

I. JURISDICTION

1. The Court has jurisdiction over the subject matter of this action, pursuant to Chapter 3704 of the Ohio Revised Code and the regulations 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.

II. PARTIES

2. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and their agents, officers, employees, assigns, successors in interest 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. Defendant shall provide a copy of this Consent Order to each contractor it employs to perform work itemized herein, including the independent contractor retained pursuant to Section VII.

III. SATISFACTION OF LAWSUIT

3. Plaintiff has alleged in its Complaint that Defendant TCC has operated its facility, located at 2563 Front Street, Toledo, Lucas County, Ohio, in violation of various provisions

of the air pollution control laws of Ohio, as set forth in Chapter 3704 of the Ohio Revised Code and the regulations adopted thereunder. Entry of this Consent Order, payment of the Civil Penalty and compliance with the terms of Sections VI, VII and VIII of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for the claims which have been alleged in the Complaint arising prior to entry of this Order.

4. This Consent Order shall not be construed to limit the authority of the Plaintiff to seek relief for claims not alleged in the Complaint nor shall this Consent Order limit or bar the State of Ohio from bringing any action against the Defendant for any violations which occur after this Order is entered.

IV. CIVIL PENALTY

5. Pursuant to §3704.06, R.C., Defendant TCC shall pay to Plaintiff a civil penalty in the amount of one hundred eighty thousand dollars (\$180,000.00). This civil penalty shall be paid in twelve quarterly installments by delivering to counsel for Plaintiff a certified check in the amount of fifteen thousand dollars (\$15,000.00), payable to the order of "Treasurer, State of Ohio" within thirty (30) days from the date of entry of this Consent Order; and thereafter, once every three months, on the last day of the third month.

V. INJUNCTIVE RELIEF

6. Defendant TCC agrees and is hereby immediately ordered and enjoined to comply with the following rules and O.R.C. Chapter 3704.05(A), (C), and (H) as they relate to the following rules:

- (a) the fugitive dust control requirements set forth in O.A.C. Rule 3745-17-08(B) and its Permits to Operate its coal and coke handling operations;
- (b) the requirements of O.A.C. §3745-17-07(E)(2) relating to off-take piping;
- (c) the requirements of O.A.C. §3745-17-07(E)(4) relating to coke oven door emissions; and
- (d) the requirements of O.A.C. §3745-17-07(A) and (B) relating to opacity from the combustion stack.

Compliance with the subparagraphs (b) through (d) and with the regulations identified therein shall be determined in accordance with the applicable procedures set forth in O.A.C. §3745-17-03, including any amendments or revisions thereto.

7. Defendant TCC is hereby immediately enjoined to keep and maintain all collector main and back pressure records, push records, any Method 9 readings or other visible emission readings conducted at the TCC facility, and Triboflow Monitoring System records and to make such records available to

the Ohio Environmental Protection Agency (OEPA) and its designated representative, TESD, for its review during an inspection upon request. TCC is enjoined to provide copies of such records to the Director or TESD within ten (10) days following any request. Defendant TCC shall keep and maintain such records for a period of not less than two (2) years.

8. TCC agrees and is enjoined to comply with Revised Code Section 3704.05(E).

9. During the course of an inspection by the director of environmental protection, his authorized representative, or the Independent Consultant hired pursuant to Section VII herein, if it becomes necessary or desirable, as determined within the sole discretion of TCC, to alter its normal operational conditions, TCC agrees and is hereby enjoined to advise such inspector during that inspection that an alteration has occurred and the reasons therefore. For purposes of this order, alteration of operational conditions includes, but is not limited to, the frequency of coke oven battery pushes and charges, the levels of pressure within the coke oven battery, and the methods and rates of coke and coal handling processes.

VI. FACILITY ALTERATIONS

10. Defendant TCC agrees and is hereby enjoined to install, within 60 days of the effective date of this Consent Order, and properly maintain thereafter, a "Triboflow" emission

monitoring and alarm system in the coke oven battery combustion stack in order to continuously monitor and record the opacity of the particulate emissions from the combustion stack. Such emission monitoring system must be calibrated or correlated to opacity in a manner acceptable to OEPA.

11. TCC agrees and is hereby enjoined to install one video camera at its facility in such a manner so that persons in the boiler house may continuously observe the operations of the coke oven battery and so that those persons directly responsible for overseeing the operation of the coke oven battery can immediately be notified of and mitigate emissions of smoke in excess of those allowed by O.A.C. §3745-17-07(E). The video camera shall be located on the coke oven battery cross-over at the trim valve, and shall be installed so as to swivel back and forth over the entire battery. The video camera shall incorporate a video recording device such that each camera records at least the first five minutes of every hour. The date and time of such video recordings shall be continuously recorded on screen. Such recordings shall be available for fourteen days for review by inspectors from the OEPA and its designated representative, TESD, and videotaped copies of selected portions of the recordings shall be made available to said inspectors within ten (10) days of such request.

VII. ENVIRONMENTAL AUDIT BY
INDEPENDENT CONTRACTOR

12. TCC agrees and is hereby enjoined to hire an independent contractor, to be approved by the OEPA and its designated representative, TESD, knowledgeable in the area of

coke oven batteries, for the purpose of thoroughly evaluating the compliance of the Toledo Coke facility with Chapter 3704. of the Revised Code, regulations promulgated thereunder, and the terms of this Consent Order. Such consultant shall perform quarterly inspections of the facility. The findings of such compliance reviews, including the results of the visible emissions observations, shall be reported in a comprehensive report to TCC and the OEPA and its designated representative, TESD, no later than forty-five days after the conclusion of each inspection. TCC may submit a comment letter which addresses the causes of exceedances observed by the consultant and the remedial actions taken by TCC, if any, concurrently with submission of the consultant's report. The first inspection conducted by the independent contractor shall take place no later than sixty (60) days from the date TCC receives notice of OEPA's approval of the contractor.

13. Each inspection shall, at a minimum, include visible emission observations performed in accordance with the procedures specified in O.A.C. 3745-17-03. Such inspections must be of sufficient quantity and quality that the consultant shall observe, during normal operational conditions, the compliance status of the air contaminant sources identified in Paragraph 23(A), herein, with Chapter 3704. of the Revised Code and all regulations promulgated thereunder and render his opinion as to that status.

14. TCC agrees to provide at least fifteen (15) days notice to OEPA and its designated representative, TESD, prior to the quarterly inspection to be conducted by the independent contractor. The OEPA and TESD will be provided the opportunity to be present and accompany the independent contractor during the quarterly inspections.

15. TCC may, but shall not be required to, discontinue environmental audits after two years or eight inspections by the independent contractor, whichever occurs last.

16. The independent contractor selected by TCC shall be identified within sixty (60) days of entry of this Order and shall be considered approvable unless the information available to OEPA clearly demonstrates that the contractor is either not independent or lacks the training and experience necessary to conduct the required inspections. All information relied on by OEPA in disapproving any contractor selected by TCC shall be provided to TCC in writing.

VIII. OPERATIONS AND MAINTENANCE MANUAL

17. TCC is hereby enjoined to develop and submit to the OEPA and its designated representative, TESD, within ninety (90) days of the date this Order is entered, an operation and maintenance manual (hereinafter "O&M Manual") which describes the procedures TCC will use to operate and maintain its facility in compliance with Chapter 3704. of the Revised Code and this Order.

18. TCC is enjoined to address any deficiencies regarding the O&M Manual, as identified by the Director or his authorized representative in any comments within thirty (30) days of receipt of such comments. The O & M Manual shall be considered deficient if it does not fully comply with the requirements of Paragraph 23 of this Order.

19. TCC's response to OEPA's comments shall, at a minimum, state whether TCC agrees or disagrees with the comment or request for correction together with the reason for such disagreement, if any. Such response shall specifically identify: (a) each comment to which TCC objects; (b) the reason(s) for each such objection; (c) any alternative provisions which TCC believes should be incorporated; and (d) its reasons for believing that such alternatives fully comply with all applicable law, rules and regulations and this Order.

20. TCC is enjoined to revise the O&M Manual to incorporate OEPA's comments, if and to the extent that TCC agrees with the comments. With respect to those comments which TCC does not agree, TCC is enjoined to revise the O&M Manual to incorporate the alternative provisions proposed in its response required pursuant to Paragraphs 18 and 19. The revised O&M Manual shall be submitted to the OEPA with the response required pursuant to Paragraphs 18 and 19.

21. A determination by the OEPA that the revised O&M Manual, submitted pursuant to paragraph 20 above, is deficient shall constitute a final action of the Director within the

meaning of Section 3745.04 of the Revised Code and shall be appealable to the Environmental Board of Review.

22. TCC is enjoined to update the O&M Manual as often as is necessary to ensure the O&M Manual accurately reflects the operations and maintenance practices undertaken by TCC to comply with Chapter 3704. of the Ohio Revised Code and all regulations promulgated thereunder and this Order.

23. The O&M manual shall include a facility maintenance and operations plan with at least the following features.

A) Scope. The O&M Manual shall include the methods TCC intends to use to control all air contaminant emissions from, at least, the following sources: charging operations; offtake piping; charging hole lids; oven doors; pushing operations; combustion stack; and coke and coal handling processes.

B) Maintenance. The O&M Manual shall include a description of all items of routine maintenance necessary to preserve the TCC facility in a state of good repair. It shall prescribe when and how routine maintenance is to occur at the TCC facility. Routine maintenance includes, at a minimum, repairing, cleaning, and replacing damaged, dirty, clogged, or inoperable equipment.

C) Operations. The O&M Manual shall identify the specific operational practices which are designed to ensure compliance with Chapter 3704. of the Revised Code and all regulations promulgated thereunder. It shall identify, in

a manner sufficient to guide the responsible TCC employees, those operational practices, conditions or the range of acceptable conditions designed to maintain compliance with Chapter 3704. of the Revised Code and all regulations promulgated thereunder. Operations include, at a minimum, all processes, adjustments, including adjustments to the back pressure, actions, or behavior undertaken at TCC, either directly or indirectly resulting in air emissions or which attempt to mitigate air emissions.

D) Performance Review. The O&M Manual shall establish a mechanism by which TCC monitors its own maintenance and operational performance by inspection and review of that performance. The O&M Manual shall describe who is responsible for inspection; when inspection shall occur; what specific functions or equipment must be inspected; and how that inspection must be accomplished. The performance review shall be designed to assure compliance with provisions of the O&M Manual and with this Order.

E) Remedial Action. The O&M Manual shall describe those actions which must be taken to rectify or cure a condition which does not conform to the standards established by the O&M Manual or mandated by this Order. The O&M Manual shall identify all foreseeable problems which may occur in each process or operation. A specific technical corrective action shall be identified for each identified problem which recurs or which can be

anticipated. For each corrective action, a schedule of compliance shall be included. The O&M Manual shall describe the process by which TCC intends to solve unanticipated problems.

F) Special Reports. The O&M Manual shall describe the procedures to be followed by TCC employees in an event or circumstance of malfunction. The procedure shall ensure that any malfunction is reported and corrected pursuant to O.A.C. §3745-15-06. The O&M Manual shall identify the TCC employee responsible for managing a malfunction event.

G) Records. The O&M Manual shall prescribe the creation of records and record retention practices for all inspection forms, reports, records or documentation of any nature necessary to prove or establish that TCC is complying with its O&M Manual and this Order. TCC shall retain for a period of two years, at least, the following records: inspection records, and maintenance records.

24. TCC agrees and is enjoined to implement and follow the Operation and Maintenance manual developed pursuant to this section.

IX. COMPLIANCE WITH APPLICABLE LAWS

25. Nothing herein shall affect Defendant's obligations to comply with all applicable federal, state or local laws, regulations, rules, or ordinances.

X. STIPULATED PENALTIES

26. Except as provided in Paragraph 27, in the event that TCC violates any of the requirements of Sections V, VI and VII of this Consent Order, TCC shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule for the indicated violations of the requirements of this Consent Order:

(A) for each violation of Paragraph 6(a):

<u>Cumulative Number of Days of Violations</u>	<u>Penalty Per Day</u>
1 - 5	\$500
6-15	\$2,000
Over 16	\$5,000

(B) for each violation of paragraph 6(b):

<u>Cumulative Number of Days of Violations</u>	<u>Penalty Per Day</u>
1 - 5	\$500
6-15	\$2,000
Over 16	\$5,000

(C) for each violation of paragraph 6(c):

<u>Cumulative Number of Days of Violations</u>	<u>Penalty Per Day</u>
1 - 5	\$500
6-15	\$2,000
Over 16	\$5,000

(D) for violation of paragraph 6(d):

<u>Cumulative Number of Days of Violations</u>	<u>Penalty Per Day</u>
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1 - 5	\$500
6-15	\$2,000
Over 16	\$5,000

(E) for each day on which the requirements of Paragraph 8 are violated:

\$15,000 per violation per day.

(F) for each day on which the requirements of Paragraph 9 are violated:

\$15,000 per violation per day.

(G) for each record required to be kept under Paragraphs 7, 10, and 11 of this Order which is missing:

<u>Number of Records</u>	<u>Penalty Per missing record</u>
1 - 30	\$500
31 - 60	\$2,000
Over 60	\$5,000

(H) for each day beyond the dates specified in Paragraphs 10 or 11 by which compliance with the requirements of those paragraphs is delayed:

<u>Delay</u>	<u>Penalty</u>
1 - 30	\$250 per day
31 - 60	\$500 per day
Over 61	\$1,000 per day

27. With respect to stipulated Penalties for violations of the requirement of Paragraph 6, above, which are due to malfunctions of the emissions sources or control equipment, TCC shall pay such stipulated penalties only after review of the malfunction incident by the OEPA and TESD.

28. Any payment required to be made under the provisions of Paragraph 26 of this Order shall be made by delivering to Plaintiff's counsel a cashier's 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". Any payment due under paragraph 27 of this Consent Order shall be made by delivering to Plaintiff's counsel a cashier's check or checks for the appropriate amounts, within forty-five days after notice by either OEPA or TESD that stipulated penalties are due.

29. The requirements for the payment of stipulated penalties set forth in paragraph 26, subparagraphs (A)-(H), shall be terminated by order of the Court upon a finding by the Court or upon a stipulation of the parties that Defendant has been in compliance with the subparagraph of this Consent Order for which it seeks termination, for an uninterrupted one-year period, beginning after the entry of this Order and that it has paid all stipulated penalties due.

XII. POTENTIAL FORCE MAJEURE

30. In any action to enforce any of the provisions of this Consent Order the Defendant may raise at that time the question 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, or orders of any regulatory agency. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed

upon by 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 a dispute arises and/or an enforcement action, if any, is commenced. Acceptance of this Consent Order without a force majeure clause does not constitute a waiver by the Defendant of any rights or defenses it may have under applicable State law.

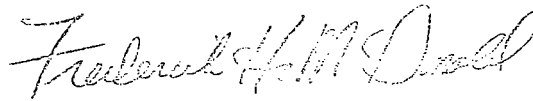
XIII. RETENTION OF JURISDICTION

31. This Court will retain jurisdiction of this action for the purpose of overseeing compliance with this Consent Order.

XIV. MISCELLANEOUS

32. Defendant shall pay all court costs of this action.

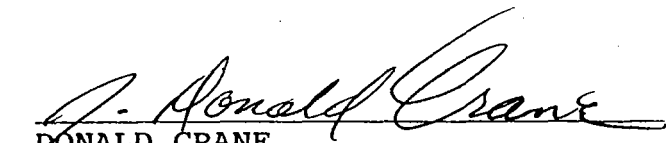
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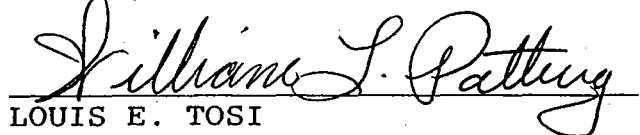


JUDGE McDONALD
COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO

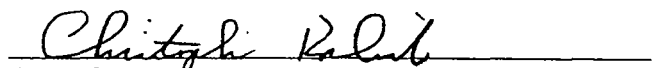
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