

FILED
COMMON PLEAS COURT
WAYNE COUNTY, OHIO

2005 DEC 20 PM 2 06

CAROL WHITE MILLHOAN
~~IN THE COURT OF~~ COMMON PLEAS
WAYNE COUNTY, OHIO

STATE OF OHIO, ex rel.
JIM PETRO
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

PREMIER METAL COATING,
INC. et al.

Defendants

CASE NO. 05-CV-0758

JUDGE

JUDGE BROWN

**Consent Order between Plaintiff State of Ohio and
Defendants Harry D. McMorrow and William D. McMorrow**

Plaintiff, the State of Ohio, by its Attorney General Jim Petro, at the written request of the Director of Environmental Protection, having filed a Complaint seeking injunctive relief and civil penalties from Premier Metal Coating ("Premier"), Inc., Victorian Properties, Ltd., Keith Eriksen, Harry D. McMorrow and William D. McMorrow for violations of R.C. Chapter 3704 and the rules promulgated thereunder, and the parties having consented to the entry of this Order.

NOW, THEREFORE, without trial, admission, or determination of any issue of fact or law, and upon the consent of Plaintiff and Harry D. McMorrow and William D. McMorrow, 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. "Facility" means the miscellaneous metal parts painting facility located at 715 Smithville Road, Orrville, Wayne County, Ohio.
- b. "Ohio EPA" means the Ohio Environmental Protection Agency including its Northeast District Office.
- c. "Director" means the Director of Environmental Protection.
- d. "Air contaminant source" or "source" has the same meaning as set forth in R.C. 3704.01(C) and Ohio Adm.Code 3745-31-01 and 3745-35-01.
- e. "Permit to Operate" or "PTO" has the same meaning as set forth in Ohio Adm.Code Chapter 3745-35.
- f. "Permit to Install" or "PTI" 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. "Defendants" means Harry D. McMorrow and William D. McMorrow.

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 pursuant to 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 Plaintiff, Defendants and, in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure, Defendants' 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.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

4. The Plaintiff alleges in its Complaint that Defendants owned and operated the Facility in such a manner as to result in emission, permitting, recordkeeping and reporting violations of the air pollution control laws and regulations of the State of Ohio.

Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of the Defendants to the Plaintiff for the claims alleged in the Plaintiff's Complaint, including liability against Premier Metal Services, Inc. (formerly known as McMorrow Brothers, Inc.) for days of violation up to and including May 31, 2001.

Nothing in this Consent Order shall relieve Premier Metal Services, Inc. (formerly known as McMorrow Brothers, Inc.), or any other person or entity, of liability for days of violation occurring after May 31, 2001.

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 of Ohio from bringing any action against the Defendants for any violations that occur after the entry of this Order. Nothing in this Consent Order shall be construed to relieve the Defendants of their obligations to comply with applicable federal, state or local statutes, regulations, or ordinances.

V. PERMANENT INJUNCTION

6. Defendants are hereby enjoined and ordered to immediately and permanently comply with R.C. Chapter 3704 and the regulations adopted thereunder, including all terms and conditions of any currently effective Permits to Install, Permits to Operate,

Title V permits and any subsequent renewals or modifications thereafter that pertain to this Facility. Specifically, Defendants agree to refrain and are hereby permanently enjoined from “installing” or “modifying” any air contaminant source, as those terms are defined by Ohio Adm.Code 3745-31-01, without first applying for and obtaining a Permit to Install from the Director in accordance with Ohio Adm.Code Chapter 3745-31. In addition, Defendants agree to refrain and are hereby permanently enjoined from operating any air contaminant source without first applying for and receiving the appropriate operating permit from the Director in accordance with Ohio Adm.Code Chapters 3745-31, 3745-35 and/or 3745-77, as applicable. Further, Defendants agree and are hereby permanently and immediately enjoined and ordered to comply with all terms and conditions of any final Permit to Install, Permit to Operate and/or Title V permit and any subsequent renewals or modifications thereof which have been or which are issued to Defendants by the Director, including but not limited to all reporting/recordkeeping requirements and all emissions limitations.

7. Defendants are enjoined and ordered to submit, on or before 30 days after entry of this Consent Order, all fee emission reports for the Facility for the period from January 1, 1995 through May 31, 2001, as required by Ohio Adm.Code 3745-78-02.

8. Defendants are enjoined and ordered to submit all Title V fees assessed against the facility the period from January 1, 1995 through May 31, 2001 pursuant to R.C. 3745.11 within thirty days after the issuance of an invoice for those fees by Ohio EPA.

VI. CIVIL PENALTY

9. Pursuant to and in accordance with R.C. 3704.06, Defendants Harry McMorrow and William McMorrow are jointly and severally liable for and are enjoined and ordered to pay a total civil penalty of Fifty Thousand Dollars (\$50,000.00). This amount shall be paid by cashier's or certified check payable to the order of "Treasurer, State of Ohio" and delivered within 30 days of entry of this Consent Order to Amy Laws, Paralegal, or her successor, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. 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. 211753."

VII. STIPULATED PENALTIES

10. In the event that any Defendant Premier fails to comply with any of the requirements imposed by paragraphs 7 and 8 of this Consent Order, that Defendant shall immediately be liable for and shall pay a stipulated penalty according to the following payment schedule:

- a. For each day Defendant Premier fails to meet a requirement, up to thirty (30) days—One Hundred Dollars (\$100.00) per day for each requirement not met;
- b. For each day Defendant Premier fails to meet a requirement, from thirty-one (31) to sixty (60) days—Two Hundred Dollars (\$200.00) per day for each requirement not met;

- c. For each day Defendant Premier fails to meet a requirement, from sixty-one (61) to ninety (90) days—Three Hundred Dollars (\$300.00) per day for each requirement not met; and
- d. For each day Defendant Premier fails to meet a requirement, over ninety (90) days—Four Hundred Dollars (\$400.00) per day for each requirement not met.

11. In the event any Defendant fails to meet any of the requirements of this Consent Order, that 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 that Defendant by delivering to Amy Laws, 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 certified check in that amount, payable to the Order of “Treasurer, State of Ohio,” immediately upon becoming aware of the violation giving rise to the penalty. 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. 211753.”

12. The payment of stipulated penalties by any 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. 3734.06, 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.

VIII. RETENTION OF JURISDICTION

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

IX. COURT COSTS

14. The Defendants are hereby ordered to pay all court costs of this action.

X. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

15. 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 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.

XI. AUTHORITY TO ENTER INTO THE CONSENT ORDER

16. Each signatory for a Defendant represents and warrants that he/she has been duly authorized to sign this document and so bind the respective Defendant to all terms and conditions thereof.

IT IS SO ORDERED

Dec. 20, 2005
DATE



JUDGE, COURT OF COMMON PLEAS
WAYNE COUNTY

JOURNALIZED

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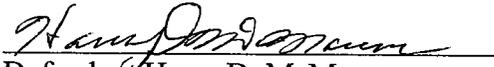
CAROL WHITE MILLHOAN
CLERK, WAYNE COUNTY, OHIO

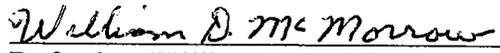
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