

COPY

IN THE COURT OF COMMON PLEAS  
ERIE COUNTY, OHIO

BARBARA J. JOHNSON  
CLERK OF COURTS

SEP 24 2008

RECEIVED AND FILED  
COMMON PLEAS COURT  
ERIE COUNTY, OHIO

STATE OF OHIO, ex rel.	:	CASE NO. 2006-CV-1028
NANCY H. ROGERS,	:	
ATTORNEY GENERAL OF OHIO	:	Judge R. Binette
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
ERIE MATERIALS, INC.	:	
	:	
Defendant.	:	

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CONSENT ORDER AND FINAL JUDGMENT ENTRY

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Plaintiff, the State of Ohio, by its Attorney General Nancy H. Rogers, at the written request of Chris Korleski, the Director of Environmental Protection, filed a Complaint seeking injunctive relief and civil penalties from Defendant Erie Materials, Inc. ("Defendant") for violations of Revised Code ("R.C.") Chapter 3704 and the rules promulgated thereunder.

Therefore, without the trial, admission, or determination of any issue of fact or law, 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. "Facilities" means the asphalt plant located at 9220 Portland Road, Sandusky, Ohio, which is assigned Ohio EPA Facility Identification No. 0322020256, and the asphalt plant formerly owned and operated by Defendant

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and located at 12580 Greensburg Pike, Portage, Ohio, and which was assigned Ohio EPA Facility Identification No. 0387000348.

- b. "Sandusky Facility" means the asphalt plant located at 9220 Portland Road, Sandusky, Ohio, which is assigned Ohio EPA Facility Identification No. 0322020256.
- c. "Portage Facility" means the asphalt plant formerly owned and operated by Defendant and located at 12580 Greensburg Pike, Portage, Ohio, and which was assigned Ohio EPA Facility Identification No. 0387000348.
- d. "Ohio EPA" means the Ohio Environmental Protection Agency.
- e. "Director" means the Director of the Ohio EPA.
- f. "Permit to Install" has the same meaning as set forth in Ohio Adm.Code Chapter 3745-31.
- g. "Title V permit" shall have the same meaning as set forth in Ohio Adm.Code Chapter 3745-77.
- h. "Synthetic Minor Permit" shall have the same meaning as set forth in Ohio Adm. Code Chapter 3745-31.

## **II. JURISDICTION AND VENUE**

2. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim for which relief can be granted under R.C. Chapter 3704. Venue is proper in this Court.

### **III. PERSONS BOUND**

3. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and, to the extent consistent with Rule 65(D) of the Ohio Rules of Civil Procedure, their officers, agents, servants, employees, attorneys, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Consent Order whether by personal service or otherwise.

4. Defendant agrees and is hereby enjoined to provide actual notice of this Order to its officers, agents, servants, employees, attorneys, successors, and assigns, and those persons in active concert or participation with Defendant regarding any activity related to this Order or the Complaint in this case.

### **IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS**

5. Plaintiff alleges in its Complaint that Defendant has owned and operated its facilities in such a manner as to result in violations of the air pollution control laws and regulations of the State of Ohio. Completion of the terms of this Consent Order shall constitute full satisfaction of any civil and administrative liability of Defendant to Plaintiff for the claims alleged in Plaintiff's Complaint up to the date of the Court's entry of this Consent Order.

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

## **V. INJUNCTIVE RELIEF**

7. Defendant is hereby ordered and enjoined to comply with R.C. Chapter 3704 and the regulations adopted thereunder.

8. Defendant is ordered and enjoined to comply with the terms and conditions of any permits issued to Defendant by the Director under R.C. Chapter 3704 for the Sandusky Facility, including any renewals or modifications thereof.

9. As Defendant has submitted an application to Ohio EPA for a Synthetic Minor permit for its Sandusky Facility and issuance is pending, Defendant may operate the Sandusky Facility pursuant to the emission limitations contained in its application. Once the Synthetic Minor permit is issued, Defendant is ordered to comply with the terms and conditions of its Synthetic Minor permit, specifically any emission limitations as established and confirmed by Ohio EPA through emission testing (“stack testing”) conducted in accordance with the permit’s terms. The initial stack tests shall be performed within sixty (60) days of permit issuance. If Defendant’s Synthetic Minor permit is issued later than September 1, 2008, Defendant shall conduct the initial stack tests within sixty (60) days of start-up of the Facility for commercial production for the 2009 asphalt production season. The sixty (60) day period within which stack testing must be performed may be extended for good cause shown by Defendant for reasons such as extended inclement weather, lack of necessary production, or the unavailability of Ohio EPA personnel to witness the stack tests. Defendant shall request such extension from Ohio EPA’s Northwest District Office in writing. Such extension shall be granted at Ohio EPA’s sole discretion.

10. Notwithstanding the provisions of this Paragraph 9, Defendant retains all rights to administratively appeal any action of the Director with respect to the Synthetic Minor permit, including but not limited to, its terms, conditions or emission limitations.

11. Defendant is ordered and enjoined from operating any major source of air contaminants without applying for and obtaining a valid Title V Permit or Synthetic Minor Permit, pursuant to Ohio Adm.Code Chapters 3745-31 or 3745-77.

12. Defendant is ordered and enjoined to comply with all fee emission reporting obligations required by Defendant's permits and pursuant to Ohio Adm.Code 3745-78-02.

#### **VI. EMISSIONS FEES**

13. Defendant is ordered and enjoined to pay Title V and non-Title V emissions fees for calendar years 1995 through 2007 for the Sandusky facility, and calendar years 1999 through 2005 for the Portage facility. Defendant shall pay a total amount of Seven Thousand Three Hundred and Thirty Dollars (\$7,330.00) for the above-mentioned fees. Such payment shall be made as follows:

- a. Defendant shall pay Seven Thousand Three Hundred and Thirty Dollars (\$7,330.00) by cashier's or certified check payable to the order of "Treasurer, State of Ohio" and delivered within thirty (30) days of entry of this Consent Order to Brenda Case or her successor, Fiscal Specialist, Ohio EPA, Attention: Fiscal Administration, P.O. Box 1049, Columbus, Ohio, 43216-1049. The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "Erie Materials, Inc."

## VII. CIVIL PENALTY

14. Pursuant to and in accordance with R.C. 3704.06, Defendant is enjoined and ordered to pay a total civil penalty of One Hundred Eighty Thousand Dollars (\$180,000.00) to the State of Ohio. Such penalty shall be paid as follows:

- a. Defendant shall, within thirty (30) days of receipt of entry of this Consent Order, fund a supplemental environmental project ("SEP") by making a contribution in the amount of twenty (20) percent – Thirty-Six Thousand Dollars (\$36,000.00) – of the total civil penalty to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Defendant shall tender a certified check payable to the order of "Treasurer, State of Ohio" for Thirty-Six Thousand Dollars (\$36,000.00). The certified check shall specify that such monies be deposited in Fund 5CD0 established by Ohio EPA for the Clean Diesel Bus Program. The certified check, together with a letter identifying the Defendant, shall be delivered to Martha A. Sexton or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. The memorandum portion of the check, or some other prominent location on the transmittal letter or

documentation, shall include a reference to “A.G. EAGO No. 293495.”

- b. Defendant shall pay the remaining eighty (80) percent – One Hundred Forty-Four Thousand Dollars (\$144,000.00) – of the total civil penalty by cashier’s or certified check payable to the order of “Treasurer, State of Ohio” and delivered within thirty (30) days of entry of this Consent Order to Martha A. Sexton or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to “A.G. EAGO No. 293495”.

#### **VIII. STIPULATED PENALTIES**

15. In the event that Defendant fails to comply with any requirement or deadline contained in Section V or Section VI of this Consent Order, excluding the requirements of Paragraph 9, Defendant is liable for and shall pay stipulated penalties in accordance with the following schedule for each failure to comply:

- a. For each day of each failure to comply with a requirement or deadline of this Consent Order, up to and including thirty (30) days – Two Hundred Fifty Dollars (\$250.00) per day for each requirement or deadline not met.

- b. For each day of each failure to comply with a requirement or deadline of this Consent Order, from thirty-one (31) to sixty (60) days – Five Hundred Dollars (\$500.00) per day for each requirement or deadline not met.
- c. For each day of each failure to comply with a requirement or deadline of this Consent Order, over sixty (60) days – Seven Hundred Fifty Dollars (\$750.00) per day for each requirement or deadline not met.

16. With respect to any failure to comply with the initial stack testing requirements of Paragraph 9, Defendant shall be liable for and shall pay stipulated penalties in the amount of One Thousand Dollars (\$1,000.00) for each exceedance of any emissions limitations established in Defendant's Synthetic Minor Permit. For purposes of this paragraph 16, each day subsequent to the failure to comply with the emission limitations in Defendant's Synthetic Minor Permit as shown by noncomplying stack tests, shall not constitute a separate violation. Notwithstanding the preceding, if Ohio EPA determines that the emission limitation(s) in the Synthetic Minor Permit needs to be modified, and the modified limitation(s) is greater than the emission rate shown during the noncomplying emission test, then no penalty shall be due and owing.

17. In the event Defendant fails to meet any of the requirements set forth in Section V or Section VI of this Consent Order, Defendant shall immediately be liable for payment of stipulated penalties imposed by this Consent Order without prior demand by the State of Ohio. Payment of all stipulated penalties shall be paid by the Defendant by its delivering to Plaintiff, c/o Martha A. Sexton or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street,

25th Floor, Columbus, Ohio 43215-3400, a certified check in that amount, payable to the order of "Treasurer, State of Ohio," immediately upon the occurrence of the violation giving rise to the penalty.

18. The imposition, payment and collection of stipulated penalties pursuant to this Consent Order shall not prevent Plaintiff from pursuing additional remedies, civil, criminal or administrative, for violations of applicable laws as described in paragraph 6.

#### **IX. SUBMITTAL OF DOCUMENTS**

19. All documents required to be submitted to Ohio EPA pursuant to this Consent Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio Environmental Protection Agency  
Division of Air Pollution Control  
Attn: James Orlemann  
Assistant Chief, SIP Development & Enforcement  
Lazarus Government Center, Suite 700  
50 West Town Street  
Columbus, Ohio 43215

Ohio Environmental Protection Agency  
Division of Air Pollution Control, Northwest District Office  
Attn: Donald Waltermeyer  
Unit Supervisor, DAPC  
347 Dunbridge Road  
Bowling Green, Ohio 43402

#### **X. TERMINATION OF CONSENT ORDER**

20. The terms and conditions of the Consent Order shall continue for two (2) years from the date of entry of this Consent Order or until Defendant has complied with all obligations and milestones set forth in Section V, Section VI, and Section VII of this Consent Order, whichever is later. Termination of any or all of the provisions of this Consent Order may also be granted upon a joint motion of the parties.

**XI. RETENTION OF JURISDICTION**

21. The Court will retain jurisdiction of this action for purposes of enforcing this Consent Order.

**XII. COURT COSTS**

22. Defendant is hereby ordered to pay all court costs of this action.

**XIII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK**

23. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, 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.

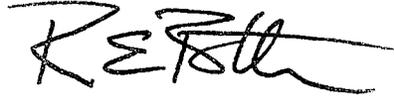
**XIV. AUTHORITY TO ENTER INTO THE CONSENT ORDER**

24. Each signatory for Defendant 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.

9/22/08

DATE



JUDGE R.E. BINETTE, ERIE COUNTY  
COURT OF COMMON PLEAS

Respectfully submitted,

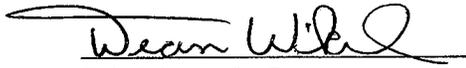
NANCY H. ROGERS  
Attorney General

Erie Materials, Inc.

By:



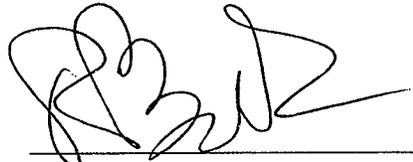
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30 East Broad Street, 25th Floor  
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Erie Materials, Inc.  
4507 Tiffin Avenue  
P.O. Box 2308  
Sandusky, Ohio 44870

*Authorized Representative*



*Attorneys for Plaintiff,  
State of Ohio*

ROBERT BOEHK (0030850)  
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4507 Tiffin Avenue  
Sandusky, Ohio 44870  
Telephone: (419) 625-7374

*Attorney for Defendant*

**"The Erie County Clerk Of Courts is ORDERED to enter this Judgment Entry on its journals, and shall serve upon all parties not in default for failure to appear Notice of this Judgment Entry and its date of entry upon the journal. Within 3 days of journalizing this Judgment Entry, the Clerk shall serve the parties. Civ. R. 58(B) & 5(B)"**