

IN THE COURT OF COMMON PLEAS

SANDUSKY COUNTY, OHIO

STATE OF OHIO, ex rel. :
WILLIAM J. BROWN :
ATTORNEY GENERAL, :
 :
Plaintiff, : Case No. 80 CV 360
 :
v. :
 :
NORTHERN OHIO SUGAR COMPANY, :
 :
Defendant. :

STIPULATION AND JUDGMENT ENTRY

This matter was instituted by plaintiff, the Attorney General of Ohio, at the request of the Director of the Ohio Environmental Protection ("OEPA") through the filing of a complaint on May 6, 1980, alleging violations of Sections 3704.05 and 3767.13 of the Ohio Revised Code, Section 3745-15-07 of the Ohio Administrative Code, and of Ohio's public nuisance doctrine. The defendant, Northern Ohio Sugar Company ("NOSCO"), operates a sugar refinery for processing beet sugar and cane sugar in Fremont, Ohio.

The plaintiff and defendant by their respective attorneys have appeared and hereby agree to settle this action by requesting that the Court enter this Stipulation and Judgment Entry ("Entry") without trial or adjudication of any issue of fact or law, without any admission by any party with respect to any issue of fact

or law and without this Entry constituting any evidence or admission by any party with respect to any matter or issue connected with this case, including but not limited to any admission by NOSCO with respect to any violation of Sections 3704.05 and 3767.13 of the Ohio Revised Code, Section 3745-15-07 of the Ohio Administrative Code, or of Ohio's public nuisance doctrine.

The plaintiff and defendant hereby waive the entry of findings of fact and conclusions of law under Rule 52 of the Ohio Rules of Civil Procedure.

NOW, THEREFORE, before the taking of any testimony and without adjudication of any issue of fact or law in connection herewith, and upon stipulation of the parties hereto, it is hereby,

ORDERED, ADJUDGED AND DECREED as follows:

I.

JURISDICTION

For the sole purpose of entering this Entry in settlement of the case, this Court has jurisdiction over the subject matter of this action and the parties to it.

II.

SCOPE OF ENTRY

This Entry covers, and shall apply only to, the NOSCO sugar refining facility located at 1101 North Front Street in Fremont, Ohio, operated by NOSCO or by any agents or successors in interest of NOSCO.

III.

PROVISIONS OF ENTRY

1. NOSCO shall cease using process wastewater in its coal-fired boiler scrubber system ("scrubber system") and shall install and operate a system using river water in its scrubber system ("river water system") as provided for in the plan submitted by NOSCO to the OEPA on June 5, 1980, as part of NOSCO's application for a permit to install pursuant to Section 3745-31-02 of the Ohio Administrative Code. The OEPA shall process said permit application as expeditiously as possible. NOSCO shall construct said river water system for its scrubber system in accordance with all terms and conditions of any permit to install issued by the OEPA, except that the OEPA may not require completion of construction of said system earlier than six months from the date of issuance of the permit to install.

2. NOSCO shall apply for an Ohio NPDES wastewater discharge permit pursuant to Section 3745-33-03 of the Ohio Administrative Code for any discharge of water or wastewater from the river water system referred to in paragraph 1 above, except that the defendant is not bound by the provision appearing in Section 3745-33-02 of the Ohio Administrative Code, subpart (B), which requires an Ohio NPDES permit application to be filed 180 days prior to the commencement of the discharge.

Wastewater discharges from said river water system prior to issuance of an Ohio NPDES permit by the OEPA shall be permissible for purposes of shake-down of the system and shall meet at all times the following effluent limitations:

<u>Parameter</u>	<u>Limitation</u>
Total Suspended Solids	100 milligrams/liter
pH	not less than 6.0 standard units nor more than 9.0 standard units

3. From the date of this Entry until July 15, 1980, NOSCO shall not use its coal-fired boilers. From July 15, 1980, to the time the river water system referred to in paragraph 1 above becomes operational, NOSCO shall not use its coal-fired boilers unless the level of the five-day biochemical oxygen demand ("BOD") of the process water used in the scrubber system for the coal-fired boilers does not exceed 1100 milligrams per liter.

4. NOSCO shall install and operate a bulk lime receiving and lime slurry system for lime addition to the sugar beet process flume water prior to or at the point of entry of said flume water to the holding lagoons ("mud ponds") at NOSCO's facility. NOSCO shall submit to OEPA by August 15, 1980, an air permit to install application with appropriate plans, as may be required by Section 3745-31-02 of the Ohio Administrative Code for this system, and shall complete construction of said

system within six months of the issuance of a permit to install by the OEPA authorizing installation of said system, or if no such permit is required, then by January 1, 1981.

5. NOSCO shall drain and dredge its four mud ponds, starting with mud pond No. 2 and completing the final dredging by October 15, 1980. In addition, NOSCO shall expeditiously take steps to isolate each mud pond and shall complete such isolation by October 15, 1981, in order to facilitate individual cleaning on an annual basis.

6. NOSCO shall maintain in operation a mobile lime distribution unit for purposes of providing more efficient lime treatment of stagnant areas of its wastewater holding or treatment ponds.

7. By November 1, 1980, NOSCO shall divide its aeration settling pond into two ponds, allowing for more efficient cleaning of said ponds.

8. NOSCO shall keep a 50 horsepower aerator on the plant site as a spare.

9. By November 1, 1980, NOSCO shall divide its lime pond into two ponds, allowing for more efficient cleaning of the lime pond.

10. By January 1, 1981, NOSCO and the OEPA shall together develop a written odor monitoring plan for the facility that will include the following elements:

a. A five-person Citizens Advisory Panel shall be established. NOSCO and OEPA shall mutually agree to the membership of this panel, except that it will include one representative from the Northern Ohio Sugar Company, one representative from Ohio EPA, one representative from the Sandusky County Department of Health, and two representatives from the Fremont community.

b. NOSCO shall monitor odor at five sites agreed to by NOSCO and OEPA within its property boundaries on a daily (7-day week) basis using a Barnebey-Cheney Scentometer or other comparable scientific device approved by NOSCO and OEPA. Monitoring reports shall be submitted monthly to OEPA and the Citizens Advisory Panel on a form agreed to by NOSCO and OEPA.

c. NOSCO shall provide the Sandusky County Department of Health, at NOSCO's cost, a Barnebey-Cheney Scentometer (or other comparable scientific device agreed to by NOSCO and OEPA) for the regular monitoring of odor at five sites in the Fremont residential community to be established by the Citizens Advisory Panel. The Sandusky County Department of Health shall submit monitoring reports to NOSCO and the Citizens Advisory Panel.

d. An "odor problem" shall be deemed to exist at a given monitoring site if

(i) NOSCO's monitoring reports show an odor level at the site at or above a 15:1 dilution ratio for two consecutive days; or

(ii) the monitoring reports of the Sandusky County Department of Health show an odor level at the site in the Fremont residential community at or above a 7:1 dilution ratio for two consecutive days, and it is shown through triangulation (or another acceptable scientific method) that NOSCO is the cause of the odor at the site.

e. In the case of an "odor problem," NOSCO and the Citizens Advisory Panel shall meet promptly and attempt to agree to reasonable corrective action by NOSCO to eliminate said odor problem. If NOSCO and the Citizens Advisory Panel agree to corrective action, defendant shall write a letter to the Citizens Advisory Panel stating its commitment to the corrective action immediately. If NOSCO and the Citizens Advisory Panel cannot agree to corrective action, the Citizens Advisory Panel shall be free to recommend to OEPA that further action be taken by OEPA.

11. This Entry serves to dismiss this action with prejudice and to bar any further action under the Ohio Revised Code, the Ohio Administrative Code, or the Ohio public nuisance doctrine, arising out of the operation of NOSCO's environmental control facilities and occurring up to the date this Entry is entered, and NOSCO and its officers, directors, agents and employees are released from any and all liability arising during the period up to the date this Entry is entered.

7/9/80
DATE

[Signature]
ROBERT FRANKLIN, JR., JUDGE
Court of Common Pleas
for Sandusky County
Sitting by assignment from Lucas County
Common Pleas Court

BY AGREEMENT:

WILLIAM J. BROWN
ATTORNEY GENERAL OF OHIO

[Signature]
THOMAS H. MILCH

BY: [Signature]
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Attorneys for Defendant

Attorneys for Plaintiff

July 3, 1980
DATE

July 7, 1980
DATE

[Handwritten notes]