

COPY

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

**STATE OF OHIO, ex rel.
RICHARD A. CORDRAY,
OHIO ATTORNEY GENERAL**

Plaintiff,

v.

ESTATE OF JAMES L. ROBERTS, et al.

Defendants.

CASE NO. 2006-CV-1028

Judge R. Binette

**FILED
COMMON PLEAS COURT
ERIE COUNTY, OHIO
2009 FEB 25 PM 4:13
BARBARA J. JOHNSON
CLERK OF COURTS**

AGREED INTERIM CONSENT ORDER

Plaintiff, the State of Ohio, by its Attorney General Richard A. Cordray, at the written request of Chris Korleski, the Director of Environmental Protection, filed a Complaint seeking injunctive relief and civil penalties from Defendants Easate of James L. Roberts, Thomas J. Roberts, and Ultimate Industries, Inc. ("Defendants") for violations of Revised Code ("R.C.") Chapters 3704, 3734, 3751 and the rules promulgated under each chapter. Plaintiff and Defendants have consented to the entry of this Order. This Order is intended to provide final resolution for liability for violations of Ohio's air pollution control laws as contained in R.C. Chapter 3704 and the toxic chemical release reporting rules contained in R.C. Chapter 3751, but is not intended to provide a final determination or resolution of any claims raised under R.C. Chapter 3734. This Order remains in effect while the case is pending and until the entry of a final order or final judgment, and until incorporated into the final order or final judgment.

REC'D.

FEB 23 2009

**Barbara J. Johnson
Clerk of Courts**

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. “Air contaminant source” or “source” has the same meaning as set forth in R.C. 3704.01 and Ohio Adm.Code 3745-15-01, and 3745-31-01.
 - b. “Defendants” means Defendant James L. Roberts (estate), Defendant Thomas J. Roberts, and Defendant Ultimate Industries, Inc.
 - c. “Director” means the Director of the Ohio Environmental Protection Agency.
 - d. “Facility” means the manufacturing facility owned and operated by Ultimate Industries, Inc. and all related operations located at 1702 Campbell Street, Sandusky, Ohio.
 - e. “Ohio EPA” means the Ohio Environmental Protection Agency.
 - f. “Permit to Install” has the same meaning as set forth in Ohio Adm.Code Chapter 3745-31.
 - g. “Permit to Operate” has the same meaning as set forth in former Ohio Adm.Code Chapter 3745-35.

- h. "Title V permit" 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 under R.C. Chapters 3704 and 3751. 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, consistent 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.

4. Defendants agree and are hereby enjoined to provide actual notice of this Consent Order to their officers, agents, servants, employees, attorneys, successors, and assigns, and those persons in active concert or participation with Defendants regarding any activity related to this Order or the Complaint in this case.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

5. Plaintiff alleges in its Complaint that Defendants have owned and operated their 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 Defendants for violations of R.C. Chapters 3704 and 3751 to Plaintiff for the claims alleged in Plaintiff's Complaint up to the date of the Court's entry of this Consent Order.

6. 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 Defendants for any violations that occur after the entry of this Consent Order. Nothing in this Consent Order shall be construed to relieve Defendants of their obligations to comply with applicable federal, state or local statutes, regulations, or ordinances.

V. INJUNCTIVE RELIEF

7. Defendants are hereby ordered and enjoined to comply with R.C. Chapters 3704 and the regulations adopted thereunder.

8. Defendants are ordered and enjoined from installing and/or operating any source of air contaminants without applying for and obtaining a valid Permit to Install and Operate, or other relevant permit, pursuant to Ohio Adm.Code Chapters 3745-31, and/or 3745-77.

VI. CIVIL PENALTY

9. Whereas, Plaintiff has alleged violations of R.C. Chapter 3704 for which R.C. 3705.06(A) provides for civil penalties up to and including Twenty-Five Thousand (\$25,000.00) per day per violation;

10. Whereas, the violations as alleged in the Plaintiff's Complaint total at least One Hundred Forty-Four Thousand, Two Hundred Seventy Dollars (\$144,270.00); and

11. Whereas, the amount of liability for civil penalties exceeds the Defendants available assets;

12. Therefore, the Defendants shall pay a civil penalty per the terms set forth in paragraph 13, and shall also forfeit any proceeds from the sale of the former Ultimate Industries property pursuant to Section VI *infra*.

13. Pursuant to and in accordance with R.C. 3704.06, Defendants are enjoined and ordered to pay a total civil penalty of Four Thousand Two Hundred Dollars (\$4,200.00) to the State of Ohio. Such penalty shall be paid as follows:

- a. Pursuant to and in accordance with R.C. 3704.06, Defendants are enjoined and ordered to pay a total civil penalty of Four Thousand Two Hundred Dollars (\$4,200.00). This amount shall be paid in twenty-four (24) monthly installments of One Hundred Seventy-Five Dollars (\$175.00) 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 Martha A. Sexton, Paralegal, or her successor, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.
- b. Each installment payment shall be received by this office no later than the fifth day of each month. In the event that payment is not received by the Office of the Attorney General per the above terms, the remaining balance of the total civil penalty shall become immediately due and payable without prior demand or notification. Defendants shall have ten (10) days to correct non-payment by providing a notification of the deficiency in writing and remitting the delinquent payment to Martha A. Sexton, Paralegal, or her successor, Office of the Attorney General

of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. If an instance of non-payment is corrected in accordance with the above procedure, Defendants shall remit the remaining balance of the civil penalty per the original monthly installment schedule.

VI. SALE OF THE ULTIMATE INDUSTRIES PROPERTY

8. All proceeds from the sale of all or part of the Site or any other asset of Defendant will be used to satisfy liability under this Consent Order.

9. Ninety (90) days prior to any proposed sale of the Site or any other asset of Defendant, Defendant shall notify Ohio EPA of the proposed sale by certified mail. If Ohio EPA approves the sale, Defendants shall complete the sale and shall pay all proceeds to Ohio EPA 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 Martha A. Sexton, Paralegal, or her successor, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

VII. STIPULATED PENALTIES

10. In the event that Defendants fail to comply with any requirement or deadline contained in this Consent Order, Defendants are 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.

11. In the event Defendants fail to meet any of the requirements set forth in this Consent Order, Defendants 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 made by the Defendants 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 cashier's or 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.

12. 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

13. All documents required to be submitted to 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
Lazarus Government Center, Suite 700
50 West Town Street
Columbus, Ohio 43215

Ohio Environmental Protection Agency
Division of Air Pollution Control, Northwest District Office
Attn: Donald Waltermeyer
Unit Supervisor, DAPC
347 Dunbridge Road
Bowling Green, Ohio 43402

X. TERMINATION OF CONSENT ORDER

14. Defendants' obligations under this Order shall terminate upon entry of a final Consent Order or Final Judgment Entry in this case that incorporates this Consent Order into the final order or final judgment. In the event no final Consent Order or Final Judgment Entry is entered in this case, Defendants' obligations under this Consent Order shall terminate five (5) years from the date of entry of this Consent Order.

XI. RETENTION OF JURISDICTION

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

XII. COURT COSTS

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

XIII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

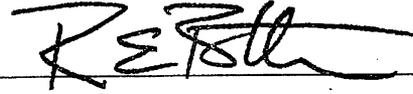
17. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is directed to serve upon all parties notice of the judgment and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

18. Each signatory for Defendants represents and warrants that he/she has been duly authorized to sign this document and so bind the party to all terms and conditions thereof.

IT IS SO ORDERED.

DATE 2/24/09

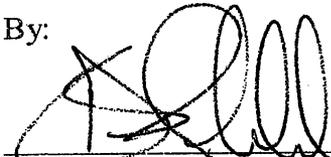


JUDGE R.E. BINETTE, ERIE COUNTY
COURT OF COMMON PLEAS

Respectfully submitted,

RICHARD A. CORDRAY
Ohio Attorney General

ESTATE OF JAMES ROBERTS, ET AL.

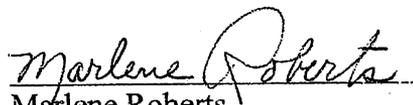
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Estate of James Roberts*



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