

IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

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STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY,
ATTORNEY GENERAL OF OHIO
30 East Broad Street
Columbus, Ohio 43266-0410

Plaintiff,

v.

RICHARD HAREN & SON
LUMBER COMPANY, INC.
Box 215
Woodsfield, Ohio 43973

Defendant.

CASE NO.

96-92

JUDGE

KITTY KAHRIG
CLERK OF COURTS
MONROE COUNTY, OH

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Betty D. Montgomery (hereinafter "Plaintiff") and Defendant Richard Haren & Son Lumber Company, Inc. 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, and without admission of fact or liability by Richard Haren & Son Lumber Company, Inc., 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 Chapters 3704, 3734, and 6111 of the Ohio Revised Code, and venue is proper in this Court.

II. PARTIES

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

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint, *inter alia*, that Defendant Richard Haren & Son Lumber Company, Inc. has operated three (3) sawmills – Site #1 located on Sawmill Road, Center Township, Monroe County, Ohio (“Site #1”), Site #2 located on Slim Chance Creek, Center Township, Monroe County, Ohio (“Site #2), and Site #3 located on Piatt Park Road, Center and Adams Townships, Monroe County, Ohio (“Site #3”) -- in such a manner as to result in violations of the air pollution control laws and regulations of the State of Ohio, the solid waste laws and regulations of the State of Ohio, and the water pollution control laws and regulations of the State of Ohio. Except as otherwise provided for in this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all violations 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 entry of this Consent Order.

IV. INJUNCTION

A. Compliance With the State of Ohio’s Air Pollution Control Laws

4. Defendant Richard Haren & Son Lumber Company, Inc. agrees to refrain and is permanently enjoined from “installing” or “modifying” any “air contaminant source”, as those terms are defined in Ohio Administrative Code (“O.A.C.”) Rule 3745-31-01(I), (J) and (C) without first applying for and obtaining a Permit to Install from the Director of Environmental Protection in accordance with O.A.C. Rule 3745-31-02(A).

5. Except as authorized under Ohio Rev. Code §3704.03(F), Defendant Richard Haren & Son Lumber Company, Inc. agrees to refrain and is permanently enjoined from “operating” any air contaminant source, as that term is defined in O.A.C. Rule 3745-35-01(B)(1) without first applying for and obtaining a Permit to Operate from the Director of Environmental Protection in accordance with O.A.C. Rule 3745-35-02(A).

6. Defendant Richard Haren & Son Lumber Company, Inc. agrees and is permanently and immediately enjoined and ordered to comply with the terms and conditions of all Permits to Install and Permits to Operate which are issued to it for air contaminant sources.

7. Defendant Richard Haren & Son Lumber Company, Inc. agrees and is permanently and immediately enjoined and ordered to refrain from causing or allowing open burning except as provided in O.A.C. Rule 3745-19-04(B) and (C), and Ohio Rev. Code §3704.11.

8. Defendant Richard Haren & Son Lumber Company, Inc. agrees and is permanently and immediately enjoined and ordered to refrain from causing or permitting any fugitive dust source to be operated without first taking or installing reasonably available control measures to prevent fugitive dust from becoming airborne.

B. Compliance With the State of Ohio's Solid Waste Laws

9. Defendant Richard Haren & Son Lumber Company, Inc. agrees to refrain and is permanently enjoined from violating Ohio Rev. Code Chapter 3734 and the rules adopted thereunder. Specifically, Defendant Richard Haren & Son Lumber Company, Inc. agrees to refrain and is permanently enjoined from conducting, permitting, or allowing open dumping of solid waste, and/or causing or allowing open burning except as provided in O.A.C. Rule 3745-19-04(B) and (C), and Ohio Rev. Code §3704.11.

C. Compliance With the State of Ohio's Water Pollution Control Laws

10. Defendant Richard Haren & Son Lumber Company, Inc. agrees to refrain and is permanently enjoined from violating Ohio Rev. Code Chapter 6111 and the rules adopted thereunder. Specifically, Defendant Richard Haren & Son Lumber Company, Inc. agrees to refrain and is permanently enjoined from causing pollution, or placing or causing to be placed any sewage, industrial waste, or other wastes in a location where they cause pollution, of any waters of the State -- except in such cases where the Director of Environmental Protection has issued a valid and unexpired permit.

D. Placement of an Advertisement in Ohio Woodlands Magazine

11. Defendant Richard Haren & Son Lumber Company, Inc. agrees and is hereby enjoined and ordered to place an advertisement, attached hereto as Attachment A, in *Ohio Woodlands Magazine*, the magazine of the Ohio Forestry Association, for a period of one (1) year. Such advertisement shall be placed and paid for by Defendant Richard Haren & Son Lumber Company, Inc. in such a manner that the advertisement appears in four (4) consecutive quarterly issues of that publication.

12. Defendant Richard Haren & Son Lumber Company, Inc. agrees and is hereby enjoined and ordered to provide proof of its compliance with paragraph 11 of this Order (i.e., proof of publication) to Ohio EPA, Central Office, Division of Solid and Infectious Waste Management and the State of Ohio Attorney General's Environmental Enforcement Section. Such notice shall be received by the above-listed entities not later than thirty (30) days after each publication of Attachment A pursuant to paragraph 11 of this Order.

V. CIVIL PENALTY

13. Defendant Richard Haren & Son Lumber Company, Inc. shall pay a civil penalty of Twenty Thousand Dollars (\$20,000.00). Of that amount, the payment of Five Thousand Dollars (\$5,000.00) is suspended based upon Defendant's demonstrated financial hardship and its compliance with paragraph 17 of this Order. The remaining penalty in the amount of Fifteen Thousand Dollars (\$15,000.00) is to be paid by Defendant in accordance with the provisions of paragraphs 14 and 15 of this Order.

14. Defendant Richard Haren & Son Lumber Company, Inc. agrees and is hereby enjoined and ordered to donate lumber to the Swiss Hills Vocational School, 46601 State Route 78, Woodsfield, Monroe County, Ohio totaling Fifteen Thousand Dollars (\$15,000.00) in value at a unit value of One Dollar (\$1.00) per board foot. Such lumber shall be of a type, quality and form acceptable to Swiss Hills Vocational School, and shall be delivered by Defendant Richard Haren & Son Lumber Company, Inc. to Swiss Hills Vocational School in accordance with the provisions of paragraph 15 of this Order.

15. Defendant Richard Haren & Son Lumber Company, Inc. agrees and is hereby enjoined and ordered to donate one thousand (1,000) board feet of No. 2 grade walnut ⁴/₄ boards, and two thousand (2,000) board feet of No. 2 grade oak ⁴/₄ boards to Swiss Hills Vocational School annually for five (5) years and deliver the lumber to the school in accordance with the following schedule:

- Within thirty (30) days of the entry of this Order;
- March 14, 1997;
- March 16, 1998;
- March 15, 1999; and,
- March 15, 2000.

16. Defendant Richard Haren & Son Lumber Company, Inc. is hereby enjoined and ordered to provide proof of its compliance with paragraphs 14 and 15 of this Order (i.e., proof of its donations to Swiss Hills Vocational School) to Ohio EPA, Central Office, Division of Solid and Infectious Waste Management and the State of Ohio Attorney General's Environmental Enforcement Section. Such notice shall be received by the above-listed entities not later than thirty (30) days after each delivery of lumber to Swiss Hills Vocational School.

17. Defendant Richard Haren & Son Lumber Company, Inc. agrees and is permanently and immediately enjoined and ordered to, on an annual basis, provide the Ohio Environmental Protection Agency's, Central Office, Division of Solid and Infectious Waste Management, with evidence of its continuing inability to remediate the environmental harm caused to Site #1 and Site #2. Such evidence shall be in the form of a copy of Defendant's federal income tax return, and shall be submitted to Enforcement Coordinator, Ohio EPA, Central Office, Division of Solid and Infectious Waste Management, P.O. Box 2198, 2305 Westbrook Drive - Building C, Columbus, Ohio 43266-2198, not later than sixty (60) days after Defendant's filing of said return with the Internal Revenue Service.

18. In the event that Defendant's profits or other income increases by a material amount such that it is economically feasible for Defendant to pay for the remediation of Site #1 and Site #2 in accordance with Ohio Rev. Code Chapter 3734 and the rules promulgated thereunder, Defendant shall be required to notify the State of Ohio of its changed financial condition and undertake all appropriate investigatory and remediation activities at the sites under the direction of Ohio EPA's Division of Solid and Infectious Waste Management.

VI. ENFORCEMENT COSTS

19. Defendant Richard Haren & Son Lumber Company, Inc. is ordered to pay the enforcement costs of relator Ohio Attorney General expended in pursuing the instant action, totaling One Thousand Dollars (\$1,000.00) by delivering to Matt Sanders, Administrative Assistant (or his successor), Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check for that amount, made payable to the order of "Treasurer, State of Ohio," 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.

VII. RETENTION OF JURISDICTION

20. The court will retain jurisdiction of this action for the purpose of enforcing this Consent Order.

VIII. COSTS

21. Defendant Richard Haren & Son Lumber Company, Inc. is hereby ordered to pay the costs of this action.

IT IS SO ORDERED:

ENTERED THIS 5TH DAY OF JUNE, 1996.



JUDGE, MONROE COUNTY
COURT OF COMMON PLEAS


APPROVED:

RICHARD HAREN & SON
LUMBER COMPANY, INC.

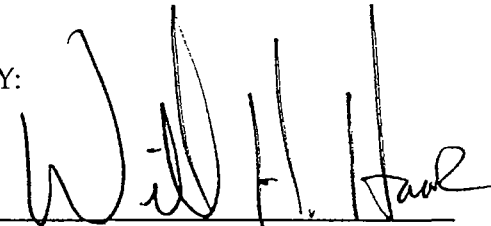
STATE OF OHIO,
ex rel. BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

BY:

BY:




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(614) 466-2766

Counsel for Defendant

BY:



(Authorized Representative of Richard Haren & Son Lumber Co., Inc.)

TITLE:

Owner

ATTACHMENT A

ATTENTION SAWMILL

OWNERS and/or OPERATORS

Sawdust, wood chips, and scrap lumber from milling processes are considered "solid wastes" as that term is defined by Ohio law. If you are operating a sawmill in Ohio, you must properly store and dispose of the waste materials which you generate. Many waste management options are available, including the reuse of waste materials in other manufacturing processes, or disposal at a licensed solid waste disposal facility.

In addition, Ohio law requires that sources of air contaminants and surface water pollution be properly permitted. If you are operating a sawmill, you must ensure that you have proper permits for any and all sources of air pollution and surface water pollution.

For more information regarding waste management options, or for assistance in determining if your facility is in compliance with all applicable environmental laws and regulations, please contact the **Ohio Environmental Protection Agency** at one of the numbers listed below:

Division of Air Pollution Control: (614) 644-2270
Division of Solid & Infectious Waste: (614) 644-2621
Division of Surface Water: (614) 644-2001

Paid for by:
Richard Haren & Son Lumber Company, Inc.
Woodsfield, Ohio