IN THE COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2009 JUL -6 P 3: 37

ROCKNE W. CLARKE
CLERK OF COURTS

State of Ohio, ex rel. Richard Cordray, Ohio Attorney General,	
Plaintiff,	**Case No. 2007 CV 070535**
v.	**Judge Edward Emmett O'Farrell**
The Belden Brick Company, L.L.C.,	
and	
Robert F. Belden,	
Defendants.	

CONSENT ORDER AND FINAL JUDGMENT ENTRY

Plaintiff State of Ohio, on relation of its Attorney General, Richard Cordray ("Plaintiff"), at the written request of the Director of Environmental Protection, having filed an Amended Complaint seeking injunctive relief and civil penalties from Defendants The Belden Brick Company, L.L.C., a Delaware limited liability company, and Robert F. Belden ("Defendants"), for alleged 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 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. "Air contaminant source" or "source" has the same meaning as set forth in R.C. 3704.01 and Ohio Adm.Code 3745-31-01 and 3745-15-01(C) and (W);

b. "Consent Order" or "Order" means this Consent Order and Final Judgment Entry;

c. "Defendants" mean "The Belden Brick Company, L.L.C. and Robert F. Belden;

d. "Director" means the Director of Environmental Protection;

e. "Facility" means Defendants' brick production facility and all related operations located at or near 475 Dover Road NW, Sugarcreek, Tuscarawas County, Ohio;

f. "PSD permit" means "Prevention of Significant Deterioration permit" as that term is defined by Ohio Adm.Code 3745-31-01(YYYY);

g. "PTI" means "permit-to-install" as that term is as set forth in Ohio Adm.Code Chapter 3745-31; and,

h. "Title V permit" and "Title V source" shall have the same meaning as set forth in Ohio Adm.Code Chapter 3745-77.

II. Jurisdiction and Venue

2. This Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapter 3704 and the rules adopted thereunder. This Court has jurisdiction over the parties. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted.

III. Persons Bound

3. The provisions of this Consent Order shall apply to and be binding upon the parties to this action. In addition, non-parties of the type identified in Rule 65(D) of the Ohio Rules of Civil Procedure are subject to the provisions of this Consent Order in the event that they are found in a contempt action to have been acting in concert with, or participating in, a violation of the Consent Order.

4. Defendants shall give actual notice of this Consent Order to their officers and to those persons or entities required by Rule 65(D) of the Ohio Rules of Civil Procedure within seven (7) days of the entry of this Consent Order.

IV. Satisfaction of Lawsuit and Reservation of Rights

5. The parties agree that this Consent Order does not constitute an admission, finding, or determination of violations at law or in fact at the Facility.

6. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendants to Plaintiff for the claims alleged in the Amended Complaint, which concerns violations of Ohio air pollution control law pursuant to R.C. 3704.05 and the rules adopted thereunder, and all violations or claims known to the Plaintiff relating to the Facility at the time of the entry of this Consent Order.

7. This Consent Order shall not be construed to limit the authority of Plaintiff to seek relief for violations not known to the Plaintiff at the time of the entry of this Consent Order , nor shall this Consent Order bar the State of Ohio from bringing any action against Defendants for any violations that occur after the entry of this Consent Order. Except as provided herein, nothing in this Consent Order shall be construed to relieve Defendants of their obligations to comply with all applicable federal, State, or local statutes, regulations, rules, or ordinances.

V. Injunctive Relief

8. Defendants are ordered and permanently enjoined to comply with R.C. Chapters 3704 and 3745 and the regulations promulgated thereunder with respect to all air contaminant sources at the Facility.

9. Defendants are further ordered and enjoined to pay Title V emission fees, for calendar years 2001 to 2006, to the Ohio Environmental Protection Agency in the amount of three hundred thirty-four thousand five hundred fourteen dollars and forty-three cents ($334,514.43) upon receipt of an invoice from the Ohio Environmental Protection Agency and in the time frame specified therein.

10. Defendants are further ordered and enjoined to submit Title V sulfur dioxide ("SO_2") fee emission reports for all plants at the Facility within one hundred eighty days of the entry of this Consent Order using the following equation for calculation of the SO_2 emissions, in tons per year ("TPY"):

> TPY of SO_2 emitted by each kiln during each CY = (avg. S) (tpy green brick) (64 g/gMol SO_2 / 32 g/gMol S)
>
> Where:
>
> CY = calendar year
>
> g/gMol = grams per gram mole
>
> avg. S = the average sulfur content, in fractional format, in the green brick (i.e., raw materials) processed for each specific kiln determined from all available LECO data for that kiln
>
> tpy green brick = the tons of raw materials processed during the year

for calendar years 1993 to 2000 in a form and manner prescribed by the Director.

11. For Plant 8 at the Facility, Ohio Environmental Protection Agency shall calculate and invoice the Defendants for the difference in emission fees between the amounts Defendants

have already paid for calendar years 1999 and 2000, and the amounts calculated using the re-submitted Title V SO_2 fee emission reports. For Plant 8 only, Defendants are ordered and enjoined to pay Title V emission fees, for calendar years 1999 to 2000, to the Ohio Environmental Protection Agency in the amount specified by the invoice from Ohio Environmental Protection Agency, and in the time frame specified therein.

12. Plaintiff shall neither invoice Defendants for any additional emission fees, nor seek enforcement action against Defendants, for calendar years 1993-2000 except as specified in Paragraph 11 of this Consent Order.

VI. Civil Penalty

13. Pursuant to and in accordance with R.C. 3704.06, Defendants are enjoined and ordered to pay a total civil penalty of one million dollars ($1,000,000.00). Of this amount, Defendants shall pay six hundred eighty thousand dollars ($680,000.00) by delivering four certified checks to the Plaintiff, % Karen Pierson or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, payable to the order of "Treasurer, State of Ohio" and indicating in the memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, a reference to "A.G. EAGO No. 281226," pursuant to the following schedule:

a. the first certified check in the amount of one hundred seventy thousand dollars ($170,000.00) shall be delivered within thirty (30) days of the entry of this Consent Order;

b. the second certified check in the amount of one hundred seventy thousand dollars ($170,000.00) shall be delivered within one (1) year of the entry of this Consent Order;

c. the third certified check in the amount of one hundred seventy thousand dollars ($170,000.00) shall be delivered within eighteen (18) months of entry of this Consent Order; and,

d. the fourth certified check in the amount of one hundred seventy thousand dollars ($170,000.00) shall be delivered within two (2) years of the entry of this Consent Order.

14. If any portion of the civil penalty due to the Plaintiff pursuant to this Section or Section VII is not paid when due, Defendants shall pay interest on the amount past due, without demand by the Plaintiff, accruing from the date of entry of this Consent Order, at the rate and manner specified by R.C. 1343.03(B). Interest paid in accordance with this paragraph shall be in addition to any stipulated penalty due pursuant to Section VIII.

15. Defendants shall not deduct any penalties paid to the Plaintiff, pursuant to this Section, Section VII, or Section VIII, in calculating their federal, State, or local income taxes.

VII. Supplemental Environmental Projects

16. Defendants shall pay the remaining three hundred twenty thousand dollars ($320,000.00) of the civil penalty, as set forth in Section VI, as supplemental environmental projects, as specified by this Section.

17. In lieu of payment of one hundred seventy thousand dollars ($170,000) of the total civil penalty, Defendants shall pay said amount to the Clean Diesel School Bus Program (Fund 5CD0). Such program has been established by the Director for the purpose of installing, in

accordance with Ohio Environmental Protection Agency guidelines, diesel particulate filters and other controls for school buses operated by school districts in the State of Ohio. Money in the Fund shall be made available to school districts in accordance with grants established by the Director. The above amount shall be paid by certified check payable to the order of "Treasurer, State of Ohio" and delivered within thirty (30) days of entry of this Consent Order to the Plaintiff, % Karen Pierson 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. 281226" and a notation that such monies are to be deposited into Fund 5CD0 established by Ohio Environmental Protection Agency for the Clean Diesel School Bus Program.

18. In lieu of payment of fifty thousand dollars ($50,000.00) of the total civil penalty, Defendants shall install and maintain a permeable pavers paving system around the brick sawing building at the Facility. The permeable pavers shall be constructed in a manner consistent with the description and schematic hereafter attached in Appendix A, and shall encompass a surface area of no less than 20,000 square feet. The permeable pavers paving system shall be completed within two (2) years of the entry of this Consent Order.

19. In lieu of payment of one hundred thousand dollars ($100,000.00) of the total civil penalty, Defendants shall utilize their best efforts to install, maintain, and operate a system at the Facility to use methane gas generated from the Kimble Landfill in Tuscarawas County, Ohio as combustible gas in the kilns at the Facility. The system shall be under contract with the owner and/or operator of the Kimble Landfill within three (3) years of the entry of this Consent Order. Defendants shall demonstrate, by the submission of documentation to the Ohio

Environmental Protection Agency, the existence of a contract with the owner and/or operator of the Kimble Landfill and the expenditure of at least one-hundred thousand dollars ($100,000.00) for the system within three (3) years of the entry of this Consent Order. Furthermore, Defendants shall timely apply for all applicable permits or modifications to permits from the Ohio Environmental Protection Agency, if otherwise required by law, for the use of converted methane gas at the Facility. Defendants will use their best faith efforts to notify the Director within thirty (30) days should actions of the owner and/or operator of the Kimble Landfill interfere with ability of the Defendants to use methane gas generated from the Kimble Landfill at the kilns at the Facility. Notwithstanding any provision to the contrary herein, the failure of Defendants to provide such notification to the Director or the failure to provide such notification within thirty (30) days shall not be subject to any enforcement action by the Director or be deemed to be a violation of this Consent Order.

20. Defendants shall maintain records for at least three years from the date of entry of this Consent Order verifying the pollution reductions and/or environmental benefits created by the supplemental environmental projects as set forth in Paragraphs 18 and 19 of this Consent Order, and shall produce such records upon request by the Ohio Environmental Protection Agency.

21. Defendants shall permit the Director, or his designee, access to the Facility or other associated property owned or controlled by the Defendants for the purpose of confirming the installation of the supplemental environmental projects required by this Section, and shall provide all information to the Director necessary to confirm the installation, maintenance, and operation of the supplemental environmental projects required by this Section.

22. Should any supplemental environmental project required by this Section not be completed or fully implemented within the time frame specified herein, the full civil penalty attributed to such supplemental environmental project shall become immediately due and payable to the Plaintiff without notice or demand.

VIII. Stipulated Penalties

23. In the event that Defendants fail to comply with any requirement or deadline contained in Paragraphs 9, 10, 11,13, 14, 15, 16, 17, and 18 in this Consent Order, the stipulated penalties contained herein shall apply for the purpose of coercing compliance. Defendants shall be 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: five hundred dollars ($500.00) 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: seven hundred fifty dollars ($750.00) per day for each requirement or deadline not met; and,

c. For each day of each failure to comply with a requirement or deadline of this Consent Order, over sixty (60) days: one thousand dollars ($1000.00) per day for each requirement or deadline not met.

24. Any payment required to be made under the provisions of this Section of the Consent Order shall be made by delivering to Plaintiff, % Karen Pierson or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, a certified check made payable to the

order of "Treasurer, State of Ohio," for the appropriate amount within thirty (30) days from the date of the failure to meet the requirement or deadline of this Consent Order. The payment of the stipulated penalty shall be accompanied by a letter briefly describing the type of violation, deadline, or requirement not met, and the date upon which the violation of this Consent Order occurred. 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. 281226."

25. The payment of stipulated penalties by the Defendants and the acceptance of such stipulated penalties by Plaintiff pursuant to this Section shall terminate Plaintiff's authority to seek additional civil penalties pursuant to R.C. 3704.06(B) for the same violation for which a stipulated penalty was paid. The payment of stipulated penalties by the Defendants and the acceptance of such stipulated penalties by the Plaintiff pursuant to this Section shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to R.C. 3704.06(B) for violations not known to the Plaintiff at the time of entry of this Consent Order, including civil penalties or injunctive relief.

IX. Potential Force Majeure

26. If any event occurs which causes or may cause a delay or any requirements of this Consent Order, Defendants shall notify the 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 the Defendants to prevent or minimize the delay, and the timetable by which such measures will be implemented. Defendants will adopt all reasonable measures to avoid or minimize any such delay.

27. In any action by Plaintiff to enforce any of the provisions of this Consent Order, Defendants may claim a defense that their conduct was caused by reasons entirely beyond their

control, such as, by way of example and not limitation, acts of God, acts of war, or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is hereby agreed upon by the parties 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 Defendants shall rest with Defendants. 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 Defendants or serve as a basis for an extension of time under this Consent Order. Failure by Defendants to comply with the notice requirements of Paragraph 27 shall render this Section void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendants' rights to request an extension of their obligations under this Consent Order based on such incident. An extension of one date based on a particular incident does not mean that Defendants qualify for an extension of a subsequent compliance date or dates. Defendants 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

28. After Defendant has paid all civil penalties and stipulated penalties, if any, that are or may be due, including completion of the supplemental environmental projects or payment of the civil penalty attributed to such projects as set forth in Section VII, and complied with the injunctive relief contained in Paragraphs 9, 10, and 11 of this Consent Order, Defendant may move the Court, pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure, to terminate this Consent Order, including, without limitation, the injunctive relief set forth in Section V and the

Court's retention of jurisdiction set forth in Section XI. Plaintiff takes no position with regard to such motion at this time, and reserves its right 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.

XI. Retention of Jurisdiction

29. This Court shall retain jurisdiction of this action for the purpose of enforcing this Consent Order.

XII. Court Costs

30. Defendants shall pay the court costs of this action.

XIII. Authority to Enter into Consent Order

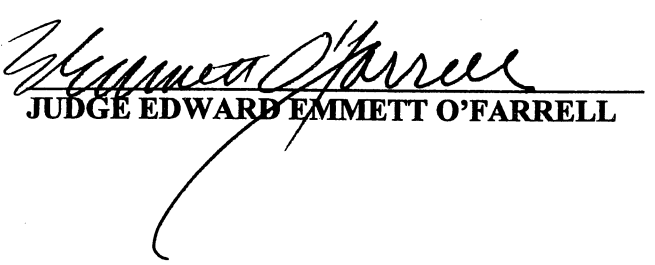
31. The signatory for Defendant The Belden Brick Company, L.L.C. represents that he has been duly authorized to sign this document and so bind Defendant The Belden Brick Company, L.L.C. to all terms and conditions thereof.

XIV. Entry of the Consent Order and Judgment by the Clerk

32. Upon signing of this Consent Order by the Court, the Tuscarawas County Clerk of Court ("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.

IT IS SO ORDERED.

Date: 7/6/2009



JUDGE EDWARD EMMETT O'FARRELL

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THE BELDEN BRICK COMPANY, L.L.C.

By:

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Title: PRESIDENT & CEO
The Belden Brick Company, L.L.C.

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Appendix A

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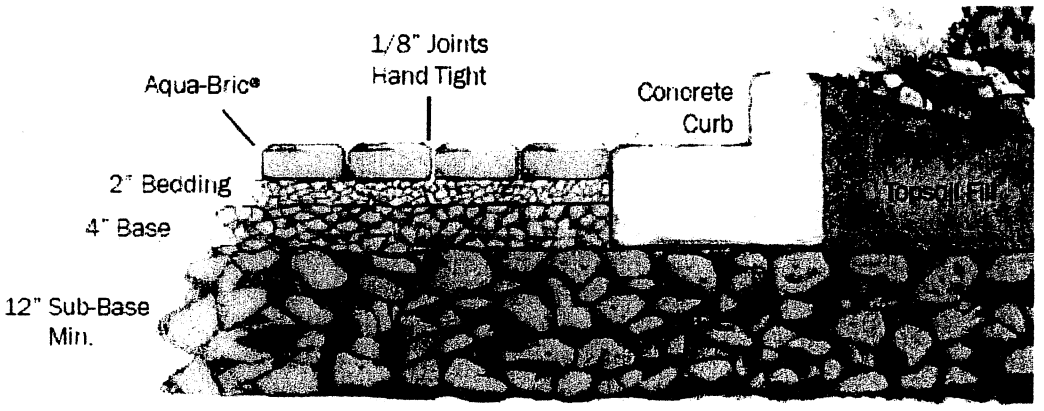
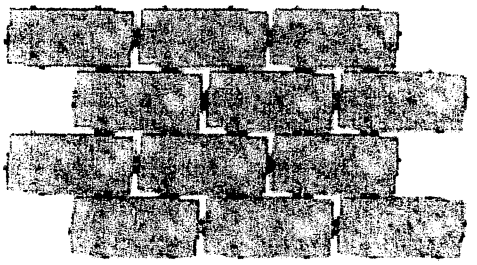
Permeable Pavers

Belden Brick is proposing to install a permeable paving system surrounding a new brick saving facility. The originally planned materials for the parking area and roadways surrounding this building were a combination of concrete and chip & seal.

Permeable pavers are designed so that the surface area has a 7.7% void to allow stormwater to seep into the system rather than run directly into a storm drain. This system's sub-surface consists of 18 inches of bedding, base, and sub-base to absorb and filter the stormwater. The planned surface area for this project will be at least 20,000 square feet.



Sub-Grade



Top View