

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

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COMMON PLEAS COURT  
FRANKLIN COUNTY, OHIO  
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JESSIE D. CARROLL  
CLERK OF COURT

STATE OF OHIO, ex rel.  
LEE FISHER, ATTORNEY GENERAL  
OF OHIO  
30 East Broad Street  
Columbus, Ohio 43266-0410

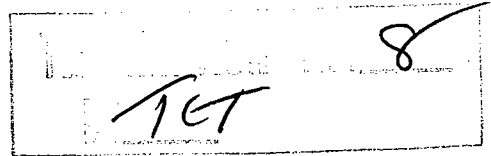
CASE NO. \_\_\_\_\_  
JUDGE 95 CV 401-04021

Plaintiff,

CONSENT ORDER

v.

OSF AMERICA, INC.  
3700 Lacon Road  
Hilliard, Ohio 43026



Defendant.

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Lee Fisher (hereinafter "Plaintiff") and Defendant OSF America, Inc. (hereinafter "OSF America") having consented to the entry of this Order,

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the parties hereto, and without admission of fact or liability by OSF America, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. DEFINITIONS

1. As used in this Order, the following terms are defined as follows:
  - a. "Air contaminant source", or "source", has the same meaning as that set forth in Ohio Rev. Code §3704.01(C) and Ohio Administrative Code Rules 3745-31-01(D) and 3745-35-01(B)(1).
  - b. "Consent Order", or "Order", means this Order and Final Judgment.
  - c. "Contractor" means the individual(s) or company or companies retained by or on behalf of the Defendant to undertake and complete the work required by this Consent Order. Each contractor and subcontractor shall be qualified to do those portions of the work for which it is retained.
  - d. "Facility" means Defendant OSF America's retail store fixture manufacturing, assembly and finishing facility and all related operations located at 3700 Lacon Road in Hilliard, Franklin County, Ohio.

- e. "O.A.C." means the Ohio Administrative Code.
- f. "Ohio EPA" means the Ohio Environmental Protection Agency.
- g. "Permit to Install", or "PTI", has the same meaning as set forth in O.A.C. Chapter 3745-31.
- h. "Permit to Operate", or "PTO", has the same meaning as set forth in O.A.C. Chapter 3745-35.

## II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the parties and the subject matter of this case. 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.

## III. PARTIES

3. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them. Defendant OSF America shall provide a copy of this Consent Order to each contractor it employs to perform work itemized herein, and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work.

## IV. SATISFACTION OF LAWSUIT

4. Plaintiff alleges in its Complaint, *inter alia*, that OSF America has operated several spray booths ("Sources K001 - K006), a lamination booth ("Source K007"), and a wood working line ("Source P001") at the Facility 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 all

violations under such laws alleged in the Complaint. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for violations not alleged in the Complaint, including violations which occur after the entry of this Consent Order. Also, nothing in this Consent Order shall be construed as an admission of fact or liability by OSF America.

## V. INJUNCTION

### A. Compliance With Permits and Permitting Requirements

5. OSF America agrees to refrain and is permanently enjoined from "installing" or "modifying" any "air contaminant source", as those terms are defined in O.A.C. Rule 3745-31-01(I), (J), and (C), at the 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(A), unless the source is exempted from the requirement to obtain a Permit to Install by the State of Ohio's statutes or regulations.

6. Except as authorized under Ohio Rev. Code §3704.03(F), OSF America agrees to refrain and is permanently enjoined from operating any air contaminant source, as that term is defined in O.A.C. Rule 3745-35-01(B)(1), at the Facility without first applying for and obtaining a Permit to Operate from Ohio EPA in accordance with O.A.C. Rule 3745-35-02(A), unless the source is exempted from the requirement to obtain a Permit to Operate by the State of Ohio's statutes or regulations.

7. OSF America agrees and is 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 it for air contaminant sources at the Facility. In addition, OSF America agrees and is enjoined to emit not more than sixteen (16) tons of organic compounds collectively from sources K001 through K007 during the one year period ending December 31, 1995, and during each successive one year period commencing January 1st and ending December 31st. The

emission limit imposed by the preceding sentence shall terminate upon commencement of incineration pursuant to paragraph 10(a) of this Consent Order, or the cessation of painting and finishing operations at the Facility pursuant to paragraph 10(b) of this Consent Order, whichever event occurs first.

8. OSF America agrees and is permanently and immediately enjoined and ordered to maintain records which adequately and accurately document the amount of actual emissions of organic compounds collectively emitted from Sources K001 through K007 for the time periods described in paragraph 7. Additionally, OSF America shall, on a quarterly basis, accurately identify and report to Ohio EPA's Central District Office the amount of organic compounds collectively emitted from Sources K001 through K007. Such quarterly reports shall be due thirty (30) days after the end of each quarter. For purposes of this paragraph, a year shall be divided into the following quarters:

1st Quarter:	January 1st through March 31st
2nd Quarter:	April 1st through June 30th
3rd Quarter:	July 1st through September 30th
4th Quarter:	October 1st through December 31st

**B. Modification of Stack Heights**

9. Defendant OSF America agrees and is hereby enjoined and ordered, by December 6, 1994, to complete construction of six (6) stacks for sources K001 through K007 that are a height of at least twenty-seven (27) feet measured from the Facility roof to the top of the stacks. All air contaminant emissions from those sources shall thereafter be emitted through the stacks.

C. Installation of Incinerator, or Cessation of Painting and Finishing Operations and the Emission of Organic Compounds, at the Facility

10. Defendant OSF America agrees, and is enjoined and ordered, within eighteen (18) months of the entry of this Order, to either:

- a. Decide to proceed with an expansion of the Facility and, in the context thereof, submit a plan and expeditious schedule for the installation of an incineration system that will minimize the organic compound emissions from Sources K001 through K007, and any other sources, and commit, in writing, to the Director of Ohio EPA and the State of Ohio Attorney General, to expeditiously install this incineration system at the Facility; or,
- b. Commit, in writing, to the Director of Ohio EPA and the State of Ohio Attorney General, to cease painting and finishing operations and the emission of organic compounds at the Facility.

11. If OSF America decides in paragraph 10, above, to commit to expanding the Facility and installing an incineration system at the Facility, OSF America shall submit an application to Ohio EPA for a Permit to Install for the system within three (3) months of the mailing of that commitment.

12. If Defendant OSF America decides in paragraph 10, above, to commit to installing an incineration system at the Facility, Defendant OSF America is enjoined and ordered, within one (1) month of the issuance of a Permit to Install for the system, should such a permit be issued by Ohio EPA, to initiate purchase of such an incineration system.

13. If Defendant OSF America decides in paragraph 10, above, to commit to installing an incineration system at the Facility, Defendant OSF America is enjoined and ordered, within nine (9) months of the initiation of the purchase of the incineration system, to complete the installation of such an incineration system at the Facility.

14. If Defendant OSF America decides in paragraph 10, above, to commit to installing an incineration system at the Facility, Defendant OSF America is enjoined and

ordered, within one month of completing the installation of the incineration system, to achieve and demonstrate compliance with the terms and conditions of the Permit to Install. OSF America and the State of Ohio agree that a permanent total enclosure and incineration system, with not less than a ninety percent (90%) destruction efficiency, represents best available technology for Sources K001 through K007 and any new painting and finishing operations. The State of Ohio and OSF America also agree, however, that actual destruction efficiency may range from ninety percent (90%) to ninety-eight percent (98%).

15. If Defendant OSF America decides in paragraph 10, above, to commit to installing an incineration system at the Facility, Defendant OSF America agrees and is enjoined and ordered, after installation of the incineration system, to emit not more than three point nine (3.9) tons of organic compounds per year collectively from all air contaminant sources at the Facility. The emission limit imposed by the preceding sentence shall remain in effect for as long as Defendant OSF America engages in painting and finishing operations at the Facility.

16. If Defendant OSF America decides in paragraph 10, above, to commit to cessation of painting and finishing operations and the emission of organic compounds at the Facility, and Defendant OSF America will be relocating its painting and finishing operations to another facility elsewhere in the United States, then Defendant OSF America is enjoined and ordered, within eighteen (18) months of the mailing of that commitment, to cease all painting and finishing operations, and the emission of organic compounds, at the Facility.

17. If Defendant OSF America decides in paragraph 10, above, to commit to cessation of painting and finishing operations, and the emission of organic compounds, at the Facility, and Defendant OSF America will not be relocating its painting and finishing operations to another facility elsewhere in the United States, then Defendant OSF America is enjoined and ordered, within four (4) months of the mailing of that commitment, to cease all painting and finishing operations, and the emission of organic compounds, at the Facility.

18. This Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing structures or facilities. Approval for any such construction or modification shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

#### VI. CIVIL PENALTY

19. Defendant OSF America shall pay a civil penalty of Three Hundred Forty-Six Thousand, Six Hundred Dollars (\$346,600.00). Of that amount, the payment of Two Hundred Seventeen Thousand, Six Hundred Dollars (\$217,600.00) is suspended upon the condition that OSF America complies with the terms of either paragraph 10(a) or paragraph 10(b) of this Consent Order - which paragraphs constitute supplemental environmental projects proposed by OSF America in lieu of the payment of this portion of the civil penalty. In addition, the payment of Eighteen Thousand Dollars (\$18,000.00) is suspended upon the condition that OSF America complies with paragraph 20 of this Consent Order. Finally, the payment of Eleven Thousand Dollars (\$11,000.00) is suspended upon the condition that OSF America complies with paragraph 9 of this Consent Order. The remaining penalty in the amount of One Hundred Thousand Dollars (\$100,000.00) shall be paid by delivering certified checks to Matt Sanders, Administrative Assistant (or his successor), Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, payable to the order of "Treasurer, State of Ohio", according to the following payment schedule:

- June 30, 1995	\$25,000.00
- December 31, 1995	\$25,000.00
- June 30, 1996	\$25,000.00
- December 31, 1996	\$25,000.00

20. The Hilliard City School District has reported to the State of Ohio that on occasion disagreeable odors are present at the Beacon Elementary School, 3600 Lacon Road, Hilliard, Franklin County, Ohio. The School District believes that the odors emanate from businesses in the vicinity of the school. OSF America asserts that it has evaluated whether the odors, in whole or in part, originate from the Facility, and further asserts that it has concluded, in its opinion, that it does not. Nevertheless, in an effort to cooperate with the State of Ohio, the School District and local government officials, OSF America agrees to pay Eighteen Thousand Dollars (\$18,000.00) by January 15, 1995, to the Hilliard City School District to defray the costs incurred by the District in conducting air sampling pertaining to the odors. This agreement by OSF America is not intended by OSF America to be an admission or concession that it has in any way contributed to the odors. Rather, OSF America's agreement is merely a positive response to requests by the State of Ohio and the School District that OSF America assist in the community's response to the odor problem.

#### VII. ENFORCEMENT COSTS

21. Defendant OSF America is ordered to pay the enforcement costs of relator Ohio Attorney General expended in pursuing the instant action, totaling Three-Thousand Dollars (\$3,000.00) by delivering to Matt Sanders, Administrative Assistant (or his successor), Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check for that amount, made payable to the order of "Treasurer, State of Ohio," within thirty (30) days after the entry of the instant Consent Order. Any check submitted in compliance with this section shall be in addition to and separate from any check submitted pursuant to any other section of this Consent Order.



### VIII. STIPULATED PENALTIES

22. In the event that OSF America fails to meet the deadlines set forth in paragraphs 9 through 17, OSF America is liable for and shall immediately pay stipulated penalties in accordance with the following schedules for each failure to meet a deadline:

- a. For each day of each failure to meet a deadline, up to thirty (30) days -- Five Hundred Dollars (\$500.00) per day.
- b. For each day of each failure to meet a deadline, from thirty-one (31) days to sixty (60) days -- One Thousand dollars (\$1,000.00) per day.
- c. For each day of each failure to meet a deadline, over sixty (60) days -- Two Thousand Dollars (\$2,000.00) per day.

Such stipulated penalty shall be paid by delivering certified checks in the appropriate amount, payable to the order of "Treasurer, State of Ohio," to Matt Sanders, Administrative Assistant (or his successor), Office of the Ohio Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

23. In the event OSF America violates the permanent injunction set forth in paragraphs 5 and 6 herein relating to the installation, modification and operation of air contaminant sources without the necessary permits, OSF America 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, OSF America shall pay a stipulated penalty of Five Thousand Dollars (\$5,000.00).
- b. For each air contaminant source operated in violation of Ohio Rev. Code Chapter 3704. and O.A.C. Chapter 3745-35, OSF America shall pay a stipulated penalty in accordance with the following schedule:
  1. For each day of operation without a permit, up to thirty (30) days -- Five Hundred Dollars (\$500.00) per day.
  2. For each day of operation without a permit, from thirty-one (31) to sixty (60) days -- One Thousand Dollars (\$1,000.00) per day.

3. For each day of operation without a permit, over sixty (60) days --  
Two Thousand Dollars (\$2,000.00) per day.

Such stipulated penalty shall be paid by delivering certified checks in the appropriate amount, payable to the order of "Treasurer, State of Ohio," to Matt Sanders, Administrative Assistant (or his successor), Office of the Ohio Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

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

24. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, OSF America shall notify the Ohio EPA in writing within ten (10) days after it becomes aware 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 OSF America to prevent or minimize the delay and the timetable by which measures will be implemented. OSF America will adopt all reasonable measures to avoid or minimize any such delay.

25. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, OSF America 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 OSF America 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 enforcement action, if any, is commenced by the Plaintiff. At that time, OSF America will bear the burden of proving any delay was or will be caused by circumstances entirely beyond the control of OSF America. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of OSF America or serve as a basis for an extension of

time under this Consent Order. Failure by OSF America to comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved and shall constitute a waiver of OSF America'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 OSF America qualifies for an extension of a subsequent compliance date or dates. OSF America must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order without a Force Majeure Clause does not constitute a waiver by OSF America of any rights or defenses it may have under applicable law.

#### **X. RETENTION OF JURISDICTION**

26. The court will retain jurisdiction of this action for the purpose of enforcing this Consent Order and resolving disputes arising under the Order. Both the Plaintiff and OSF America hereby reserve their rights under Rule 60(B) of the Ohio Rules of Civil Procedure.

XI. COSTS

27. Defendant OSF America is hereby ordered to pay the costs of this action.

IT IS SO ORDERED:

ENTERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 1995.

\_\_\_\_\_  
JUDGE, FRANKLIN COUNTY  
COURT OF COMMON PLEAS

APPROVED:

OSF AMERICA, INC.

BY:

Steven G. Gentry  
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BY:

Joseph T. Chaulk  
(Authorized Representative of Defendant, OSF America, Inc.)

TITLE:

VP/CFO