

IN THE COURT OF COMMON PLEAS
MORROW COUNTY, OHIO
FILED

STATE OF OHIO, ex rel.
MICHAEL DEWINE
OHIO ATTORNEY GENERAL

2013 JAN 24 AM 8 48

CASE NO.

~~2012 CV 0043~~

JUDGE

HALL

0443
~~00~~
Jury
by
Pap

Plaintiff,

MORROW COUNTY
CLERK OF COURTS
VANESSA K. MILLS

v.

CARDINGTON YUTAKA
TECHNOLOGIES, INC.

Defendant.

CONSENT ORDER

Plaintiff, the State of Ohio ("Plaintiff"/"State"), by and through its counsel, Attorney General Michael DeWine, filed a Complaint against Defendant Cardington Yutaka Technologies, Inc. ("Defendant") alleging violations of Ohio's Water Pollution Control laws, Ohio Revised Code ("R.C.") Chapter 6111, occurring at Defendant's auto-parts manufacturing facility located at 575 West Main Street, Cardington, Morrow County, Ohio 43315 ("Facility"). This Consent Order constitutes a resolution of disputed claims.

NOW THEREFORE, without the trial 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. JURISDICTION AND VENUE

1. The Court has jurisdiction over the Parties and the subject matter of this action pursuant to R.C. Chapter 6111. The Complaint states a claim upon which relief can be granted against Defendant under R.C. Chapter 6111. Venue is proper in this Court.

II. PERSONS BOUND

2. All terms and provisions of this Consent Order shall apply to and be binding upon the Defendant, Defendant's agents, employees, assigns, successors in interest and any person acting in concert, privity or participation with Defendant.

III. SATISFACTION OF LAWSUIT

3. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims alleged in the State's Complaint. This Consent Order is in settlement and compromise of disputed claims and nothing in this Consent Order is to be construed as an admission of facts or liability.

IV. RESERVATION OF RIGHTS

4. Nothing in this Consent Order, including the imposition of stipulated civil penalties for violations of this Consent Order, shall limit the authority of the State of Ohio to:

- (a) Seek any legal or equitable relief from Defendant or any other appropriate person for claims or conditions not alleged in the Complaint, including violations that occur after the filing of the Complaint;
- (b) Seek any legal or equitable relief from Defendant or any other appropriate person for claims or conditions alleged in the Complaint that occur or exist on the date of or after the entry of this Consent Order;

- (c) Enforce this Consent Order through a contempt action or otherwise seek relief for violations of this Consent Order;
- (d) Take any action authorized by law against any appropriate person, including Defendant, to eliminate or mitigate conditions at the Facility that may present a threat to the public health or welfare, or the environment in derogation of applicable laws and regulations, for which Ohio EPA has the authority to enforce;
- (e) Bring any legal or equitable action against any appropriate person other than Defendant for any violation of applicable laws. For the purposes of this Consent Order, and in particular the provisions of this paragraph, the term "person" includes: an individual, corporation, business trust, estate, trust, partnership, association, municipal corporation, interstate body created by compact, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.

5. Notwithstanding the foregoing, this Consent Order in no way waives any defenses which Defendant may have as to such claims, demands, rights, or causes of action that the State of Ohio reserves to itself in this Section. Further, this Consent Order does not waive any defenses Defendant may have in any proceeding as to claims raised by a third party.

V. INJUNCTION

6. Defendant is enjoined and ordered to comply immediately with all applicable provisions of R.C. Chapter 6111 and the rules promulgated under and permits issued pursuant to that chapter subject to the terms hereof.

7. Defendant is enjoined and ordered to immediately notify the Ohio EPA and the Village of Cardington Wastewater Treatment Plant directly of: (a) any significant change in production, staff or employees, including temporary shutdowns, that results in a substantial change (5% or greater) in the volume of wastewater discharged to the sanitary sewer; (b) a change in water usage resulting in a substantial change in the volume of wastewater discharged to the sanitary sewer; and (c) when an evaporator or other treatment or pretreatment system is not operational due to

maintenance, cleaning, repair, or any other reason. Defendant is prohibited from discharging any slug loads, including non-contact cooling water sump overflows, to the Village of Cardington's sewerage system without the approval of both the Village of Cardington and Ohio EPA. After twenty-four (24) months of consecutive compliance with this paragraph, Defendant may apply to Ohio EPA to terminate its ongoing reporting obligations under this paragraph.

8. Defendant is enjoined and ordered to maintain at the Facility, and to make available to Ohio EPA and the Village of Cardington upon request, records of the quantity of waste shipped from the Facility, the dates the waste is shipped, by whom it is taken from the Facility, and the location to which it is taken. Defendant shall retain the records for a minimum of three (3) years.

9. Within thirty (30) days of the entry of this Consent Order, Defendant shall complete an environmental audit of the Facility, including all utilities, and shall submit to Ohio EPA (Attn.: Pretreatment Coordinator, Ohio EPA Central District Office, P.O. Box 1049, Columbus, Ohio 43216-1049) a report of the results of the audit and the recommendations relating to environmental compliance, along with a time schedule for implementing the recommendations.

10. Within ninety (90) days of the entry of this Consent Order, Defendant is ordered to submit, for Ohio EPA review and approval, a complete permit to install application, pursuant to the requirements of O.A.C. 3745-42, for the evaporators, collection system, and holding tanks previously installed at the Facility if they will continue to be operated by Defendant, and/or any other treatment or pretreatment system to be installed at the Facility. Defendant shall provide written notification to Pretreatment Coordinator, Ohio EPA Central District Office, P.O. Box 1049, Columbus, Ohio 43216-1049, at the time of submission of any permit to install application. Upon submittal of the complete permit to install application as described in this paragraph, Defendant shall withdraw PTI Application No. 718877 and request for adjudication of the Director's proposed denial of PTI Application No. 718877, docketed at Ohio EPA Case No. 10-WI-09-1.

11. Within sixty (60) days of entry of this Consent Order, Defendant is ordered to install, operate and maintain meters in the Facility to monitor wash water flow, leak test flow, and non-contact cooling water flow when non-contact cooling water is discharged. Within fourteen (14) days following the installation of the meters required by this paragraph, Defendant shall provide written notification of their installation to Pretreatment Coordinator, Ohio EPA Central District Office, P.O. Box 1049, Columbus, Ohio 43216-1049. Flow data recorded by the meters shall be maintained at the Facility for a minimum of three (3) years and made available to Ohio EPA and the Village of Cardington upon request.

12. Within ninety (90) days of entry of this Consent Order, Defendant is ordered to submit to Ohio EPA either: (a) an application for an indirect discharge permit for the discharge of non-contact cooling water from the Facility to the Village of Cardington sewerage system in accordance with the requirements of O.A.C. Chapter 3745-36 or; (b) an application for a general or individual National Pollutant Discharge Elimination System (NPDES) permit for the discharge of non-contact cooling water from the Facility in accordance with the requirements of O.A.C. Chapter 3745-38. Defendant shall provide written notification to the Pretreatment Coordinator in Ohio EPA's Central District Office at the time of submission of any indirect discharge permit application or NPDES permit application. The requirements of this paragraph do not apply if Defendant can demonstrate, to Ohio EPA's satisfaction, that there is no discharge of non-contact cooling water to the Village of Cardington's sewerage system or to waters of the State. This demonstration shall include a protocol for prevention of a discharge of non-contact cooling water from Defendant's system, and shall be submitted in writing to Pretreatment Coordinator, Ohio EPA Central District Office, P.O. Box 1049, Columbus, Ohio 43216-1049.

13. Within sixty (60) days of entry of this Consent Order, Defendant is ordered to submit to Ohio EPA for review and approval, a complete permit to install application for a metering

manhole to measure flow and to obtain samples of Defendant's wastewater discharge. The manhole shall be constructed within ninety (90) days of approval of the permit to install and shall be accessible at all times and only to Ohio EPA and the Village of Cardington for sampling.

VI. CIVIL PENALTY

14. By no later than thirty (30) days following the entry of the Consent Order, Defendant shall pay to the State of Ohio a civil penalty of **five hundred thousand dollars (\$500,000)** for alleged violations of Ohio's water pollution control laws. The penalty payment shall be made by a certified check for the amount as stated above, payable to the order of "Treasurer, State of Ohio" and delivered to Martha Sexton, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

VII. STIPULATED PENALTIES

15. In the event that Defendant fails to comply with any requirement of this Consent Order, Defendant is liable for, and shall immediately 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 meet a deadline from one (1) day to thirty (30) days – two hundred fifty dollars (\$250.00) per day per requirement not met;
- (b) For each day of each failure to comply with a requirement or meet a deadline from thirty-one (31) days to sixty (60) days – five hundred dollars (\$500.00) per day per requirement not met;
- (c) For each day of each failure to comply with a requirement or meet a deadline over sixty-one (61) days – seven hundred fifty dollars (\$750.00) per day per requirement not met.

16. Payments due under Paragraph 15 shall be made within forty-five (45) days from the date of the failure to meet the applicable deadline or knowledge of the effluent limitation violation.

Payments shall be accompanied by a written explanation of the deadline missed and/or the effluent violation. Any payment required to be made under this paragraph shall be made by delivering a certified check or checks for the appropriate amount(s), made payable to "Treasurer, State of Ohio," to Martha Sexton, Environmental Enforcement Section, Ohio Attorney General's Office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to Section VIII shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order. Further, payment by Defendant shall not be considered an admission of liability on the part of Defendant.

17. The stipulated penalties imposed by Paragraph 15 of this Consent Order may be terminated as to each specific paragraph of this Consent Order, for which stipulated penalties are imposed, only after Defendant has achieved and maintained compliance with all the requirements of that paragraph for a period of twelve consecutive months and has paid all stipulated penalties incurred related to that paragraph. Termination of one paragraph subject to stipulated penalties under this Consent Order shall not terminate the accrual of or the liability for payment of stipulated penalties under any other paragraph. Termination of stipulated penalties under this Consent Order shall only be upon written application by any party, and by order of the Court after the Court has made a determination that the requirements of this paragraph have been satisfied.

VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

18. Performance of the terms of this Consent Order by Defendant is not conditioned on the receipt of any Federal or State grants, loans and/or funds. In addition, Defendant's performance is not excused by the failure to obtain or any shortfall of any Federal or State grants, loans and/or funds or by the processing of any applications for the same.

IX. POTENTIAL FORCE MAJEURE

19. If any event occurs which causes or may cause a delay in Defendant's compliance with any requirement of this Consent Order, Defendant shall notify the Ohio EPA in writing within ten (10) days from when Defendant knew, or by the exercise of due diligence should have known, of the event. The notification to Ohio EPA shall describe 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 those measures will be implemented. Defendant shall 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, strikes, acts of war or civil disturbances. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and Plaintiff 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, if ever, that a court proceeding to enforce this Consent Order is commenced by Plaintiff. At that time, Defendant will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or a change in Defendant's 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 timely 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 and shall constitute a waiver of Defendant'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 Defendant qualifies for an extension of a subsequent 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. RIGHT OF ENTRY

21. The State of Ohio, its agents and employees, shall have full access to the Facility, as described in this Consent Order, at any and all reasonable times to observe the work required by this Consent Order or as otherwise may be necessary for the implementation of this Consent Order.

22. Nothing in this Consent Order shall be construed to limit the State's statutory authority under R.C. Chapter 6111, the rules adopted thereunder, or any other provision of the Revised Code, to obtain or seek access, conduct inspections or surveys, take samples, field evaluations, and/or assessments at, on or near the Facility described in this Consent Order.

XI. MISCELLANEOUS

23. Nothing in this Consent Order shall affect Defendant's obligation to comply with all applicable federal, state or local laws, regulations, rules or ordinances.

24. Any acceptance by the State of Ohio of any payment, document or other work due hereunder subsequent to the time that the obligation is due under this Consent Order shall not relieve Defendant from the obligations created by this Consent Order.

25. Defendant shall inform the Ohio EPA of any change or cessation of the business that is the subject of this action.

XII. COSTS

26. Defendant shall pay the court costs of this action.

27. Defendant is hereby ordered to pay the costs incurred by the Ohio EPA for the publication of the Consent Order in Ohio EPA's Weekly Review and a newspaper of general circulation as required in Paragraph 29, below. Defendant shall pay the costs associated with publication by delivering a certified check payable to: "Treasurer, State of Ohio" and with a notation indicating that the funds are going to "Fund 699" on it, in the amount of the costs, to the Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, within thirty (30) days from the date he receives notice of the costs from Ohio EPA.

XIII. CONTINUING JURISDICTION

28. This Court shall retain jurisdiction over this action for the purpose of enforcing and administering Defendant's compliance with this Consent Order.

XIV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

29. The Parties agree and acknowledge that final approval by Plaintiff and Defendant and entry of this Consent Order is subject to the requirements of 40 C.F.R. 123(d)(1)(iii), which provides for notice of the lodging of the Consent Order, opportunity for public comment, and the consideration of any public comments. Both Plaintiff and Defendant reserve the right to withdraw this Consent Order based on comments received during the public comment period.

30. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon the signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the

parties a 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.

31. The Effective Date of this Consent Order shall be the date upon which this Consent Order is entered by the Court or a motion to enter the Consent Order is granted, whichever occurs first, as recorded in the Court's docket.

IT IS SO ORDERED.

Howard E. Hall
JUDGE Howard E. Hall
COURT OF COMMON PLEAS
MORROW COUNTY

1-24-13
DATE

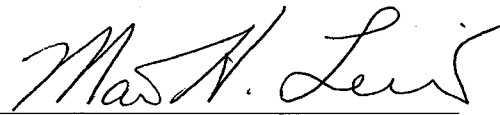
APPROVED:

MICHAEL DEWINE
OHIO ATTORNEY GENERAL



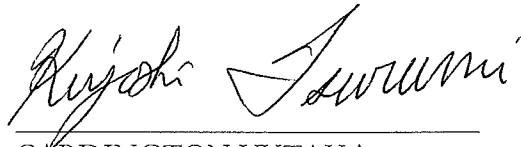
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