

IN THE COURT OF COMMON PLEAS
RICHLAND COUNTY, OHIO

COURT OF APPEALS
RICHLAND COUNTY OHIO
FILED

2016 MAR 17 P 3:04

LINDA H. FRARY
CLERK OF COURTS
2016 CV 0317

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

Plaintiff,

v.

RICHLAND MOULDED BRICK
COMPANY, INC., et al.,

Defendants.

CASE NO. _____

CV _____

JUDGE

~~ROBINSON~~

CONSENT ORDER AND FINAL JUDGMENT ENTRY

Plaintiff, the State of Ohio, through its Attorney General, (“Plaintiff”), filed a Complaint for Injunctive Relief and Civil Penalties (“Complaint”) against Defendants Richland Moulded Brick Company, Inc. and Scott Frame alleging violations of Chapter 3734 of the Ohio Revised Code and the rules promulgated thereunder; and

Plaintiff and Defendants have agreed to this Consent Order;

THEREFORE, without trial or admission of any issue of fact or law, and upon the consent of Plaintiff and Defendants Richland Moulded Brick Company, Inc. and Scott Frame, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

I. DEFINITIONS

1. As used in this Consent Order:

a. **“Consent Order”** means this Consent Order and Final Judgment Entry.

b. **“Effective Date”** means the date the Richland County Court of Common Pleas enters this Consent Order.

c. **“Facility”** refers to the locations where the alleged violations of Ohio's hazardous waste laws occurred: 1000 Richland Shale Road and 775 Richland Shale Road, Mansfield, Richland County, Ohio 44903.

d. **“Plaintiff”** means the State of Ohio.

e. **“Defendants”** means Defendants Richland Moulded Brick Company, Inc. and Scott Frame.

II. JURISDICTION AND VENUE

2. 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 3734. Venue is proper in this Court.

III. PERSONS BOUND

3. The provisions of this Consent Order shall apply to and be binding upon Plaintiff and Defendants, their agents, officers, employees, assigns, and successors-in-interest of Defendants, and any other person who would be bound pursuant to Rule 65(D) of the Ohio Rules of Civil Procedure, including any person acting in concert, privity, or participation with Defendants who receives actual notice of this Consent Order whether by personal service or otherwise.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

4. Except as otherwise provided in this Consent Order, compliance with the terms of Paragraphs 10, 11, 12, and 14 of this Consent Order shall constitute full satisfaction of any civil liability of Defendants to the Plaintiff for the claims alleged in the State's Complaint that have

occurred at the Facility prior to the Effective Date. This Consent Order also constitutes full satisfaction of any civil liability of Defendants to Plaintiff for any removal costs, enforcement costs, oversight costs, and other costs relating to the Facility that were expended before the Effective Date.

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

a. Seek relief for claims or conditions not alleged in the Complaint, except for claims to recover removal costs, enforcement costs, oversight costs, and other related costs relating to the Facility that were expended before the Effective Date;

b. Seek relief for claims or conditions alleged in the Complaint that occur after the Effective Date of this Consent Order;

c. Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;

d. Bring any action against Defendants or against any other person, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. 9601, *et seq.*, and/or R.C. 3734.20 through 3734.27 to: (1) recover natural resource damages; and/or (2) order the performance of and/or recover costs for any removal or remedial or corrective activities conducted after the Effective Date;

e. Take any action authorized by law against any person, including Defendants, to eliminate or mitigate conditions at the Facility that may present an imminent threat to the public health or safety or to the environment.

6. 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 in the

Complaint, against any person, firm, trust, joint venture, partnership, corporation, association, or other entity not a signatory to this Consent Order.

7. Nothing in this Consent Order shall be construed to relieve Defendants of their obligations to comply with applicable federal, state, or local statutes, regulations, or ordinances.

8. Nothing herein shall restrict the right of the Defendants to raise any administrative, legal, or equitable claim or defense with respect to such further actions reserved by the State in this Section. However, with respect to the actions reserved by the State in this Section, Defendants shall not assert and may not maintain, any defense or claim against the State based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim splitting or other defenses based upon any contention that the claims raised by the State in the subsequent proceeding were, could, or should have been brought in the instant case.

V. PERMANENT INJUNCTION

9. Defendants are ordered and enjoined to comply with R.C. Chapter 3734 and the rules promulgated thereunder.

VI. CIVIL PENALTY

10. Pursuant to R.C. 3734.13(C), Defendants, jointly and severally, are ordered ~~and~~ ~~enjoined~~ to pay a civil penalty of One Hundred Ten Thousand Dollars (\$110,000) within thirty (30) days of the Effective Date.

11. The civil penalty payment identified in Paragraph 10 above shall be made by delivering to Plaintiff, c/o Scott Hainer, Paralegal, or his successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, a cashier's or certified check, payable to the order of "Treasurer, State of Ohio." 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. 464797." This civil penalty shall be deposited into the Environmental Protection Remediation Fund created by Ohio Revised Code 3734.281.

12. Should Defendants fail to make payment in full as required by Paragraph 10, the remaining unpaid balance of the total civil penalty, plus applicable interest pursuant to 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.

13. The State reserves the right to file a certificate of judgment lien against Defendants for the remaining unpaid balance of the total civil penalty, plus applicable interest per Paragraph 12 above, if the full payment is not paid within thirty (30) days of the Effective Date.

VII. COSTS

14. Defendants shall pay the court costs of this action.

VIII. EFFECTIVE DATE

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

IX. RETENTION OF JURISDICTION

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

X. SIGNATORIES

17. Each of the undersigned representatives of the Parties represents that they are fully authorized to enter into the terms and conditions of this Order and legally bind the respective party to this document.

XI. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

18. Pursuant to Civ.R. 58, upon signing of this Order by the Court, the Clerk is directed to enter it upon the journal. Within three 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.

IT IS SO ORDERED.

3/17/16
DATE

Brett Rob
JUDGE

APPROVED:

**MICHAEL DEWINE
OHIO ATTORNEY GENERAL**


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Clint R. White (0086393)
Assistant Attorneys General
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Attorneys for Plaintiff

**DEFENDANT RICHLAND
MOULDED BRICK COMPANY, INC.**

By: Authorized Representative of
Defendant Richland Moulded Brick
Company, Inc.

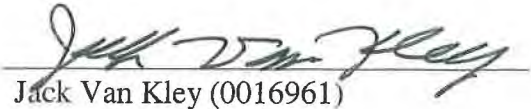

Scott Frame

Title:

President
2.26.16

DEFENDANT SCOTT FRAME


In his personal capacity



Jack Van Kley (0016961)
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Attorney for the Defendants Richland Moulded Brick Company, Inc. and Scott Frame