

- c. "Director" means the Director of the Ohio Environmental Protection Agency.

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, to the extent provided by Civ.R. 65(D), 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. Completion of the terms of this Consent Order shall constitute full satisfaction of any civil and administrative liability of Defendant to Plaintiff for all claims alleged in Plaintiff's Complaint.

5. This Consent Order shall not be construed to limit the authority of 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 Defendant for any violations that occur after the entry of this Consent 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. CIVIL PENALTY

6. Pursuant to and in accordance with R.C. 3704.06, Defendant is enjoined and ordered to pay a total civil penalty of Forty-Two Thousand, Nine Hundred and Seventy-Five Dollars (\$42,975.00) to the State of Ohio. Such penalty shall be paid as follows:

- a. Within 90 days of entry of this Consent Order, Defendant shall pay Thirty-Four Thousand, Three Hundred and Eighty Dollars (\$34,380). The payment shall be by cashier's or certified checks payable to the order of "Treasurer, State of Ohio" and delivered to Martha Sexton 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 checks, or some other prominent location on the transmittal letters or documentation, shall include a reference to "A.G. EAGO No. 406705."
- b. Also within 90 days of entry of this Consent Order, Defendant shall pay the remaining Eight Thousand, Five Hundred and Ninety-Five Dollars (\$8,595.00) to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). The payment shall be by cashier's or certified check payable to the order of "Treasurer, State of Ohio" and specifying that such monies be deposited in Fund 5CD0 established by Ohio EPA for the Clean Diesel School Bus Program. The check, together with a letter identifying the Defendants, shall be delivered to Martha Sexton 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 checks, or some other prominent location on

the transmittal letters or documentation, shall include a reference to “A.G. EAGO No. 406705.”

VI. PERMANENT INJUNCTION

7. Defendant is hereby enjoined and ordered to comply immediately and permanently with R.C. Chapter 3704. In particular, Defendant, with regard to the Facility, shall comply with: R.C. 3704.05(C); R.C. 3704.05(G); the obligations to apply for and obtain Permits to Install and Operate required by Ohio Adm. Code 3745-31-02; and the emissions limitations contained in the Permit to Install issued by the Director, and upon filing an application for an administrative modification to its current Permit to Install for the facility, the agreed revised VOC limit of 28.55 lbs/hr in Defendant’s application. The Director will process the application in accordance with Ohio Administrative Code requirements and, accordingly, reserves the right to modify the agreed upon revised VOC limit as necessary.

8. In the event of any future failed compliance (stack) test at the Facility that fails to demonstrate compliance with any applicable emissions limitation contained in any Permit to Install, Permit to Operate, or Permit to Install and Operate issued by the Director, Defendant shall take prompt corrective action and retest at the earliest appropriate opportunity. In no case shall Defendant fail to conduct a compliance test during the production season immediately following the season in which Defendant fails a compliance test unless the source has been decommissioned. For any failures occurring earlier than August 1st of the production season, retesting shall occur during that same asphalt production season.

VII. STIPULATED PENALTIES

9. Except as set forth in paragraph 9(d) below, if Defendant fails to comply with any requirement or deadline contained in Sections V or VI of 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 thirty (30) days – Two Hundred Fifty Dollars (\$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 thirty-one (31) to sixty (60) days – Five Hundred Dollars (\$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 sixty (60) days – Seven Hundred Fifty Dollars (\$750.00) per day for each requirement or deadline not met.
- d. If Defendant fails a future compliance (stack) test at the Facility, stipulated penalties shall accrue as defined in Section VII Paragraphs 9(a) through 9(c) except that stipulated penalties shall not accrue on any day that Defendant can prove to Ohio EPA's satisfaction that the Facility was not in operation. The Defendant bears the burden to make such a showing within 30 days of the next compliant stack test.

10. If Defendant fails to meet any of the requirements set forth in Sections V or VI of this Consent Order, Defendant shall immediately be liable for payment of stipulated penalties imposed by this Consent Order without prior demand by or notice from the State of Ohio. Payment of all stipulated penalties shall be paid by delivery to Plaintiff, c/o Martha Sexton or her successor, Paralegal, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, 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 this Consent Order shall not prevent Plaintiff from pursuing additional remedies, civil, criminal, or administrative, for violations of applicable laws.

VIII. SUBMITTAL OF DOCUMENTS

12. All documents required to be submitted to Ohio EPA and the Central District Office of Ohio EPA pursuant to this Consent Order shall be submitted to the following addresses:

Ohio Environmental Protection Agency
Division of Air Pollution Control
Attn: Tom Kalman
Acting Assistant Chief, SIP Development & Enforcement Section
Lazarus Government Center
50 West Town Street
Columbus, Ohio 43215

Ohio Environmental Protection Agency
Division of Air Pollution Control, Central District Office
Attn: Adam Ward
Lazarus Government Center
50 West Town Street
Columbus, Ohio 43215

or to such addresses as Ohio EPA may hereafter designate in writing.

IX. TERMINATION OF CONSENT ORDER

13. The terms and conditions of the Consent Order shall continue for five (5) years from the date of entry of this Consent Order or until Defendant has complied with all obligations and milestones set forth in Section V and Section VI of this Consent Order, whichever is later.

X. RETENTION OF JURISDICTION

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

XI. COURT COSTS

15. Defendant is hereby ordered to pay all court costs of this action.

XII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

16. Pursuant to Civ.R. 58, 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 Civ.R. 5(B) and note the service in the appearance docket.

XIII. AUTHORITY TO ENTER INTO THE CONSENT ORDER

17. Each signatory for 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 DUNCAN WHITNEY
Delaware County Court of Common Pleas

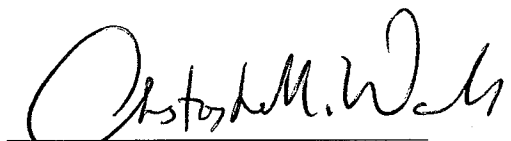
APPROVED:

Respectfully submitted,

MICHAEL DEWINE
OHIO ATTORNEY GENERAL



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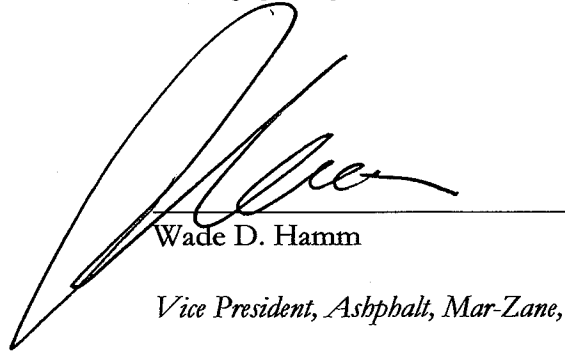
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