



- 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 Premier Metal Coating, Inc., Keith A. Eriksen and Victorian Properties, Ltd.

## **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, according to Rule 65(D) of the Ohio Rules of Civil Procedure, "is binding upon the parties to the action, 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. Eriksen shall be bound by the provisions of this Consent Order only so long as he remains the owner of Premier and/or its principal officer.

5. The Complaint as to Victorian is hereby dismissed with prejudice.

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

6. 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 (formerly known as McMorrow Brothers, Inc.) for days of violation up to and including the date of entry of this Consent Order. Nothing in this Consent Order shall relieve Premier (formerly known as McMorrow Brothers, Inc.), Eriksen, and Victorian or any other person or entity, of liability for days of violation occurring after the date of entry of this Consent Order.

7. 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**

8. Defendants Premier and Eriksen 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 Premier and Eriksen 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 Premier and Eriksen 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 Premier and Eriksen 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 recordkeeping and reporting requirements and all emissions limitations.

9. Defendants Premier and Eriksen are enjoined and ordered to submit, on or before 60 days after entry of this Consent Order, all fee emission reports for the Facility for the period from June 1, 2001 through January 25, 2004, as required by Ohio Adm.Code 3745-78-02. Plaintiff acknowledges all fee emission reports for the Facility not specified in the previous sentence were properly submitted to Ohio EPA.

10. Defendants Premier and Eriksen are enjoined and ordered to submit all Title V fees assessed against the facility for the period from June 1, 2001 through January 25, 2004 pursuant to R.C. 3745.11(C)(4) within 30 days after the issuance of an invoice for those fees by Ohio EPA. Plaintiff acknowledges all Title V fees assessed against the Facility not specified in the previous sentence were properly submitted to Ohio EPA.

## **VI. TERMINATION**

11. No earlier than 2 years after the entry of this Consent Order, and after Defendants paid all civil and/or stipulated penalties that are or may be due, Defendants Premier and Eriksen 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.

## **VII. CIVIL PENALTY**

12. Pursuant to and in accordance with R.C. 3704.06, Defendants Premier and Eriksen are jointly and severally liable for and are enjoined and ordered to pay a total civil penalty of Ten Thousand Dollars (\$10,000.00). 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 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. 211753."

## **VII. STIPULATED PENALTIES**

13. In the event that either Defendant Premier or Eriksen fails to comply with any of the requirements imposed by paragraphs 8, 9, 10 and 12 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 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 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 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 fails to meet a requirement, over ninety (90) days—Four Hundred Dollars (\$400.00) per day for each requirement not met.

14. In the event either Defendant Premier or Eriksen w 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 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, 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."

15. 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 relief pursuant to R.C. Chapter 3704 and the regulations adopted thereunder,

and/or to otherwise seek judicial enforcement of this Consent Order for the same violation for which a stipulated penalty was paid.

**VIII. RETENTION OF JURISDICTION**

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

**IX. COURT COSTS**

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

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

18. 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**

19. 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**

9/19/06  
DATE

  
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JUDGE ROBERT J. BROWN,  
COURT OF COMMON PLEAS  
WAYNE COUNTY

**JOURNALIZED**

SEP 18 2006

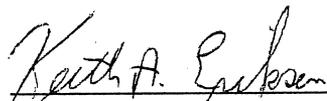
SUZANNE M. WALDRON  
WAYNE COUNTY, OHIO

Respectfully submitted,

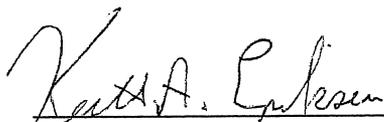
JIM PETRO  
ATTORNEY GENERAL OF OHIO



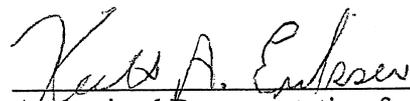
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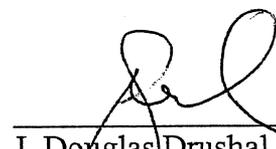
Authorized Representative for Defendant Premier Metal, Inc.



Defendant Keith A. Eriksen



Authorized Representative for Defendant Victorian Properties, Ltd.



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