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FILED

DEC 26 2001

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

Kenneth J. Murphy, Clerk
Columbus, Ohio

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

Plaintiff,

v.

AK STEEL CORPORATION, et al.

Defendants,

and

OHIO DEPARTMENT OF
TRANSPORTATION

Third-Party Defendant.

CASE NO. **C2-01-1058**

JUDGE **JUDGE GRAHAM**

MAGISTRATE JUDGE KING

CONSENT DECREE

Plaintiff, State of Ohio, on relation of 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.") Chapters 3734, 3745, and 6111 and the common law and for civil penalties and damages pursuant to R.C. Chapter 6111 and the common law.

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

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DEFINITIONS

1. Unless otherwise stated, all terms used in this Consent Decree shall have the same meaning as used in CERCLA and R.C. Chapters 3734, 3745, and 6111, and the regulations adopted thereunder. In addition, the following terms are defined as follows:

- A. **“Consent Decree”** means this Decree.
- B. **“Granville Solvents Site”** shall mean, solely for the purposes of this Consent Decree, the physical facility located at Palmer Lane, Granville, Licking County, Ohio where treatment, storage, placement, or disposal of Waste Material and/or release or discharge into waters of the State or the environment of Waste Material has occurred, including any other area where such Waste Material has migrated or threatened to migrate.
- C. **“Ohio EPA”** means the Ohio Environmental Protection Agency, and its designated representatives.
- D. **“Response Costs”** means all direct and indirect costs incurred by the State related to the response and remedial actions conducted at the Site by Defendant, 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.
- E. **“Settling Defendants”** means AK Steel Corporation, Accurate Plastics, Inc., Bradley Paint Company, Coyne International Enterprises Corp., Vermont American Company, Union Tank Car Company, Westinghouse Electric Corporation, and the Settling Defendants listed in Attachment A (including Ohio Department of Transportation).
- F. **“State”** means the State of Ohio by and through its Attorney General on behalf of the Ohio Environmental Protection Agency.
- G. **“U.S. EPA”** means the United States Environmental Protection Agency.
- H. **“Waste Material”** shall mean (1) any “hazardous waste” as that term is defined under R.C. § 3734.01(J); (2) any “solid waste” as that term is defined under R.C. § 3734.01(E); (3) any “industrial waste” as that term is defined under R.C. § 6111.01(C); (4) any

“other wastes” as that term is defined under R.C. § 6111.01(D); (5) any “hazardous substances” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); and (6) any “hazardous waste constituent” as that term is defined under O.A.C. § 3745-50-10(A)(43).

BACKGROUND

2. In response to releases and the threat of releases of hazardous substances at or from the Granville Solvents Site, the State alleges that it has incurred removal response costs, as defined by Sections 101(23) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(23) and 9607(a), from 1985 through the present.

3. The State alleges that its removal response costs include waste drum removal costs, sampling costs, enforcement costs, joint enforcement costs with U.S. EPA concerning negotiation of a removal administrative order, and participation in the U.S. EPA administrative order by review and comment on all required submittals.

4. Settling Defendants have 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 or of the facts that State alleges in its Complaint or herein.

JURISDICTION

5. 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. Settling Defendants waive service of the complaint and summons in this action. Venue is proper in this Court.

PARTIES BOUND

6. This Consent Decree applies to and is binding upon the State and upon the Settling Defendants, their 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 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

7. 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

8. No later than thirty (30) calendar days after entry of this Consent Decree, Settling Defendant AK Steel Corporation shall pay to the State, One Hundred Seventy-Six Thousand, One Hundred Twenty-Nine Dollars (\$176,129.00) in reimbursement for past Response Costs incurred by the State through the date of the entry of this Consent Decree.

9. No later than thirty (30) calendar days after entry of this Consent Decree, Settling Defendant Bradley Paint Company shall pay to the State, Nine Thousand, Eight

Hundred Twenty-Nine Dollars (\$9,829.00) in reimbursement for past Response Costs incurred by the State through the date of the entry of this Consent Decree.

10. No later than thirty (30) calendar days after entry of this Consent Decree, Settling Defendant Coyne International Enterprises Corp. shall pay to the State, Two Hundred Seventeen Dollars (\$217.00) in reimbursement for past Response Costs incurred by the State through the date of the entry of this Consent Decree.

11. No later than sixty (60) calendar days after entry of this Consent Decree, Settling Defendants listed in Attachment A shall pay to the State, Four Hundred Ten Thousand, One Hundred Ninety-Seven Dollars (\$410,197.00) in reimbursement for past Response Costs incurred by the State through the date of the entry of this Consent Decree.

12. No later than thirty (30) calendar days after entry of this Consent Decree, Settling Defendant Vermont American Company shall pay to the State, Twenty-Six Thousand, One Hundred Sixty-Five Dollars (\$26,165.00) in reimbursement for past Response Costs incurred by the State through the date of the entry of this Consent Decree.

13. No later than thirty (30) calendar days after entry of this Consent Decree, Settling Defendant Union Tank Car Company shall pay to the State, Twenty-Nine Thousand, Four Hundred Dollars (\$29,400.00) in reimbursement for past Response Costs incurred by the State through the date of the entry of this Consent Decree.

14. No later than thirty (30) calendar days after entry of this Consent Decree, Settling Defendant Westinghouse Electric Corporation shall pay to the State, Four Thousand, Three Hundred Eighty-Three Dollars (\$4,383.00) in reimbursement for past

Response Costs incurred by the State through the date of the entry of this Consent Decree.

15. No later than thirty (30) calendar days after entry of this Consent Decree, Settling Defendant Accurate Plastics, Inc. shall pay to the State, Three Thousand, Four Hundred Eighty-Four Dollars (\$3,484.00) in reimbursement for past Response Costs incurred by the State through the date of the entry of this Consent Decree.

16. The payments made pursuant to Paragraphs 8 through 15 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. Each Settling 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

17. In consideration of the payments made by Settling Defendants pursuant to Paragraphs 8 through 15 above, the State covenants not to sue Settling Defendants, their predecessors in interest, their successors in interest, assigns, receivers, officers, agents, servants, or employees under CERCLA Section 107(a), R.C. Sections 3734.13, 6111.09, 3767.03 and 3767.04, 3745.12, and the common law for any Response Costs related to the Site which were incurred by the State prior to the entry of this Consent Decree. Such covenant not to sue is effective for each Settling Defendant upon payment of their separate payment obligations.

18. Except as expressly provided in Paragraph 17 above, the State reserves all rights it may have to seek any other relief from 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 any payment(s) required by Paragraphs 8 through 15 is/are not made, cost recovery for past Response Costs;
- C. reimbursement of any future costs not otherwise reimbursed by a U.S. EPA grant; 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 R.C. Chapters 3734, 6111, 3767, 3745, any other state law, the common law, or federal law;
- E. civil and criminal sanctions for violations of law;
- F. liability arising from Waste Material 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.
- I. relief for natural resource damages.

The reservations set forth in subparagraphs A. and B. only apply to a violating and/or non-paying Settling Defendant. The reservations set forth in subparagraphs C. through I. apply to all of the Settling Defendants jointly and severally. Furthermore, except as set forth in Paragraph 19, Settling Defendants reserve all defenses they may have to any of the State's claims described in this paragraph.

19. In any subsequent administrative or judicial proceeding initiated by the State for injunctive relief, recovery of response costs not paid as required by Paragraphs 8

through 15, or other appropriate relief relating to the Site, Settling Defendants 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 16

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, association, or other entity not a signatory to this Consent Decree or not otherwise identified in Paragraph 17, including, but not limited to, all members of the Granville Solvents Site PRP Group that have not signed 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.

DISCLAIMER OF LIABILITY

21. This Consent Decree shall not constitute an admission or adjudication with respect to any allegation in the State's Complaint, or any admission of any wrongdoing or misconduct or liability on part of the Settling Defendants or their successors in interest, assigns, receivers, officers, agents, servants, or employees.

CONTRIBUTION PROTECTION

22. This Consent Decree provides Settling Defendants with contribution protection as provided in Section 113(f)(2) of the Superfund Amendments and Reauthorization Act of 1986.

ENTRY OF CONSENT DECREE

23. 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.

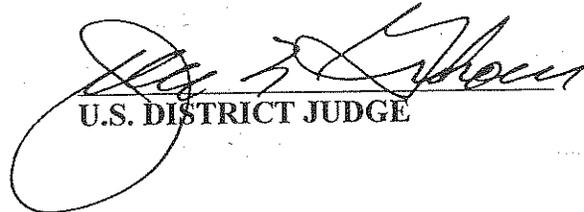
RETENTION OF JURISDICTION

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

COSTS

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

Entered this 26th day of December, 2001.


U.S. DISTRICT JUDGE