

Issuance Date NOV 17 1989
Effective Date NOV 17 1989

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter Of :
:
John R. Wilms, Respondent : Director's Final
and : Findings and Orders
Ruetgers-Nease Chemical :
Company, Respondent :

Pursuant to Sections 6111.03(H), 3734.20(A), and 3734.20(B), of the Ohio Revised Code, the Director of the Ohio Environmental Protection Agency, hereinafter referred to as "Director," hereby makes the following Findings and issues the following Orders:

FINDINGS

1. Pursuant to Section 6111.03(H) of the Ohio Revised Code, the Director may issue orders to prevent, control or abate water pollution. Pursuant to ORC 6111.04, no person shall cause pollution of any waters of the state.
2. Pursuant to Sections 3734.20(A) and (B), if the Director determines that conditions at a hazardous waste facility are causing or contributing to or threatening to cause or contribute to water and/or soil contamination, he shall initiate appropriate action under Chapters 3734, 6111 and other appropriate Chapters of the Ohio Revised Code.
3. Respondent Ruetgers-Nease Chemical Company is the owner of the Nease Chemical Site in Salem, Ohio. The Nease Chemical Company, which merged with the Ruetgers Chemical Company in 1977, formerly operated the facility as a chemical manufacturing plant. The Nease Chemical Site is a "facility," as defined by Ohio Revised Code Section 3734.01(N), at which hazardous waste was disposed. The Nease Chemical site is included on the National Priorities list as created by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq., (CERCLA).
4. Respondent Ruetgers-Nease Chemical Company is a signatory to Administrative Orders by Consent with the Ohio Environmental Protection Agency and the United States Environmental Protection Agency, ordering a Remedial Investigation and Feasibility Study ("RI/FS") at the Nease Chemical Site, in accordance with CERCLA and State law.

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 Caven Date 11-17-89

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5. Respondent John R. Wilms is the owner of property at 3034 Lisbon Road in Leetonia, Ohio, which borders Middle Fork Little Beaver Creek, (hereinafter the "Wilms Property"), and which is fully described in the deed to the property, a copy of which is attached to and fully incorporated herein as Exhibit A.
6. Among the contaminants known to exist at the Nease Chemical Site is Mirex, a pesticide now banned for use in the United States.
7. Mirex is listed by the National Toxicology Program as a substance that may reasonably be anticipated to be a carcinogen (Fourth Annual Report on Carcinogens, NTP, 1985). In addition, the International Agency for Research on Cancer (IARC) has determined that there is sufficient evidence that mirex is carcinogenic in mice and rats. Mirex is also classified by IARC as a compound that is possibly carcinogenic to humans (IARC Monographs Volumes 1 to 42 Supplement 7, 1987).
8. Mirex can persist in the environment for 12-600 years and its two most common potential breakdown products, Kepone and Photomirex, have toxicological properties similar to Mirex.
9. Results from a 1987 U.S. EPA survey show that Mirex and other pollutants or contaminants from the Nease Chemical Site have contaminated the waters, soils and sediments of Middle Fork Little Beaver Creek (MFLBC) in Mahoning and Columbiana Counties, Ohio.
10. A fish advisory was issued by the Ohio Department of Health on October 7, 1987, for the section of MFLBC that runs from Salem, Ohio to the Route 11 Bridge southeast of Lisbon, Ohio, based on determination through fish and sediment sampling that fish from MFLBC contained Mirex in sufficient quantities to be potentially harmful to humans if consumed in sufficient quantities. On March 8, 1988, the fish advisory was updated to include a warning against swimming and wading within the advisory area.
11. Sampling conducted by the Ohio Environmental Protection Agency between May and June, 1989, showed Mirex present on the Wilms Property at 80 ug/kg (parts per billion). Respondent John R. Wilms was so notified by letter dated June 29, 1989, a copy of which is attached to and fully incorporated herein as Exhibit B.
12. Respondent John R. Wilms has excavated soils and/or sediments, and has sold and/or distributed for profit on one or more occasions soils and/or sediment from the Wilms Property. To wit, Mr. James Kerr, of 44399 State Route 154, Rogers, Ohio, states that he purchased soil from Respondent John R. Wilms during and between the years 1985 - 1986.

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By: Mary Carr Date 11-17-89

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13. Sampling conducted by the Ohio Environmental Protection Agency between May and June, 1989, showed Mirex present on the Kerr property at 21 ug/kg (parts per billion). Mr. James Kerr was so notified by letter dated June 28, 1989, a copy of which is attached and fully incorporated herein as Exhibit C.
14. By certified letter of August 25, 1989, a copy of which is attached and fully incorporated herein as Exhibit D, Respondent John R. Wilms was requested by the Director to contact the Ohio Environmental Protection Agency to confirm that he has ceased all sales and/or distribution of soils and/or sediments from the Wilms Property and requesting his assistance in any investigation of soil contamination on the Wilms property.
15. Respondent John R. Wilms has failed to initiate any contact with the Ohio Environmental Protection Agency in response to the August 25, 1989 letter.
16. Pursuant to ORC Sections 3734.20(A), and (B), the Director has determined that contaminants from the Nease Chemical Site are causing or contributing to or threatening to cause or contribute to water pollution and soil contamination outside the physical boundaries of the Nease Chemical Site.
17. Pursuant to ORC Section 6111.03(H), the Director has determined that run-off from contaminated soils at, upon and/or distributed from the Wilms Property threatens to pollute the waters of the state.

ORDERS

1. Respondent John R. Wilms is hereby ordered to cease and desist all removal, use and/or sales of soils, sediments and/or gravel from the Wilms Property until such time as the Director determines that there exists no threat from contamination or potential contamination to the public health or the environment, and is ordered to refrain forthwith from the dredging, removal or other use, commercial or otherwise, of any soils, sediments, or other materials from the Middle Fork Little Beaver Creek.
2. Respondent John R. Wilms is hereby ordered to immediately provide to OEPA all records, files, receipts, bills and/or notations or other memoranda of sales or other distribution of soils from the Wilms Property. Failure to provide such records, files or other memoranda within seven (7) days of receipt of this order constitutes a violation of this order.

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By: Mary Gorman Date 11-17-89

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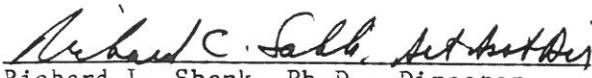
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3. Respondent John R. Wilms is hereby ordered to post signs warning of potential contamination and threat to public health, at least at 200 foot intervals along the Wilms property borders.
4. Respondent John R. Wilms is hereby ordered to provide access to the Wilms property to Ruetgers-Nease Chemical Company, Inc., and to its agents, assigns, contractors and/or employees, and allow Ruetgers-Nease and other such persons referenced above to undertake an investigation to determine the nature and extent of contamination of streams and/or soils on the Wilms property, and permit such persons to be present and move freely in the area in order to accomplish the investigation.
5. Respondent John R. Wilms is hereby ordered to provide access to the Wilms property to OEPA's employees, contractors, agents and consultants for the purpose of investigation, sampling and oversight, and permit such persons to be present and move freely in order to oversee the above referenced investigation.
6. Respondent Ruetgers-Nease is hereby ordered to conduct an investigation of the Wilms property at the direction of OEPA in order to determine the nature and extent of contamination of streams and/or soils on the Wilms property.
7. Nothing contained herein shall be construed to prevent the Director or OEPA from seeking legal or equitable relief to enforce the terms of this Order or from taking other legal or equitable actions as deemed appropriate and necessary.

PENALTIES FOR NON-COMPLIANCE

Respondents John R. Wilms and Ruetgers-Nease Chemical Company are advised that failure or refusal to comply with this Order or any portion thereof may subject Respondents to a civil penalty of ten thousand dollars (\$10,000) per day per violation of ORC Chapter 3734 and 6111 and the rules promulgated thereunder.

IT IS SO ORDERED:


Richard L. Shank, Ph.D., Director
Ohio Environmental Protection Agency

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Date

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By: Mary Carr Date 11-17-89

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