

FILED

IN THE COURT OF COMMON PLEAS  
FAIRFIELD COUNTY, OHIO

2006 AUG 29 AM 9:23

DEBORAH SMALLEY  
CLERK OF COURTS  
FAIRFIELD CO. OHIO

STATE OF OHIO, ex rel.  
JIM PETRO,  
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

THE CYRIL-SCOTT COMPANY,

Defendant.

CASE NO. 2006 CV 002

JUDGE Martin

CONSENT ORDER

Plaintiff State of Ohio ("Plaintiff"), by its Attorney General Jim Petro, at the written request of Christopher Jones, the Director of the Ohio Environmental Protection Agency ("Ohio EPA"), having filed a Complaint seeking injunctive relief and civil penalties from Defendant, the Cyril-Scott Company ("Cyril-Scott" or "Defendant"), for violations of R.C. Chapter 6111 and the rules promulgated thereunder, and both parties having consented to the entry of this Order,

NOW, THEREFORE, without trial, admission, or determination of any issue of fact or law, without admission of liability by Cyril-Scott, 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 case. The Complaint states a claim for which relief can be granted pursuant to R.C. Chapter 6111. Venue is proper in this Court.

**II. PERSONS BOUND**

2. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and, in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure, their officers, agents, servants, employees, 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.

### **III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS**

3. Plaintiff alleges in its Complaint that Defendant has owned and operated a printing facility, located at 3950 State Route 37 East, in Lancaster, Fairfield County, Ohio, in such a manner as to result in violations of the water pollution control laws and regulations of the State of Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendant to Plaintiff for the claims alleged to have occurred under Ohio Revised Code Chapter 6111 and the rules adopted thereunder as set forth in Plaintiff's Complaint.

4. Within thirty (30) days of effective date of this Consent Order, Defendant agrees to file with the Environmental Review Appeals Commission for the State of Ohio, in the appeal captioned *Cyril-Scott Company v Jones*, ERAC case no. 235595, a Notice or Stipulation of Dismissal. Defendant agrees to pay whatever costs are due to the Commission in that appeal; otherwise, each party to that appeal, shall bear its own costs and attorneys fees.

5. Except as provided herein, 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 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 its obligations to comply with applicable federal, state, or local

statutes, regulations, or ordinances. Nothing in this Consent Order shall limit Defendant's right to defend against any allegations by Plaintiff of additional violations of law or any alleged violations of this Consent Order.

#### **IV. INJUNCTIVE RELIEF**

6. Defendant is hereby enjoined and ordered to permanently comply with R.C. Chapter 6111 and the regulations adopted thereunder and conditions of National Pollutant Discharge Elimination System (“NPDES”) permit No. 4IN00078\*DD, except where otherwise provided by this Consent Order.

7. By May 1, 2008, Defendant shall connect to the City of Lancaster sewer system. In addition, Defendant shall discontinue the usage of its existing wastewater treatment, taking all necessary actions to eliminate all wastewater discharges from Defendant’s facility to waters of the State including the unnamed tributary to Raccoon Run by May 1, 2008. Defendant shall submit to the Ohio EPA a complete and approvable Permit-to-Install application by July 1, 2007 for the connection. Once the Defendant has connected to the City of Lancaster sewer system, Defendant shall decommission its existing wastewater treatment plant and provide for the proper disposal of all wastes associated with the plant. Upon the elimination of its wastewater discharges to waters of the State, Defendant shall surrender its NPDES permit to the Ohio EPA.

#### **V. CIVIL PENALTY**

8. It is hereby ordered that Defendant shall pay to the State of Ohio a civil penalty of eighty thousand dollars (\$80,000) within thirty (30) days of the entry of this Consent Order. The civil penalty 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 Mark

Lemmon, or his successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

**VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

9. In lieu of an additional civil penalty of \$20,000, in furtherance of the objectives of the State of Ohio in improving the water of the State as well as the environment, Defendant will provide \$20,000.00 to be utilized by local schools, political subdivisions and/or not-for-profit organizations sponsoring environmental enhancement/restoration projects in the Hocking River watershed of Ohio. Defendant will place \$20,000 in a separate bank account, and this money will only be disbursed to either an approved project sponsor or to Ohio EPA, as set forth in this paragraph. In order for a project to be eligible for this money, the sponsor must submit to the Defendant a written request describing the proposed project and the estimated costs associated with same. Defendant will then select a proposed project or projects, which will then be forwarded to Ohio EPA (in care of Chief of the Division of Surface Water, Lazarus Government Center, 122 South Front Street; P.O. Box 1049, Columbus, Ohio 43216-1049) for written approval. A proposal must demonstrate that the money will be used for environmental enhancement/restoration of the Hocking River watershed. The Director of Ohio EPA, in his sole unreviewable discretion, shall determine if the proposal meets these requirements. After the Director of Ohio EPA has determined that the proposal meets these requirements, Ohio EPA will inform in writing the sponsor so that the sponsor can forward the written approval and request release of the funds from Defendant. Potential project sponsors will have three (3) years from the date of entry of this consent decree to submit proposals, receive approval from Defendant and Ohio EPA and to request the release of the funds. If three years after the entry of this consent order any funds remain in the account, the balance of the account will be paid by Defendant to

the Ohio EPA. Payment shall be paid by check for the appropriate amount, made payable to "Treasurer, State of Ohio", which check shall be delivered by mail, or otherwise, to Mark Lemmon, or his successor, at the Ohio Attorney General's Office, Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

## **VII. STIPULATED PENALTIES**

10. In the event that Defendant fails to meet any of the schedule milestone requirements of this Consent Order set forth in Paragraph 7, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

For each day of non-compliance after the schedule milestone date from one (1) day to thirty (30) days – five hundred dollars (\$500.00) per day not met;

For each day of non-compliance after the schedule milestone date from thirty-one (31) days to sixty (60) days – seventy-five hundred dollars (\$750.00) per day not met;

For each day of non-compliance after the schedule milestone date over sixty-one (61) days – one thousand dollars (\$1,000.00) per day not met.

11. In the event that Defendant violates any effluent limitation or reporting requirement of its NPDES permit, except for total ammonia from November to March of each year where for purpose of this paragraph the applicable effluent limit shall be 7.8 mg/l daily maximum concentration, 0.12 mg/kg daily loading, 5.2 mg/l thirty-day average concentration and 0.08 mg/kg thirty-day average loading for total ammonia, Defendant shall immediately and

automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

- a. For each violation of a daily effluent limitation - two hundred dollars (\$200.00) per each violation per day.
- b. For each violation of a thirty-day effluent limitation - six hundred dollars (\$600.00) per each violation.
- c. For each failure to report information to Ohio EPA as required by the NPDES - six hundred dollars (\$ 600.00) per each violation.

12. Any payment required to be made under the provisions of Paragraph 10 and 11 of this Consent Order shall be made by certified check for the appropriate amount, made payable to "Treasurer, State of Ohio", which check shall be delivered by mail, or otherwise, to Mark Lemmon, or his successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. A letter indicating what violations are being covered by the specific check shall accompany the check.

13. The imposition, payment and collection of stipulated penalties pursuant to violations of this Consent Order shall not prevent Plaintiff from pursuing judicial enforcement of this Consent Order.

#### **VII. RETENTION OF JURISDICTION**

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

### **VIII. COURT COSTS**

15. Defendant is hereby ordered to pay all court costs of this action.

### **IX. POTENTIAL FORCE MAJEURE**

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

17. In any action by the 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 limitations, acts of God, strikes, acts of war or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and the 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 that an enforcement action, if any, is commenced by the 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 changed 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 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. Acceptance of this Consent Order with a Potential Force Majeure Clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

**X. ENTRY OF CONSENT ORDER AND FINAL JUDGEMENT BY CLERK**

18. The parties agree and acknowledge that final approval by the Plaintiff and Defendant, 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 the consideration of any public comment. The State and Defendant reserve the right to withdraw this Consent Order based on comments received during the public comment period. Defendant shall pay the cost of publishing the public notice.

19. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon 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 the 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.

**XI. AUTHORITY TO ENTER INTO THE CONSENT ORDER**

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

**IT IS SO ORDERED**

8/28/00  
DATE

Chris A. Meent  
JUDGE  
COURT OF COMMON PLEAS  
FAIRFIELD COUNTY

**APPROVED:**

**JIM PETRO,  
ATTORNEY GENERAL**

[Signature]  
Thomas P. Behlen (0042721)  
Assistant Attorneys General  
Environmental Enforcement Section  
Public Protection Division  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215-3400  
Telephone: (614) 466-2766

*Attorney for Plaintiff  
State of Ohio*

**THE CYRIL-SCOTT COMPANY**

[Signature]  
Lowell Morrison for  
*Defendant The Cyril-Scott Company*

**BRICKER & ECKLER, LLP**

[Signature]  
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*Attorney for Defendant  
The Cyril-Scott Company*

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