

COPY

IN THE COURT OF COMMON PLEAS
ERIE COUNTY, OHIO

FILED COURT
COMMON PLEAS
ERIE COUNTY, OHIO
2009 OCT 19 PM 4:08
BARBARA J. JOHNSON
CLERK OF COURTS

STATE OF OHIO, <i>ex rel.</i>	:	
RICHARD CORDRAY	:	
ATTORNEY GENERAL OF OHIO	:	CASE NO. 2007-CV-0647
	:	
Plaintiff,	:	JUDGE R. E. BINETTE
	:	
v.	:	
	:	<u>CONSENT ORDER AND</u>
CERTAINT EED CORPORATION	:	<u>FINAL JUDGMENT ENTRY</u>
	:	
Defendant.	:	

Plaintiff State of Ohio, on relation of its Attorney General Richard Cordray, at the written request of the Director of Environmental Protection ("Director"), filed a Complaint seeking injunctive relief and civil penalties from Defendant CertainTeed Corporation ("Defendant") for violations of Revised Code ("R.C.") Chapter 3704 and the rules promulgated thereunder, and both parties have consented to the entry of this Order.

Therefore, without the trial, admission, or determination of any issue of fact, law, or liability, 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. "Facility" means Defendant's Plant located at 11519 U.S. Route 250 North, Milan, Erie County, Ohio, 44846, which is assigned Ohio EPA Facility Identification No. 0322000017.
 - b. "Ohio EPA" means the Ohio Environmental Protection Agency.

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- c. "Director" means the Director of the Ohio Environmental Protection Agency.
- d. "Permit to Install" has the same meaning as set forth in Ohio Adm.Code Chapter 3745-31.
- e. "Title V permit" has the same meaning as set forth in Ohio Adm.Code Chapter 3745-77.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapter 3704 and the rules adopted thereunder. This Court has jurisdiction over the parties. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted.

III. PERSONS BOUND

3. The provisions of this Consent Order shall apply to and be binding upon Plaintiff and Defendant, their agents, officers, directors, members, employees, assigns, successors-in-interest, heirs, and any person acting in concert, privity, or participation with them who receives actual notice of this Consent Order, whether by personal service or otherwise.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

4. Plaintiff alleges in its Complaint that Defendant has owned and operated 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 of Defendant to the 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 from bringing any action against Defendant for any violations that occur after the entry of this Order. Nothing in this Consent Order shall be construed to relieve Defendant of its obligations to comply with applicable federal, state, or local statutes, regulations, or ordinances.

V. PERMANENT INJUNCTION

6. Defendant is ordered and permanently enjoined to comply fully with R.C. Chapter 3704 and the rules promulgated thereunder.

7. Except as otherwise provided in this Order, Defendant is ordered and enjoined from installing and/or operating any air contaminant source without first complying with the permitting requirements of Ohio Adm.Code Chapters 3745-31 and 3745-77.

Title V Permit Application

8. Defendant agrees and is enjoined and ordered to submit a complete and approvable Title V permit application for the Facility, in accordance with Ohio Adm.Code Chapter 3745-77. The application required by this Paragraph shall be submitted within 90 days of the issuance of the plant-wide Permit-to-Install for the Facility, which will represent the Director's final action on Defendant's Permit-to-Install application.

Emissions Monitoring

9. Defendant shall continue to operate, monitor and maintain the existing bag leak detection system for its Line 2 filler heater baghouse pursuant to the procedures submitted to and received by the Ohio EPA on April 30, 2008.

10. Defendant shall continue to follow the preventative maintenance and malfunction abatement plan for its Line 2 filler heater baghouse, the latest proposal of which was received by Ohio EPA on June 5, 2008.

11. Within 90 days of the entry of this Order, Defendant shall submit a supplemental plan for measuring and monitoring the organic compound content of all stone received from Hanson Aggregates Quarry, 9220 Portland Road, Castalia, Ohio 44824, the latest proposal of which was received by Ohio EPA on September 29, 2008, and shall implement such plan immediately upon Ohio EPA's approval of the same. Defendant's supplemental plan shall ensure compliance with the organic compound emissions limitations established for the filler heaters and prevent visible emissions of condensable organic compounds from the baghouses on the filler heaters.

Title V Fee Emission Reports and Fees

12. Within 180 days of the entry of this Order, Defendant shall submit to Ohio EPA Title V Fee Emission Reports for the Facility, for the years 1993 through 1996.

13. Within 180 days of Ohio EPA's final assessment and approval of the Title V Fee Emission Reports described in Paragraph 12, Defendant shall pay the difference between the non-Title V fees already paid and the Title V fees not yet paid. Such fees shall be paid as follows:

- a. Defendant shall tender a cashier's or certified check payable to the order

of "Treasurer, State of Ohio" to Ohio EPA, Department L-2711, Columbus, Ohio 43260-2711. The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 330261."

VI. CIVIL PENALTY

14. Pursuant to and in accordance with R.C. 3704.06, Defendant is enjoined and ordered to pay a total civil penalty of \$230,000.00 to the State of Ohio. Such penalty shall be paid as follows:

- a. Defendant shall, within thirty (30) days of receipt of entry of this Consent Order, fund a supplemental environmental project ("SEP") by making a contribution in the amount of twenty (20) percent – \$46,000.00 – of the total civil penalty to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Defendant shall tender a certified check payable to the order of "Treasurer, State of Ohio" for \$46,000.00. The certified check shall specify that such monies be deposited in Fund 5CD0 established by Ohio EPA for the Clean Diesel School Bus Program. The certified check, together with a letter identifying Defendant, shall be delivered to Karen Pierson or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 330261."

- b. Defendant shall pay the remaining eighty (80) percent – \$184,000.00 – of the total civil penalty by cashier's or certified check payable to the order of "Treasurer, State of Ohio" and delivered within thirty (30) days of entry of this Consent Order to Karen Pierson or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 330261."

VII. STIPULATED PENALTIES

15. In the event that Defendant fails to comply with any requirement or deadline contained in this Consent Order or any requirement or deadline contained in any document approved in accordance with this Consent Order, Defendant is liable for and shall pay stipulated penalties in accordance with the following schedule for each failure to comply:

- a. For each day of each failure to comply with a requirement or deadline of this Consent Order, up to and including 30 days – \$250.00 per day for each requirement or deadline not met.
- b. For each day of each failure to comply with a requirement or deadline of this Consent Order, from 31 to 60 days – \$500.00 per day for each requirement or deadline not met.

- c. For each day of each failure to comply with a requirement or deadline of this Consent Order, over 60 days – \$750.00 per day for each requirement or deadline not met.

16. In the event that 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. Payment of all stipulated penalties shall be paid by Defendant by its delivery to Plaintiff, c/o Karen Pierson or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, 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.

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

VIII. SUBMITTAL OF DOCUMENTS

18. All documents required to be submitted to the Central Office of Ohio EPA and/or the Northwest District Office of Ohio EPA pursuant to this Consent Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio Environmental Protection Agency
Division of Air Pollution Control
Attn: Tom Kalman
Manager, Enforcement Section
Lazarus Government Center
50 West Town Street
Columbus, Ohio 43215

Ohio Environmental Protection Agency
Division of Air Pollution Control, Northwest District Office
Attn: Jan Tredway
347 North Dunbridge Road
Bowling Green, Ohio 43402

19. All documents required to be submitted to Defendant pursuant to this Consent Order shall be submitted to the following addresses, or to such addresses as Defendant may hereafter designate in writing:

Mark Hyde
Plant Manager – Roofing Products
CertainTeed Corporation
11519 US 250 N
Milan, Ohio 44846

Lauren P. Alterman, Esq.
Saint-Gobain Corporation
750 E. Swedesford Road
Valley Forge, Pennsylvania 19482

IX. TERMINATION

20. No earlier than two (2) years from the date of the Court's entry 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 and stipulated provisions contained in Sections V and VII, respectively, of this Consent Order. Termination of the provisions in Sections V and VII of this Consent Order shall only be effected by order of the Court upon a showing by Defendant that it has been in compliance with the obligations of this Consent Order for the previous two (2) 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.

X. POTENTIAL FORCE MAJEURE

21. If any event occurs which causes or may cause a delay of any requirement of the Consent Order, Defendant shall notify the Ohio EPA in writing within 10 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.

22. In any action by the State of Ohio to enforce any of the provisions of the Consent Order, Defendant may raise that it is entitled to a defense that its conduct was caused by reasons beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances, unusually severe weather conditions, and terrorism. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and the State of Ohio 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 State of Ohio. At that time the burden of proving that any delay was or will be caused by circumstances beyond the control of Defendant shall rest with Defendant. Unanticipated or increased costs associated with the implementation of any action required by the Consent Order or changed financial circumstances shall not constitute circumstances beyond the control of Defendant, or serve as a basis for an extension of time under the Consent Order. Failure by Defendant 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 but shall not constitute a waiver of Defendant's right to request an extension of its obligations under the Consent

Order based on such incident. An extension of one date based on a particular incident does not mean that Defendant qualifies for an extension of a subsequent date or dates. Defendant must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought.

XI. RETENTION OF JURISDICTION

23. This Court shall retain jurisdiction of this action for the purpose of enforcing this Consent Order.

XII. COSTS

24. Defendant shall pay the court costs of this action.

XIII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

25. Upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within 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 Civ.R. 5(B), and note the service in the appearance docket.

XIV. AUTHORITY TO ENTER INTO THE CONSENT ORDER

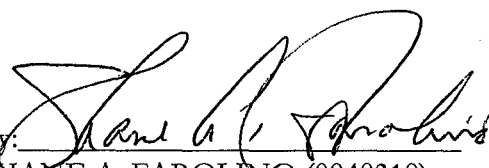
26. Each signatory for a corporation represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof.

IT IS SO ORDERED:



JUDGE BINETTE
ERIE COUNTY
COURT OF COMMON PLEAS

10/19/2009
Date

APPROVED:

By: 
SHANE A. FAROLINO (0040310)
ROETZEL & ANDRESS
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Akron, OH 44308
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Facsimile: (330) 376-4577
sfarolino@ralaw.com

*Attorney for Defendant,
CertainTeed Corporation*

By: 
Its: VICE PRESIDENT, OPERATIONS

*Authorized Representative of Defendant,
CertainTeed Corporation*

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

By: 
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