

IN THE COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY,
ATTORNEY GENERAL OF OHIO
30 E. Broad Street
Columbus, Ohio 43215

Plaintiff,

v.

ASHLEY BROOKS CORPORATION,
d.b.a. World Agritech Corporation
c/o Statutory Agent
2896 State Route 232
Bethel, Ohio 45106

and

EASTERN ENTERPRISE
CORPORATION,
d.b.a. International Trailer Corporation
c/o Statutory Agent
2896 State Route 232
Bethel, Ohio 45106,

and

INTERNATIONAL TRAILER
CORPORATION,
c/o Statutory Agent
2896 State Route 232
Bethel, Ohio 45106,

and

INTERNATIONAL MACHINERY
CORPORATION,
c/o Statutory Agent
2896 State Route 232
Bethel, Ohio 45106

Defendants.

CASE NO. 2001 CVH 782

JUDGE
JUDGE McBRIDE

CONSENT ORDER AND
FINAL JUDGMENT ENTRY

2001 JUL 16 AM 11:11
DAVID J. JONES
CLERK OF COURT
CLERMONT COUNTY, OHIO

FILED

Plaintiff, the State of Ohio, by its Attorney General Betty D. Montgomery, at the written request of Christopher Jones, the Director of Environmental Protection, having filed a Complaint seeking injunctive relief and civil penalties from Defendants Ashley Brooks Corporation, Eastern Enterprise Corporation, International Trailer Corporation, and International Machinery Corporation (hereinafter "Defendants"), for violations of R.C. Chapter 3704 and the rules promulgated thereunder, and the parties 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

- I. As used in this Order, the following terms are defined as follows:
 - a. "Bethel facility" means the farm equipment and multipurpose trailer manufacturing operation located at 2896 State Route 232 in Bethel, Clermont County, Ohio.
 - b. "Amelia facility" means the farm equipment painting facility located at 3204 Marshall Drive in Amelia, Clermont County, Ohio.
 - c. "Ohio EPA" means the Ohio Environmental Protection Agency.
 - d. "Director" means the Director of Environmental Protection.
 - e. "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).
 - f. "Permit to Operate" or "PTO" has the same meaning as set forth in Ohio Adm. Code Chapter 3745-35.
 - g. "Permit to Install" or "PTI" has the same meaning as set forth in Ohio Adm. Code Chapter 3745-31.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim for which relief can be granted pursuant to R.C. Chapter 3704. Venue is proper in this Court.

III. PERSONS BOUND

3. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and, in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure, their officers, agents, servants, employees, attorneys, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Consent Order whether by personal service or otherwise.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

4. The Plaintiff alleges in its Complaint that Defendants have owned and operated the Bethel and Amelia facilities in such a manner as to result in permitting, emission and record keeping violations of the air pollution control laws and regulations of the State of Ohio. Without trial, admission, or determination of any issue of fact or law, and upon the consent of the parties hereto, Defendants agree to comply with the terms of this Consent Order which shall constitute full satisfaction of any civil liability of Defendants with respect to the Bethel and Amelia facilities against Plaintiff for the claims alleged in the Plaintiff's Complaint.

5. This Consent Order shall not be construed to limit the authority of the Plaintiff to seek relief for violations not alleged in the Complaint, nor shall this Consent Order bar the State of Ohio from bringing any action against the Defendants for any violations which occur after the entry of this Order. Nothing in this Consent Order shall be construed to relieve Defendants of

their obligation to comply with applicable federal, state or local statutes, regulations, or ordinances.

V. PERMANENT INJUNCTION

6. Defendants are hereby enjoined and ordered to immediately and permanently comply with all terms and conditions of Defendants' currently effective Permits to Install and Permits to Operate and any subsequent renewals or modifications thereafter. Defendants are further enjoined from operating the Bethel and Amelia facilities in violation of Ohio Adm. Code 3745-21-07, 3745-21-09, 3745-31-02(A) and 3745-35-02(A).

VI. CIVIL PENALTY

7. Pursuant to R. C. 3704.06, Defendants shall pay to the State of Ohio a total civil penalty of one hundred twenty six thousand and nine hundred ninety dollars (\$126,990.00).

8. The civil penalty shall be paid in eight (8) equal installments of fifteen thousand eight hundred seventy-three dollars and seventy-five cents (\$15,873.75) over a period of one year from the date of entry of this Consent Order according to the following payment schedule:

- a. Defendants shall pay the first installment of the civil penalty in cash by delivering a certified check for \$15,873.75 payable to the order of the "Ohio Department of Natural Resources, Division of Forestry, State Forest Fund (Fund No. 509) on or before July 15, 2001. The purpose of this payment is to fund urban area tree-planting projects in Ohio, a supplemental environmentally beneficial project. If Defendants do not, by July 15, 2001, pay the \$15,873.75 to fund the supplemental environmentally beneficial project, Defendants shall pay this amount as its civil penalty by delivering a

certified check for \$15,783.75 payable to the order of "Treasurer, State of Ohio" on or before July 15, 2001.

- b. Defendants shall pay the second installment of the civil penalty in cash by delivering a certified check for \$9,524.25 payable to the order of "Treasurer, State of Ohio" on or before August 15, 2001 and a certified check for \$6,349.50 payable to the order of the "Ohio Department of Natural Resources, Division of Forestry, State Forest Fund (Fund No. 509) on or before August 15, 2001. The purpose of the payment in the amount of \$6,349.50 is to fund urban area tree-planting projects in Ohio, a supplemental environmentally beneficial project. If Defendants do not, by August 15, 2001, pay the \$6,349.50 to fund the supplemental environmentally beneficial project, Defendants shall pay this amount as its civil penalty by delivering a certified check for \$6,349.50 payable to the order of "Treasurer, State of Ohio" on or before August 15, 2001.
- c. Defendants shall pay the third installment of the civil penalty in cash by delivering a certified check for \$15,873.75 payable to the order of "Treasurer, State of Ohio" on or before September 15, 2001.
- d. Defendants shall pay the fourth installment of the civil penalty in cash by delivering a certified check for \$15,873.75 payable to the order of "Treasurer, State of Ohio" on or before October 15, 2001.
- e. Defendants shall pay the fifth installment of the civil penalty in cash by delivering a certified check for \$15,873.75 payable to the order of "Treasurer, State of Ohio" on or before April 15, 2002.

- f. Defendants shall pay the sixth installment of the civil penalty in cash by delivering a certified check for \$15,873.75 payable to the order of "Treasurer, State of Ohio" on or before May 15, 2002.
- g. Defendants shall pay the seventh installment of the civil penalty in cash by delivering a certified check for \$15,873.75 payable to the order of "Treasurer, State of Ohio" on or before June 15, 2002.
- h. Defendants shall pay the eighth and final installment of the civil penalty in cash by delivering a certified check for \$15,873.75 payable to the order of "Treasurer, State of Ohio" on or before July 15, 2002.

All certified checks required under this paragraph 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

9. In the event that Defendants violate the permanent injunction set forth in Paragraph six of this Consent Order relating to the installation, modification and/or operation of air contaminant sources without necessary permits, or the operation of the Amelia and Bethel facilities in violation of Ohio Adm. Code 3745-21-07(G)(2), Ohio Adm. Code 3745-21-09(B)(3)(h), or Ohio Adm. Code 3745-21-09(U)(1)(c), Defendants shall be liable for and 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, Defendants shall pay a stipulated penalty of five thousand dollars (\$5,000.00) per source installation/modification.

b. for each day for which each air contaminant source is operated without first obtaining the applicable operating permit, or operated in violation of a permit or this Consent Order, Defendants shall pay a stipulated penalty of five hundred dollars (\$500.00) per day of such operation per source.

c. for each day for which each air contaminant source is operated in violation of Ohio Adm. Code 3745-21-07(G)(2) or Ohio Adm. Code 3745-21-09(U)(1)(c), Defendants shall pay a stipulated penalty of five hundred dollars (\$500.00) per day of such operation per source.

d. for each day for which each air contaminant source is operated in violation of Ohio Adm. Code 3745-21-09(B)(3)(h), Defendants shall pay a stipulated penalty of five hundred dollars (\$500.00) per day of such operation per source.

10. In the event Defendants fail to meet any of the requirements of this Consent Order, the Defendants shall immediately be liable for payment of stipulated penalties imposed by this Consent Order without prior demand by the State of Ohio. Payment of all stipulated penalties shall be paid by Defendants by delivering to Plaintiff, c/o Jena Suhadolnik, Administrative Assistant, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check in that amount, payable to the Order of "Treasurer, State of Ohio," immediately upon the occurrence of the violation giving rise to the penalty.

11. The imposition, payment and collection of stipulated penalties pursuant to violations of this Consent Order shall not prevent the State from pursuing additional remedies, civil, criminal or administrative, for violations of applicable laws.

VIII. TERMINATION OF STIPULATED PENALTIES

12. The provisions of this Consent Order set forth in Section VII requiring the payment of stipulated penalties may be terminated upon a demonstration by Defendant of compliance with all of the following requirements:

- a. Defendants have paid all penalties required by this Consent Order.
- b. For a period of twelve (12) months, Defendants have achieved and maintained compliance with the terms of this Consent Order, the terms and conditions of all permits issued to Defendants by Ohio EPA.

13. Termination of the stipulated penalty provisions of Paragraph 9 of this Consent Order shall only be by order of the Court upon application by any party and a demonstration that the conditions outlined in Paragraph 12 of this Consent Order have been met. Notwithstanding Defendants' satisfaction of the requirements found in Paragraph 12 of this Consent Order, the State of Ohio retains the right to object to or contest any such request from Defendant.

IX. RETENTION OF JURISDICTION

14. The Court will retain jurisdiction of this action for purposes of enforcing this Consent Order.

X. COURT COSTS

15. The Defendants are hereby ordered to pay all court costs of this action.

XI. TERMINATION OF CONSENT ORDER

16. If within three (3) years after the entry of this Consent Order Defendants determine that they have substantially complied with all of the requirements of the Consent Order, they may submit to the Plaintiff a certification of compliance which contains the

following language: *I certify under the penalty of law that I have personally examined and am familiar with the information contained in or accompanying this certification, and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information contained in or accompanying this certification is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment.*

17. If Plaintiff concurs that Defendants have satisfied the requirements of this Consent Order, the parties shall file a joint motion with the Court to terminate this Consent Order. Upon approval of the Court, this Consent Order and the obligations thereunder shall terminate.

18. If Plaintiff does not agree that Defendants have substantially complied with and/or fully satisfied the requirements of this Consent Order in accordance with Paragraph 17, Defendants may file a motion pursuant to 60(B) of the Ohio Rules of Civil Procedure requesting that the Court terminate this Order. Plaintiff reserves the right to respond to any motion to terminate this Order which Defendants may file.

XII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

19. 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.

XIII. AUTHORITY TO ENTER INTO THE CONSENT ORDER

20. Each signatory for the Defendants 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

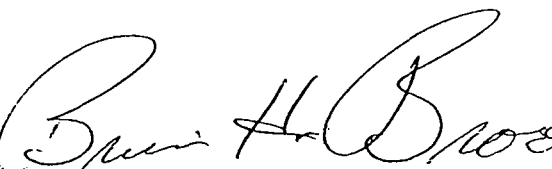
DATE

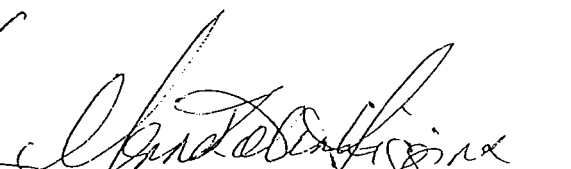
7/16/01


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

APPROVED:

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


Brian H. Brooks
General Manager,
Ashley Brooks Corporation, d.b.a.
World Agritech Corporation;
Eastern Enterprise Corporation, d.b.a.
International Trailer Corporation;
International Trailer Corporation;
International Machinery Corporation
2896 State Route 232
Bethel, Ohio 45106
(513) 734-4317
Authorized Representative for Defendants


Yanna Robson-Higgins (0069023)
Bryan F. Zima (0001053)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, OH 43215-3428
Phone: (614) 466-2766
Facsimile: (614) 644-1926
Attorneys for Plaintiff State of Ohio