

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Civil No. 1-99-CV-383
)
 ELMER'S CRANE AND DOZER, INC.,)
)
 Defendant.)
 _____)

CONSENT DECREE

Plaintiff, the United States of America ("Plaintiff" or "United States"), by authority of the Attorney General of the United States, and acting at the request of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), has filed a Complaint in this action asserting claims for civil penalties pursuant to Section 113 of the Clean Air Act (the "Act"), 42 U.S.C. § 7413, against the Defendant, Elmer's Crane and Dozer, Inc. ("Elmer's"). The Complaint alleges that Elmer's, a nonmetallic mineral processing operation with three portable sand and gravel plants in Maple City and Karlin, Michigan, failed to comply with the Michigan State Implementation Plan ("SIP"), federally approved under Section 110 of the Act, 42 U.S.C. § 7410 because Elmer's failed to obtain operating permits as required by the Michigan SIP, Michigan Air Pollution Control Commission ("MAC") Rule 336.1208, and the Act, 42 U.S.C. § 7413. The

underlying Complaint, Elmer's waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Defendant shall not challenge the entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

II. DEFINITIONS

5. Unless otherwise expressly stated, the terms used in this Consent Decree that are defined in the Act, or in regulations promulgated under the Act, shall have the meanings set forth in such definitions.

6. "66" Spokane - VSI Plant" shall mean the portable sand and gravel plant located at part of the NW 1/4 of Section 15, T25N, R12W, Karlin, Michigan and currently owned and operated by Elmer's Crane and Dozer, Inc.

7. "Act" or "CAA" means the Clean Air Act, as amended, 42 U.S.C. §§ 7401, *et seq.*

8. "Cedarapids 1274 Plant" shall mean the portable sand and gravel plant located at 10212 South Coleman Road, Maple City, Michigan and currently owned and operated by Elmer's Crane and Dozer, Inc.

9. "Day" means a calendar day unless expressly stated to be a Working Day. "Working Day" means a day other than a Saturday, Sunday or federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period will run until the close of business of the next

III. PARTIES BOUND

20. This Consent Decree shall apply to and be binding on the United States and Elmer's and its successors and assigns. In any action to enforce the terms of this Consent Decree, Elmer's shall not raise as a defense the failure of its officers, directors, agents, servants, contractors, or employees to take any actions necessary to comply with this Decree. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the Defendant's status or responsibilities under this Consent Decree.

IV. CIVIL PENALTIES

21. Defendant shall pay a civil penalty in the amount of \$168,000 (ONE HUNDRED SIXTY-EIGHT THOUSAND DOLLARS) to the United States of America within thirty (30) calendar days after entry of this Consent Decree as an Order of the Court. The payment shall be made by FEDWIRE Electronic Funds Transfer ("EFT") to the United States Department of Justice lockbox bank. Payment shall be made in accordance with specific instructions to be timely provided by the United States to Defendant upon entry of this Consent Decree. Any EFT received at the United States Department of Justice lockbox bank after 11:00 a.m. (Eastern Time) will be credited on the next business day. Defendant shall advise the Financial Litigation Unit of the United States

applicable federal authority. Further, Elmer's shall be liable for reasonable attorney fees and costs incurred by the United States to collect any amounts past due under this Consent Decree.

25. Payments made under Paragraph 25 shall be in addition to any other remedies or sanctions available to the United States by virtue of Elmer's failure to make timely payments required by this Consent Decree.

VI. NOTICE

26. Unless otherwise provided in this Decree, notifications to or communications with the U.S. EPA or the United States shall be deemed submitted on the date they are postmarked and sent either by overnight receipt mail service or by certified or registered mail, return receipt requested.

27. Unless this Consent Decree states otherwise, all notices, submissions, or communications in connection with this Consent Decree shall be addressed as follows:

As to the U.S. EPA:

Chief, Air Enforcement and Compliance
Assurance Branch
Air and Radiation Division, AE-17J
U.S. EPA, Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

As to the United States or Department of Justice:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division

EPA.

31. This Consent Decree does not limit or affect the rights of Defendant or the United States as against any third parties.

32. Each Party to this action shall bear its own costs and attorney's fees.

33. Any modification of this Consent Decree must be in writing and approved by the Court. Any such written modification must be agreed to and signed by all parties to this Consent Decree.

34. Elmer's shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to matters arising under or relating to this Consent Decree.

35. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of either party and the terms of the agreement may not be used as evidence in any litigation between the parties.

VIII. RETENTION OF JURISDICTION

36. This Court shall retain jurisdiction to modify or enforce the terms of this Consent Decree or to take any action necessary or appropriate for its construction or execution.

IX. PUBLIC COMMENT

37. This Consent Decree shall be lodged with the Court for a period of not less than 30 days, for public notice and comment. The

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BY: Francis X. Lyons
FRANCIS X. LYONS
Regional Administrator
Region 5
United States Environmental
Protection Agency

Date: August 18, 1999

Ignacio L. Arrázola
IGNACIO L. ARRÁZOLA
Associate Regional Counsel
Region 5
U.S. Environmental
Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604

Date: August 4, 1999

Jul-27-99 01:08P ELMER'S
07/27/99 12:09 FAX 616 459 5107

WARNER NORCROSS

616 943 8975

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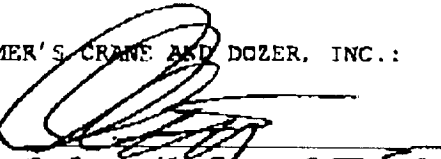
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FOR ELMER'S CRANE AND DOZER, INC.:

Dated: 7/27/99

Name:



Title:

CHARLES K. PITTENGER SR
CONTRACTOR