

DIANA ZALESKI
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SUMMIT COUNTY
CLERK OF COURTS

COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

STATE OF OHIO, ex rel.
JIM PETRO
ATTORNEY GENERAL OF OHIO,
Environmental Enforcement Section
30 E. Broad St., 25th Floor
Columbus, Ohio 43215-3428,

CASE NO. 2001-12-6196
JUDGE ADAMS

Plaintiff,

v.

HIGHPOINT TRUCK TERMINALS,
INC. et. al.

Defendants.

CONSENT ORDER

Plaintiff State of Ohio by its Attorney General, Jim Petro, at the written request of the Director of the Ohio Environmental Protection Agency, together with Defendant Highpoint Truck Terminals, ("Defendant") hereby consent to the entry of this Order.

NOW, THEREFORE, without adjudication or admission of any issue of fact or law, and upon 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 Order, the following definitions shall apply:

- A. "Complaint" means the Complaint filed by the State on February 26, 2002 against Defendants Highpoint Truck Terminals Inc. and Inderjit

Soni.

- B. **"Consent Order"** means this Order.
- C. **"Decision Document"** means the document issued by Ohio EPA setting forth the remedial action requirements for the Site.
- D. **"Defendant"** means Defendant Highpoint Truck Terminals, Inc. ("Highpoint")
- E. **"Director's Findings and Orders"** means the Final Findings and Orders issued by the Director of Ohio EPA on February 21, 1992 pursuant to his authority under R.C. Sections 3734.13, 3734.20, 3745.01 and 6111.03, ordering, among other things, the implementation of a hydrogeologic investigation and the reimbursement of Ohio EPA's Response Costs.
- F. **"Ohio EPA"** means the Ohio Environmental Protection Agency, and its designated representatives.
- G. **"Site"** shall mean, solely for the purposes of this Consent Order, the Highpoint Truck Terminal Site located at 3969 Congress Parkway, Richfield, Ohio.
- H. **"Response Costs"** means all direct and indirect costs incurred by the State related to the response and remedial actions conducted at the 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.
- I. **"State"** means the State of Ohio by and through its Attorney General on behalf of the Ohio Environmental Protection Agency.

I. OBJECTIVES OF PARTIES AND PURPOSE OF CONSENT ORDER

2. In entering into this Consent Order, the mutual objectives of the State of Ohio and Defendant includes: (1) providing for the payment of past and future Response Costs; (2) completion of the investigation of the Site as required by the Director's Findings and Orders;

(3) implementation of the remedy contained in a Decision Document issued by the Director of Ohio EPA and which shall be consistent with federal, state and local law; (4) assignment to the State of past rent due by tenants at the Site; (5) payment to the State of future rent paid by tenants at the Site; (6) completion of the requirements of this Consent Order with the proceeds from any sale of the property; and (7) all claims filed by the State against Inderjit Soni in the Complaint are dismissed with prejudice.

II. JURISDICTION

3. 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 Order. Venue is proper in this Court.

III. PARTIES BOUND

4. This Consent Order 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 Order 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 Order and to execute and legally bind that party to it.

IV. INJUNCTION AGAINST DEFENDANT HIGHPOINT

5. Defendant Highpoint is liable to the State of Ohio for completion of the following requirements:

- a. Payment of Ohio EPA's past response costs in the amount of one hundred thirty-eight thousand, thirty-one dollars and twenty-six cents

(\$138,031.26) incurred by the State through February 11, 2003.

- b. Payment of all Response Costs incurred by the State of Ohio from February 11, 2003, and continuing through the termination of this Consent Order.
- c. Completion of the investigation required by the 1992 Director's Findings and Orders. All work to be performed by Defendant pursuant to the 1992 Director's Findings and Orders shall be under the direction and supervision of a qualified environmental engineer, geologist or architect with expertise in hazardous waste site investigation and remediation and shall be pre-approved by Ohio EPA.
- d. Implementation of any Recommended Remedy for the Site determined to be necessary by Ohio EPA and set forth in a Decision Document issued by the Director of Ohio EPA.

V. PAYMENTS AND REIMBURSEMENTS OF COSTS

Past and Future Costs:

- 6. Defendant shall pay one hundred thirty-eight thousand, thirty-one dollars and twenty-six cents (\$138,031.26) to Ohio EPA in past Response Costs.
- 7. Defendant shall reimburse the State of Ohio for all Response Costs incurred by the State of Ohio in connection with the compliance of this Consent Order. The obligations of Defendant to reimburse the State for its Response Costs shall continue in effect as provided in Section XVIII. **TERMINATION** of the Consent Order.

VI. ASSIGNMENT OF PAST RENT

8. Defendant is ordered and enjoined to assign its rights to payment of all past uncollected rent from tenant Richfield Purchasing for the Highpoint Site to the State. The approximate time period of the past uncollected rent is January 1st, 1999 to March 1, 2002. Any money collected by the State will be used to comply with the requirements of this Consent Order.

VII. PAYMENT OF FUTURE RENT

9. Starting April 1st, 2003, Defendant is ordered and enjoined to submit to the State any and all proceeds received in relation to the Site, or any part of Defendant's Site, except as provided for in paragraph 10. Such proceeds include but are not limited to, rent, lease payments, from renters/lessors, or any other money paid to Defendant for use of the Site. Any money collected by the State will be used to comply with the requirements of this Consent Order.

10. Upon individual written approval of Ohio EPA, Defendant may deduct reasonable administrative expenses of the Site from the monthly proceeds Defendant is required to pay to the State, from the rent received each month, prior to submitting the rent to the State.

Reasonable administrative expenses that must be approved by the Ohio EPA include:

- a. payment of utilities;
- b. maintenance or upkeep costs;
- c. reasonable labor costs; and
- d. property taxes.

11. Every month that proceeds are collected by Defendant regarding use of the Site,

Defendant shall pay the State, by the 12th of every month, the entire amount of proceeds received, minus any Ohio EPA approved administrative expenses, as described in paragraph 10, by delivering a check in the order of "Treasurer of the State of Ohio" and forwarded to Fiscal Officer, Ohio EPA, Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-1049. Defendant shall send a copy of the transmittal letter and check to: the Fiscal Officer, DERR, Ohio EPA, Lazarus Government Center, 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.

VIII. SALE OF THE SITE OR ANY OTHER ASSET OF DEFENDANT

12. All proceeds from the sale of all or part of the Site or any other asset of Defendant will be used to comply with the requirements of this Consent Order.

13. Ninety (90) days prior to any proposed sale of the Site or any other asset of Defendant, Defendant shall notify Ohio EPA of the proposed sale by certified mail. If Ohio EPA approves the sale, Defendant shall complete the sale and shall pay all proceeds to Ohio EPA in the manner set forth in Paragraph 11, above. If any interest in the Site is conveyed to another party, Defendant shall also comply with the requirements of **Section XII. NOTICE OF**

CONVEYANCE AND DEED NOTICE

IX. INSPECTIONS AND ACCESS

14. Ohio EPA, its employees, contractors and agents shall have access at all times to the Site and any other property to which access may be needed for the implementation of this Consent Order to the extent access to the property is controlled by Defendant. Access under this

Consent Order shall be for the purposes of conducting any activity related to this Consent Order including, but not limited to the following:

- a. Monitoring the work;
- b. Conducting sampling;
- c. Inspecting and copying records, operating logs, contracts, and/or other documents related to the implementation of this Consent Order;
- d. Conducting investigations and tests related to the implementation of this Consent Order;
- e. Verifying any data and/or other information submitted to Ohio EPA; and
- f. Doing the work required under this Consent Order.

No provision of this Consent Order shall be construed to eliminate or restrict any right of the State to seek access to Defendant's property, which it may otherwise have under federal or state law.

15. To the extent that the Site or any other property to which access may be needed for the implementation of this Consent Order is owned or controlled by persons other than Defendant, Defendant shall use their best efforts to secure from such persons access for Defendant and the Ohio EPA as necessary to effectuate this Consent Order. Consent Orders of all access agreements obtained by Defendant shall be provided promptly to Ohio EPA. If any access required to effectuate this Consent Order is not obtained within thirty (30) days of entry of this Consent Order, or within thirty (30) days of the date Ohio EPA notifies Defendant in writing that additional access beyond that previously secured is necessary, Defendant shall promptly notify the Ohio EPA in writing of the steps Defendants has taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Defendants in obtaining access.

X. NOTICES

16. All document(s), including correspondence, progress reports, notifications, or other submissions, required to be submitted under this Consent Order shall be submitted to the following by certified mail or overnight mail unless the Consent Order specifically provides otherwise:

Ohio Environmental Protection Agency
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087
ATTN: DERR Site Coordinator, Highpoint Truck Terminals, Inc.

XI. ANNUAL FINANCIAL REPORT AND EVALUATION OF DEFENDANT'S ABILITY TO COMPLY

17. Defendant shall submit a copy of their most recent IRS corporate filings on the 1st day of July every year.

18. Ohio EPA will review such information and make a determination as to Defendant's ability to pay additional proceeds for compliance with the requirements of this Consent Order. Defendant shall then pay to Ohio EPA, in the manner set forth in Paragraph 11, above, the money demanded by Ohio EPA. Such money will be used to comply with the requirements of this Consent Order.

XII. NOTICE OF CONVEYANCE AND DEED NOTICE

19. Prior to conveying any interest in the Site, the Defendant shall also place in the deed for the portion of the Site to be conveyed an appropriate notice as to the condition thereof,

which shall first be approved by the Ohio EPA.

XIII. DISPUTE RESOLUTION

20. This Dispute Resolution Section shall only be applicable to the following portions of this Consent Order: **Section V. PAYMENTS AND REIMBURSEMENTS OF COSTS -- paragraph 7 only; Section VII. PAYMENT OF FUTURE RENT; Section VIII. SALE OF THE SITE OR ANY OTHER ASSET OF DEFENDANT; and Section XI. ANNUAL FINANCIAL REPORT AND EVALUATION OF DEFENDANT'S ABILITY TO COMPLY**

21. The DERR Site Coordinators and the Defendant's representative shall, whenever possible, operate by consensus. In the event that a disagreement exists about either the adequacy or disapproval of any Workplan, report, or other item required to be submitted by Defendant pursuant to this Consent Order, or, the accuracy of the State's request for reimbursement of costs, then the parties shall have fifteen (15) days from the date the dispute arises to negotiate in good faith in an attempt to resolve the differences. The dispute arises when either the Ohio EPA Site coordinator provides a brief written notice of dispute to the Defendants' representative, or the Defendant's representative provides a brief written notice of dispute to the Ohio EPA Site Coordinator. This fifteen (15) day period may be extended by mutual agreement of the parties, up to an additional seven (7) days.

22. In the event that the DERR Site Coordinator and Defendant's representative are unable to reach consensus on the dispute, then upon agreement both parties shall reduce their position to writing within thirty (30) days of the end of the good faith negotiations referenced in the preceding paragraph. Those written positions shall be immediately exchanged by the parties.

Following the exchange of written positions, the parties shall have an additional seven (7) days to resolve their dispute.

23. If Ohio EPA does not concur with the position of the Defendant, the Ohio EPA Site Coordinator will notify Defendant in writing. Upon receipt of such written notice, the Parties shall have seven (7) days to forward a request for resolution of the dispute, along with a written statement of the dispute, to the Assistant Chief of the Division of Emergency Response and Remediation ("DERR"). The statement of dispute shall be limited to a concise presentation of the Parties position on the dispute. The Assistant Chief of DERR, or his/her designee, will resolve the dispute based upon and consistent with this Consent Order; State law, including R.C. Chapters 6111 and 3734, and the regulations promulgated thereunder; the National Contingency Plan, 40 CFR Part 300; and other appropriate state and federal laws.

24. If Defendants and the Ohio EPA do not agree on a resolution of the dispute within fourteen (14) days of the decision reached by the Assistant Chief for DERR, either party may institute an action in this Court to resolve the dispute under this Consent Order. In this Court proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the decision by the Ohio EPA is unlawful and/or unreasonable.

25. The pendency of dispute resolution set forth in this Section shall not affect the time period for completion of any part of this Consent Order, except that upon written mutual agreement of the parties, any time may be extended as appropriate under the circumstances.

26. Within thirty (30) days of resolution of a dispute regarding disapproval or inadequacy of a submittal Defendant shall incorporate the resolution and final determination into the Workplan, report, or other item required to be submitted under this Consent Order and

proceed to implement this Consent Order according to the amended Workplan, report, or other item required to be submitted under this Consent Order.

27. Within thirty (30) days of resolution of a dispute regarding any inaccurate statement issued for reimbursement of costs, the Plaintiff will make any necessary corrections to the statement and reimburse to Defendant any overpayment of costs made by Defendant which may have arose as a result of the inaccurate statement being issued to Defendant.

28. Within thirty (30) days of resolution of a dispute regarding a change or modification of the Recommended Remedy set forth in the Decision Document, Ohio EPA agrees to follow the procedures for additional public notice and comment as set forth in the interim final policy titled "Preferred Plans and Decision Documents" attached as Appendix C to this Consent Order and any applicable requirements of State and/or Federal law and the NCP.

29. Unless otherwise expressly provided for in this Consent Order, the dispute resolution procedures of Section XIII. shall be the exclusive mechanism to resolve disputes arising under or with respect to those matters set forth in paragraph 20 of this Consent Order.

XIV. SATISFACTION OF INJUNCTION AND RESERVATION OF RIGHTS

30. Defendant shall remain liable to the State for all claims set forth in the Complaint until the injunctive relief requirements set forth in Section IV and all other items of this Consent Order are fully completed. Such full compliance shall constitute full satisfaction of all civil liability of Defendant for the claims by the State as stated in the Complaint.

31. The State of Ohio reserves the right to seek further relief from this or any Court, including without limitation, further preliminary and/or permanent injunctive relief, civil penalties and cost recovery for work beyond this Consent Order. This reservation also

explicitly includes the State of Ohio's right to seek relief for claims for damages to natural resources. This Consent Order in no way waives any defenses, which Defendant may have as to such further relief, except that 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.

32. The State of Ohio expressly reserves, and this Consent Order shall be without prejudice to, any civil or criminal claims, demands, rights, or causes of action, judicial or administrative, the State of Ohio may have or which may in the future accrue against Defendant or others, regardless of whether such claim, demand, right or cause of action was asserted in the Complaint. This Consent Order in no way waives any defenses that Defendant may have as to such claims, demands, rights or causes or action.

33. Nothing herein shall limit the authority of the State of Ohio to undertake any action against any entity, including Defendant, to eliminate or control conditions, which may present a threat to the public health, safety, welfare or environment, and to seek cost reimbursement for any such action.

34. Nothing herein shall be construed to relieve Defendant of its obligation to comply with applicable federal, state or local statutes, regulations or ordinances, including without limitation permit requirements.

35. Entering into this Consent Order, the Consent Order itself, or the taking of any action in accordance with it do not constitute an admission by Defendant of any factual or legal matters or opinions set forth herein. Defendant does not admit liability under Ohio law or any

other applicable law, rule or regulation for any purpose or admit any issues of fact or law, any wrongdoing, or any responsibility with regard to Waste Material, releases or threatened releases of hazardous substances at or from the Site, or with regard to any contamination at or from the Site. Nothing herein absolves Defendant from the duty to comply with this Consent Order.

XV. MODIFICATION

36. No modification shall be made to this Consent Order without the written agreement of the Parties and the Court.

XVI. STIPULATED PENALTIES

37. In the event that Defendant fails to comply with any requirement of this Consent Order, to coerce Defendant to comply with the terms of this consent order, the Defendant is liable for and shall immediately pay the stipulated penalties in accordance with the following schedule for each failure to comply:

- a. For each day of each failure to comply with a requirement or deadline of this Consent Order, up to and including fifteen (15) days Two Hundred and Fifty Dollars (\$250) per day for each requirement or deadline not met.
- b. For each day of each failure to comply with a requirement or deadline of this Consent Order, from sixteen (16) days to thirty (30) days – Five Hundred Dollars (\$500) per day for each requirement or deadline not met.
- c. For each day of each failure to comply with a requirement or deadline of this Consent Order, from thirty-one (31) days to sixty (60) days – One Thousand Dollars (\$1,000) per day for each requirement or deadline not met.
- d. For each day of each failure to comply with a requirement or deadline of this Consent Order, over sixty-one (61) days – One Thousand Five Hundred Dollars (\$1,500) per day for each requirement or deadline not met.

38. Any payment required to be made under the provisions of this Section of the Consent Order shall be made by delivering to Plaintiff, c/o Jena Suhadolnik, Administrative Assistant, or her successor, Environmental Enforcement Section, Ohio Attorney General's Office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check or checks made payable to "Treasurer, State of Ohio," for the appropriate amount within forty-five (45) days from the date of the failure to meet the requirement or deadline of this Consent Order. The payment of the stipulated penalty shall be accompanied by a letter briefly describing the type of violation, deadline or requirement not met and date upon which the violation of this Consent Order occurred. The payment of stipulated penalties by Defendants and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to this Section shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order. The check will be paid pursuant to R.C. 3734.28.

XVII. RETENTION OF JURISDICTION

39. This Court shall retain jurisdiction of this matter for the purpose of enforcing compliance with this Consent Order.

XVIII. TERMINATION

40. Upon completion of all the injunctive relief requirements and all other terms of this Consent Order, Defendant may move the Court for an order terminating this Consent Order. Nothing herein shall preclude Ohio EPA from seeking further investigatory work in connection with implementation of a remedy or to address an imminent threat of harm to the public health or the environment. This Section, and the Sections of this Consent Order on Reservation of Rights,

Notice of Conveyance and Deed Notice shall survive this Termination provision.

XIX. COURT COSTS

41. Defendant shall pay the court costs of this action.

XX. SIGNATORIES

42. Each undersigned representative of each respective Defendant understands the terms and conditions of this Consent Order and certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to execute and legally bind the respective Defendant to this document.

EFFECTIVE UPON AND ENTERED THIS 30th DAY OF June, 2003.

Judy Quinter
JUDGE, COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

Respectfully submitted and approved by:

JIM PETRO
ATTORNEY GENERAL OF OHIO

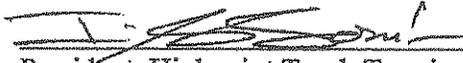
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Attorney for Defendant

The undersigned authorized representative for *Defendant Highpoint Truck Terminals, Inc.* hereby consents to the foregoing Consent Order in State of Ohio v. Highpoint Truck Terminals, Inc. et. al.

By: 

President, Highpoint Truck Terminals, Inc., Mr. Inderjit Soni