

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

STATE OF OHIO, ex rel.	:	CASE NO.
BETTY D. MONTGOMERY,	:	
ATTORNEY GENERAL OF OHIO	:	JUDGE
Environmental Enforcement Section	:	
30 E. Broad Street, 25th Floor	:	
Columbus, Ohio 43215-3428	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	<u>CONSENT ORDER AND</u>
PLAS-TANKS INDUSTRIES, INC.	:	<u>FINAL JUDGMENT ENTRY</u>
39 Standen Drive	:	
Hamilton, Ohio 45015	:	
	:	
Defendant.	:	

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Betty D. Montgomery (hereinafter “Plaintiff” or “State of Ohio”) and Defendant Plas-Tank Industries, Inc. (hereinafter “Defendant” or “Plas-Tanks”) having consented to the entry of this Order,

NOW, THEREFORE, without trial, admission, or determination of any issue of fact or law, and upon the 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 Consent Order and Final Judgment Entry.
- c. “Facility” means Defendant’s polyester resin plastic tank manufacturing facility located at 39 Standen Drive, Hamilton, Butler County, Ohio.
- d. “Ohio EPA” means the Ohio Environmental Protection Agency.
- 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 Defendant, its 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 Defendant 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. Nothing in this Order shall 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 filing of this Consent Order.

V. PERMANENT INJUNCTION

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 any existing and future Permit to Install, Permit to Operate, and Title V Permit and any subsequent renewals or modifications thereafter. 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), (VV) and (D), respectively, 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, as applicable. In addition, Defendant agrees and is hereby enjoined from operating any air contaminant source at the Facility without first complying with the requirements of Ohio Adm. Code Chapters 3745-31, 3745-35 and 3745-77 and Ohio Adm. Code 3745-21-07(G)(2), as applicable.

VI. PRELIMINARY INJUNCTION

6. Within sixty (60) days of the date of entry of this Consent Order, Defendant agrees and is hereby enjoined and ordered to complete installation and commence operation of metering equipment (i.e. that measures total flow and not instantaneous flow) to measure the amount, by weight or volume, of all resins and gel coats used at five of six stations (identified as emissions units P001 through P005 in permit to install no. 14-4022) at the Facility and to complete installation and commence operation of measuring equipment to measure the amount, by weight or volume, of resins and gel coats employed in emissions unit P006 and cleanup materials employed in emissions units P001 through P006. No later than thirty (30) days

following Defendant's completion of the installation of the metering equipment and the measuring equipment, Defendant shall submit to the Hamilton County Department of Environmental Services, written confirmation of the installation and operation of the metering and measuring equipment and documentation of the total cost to Defendant to purchase and install such equipment.

Defendant shall calibrate the metering equipment to measure the amount, by weight or volume, of all resins and gel coats used at emissions units P001 through P005 as necessary or appropriate to maintain the accuracy of the measurements guaranteed or specified by the manufacturer of the metering equipment or to an accuracy of within plus or minus five percent (5%) of the true value, whichever is more stringent. Defendant shall calibrate the measuring equipment to measure the amount, by weight or volume, of all resins and gel coats employed in emissions unit P006 and cleanup materials employed in emissions units P001 through P006 as necessary or appropriate to maintain the accuracy of the measurements guaranteed or specified by the manufacturer of the measuring equipment or to an accuracy of within plus or minus five percent (5%) of the true value, whichever is more stringent.

Promptly upon completion of installation and initial operation of the metering and measuring equipment described above, Defendant shall provide to the Hamilton County Department of Environmental Services the following information: the name of the manufacturer of the metering equipment, the make and model of the metering equipment, calibration data (e.g., volume of coating per pump stroke), a copy of the manufacturer's specifications and warranty for the accuracy of the metering equipment, and the actual accuracy of the material measurements (by weight or volume) recorded for the metering and measuring equipment. Calibration and accuracy tests consistent with such specifications shall be conducted semi-annually and

submitted to the Hamilton County Department of Environmental Services. If the manufacturer does not warrant or specify the calibration data or the accuracy of the material measurements for the metering and measuring equipment, Defendant shall also perform calibration and accuracy tests on the equipment on a monthly basis during the first six (6) months of its operation.

Calibration tests for the metering equipment for emissions units P001 through P005 shall include two resins (the highest and lowest density resins), two gel coats (the highest and lowest density gel coats), and cleanup material. Defendant shall submit the test results for the six-month period to the Hamilton County Department of Environmental Services within 210 days from the entry date of this Consent Order. Thereafter, calibration and accuracy tests shall be conducted semi-annually and submitted to the Hamilton County Department of Environmental Services. The semi-annual calibration and accuracy tests shall be due on January 30 and July 30 of each calendar year. If approval from the Hamilton County Department of Environmental Services cannot be obtained, then Defendant shall revert to performing calibration and accuracy tests on the equipment on a monthly basis until such time as the Defendant can secure approval from the Hamilton County Department of Environmental Services to perform calibration and accuracy tests on the equipment on a semi-annual basis.

Promptly upon completion of installation and initial operation of such metering and measuring equipment, Defendant agrees and is hereby enjoined and ordered to use the metering and measuring equipment to monitor, record, and report all required information for the emissions units identified above, unless otherwise specified in any final permits to install, permits to operate and Title V permits issued by the Director and any subsequent renewals or modifications thereafter.

VII. CIVIL PENALTY

7. Pursuant to R.C. 3704.06, Defendant shall pay to the State of Ohio a total civil penalty of Seventy Thousand, Seven Hundred and Fifty Dollars (\$70,750.00), which amount shall be paid in eighteen (18) monthly installments according to the following payment schedule:

- a. Defendant shall pay the first monthly installment of the civil penalty by delivering a company check on or before January 15, 2003 in the amount of Three Thousand Six Hundred and Fifty Dollars (\$3,650.00) payable to the order of the "Ohio Department of Natural Resources, Division of Forestry, State Forest Fund (Fund No. 509)". Defendant shall pay the second, third and fourth monthly installment of the civil penalty by delivering a company check on or before February 15, 2003, March 15, 2003, and April 15, 2003, respectively, each in the amount of Three Thousand and Five Hundred Dollars (\$3,500.00) and each 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 Fifty-Six Thousand Six Hundred Dollars (\$56,600.00) of the civil penalty in fourteen monthly installments as follows: Defendant shall deliver a company check in the amount of Four Thousand and Six Hundred Dollars (\$4,600.00) payable to the order of "Treasurer, State of Ohio" on or before May 15, 2003. Defendant shall pay the remaining thirteen installments of the civil penalty by delivering company checks each in the amount of Four Thousand Dollars (\$4,000.00) and payable to the order of

“Treasurer, State of Ohio” on or before the fifteenth day of each month beginning on June 15, 2003, with the final payment due on or before June 15, 2004.

- c. All company checks required under this paragraph 7 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.

VIII. STIPULATED PENALTIES

8. In the event that Defendant violates any requirement under paragraphs 5, 6 or 7 of this Consent Order, Defendant shall immediately be liable to the State of Ohio for payment of stipulated penalties, without prior demand by the State of Ohio, in the amount of One Thousand Dollars (\$1,000.00) per each day of each violation. 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.” 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.

IX. FORCE MAJEURE

9. 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’s Central Office and Hamilton County Department of Environmental Services, in writing within ten (10)

calendar days 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.

10. 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, 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 and conditions 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, 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 9 shall render this Paragraph 10 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

11. The Court will retain jurisdiction of this action for the purpose of enforcing this Consent Order.

XI. TERMINATION

12. No earlier than three (3) years after Defendant has complied with the injunctive provisions and other requirements contained in paragraphs 6 and 7 of this Consent Order, Defendant may move the Court, pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure, to terminate the injunctive relief provisions and other requirements contained in paragraphs 6 and 7 of this Consent Order. Termination of paragraph numbers 6 and 7 shall only be effected by order of the Court upon a showing by Defendant that: (1) Defendant has been in continuous compliance with all the requirements of paragraph number 6 and 7 of this Consent Order for such three-year period; (2) Defendant has been in compliance with all terms and conditions of all applicable permits to install and operating permits and all subsequent modifications or amendments thereto for a three-consecutive-year period; and (3) Defendant has paid all penalties required by this Consent Order for such three year period. Plaintiff takes no position with regard to such motion at this time, and reserves any rights it may have to oppose the motion. Such an order may also be granted upon joint motion of the parties.

XII. COSTS

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

XIII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

14. Upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) 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.

XIV. AUTHORITY TO ENTER INTO THE CONSENT ORDER

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

IT IS SO ORDERED

DATE

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

APPROVED:

**BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO**

BY:

BY:

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