

FILED

NOV 23 1998

Kenneth J. Murphy, Clerk
Columbus, Ohio

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

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STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

CONSOLIDATION COAL
COMPANY, et al.,

Defendants.

CASE NO. **C2 98-1113**

JUDGE

JUDGE GRAHAM

MAGISTRATE JUDGE ABEL

CONSENT DECREE

Plaintiff, State of Ohio, ex rel. Betty D. Montgomery, Attorney General of Ohio, having filed the Complaint in this action against Defendants for reimbursement of response costs incurred by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended, 42 U.S.C. §9601 et seq. ("CERCLA") and Ohio Revised Code ("R.C.") Chapter 3745.

NOW, THEREFORE, without trial and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED and DECREED as follows:

DEFINITIONS

1. Whenever the following terms are used in this Consent Decree, the following definitions shall apply:

A. "Consent Decree" means this Decree.

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- B. **"Hazardous substance"** shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
- C. **"National Contingency Plan"** or "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, referred to in the Comprehensive Environmental Response, Compensation and Liability Action of 1980 ("CERCLA") as the National Contingency Plan, and codified at 40 C.F.R. Part 300.
- D. **"Ohio EPA"** means the Ohio Environmental Protection Agency, and its designated representatives.
- E. **"Response Costs"** means all direct and indirect costs incurred by the State of Ohio related to the response and remedial actions conducted at the Buckeye Reclamation Landfill Site by the Settling Defendants, other PRPs, U.S. EPA, and Ohio EPA, including, but not limited to, payroll costs, contractor costs, travel costs, oversight costs, laboratory costs, costs of reviewing or developing plans, report or other items, and costs of the Ohio Attorney General's Office in representing Ohio EPA in this action.
- F. **"Settling Defendants"** means those Parties, other than the State, who sign this Consent Decree.
- G. **"Site" or "Buckeye Reclamation Landfill Site"** shall mean, solely for the purposes of this Consent Decree, the Buckeye Reclamation Landfill (also known as the Belmont County Landfill) located on approximately 50 acres of a 658 acre tract of land, and such other areas beyond said 50 acre landfill (totaling approximately 100 acres in Richland Township, Belmont County, Ohio) where hazardous substances have come to be located as a result of a release from said landfill.
- H. **"State"** means the State of Ohio.
- I. **"U.S. EPA"** means the United States Environmental Protection Agency and its designated representatives.

BACKGROUND

2. The United States Environmental Protection Agency ("U.S. EPA"), pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, placed the Buckeye Reclamation Landfill Site ("Site") in Belmont County in Ohio on the National Priorities List, which is set forth at 40

C.F.R. Part 300, Appendix B, by publication in the Federal Register in October, 1984, 48 Fed. Reg. 40658-40682.

3. On October 31, 1985 in response to a release or a substantial threat of a release of hazardous substances at or from the Site, Cravat Coal Company, Ashland Chemical Company, Aristech Chemical Company (formerly a subsidiary of the U.S. Steel Corporation), Beazer East, Inc. (formerly Koppers Company, Inc.), Triangle Wire and Cable, Inc. (formerly Triangle PWC), and SKF USA, Inc., pursuant to the first Administrative Order on Consent for this Site, commenced on October 31, 1985, a Remedial Investigation and Feasibility Study ("RI/FS") pursuant to 40 C.F.R. § 300.430. On June 26, 1986, the Administrative Order on Consent (AOC I) was modified to include Kittle Hauling as a Respondent.

4. Cravat Coal Company, Ashland Chemical Company, Aristech Chemical Company, Beazer East, Inc., Triangle Wire and Cable, Inc., and SKF USA, Inc. (Kittle Hauling went out of business during the course of the work), completed a Remedial Investigation ("RI") Report on June 20, 1990, and Cravat Coal Company, Ashland Chemical Company, Aristech Chemical Company, Beazer East, Inc., Triangle Wire and Cable, Inc., and SKF USA, Inc., completed a Feasibility Study ("FS") Report on May 15, 1991.

5. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, U.S. EPA published notice of the completion of the FS and of the proposed plan for remedial action on May 13, 1991, in a major local newspaper of general circulation. U.S. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

6. The decision by U.S. EPA on the remedial action to be implemented at the Site was embodied in a final Record of Decision ("ROD"), executed on August 19, 1991.

7. Consolidation Coal Company, Ashland Chemical, Inc., Beazer East, Inc., Triangle Wire and Cable, Inc., Aristech Chemical Corporation, SKF USA, Inc., The Pullman Company (formerly Clevite Industries, Inc.), Mill Service, Inc., USX Corporation (formerly U.S. Steel Corporation), Wheeling-Pittsburgh Steel Corporation, Allegheny Ludlum Corporation, and National Steel Corporation entered into a second Administrative Order on Consent (AOC II), No. VW-92-C-137, on February 10, 1992, to perform the Remedial Design for the Remedial Action for the Site required by U.S. EPA's ROD.

8. On July 17, 1997, USEPA modified the ROD by issuing an Explanation of Significant Difference ("ESD"). The ROD includes U.S. EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

9. On March 17, 1998, a Judicial Consent Decree was entered in this court, between U.S. EPA and Settling Defendants, which requires the Settling Defendants to implement the ROD remedy as amended by the ESD.

10. The State has incurred costs in addressing releases or the substantial threat of releases of hazardous substances at and from the Site.

11. The Settling Defendants have consented to the entry of this Consent Decree without admitting any facts or acknowledging liability of any type, and the entry of this Decree shall not represent a finding of fact or an admission or adjudication of liability.

12. The Parties agree, and the Court by entering this Consent Decree finds, that entry of this Consent Decree is in the public interest and will avoid prolonged and complicated litigation between the Parties.

JURISDICTION

13. This Court has jurisdiction over the subject matter herein, and over the Parties consenting hereto. The Settling Defendants shall not challenge this Court's jurisdiction to enter and enforce this Consent Decree. The Settling Defendants waive service of the complaint and summons in this action. Venue is proper in this Court.

PARTIES BOUND

14. This Consent Decree applies to and is binding upon the Settling Defendants, their successors in interest, assigns, receivers, officers, agents, servants, employees, and those acting in concert, privity, or participation with them. The undersigned representative of each party to this Consent Decree certifies that he or she is fully authorized by the party or parties whom she or he represents to enter into the terms and conditions of the Consent Decree and to execute and legally bind that party to it.

CALCULATION OF TIME

15. Unless otherwise stated in this Consent Decree, where this Decree requires actions to be taken within a specified period of time (e.g. "within thirty days"), this time period shall begin the day after the entry of this Consent Decree. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday or State of Ohio or federal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday or legal holiday.

REIMBURSEMENT

16. No later than thirty (30) calendar days after entry of this Consent Decree, Settling Defendants shall pay to the State, Two Hundred Thousand Dollars (\$200,000.00) as reimbursement for past Response Costs incurred by the State through the date of the entry of this Consent Decree.

17. The payment made pursuant to Paragraph 16 above shall be made in the form of a certified or cashier's check payable to "Treasurer, State of Ohio" and sent to the Fiscal Officer, Ohio EPA, P.O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43266-0149, ATTN: Edith Long, or her successor. Settling Defendants shall send a copy of the transmittal letter and copy of the check to: the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43266-0149, ATTN: Patricia Campbell or her successor, to the Ohio EPA Site Coordinator, and the Assistant Attorney General representing the State in this case.

COVENANT NOT TO SUE

18. In consideration of the payments made by Settling Defendants pursuant to Paragraph 16 above, the State covenants not to sue Settling Defendants or their officers, directors, employees, successors or agents for any Response Costs related to the Site which were incurred by the State prior to entry of this Consent Decree.

19. Except as expressly provided in Paragraph 18 above, the State reserves all rights it may have to seek any other relief from the Settling Defendants, or any other person or entity, including but not limited to the following:

- A. sanctions for violation of this Consent Decree;
- B. if the payments required by Paragraph 16 are not

made, cost recovery for Past Response Costs;

- C. reimbursement for any future costs; these future costs may include, but are not limited to, oversight costs, the State's 10% matching share of the cost for any U.S. EPA remedial action, the State's costs for operation and maintenance, and the costs of any actions taken by the State to address contamination by the Facility;
- D. injunctive relief under state or federal law;
- E. civil and criminal sanctions for violations of law;
- F. liability arising from hazardous substances removed from the Site;
- G. administrative orders;
- H. judicial relief pursuant to Section 121(e)(2), 121(f), or 310 of CERCLA, 42 U.S.C. 9621(e)(2), 9621(f), and 9659, or any other provision of federal or state law in the event the State becomes dissatisfied with the Work; and
- I. intervention into United States v. Consolidation Coal Company..et al., Case No. C2-94-248, C2-94-785 (S.D. Ohio);
- J. judicial relief for natural resource damages.

Settling Defendants reserve all defenses they may have to any of the State actions described in this Paragraph, except that Defendants shall not assert, and may not maintain any defense or claim based upon the principles of waiver, laches, res judicata, collateral estoppel, issue preclusion, claim splitting or other defenses based upon any contention that claims raised by the State in a subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue set forth in paragraph 18.

20. Nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity not a signatory to this Consent Decree for any liability it may have arising out of or relating to the Site, including but not limited to, liability for any Response Costs unreimbursed by this Consent Decree. The State expressly reserves the right to sue any person other than Settling Defendants, in connection with the Site.

CONTRIBUTION PROTECTION

21. This Consent Decree provides Settling Defendants with contribution protection as provided in Section 113(f) of the Superfund Amendments and Reauthorization Act of 1986.

ENTRY OF CONSENT DECREE

22. Pursuant to Federal Rules of Civil Procedure 58 and 79, the Clerk of Courts is hereby directed to enter this judgment into the civil docket of the Court.

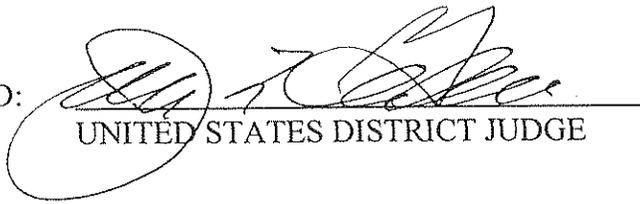
RETENTION OF JURISDICTION

23. The Court retains jurisdiction over this action for the purpose of enforcing the Consent Decree or providing other appropriate relief in this action.

COSTS

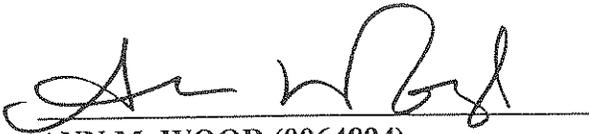
24. Settling Defendants shall pay the costs of this action.

IT IS SO ORDERED:


UNITED STATES DISTRICT JUDGE

The parties whose signature appear below and on the attached signature pages hereby consent to the terms of this Consent Decree.

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO



ANN M. WOOD (0064894)
KARL COLÓN (0059925)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
(614) 466-2766

Attorneys for Plaintiff State of Ohio



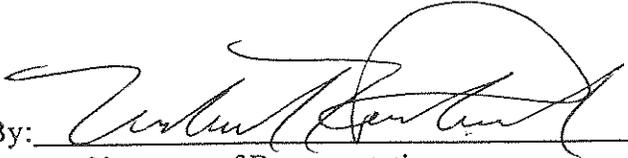
DANIEL M. DARRAGH, ESQ.
Buchanan Ingersoll
One Oxford Centre
301 Grant Street, 20th Floor
Pittsburgh, PA 15219-1410

Attorney for Defendants Consolidated Coal
Company and Wheeling-Pittsburgh Steel
Corporation

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. Consolidated Coal Company, et al.

Cravat Coal Company
Name of Defendant

Address: 40580 Cadiz-Piedmont
Cadiz, OH 43907

By: 
Signature of Representative

Michael T. Puskarich
Name of Representative (Print or Type)

President
Title

10/28/98
Date

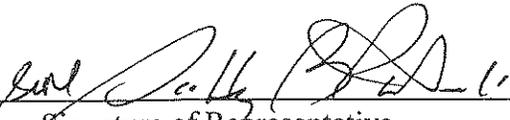
The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. Consolidated Coal Company, et al.

ASHLAND CHEMICAL COMPANY, Division of
ASHLAND INC.

Name of Defendant

Address: 5200 BLAZER PKWY

DUBLIN, OH 43017

By: 

Signature of Representative

SCOTTY B. PATRICK

Name of Representative (Print or Type)

Group Vice President

Title

October 26, 1998

Date

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. Consolidated Coal Company, et al.

Belmont County

Name of Defendant

Address: 147 West Main Street
Courthouse Annex Number 1
St. Clairsville, Ohio 43950

By: Michael C. Bianconi Anita H. Wiley
Signature of Representative

Michael C. Bianconi
Anita H. Wiley

Name of Representative (Print or Type)

Belmont County Commissioners
Title

October 14, 1998
Date

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. Consolidated Coal Company, et al.

SICF USA Inc
Name of Defendant

Address: 111 Adams Avenue
Newtown PA 19403

By: Alley Belton
Signature of Representative

Allen G. Belton
Name of Representative (Print or Type)

UP
Title

10/7/98
Date

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. Consolidated Coal Company, et al.

The Pullman Company
Name of Defendant

Address: Tenneco Automotive
500 North Field Drive
Lake Forest, IL 60045

By: Virginia L. Kearns
Signature of Representative

Virginia Kearns
Name of Representative (Print or Type)

General Counsel, Tenneco Automotive
Title

October 13, 1998
Date

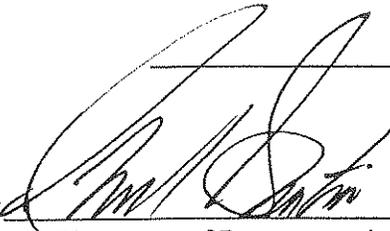
The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. Consolidated Coal Company, et al.

TRIANGLE WIRE & CABLE, INC.

(N/K/A OCEAN VIEW CAPITAL, INC.)

Name of Defendant

Address: 155 SOUTH MAIN STREET, SUITE 302
PROVIDENCE, RI 02903

By: 

Signature of Representative

SHARAD V. BHATIA
Name of Representative (Print or Type)

COO/GENERAL COUNSEL
Title

10/15/98
Date

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. Consolidated Coal Company, et al.

National Steel Corporation
Name of Defendant

Address: 4100 Edison Lakes Parkway
Mishawaka, IN 46545-3440

By: John A. Maczuzak
Signature of Representative

JOHN A. MACZUZAK
Name of Representative (Print or Type)

PRESIDENT & CHIEF OPERATING OFFICER
Title

10/8/98
Date

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. Consolidated Coal Company, et al.

CONSOLIDATION COAL COMPANY
Name of Defendant

Address: 1800 WASHINGTON ROAD
CONSOL PLAZA
PITTSBURGH, PA 15241

By: 
Signature of Representative

SAMUEL P. SKEEN
Name of Representative (Print or Type)

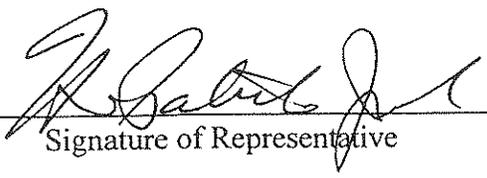
ASSISTANT SECRETARY
Title

OCTOBER 5, 1998
Date

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. Consolidated Coal Company, et al.

Aristech Chemical Corporation
Name of Defendant

Address: 600 Grant Street
Room 1190
Pittsburgh, PA 15219-2704

By: 
Signature of Representative

H. Patrick Jack
Name of Representative (Print or Type)

President and COO
Title

October 1, 1998
Date

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. Consolidated Coal Company, et al.

Beazer East, Inc.

Name of Defendant

Address: One Oxford Centre

Suite 3000

Pittsburgh, PA 15219

By: Edward O'Connell
Signature of Representative

Edward O'Connell

Name of Representative (Print or Type)

Counsel - Law Department

Title

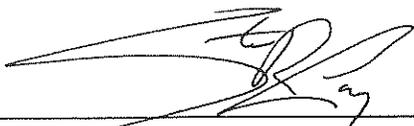
October 5, 1998

Date

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. Consolidated Coal Company, et al.

wheeling - Pittsburgh Steel Corporation
Name of Defendant

Address: 1134 Market Street
Wheeling, WV 26003

By: 

Signature of Representative

Steven R. Lacy
Name of Representative (Print or Type)

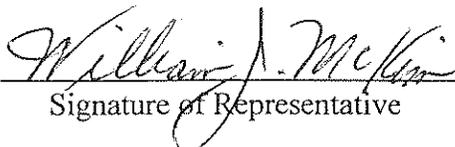
General Counsel
Title

10/1/98
Date

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. Consolidated Coal Company, et al.

USX Corporation
Name of Defendant

Address: c/o Miles Stipanovich, Jr.
600 Grant Street, Rm. 1500
Pittsburgh, PA 15219-2749

By: 
Signature of Representative

William J. McKim
Name of Representative (Print or Type)

Assistant General Counsel
Environmental & Real Estate
Title

October 1, 1998
Date

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. Consolidated Coal Company, et al.

Allegheny Ludlum Corporation
Name of Defendant

Address: 1000 Six PPG Place
Pittsburgh, PA 15222

07/13/98
RECEIVED
JUL 13 1998
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE

By: Jon D. Walton
Signature of Representative

Jon D. Walton
Name of Representative (Print or Type)

General Counsel
Title

7/13/98
Date