

City of Coshocton
5/13/92 Filed

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

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KENNETH J. MUIR
CLERK

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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JUDGE	<i>[Signature]</i>
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STATE OF OHIO, ex rel.
LEE FISHER, ATTORNEY GENERAL
OF OHIO,

Plaintiff,

v.

CITY OF COSHOCTON, et al.,

Defendants.

CIVIL ACTION C2-91-535

JUDGE KINNEARY

RECEIVED

MAY 18 1992

Environmental Enforcement Section

CONSENT DECREE

WHEREAS, the United States Environmental Protection Agency ("U.S. EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9605, placed the Coshocton City Landfill in Franklin Township, Coshocton County in Ohio (the "Facility" as specifically defined in Paragraph 3B of this Consent Decree) on the National Priorities List, which is set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658;

WHEREAS, U.S. EPA has performed a Remedial Investigation and Feasibility Study to assess releases of hazardous substances from the Facility and to evaluate remedial actions to address those releases;

#44

WHEREAS, U.S. EPA in consultation with the State of Ohio reached a decision on the final remedy for the Facility which is embodied in the Record of Decision dated June 29, 1988, to which the State has given its concurrence;

WHEREAS, the Defendants signing this Consent Decree have agreed to finance and implement the remedy at the Facility by entering into a settlement with the U.S. EPA in United States v. City of Coshocton, et al., No. C-2-90-165, (S.D. Ohio);

WHEREAS, the State has incurred costs in addressing releases of hazardous substances from the Facility;

WHEREAS, Defendants have consented to the entry of this Consent Decree without acknowledging liability of any type and without conceding the need for the remedy set forth in the Record of Decision, and the entry of this Decree shall not represent an admission or adjudication of liability or the need for the remedy;

WHEREAS, the parties agree, and the Court has found, that entry of this Consent Decree is in the public interest and will avoid prolonged and complicated litigation between the Parties;

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED:

JURISDICTION

1. This Court has jurisdiction over the subject matter herein, and over the parties consenting hereto. The Defendants

shall not challenge this Court's jurisdiction to enter and enforce this Consent Decree. The Defendants waive service of complaint and summons in this action.

PARTIES BOUND

2. This Consent Decree applies to and is binding upon the undersigned parties and their successors and assigns. 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.

3. Buckeye Fabric Finishers, Inc. aka Buckeye Fabric Finishing Company was an Ohio Corporation which executed the Consent Decree in the United States of America vs. City of Coshocton, et al, C-2-90-165 (S.D. Ohio), by and through a trustee, since the Buckeye Fabric Finishers, Inc. had been dissolved. The trusteeship has since been terminated and Edward L. Lee has executed the Consent Decree as a former officer on behalf of said corporation.

4. Buckeye Fabric Finishers, Inc. aka Buckeye Fabric Finishing Company was named as a party to the instant action. Buckeye Fabric Finishing, Inc. is not a successor of Buckeye Fabric Finishers, Inc. aka Buckeye Fabric Finishing Company and is a corporation formed on December 7, 1988 consisting of entirely new shareholders and officers. Therefore Buckeye

F. "National Contingency Plan" shall be used as that term is used in Section 105 of CERCLA, 42 U.S.C. §9605.

G. "OEPA" means the Ohio Environmental Protection Agency, and its successors and assigns.

H. "Oversight Costs" mean any costs incurred by OEPA after the entry of this Consent Decree that are not inconsistent with the National Contingency Plan and are incurred by OEPA in monitoring the performance of the Work. These costs include, but are not limited to, direct payroll costs, indirect and overhead costs, sampling and laboratory costs, travel, contractor costs and costs of review of the Work.

I. "Site Coordinator" means the person designated by OEPA to review and comment on the performance of the Work.

J. "Project Manager" is the person designated by the Defendants to have primary responsibility for supervising the Work.

K. "Response Costs" means any costs not inconsistent with the National Contingency Plan incurred by the State pursuant to 42 U.S.C. §§9601 et seq. in connection with the Facility.

L. "State" means the State of Ohio, including without limitation, its agencies, departments, successors, and assigns.

M. "U.S. EPA" means the United States Environmental Protection Agency, its representatives, successors, and assigns.

N. "Work" means the activities performed pursuant to the Federal Decree, including but not limited to reports, plans, schedules, data, and other documents submitted to U.S. EPA and

design, construction, and implementation of the tasks described in the Record of Decision for the Facility, in the attachments or appendices to the Federal Decree, and in the Federal Decree itself.

REIMBURSEMENT

7. Not later than thirty (30) calendar days after entry of this Consent Decree, the Defendants shall pay to the State the sum of \$15,000.00 in settlement of all claims the State has against the Defendants for Response Costs incurred by the State prior to the entry of this Consent Decree.

8. The Payment made pursuant to Paragraph 4 above shall be made in the form of a certified or cashier's check payable to "Treasurer, State of Ohio" and sent to Don Vanterpool on the legal staff at OEPA. A copy of such check shall be sent to the Fiscal Officer in the Division of Emergency and Remedial Response.

FACILITY ACCESS AND SAMPLING

9. The City of Coshocton shall provide to OEPA and its authorized representatives, access to the Facility for purposes of implementing the requirements of this Consent Decree and observing the Work. In the event of any future conveyance of the Facility, the City of Coshocton shall use its best efforts to ensure that the grantee provides access to OEPA and its authorized representatives, for purposes of implementing the requirements of this Consent Decree and observing the Work.

10. At the request of OEPA, the Defendants shall allow split or duplicate samples to be taken by OEPA, and/or its authorized representatives, of any samples collected by the Defendants pursuant to the implementation of the Federal Decree. The Defendants shall notify OEPA not less than fourteen (14) calendar days in advance of any sample collection activity. In addition, OEPA shall have the right to take any additional samples that OEPA deems necessary and shall allow split or duplicate samples to be taken by the Defendants.

REPORTING REQUIREMENTS

11. The Defendants shall require their Project Manager to provide to the OEPA a copy of the progress reports and all other documents that are required to be submitted to U.S. EPA under the Federal Decree. The Project Manager shall also provide the OEPA all analytical data including raw data collected during the performance of the Work and, to the extent that they are prepared, all written plans relating to a) the design or implementation of the remedy, b) operation and maintenance work undertaken in connection with the remedy, c) quality assurance, d) health and safety, e) applicable or relevant and appropriate requirements ("ARARs"), and f) sampling.

12. If OEPA submits comments to the Defendants on any documents required to be submitted to OEPA by paragraph 8 above, the Defendants shall reply to such comments within thirty (30) calendar days of their receipt by the Defendants.

13. The Defendants shall provide advance notice of not less than fourteen (14) calendar days where feasible, to OEPA of all scheduled meetings between U.S. EPA and the Defendants regarding the Work. A "meeting" for purposes of this paragraph shall not include day-to-day interaction between the Defendants, their representatives or contractors and U.S. EPA, its representatives or contractors.

14. To the maximum extent possible, communications between the Defendants and OEPA concerning the Work shall be made between the Project Manager and the Site Coordinator. Within twenty (20) calendar days of the effective date of this Consent Decree, the Defendants and OEPA shall notify each other, in writing, of the name, address and telephone numbers of the designated Project Manager and an Alternate Project Manager and the designated Site Coordinator and an Alternate Site Coordinator. In the event that the identity of any such person changes, the party shall notify the other parties within twenty (20) calendar days.

RETENTION AND AVAILABILITY OF INFORMATION

15. The Defendants shall make available to OEPA upon reasonable notice and shall retain, during the performance of the Work and for a period of ten (10) years after its completion, all records and documents in their possession, custody, or control which relate to the performance of the Work, including, but not limited to, documents reflecting the results of any sampling, tests, or other data or information

generated or acquired by any of them, or on their behalf, with respect to the Facility and all documents pertaining to their own or any other person's liability for response action or costs at the Facility under CERCLA. After the ten (10) year period of document retention, the Defendants shall notify the Ohio Attorney General and OEPA at least ninety (90) calendar days prior to the destruction of any such documents, and upon request by OEPA, the Defendants shall relinquish custody of the documents to OEPA.

16. The Defendants may assert business confidentiality claims covering part or all of the information provided in connection with this Consent Decree in accordance with the provisions of Ohio law.

17. Information determined to be confidential by OEPA will be afforded the protection specified by Ohio law. If no such claim accompanies the information when it is submitted to the OEPA, the public may be given access to such information without further notice to the Defendants.

18. Information acquired or generated by the Defendants in performance of the Work that is subject to the provisions of Section 104(e)(7)(F) of CERCLA, 42 U.S.C. §9604(e)(7)(F), shall not be claimed as confidential by the Defendants.

COVENANT NOT TO SUE

19. In consideration of the payment made by the Defendants pursuant to Paragraph 4 above, the State covenants not to sue the Defendants or their officers, directors, employees,

successors or agents for any Response Costs related to the Facility which were incurred by the State prior to the entry of this Consent Decree.

20. Except as expressly provided in Paragraph 19 above, the State reserves all rights it may have to seek any other relief including but not limited to the following:

- A. sanctions for violation of this Consent Decree;
- B. if the payment required by Paragraphs 4 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 of 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 Facility;
- G. natural resource damages;
- H. administrative orders;
- I. judicial relief pursuant to Sections 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

J. intervention into United States v. City of Coshocton, et al., Case No. C-2-90-165 (S.D. Ohio).

The Defendants reserve all defenses they may have to any of the State actions described in this Paragraph.

21. 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 Facility, including but not limited to liability for any Response Costs and unreimbursed by this Consent Decree. The State expressly reserves the right to sue any person other than Defendants, in connection with the Facility.

NO ADMISSIONS

22. The Defendants represent that they are entering into this Consent Decree because the probable costs of defending this action would greatly exceed the amount they are agreeing to pay. The Defendants' agreement to enter into this Consent Decree is not, and cannot be construed as, an admission, acknowledgement or concession of liability on their part, or of the facts alleged by the State, or of the appropriateness of

the remedy set forth in the Record of Decision. Neither the Defendants' agreement to enter this Consent Decree nor any terms hereof, including without limitation terms relating to the Defendants' proportional share of Response Costs, shall be used or admitted into evidence against the Defendants in any other proceeding relating to the Facility, including without limitation United States v. City of Coshocton, et al., Case No. C-2-90-165 (S.D. Ohio).

CONTRIBUTION PROTECTION

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

NOTICES

24. Whenever, under the terms of this Consent Decree, notice is required to be given or a report or other document is required to be forwarded by one party to another, such correspondence shall be directed to the following individuals at the addresses specified below:

To the State or OEPA:

Ohio Environmental Protection Agency
1800 WaterMark Drive
P.O. Box 1049
Columbus, Ohio 43266-0149
Attn: Supervisor, Technical Support, DERR

Southeast District Office
2195 Front Street
Logan, Ohio 43138
Attn: Site Coordinator for Coshocton City Landfill

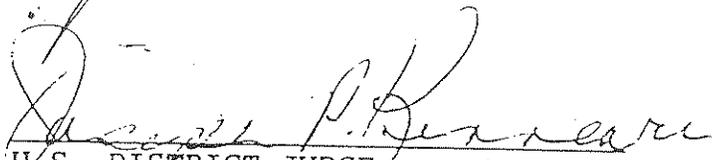
As to Settling Defendants:

To those individuals listed in Appendix 1 to this Consent Decree.

COSTS

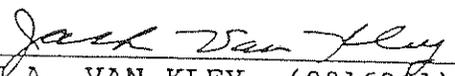
25. The Defendants shall pay their own costs, if any, of this action, and seventy-five percent (75%) of the court costs, if any, of this action.

Entered this 27th day of May, 1991.


U.S. DISTRICT JUDGE

The parties whose signatures appear below hereby consent to the terms of this Consent Decree.

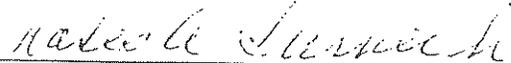
LEE FISHER
ATTORNEY GENERAL OF OHIO


JACK A. VAN KLEY (0016961)
Trial Attorney for State
TIMOTHY J. KERN (0034629)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street
25th Floor
Columbus, Ohio 43266-0410
(614) 466-2766

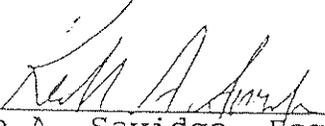
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CITY OF COSCHOCTON

By:


Charles A. Turner, Senior
Mayor

AND


Keith A. Savidge, Esq. (0014242)
Seeley, Savidge & Aussem Co., L.P.A.
800 Bank One Center
600 Superior Avenue, East
Cleveland, Ohio 44114-2655
(216) 566-8200

ITS ATTORNEY

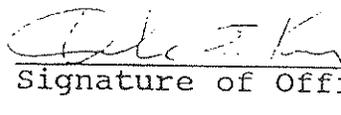
THE GENERAL ELECTRIC COMPANY

BY: *Gary L. Rogers*
Gary L. Rogers
Senior Vice President

Date: 2/5/92

STEEL CEILINGS DIVISION OF
AIRTEX CORPORATION

By: Dale E. King
Name of Officer (Type)


Signature of Officer

Vice Chairman
Title

STONE CONTAINER CORPORATION

By: Lester F. Ledner
Name of Officer (Type)

[Signature]
Signature of Officer

V.P.
Title

STONE CONTAINER CORPORATION

By: [Signature]

Paul W. Casper, Jr.
Frost & Jacobs
2500 Central Trust Center
201 East Fifth Street
Cincinnati, Ohio 45202
(513) 651-6490

Attorney for Stone Container Corporation

EXCELLO FABRIC FINISHERS, INC.
d/b/a EXCELLO, INC.

By: William J. Stenner
Name of Officer (Type)
William J. Stenner
Signature of Officer
President
Title

By: *David W. Burns*
David W. Burns
Pomerene, Burns, Milligan,
Skelton & France
309 Main Street
Coshocton, Ohio 43812
(614) 622-2011

Trial Attorney for Excello Fabric
Finishers, Inc. d/b/a Excello, Inc.

BUCKEYE FABRIC FINISHERS, INC.

By: Edward L. Lee

Name of Officer, (Type)

Edward L. Lee

Signature of Officer

Former Sec. Treas.

Title

By:

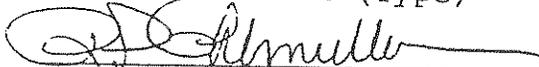
David W. Burns

David W. Burns
Pomerene, Burns, Milligan,
Skelton & France
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(614) 622-2011

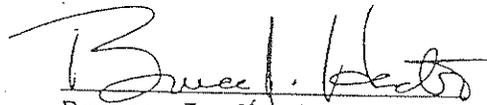
Trial Attorney for Buckeye Fabric Finishers, Inc.

BECTON DICKINSON AND COMPANY

By: R. P. Ohlmuller
Name of Officer (Type)


Signature of Officer

Vice President and Secretary
Title

By: 
Bruce J. Hector
Becton Dickinson and Co.
One Becton Drive
Franklin Lakes, New Jersey 07417-1800

Trial Attorney for Becton Dickinson and Company

HERITAGE COMMUNICATIONS
on behalf of Shaw Barton, Inc.

By: Terrel Ellis Davis
Name of Officer (Type)

Terrel Ellis Davis
Signature of Officer

Vice President
Title

By: David W. Burns
David W. Burns
Pomerene, Burns, Milligan,
Skelton & France
309 Main Street
Coshocton, Ohio 43812
(614) 622-2011

Trial Attorney for Shaw-Barton, Inc.