

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO, *ex rel.*,
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

CASE NO. 96-CV-887

JUDGE W. WYATT MCKAY

Plaintiff,

vs.

BLACK ROCK, INC.
1510 South State Street
Girard, Ohio 44420

and

ROBERT BUCCI
100 West Street
Niles, Ohio 44446

Defendants.

CONSENT ORDER

Plaintiff, the State of Ohio, by its Attorney General Betty D. Montgomery at the written request of Donald R. Schregardus, Director of the Ohio Environmental Protection Agency, has filed a Complaint seeking injunctive relief and civil penalties from Defendants Black Rock, Inc. (hereinafter referred to as "Black Rock") and Mr. Robert Bucci (hereinafter "Mr. Bucci") for violations of Ohio Revised Code (hereinafter "O.R.C.") Chapter 3704. and the regulations adopted thereunder, and both parties have consented to the entry of this Order.

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Defendants Black Rock and Mr. Bucci deny Plaintiff's allegations contained in the Complaint and do not herein admit any violations described herein or in the Complaint or liability to Plaintiff arising out of the allegations described herein or in the Complaint. Defendants Black Rock's and Mr. Bucci's participation in the settlement of this case shall not be considered an admission of liability for any purpose.

In order to resolve Defendants Black Rock's and Mr. Bucci's alleged violations described herein or in the Complaint and in order to resolve Defendants Black Rock's and Mr. Bucci's exposure to civil liability as a result of these alleged violations, Defendants shall comply with the terms of this Consent Order, and shall pay the civil penalty contained herein.

Therefore, without trial, admission, or determination of any issue of fact or law, 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. "Facility" means the asphalt plant located at 1510 South State Street, Girard, Ohio, 44420.
- b. "Ohio EPA" means the Ohio Environmental Protection Agency.
- c. "Director" means the Director of the Ohio EPA.
- d. "Air contaminant source" or "source" has the same meaning as set forth in O.R.C. § 3704.01(C) and O.A.C. Rules 3745-31-01(D) and 3745-35-01(B)(1).
- e. "Permit to Install" or "PTI" has the same meaning as set forth in O.A.C. Chapter 3745-31.
- f. "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 for which relief can be granted, and 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, 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 Order whether by personal service or otherwise.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

4. Plaintiff alleges in its Complaint that Defendants Black Rock and Mr. Bucci have operated the Facility in such a manner as to result in violations of air pollution laws of the State of Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendants Black Rock and Mr. Bucci to the Plaintiff for the violations 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 from bringing any action against the Defendants for any violations or conditions which occur after the entry of this Order. Nothing in this Consent Order shall be construed to relieve Defendants of their obligations to comply with applicable federal, state or local statutes, regulations, or ordinances.

VI. PERMANENT INJUNCTION

A. Permits To Install

6. Defendants Black Rock and Mr. Bucci agree and are hereby ordered to comply with the terms and conditions of the PTI issued by the Director on May 28, 1993 for the air contaminant sources at their facility. Defendants further agree to refrain and are hereby permanently enjoined from "installing" or "modifying", within the meaning of O.A.C. Rules 3745-1-01(I) and (J), any air contaminant source without obtaining a PTI from the Director prior to commencement of such installation or modification. Further, Defendants agree and are hereby ordered to comply with any PTIs for air contaminant sources issued to them by the Director, including any and all terms and conditions associated with or included in those PTIs.

B. Permits To Operate

7. Defendants Black Rock and Mr. Bucci agree and are hereby ordered to comply with the terms and conditions of the PTO issued by the Director on January 7, 1994 for their air contaminant sources at their facility. Defendants further agree to refrain and are permanently enjoined from operating any air contaminant source at the Facility without first obtaining a PTO for such source from the Ohio EPA prior to such operation, in accordance with O.R.C. §3704.03(G). Further, Defendants agree and are hereby ordered to comply with any PTOs for air contaminant sources issued to them by the Ohio EPA, including any and all terms and conditions associated with or included in these PTOs.

VI. CIVIL PENALTY

8. Pursuant to O.R.C. § 3701.06(C), Defendants shall pay Five Thousand Dollars (\$5,000.00) to the State of Ohio. Payment shall be made in accordance with the following schedule, by delivering a cashier's or certified check or money order payable to "Treasurer, State of Ohio" for the above-stated amount to: Matt Sanders, Administrative Assistant, Office of the Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428:

\$1000.00	30 days after the date of entry of this Order
\$1000.00	60 days after the date of entry of this Order
\$1000.00	90 days after the date of entry of this Order
\$1000.00	120 days after the date of entry of this Order
\$1000.00	150 days after the date of entry of this Order

VII. RETENTION OF JURISDICTION

9. The Court will retain jurisdiction of this action for purposes of overseeing and enforcing the implementation of this Consent Order.

VIII. COURT COSTS

10. Defendants Black Rock and Mr. Buccell shall pay any court costs.

IT IS SO ORDERED.

W. Wyatt McKay

JUDGE W. WYATT MCKAY, Court of Common Pleas,
Trumbull County

11/14/88

DATE

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