

FINAL APPEALABLE ORDER

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

STATE OF OHIO, EX REL.
MARC DANN
ATTORNEY GENERAL OF OHIO

Plaintiff,

v.

MAR-ZANE, INC.

Defendant.

:
: CASE NO. 06CVH-12-16495
:
: Judge R. Frye

TERMINATION NO. 7
BY 1-30-08

CONSENT ORDER AND FINAL JUDGMENT ENTRY

Plaintiff, the State of Ohio, by its Attorney General Marc Dann, at the written request of Chris Korleski, the Director of Environmental Protection, filed a Complaint seeking injunctive relief and civil penalties from Defendant Mar-Zane, Inc. ("Defendant") for violations of Revised Code ("R.C.") Chapter 3704 and the rules promulgated thereunder, which violations Defendant denies, 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 Plant No. 26 located at 3300 Jackson Pike Road, Grove City, Ohio, which is assigned Ohio EPA Facility Identification No. 0125092371.

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- b. "Ohio EPA" means the Ohio Environmental Protection Agency.
- c. "Director" means the Director of the Ohio Environmental Protection Agency.
- d. "Permit to Install" has the same meaning as set forth in Ohio Adm.Code Chapter 3745-31.
- e. "Synthetic Minor Permit to Install" shall have the same meaning as set forth in Ohio Adm. Code 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, in accordance 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.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

4. Plaintiff alleges in its Complaint that Defendant has owned and operated the Facility 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.

5. 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 comply immediately and permanently with R.C. 3704.05(C) and (G), Ohio Adm. Code 3745-31-02(A), Ohio Adm. Code 3745-31-11 to 3745-31-20, Ohio Adm. Code 3745-77-02, Ohio Adm. Code 3745-77-04 and Ohio Adm. Code 3745-78-02.

Synthetic Minor Permit to Install Application

7. Defendant agrees and is enjoined and ordered to submit an application for a Synthetic Minor Permit to Install for the hot mix asphalt plant (Emissions Unit P901), by not later than January 2, 2008, which application Ohio EPA acknowledges having received on January 2, 2008. Such application shall include a control plan and compliance schedule to implement all control equipment and control measures as identified and further described in Paragraph 10. The control plan shall provide for the implementation of all control equipment and control measures, as well as the achievement of emission limits. The application shall also identify and provide for a program of regular tuning and maintenance of the high-efficiency burner described in paragraph 10. Such application shall include a control plan and compliance schedule to

implement all control equipment and control measures as identified and further described in Paragraph 10. The control plan shall provide for the implementation of all control equipment and control measures, as well as the achievement of emission limits. The application shall also identify and provide for a program of regular tuning and maintenance of the high-efficiency burner described in paragraph 10.

8. Defendant is hereby enjoined and ordered to comply with the terms and conditions of the final Synthetic Minor Permit to Install for Plant 26 to be issued by Ohio EPA pursuant to Paragraph 7 unless and until a modification or renewal of such Permit is issued by Ohio EPA.

9. The parties expressly acknowledge and agree that Defendant may contest the lawfulness and/or reasonableness of the final Synthetic Minor Permit to Install for Emissions Unit P901 before the Environmental Review Appeals Commission, or any other tribunal of competent jurisdiction. Furthermore, Defendant reserves the right to participate as an intervenor if any other party contests the above-mentioned Synthetic Minor Permit to Install.

Installation of High-Efficiency Burner

10. Defendant has proposed to install a high-efficiency burner for Emissions Unit P901. The proposed burner is an Astec Phoenix Talon burner ("burner"), as specifically identified in Attachment "A." To avoid the requirement to obtain a PSD permit and as allowed by U.S. EPA's "Injunctive Relief Policy," the burner has been approved by Ohio EPA as Best Available Control Technology for Plant 26. Defendant shall install this burner for Emissions Unit P901 by not later than April 1, 2008.

11. Defendant shall perform compliance tests (stack tests) for Emissions Unit P901 in accordance with the terms and conditions of the Synthetic Minor Permit to Install identified in Paragraph 8, and any subsequent modifications thereof.

12. Defendant shall operate and maintain the burner in accordance with the manufacturer's recommendations to ensure efficient combustion of fuel.

Emission Reports

13. Defendant agrees and is enjoined and ordered to submit a complete Title V emission report in the manner prescribed by the Director for calendar year 2002.

VI. 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 Forty Thousand Dollars (\$140,000.00) 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 – Twenty-Eight Thousand Dollars (\$28,000.00) – 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 Twenty-Eight Thousand Dollars (\$28,000.00). 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. 247114."

- b. Defendant shall pay the remaining eighty (80) percent – One Hundred Twelve Thousand Dollars (\$112,000.00) – 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. 247114".

VII. 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, 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. 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.

17. 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.

VIII. SUBMITTAL OF DOCUMENTS

18. All documents required to be submitted to Ohio EPA and the Central District Office of 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 Section
Lazarus Government Center
50 West Town Street
Columbus, Ohio 43215

Ohio Environmental Protection Agency
Division of Air Pollution Control, Central District Office
Attn: Todd Scarborough
Senior Environmental Specialist
Lazarus Government Center
50 West Town Street
Columbus, Ohio 43215

IX. POTENTIAL FORCE MAJEURE

19. If any event occurs that causes or may cause a delay in Defendant's compliance with Section V of this Consent Order, Defendant shall notify Ohio EPA, in writing, within ten (10) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendant to prevent or minimize the delay and the timetable by which measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

20. In any action by Plaintiff to enforce any of the provisions of this Consent Order, Defendant may raise that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control, such as, by way of example and not limitation, acts of God, acts of war or civil disturbances. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by the parties that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an action to enforce the terms and conditions of this Consent Order, if any, is commenced by Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant shall rest with Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Defendant or serve as a basis for an extension of time under this Consent Order. Failure by Defendant to comply with the notice requirements of the previous paragraph shall render this paragraph void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendant's right to request an extension of its obligations under this Order based on such incident. An extension of one compliance date based on a particular incident does not mean that Defendant qualifies for an extension of a subsequent compliance date or dates. Defendant must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought.

X. TERMINATION OF CONSENT ORDER

21. 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 and Section VI 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

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

XII. COURT COSTS

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

XIII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

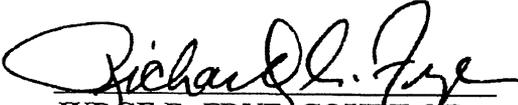
24. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is directed to serve upon all parties notice of the judgment and 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

25. 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

1/30/08
DATE


JUDGE R. FRYE, COURT OF
COMMON PLEAS, FRANKLIN
COUNTY

APPROVED:

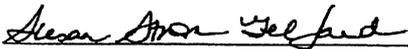
MAR-ZANE, INC.


Authorized Representative of
Defendant Mar-Zane, Inc.
Gerald N. Little
President

MARC DANN,
ATTORNEY GENERAL OF OHIO

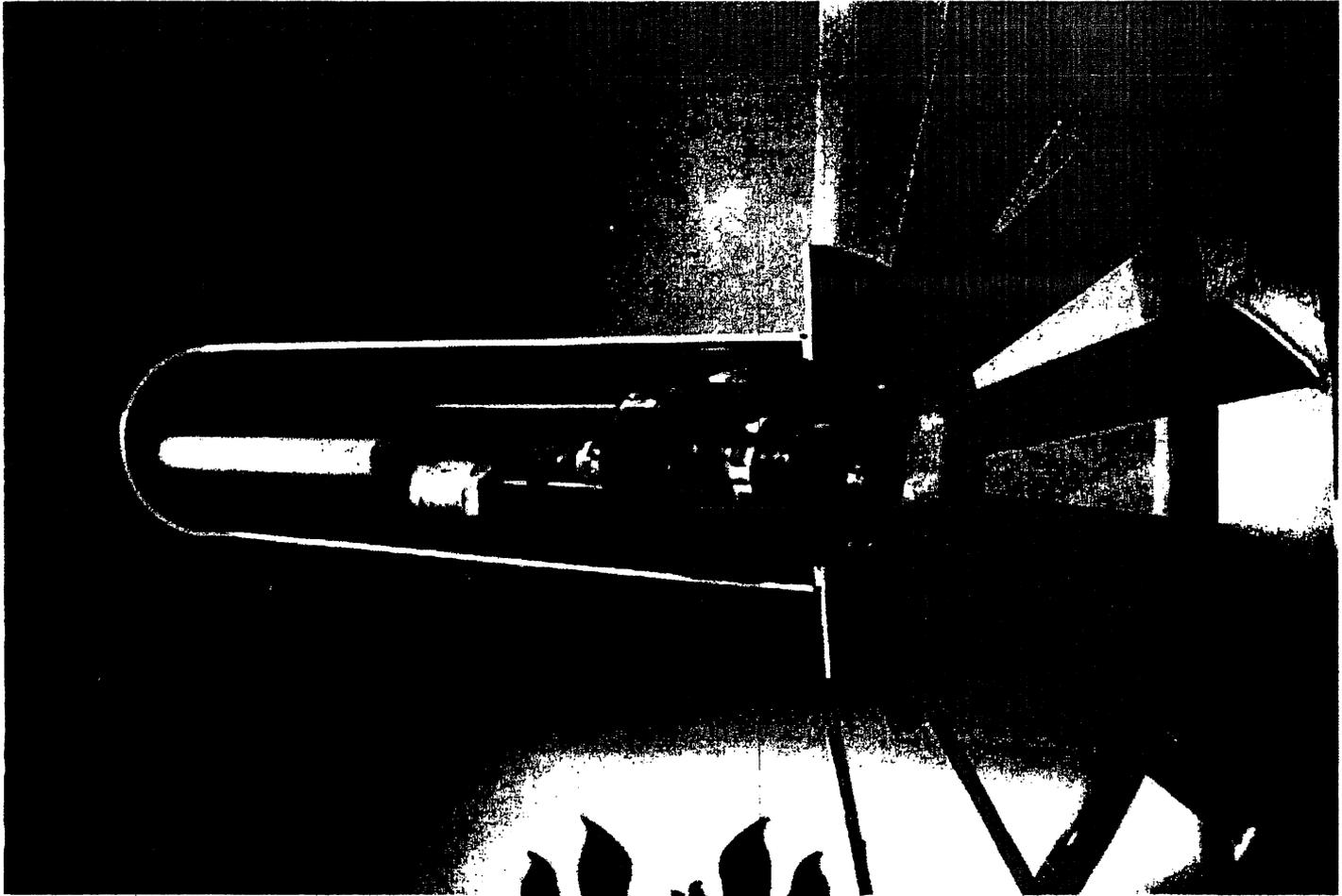

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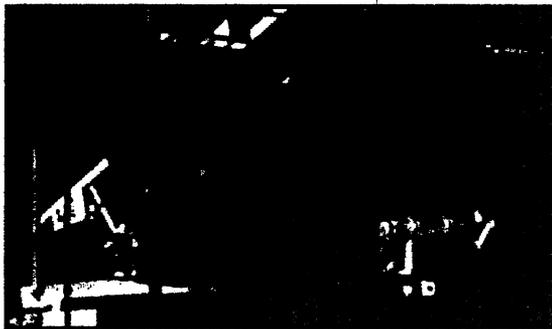
Attorney for Defendant, Mar-Zane, Inc.

Attachment "A"



TALON

**ASTECS HIGH-EFFICIENCY
AGGREGATE DRYING BURNER**



HIGH EFFICIENCY

Astec's Phoenix® Talon is the premier high-efficiency burner for the aggregate and HMA industries due to its premix gas design and compressed air-atomized oil burning technology. It features a lean-burn premix capability that does not require any special equipment.

LOW ELECTRIC POWER CONSUMPTION

The Phoenix Talon uses significantly less electric power than conventional burners due to its low body pressure design and the variable frequency drive in its combustion blower.

At 80% capacity, where most burners operate the majority of the time, the Phoenix Talon uses approximately 35 hp compared to the 80 hp used by conventional burners.

LOW COMBUSTION EMISSIONS

The Phoenix Talon is the only true premix gas burner in the hot mix asphalt industry. The thorough and uniform mixing of gas and air in the premix chamber eliminates hot and cold spots in the flame that cause most NOx and CO emissions.

Rapid combustion in the front-end of the burner further reduces emissions, making the Phoenix Talon the best burner for areas with tight emission limits.

COMPACT FLAME SHAPE

During both oil and gas firing, the flame develops downstream of the swirler. The swirler and other components of the burner nose ensure rapid and complete mixing of air and fuel. This thorough mixing accounts for the Phoenix Talon's compact flame shape.

The burner's compact flame shape is compatible with most drums without complicated flame adjustments. For example, the flame size of the PT-100 is only about 5 feet in diameter and 5.5 feet long during oil firing and is still smaller than when firing on gas.

PRECISE FUEL TO AIR RATIO CONTROL

Oil flow and airflow are each controlled by variable frequency drives, eliminating oil control valves and air dampers. The linear control characteristics of the Phoenix Talon allow operators to precisely control fuel to air ratios.

QUIET OPERATION

Since variable frequency drives replace traditional dampers in the Phoenix Talon, it is quieter than other aggregate drying burners. The free-flowing design generates less noise than other burners. Sound emission of the Phoenix Talon is typically about 84 dBA at 10 feet.

PHOENIX TALON'S TYPICAL EMISSION RATES

	OIL	NATURAL GAS	NATURAL GAS (LEAN-BURN)
CO	40 PPM	250 PPM	200 PPM
NOx	70 PPM	40 PPM	20 PPM

These emission rates have been corrected to 3% oxygen.

EASY INSTALLATION AND MAINTENANCE

The Phoenix Talon comes pre-piped and pre-wired for quick installation. It is complete with fuel meters, junction box pre-wired to all components, flame scanner, regulators, and solenoids.

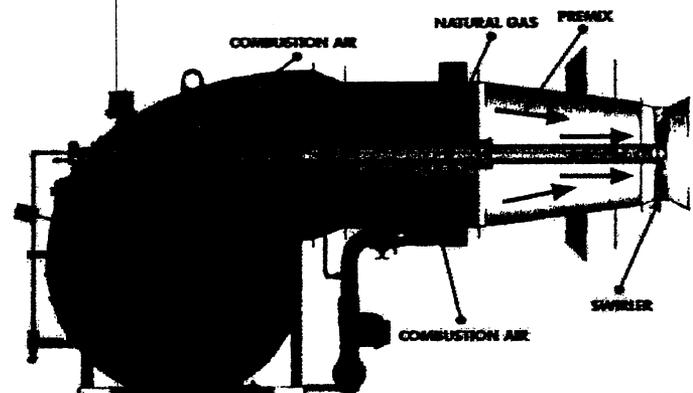
Once installed, it is easy to maintain. It has far fewer parts than traditional dampened burners, and the stainless steel flame end ensures a long service life.

Other features for trouble-free operation and maintenance include the solid blade blower construction, welded nozzle pintle, and pilot that is removable from the rear of the burner.

RELIABLE FIRING

The self-stabilizing design of the Phoenix Talon's oil atomizer locks the flame in the wake of the nozzle. As a result the burner provides smooth combustion of any fuel, even waste oil (when preheated so that viscosity is 90 SSU or less).

For reliable firing in cold conditions, the Phoenix Talon can be supplied with Astec's exclusive heat tracing and insulation system. This system eliminates the cold oil "slug" from the burner piping.



LOW EXCESS AIR FIRING SPECS

MODEL	Rated Capacity Millions of BTU/HR (with 20% O ₂ A ₂)	Nominal Aggregate Drying Capacity at 5% Moisture	Burner Air Capacity SCFM	Integral Blower Horsepower	Oil-Fired Atomizing Air Requirement SCFM
75		300 tph	1 mill.	60	65 to 50
100		400 tph	1.3 mill.	75	65 to 50
125		500 tph	1.6 mill.	100	70 to 55
150		600 tph	2 mill.	125	70 to 60

Actual conditions are standard at 70° F. drying level. See detailed capacity performance sheets for burner's air flow, air flow and specific flows and pressures. Nominal aggregate drying capacity based on 100% oil, 5% moisture, 240° F. ± 2 BTU/lbm. Specific heat in the aggregate burner flame is 800 Btu/lbm. ± 10% of rated capacity.

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