

IN THE COURT OF COMMON PLEAS
HARRISON COUNTY, OHIO

FILED
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LESLIE A. MILLIKEN
CLERK OF COURTS
HARRISON COUNTY, OHIO

STATE OF OHIO, *ex rel.* : CASE NO. CVH 20160064
MICHAEL DEWINE :
OHIO ATTORNEY GENERAL, :
 :
Plaintiff, :
 :
v. :
 :
FREEPORT PRESS, INC. : CONSENT ORDER
 :
 :
Defendant. :

The State of Ohio, by its Attorney General (“Plaintiff”/“the State”) and at the written request of the Director of the Ohio Environmental Protection Agency (“the Director”), has filed a Complaint seeking injunctive relief and civil penalties against Defendant Freeport Press, Inc. for violations of R.C. Chapter 3704 and the rules adopted thereunder. The Parties have consented to the entry of this Order.

Therefore, without trial, admission, or determination of any issue of fact or law and with the consent of the Parties hereto, it is ORDERED, ADJUDGED, AND DECREED:

I. DEFINITIONS

1. As used in this Order, the following terms are defined:
 - a. “Defendant” means The Freeport Press, Inc., aka Freeport Press, Inc.
 - b. “Director” means the Director of the Ohio Environmental Protection Agency (“Ohio EPA”) or his designee.
 - c. “Parties” means Plaintiff, the State of Ohio, and Defendant, Freeport Press, Inc.

- d. "Person" means an individual, public or private corporation, business trust, estate, trust, partnership, association, federal government or any agency thereof, municipal corporation or any agency thereof, political subdivision or any agency thereof, public agency, interstate body created by compact, any other entity, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.
- e. "Site" means Defendant's property at 121 West Main Street, Freeport, Harrison County, Ohio 43973.
- f. "State" means Plaintiff, the State of Ohio, including the Director, Ohio Environmental Protection Agency, or the Ohio Attorney General on behalf of the State, or any State entity.
- g. "Order" refers to this Consent Order.
- h. "Written" means a paper copy or a saved or stored electronic copy.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the Parties and the subject matter of this action under R.C. Chapter 3704. The Complaint states a claim upon which relief can be granted. Venue is proper in this Court. Defendant shall not challenge the Court's jurisdiction to enter or enforce this Consent Order.

III. PARTIES BOUND

3. Defendant Freeport Press, Inc. is an Ohio limited liability company with its principal place of business at 121 West Main Street, Freeport, Harrison County, Ohio 43973.

4. This Order shall apply to and be binding only upon Defendant, and, to the extent consistent with Civ. R. 65(D), on its agents, officers, employees, contractors, assigns, successors in interest, and those persons acting in concert, privity, or participation with Defendant who receive actual or constructive notice of this Order whether by personal service, by public record filed in the county land record, or otherwise. Defendant shall provide a copy of this Consent Order to any successor in interest and to each key employee, consultant or contractor employed to perform work referenced herein or to operate the Site.

5. 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 any facts or liability.

6. If insolvency, bankruptcy, or other failure occurs, Defendant must pay the remaining unpaid balance of the total civil penalty.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

7. The Plaintiff alleges that Defendant is responsible for violations of the air pollution control laws of the State of Ohio under R.C. Chapter 3704. Compliance with this Consent Order shall constitute full satisfaction of any civil liability of Defendant to Plaintiff for the claims alleged in Plaintiff's Complaint up to the Court's entry of this Consent Order.

8. Nothing in this Consent Order shall limit the authority of the State of Ohio to:

- a. Seek any legal or equitable relief or civil penalties from Defendant or any other appropriate person for any claims or violations that occurred after filing the Complaint, and are not alleged in the Complaint;
- b. Seek any legal or equitable relief or civil penalties from Defendant or any other appropriate person for claims or violations not alleged in the Complaint;

- c. Seek any legal or equitable relief or civil penalties from Defendant or any other appropriate person for claims or conditions that occur or exist after the entry of this Consent Order;
- d. Enforce this Consent Order through a contempt action or otherwise seek relief for violations of this Consent Order; and/or
- e. Take any action authorized by law against any appropriate person, including Defendant, to eliminate or mitigate conditions at the Site that may threaten public health or welfare or the environment.

9. This Consent Order does not waive, abridge, settle, compromise, or otherwise impact any other claims in law or equity that the State of Ohio or other persons may have against Defendant.

10. Except for the signatories to the Consent Order, nothing in this Consent Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged, against any person not a signatory to this Consent Order for any liability such non-signatory(ies) may have arising out of matters alleged in the Complaint. Plaintiff also specifically reserves its right to sue any entity that is not a signatory to this Consent Order.

11. This Consent Order is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Nothing in this Consent Order shall relieve Defendant of its obligations to comply with applicable federal, state, or local statutes, regulations, rules, or ordinances, and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The State of Ohio does not, by their consent to the entry of this Consent Order, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Order will result in

compliance with provisions of R.C. Chapter 3704 or with any other provisions of federal, state, or local laws, regulations, or permits.

12. Defendant shall not assert and/or maintain, any defense or claim of waiver, *res judicata*, collateral estoppel, issue preclusion, claim splitting, or other defenses based on any contention that Plaintiff's claims in any subsequent judicial or administrative proceeding could or should have been brought in this case. Nothing herein shall restrict the rights of the Defendant to raise any administrative, legal, or equitable claim or defense with respect to any further actions brought by Plaintiff or any third party.

13. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

V. PERMANENT INJUNCTION

14. Defendant is ordered and permanently enjoined to comply fully with R.C. Chapter 3704 and the rules thereunder, including, but not limited to, the provisions of Ohio Adm.Code 3745-15-07.

VI. CIVIL PENALTY

15. Under R.C. 3704.06, Defendant is ordered and enjoined to pay a civil penalty of \$50,000.00, subject to the provisions set forth in Paragraphs 16 through 22. Full payment shall be made within thirty (30) days of entering this Consent Order. Such payment shall be made by delivering to Scott Hainer, Paralegal, or his successor, Office of the Attorney General, 30 E. Broad St., 25th Floor, Columbus, Ohio 43215, a certified check or checks for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

16. If full payment is not paid as required in Paragraph 15 above, the remaining unpaid balance of the total civil penalty, plus applicable interest in R.C. 131.02(D), shall become

immediately due and owing. Any delinquent payments shall accrue interest at the maximum statutory rate under R.C. 5703.47 calculated from the Effective Date of this Order.

17. The State reserves the right to file a certificate of judgment lien against Defendant for the remaining unpaid balance of the total civil penalty, plus applicable interest per Paragraph 16 above, if the full payment is not paid according to the schedule in Paragraph 15 above. Defendant shall not be permitted to claim a force majeure as an excuse for any untimely payment or partial payment of an amount less than that specified in Paragraph 15.

VII. 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 private, Federal or State grants, loans, and/or funds. In addition, Defendant's performance is not excused by failing to obtain or any shortfall of any private, Federal or State grants, loans and/or funds or by the processing of any applications for the same.

VIII. EFFECT OF CONSENT ORDER

19. This Consent Order does not constitute authorization or approval of the construction, installation, modification, or operation of any air contaminant source, source operation, or any building, structure, facility, facility component, operation, installation, disposal or storage site, other physical facility, or real or personal property that emits or may emit any air pollutant or air contaminant not previously approved by Ohio EPA, under the Clean Air Act, or by a permitting authority or its delegates. Approval for any such construction, installation, modification, or operation shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

IX. MISCELLANEOUS

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

21. Any acceptance by the State of Ohio of any payment, document, or other work due 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.

22. Defendant shall inform Ohio EPA of any change in Registered Agents' address and business addresses or telephone numbers, or the cessation of the business that is the subject of this action.

X. RETENTION OF JURISDICTION

23. This Court shall retain jurisdiction for the purpose of administering and enforcing this Consent Order.

XI. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

24. Under Rule 58 of the Ohio Rules of Civil Procedure, upon signing this Consent Order by the Court, the Clerk is directed to enter it upon the journal. Within 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 Civ.R. 5(B) and note the service in the appearance docket. The failure of the Clerk to serve notice does not affect the validity of this Consent Order.

XII. EFFECTIVE DATE

25. This Consent Order shall be effective upon the date of its entry by the Court.

XIII. COURT COSTS

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

XIV. AUTHORITY TO ENTER INTO THE CONSENT ORDER

27. Each signatory represents and warrants he has been duly authorized to sign this document and is fully authorized to agree to its terms and conditions, and, in the case of a person signing on behalf of a corporate entity, may so legally bind the corporate entity to all terms and conditions in this document.

IT IS SO ORDERED.



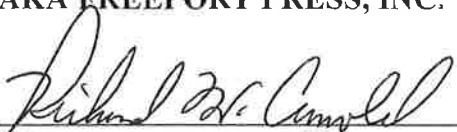
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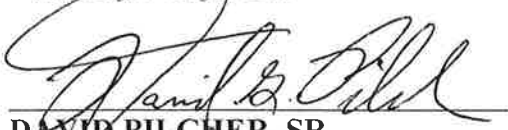
DATE

APPROVED AND AGREED TO BY:


THE FREEPORT PRESS, INC.
AKA FREEPORT PRESS, INC.



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