

IN THE COURT OF COMMON PLEAS
ALLEN COUNTY, OHIO

COMMON PLEAS COURT
FILED

2003 DEC 17 PM 2:58

CV2003 1161
CASE NO. COURT OF COMMON PLEAS
ALLEN COUNTY, OHIO

STATE OF OHIO
JIM PETRO
ATTORNEY GENERAL OF OHIO,

JUDGE:

[s] RICHARD K. WARREN

Plaintiff,

v.

CONSENT ORDER AND FINAL
JUDGMENT ENTRY

B.P. CHEMICALS, INC.

Defendant.

Plaintiff, the State of Ohio, by its Attorney General Jim Petro, at the written request of Christopher Jones, the Director of Environmental Protection, has filed a Complaint seeking injunctive relief and civil penalties from Defendant B.P. Chemicals, Inc. ("Defendant") for violations of Revised Code ("R.C.") Chapter 3704 and the rules promulgated thereunder, and both parties have consented to the entry of this Order.

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. "Facility" means Defendant's facility and all related operations located at 1900 Fort Amanda Road, Lima, Allen County, Ohio.
 - b. "Ohio EPA" means the Ohio Environmental Protection Agency.
 - c. "Director" means the Director of Ohio EPA.
 - d. "Air contaminant source" or "source" has the same meaning as set

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forth in R.C. 3704.01(C) and Ohio Administrative Code ("O.A.C") Rules 3745-31-01(D) and 3745-35-01(B)(1).

- e. "Permit to Operate" or "PTO" has the same meaning as set forth in O.A.C Chapter 3745-35.
- f. "Permit to Install" or "PTI" has the same meaning as set forth in O.A.C. Chapter 3745-31.
- g. "Title V permit" shall have the same meaning as set forth in O.A.C. Chapter 3745-77.

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 the parties to this action, and, to the extent provided by 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.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

4. Application for the permit modification required by Paragraph 7, completion of the tasks required by paragraphs 8 and 9, and payment of the Civil Penalty required by paragraph 10 of this Consent Order shall constitute full satisfaction of any civil liability of Defendant to the Plaintiff for violations alleged in the Plaintiff's Complaint that occurred prior to the date of Entry

of this Consent Order, including any continuing violations alleged in the Complaint that arise out of acts or omissions occurring prior to the date of entry of this Consent Order.

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 which commence after the entry of this 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

6. Defendant agrees and is hereby enjoined and ordered to comply with the nitrogen oxides (NOx) emission limit applicable to the Absorber Offgas Incinerator (Source P035) as specified in Permit To Install No. 03-09227 and to comply with Additional Special Term and Conditions number 4.C.2.A. of PTI No. 03-09227 to operate and maintain equipment (known as a "Continuous Emission Monitor System" or "CEMS").

7. Defendant agrees and is enjoined and ordered to submit an application for a modification of the Permit To Install for the Scrubber Off-gas Incinerator (Source N006), and to comply with that modified permit, in accordance with the following schedule:

<u>TASK</u>	<u>DATE</u>
a. Submit an application for modification of the PTI	Within 45 days of the entry of this Order
b. Submit Progress Report(s)	At the end of each calendar quarter following submission of the application until issuance of the final permit modification

c. Achieve and thereafter maintain compliance with the particulate matter emission limit specified in the modified PTI. Upon the effective date of the modified PTI

8. Defendant agrees and is enjoined and ordered to install a new continuous emission monitoring system on its Absorber Offgas Incinerator in accordance with the following schedule and to thereafter comply with the continuous emission monitoring requirements applicable to the Absorber Offgas Incinerator (Source P035):

<u>TASK</u>	<u>DATE</u>
a. Award Contracts	Completed
b. Submit Progress Report	Within 3 months of the entry of this Order
c. Submit Progress Report	Within 6 months of the entry of this Order
d. Complete On-Site Installation and Commence Operation	Within 9 months of the entry of this Order

Defendant is enjoined and ordered to submit to Ohio EPA, on or before five days after the milestone date specified in Paragraphs 8.d. above, a report indicating whether Defendant has complied with the milestone.

9. Defendant is enjoined and ordered to conduct a stack test on Source No. N006 in accordance with O.A.C. 3745-15-04 and in accordance with the following schedule:

a. Within 45 days after the date specified in paragraph 7.c., Defendant shall submit an Intent to Test ("ITT") notification to Ohio EPA's Northwest District

Office. The ITT notification shall describe in detail the proposed test methods and procedures, the emissions unit operating parameters, the time(s) and date(s) of the test(s), and the person(s) who will be conducting the test(s).

b. Failure to submit such notification for review and approval prior to the test(s) may result, in the sole discretion of Ohio EPA, in the Ohio EPA's Northwest District Office's refusal to accept the results of the emission test(s).

c. Personnel from Ohio EPA's Northwest District Office shall be permitted to witness the test(s), examine the testing equipment, and acquire data and information necessary to ensure that the operation of the emissions unit and the testing procedures provide a valid characterization of the emissions from the emissions unit and/or the performance of the control equipment.

d. Within 90 days after the date specified in paragraph 7.c., Defendant shall conduct the stack test in accordance with both the ITT and O.A.C. Rule 3745-15-04.

e. Within 150 days after the date specified in paragraph 7.c., Defendant shall submit to Ohio EPA's Northwest District Office a comprehensive written report on the results of the emissions test(s), which shall be signed by the person or persons responsible for conducting and performing the test. Defendant may request additional time for the submittal of the written report, where warranted, with prior approval from Ohio EPA's Northwest District Office.

VI. CIVIL PENALTY

10. Pursuant to R.C. 3704.06(C), Defendant shall pay a civil penalty in the amount of One Hundred Thousand Five Hundred Dollars (\$100,500.00) to the State of Ohio. This amount, shall be paid in cash by delivering a certified check in that amount, payable to the order of "Treasurer, State of Ohio", to Jena Suhadolnik or her successor, Administrative Assistant, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215-3400, within thirty (30) days of the date of entry of this Consent Order.

VII. STIPULATED PENALTIES

11. In the event Defendant violates the requirements of this Consent Order identified below, Defendant shall be liable for and immediately pay a stipulated penalty in an amount determined in accordance with the following subparagraphs:

- a. For each day after the date of entry of this Order on which the NOx emission limit referred to in Paragraph 6 is exceeded for reasons other than startup, shutdown or malfunction: \$500/day.
- b. For each day after the date specified in Paragraph 7.c. on which the PM emission limit established in such permit is exceeded for reasons other than startup, shutdown or malfunction: \$500/day.
- c. For failure to timely comply with any interim milestone in Paragraph 7 or 8 or to conduct the stack test required by Paragraph 9: \$250/day.
- d. For failure to comply with any reporting or notification requirement in Paragraphs 7 or 8 or 9: \$100/day.
- e. For failure to timely pay the penalty set forth in Paragraph 10: \$500/day.

Payment of said stipulated penalty shall be made by delivering to Plaintiff, c/o Jena Suhadolnik, Administrative Assistant, 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 the appropriate amount, payable to the Order of "Treasurer, State of Ohio," immediately upon the occurrence of the violation giving rise to the penalty.

12. The imposition, payment and collection of stipulated penalties pursuant to violations of this Consent Order shall not prevent the State from pursuing additional remedies, civil, criminal or administrative, for violations of applicable law.

VIII. RETENTION OF JURISDICTION

The Court shall retain jurisdiction for purposes of enforcing compliance with the terms of this Consent Order.

IX. COURT COSTS

Defendant is enjoined and ordered to pay all court costs of this

X. TERMINATION

No earlier than two (2) years after the completion of the application for the permit modification required by paragraph 1 of the tasks required in paragraphs 1 and 2 and any other of the Consent Order required by paragraph 1. Defendant may move the Court, pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure to terminate this Consent Order if Defendant can demonstrate that it has been in compliance with the obligations of this Consent Order for such two (2) year period. The Plaintiff takes position at this time as to the same and reserves any rights it may have to oppose the motion, including the basis that two years is, in actuality, the appropriate time period.

XI. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

Pursuant to Rule 60 of the Ohio Rules of Civil Procedure upon granting this Consent Order by the Court, the clerk directed to enter upon the journal within three days of entering the judgment upon the journal the clerk directed to serve upon all parties of the judgment its date entry upon the journal the same as prescribed by Rule 60 of the Ohio Rules of Civil Procedure and to file the service with the appearance docket.

XII. AUTHORITY TO ENTER INTO THE CONSENT ORDER

Each signatory for the Defendant represents and warrants that he/she has been

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duly authorized to sign this document and so bind the corporation to all terms and conditions thereof.

IT IS SO ORDERED

12/17/03
DATE



JUDGE, COURT OF COMMON PLEAS
ALLEN COUNTY

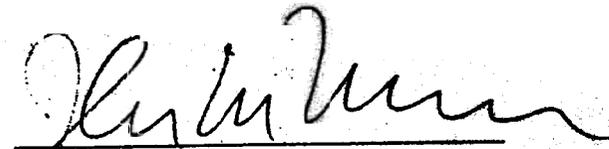
APPROVED:

B.P. CHEMICALS, INC.

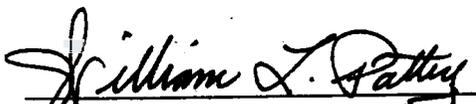
**JIM PETRO
ATTORNEY GENERAL OF OHIO**



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