

IN THE COURT OF COMMON PLEAS
GUERNSEY COUNTY, OHIO

FILED *X* *Brook*

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STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO
30 East Broad Street
Columbus, Ohio 43215-3428

CASE NO.

JUDGE

COURTS
CO., OHIO

Plaintiff,

vs.

BYESVILLE ASEPTICS, INC.
100 Hope Road
Byesville, Ohio 43723
c/o CT Corp. System
3810 Carew Tower
Cincinnati, Ohio 45202

FINAL APPEALABLE
ORDER

POWER PACKAGING, INC.
525 Dunham Road
St. Charles, Illinois 60174
c/o C T Corp.
1300 E. Ninth Street
Cleveland, Ohio 44114

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FA

Defendants.

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio by its Attorney General Betty D. Montgomery (hereinafter referred to as "Plaintiff") and Defendants Byesville Aseptics, Inc. and Power Packaging Inc. (hereinafter referred to as "Defendants") having consented to the entry of this Order, hereby agree to the entry of this Consent Order to resolve the allegations set forth in the Complaint. Defendants deny the violations of law alleged in the Complaint.

NOW THEREFORE, without trial of any issue of fact or law, without any admission of fact or law by Defendants, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has both personal and subject matter jurisdiction over the Parties. The Complaint states a claim upon which relief can be granted against Defendants under Chapter 6111 of the Ohio Revised Code (hereinafter referred to as R.C.) and the rules promulgated under that chapter. Venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply and be binding upon the Plaintiff State of Ohio and Defendants, Defendants' agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them. Defendant Byesville Aseptics, Inc. shall provide a copy of this Consent Order to each contractor and consultant it employs to perform the work itemized herein. Defendant Byesville Aseptics, Inc. shall require each general contractor to provide a copy of this Consent Order to each subcontractor for such work.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

3. Plaintiff has alleged that Defendants have operated their pretreatment systems in such a manner as to result in violations of the requirements of the Industrial User permit and in violation of the water pollution laws of the State of Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims

of violations alleged in the complaint, including the claims for injunctive relief and civil penalties.

4. Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against other appropriate persons for claims or conditions alleged in the complaint. Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against Defendants or other appropriate persons for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint, nor shall anything in this Consent Order limit the right of Defendants to any defenses they may have for such claims. Similarly, nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to undertake any action against any person, including Defendants, to eliminate or mitigate conditions which may present a threat to the public health, welfare or the environment.

IV. PERMANENT INJUNCTION

5. Defendant Byesville Aseptics, Inc. is permanently enjoined and ordered to immediately comply with all applicable provisions of R.C. Chapter 6111 and the rules promulgated under that chapter.

V. TIME EXTENSIONS

6. If any date for performance falls upon a weekend or state or federal holiday, the time for performance is extended to the next working day following the weekend or holiday.

VI. SUBMITTAL OF DOCUMENTS

7. All documents required under this Consent Order shall be submitted to:

- a. Ohio EPA
Southeast District Office
2195 Front Street
Logan, Ohio 43138
Attn.: Manager, Division of Surface Water

- b. Ohio EPA
Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn.: Manager, Enforcement Section

VII. CIVIL PENALTY & SUPPLEMENTAL ENVIRONMENTAL PROJECTS

8. It is hereby ordered that within 30 days from the date of this order, Defendant Power Packaging Inc. shall pay to the State of Ohio a civil penalty of \$40,000.00. Defendant Byesville Aseptics, Inc. shall pay a civil penalty of \$10,000.00. 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 Jena Suhadolnik, Administrative Assistant, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

9. In lieu of an additional civil penalty, and in furtherance of the mutual objectives of the State of Ohio and Defendants in improving the waters of the State and the environment, Defendant Byesville Aseptics, Inc. will provide fifty thousand dollars (\$50,000.00) to be utilized by the Village of Byesville's Waste Water Treatment Plant (WWTP) for supplemental environmental project(s). Defendant Byesville Aseptics, Inc. will place the \$50,000 into a separate bank account and this money will only be disbursed to either the Village of Byesville or Ohio EPA.

In order for the Village of Byesville's Waste Water Treatment Plant to be eligible for this money it must submit to Ohio EPA (as set forth in paragraph 7) for written approval a written proposal demonstrating that the money will be used for supplemental environmental project(s). After Ohio EPA has determined that the proposal meets the requirements for a supplemental environmental project Ohio EPA will inform in writing the Village of Byesville so that the Village can forward the written approval and request a release of the appropriate amount of funds from Defendant Byesville Aseptics, Inc. The Village of Byesville will have two years from the date of the entry of this consent decree to receive approval from Ohio EPA and to request the release of the funds. If two years after the entry of this consent order, the Village of Byesville has failed to submit and obtain written approval from Ohio EPA for its proposed supplemental environmental project(s), Defendant Byesville Aseptics, Inc. will pay the fifty thousand dollars (\$50,000) or any portion not previously provided to the Village to the Ohio EPA as provided for in paragraph 8. Within 30 days from the entry of this consent decree, Defendant Byesville Aseptics, Inc. will provide the Village of Byesville with a copy of this decree and inform them of the opportunity to utilize the money for supplemental environment project(s) for the Village's waste water treatment plant.

VIII. STIPULATED PENALTIES

10. In the event that Defendants fail to meet any of the deadlines and requirements of this Consent Order, Defendants shall pay a stipulated penalty for each failure according to the following payment schedule: (a) for each day of each failure to meet each deadline or requirement, up to thirty (30) days --Four Hundred Dollars (\$400.00) per each day for each deadline or requirement not met; (b) for each day of each failure to meet each deadline or

requirement, from thirty-one (31) to sixty (60) days -- Six Hundred and Fifty Dollars (\$650.00) per day for each deadline or requirement not met; (c) for each day of each failure to meet each deadline or requirement, over sixty-one (61) days – One Thousand Dollars (\$1,000.00) per each day for each deadline or requirement not met.

11. Any payment required to be made under the provisions of Section VIII of this Consent Order shall be made by delivering to Jena Suhadolnik, or her successor, at the address set forth in Section VII within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, a certified check or checks for the appropriate amount(s), made payable to the order of "Treasurer, State of Ohio". Defendants shall also state in writing the specific deadline or requirement of the Consent Order which was not complied with, and the date(s) of non-compliance. The payment of stipulated penalties by Defendants and the acceptance of such stipulated penalties by the 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.

IX. RETENTION OF JURISDICTION

12. The Court will retain jurisdiction of this action for the purpose of enforcing and administering Defendants' compliance with this Consent Order. The Court will retain jurisdiction for the purpose of interpretation of this Consent Order should any disagreement arise between the parties.

X. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

13. Performance of the terms of this Consent Order by Defendants is not conditioned on the receipt of any Federal or State grant or loan funds. In addition, Defendants' performance is not excused by the failure to obtain or the shortfall of any Federal or State grant or loan funds, or by the processing of any applications for the same.

XI. POTENTIAL FORCE MAJEURE

14. If any event occurs which causes or may cause a delay of any requirements of this Consent Order, Defendants shall notify the Ohio EPA in writing within (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 Defendants to prevent or minimize the delay and the timetable by which measures will be implemented. Defendants will adopt all reasonable measures to avoid or minimize any such delay.

15. In any action by the State of Ohio to enforce any of the provisions of this Consent Order, Defendants may raise that it is entitled to a defense that its conduct was caused by reasons beyond its control such as, by way of example and not limitations, acts of God, strikes, acts of war or civil disturbances. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed upon by Defendants and the State of Ohio 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 State of Ohio. At that time the burden of proving that any delay was or will be caused by circumstances beyond the control of Defendants shall rest with Defendants. Unanticipated or increased costs associated with the implementation of any action required by

this Consent Order, or changed financial circumstances shall not constitute circumstances beyond the control of Defendants, or serve as a basis for an extension of time under this Consent Order. Failure by Defendants 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 but shall not constitute a waiver of Defendants' 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 Defendants qualify for an extension of a subsequent date or dates. Defendants must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought.

XII. COURT COSTS

16. Defendants are hereby ordered to pay the court costs of this action.

XIII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

17. The parties agree and acknowledge that final approval by the Plaintiff and Defendants, and entry of this Consent Order is subject to the requirement of 40 C.F.R. § 123.27 (d)(1)(iii), which provides for notice of the lodging of this Consent Order, opportunity for public comment, and consideration of any public comment. The Plaintiff and Defendants reserve the right to withdraw consent to this Consent Order based on comments received during the public comment period. Defendants shall pay the cost of publishing the public notice within thirty days of receipt of a bill or notice from Ohio EPA.

18. Upon the 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 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:

April 4th, 2003
DATE

David A. Ellwood
JUDGE, COURT OF COMMON PLEAS,
GUERNSEY COUNTY, OHIO

APPROVED:

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

BY: 
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*Attorney for Defendant
Power Packaging, Inc.*

BY: _____
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Assistant Attorneys General
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30 East Broad Street, 25th Floor
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*Attorney for Plaintiff
State of Ohio*

BY: 
*Authorized Representative of
Defendant Power Packaging Inc.*

BY: _____
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BY: _____
*Authorized Representative of
Defendant Bysville Aseptics, Inc.*

*Attorney for Defendant
Bysville Aseptics, Inc.*