

**IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO**

STATE OF OHIO, ex rel.	:	CASE NO. CV 2002 06 1561
BETTY D. MONTGOMERY,	:	
ATTORNEY GENERAL OF OHIO	:	JUDGE ONEY
	:	
Plaintiff,	:	
	:	
v.	:	<u>CONSENT ORDER AND</u>
	:	<u>FINAL JUDGMENT ENTRY</u>
ARKAY PLASTICS, INC.	:	
	:	
Defendant.	:	

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Jim Petro (hereinafter “Plaintiff” or “State of Ohio”) and Defendant Arkay Plastics, Inc. (hereinafter “Defendant” or “Arkay”) having consented to the entry of this Order,

NOW THEREFORE, upon consent of the parties hereto, 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 set forth in R.C. 3704.01(C) and Ohio Adm. Code 3745-31-01(D) and 3745-35-01(B)(1).
 - b. “Consent Order” or “Order” means this Order and Final Judgment Entry.
 - c. "Director" means the Director of Environmental Protection.
 - d. “Facility” means Defendant’s molded plastic products manufacturing facility located at 240 American Way, Monroe, Butler County, Ohio.
 - e. “Permit to Install” or “PTI” has the same meaning as set forth in

Ohio Adm. Code Chapter 3745-31.

- f. "Permit to Operate" or "PTO" has the same meaning as set forth in Ohio Adm. Code 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, in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure, any person in active concert or participation with them who receives actual notice of this Consent Order whether by personal service or otherwise.

IV. SATISFACTION OF LAWSUIT

4. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendant for all violations alleged in the Complaint. This Consent Order shall not be construed to limit the authority of the State of Ohio to seek relief for violations not specifically alleged in the Complaint, including any violations that occur after the entry of this Consent Order. 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.

V. INJUNCTIVE RELIEF

- 5. Defendant agrees and is hereby enjoined and ordered to comply with R.C. 3704

and the regulations adopted thereunder, including all terms and conditions of all existing and future Permits to Install and Permits to Operate, and any subsequent renewals or modifications thereafter that pertain to the Facility. Specifically, Defendant agrees to refrain and is hereby enjoined from “installing” or “modifying” any “air contaminant source,” as those terms are defined by Ohio Adm. Code 3745-31-01(LL) and (VV), at the Facility without first applying for and obtaining a Permit to Install from the Director in accordance with Ohio Adm. Code. 3745-31-02. Defendant agrees and is hereby enjoined from operating any air contaminant source at the Facility without first applying for and receiving the appropriate operating permit from the Director in accordance with O.A.C. Chapters 3745-31, 3745-35 and/or 3745-77, as applicable. Further, Defendant agrees and is hereby permanently and immediately enjoined and ordered to comply with all terms and conditions of any Permits to Install and all Permits to Operate and any subsequent renewals or modifications thereof which have been or are issued to Defendant by the Director, including but not limited to all reporting/record keeping requirements and all emissions limitations.

VI. CIVIL PENALTY

6. Pursuant to R.C. 3704.06, Defendant shall pay to the State of Ohio a total civil penalty of Fifty-Seven Thousand, Six Hundred Twenty-Five Dollars (\$57,625), which amount shall be paid in twenty equal monthly installments according to the following payment schedule:
 - a. Defendant shall pay the first, second, third and fourth monthly installment of the civil penalty by delivering a company check on or before the 1st day of each month commencing on June 1, 2003 in the amount of Two Thousand Eight Hundred Eighty-One Dollars and Twenty-Five Cents (\$2,881.25) payable to the order of the “Ohio Department of Natural Resources, Division

of Forestry, State Forest Fund (Fund No. 509).” The purpose of the payments described above is to fund urban area tree-planting projects in Ohio, a supplemental environmentally beneficial project.

- b. Defendant shall pay the remaining sixteen monthly installments of the civil penalty by delivering a company check on or before the 1st day of each month commencing on October 1, 2003 in the amount of \$2,881.25 payable to the order of “Treasurer, State of Ohio.”
- c. All company checks required under this paragraph 6 shall be delivered to: Jena Suhadolnik (or her successor), Administrative Assistant, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

VII. STIPULATED PENALTIES

7. In the event that Defendant violates any requirement under paragraph 5 or 6 of this Consent Order, Defendant shall immediately 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, a stipulated penalty of Five Hundred Dollars (\$500) per day for each requirement not met shall be paid; for each day of failure to meet a requirement, from thirty-one (31) to sixty (60) days, a stipulated penalty of One Thousand Dollars (\$1,000) per day for each requirement not met shall be paid; for each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days, a stipulated penalty of One Thousand Five Hundred Dollars (\$1,500) per day for each requirement not met shall be paid; and for each day of failure to meet a requirement, over ninety (90) days, a stipulated penalty of Two Thousand Dollars (\$2,000) per day for each requirement not met shall be paid. Any such stipulated penalty shall be paid by

delivering to Jena Suhadolnik (or her successor), Administrative Assistant, Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a company check for the appropriate amount immediately upon the date of the violation, made payable to the Order of "Treasurer, State of Ohio." In the event Defendant fails to meet any of the requirements of this Consent Order, Defendant shall immediately be liable for payment of stipulated penalties imposed by this Consent Order without prior demand by the State of Ohio. The imposition, payment and collection of stipulated penalties pursuant to violations of this Order shall not prevent the Plaintiff from pursuing additional civil, criminal, or administrative remedies for violations of applicable laws. Nothing in this paragraph 7 shall prevent the State of Ohio from bringing an action in contempt against Defendant for noncompliance with this Consent Order, or, in lieu of accepting stipulated penalties, from seeking civil penalties pursuant to R.C. Chapter 3704 for violations of that Chapter or rules adopted thereunder.

VIII. RETENTION OF JURISDICTION

8. The court will retain jurisdiction of this action for the purpose of enforcing this Consent Order.

IX. COSTS

9. The Defendant is hereby ordered to pay the court costs of this action.

X. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

10. Upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three days of entering the judgment upon the journal, the clerk is directed to serve upon all parties, notice of the judgment and its date of entry upon the journal in

the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

XI. AUTHORITY TO ENTER INTO THE CONSENT ORDER

11. The signatory for the Defendant represents and warrants that he/she has been duly authorized to sign this Order and so bind the corporation to all terms and conditions thereof.

IT IS SO ORDERED

DATE

**JUDGE ONEY
BUTLER COUNTY
COURT OF COMMON PLEAS**

APPROVED:

**JIM PETRO
ATTORNEY GENERAL OF OHIO**

BY:

BY:

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