comment on its provisions, pursuant to Section 113(g) of the Act, 42 U.S.C. § 7413(g), and 28 C.F.R. § 50.7. Following the close of the comment period, the United States may withdraw or modify its consent to the terms of this Decree on the basis of comments received.

54. This Decree shall be effective upon entry by this Court, following the completion of the public comment period and the request of the United States to enter the Decree.


### XIII. SIGNATORIES

55. The undersigned representatives of Hoge Lumber Company and the Ohio Attorney General, and the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, each certifies that he or she is fully authorized to enter into the terms and conditions of this Decree, to execute it and bind the Party each person represents to this document.

Hoge Lumber Co., Civil Action 3:95 CV 7044

FOR THE UNITED STATES OF AMERICA:

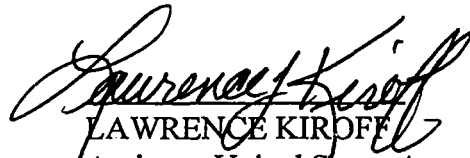
Date: 6/5/97

  
\_\_\_\_\_  
LOIS J. SCHIFFER  
Assistant Attorney General  
Environment and Natural Resources Division

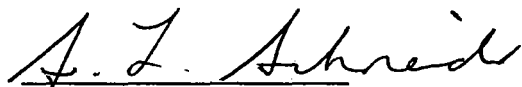
Date: \_\_\_\_\_

\_\_\_\_\_  
EMILY M. SWEENEY  
United States Attorney  
Northern District of Ohio

Date: 6/9/97

  
\_\_\_\_\_  
LAWRENCE KIROFF  
Assistant United States Attorney  
Northern District of Ohio  
1716 Spielbusch Avenue  
Suite 305  
Toledo, Ohio 43624

Date: 6/6/97

  
\_\_\_\_\_  
SUSAN L. SCHNEIDER  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

Hoge Lumber Co., Civil Action 3:95 CV 7044

Date:

June 4, 1987

David A. Ullrich

~~VALDAS V. ADAMKUS~~

*ACTING*

Regional Administrator

U.S. Environmental Protection Agency

Date:

June 4, 1987

WAGNER

WILLIAM H. WAGNER

Assistant Regional Counsel

U. S. Environmental Protection Agency

Region 5 (CA-29)

77 West Jackson Blvd.

Chicago, IL 60604

Hoge Lumber Co., Civil Action 3:95 CV 7044

FOR THE STATE OF OHIO:

Date:

*May 29, 1997*

*Susan E. Ashbrook*

SUSAN ASHBROOK

APRIL BOTT

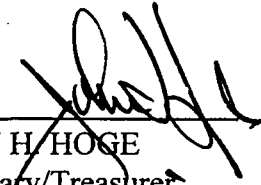
Assistant Attorneys General  
Ohio Attorney General's Office  
Environmental Enforcement Section  
30 East Broad Street, 25th floor  
Columbus, Ohio 43266-0410




Hoge Lumber Co., Civil Action 3:95 CV 7044

FOR HOGE LUMBER COMPANY:

Date: 28 MAY 97

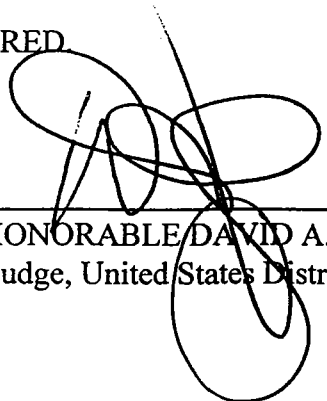
  
\_\_\_\_\_  
JOHN H. HOGE  
Secretary/Treasurer  
Hoge Lumber Company

Date: 5/29/97

  
\_\_\_\_\_  
JOHN P. GARTLAND  
RICHARD P. FAHEY  
Arder & Hadden  
One Columbus, 10 West Broad Street  
Columbus, Ohio 43215

IT IS SO ORDERED

Date: 8/14/97

  
\_\_\_\_\_  
HONORABLE DAVID A. KATZ  
Judge, United States District Court