

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of	:	
	:	
HIGHPOINT TRUCK TERMINALS, INC.	:	DIRECTOR'S FINAL
3969 Congress Parkway	:	FINDINGS AND ORDERS
Richfield, Ohio 44286	:	

PREAMBLE

It is hereby agreed by and among the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("OEPA") under Sections 3734.13, 3734.20, 3745.01, and 6111.03 of the Ohio Revised Code ("ORC").

II. PARTIES

These Orders shall apply to and be binding upon Highpoint Truck Terminals, Inc., formerly All State AntiPollution Services, Inc. (hereinafter "Highpoint"), its officers, directors, servants and employees, in their capacities as such, agents, assigns, and successors in interest.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

To the extent that Ohio EPA contends that there has been illegal placement or disposal of hazardous waste at the Site, such contention is denied in all respects by Highpoint. The Director of the Ohio EPA has determined the following Findings of Fact and Conclusions of Law:

- A. Highpoint currently owns, and formerly operated, a property which is located at 3969 Congress Parkway, Richfield, Ohio ("Site").
- B. The Site was formerly operated as a truck washing facility from

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By: Althea Mackey Date 2/21/92

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COLUMBUS, OHIO

approximately 1961 until at least April 2, 1985, utilizing various degreasers in the operation. Wastewater from the truck washing operation was apparently sent initially to lagoons, and later the flow was apparently diverted to an oil/water separator.

- C. There were at least three underground tanks present on the Site, two of them holding ten thousand (10,000) gallons, apparently of diesel fuel, and a third of five hundred (500) gallons holding waste oil. Highpoint used only one of the 10,000 gallon tanks after April 2, 1985. A fourth above-ground tank of unknown use was removed from the Site on June 15, 1989.
- D. As a result of an investigation performed under orders of the State Fire Marshal following a spill of petroleum at the Site in 1989, petroleum hydrocarbon and organic contamination was discovered in groundwater samples. Contaminants included methylene chloride, chloroform and trichloroethylene as well as benzene, toluene and xylenes. Benzene, toluene and xylenes are constituents associated with petroleum products.
- E. As a result of the same investigation, at least one hundred thirty eight (138) semi-truck loads of visibly contaminated soil were removed from the Site.
- F. Methylene chloride, chloroform, trichloroethylene, benzene, toluene and xylenes are hazardous wastes, as defined by Ohio Revised Code section 3734.01(J), and/or industrial wastes under ORC section 6111.01(C)
- G. The Site is a "facility" as that term is defined in ORC section 3734.01(N).
- H. Conditions at the Site constitute a substantial threat to public

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By: AJL Mackey Date 2/21/92

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health or are causing or contributing to or threatening to cause or contribute to water pollution or soil contamination within the meaning of ORC section 3734.20(B).

- I. The presence of the methylene chloride, chloroform, trichloroethylene, benzene, toluene and xylenes in the groundwater results from an unpermitted discharge of industrial waste and hazardous waste into "waters of the state" as that term is defined in ORC Section 6111.01(H). Such an unpermitted discharge into the "waters of the state" is prohibited by ORC 6111.04.
- J. The Director finds that the issuance of these Orders furthers the intent of the General Assembly and that actions required by this Consent Order are reasonable and will prevent and abate the pollution of the environment for the health, safety, welfare, and property of the people of the State of Ohio.
- K. Based upon information available to the Director as set forth in these findings of fact, the Director has determined that the work required by the Orders, set forth below, is in the nature of interim measures only, designed to identify, contain, abate and/or mitigate contamination.
- L. The Director has given consideration to and based his determination on evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and on evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of this state to be derived from such compliance and accomplishing the purposes of ORC Chapters 6111. and 3734 E.P.A.

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By: Julie Mackey Date: 2/21/92

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IV. ORDERS

Highpoint shall perform the following work:

A. Hydrogeologic Investigation

1. Within forty-five (45) days from the effective date of these Orders, Highpoint shall submit to OEPA, for its review and approval, a work plan, detailing the work required to perform a hydrogeologic investigation of the Site, including any and all areas where contamination has migrated. The investigation shall be designed to identify the direction and rate of groundwater flow, the full nature and extent of groundwater contamination at and emanating from the Site, and the source areas which are causing the groundwater contamination. Attached to these Orders as Attachment A and fully incorporated herein is a Scope of Work which details the nature of the investigation that will be performed.
2. In accordance with Attachment A, the workplan shall include a sampling and analysis plan, a health and safety plan, and a quality assurance project plan, and any other plan or support document, as required by the work that will be performed, including schedules for performance.
3. Within fourteen (14) days from receipt of comments from OEPA, Highpoint shall revise the work plan to conform to all comments and/or requested changes and resubmit the workplan to Ohio EPA.
4. Highpoint shall within fourteen (14) days from receipt of OEPA's written approval implement the work plan.

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By: Mike Mackey Date 2/21/92

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B. Notice and Site Access

1. Highpoint shall allow OEPA employees and designated representatives full access to the Site during the course of the investigation, and shall permit OEPA or its designated representatives to take samples, or split samples with Highpoint.
2. Highpoint shall notify the OEPA ten (10) days before any sampling event.

V. DISPUTE RESOLUTION

The Site Coordinators shall whenever possible operate by consensus. In the event there is a disapproval of a report or workplan or disagreement about the conduct of the work performed under these Orders, the Site Coordinators shall negotiate in good faith for five (5) days to resolve the differences. In the event the Site Coordinators do not reach consensus, each Site Coordinator shall reduce his/her position to written form within five (5) days of the end of the five (5) day period for negotiations. The written positions shall be exchanged immediately and appropriately among the respective parties.

Following exchange of the written positions the parties shall in good faith attempt to resolve the dispute for seven (7) days. During this period, Highpoint shall have the opportunity to discuss resolution of the dispute with the District Unit Supervisor, Division of Emergency and Remedial; Response, with appropriate participation by Central Office management. Highpoint may meet with the District Unit Supervisor, in person, if practicable. If the District Unit Supervisor is not available, a designee with comparable authority shall confer by telephone or may meet with Highpoint in person. After the seven (7) day period, the matter will be referred to the District Unit

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By: Lilli Mackey Date: 2/21/92

Supervisor, or his/her designee, for a final decision based upon and consistent with the purpose of these Orders.

The pendency of any dispute under this Section shall not affect Highpoint's responsibility for timely performance of the work required by these Orders; provided, however, that the time period for completion of the work affected by such dispute shall be extended for a period of time not to exceed the time required to resolve in good faith any dispute in accordance with the procedures specified herein. All elements of the work required by these Orders which are not affected by the dispute shall continue in accordance with the approved schedule.

#### VI. OTHER CLAIMS

Nothing in these Orders shall constitute as a release from any claim of action or demand in law or equity against any person, firm, partnership, or corporation, not subject to these Orders including, but not limited to, officers, directors, servants and employees of Highpoint in their personal capacity, for any liability arising out of or relating to the operation of the Site or facility.

#### VII. OTHER APPLICABLE LAWS

All work required to be taken pursuant to these Orders shall comply with the requirements of local, state, and federal laws and regulations applicable to the work and shall be consistent with the National Contingency Plan ("NCP") 40 CFR Part 300, as amended. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to High Point's operation of the Site or facility. The Ohio EPA reserves all rights and privileges except as specified herein.

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VIII. RETIMBURSEMENT OF COSTS

OEPA has incurred and continues to incur oversight and response costs in connection with the Site. Within thirty (30) days of the receipt of the first accounting of these costs incurred up to the effective date of the Order, Highpoint shall remit a check to OEPA for the full amount claimed. Thereafter, at the termination of this Order, OEPA shall submit to Highpoint an itemized statement of such costs of OEPA for the duration of this Order. Following receipt of the itemized statement, Highpoint shall pay, within thirty (30) calendar days, the full amount claimed. Payment to OEPA shall be made to the Ohio Hazardous Waste Cleanup Special Account created by ORC Section 3734.28 by check payable to "Treasurer, State of Ohio" and shall be forwarded to Ms. Patricia Campbell, (or her successor), Fiscal Officer, Ohio EPA, Division of Emergency and Remedial Response, P. O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43266-0149. A copy of the transmittal letter shall be sent to Debra L. Clinkscale, (or her successor), Counsel for Director of Environmental Protection, at the address listed above.

IX. NOTICE

All documents demonstrating compliance with these Orders and other documents required under these Orders to be submitted to the Ohio EPA shall be addressed to:

Ohio Environmental Protection Agency  
Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
ATTN: Regan Williams, DERR (or his successor)

and

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By: Niki MacKey Date: 2/2/92

Ohio Environmental Protection Agency  
1800 WaterMark Drive  
P. O. Box 1049  
Columbus, Ohio 43266-1049  
ATTN: Manager, Technical & Program Support Section

unless otherwise specified in these Orders or to such persons and addresses as may hereafter be otherwise specified in writing. Regan Williams (or his successor) is named Site Coordinator for Ohio EPA; Highpoint shall notify Ohio EPA within seven days of the effective date of these Orders of the name of its Site Coordinator.

#### X. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent OEPA from (1) seeking legal or equitable relief to enforce the terms of these Orders including penalties against Highpoint for noncompliance or claims for natural resources damages; or (2) completing any work described in these Orders. OEPA reserves the right to take any enforcement action, recover costs, or seek damages for injury to natural resources pursuant to any available legal authority for past, present, or future violations of ORC Chapters 3734. or 6111., violation of these Orders, conditions at the Site or facility, or releases of hazardous substances.

OEPA reserves the right to perform or require Highpoint to perform additional investigation, removal, or remediation pursuant to ORC Chapters 3734 and/or 6111, or other authority for these or any other conditions.

#### XI. TERMINATION

Except as to sections VIII. and X. (Reimbursement of Costs and Reservation of Rights), the obligations of Respondent under these Ohio EPA Orders shall terminate upon Ohio EPA's written approval of the final FEB 21 92

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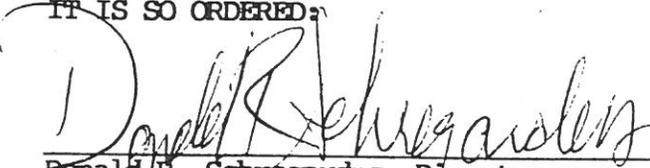
investigation report submitted under section IV. (Orders).

**XII. SIGNATORIES**

Each undersigned representative of a signatory to these Orders certified that he/she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

**IN THE MATTER OF HIGHPOINT TRUCK TERMINALS, INC.**

**IT IS SO ORDERED:**

  
\_\_\_\_\_  
Donald R. Schregardus, Director  
Ohio Environmental Protection Agency

\_\_\_\_\_  
Date 2/21/92

**XI. WAIVER AND AGREEMENT**

In order to resolve disputed claims, without admission of fact (including the facts in Section III. Findings of Fact and Conclusions of Law), violation, or liability and in lieu of further enforcement action by OEPA for only the obligations addressed in these Findings and Orders, Highpoint agrees that these Findings and Orders are lawful and reasonable, that the schedule provided for compliance herein is reasonable and that Highpoint agrees to comply with these Orders. Upon Highpoint's receipt of written notice of termination of the Order from the Director and except as otherwise described in Section IX, Highpoint shall be released from the obligations embodied in Section IV of these Orders.

Highpoint hereby waives the right to appeal the issuance, terms, and service of these Orders, and hereby waives any and all rights they might have to seek judicial review of said Findings and Orders either

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By: Mimi Mackey Date 2/21/92

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in law or equity.

Notwithstanding the preceding, the Director and Highpoint agree that in the event that these Findings and Orders are appealed by a third party, Highpoint retains the right to intervene and participate in the third party's appeal. In such event, Highpoint shall continue to comply with these Orders notwithstanding such appeal and intervention unless said Orders are stayed, vacated, or modified.

IT IS SO AGREED:

HIGHPOINT TRUCK TERMINALS, INC.:

By: I. S. Soni

2.10.1992  
DATE

Inderjit S. Soni  
Printed or typed name

PRESIDENT  
Title

OHIO ENVIRONMENTAL PROTECTION AGENCY:

Donald R. Schregardus  
Donald R. Schregardus, Director

2/21/92  
Date

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By: Nick Mackey Date 2/21/92

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## STATEMENT OF WORK FOR HIGHPOINT TRUCKING TERMINAL INC.

The following Statement of Work (SOW) describes the requirements for a hydrogeologic investigation of the above referenced site. Ohio EPA reserves the right to require additional work, and/or disapprove work performed or data collected without Ohio EPA oversight. The workplan produced to complete the work described by the SOW shall include a task to produce a final written report that details the following:

- 1) Facility description and history; types of products and/or wastes handled at the facility, chemical compositions of these products and/or wastes; and formerly regulated units present at the facility.
- 2) Appropriate dates or periods of past product and waste spills, identification of the materials spilled, the amount spilled, the location where spilled and a description of the response actions conducted (local, state, or federal response units or private parties), including any inspection reports or technical reports generated as a result of the response.
- 3) Description of the local physiography/drainage patterns, the location of surface water bodies, underground mines, floodways, etc., and the analysis of any topographic features that might influence the ground water flow system.
- 4) Description of the site hydrogeology and aquifer systems including:
  - a) Methods used in identifying zones of saturation, perched water zones, and aquifer systems.
  - b) Location, depth, thickness, lithology, areal extent and type of aquifer(s) present, including identification of the uppermost aquifer system and any water bearing zones above the first confining layer that may serve as a pathway for contaminant migration.
  - c) Identification and characterization of recharge and discharge areas.
  - d) An interpretation of hydraulic interconnections between saturated zones.
- 5) Reasoning for the location and screening interval of the monitoring wells.
- 6) Detailed account of monitoring well construction and installation techniques including:
  - a) Complete description of drilling methods employed including drilling fluids used, etc.
  - b) Length and placement of screened intervals.
  - c) Size and depth of wells.
  - d) Type of well casing and screen material used.
  - e) Description of well-intake design, including screen slot size and length, filter pack materials, and

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methods of filter pack emplacement.

- f) Methods used to seal the well at the surface and prevent downward migration of contaminants through the well annulus.
  - g) Description of methods or procedures used to develop the wells and the criteria used to determine when development has been completed.
- 7) Ground water level information including:
- a) Static water level measurement procedures.
  - b) Static water level elevations.
  - c) Water table/potentiometric map overlain on the facility site map and possibly geochemical contour maps.
  - d) An interpretation of the flow system, including the vertical and horizontal components of flow.
  - e) Documentation of seasonal fluctuations in ground water levels and the effects of these fluctuations on hydraulic gradients and flow directions.
- 8) Sampling and analysis plan including:
- a) Well evacuation procedures including the volume to be removed prior to sampling and handling procedures for the purged well water.
  - b) Sample withdrawal techniques.
  - c) Sample handling and preservation techniques including provisions for field-filtering of samples as appropriate.
  - d) Procedures for decontamination of sampling equipment between wells.
  - e) Parameters measured.
  - f) Procedures used for measuring ground water elevations at each well.
  - g) Laboratory analytical techniques, including EPA approved analytical methods, quality assurance procedures, and detection limits.
- 9) A Quality Assurance/Quality Control (QA/QC) plan should be included which addresses the following:
- a) QA objective for measurement of data in terms of precision, accuracy, completeness, representativeness, and comparability, and the procedures used to assess

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By: Dicki Mackey Date 2/21/92

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these factors.

- b) Sampling procedures.
  - c) Chain-of-custody procedures used for all phases of sample management.
  - d) Calibration procedures, references, and frequency.
  - e) Internal QC checks and frequency.
  - f) Preventative maintenance procedures and schedules.
- 10) Ground water data, including water level measurements and results of the chemical analyses of the ground water samples, should be presented in a tabulated form.
  - 11) Determination and presentation of background concentrations and the statistical analyses used to determine if the ground water quality downgradient of the facility differs significantly from background concentrations for each parameter analyzed.
  - 12) A written final report including interpretations of data and conclusions.

In addition to the maps mentioned above, the following maps are required:

- 1) A facility site map should be prepared with a scale of one inch = 100 feet. The map should show property lines of the facility with the owners of all adjacent property clearly indicated. Surrounding land use (residential, commercial, agricultural, recreational, etc.) should be clearly shown. Locations of buildings, tanks, underground storage tanks, utilities, paved areas, and other man made features, vegetation, streams, springs, and other bodies of water, etc., also need to be shown. Locations of all known past solid or hazardous waste treatment, storage, or disposal areas, and product and waste underground tanks or piping must be included.
- 2) Locations of soil borings and monitoring wells should be shown on a facility site map. The elevations of borings and the tops of monitoring well casings should be determined by a professional surveyor and should be included on each soil boring and monitoring well log. These logs should be submitted as part of the study.
- 3) Locations of all private and public water wells within 2,000 feet of the facility should be shown on a topographic map. Logs for these wells should be submitted as available.
- 4) Hydrogeologic cross-sections showing the lithology and water bearing zones beneath the facility should be prepared. The aquifer system(s) beneath the facility should be clearly shown in relations to the locations and depths of private off-site wells and on-site monitoring wells.

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By: Mike Mackew

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