

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

STATE OF OHIO, ex rel.
JIM PETRO
ATTORNEY GENERAL OF OHIO
30 EAST BROAD STREET
COLUMBUS, OHIO 43215-3428

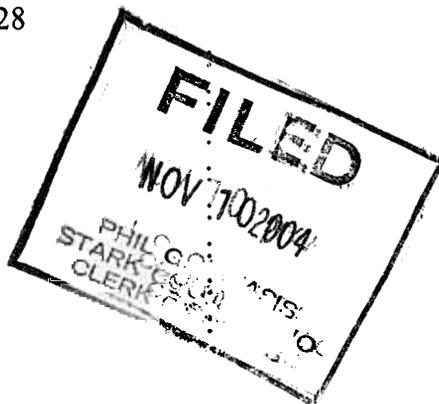
CASE NO. 2004CV03172
BROWN

JUDGE _____

Plaintiff,

SHEARER'S FOODS, INC.

Defendant.



CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio by its Attorney General Jim Petro (hereinafter "**Plaintiff**") and Defendant Shearer's Foods, Inc. (hereinafter "**Defendant**" or "**SFI**") having consented to the entry of this Order, hereby agree to the entry of this Consent Order to resolve the allegations set forth in the Complaint.

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has both personal and subject matter jurisdiction over the Parties. The Complaint states a claim upon which relief can be granted against SFI under Chapter 61 of the Ohio Revised Code (hereinafter "**O.R.C.**") and the rules promulgated under that chapter. Venue

is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply and be binding upon Plaintiff State of Ohio and SFI, SFI's agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

3. Plaintiff has alleged that SFI has operated its facility and pretreatment system in such a manner as to result in violations of the requirements of Individual Indirect Discharge Permits (hereinafter "**IIDP**") issued to it by the Director of the Ohio Environmental Protection Agency (hereinafter "**Director**") and in violation of the water pollution control laws and rules of the State of Ohio. SFI denies such allegations. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of the Defendants and its officers, employees and agents for all claims of violations alleged in the Complaint, including the claims for injunctive relief and civil penalties.

4. Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against other appropriate persons for claims or conditions alleged in the Complaint. Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against SFI or other appropriate persons for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint, nor shall anything in this Consent Order limit the right of SFI to any defenses it may have for such claims. Similarly, nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to undertake any action against any person, including SFI, to

eliminate or mitigate conditions that may present a threat to the public health, welfare or the environment.

IV. PERMANENT INJUNCTION

5. SFI is hereby permanently enjoined and immediately ordered to remain in compliance with the requirements of O.R.C. Chapter 6111 and the rules adopted thereunder, and with the terms and conditions of its currently effective IIDP Permit No. 3DP00031*CP, and any renewals or modifications thereof. IIDP Permit No. 3DP00031*CP is hereby incorporated herein by reference as if rewritten in full. (See “Attachment B” to the Complaint filed in this matter). All renewals, modifications or changes to SFI’s IIDP Permit, approved by the Director of the Ohio Environmental Protection Agency (hereinafter “Director”) and/or effective after the entry of this Consent Order, shall be deemed to be incorporated in full and made an enforceable part of this Consent Order.

6. Defendant is ordered to maintain compliance with the final numerical effluent limitations for outfall 3PB00006100, as specified in IIDP Permit No. 3DP00031*CP and any renewal or modification thereof.

V. SUBMITTAL OF DOCUMENTS

7. Anything required by the terms and conditions of this Consent Order to be submitted to the Director shall be submitted to

Ohio EPA
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn.: Manager, Division of Surface Water

and

Ohio EPA
Lazarus Government Center
122 South Front Street, P.O. Box 1049
Columbus, Ohio 43216-1049
Attn.: Manager, Enforcement Section, Division of Surface Water

unless specifically specified otherwise.

VI. CIVIL PENALTY

8. It is hereby ordered that within 30 days from the date of this order, SFI shall pay to the State of Ohio a civil penalty of \$200,000. Payment shall be paid by certified check for the appropriate amount, made payable to "Treasurer, State of Ohio", which check shall be delivered by mail, or otherwise, to: Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, Attn. Administrative Assistant.

VII. STIPULATED PENALTIES

9. In the event that SFI violates the numerical effluent limitations specified in IIDP Permit No. 3DP00031*CP or any modification or renewal thereof, SFI shall pay a stipulated penalty for each violation according to the following payment schedule:

- (1) For each violation of a numerical effluent limitation, up to thirty (30) violations – three-hundred dollars (\$300.00) per day per violation;
- (2) For each violation of a numerical effluent limitation, from thirty-one (31) to sixty (60) violations – five-hundred dollars (\$500.00) per day per violation;
- (3) For each violation of a numerical effluent limitation, over sixty-one (61) violations – seven-hundred dollars (\$700.00) per day per violation.

For purposes of this paragraph, each failure to comply with a monthly, weekly or daily numerical effluent limitation shall count as one violation only.

10. Any payment required to be made under the provisions of Section VII of this Consent Order shall be made by delivering to Administrative Assistant, at the address set forth in Section VI, Paragraph 8, within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, a certified check or checks for the appropriate amount(s), made payable to the order of "Treasurer, State of Ohio." SFI shall also state in writing the specific deadline or requirement of the Consent Order that was not complied with, and the date(s) of non-compliance. The payment of stipulated penalties by SFI and the acceptance of such stipulated penalties by the Plaintiff for specific violations pursuant to Section VII shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order.

VIII. TERMINATION OF STIPULATED PENALTIES

11. The provisions of this Consent Order requiring the payment of stipulated penalties may be terminated upon a demonstration by SFI that:

- (1) it has paid all penalties required by this Consent Order; and
- (2) it has maintained compliance with the numerical effluent limitations in IIDP Permit No. 3DP00031*CP or any modification or renewal thereof, along with the other terms and conditions of said permit, for twenty (20) consecutive months from the effective date of this Consent Order.

SFI may petition the Ohio Environmental Protection Agency to exclude a violation from the time period above.

12. Termination of the stipulated penalty section of this Consent Order shall only be by order of this Court upon application by any party, and a demonstration that the two (2) conditions outlined above have been met.

IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

13. Performance of the terms and conditions of this Consent Order by SFI is not conditioned on the receipt of any Federal or State grant or loan funds. In addition, SFI's performance is not excused by the failure to obtain or the shortfall of any Federal or State grant or loan funds, or by the processing of any applications for the same.

X. POTENTIAL FORCE MAJEURE

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

15. In any action by the State of Ohio to enforce any of the provisions of this Consent Order, SFI may raise that it is entitled to a defense that its conduct was caused by reasons beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed upon by SFI and the State of Ohio 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 enforcement action, if any, is commenced by the State of Ohio. At that time the burden of proving that any delay was or will be caused by circumstances beyond the control of SFI shall rest with SFI. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed

financial circumstances shall not constitute circumstances beyond the control of SFI, or serve as a basis for an extension of time under this Consent Order. Failure by SFI to comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved but shall not constitute a waiver of SFI's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one date based on a particular incident does not mean that SFI qualifies for an extension of a subsequent date or dates. SFI must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought.

XI. COURT COSTS

16. SFI is hereby ordered to pay the court costs of this action.

XII. AUTHORITY TO ENTER INTO THE CONSENT ORDER

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

XIII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

18. The parties agree and acknowledge that final approval by the Plaintiff and SFI, and entry of this Consent Order, is subject to the requirement of 40 C.F.R. § 123.27(d)(2)(iii), which provides for notice of the lodging of this Consent Order, opportunity for public comment, and consideration of any public comment. The Plaintiff and SFI reserve the right to withdraw consent to this Consent Order based on comments received during the public comment period. SFI shall pay the cost of publishing the public notice within thirty days of receipt of a bill or notice from the Director.

19. Upon the signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby 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

**JUDGE, COURT OF COMMON PLEAS,
STARK COUNTY, OHIO**

APPROVED:

JIM PETRO
ATTORNEY GENERAL OF OHIO

BY:

 9/21/2004
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*Authorized Representative of Shearer's
Foods, Inc.*