

IN THE COURT OF COMMON PLEAS  
ASHTABULA COUNTY, OHIO

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

Plaintiff,

v.

MOLDED FIBER GLASS CO.  
1601 West 29th Street  
Ashtabula, Ohio 44004

Defendant.

CASE NO. 95 CV 284

JUDGE Vittel

CONSENT ORDER

MAY 11 1 30 PM '95  
CAROL A. HEAD  
COMMON PLEAS COURT  
ASHTABULA COUNTY, OHIO

Plaintiff, State of Ohio, by its Attorney General, Betty D. Montgomery ("Plaintiff"), having filed the Complaint against Defendant Molded Fiber Glass Companies ("Defendant") 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 rules 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.

## **II. PERSONS BOUND**

2. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, their agents, representatives, officers, directors, employees, subsidiaries or divisions, assigns and successors in interest and those persons acting in concert or participation with any of them, who receive actual notice of this Consent Order whether by personal service or otherwise.

## **III. SATISFACTION OF LAWSUIT**

3. Plaintiff alleges in its Complaint that Defendant has owned and operated a fiberglass reinforced plastic parts production facility (OEPA premise number 0204010230) at 1601 West 29th Street, Ashtabula, Ohio, and that Defendant's fiberglass facility has been operated in such a manner as to result in violations of the air pollution control laws and regulations of the State of Ohio. 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 and for all violations disclosed in usage reports submitted pursuant to Permits To Operate 0204010230 R003, R004 (effective 5/22/92), P004 and P005 (effective 8/17/92) which are received by Ohio EPA by the date of entry of this Consent Order. 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 disclosed in usage reports submitted pursuant to Permits To Operate 0204010230 R003, R004 (effective 5/22/92), P004 and P005 (effective 8/17/92) which are received by Ohio EPA after the date of entry of this Consent Order, including violations which occur after

the filing of the Complaint. All violations known to the Ohio EPA have been alleged in the complaint. Further, nothing in this Consent Order shall be construed to relieve the Defendant of its obligations 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, including all terms and conditions of the Defendant's currently effective Permits to Install and Permits to Operate, and any subsequent renewals or modifications thereafter. 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. 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. CIVIL PENALTY**

5. Defendant is assessed a civil penalty in the amount of One Hundred and Sixty-Five Thousand, Six Hundred Dollars (\$ 165,600.00). The sum of \$130,600 shall

be paid by Defendant 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 cashier's 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.

6. Payment of the sum of \$35,000 shall be suspended pending compliance with paragraphs number 8 and 9 of this Order. If at any time Defendant fails to comply with any requirement of paragraphs number 8 and 9, except for the requirement in paragraph 8 that paint solids, paint emissions and clean-up emissions be reduced by the amounts specified (which failure to comply is addressed in paragraph 7), then Defendant shall pay the sum of \$35,000. Any payment required pursuant to this paragraph shall be paid 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 cashier's check in the appropriate amount, payable to the order of "Treasurer, State of Ohio," within ten (10) days from the date of Defendant's noncompliance with paragraphs 8 or 9, whichever is applicable.

7. If Defendant fails to achieve any of the estimated reductions in emissions specified in paragraph number 8 by the deadline imposed by paragraph 8d, then Defendant shall repay the \$35,000 sum in accordance with the following requirements:

a. \$600.00 per one-tenth of a ton or any part thereof for the difference between what was actually reduced and what would have been necessary to achieve a reduction of 2.0 tons of paint solids;

b. \$600.00 per one-tenth of a ton or any part thereof for the difference between what was actually reduced and what would have been necessary to achieve a reduction of 1.0 tons of paint volatile organic compound emissions;

c. \$600.00 per one-tenth of a ton or any part thereof for the difference between what was actually reduced and what would have been necessary to achieve a reduction of 3.0 tons of clean-up volatile organic compound emissions.

Any payment required pursuant to this paragraph shall be paid 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 cashier's check in the appropriate amount, payable to the order of "Treasurer, State of Ohio," within ten (10) days from the date of Defendant's noncompliance with paragraph 8d.

## **VI. POLLUTION PREVENTION**

8. Defendant is enjoined and ordered to perform a supplemental environmental project which involves the installation of a paint proportioning unit (hereinafter "the unit") to serve sources R005 and R006 (hereinafter "these sources"). The unit shall draw paints, catalysts, and reducers from pots or directly from drums, mixing them as they are pumped through these sources. The unit shall, based on production records for calendar year 1994, reduce an aggregate of 2.0 tons per year (tpy) of paint solids generated by these sources, an aggregate of 1.0 tpy of paint volatile organic compound emissions from these sources, and an aggregate of

3.0 tpy of clean-up volatile organic compound emissions from these sources in accordance with the following schedule:

TASK	COMPLIANCE DATE
a. complete review of contract for installation of the paint proportioning units	6/1/95
b. begin installation of the units	9/1/95
c. complete installation of all units	10/1/95
d. demonstrate compliance with the above required aggregate reductions	4/1/96

9. Within seven days from each completion date listed in paragraph 8, Defendant shall submit a written report stating whether or not Defendant has performed the action(s) set forth therein to the following:

Ohio EPA Northeast District Office  
Division of Air Pollution Control  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
attn: Christine McPhee or her successor

Ohio Environmental Protection Agency  
Office of Pollution Prevention  
P. O. Box 1049  
1800 WaterMark Dr.  
Columbus, Ohio 43266-0149  
attn: Anthony Sasson or Megan James or their successors

Ohio Environmental Protection Agency  
Division of Air Pollution Control  
P. O. Box 1049  
1600 WaterMark Dr.  
Columbus, Ohio 43266-0149  
attn: Isaac Robinson or his successor

**VII. STIPULATED PENALTIES**

10. In the event that Defendant fails to timely make the payments imposed by paragraphs 5, 6, 7, and 13 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.

11. In the event that Defendant violates the permanent injunction set forth in paragraph 4 of this Order relating to the installation and modification 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).

12. In the event that 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.

#### **VIII. PLAINTIFF'S ENFORCEMENT COSTS**

13. For Plaintiff's litigation costs in investigating and prosecuting this case, Defendant shall reimburse the Attorney General's Office in the amount of Seven Thousand Dollars (\$ 7,000.00). This reimbursement shall be paid by delivering a cashier's check for that amount payable to the order of "Treasurer, State of Ohio," within seven (7) days of entry of this Order to the same Matt Sanders identified in Section V, paragraph 5 above.

#### **IX. POTENTIAL FORCE MAJEURE**

14. If any event occurs which causes or may cause a delay in Defendant's compliance with any requirement of this Consent Order, Defendant shall notify the Ohio EPA, Northeast District Office, in writing within ten (10) days of when Defendant knows or should have known of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendant to prevent or minimize the delay, and the timetable by which measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.



15. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendant 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 Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and the Plaintiff 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 action to enforce the terms of this Consent Order, if any, is commenced by the Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant shall rest with Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances of Defendant, shall not constitute circumstances entirely beyond the control of Defendant or serve as a basis for an extension of time under this Consent Order. Failure by Defendant to comply with the notice requirements of Paragraph 14 shall render this Paragraph 15 void and of no force and effect as to the particular incident involved, and shall constitute a waiver of Defendant's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one compliance date based on a particular incident does not mean that Defendant qualifies for an extension of a subsequent compliance date or dates. Defendant must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought.

**X. RETENTION OF JURISDICTION**

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

**XI. COSTS**

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

**XII. TERMINATION**

18. No earlier than three (3) years from the date of entry of this Consent Order, Defendant may move the Court, pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure, to terminate this Consent Order if Defendant can demonstrate that it has been in continuous compliance with the obligations of this Consent Order for such three (3) year period. The Plaintiff takes no position at this time as to such motion and reserves any rights it may have to oppose the motion including the basis that three (3) years is, in actuality, not an appropriate time period.

**IT IS SO ORDERED**

DATE

May 11, 1995

Donald W. Vettel

CIV-H-7

JUDGE  
ASHTABULA COUNTY COURT OF  
COMMON PLEAS

**APPROVED:**

BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO

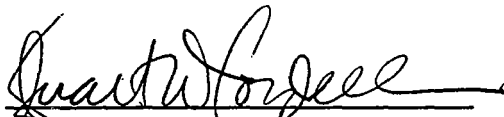


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