

Issue Date SEP 07 1990

Effective Date SEP 07 1990

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:  
  
MR. GEORGE KYPRIANOU  
8640 WEST AKRON-CANFIELD ROAD  
CANFIELD, OHIO 44406

and;

GENERAL MOTORS CORPORATION  
NEW CENTER ONE BUILDING  
3031 WEST GRAND BLVD.  
P. O. BOX 33122  
DETROIT, MICHIGAN 48232

and;

GENERAL ELECTRIC CORPORATION  
YOUNGSTOWN LAMP PLANT  
40 HUGHES STREET  
YOUNGSTOWN, OHIO 44501

Respondents

DIRECTOR'S FINAL FINDINGS  
AND ORDERS

OHIO EPA  
SEP -7 90  
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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, and 6111.03 of the Ohio Revised Code ("ORC"). Respondents do not admit or agree to the Director's authority to issue these Final Findings and Orders under the cited sections of the Revised Code, but consent to entry of these Director's Final Findings and Orders and agree to be bound by the terms and conditions herein. While Respondents waive their right to appeal the issuance, terms, and service of these orders, the Respondents, by entering into these Orders, do not admit the Findings of Fact and Conclusions of Law set forth below. Specifically, Respondents neither admit nor deny that any threat to the public health, safety, welfare or to the environment exists requiring this action, and deny any legal liability associated with the facility.

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

By: Mary Cavin Date 9-7-90

## II. PARTIES

These Orders shall apply to and be binding upon Mr. George Kyprianou, General Motors Corporation, and General Electric Company (hereinafter collectively referred to as "Respondents"), their assigns and successors in interest.

## III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Director of the Ohio EPA has determined the following findings of fact and conclusions of law:

1. Hilltop Landfill, a.k.a. Old Toth Landfill, is located in Mahoning County, Ellsworth Township, on fifteen to twenty five acres of land. The property was leased to Toth & Company by Maurice Jones and Steven Jesescko (deceased). Upon Jesescko's death, the land was parceled and part of the landfill was sold to George Kyprianou, 8640 West Akron-Canfield Road, Canfield, Ohio, 44406. The remainder of the landfill was on a parcel sold to Arthur Horvath, 8520 West Akron-Canfield Road, Canfield, Ohio, 44406.
2. The land presently owned by Mr. Kyprianou was purchased subsequent to the closing of the Hilltop Landfill. Purchase of the land owned by Mr. Horvath was made while the landfill was in operation. Upon purchase of the land, Mr. Horvath retained the lease agreement with Toth Company, the lease existing prior to Mr. Horvath's purchase of the land and continued with the purchase.
3. The Hilltop Landfill was first licensed in 1969 and closed in 1976. The Landfill was formally a coal strip mine and was mined to a depth of approximately sixty (60) feet.
4. Inspection reports completed by the Mahoning County Board of Health in the late 1960's and early 1970's indicated the presence of water in the landfill pit. These same reports indicated a lack of daily cover.
5. From 1969 and 1976 the landfill accepted dead animals, household, commercial, agricultural, industrial, institutional and construction waste.
6. In addition to the materials stated above, reports and documents written during the time the Landfill was licensed to operate indicated that paint sludges, drainings from paint pits, polychlorinated biphenyls (PCB's) and other solid and liquid hazardous wastes may have been accepted and/or disposed of at the Hilltop Landfill.

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By: Mary Carr Date 9-7-90

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7. The landfill appears to have a sandy clay cover which supports grassy vegetation. Several nonvegetated areas indicate the possible migration of landfill gas through the cap. There are no access restrictions in place. The abundance of animal fecal material on the landfill surface suggests that the area may be used for the grazing of livestock.
8. Located along the east/northeast border of the site is an unnamed tributary which flows north into a pond privately owned by Mr. Mark Yelic, 8677 Palmyra Road Canfield, Ohio. The pond is located approximately 3/4 of a mile upstream of the Landfill. From the pond, water flows into Palmyra Lake. Approximately two (2) river miles upstream from the Landfill is Meander Creek reservoir, the water supply source for the City of Youngstown.
9. Leachate is discharging from the overburden, and possibly from the bedrock, located along the east side of the site. Considerable pooling of the leachate has occurred along the bank of the unnamed tributary. The leachate is presently discharging into the waters of the unnamed tributary.
10. Results from leachate samples collected from the site on February 23, 1990 disclosed the presence of the following substances:

ORGANICS

Acetone	3800 ug/L
Benzene	12 "
2-Butanone	6200 "
1,1-Dichloroethane	32 "
1,2-Dichloroethane (total)	7 "
Diethylphthalate	2000 "
Ethyl Benzene	1400 "
2-Hexanone	350 "
Methylene Chloride	8000 "
4-Methyl-2-Pentanone	600 "
4-Methylphenol	7500 "
Phenol	6600 "
Tetrachloroethene	6 "
Toluene	1600 "
Trichloroethene	98 "
Vinyl Chloride	10 "
Xylene (total)	3700 "
Carbon Disulfide	26 "

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By: Mary Coon Date 9-7-90

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

By: Mary Carr Date 9-7-90

INORGANICS

Aluminum	1.3	mg/L
Arsenic	0.01	mg/L
Berium	0.82	mg/L
Beryllium	0.02	mg/L
Calcium	1300	mg/L
Cadmium	0.01	mg/L
Chromium	0.2	mg/L
Iron	3000	mg/L
Potassium	220	mg/L
Magnesium	300	mg/L
Manganese	23	mg/L
Nickel	0.1	mg/L
Lead	0.02	mg/L
Sodium	-----	----
Vanadium	0.52	mg/L
Zinc	6.5	mg/L

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11. Results of sediment samples collected from Yelic Pond on February 23, 1990 disclosed the presence of the following substances:

2-Butanone	35	ug/kg
Acetone	190	ug/kg
Barium	35	ug/kg
Mercury	0.3	ug/kg

13. The Hilltop Landfill located at 8520 West Akron-Canfield Road Canfield, Ohio is a facility as the term is defined in Ohio Revised Code (ORC) Section 3734.01(N).
14. Arsenic, Barium, Cadmium, Chromium, Nickel, Lead, Vanadium, Zinc, Methylene Chloride, Phenol, O-Cresol, Methylene Chloride, Acetone, Vinyl Chloride, Carbon Disulfide, 1,1 Dichloroethane, 1,2 Dichloroethane, Trichloroethane, Benzene, Tetrachloroethane, Toluene, Ethyl benzene, and xylenes, among other substances found, are "industrial wastes" and/or "other wastes" as defined in ORC Section 6111.11(C) and (D), and/or hazardous wastes as defined in ORC Section 3734.01(J) and/or "hazardous substances" as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC 9601 et seq. (CERCLA).
15. The discharge, deposit, injection, dumping, leaking, spilling, or placing of Arsenic, Barium, Cadmium, chromium, Nickel, Lead, Vanadium, Zinc, MEK, Phenol, O-Cresol, Methylene Chloride, Acetone, Vinyl Chloride, Carbon Disulfide, 1,1 Dichloroethane, 1,2 Dichloroethane, Trichloroethane, Benzene Tetrachloroethane, Toluene, Ethyl benzene, Xylenes and/or other substances into or onto the soil, ground water, and surface water at or from the facility constitutes "disposal" of hazardous waste as defined in O.R.C. Section 3734.01(F).

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Director's Final Findings and Orders  
Old Toth Landfill  
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By: Mary Carr Date 9-7-90

ENVIRONMENTAL PROTECTION AGENCY

16. The migration and threatened migration of these industrial wastes, other wastes, and/or hazardous wastes and substances into the soil, ground water, and/or surface water at or from the facility, constitutes "a release or threat of a release" as that term is defined in Section 101(22) of CERCLA, and an unpermitted discharge of industrial waste, other wastes, and/or hazardous wastes and substances into "waters of the state", as that term is defined in O.R.C. Section 6111.01(H). The unpermitted discharge of industrial waste, other wastes, and/or hazardous wastes and substances into "waters of the state" is prohibited by O.R.C. Section 6111.04.
17. With the exception of Mr. George Kyprianou, each Respondent arranged for disposal or transport for disposal of "hazardous substances", as that term is defined in Section 101(14) of CERCLA, at the Hilltop Landfill facility or is a past or present owner or operator of the facility, and is therefore a liable person as defined under Section 107(a) of CERCLA.
18. Respondents disposed of hazardous wastes at the facility within the meaning of O.R.C. Section 3734.20 and have placed or caused to be placed industrial wastes or other wastes in a manner which has caused pollution of the waters of the state within the meaning of ORC Section 6111.04.
19. The release or disposal of industrial waste and/or hazardous waste from the facility constitutes a substantial threat to public health or safety or is causing or contributing to or threatening to cause or contribute to air or water pollution or soil contamination within the meaning of O.R.C. 3734.20(B).
20. Respondents are potentially "responsible person's" within the meaning of Section 107 of CERCLA. Respondents are "person's" as defined in Section 101(21) of CERCLA, and O.R.C. Section 3734.01(G) and 6111.01(I).
21. The Director finds that the issuance of these Orders furthers the intent of General Assembly, and that actions required by this Consent Order are reasonable and will prevent and abate pollution of the environment for the health, safety, welfare, and property of the people of the State of Ohio.
22. 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 contain, abate, and mitigate contamination.
23. 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 the State of Ohio to be derived from such compliance in accomplishing the purpose of O.R.C. Chapter 6111.

By: Mary Cavin Date 9-7-90

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IV. ORDERS

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Respondents shall perform the following work:

WIDE OHIO

1. Director's Final Findings and Orders effective on July 20, 1990, are hereby revoked as to the signatories to this document contained herein.
2. Property owned by Mr. George Kyprianou, 8640 West Akron-Canfield Road, Canfield, Ohio shall be made available for access to Ohio EPA, its agents, and the named Respondents and their agents, employees, contractors and essential personnel consistent with the scope and directives of these Orders. Mr. Kyprianou's liability under these Orders shall be limited to the directive stated within item two (2) of Section IV of these Orders.
3. Respondents shall retain a contractor qualified to undertake and complete the requirements of these Orders and shall notify Ohio EPA of the name of such contractor within fourteen (14) days of the effective date of this order.
4. Within twenty-one (21) days of the effective date of these Orders, Respondents and their contractor shall meet with representatives of Ohio EPA in a scoping meeting preliminary to preparation of the Conceptual Design for Investigation Work described in paragraph five (5).
5. Within thirty-five (35) days of entry of these Orders, Respondents shall submit a Conceptual Design for Investigation Work. The investigation work to be performed pursuant to this conceptual design shall include the following:
  - a. A preliminary hydrogeologic investigation consisting of groundwater samples, soil borings or other means sufficient to provide an initial evaluation of groundwater conditions in and around the Hilltop Landfill and necessary to design an interim corrective measure to mitigate leachate discharges to surface waters of the State.
  - b. A sediment investigation including quantification and characterization of sediment contamination downstream from the Hilltop Landfill. The sediment to be investigated should include the stream bed and associated floodplain. The scope of the sediment investigation must be sufficient to establish the impact, if any, of releases from the landfill on downstream sediments.
  - c. A landfill gas investigation including the determination of the presence or absence of methane generation at the landfill and its possible migration offsite.

The Conceptual Design for Investigation Work shall include a schedule of implementation for the studies and generally describe how the studies will be implemented.

6. Upon Ohio EPA approval of the conceptual design for investigation work, Respondents shall implement the investigation work in accordance with the schedule contained in the conceptual design for investigation work.
7. Upon completion of the investigation work, Respondents shall submit a report to Ohio EPA which shall include all data generated as a result of the investigation work. The report shall also include a Conceptual Design of Interim Corrective Measures to mitigate leachate discharge to surface waters of the State. The Conceptual Design of Interim Corrective Measures shall include a schedule of implementation.
8. Upon Ohio EPA approval of the conceptual design for investigation work Respondents shall implement the interim corrective measures to mitigate leachate discharge to surface waters of the State in accordance with the schedule contained in the conceptual design of interim corrective measures.
9. Prior to implementation of any site work Respondents shall submit a site safety and health plan and shall be prepared in accordance with the Occupational Safety and Health Administration ("OSHA") regulations applicable to Hazardous Waste Operations and Emergency Response, as well as applicable Ohio statutory and regulatory authority.
10. Respondents shall submit as soon as practicable and in any case within sixty (60) days of the effective date of these Orders all records, documents, memoranda, communications, manifests, receipts, and transcripts, regarding the Hilltop Landfill. Additional information requested by Ohio EPA related to the Hilltop Landfill shall be submitted within 60 days of the request.
11. Respondents shall require all laboratories or contractors to deliver all monitoring and analytical data to Ohio EPA contemporaneously with delivery to Respondents.
12. Within thirty (30) days of the effective date of these Orders, Respondents shall demarcate the perimeter of the site with posted warning signs.
13. For purposes of these Orders, "Days" shall mean calendar days, unless otherwise specified. When the last day of any specified period or the due date for any report falls on a Saturday, Sunday, or Holiday, the last day of the specified period on the due date for the report shall be deemed to be the next business day following the Saturday, Sunday or holiday.

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By: Mary Cavan Date 9-7-90

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V. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed 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 for any liability arising out of or relating to the operation of the facility.

VI. OTHER APPLICABLE LAWS

All work required to be taken pursuant to these Orders shall comply with the requirements of applicable local, state, and federal laws and regulations 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 Respondents with regard to the facility identified within these orders. The Ohio EPA reserves all rights and privileges except as specified herein.

VII. REIMBURSEMENT OF COSTS

Ohio EPA has incurred and continues to incur oversight and response costs in connection with the facility ("Costs"). Within thirty (30) days of the receipt of the first accounting of Costs incurred up to the effective date of these Orders, Respondents shall remit a check to Ohio EPA for the amount of such Costs which are not inconsistent with the National Contingency Plan. Thereafter, at the termination of these Orders, Ohio EPA shall submit to the Respondents an itemized statement of such Costs of the Ohio EPA for the duration of these Orders. Following receipt of the itemized statement, Respondents shall pay, within thirty (30) calendar days, the amount of such Costs which are not inconsistent the National Contingency Plan. Payment to Ohio EPA shall be made to the Ohio Hazardous Waste Clean-up Special Account created by O.R.C. Section 3734.28 by check payable to "Treasurer, State of Ohio" and shall be forwarded to Counsel for Director of Environmental Protection, P. O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio, 43266-0149. A copy of the transmittal letter shall be sent to Ms. Patricia Campbell, Fiscal Officer, Ohio EPA, Division of Emergency and Remedial Response, at the address listed above. Respondents' obligations to reimburse Ohio EPA for Costs under these Orders shall be limited to those Costs associated with activities undertaken pursuant to these Director's Final Findings and Orders.

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

By: Mary Caron Date 9-7-90

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By: Mary Carmi Date 9-7-90

VIII. 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  
Attn: Karla Auker  
2110 East Aurora Road  
Twinsburg, Ohio 44087

and

Ohio Environmental Protection Agency  
1800 WaterMark Drive  
P. O. Box 1049  
Columbus, Ohio 43266-1049  
Attn: Removal Coordinator, DERR

All documents accounting for Costs and other notices relating to these Orders shall be submitted to the Respondents and addressed to the following:

Douglas G. Haynam, Esq.  
Fuller & Henry  
One Seagate, 17th Floor  
P. O. Box 2088  
Toledo, Ohio 43603

Michael LaManna, Esq.  
General Electric  
1975 Noble Road  
Nela Park  
East Cleveland, Ohio 44112

OHIO EPA

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unless otherwise specified in these Orders or to such persons and addresses as may hereafter to otherwise specified in writing.

IX. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from (1) seeking legal or equitable relief to enforce the terms of these Orders including penalties against Respondents for noncompliance or claims for natural resources damages; or (2) completing any work described in these Orders. Ohio EPA 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 O.R.C. Chapters 3734 or 6111, conditions at the facility, or releases of hazardous substances.

Ohio EPA reserves the right to perform or require Respondents to perform additional investigation, removal, or remediation pursuant to Chapters 3734 and/or 6111 of the Ohio Revised Code or other authority for these or any other conditions.

X. SIGNATORIES

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

IT IS SO ORDERED:

Mary Walsh for RLS  
Richard L. Shank, Ph.D., Director  
Ohio Environmental Protection Agency

9/1/90  
Date

XI. WAIVER AND AGREEMENT

In order to resolve disputed claims, without admission of fact, violation, or liability and in lieu of further enforcement action by the Ohio EPA for only the obligations addressed in these Findings and Orders, and subject to the provisions of Section I, Respondents agree that these Findings and Orders are lawful and reasonable, that the schedule provided for compliance herein is reasonable and that Respondents agree to comply with these Orders. Upon Respondents receipt of written notice of termination of these Orders and except as otherwise described in Section IX, Respondents shall be released from the obligations embodied in Section IV of these Orders.

Respondents hereby waive their right to appeal the issuance, terms, and service of these Orders, and hereby waive any and all rights they might have to seek judicial review of said Findings and Orders either in law or equity; except that, in the event that the Director determines that Respondents have failed to comply with these Orders, Respondents reserve the right to demonstrate compliance in any appropriate administrative or judicial proceeding.

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

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

By: Mary Carvini Date 9-7-90

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IT IS SO AGREED:

*George Kyprlanou*  
Mr. George Kyprlanou

8/22/90  
Date

OHIO ENVIRONMENTAL PROTECTION AGENCY

*Mary Walsh for RLS*  
Richard L. Shank, Ph.D.  
Director

9/5/90  
Date

I certify this to be a true and accurate copy of the  
official document as filed in the records of the Ohio  
Environmental Protection Agency.

By: *Mary Carrin* Date 9-7-90

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IT IS SO AGREED:

GENERAL ELECTRIC CORPORATION

By: *Ronald N. [Signature]* *8/27/90*  
Date

Title: *Gen Mgr. - Envir. Health & Safety*

OHIO ENVIRONMENTAL PROTECTION AGENCY

*Murray Wash for RLS* *9/6/90*  
Richard I. Shank, Ph.D.  
Director Date

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

By: *Murray Cavin* Date *9-7-90*

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IT IS SO AGREED:

GENERAL MOTORS CORPORATION

By: Mark Hester  
Mark Hester

August 28, 1990  
Date

Title: Attorney

OHIO ENVIRONMENTAL PROTECTION AGENCY

Richard L. Shank for RLS  
Richard L. Shank, Ph.D.  
Director

9/6/90  
Date

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

By: Mary Carr Date 9-7-90

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