

James

IN THE COURT OF COMMON PLEAS
OF GUERNSEY COUNTY, OHIO

FILED
COMMON PLEAS COURT

NOV - 9 2007

State of Ohio, ex rel. Marc Dann, :
Attorney General of Ohio, :
 :
Plaintiff, :
 :
v. :
 :
Jack DeLancey, d.b.a. Tyson's Cleaners, :
 :
Defendant. :

GUERNSEY COUNTY, OHIO
Teresa A. Dankovic, Clerk of Court
Case No. 06-CV-177

Judge David A. Ellertson
FINAL APPEALABLE
ORDER
NO JUST CAUSE FOR DELAY

CONSENT ORDER AND FINAL JUDGMENT ENTRY

Plaintiff State of Ohio ("Plaintiff"), by and through its Attorney General, Marc Dann, at the written request of the Director of the Ohio Environmental Protection Agency, having filed a Complaint seeking injunctive relief and civil penalties from Jack DeLancey, d.b.a. Tyson's Cleaners ("Defendant") for 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. Jurisdiction and Venue

1. 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.

II. Satisfaction of Lawsuit and Reservation of Rights

2. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendant to the Plaintiff for the claims alleged in the Plaintiff's Complaint.

3. This Consent Order shall supersede and replace the Interim Consent Agreement issued by this Court on August 14, 2006.

4. This Consent Order shall not be construed to limit the authority of the Plaintiff to seek relief for violations not alleged in the Complaint, nor shall this Consent Order bar the Plaintiff from bringing any action against the 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 his obligations to comply with applicable federal, state, or local statutes, rules, regulations, or ordinances.

III. Injunctive Relief

5. Defendant is ordered and permanently enjoined to comply with Ohio environmental law as codified in R.C. Chapter 3704 and the rules promulgated thereunder, and specifically comply with Ohio Adm.Code Chapters 3745-21-09, 3745-31, and 3745-35 governing the operation of dry cleaning facilities and the permitting of air contaminant sources.

6. Defendant is ordered and permanently enjoined to comply with all terms and conditions of Permits to Install, Permits to Operate, Permits to Install and Operate, or any other Ohio Environmental Protection Agency permits that have been issued or transferred to him or may be issued to him in the future, including modifications and renewals thereof.

IV. Civil Penalty

7. Pursuant to and in accordance with R.C. 3704.06, Defendant is enjoined and ordered to pay a total civil penalty of twenty-five thousand dollars (\$25,000.00). Of this amount, Defendant shall pay twenty thousand dollars (\$20,000.00) by certified check payable to the order of "Treasurer, State of Ohio" and delivered within sixty (60) days of entry of this Consent Order to Plaintiff, % Martha 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. 299047."

V. Supplemental Environmental Project

8. Defendant shall pay the remaining five thousand dollars (\$5,000.00) of the civil penalty, as set forth in Section IV, within sixty (60) days of entry of this Consent Order to the Clean Diesel School Bus Program (Fund 5CD0) established by the Director of Environmental Protection for the purpose of installing, in accordance with Ohio Environmental Protection Agency guidelines, diesel particulate filters 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 a grant established by the Director of Environmental Protection. This amount shall be paid by certified check payable to the order of "Treasurer, State of Ohio" and delivered within thirty (60) days of entry of this Consent Order to Plaintiff, % Martha 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. 299047” and specify that such monies are to be deposited into Fund 5CD0 established by Ohio Environmental Protection Agency for the Clean Diesel School Bus Program.

VI. Stipulated Penalties

9. In the event that Defendant fails to comply with any requirement or deadline contained in this Consent Order, the stipulated penalties contained herein shall apply for the purpose of coercing compliance. Defendant 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: one-hundred dollars (\$100.00) 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: two-hundred fifty dollars (\$250.00) 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: five-hundred (\$500.00) per day for each requirement or deadline not met.

10. Any payment required to be made under the provisions of this Section of the Consent Order shall be made by delivering to Plaintiff, % Martha 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, 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 memo portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 299047."

11. The payment of stipulated penalties by the Defendant and the acceptance of such stipulated penalties by Plaintiff pursuant to this Section shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to R.C. Chapter 3704, including civil penalties under R.C. 3734.06, or to otherwise seek judicial enforcement of this Consent Order, for the same violation for which a stipulated penalty was paid or for other violations.

VII. Retention of Jurisdiction

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

VIII. Court Costs

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

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

14. 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.

IT IS SO ORDERED.

Date: 11/9/07



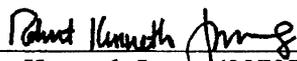
JUDGE DAVID A. ELLWOOD

APPROVED:

MARC DANN
ATTORNEY GENERAL OF OHIO


JACK DELANCEY
617 North 7th Street
Cambridge, Ohio 43725

By:


Robert Kenneth James (0078761)
R. Benjamin Franz (0080693)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400
Attorneys for Plaintiff State of Ohio


C. Keith Plummer (0002350)
Tribbie, Scott, Plummer & Padden
139 West 8th Street
Cambridge, Ohio 43725-0640
Attorneys for Defendant Jack DeLancey