

IN THE COURT OF COMMON PLEAS  
HOLMES COUNTY, OHIO

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DORCAS L. MILLER, CLERK  
COMMON PLEAS COURT  
HOLMES COUNTY, OHIO

State of Ohio ex rel. Richard Cordray,  
Ohio Attorney General,

Plaintiff,

v.

Walnut Creek Furniture, Inc.,

Defendant.

Case No. 10CV085

Judge Robert D. Rinfret

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CONSENT ORDER AND FINAL JUDGMENT ENTRY

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Plaintiff, State of Ohio, ex rel Richard Cordray, Attorney General of Ohio ("Plaintiff"), having filed the Complaint in this action against Walnut Creek Furniture, Inc. ("Defendant") to enforce Ohio's air pollution control laws found in R.C. Chapter 3704 and rules adopted thereunder; and Plaintiff and Defendant having consented to the entry of this Consent Order and Final Judgment Entry;

THEREFORE, without trial or admission of any issue of law or of fact, and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. DEFINITIONS

1. As used in this Order, the following terms are defined as follows:
  - a. "Air contaminant source" or "source" has the same meaning as set forth in R.C. 3704.01 and Ohio Adm.Code 3745-15-01.
  - b. "Consent Order" or "Order" means this Consent Order and Final Judgment Entry.
  - c. "Director" means the Director of the Ohio Environmental Protection Agency.

- d. "Facility" means the location of Defendant's finishing operation and all related operations located at 3470B State Route 39, Walnut Creek, Ohio 44687.
- e. "Ohio EPA" means the Ohio Environmental Protection Agency.

## II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapter 3704 and the rules 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.

## III. PERSONS BOUND

3. The provisions of this Consent Order shall apply to and be binding upon Plaintiff and Defendant, and Defendant's agents, officers, employees, assigns, successors-in-interest, and any person acting in concert, privity or participation with it and any purchaser of the Facility who receives actual notice of this Consent Order whether by personal service or otherwise. Should Defendant sell or transfer the Facility, either individually or as part of a larger transaction, Defendant agrees to provide the purchaser or transferee a copy of this Consent Order.

## IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

4. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendant to the Plaintiff for the claims alleged in the Plaintiff's Complaint.

5. This Consent Order shall not be construed to limit the authority of the Plaintiff to seek relief for violations not alleged in the Complaint, nor shall this Consent Order bar the State from bringing any action against the Defendant for any violations that occur after the entry of this Order. Nothing in this Consent Order shall be construed to relieve Defendant of its obligation to comply with applicable federal, state or local statutes, regulations, or ordinances.

#### V. INJUNCTIVE RELIEF

6. Defendant is ordered and enjoined to fully comply with the terms and conditions of this Consent Order including but not limited to compliance with regard to payment amounts, payment schedules, and other payment terms.

#### VI. CIVIL PENALTY

7. Pursuant to and in accordance with R.C. 3704.06, Defendant is enjoined and ordered to pay a total civil penalty of FORTY THOUSAND DOLLARS (\$40,000.00). Such penalty shall be paid as follows:

- a. Of the total civil penalty amount, Defendant shall pay \$8,000 to Plaintiff in the form of a supplemental environmental project ("SEP") by making a contribution to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0), in accordance with the following schedule. Payment shall be made in two installments, the first of \$5,000 and the second of \$3,000, on or before the following dates:

Within 15 days of the entry of this Consent Order, and  
January 1, 2011.

b. Civil penalty payments made pursuant to Paragraph 7a above shall be made by tendering certified checks payable to the order of "Treasurer, State of Ohio". The certified checks shall specify that such monies be deposited in Fund 5CD0 established by Ohio EPA for the Clean Diesel School Bus Program. The certified checks, together with a letter identifying Defendant, shall be delivered to Karen Pierson or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. The memorandum portion of the checks, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 355770."

c. Of the total civil penalty amount, Defendant shall pay \$32,000.00 to Plaintiff in accordance with the following schedule. Payments shall be made in seven installments, the first of \$2,000 and then six installments of \$5,000 each, on or before the following dates:

January 1, 2011

April 1, 2011

July 1, 2011

October 1, 2011

January 1, 2012

April 1, 2012

July 1, 2012.

d. Civil penalty payments made pursuant to Paragraph 7c above shall be made by tendering certified checks payable to the order of "Treasurer, State of Ohio". The certified checks, together with a letter identifying Defendant,

shall be delivered to Karen Pierson or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. The memorandum portion of the checks, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 355770."

#### VII. ATTORNEY GENERAL'S ENFORCEMENT COSTS

8. Defendant shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the Ohio Attorney General for enforcement costs by cashier's or certified check payable to the order of "Treasurer, State of Ohio" by October 1, 2012 to Karen Pierson or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "enforcement costs of the Ohio Attorney General related to A.G. EAGO No. 355770."

#### VIII. STIPULATED PENALTIES

9. In the event that Defendant fails to comply with any of the requirements of Sections V, VI, VII of this Consent Order, the stipulated penalties contained herein shall apply for the purpose of coercing compliance and Defendant is liable for and shall immediately pay stipulated penalties in accordance with the following schedule for each failure to comply:

- a. The first time Defendant violates the terms or conditions of this Consent Order, Defendant shall be liable for Five Hundred Dollars (\$500.00).
- b. The next time Defendant violates the terms or conditions of this Consent Order, Defendant shall be liable for Seven Hundred and Fifty Dollars (\$750.00).
- c. If Defendant violates the terms or conditions of this Consent Order following the second violation, Defendant shall be liable for One Thousand Dollars (\$1,000.00) for each day of each violation thereafter.

10. Any payment required to be made under the provisions of this Section of the Consent Order shall be made by delivering to Plaintiff, c/o Karen Pierson, Paralegal, or her successor, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, a cashier's or certified check made payable to the order of "Treasurer, State of Ohio," for the appropriate amount within thirty (30) days from the date of the violation of the terms and conditions of this Consent Order. The payment of the stipulated penalty shall be accompanied by a letter briefly describing the type of violation, deadline or requirement not met and the date upon which the violation occurred. The memo portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 355770."

11. The requirement to pay any stipulated penalty as set forth herein is self-executing upon any violation of the terms and conditions of this Consent Order by Defendant. No further demand need be made by Plaintiff.

12. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff pursuant to this Section shall not be construed to limit

Plaintiff's authority to seek additional relief pursuant to R.C. Chapter 3704, including civil penalties under R.C. 3704.06, or to otherwise seek judicial enforcement of this Consent Order, for the same violation for which a stipulated penalty was paid or for other violations.

IX. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS

13. All activities undertaken by Defendant pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state and local laws, rules, regulations and permits. Defendant shall submit timely applications and requests for any such permits and approvals. Where such laws appear to conflict with the other requirements of this Consent Order, Defendant is ordered and enjoined to immediately notify Ohio EPA of the potential conflict. This Consent Order is not a permit issued pursuant to any federal, state or local law or rule.

X. RETENTION OF JURISDICTION

14. This Court shall retain jurisdiction of this action for the purpose of enforcing this Consent Order.

XI. COSTS

15. Defendant shall pay the court costs of this action.

XII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

16. 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 Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

XIII. TERMINATION

17. After Defendant pays all civil and/or stipulated penalties that are or may be due and is in compliance with all terms and conditions of this Consent Order, Defendant may move the Court, pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure, to terminate this Consent Order. Plaintiff takes no position with regard to such motion at this time, and reserves its rights to oppose the motion. Termination of any or all of the provisions of this Consent Order may also be granted upon joint motion of the parties.

XIV. AUTHORITY TO ENTER INTO THE CONSENT ORDER

18. Each signatory for a corporation 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:

**S/ ROBERT D. RINFRET, JUDGE**

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JUDGE RINFRET  
HOLMES COUNTY  
COMMON PLEAS COURT

RICHARD CORDRAY  
OHIO ATTORNEY GENERAL

WALNUT CREEK FURNITURE, INC.

By:

By: Dale J. Miller

  
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SARAH T. BLOOM (0082817)  
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