

IN THE COURT OF COMMON PLEAS, WYANDOT COUNTY, OHIO

STATE OF OHIO, ex rel. : Case No. 90-CV-25
 Anthony J. Celebreeze, Jr. :
 Attorney General of Ohio, :
 Plaintiff, :
 vs. :
 NATIONAL LIME & STONE COMPANY : JUDGMENT ENTRY
 Defendant. :

FEB 6 9 47 AM '91
 ANN K. DUBOAR
 CLERK
 WYANDOT CO., OHIO
 FILED
 CLERK'S OFFICE

: : : : : : : : : :

The plaintiff State of Ohio and the defendant National Lime & Stone Company ("National") on January 8, 1991, each filed motions for summary judgment on all claims before the Court.

Having fully considered the parties' motions for summary judgment, the supporting memoranda, pleadings, affidavits, deposition testimony, documents and other matters in the record, the Court finds that there is no genuine issue as to any material fact and that National is entitled to judgment as a matter of law dismissing all claims set forth in the amended complaint. The Court further finds that National's motion for summary judgment is well taken and should be granted and the plaintiff's motion for summary judgment should be denied for the following reasons.

The Court finds as a matter of law that:

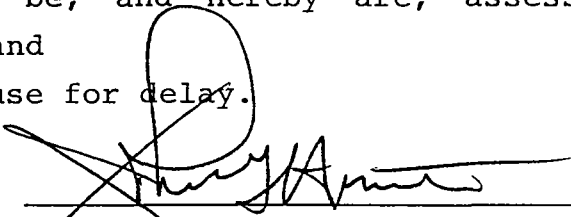
1. The plaintiff could have included the term "replace" within the definition of "install" or "modify". Its failure to do so is deemed to be intentional under the maxim, Expressio unis est exclusio alterius, which can be applied wherein the mention of "install" or "modify" only must be deemed to exclude "replace". Therefore, no PTI was required under the facts of this case.

2. Insofar as Count II is concerned, defendant had an existing permit to operate a Raymond Mill which continued under the replacement mill, and defendant applied for a new permit to operate when the original expired.

3. For the Ohio E.P.A. to prevail under the theory expounded in their pleadings as applied to the facts of this case, it would appear that a modification of their rules will be necessary.

It is, therefore, **ORDERED:**

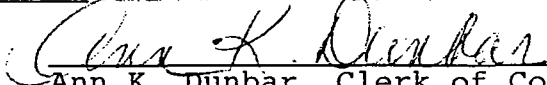
1. That National's motion for summary judgment be, and hereby is, granted;
2. That plaintiff's motion for summary judgment be, and hereby is, denied;
3. That the amended complaint be, and hereby is, dismissed with prejudice;
4. Defendant's motion to strike jury demand is moot;
5. That costs herein be, and hereby are, assessed against the plaintiff; and
6. There is no just cause for delay.



JUDGE

CERTIFICATION

I, Ann K. Dunbar, Clerk of Courts, do hereby certify that file-stamped copies of the foregoing entry were sent to all parties or their counsel of record by ordinary U.S. Mail this 6th day of February, 1991.



Ann K. Dunbar, Clerk of Courts

Deputy Clerk