

IN THE CIRCUIT COURT OF JASPER COUNTY, MISSOURI

STATE OF MISSOURI ex rel. Chris Koster, )  
 the Attorney General of Missouri, and the )  
 Missouri Department of Natural Resources, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 AMERICOLD LOGISTICS, LLC. )  
 )  
 Defendant. )

**FILED**  
**MELISSA HOLCOMB-CLERK**  
 5-13-2014  
**JASPER COUNTY CIRCUIT COURT**  
**JOPLIN MO**

Case No.

**CONSENT JUDGMENT**

Plaintiff, by and through its relators Attorney General Chris Koster and the Missouri Department of Natural Resources, and Defendant Americold Logistics, LLC, by and through counsel, consent to the entry of this Consent Judgment.

The Court has read Plaintiffs Petition for Injunctive Relief and Civil Penalties, in which Plaintiff alleges that Defendant violated the Missouri Air Conservation Law. The Court is satisfied that the provisions of this Consent Judgment are intended to resolve the issues raised by the Petition and that the parties want to terminate this controversy and consent to the entry of this judgment without trial.

Each and every term of this Judgment shall be enforceable by further order of this Court, and to that end, the Court retains jurisdiction of the matter in order to enforce each and every term of this Consent Judgment. The Court finds that the terms of this Consent Judgment protect the public's interest.

The parties, having consented to the entry of this Consent Judgment, it is hereby ORDERED, ADJUDGED AND DECREED that:

**I. Objectives of the Parties**

The objectives of the parties to this Consent Judgment are to protect human health and the environment and to compromise, satisfy and resolve allegations contained in Plaintiff's Petition without any admission of liability with regard to the alleged violations in the Petition on the part of the Defendant.

## **II. Definitions**

2. Terms used herein shall have the same meaning as provided in the Missouri Air Conservation Law, Chapter 643 and the regulations adopted thereunder ("MACL"). In addition, the following terms are specifically defined:

- a. "Consent Judgment" means this Consent Judgment and all attachments, which are included by reference and fully enforceable as a term of the judgment.
- h. "Defendant" means Americold Logistics, LLC
- c. "Department" means the Missouri Department of Natural Resources.
- d. "Effective Date" means the date that the Court enters an order approving this Consent Judgment.
- e. "Installation" means the Defendant's limestone crushing operation known as Carthage Crushed Limestone at 1331 Civil War Road, Carthage, Jasper County, Missouri.
- f. "Plaintiff" and "State" means the State of Missouri on the relationship of Attorney General Chris Koster and the Department.

## **III. Jurisdiction and Venue**

3. This Court has jurisdiction over the subject matter and the parties in this case pursuant to § 643.151.1 RSMo. Venue is proper in this court pursuant to § 643.151.1 RSMo because the Defendant's conduct giving rise to this action took place in Jasper County.

## **IV. Parties Bound**

4. The provisions of this Judgment shall be binding upon the parties to this action as well as their agents, servants, employees, heirs, successors, assigns, and to all persons, firms, corporations and other entities who are, or who will be, acting in concert or privity with, or on behalf of the parties to this action or their agents, servants, employees, heirs, successors, and

assigns. Defendant shall provide a copy of this order to all persons or entities retained to perform work required by this order. To the extent that any prior agreement between the parties is in conflict with this Consent Judgment, this Consent Judgment controls.

#### **V. Satisfaction and Reservation of Rights**

5. The Department and Attorney General agree not to bring or cause to be brought any civil action against Defendant or its officers, directors, employees or agents for violations alleged in the Petition, except to enforce the terms of this Consent Judgment. Upon the completion of all terms of this Consent Judgment, including the payment of civil penalties, completion of all schedules of compliance and the payment of any stipulated penalties due under the terms of this Consent Judgment, Defendant is relieved of liability for the violations alleged in the Petition and of any further obligations under this Consent Judgment.

6. This Consent Judgment shall not be construed to limit the rights of the State to obtain penalties or injunctive relief under the MACL or its implementing regulations or under other federal or state laws, or regulations, except as expressly stated in the preceding paragraph of this Consent Judgment. Without limiting the foregoing, the parties expressly agree that:

a. Nothing in this Consent Judgment shall prevent the State from applying to this Court for further orders or relief if violations of this Consent Judgment occur.

b. Nothing in this Consent Judgment shall preclude the State from seeking equitable or legal relief for violations of the Missouri laws or regulations that were not alleged in the petition.

c. Nothing in this Consent Judgment shall preclude the State from seeking equitable or legal relief for future violations of the MACL,

d. The State of Missouri further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant' facility, acts or omissions, whether related to the violations addressed in this Consent Judgment or otherwise.

e. Nothing in this Consent Judgment shall in any way limit the availability of any defenses that Defendant may have to the actions identified in paragraphs 6 (a-d).

#### **VI. Injunctive Relief**

7. Defendant shall implement the Compliance Plan, which is attached to this Consent Judgment as Exhibit A, the terms of which are incorporated into this Consent Judgment as if fully set forth herein.

8. Defendant shall obtain all approvals and permits necessary to perform the terms of the Compliance Plan, if any, at Defendant's cost.

#### **VII. Information Collection and Retention**

9. The State, through its authorized representatives, shall have the right of entry into the Installation at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Judgment;
- b. verify any data or information submitted to the State in accordance with the terms of this Consent Judgment;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or Defendant's representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Judgment.

10. Upon request, Defendant shall provide the State, through its authorized representatives, splits of any samples taken by Defendant.

11. Until five years after the termination of this Consent Judgment, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Judgment. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or

procedures. At any time during this information-retention period, upon request by the State, Defendant shall provide copies of any non-privileged documents, records, or other information required to be maintained under this Paragraph.

12. This Consent Judgment in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

### **VIII. Stipulated Penalties**

13. In the event that Defendant fail to comply with the requirements of the Compliance Plan, Exhibit A, Defendant shall pay stipulated penalties in accordance with the following schedule :

A. \$100.00 per day for each day of each violation up to thirty days.

B. \$250.00 per day for each day of each violation, from thirty-one days to sixty days.

C. \$500.00 per day for each day of each violation, beyond sixty days.

14. Stipulated penalties shall be due and payable within ten days of demand being made by the Attorney General's Office. Defendant shall pay stipulated penalties by check made payable to the "*State of Missouri (Jasper County)*" and mailed, along with a copy of the State's stipulated penalty demand letter, to: Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899. That check will be deposited and processed in accordance with the consent judgment and Missouri law.

15. The inclusion of stipulated penalty provisions in this Consent Judgment, and the payment of stipulated penalties, does not limit the State's ability to pursue other penalties for the same acts; where a violation of this Consent Judgment also constitutes a violation of a statute, stipulated penalties may be collected in addition to statutory penalties imposed for those violations.

## IX. Dispute Resolution

16. Unless otherwise expressly provided for in this Consent Judgment, the dispute resolution procedures of this section shall apply to resolve disputes arising under or with respect to this Consent Judgment.

A. Informal Dispute Resolution. Any dispute under this Consent Judgment shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the Department a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) Days from the date of the Notice of Dispute, unless that period is modified by written agreement between the Parties. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the Department shall be considered binding unless, within twenty (20) Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

B. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding subparagraph, by serving on the Department and the Plaintiff a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

C. The Department shall serve its Statement of Position within sixty (60) Days of receipt of Defendant's Statement of Position. The Department's Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the Department. The Department's Statement of Position shall be binding on Defendant, unless Defendant files a petition for judicial review of the dispute in accordance with the following subparagraph.

D. Defendant may seek judicial review of the dispute by filing a motion with this Court and serving on the Department, the motion requesting judicial resolution of the dispute. The Motion must be filed within fifteen (15) Days of receipt of the Department's Statement of Position pursuant to the preceding subparagraph.

E. The Department shall respond to Defendant's motion within thirty (30) Days.

F. The invocation of dispute resolution procedures under this section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Agreement not in dispute. As part of the resolution of any dispute under this Section, in appropriate circumstances the disputing Parties may agree, or this Court may order, an extension or modification of the schedule for the completion of the work required under this Consent Judgment.

#### **X. Modification**

17. Except as otherwise specified herein, there shall be no modification of this Consent Judgment without the written agreement of the Parties. There shall be no material modification of this Consent Judgment without the written agreement of the Parties and the approval of the Court. All modifications shall be in writing and filed with the Court.

#### **XI. Costs**

18. Defendant shall pay all court costs in this action.

#### **XII. Termination**

19. In the event Defendant ceases operation of PM<sub>10</sub> emission units at Defendant's Installation subject to this Consent Judgment, Defendant shall notify MDNR and will be relieved of the injunctive relief or other required practices that were for the purpose of reducing PM<sub>10</sub> emissions from the subject units at Defendant's Installation.

20. In the event that elements of Exhibit A, Compliance Plan, are imposed in a permit or permit amendment and incorporated into the State of Missouri's State Implementation Plan, Defendant shall be relieved of the injunctive relief or other required practices that

were for the purpose of reducing PM<sub>10</sub> emissions from the subject units at Defendant's Installation and this Consent Judgment shall terminate. MDNR shall cooperate with Defendant in the issuance of a permit amendment or permit incorporating the elements of the Compliance Plan.

The parties hereby consent to this Consent Judgment through their duly authorized representatives as indicated below.

AMERICOLD LOGISTICS, LLC

By: [Signature]

Title: EVP

Date: 4/2/14

MISSOURI ATTORNEY GENERAL'S OFFICE

By: [Signature]

Don A. Willoh  
Assistant Attorney General

Date: 3-28-14

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: [Signature]

Kyra L. Moore, Director  
Air Pollution Control Program

Date: 3-27-14

MISSOURI AIR CONSERVATION COMMISSION

By: [Signature]

Date: 03-27-14

SO ORDERED.

[Signature]

Circuit Judge

Date: 5-13-14

COURT SEAL OF



JASPER COUNTY



EPA Rulemakings

CFR: 40 C.F.R. 52.1320(d)(30)  
FRM: 81 FR 4886 (1/28/16) effective 3/28/16  
PRM: 81 FR 4905 (1/28/16)  
State Submission: 6/2/14  
State Effective Date: 4/27/14  
APDB File: MO-343  
Description: This SIP revision incorporates a consent judgment to address violations of the 24-hour PM<sub>10</sub> NAAQS near the Americold Logistics, LLC, Carthage Crushed Limestone (CCL) facility near Carthage, Missouri. The consent judgment between the State of Missouri and CCL includes measures that will control PM<sub>10</sub> emissions from the facility. This approval will make the consent judgment federally-enforceable.

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Difference Between the State and EPA-Approved Regulation

None.