

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

STATE OF OHIO, ex rel.,
LEE FISHER
ATTORNEY GENERAL OF OHIO

Plaintiff,

vs.

CROSS POINTE PAPER CORPORATION
AND MIAMI PAPER CORPORATION

Defendants.

: CASE NO. 94-2390

: JUDGE _____

: CONSENT ORDER

FILED
JUL 17 11 23 AM '94
CLERK OF COURT
MONTGOMERY COUNTY, OHIO

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Lee Fisher (hereinafter "Plaintiff") and Defendants Cross Pointe Paper Corporation and Miami Paper Corporation (hereinafter "Defendants" or "Cross Pointe") having consented to the entry of this Order.

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. 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 6111 of the Ohio Revised Code, and venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply and be binding upon the Defendant to this action, their agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them. This

settlement is not intended to create any right in any person not a party hereto. Defendant Cross Pointe shall provide a copy of this Consent Order to each contractor it employs to perform work itemized herein, and each general contractor shall provide a copy of this Consent Order to each of its sub contractors for such work.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant has operated its paper manufacturing plant in such a manner as to result in numerous violations of the discharge limitations and general conditions of the NPDES Permits Nos. 1IA00007*GD and 1IA0007*HD (OH0009784) issued to it by the Director of Environmental Protection and in violation of the water pollution laws of the State of Ohio. Defendant denies the allegations contained herein. Acceptance of the terms of this Consent Order does not constitute an admission on the part of Defendant that Defendant committed violations alleged in the Complaint. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil or administrative liability by Defendant for all claims under such laws 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 alleged in the Complaint, including violations which occur after the filing of the Complaint.

IV. COMPLIANCE SCHEDULE

4. Defendant Cross Pointe is hereby Enjoined and Ordered to immediately comply with the requirements of Chapter 6111 of the Ohio Revised Code and the terms and conditions of the rules and regulations adopted under that Chapter and its currently effective NPDES Permit, and any renewals or modifications thereof.

Defendant Cross Pointe is hereby Enjoined and Ordered to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

5. Defendant Cross Pointe is enjoined and ordered to as expeditiously as practicable, but not later than the dates in the following schedule, determine final effluent limits for outfall 1IA00007001 which are protective of the Water Quality Criteria for Owl Creek, pursuant to OAC Rules 3745-1-04 and, 3745-1-07 and achieve and maintain compliance with such final effluent limits and general conditions in accordance with the following schedule.

TASK

COMPLETION DATE

(a) submit a report to the Director of Environmental Protection (one copy to the Southwest District Office, Water Pollution Control Permit Section and one copy to the Ohio EPA Central Office, Division of Water Pollution Control). The Report shall contain at a minimum, the following information:

Completed

- (1) Demonstration of what effluent limits for suspended solids will be protective of water quality in Owl Creek.
- (2) evaluation of all potential sources of PCBs and cyanide at the facility and submittal of a plan recommending steps to eliminate these sources, or if it is not feasible to eliminate these sources, submittal of a plan to minimize the discharge of those pollutants and recommendation for final effluent limits, if necessary, to protect water quality in the river.
- (3) demonstration of the feasibility and/or desirability of relocating outfall 1IA000700 to discharge directly into the Great Miami River, and an evaluation of the effluent limits necessary to protect water quality in the river.

- | | | |
|-----|--|--------------------|
| (b) | submit to the Ohio EPA, Southwest District Office, a complete permit to install (PTI) application with approvable detailed plans for wastewater treatment facilities sufficient to attain and maintain compliance with effluent limits developed in the Report required pursuant to (a) above. | Completed |
| (c) | initiate construction of the wastewater treatment facilities in accordance with an approved PTI. | September 30, 1994 |
| (d) | Complete construction of wastewater treatment facilities. | September 30, 1995 |
| (e) | attain and maintain compliance with the final effluent standards developed in report required in (a) above. | September 30, 1995 |
| (f) | obtain the full time services of a Class II certified wastewater works operator | September 1, 1994 |

Within fourteen (14) days from each completion date listed above, Defendant Cross Pointe shall submit a written report stating whether or not it has performed the action so listed, to the Ohio EPA's Southwest District Office. This Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Approval for any such construction or modification shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

VI. CIVIL PENALTY

6. Defendant Cross Pointe shall pay to the State of Ohio a civil penalty of Two Hundred Twelve Thousand and Five Hundred Dollars (\$212,500.00). The penalty shall be paid by delivering to counsel for Plaintiff a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within ninety (90) days from the date of entry of this Consent Order.

VII. STIPULATED PENALTIES

7. In the event that Defendant Cross Pointe fails to meet any of the requirements of this Consent Order or any set forth in Section IV and V (except for item (e), Section V pertaining to compliance with final effluent limitations developed by Cross Pointe) including any scheduled milestone requirement, the Defendant shall, immediately and automatically, 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 -Three Hundred and Fifty Dollars (\$350.00) per day for each requirement not met. For each day of failure to meet a requirement, from thirty-one (31) to sixty days (60) -Eight Hundred Dollars (\$800.00) per day for each requirement not met. For each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days - Two Thousand Dollars (\$2000.00) per day for each requirement not met. For each day of failure to meet a requirement, over ninety days (90) days - Three Thousand Dollars (\$3,000.00) per day for each requirement not met.

8. In the event that Defendant Cross Pointe fails to achieve compliance with all terms and conditions of its effective NPDES permit in accordance with item (e), Section V, the Defendant shall immediately and automatically be liable for payment of a stipulated penalty of Five Thousand Dollars (\$5000.00) per day of each violation of said requirement. The Defendant shall be liable for an additional stipulated penalty of One Thousand Dollars (\$1,000.00) per day of each violation if the failure to comply continues for more than thirty (30) days, i.e. Six Thousand Dollars (\$6,000.00) per day of each violation. In the event that failure to comply with the requirements of Subparagraph, 5(e) continues more than sixty (60) days, Defendant shall be liable for an additional Four Thousand Dollars (\$4,000.00) per day of each violation, i.e., Ten Thousand Dollars (\$10,000.00) per day of each violation.

9. Any payment required to be made under the provisions of Paragraphs 7 or 8 of this Order shall be made by delivering to Plaintiff's counsel a certified check

or checks for the appropriate amounts, within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, made payable to "Treasurer, State of Ohio".

10. If Defendant complies with all terms and conditions of its effective NPDES permit in accordance with item (e), Section V, for 24 consecutive months, the requirement for payment of stipulated penalties under this paragraph shall terminate.

VIII. POLLUTION PREVENTION

11. Within sixty (60) days from the effective date of this Order, Defendants shall begin a comprehensive pollution prevention program for current facility operations by initiating a program as described in the *Ohio Pollution and Waste Minimization Planning Guidance Manual* (Planning Guidance Manual) dated September 30, 1993, following Figure 1 on page 18 of the document and accompanying text. Defendants shall document initiation of the program by submitting to Ohio EPA a formal policy statement, a consensus building plan, a list of the names and titles of the members of a pollution prevention task force, and an outline of preliminary program goals. A copy of the Planning Guidance Manual will be supplied to Defendants by Ohio EPA.

12. Within one hundred and twenty (120) days from the effective date of this Order, Defendants shall complete the first four steps (Establish the pollution prevention program, Organize the pollution prevention program, Do a preliminary assessment; and Write the pollution prevention plan) of the Planning Guidance Manual and shall document compliance by submitting a detailed narrative report, for review and approval, that discusses all four steps.

13. Within two hundred and forty (240) days from the effective date of this Order, Defendants shall complete steps five (5) and six (6) (Do a detailed assessment; and Define pollution prevention options) of the Planning guidance Manual and shall document compliance by submitting a detailed narrative report, for review

and approval, that discusses both steps and covers all processes which have been prioritized for pollution prevention by Defendants.

14. Within three hundred and sixty (360) days from the effective date of this Order, Defendants shall complete steps seven (7), eight (8), and nine (9) (Cost considerations; Do feasibility analysis; and Write the assessment report) of the Planning Guidance Manual and shall document compliance by submitting a detailed narrative report, for review and approval, that discusses these three steps and covers the pollution prevention options that have been defined by Defendants.

15. Within four hundred and fifty (450) days from the effective date of this Order, Defendants shall complete steps ten (10) and eleven (11) (Implement the pollution prevention plan; and Measure progress: program and project evaluation) of the Planning Guidance Manual and shall document compliance by submitting a detailed narrative report, for review and approval, that discusses both steps and covers all pollution prevention options which have been selected for implementation by Defendants.

16. All reports and other documents required to be submitted pursuant to this Article shall be sent to:

Office of Pollution Prevention
Ohio Environmental Protection Agency
c/o Anthony Sasson or Megan James
P. O. Box 1049
1800 WaterMark Drive
Columbus, Ohio 43266-0149

IX. POTENTIAL FORCE MAJEURE

17. In any action to enforce any of the provisions of this consent order Defendant may raise at that time the questions of whether 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, unusually severe weather conditions, strikes, acts of war or civil disturbances. While Plaintiff does not agree that such a defense exists, it

is, however, agreed upon by the parties 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. Acceptance of this Consent Order without a force majeure clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law or equity.

X. RETENTION OF JURISDICTION

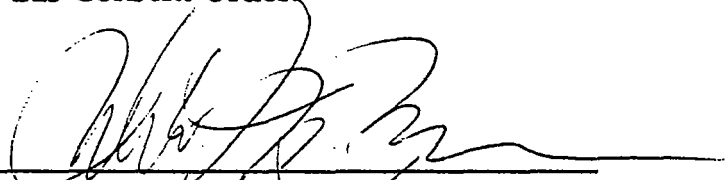
18. The Court will retain jurisdiction of this action for the purpose of making any order or decree which it deems appropriate to carry out this Consent Order.

XI. COSTS

19. Defendant Cross Pointe is hereby ordered to pay the costs of this action.

20. Defendant Cross Pointe is ordered to pay the costs of relator Ohio Attorney General expended in pursuing the instant action, totalling Eight Thousand Dollars (\$8,000.00) by delivering a certified check in such an amount for payment into the State Treasury made payable to the order of "Treasurer, State of Ohio" to

Matthew A. Sanders, Acting Administrative Assistant, Environmental Enforcement Section, 25th Floor, 30 East Broad Street, Columbus, Ohio 43215, within thirty (30) days after the entry of the instant Consent Order. Any check submitted in compliance with this Section shall be in addition to and separate from any check submitted pursuant to any other Section of this Consent Order.

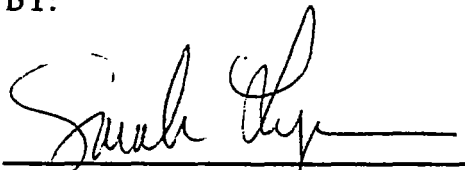


JUDGE, COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY

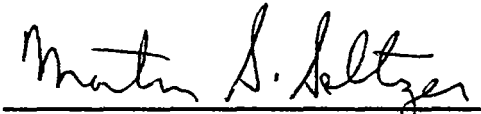
APPROVED:

STATE OF OHIO, ex rel.
LEE FISHER
ATTORNEY GENERAL OF OHIO

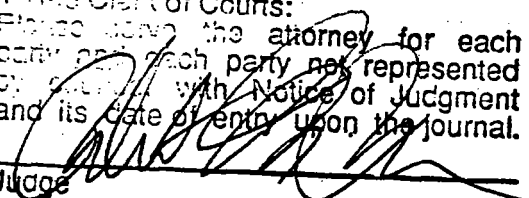
BY:



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Counsel for Defendants, Cross Pointe
Paper Corp./ Miami Paper Corp.

To the Clerk of Courts:
Please advise the attorney for each
party and each party not represented
by counsel with Notice of Judgment
and its date of entry upon the journal.


Judge