

DIV. OF EMERGENCY &
REMEDIAL RESPONSE

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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

Plaintiff,

v.

CITY OF COSHOCTON, et al.,

Defendants.

CASE NO. C2-00-1449

JUDGE

JUDGE MARBLEY

MAGISTRATE JUDGE ABEL

CONSENT DECREE BETWEEN THE STATE OF OHIO
AND DEFENDANT PRETTY PRODUCTS, INC.

Plaintiff, State of Ohio, on relation of Betty D. Montgomery, Attorney General of Ohio, having filed the Complaint in this action against Defendant 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:

2

DEFINITIONS

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

- A. **“Consent Decree”** means this Decree.
- B. **“Defendant”** means Pretty Products, Inc.
- C. **“Hazardous substance”** shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- D. **“National Contingency Plan”** shall be used as that term is used in Section 105 of CERCLA, 42 U.S.C. § 9605.
- E. **“Ohio EPA”** means the Ohio Environmental Protection Agency, and its designated representatives.
- F. **“Site”** shall mean, solely for the purposes of this Consent Decree, the Coshocton City Landfill in Franklin Township, Coshocton County, Ohio, and any area to which hazardous substances have migrated therefrom. This Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- G. **“Response Costs”** means all direct and indirect costs incurred by the State related to the response and remedial actions conducted at the Coshocton City Landfill Site by 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, reports or other items, and costs of the Ohio Attorney General’s Office in representing Ohio EPA in this action.
- H. **“State”** means the State of Ohio by and through its Attorney General on behalf of the Ohio Environmental Protection Agency.
- I. **“U.S. EPA”** means the United States Environmental Protection Agency.

BACKGROUND

2. In September 1983, The United States Environmental Protection Agency ("U.S. EPA"), pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, placed the Coshocton City Landfill Site on the National Priorities List, which is set forth at 40 C.F.R. Part 300, Appendix B.

3. Plaintiff State of Ohio and Defendant entered into a Consent Order, State of Ohio v. City of Coshocton, et al., No. C2-91-535 (S.D. Ohio) in the United States District Court, Southern District of Ohio. The Consent Decree required Defendant to reimburse the State of Ohio for costs incurred in addressing releases or the substantial threat of releases of hazardous substances at and from the Site through entry of the Consent Order, February 11, 1992.

4. This Consent Decree requires the Defendant to reimburse the State of Ohio for costs incurred in addressing releases or the substantial threat of releases of hazardous substances at and from the Site for the period starting after February 11, 1992 until entry of this Consent Order.

5. Defendant has consented to the entry of this Consent Decree without acknowledging liability of any type, and the entry of this Decree shall not represent an admission or adjudication of liability.

JURISDICTION

6. This Court has jurisdiction over the subject matter herein, and over the Parties consenting hereto. The Parties shall not challenge this Court's jurisdiction to

enter and enforce this Consent Decree. Defendant waives service of the complaint and summons in this action. Venue is proper in this Court.

PARTIES BOUND

7. This Consent Decree applies to and is binding upon Defendant, its successors in interest, assigns, receivers, officers, agents, servants, and employees. The undersigned representative of each party to this Consent Decree certifies that he or she is fully authorized by the party 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

8. 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 (30) 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

9. No later than thirty (30) calendar days after entry of this Consent Decree, Defendant shall pay to the State, Fifteen Thousand, One Hundred Seventy-Four Dollars and Forty-Six Cents (\$15,174.46), in reimbursement for past Response Costs incurred by the State from February 11, 1992 through the date of the entry of this Consent Decree.

10. The payment made pursuant to Paragraph nine (9) 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, Columbus, Ohio 43216-1049, ATTN:

Vicki Galilei, or her successor. Defendant shall send a copy of the transmittal letter and copy of the check to: the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, 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

11. In consideration of the payment made by Defendant pursuant to Paragraph nine (9) above, the State covenants not to sue Defendant, its successors in interest, assigns, receivers, officers, agents, servants, or employees for any Response Costs related to the Site which were incurred by the State from February 11, 1992 until the date of entry of this Consent Decree.

12. Except as expressly provided in Paragraph eleven (11) above, the State reserves all rights it may have to seek any other relief from Defendant, or any other person or entity, including but not limited to the following:

- A. sanctions for violation of this Consent Decree;
- B. if the payment required by Paragraph nine (9) is not made, cost recovery for past Response Costs;
- C. reimbursement of 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 at the Site;
- 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; and

- 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.
- I. relief for natural resource damages.

Except as set forth in Paragraph thirteen (13), Defendant reserves all defenses they may have to any of the State's claims described in this paragraph.

13. In any subsequent administrative or judicial proceeding initiated by the State for injunctive relief, recovery of response costs not paid as required by Paragraph nine (9), or other appropriate relief relating to the Site, Defendant shall not assert, and may not maintain, any defense or claim 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 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 eleven (11).

14. 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.

CONTRIBUTION PROTECTION

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

ENTRY OF CONSENT DECREE

16. 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.

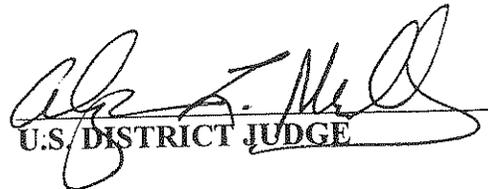
RETENTION OF JURISDICTION

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

COSTS

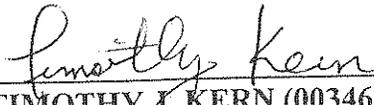
18. Defendant shall pay the costs of this action.

Entered this 5 day of January, 2000.


U.S. 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



TIMOTHY J. KERN (0034629)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
(614) 466-2766

Attorney for Plaintiff State of Ohio



C. CRAIG WOODS
Squire, Sanders & Dempsey
1300 Huntington Center
41 South High Street
Columbus, Ohio 43215

Attorney for Defendant Pretty Products, Inc. --

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. City of Coshocton, et al.

PRETTY PRODUCTS, INC.

Address: 437 Cambridge Rd.
P.O. Box 6002
Coshocton, Ohio 43812-6002

By: David M Segal
Signature of Representative

David M Segal
Name of Representative (Print or Type)

Secretary
Title

9-6-00
Date