

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO, ex rel.
NANCY H. ROGERS,
ATTORNEY GENERAL,

:

CASE NO. CV04-08-2280

:

:

JUDGE MICHAEL J. SAGE

Plaintiff,

FILED BUTLER CO.
COURT OF COMMON PLEAS

DEC 09 2008

v.

:

CINDY CARPENTER
CLERK OF COURTS

MID OHIO PETROLEUM COMPANY, :
ET AL., :

:

:

Defendants. :

:

PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT AGAINST
DEFENDANT MID-OHIO PETROLEUM COMPANY

Plaintiff, State of Ohio, by and through its counsel, Attorney General Nancy H. Rogers, and pursuant to Civil Rule 55, hereby moves this Court to enter a judgment by default against Defendant Mid-Ohio Petroleum Company ("Mid-Ohio") for failing to answer a complaint properly served upon it in October 2004. The grounds for this motion are more fully set forth in a Memorandum in Support which is attached hereto and incorporated herein. In addition, a proposed judgment entry and order is attached for the Court's convenience.

Respectfully submitted,

NANCY ROGERS
ATTORNEY GENERAL OF OHIO


Nicole Candelora-Norman (0079790)
Assistant Attorney General
Environmental Enforcement Section

Public Protection Division
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400
Telephone: (614) 466-2766
Facsimile: (614) 644-1926
E-mail: ncandelora-norman@ag.state.oh.us

Counsel for Plaintiff, State of Ohio

MEMORANDUM IN SUPPORT

On August 6, 2004, Plaintiff, State of Ohio (“Ohio”), by and through its counsel, the Attorney General of Ohio, and at the written request of the Director of Environmental Protection, initiated a civil action against Defendant Mid-Ohio for violations of Ohio’s air pollution control rules at its gasoline dispensing facility (i.e., a gas station) in Butler County, Ohio. Ohio alleged Mid-Ohio violated these rules by operating its facility without a permit to operate pursuant to Ohio Adm.Code 3745-35-02 and failing to install vapor control systems pursuant to Ohio Adm.Code 3745-21-09. Because of its conduct, Mid-Ohio is subject to injunctive relief and a civil penalty pursuant to R.C. 3704.06. As discussed below, Mid-Ohio failed to properly plead or otherwise defend this action, and the State of Ohio is therefore entitled to judgment by default pursuant to Civ.R. 55(A).¹

On August 9, 2004, the Clerk of this Court sent a summons with a copy of Plaintiff’s Complaint to Mid-Ohio’s statutory agent, Robert J. Meyers, via ordinary mail (attached as Exhibit A). Two months later on or about October 22, 2004, the Clerk of this Court again sent a summons with a copy of the same Complaint to Mid-Ohio’s statutory agent, Robert J. Meyers, this time via certified mail. On October 26, 2004, Amy Frank, an employee of Buechner, Haffer, O’Connell, Meyers & Healey Co., LPA where Robert J. Meyers is an attorney, signed for the certified mail receipt, completing service of the Complaint in the above referenced matter (attached as Exhibit B). Consequently, service of the complaint was perfected on October 26, 2004.

Civ.R. 12(A)(1) required Mid-Ohio to serve its answer within twenty-eight days after the October 26, 2004 service of the summons and complaint. Nonetheless, Mid-Ohio failed to

¹ On April 20, 2005, Ohio amended its complaint to include Defendants Charles K. Stout and Loveland Oil Company. On May 25, 2007, Ohio, Charles K. Stout, and Loveland Oil Company jointly filed a consent order in this case and those Defendants are not the subjects of this motion.

properly move, plead, or defend this action after service of the summons and Complaint. Mid-Ohio should have responded to the Complaint by November 23, 2004. To date, Mid-Ohio has failed to file an Answer to Ohio's Complaint and therefore has failed to properly move, plead, or otherwise defend this action with the Court as provided by the Rules of Civil Procedure. Therefore, Ohio is entitled to judgment by default.

Based on the foregoing, the State of Ohio respectfully requests the Court to enter a judgment by default by doing the following:

1. Issue an order pursuant to R.C. 3704.06 enjoining Mid-Ohio to submit an application for a permit to install and operate the facility pursuant to Ohio Adm.Code 3745-35-02.
2. Issue an order pursuant to 3704.06 enjoining Mid-Ohio to install stage II vapor recovery equipment on the gas pumps at the facility in accordance with Ohio Adm.Code 3745-21-09(DDD).
3. Issue an order pursuant to R.C. 3704.06 ordering Mid-Ohio to pay a civil penalty of fifty-one thousand five hundred dollars (\$51,500) for the violations alleged in Ohio's Complaint.

For these reasons, Plaintiff respectfully moves this Court for an order granting default judgment against Mid-Ohio.

Respectfully submitted,

NANCY H. ROGERS
ATTORNEY GENERAL OF OHIO


Nicole Candelora-Norman (0079790)
Assistant Attorney General

Environmental Enforcement Section
Public Protection Division
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400
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E-mail: ncandelora-norman@ag.state.oh.us

Counsel for Plaintiff, State of Ohio

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion for Default Judgment was sent by certified U.S. mail, postage prepaid, this 3rd day of December, 2008 to the following:

Robert J. Meyers
105 East Fourth Street, Suite 300
Cincinnati, Ohio 45202

Registered Statutory Agent for Defendant Mid-Ohio Petroleum Company

James C. Frooman
Frost Brown Todd LLC
2200 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202

Bankruptcy Attorney for Defendant Mid-Ohio Petroleum Company

Ira H. Thomsen
140 North Main Street
P.O. Box 639
Springboro, Ohio 45066

Attorney for Defendants Charles K. Stout and Loveland Oil Company



NICOLE CANDELORA-NORMAN
Assistant Attorney General

4. Defendant Mid-Ohio and its agents, representatives, employees, successors, or assigns, under the names that they presently use or any other names they use through any corporate or other device, and those acting in concert and participation with Defendant Mid-Ohio directly or indirectly, are permanently enjoined from engaging in the acts or practices of which Plaintiff complains.

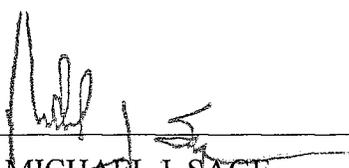
5. Defendant Mid-Ohio is ordered to pay all the costs of this action, including Plaintiff's attorneys' fees and other extraordinary litigation costs.

6. Defendant Mid-Ohio is ordered to pay into the Treasury of the State of Ohio, pursuant to R.C. 3704.06, a civil penalty for violations of R.C. Chapter 3704 and the rules promulgated and adopted thereunder, as described in the Complaint, in the amount of fifty-one thousand five hundred dollars (\$51,500).

7. This Court shall retain jurisdiction of this suit for making any Order or Decree the Court may deem necessary at any time to enforce and administer Defendant Mid-Ohio's compliance with, and to carry out, this Court's judgment.

IT IS SO ORDERED

DATE



JUDGE MICHAEL J. SAGE

EXHIBIT A

CINDY CARPENTER



CLERK OF COURTS

1000207062

CERTIFICATE OF MAILING
SUMMONS ON COMPLAINT
BY ORDINARY MAIL

Date: August 9, 2004

Case No.: CV 2004 08 2280

STATE OF OHIO vs. MID OHIO PETROLEUM COMPANY

This Certificate of Mailing is evidence that ordinary mail service of a Summons on Complaint was issued by the Butler County Clerk of Courts, in accordance with Ohio Civil Rule 4.6, to the following party:

MID OHIO PETROLEUM COMPANY
C/O ROBERT J MEYERS STATUTORY AGENT 105 EAST FOURTH STREET STE
1405
CINCINNATI, OH 45202

This original Certificate of Mailing must be filed in the case file identified above.

CINDY CARPENTER
Butler County Clerk of Courts

By: Rebecca Fleenor
Deputy Clerk



GOVERNMENT SERVICES CENTER • 315 HIGH STREET • SUITE 550 • HAMILTON, OHIO 45011-6016

BUTLER COUNTY CLERK OF COURTS
www.butlercountyclerk.org

EXHIBIT B



7360 3906 9448 6773 2780

A. Received by (Name) 110-26

C. Signature Agent Addressee
x Amy Frank

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

3. Service Type **CERTIFIED MAIL**
4. Restricted Delivery? (Extra Fee) Yes No

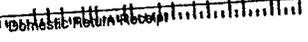
1. Article Addressed to: FILED in Common Pleas Court
BUTLER COUNTY, OHIO

MID OHIO PETROLEUM COMPANY
C/O ROBERT J MEYERS SUPERVISOR
105 EAST FOURTH STREET STE 1405
CINCINNATI, OH 45202
OCT 28 2004
CINDY CARPENIK
CLERK OF COURTS

L000 0682 07

CV 2004 08 2280

PS Form 3811, July 2004



**IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO**

STATE OF OHIO, ex rel.	:	
NANCY H. ROGERS,	:	CASE NO. CV04-08-2280
ATTORNEY GENERAL,	:	
	:	JUDGE MICHAEL J. SAGE
Plaintiff,	:	
	:	
v.	:	
	:	
	:	
MID OHIO PETROLEUM COMPANY,	:	
ET AL.,	:	
	:	
Defendants.	:	

ORDER

Upon the application of the Attorney General of the State of Ohio, Nancy H. Rogers, and pursuant to Civil Rule 55 of the Ohio Rules of Civil Procedure, and for good cause shown, it is the Order of this Court that judgment by default be entered against Defendant Mid-Ohio Petroleum Company. Defendant Mid-Ohio failed to answer the Complaint served upon it by certified mail on October 26, 2004. It is further ordered that:

1. Pursuant to R.C. 3704.06, Defendant Mid-Ohio is enjoined to submit an application for a permit to install and operate the facility pursuant to Ohio Adm.Code 3745-35-02.
2. Pursuant to R.C. 3704.06, Defendant Mid-Ohio is enjoined to install stage II vapor recovery equipment on the gas pumps at the facility in accordance with Ohio Adm.Code 3745-21-09(DDD).
3. Defendant Mid-Ohio is permanently enjoined from violating R.C. Chapter 3704 and the rules adopted thereunder.

4. Defendant Mid-Ohio and its agents, representatives, employees, successors, or assigns, under the names that they presently use or any other names they use through any corporate or other device, and those acting in concert and participation with Defendant Mid-Ohio directly or indirectly, are permanently enjoined from engaging in the acts or practices of which Plaintiff complains.

5. Defendant Mid-Ohio is ordered to pay all the costs of this action, including Plaintiff's attorneys' fees and other extraordinary litigation costs.

6. Defendant Mid-Ohio is ordered to pay into the Treasury of the State of Ohio, pursuant to R.C. 3704.06, a civil penalty for violations of R.C. Chapter 3704 and the rules promulgated and adopted thereunder, as described in the Complaint, in the amount of fifty-one thousand five hundred dollars (\$51,500).

7. This Court shall retain jurisdiction of this suit for making any Order or Decree the Court may deem necessary at any time to enforce and administer Defendant Mid-Ohio's compliance with, and to carry out, this Court's judgment.

IT IS SO ORDERED



DATE

JUDGE MICHAEL J. SAGE

EXHIBIT A

CINDY CARPENTER



CLERK OF COURTS

1000207062

**CERTIFICATE OF MAILING
SUMMONS ON COMPLAINT
BY ORDINARY MAIL**

Date: August 9, 2004

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STATE OF OHIO vs. MID OHIO PETROLEUM COMPANY

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1405
CINCINNATI, OH 45202

This original Certificate of Mailing must be filed in the case file identified above.

CINDY CARPENTER
Butler County Clerk of Courts

By: Rebecca Fleenor
Deputy Clerk



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BUTLER COUNTY CLERK OF COURTS

www.butlercountyclerk.org

EXHIBIT B

2. Article Number



7160 3901 9548 6773 2780

A. Received by (Please Print Clearly)

B. Date of Delivery

10-26

C. Signature

x Amy Frank

Agent
 Addressee

D. Is delivery address different from item 17
If YES, enter delivery address below:

Yes
 No

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

FILED in Common Pleas Court
BUTLER COUNTY, OHIO

L000 0682 07

MID OHIO PETROLEUM COMPANY
C/O ROBERT J MEYERS SPORTS CENTER
105 EAST FOURTH STREET STE 1405
CINCINNATI, OH 45202

NOV 28 2004
CINDY CARPENLA
CLERK OF COURTS

CV 2004 08 2280

PS Form 3811, July 2001

Domestic Return Receipt