

IN THE COURT OF COMMON PLEAS
KNOX COUNTY, OHIO

FILED
KNOX COUNTY
COURT OF COMMON PLEAS

2006 OCT 17 AM 10:57

MARY JO HAWKINS
CLERK OF COURTS

STATE OF OHIO, *ex rel.* JIM PETRO,
ATTORNEY GENERAL
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400

CASE NO. 06IN070343

JUDGE EYSTER

Plaintiff,

v.

KOKOSING MATERIALS, INC.
17531 Waterford Road
P.O. Box 334
Fredericktown, Ohio 43019-9159

Defendant.

CONSENT ORDER FOR PERMANENT INJUNCTION AND CIVIL PENALTY

Plaintiff, the State of Ohio, by and through its Attorney General Jim Petro, and at the written request of the Director of the Ohio Environmental Protection Agency, filed a Complaint seeking injunctive relief and civil penalties from Defendant Kokosing Materials, Inc. ("Defendant" or "Kokosing") 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 Defendant's admission of any allegations set forth in the Complaint and 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 any of the seven asphalt plants owned and operated by Kokosing and that are commonly referred to as Plant 505, Plant 506, Plant 507, Plant 509, Plant 510, Plant 513, and Plant 514, which is each a "facility," as defined in Ohio Adm. Code Rule 3745-15-01(P). Plant 505 was located in Fredericktown, Ohio, but is now shut down; Plant 506 is located at 2420 S. Section Line Road, Delaware, Ohio 43015; Plant 507 has been shut down, but was located at 1242 Mt. Vernon Road, Newark, Ohio; Plant 509 is located at 4755 South High Street, Columbus, Ohio; Plant 510 was located in Columbus, Ohio, but is now located elsewhere; Plant 513 is located at 6187 Westerville Road, Westerville, Ohio 43081 and is now owned and operated as a joint venture between Kokosing and Shelly Materials, Inc.; and Plant 514 is located in Lodi, Ohio.
 - b. "Ohio EPA" means the Ohio Environmental Protection Agency.
 - c. "Director" means the Director of the Ohio Environmental Protection Agency.
 - 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(D) and 3745-35-01(B)(1).
 - e. "Permit to Install" or "PTI" has the same meaning as set forth in O.A.C. Chapter 3745-31.
 - f. "Title V permit" shall have the same meaning as set forth in O.A.C. Chapter 3745-77.
 - g. "Permit to Operate" or "PTO" has the same meaning as set forth in O.A.C. Chapter 3745-35.

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 consistent with Rule 65(D) of the Ohio Rules of Civil Procedure, their officers, agents, servants, employees, attorneys, 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. Plaintiff alleges in its Complaint that Defendant has owned and operated the Facilities in such a manner as to result in violations of the air pollution control laws and the rules of the State of Ohio. Compliance with 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 and for claims for injunctive relief and civil or administrative penalty up to the date the parties execute this Consent Order. Nothing in this Consent Order shall limit the Plaintiff from seeking any lawful remedy for enforcement of Defendant's obligations under this Consent Order.

5. Except as provided in the preceding paragraph, 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. PERMANENT INJUNCTION

6. Defendant is hereby enjoined and ordered to immediately and permanently comply with R.C. Chapter 3704 and the rules adopted thereunder.

7. Defendant is hereby enjoined and ordered to comply with the terms and conditions of any permits issued to Kokosing by the Director under R.C. 3704 and for plants 505, 506, 507, 509, 510, 513 and/or 514. Specifically, Defendant is enjoined and ordered to comply with all PTIs currently applicable to each plant listed in the previous sentence.

VI. CIVIL PENALTY

8. Pursuant to R.C. 3704.06(C), Defendant shall pay a total civil penalty in the amount of One Hundred Eighty Five Thousand Dollars (\$185,000) 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 Seven Thousand Dollars (\$37,000) – of the total civil penalty to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD). Defendant shall tender a certified check to the Order of the "Treasurer, State of Ohio" for Thirty Seven Thousand Dollars (\$37,000). The certified check shall specify that such monies are to be deposited in the Fund 5CD established by Ohio EPA for the Clean Diesel Bus Program. The certified check together with a letter identifying the Defendant, shall be delivered to J. Mark Lemmon, Paralegal, or his successor, Paralegal, 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. 250391."

b. Defendant shall pay the remaining eighty (80) percent – One Hundred Forty Eight Thousand Dollars (\$148,000) – of the total penalty by cashier's or certified check payable to the order of "Treasurer, State of Ohio" and delivered within thirty (30) days of receipt of entry of this Consent Order to J. Mark Lemmon, Paralegal, or his 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. 250391."

VII. RETENTION OF JURISDICTION

9. The Court will retain jurisdiction of this action for purposes of enforcing this Consent Order until it is terminated.

VIII. COURT COSTS

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

IX. TERMINATION

10A. No earlier than one (1) year after the entry of this Consent Order, and after Defendant has paid all civil penalties that are or may be due, 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.

X. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

11. 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

12. 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

DATE

APPROVED:

KOKOSING MATERIALS, INC.



Authorized Representative of
Defendant Kokosing Materials, Inc.



**JUDGE, COURT OF COMMON
PLEAS, KNOX COUNTY**

**JIM PETRO,
ATTORNEY GENERAL OF
OHIO**



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