

DERR / New Boston Coke
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SCIOTO COUNTY
OHIO
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**IN THE COURT OF COMMON PLEAS
SCIOTO COUNTY, OHIO**

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**STATE OF OHIO, ex rel.
JIM PETRO
ATTORNEY GENERAL OF OHIO**

CASE NO. 99-CIG-003

Michael R. Shannon
CLERK OF COURTS

Plaintiff,

JUDGE Howard H. Harcha III

v.

NEW BOSTON COKE CORP., et al.

Defendants.

STIPULATION AND ORDER

WHEREAS, Plaintiff State of Ohio ("the State"), pursuant to Ohio Revised Code ("R.C.") Chapter 2705, filed its Amended Written Charges in Contempt against Defendants New Boston Coke Corporation, Inc. ("New Boston Coke"), Fred J. Dery and Gil Mains, Jr. ("Defendants") on June 11, 2003, to enforce the Court's December 20, 2002 Decision and Judgment Entry and its May 2, 2003 Judgment Entry;

WHEREAS, Defendants Fred Dery and Gil Mains deny any liability;

WHEREAS, the State and Defendants have agreed to resolve all of the State's pending contempt charges through this Stipulation and Order, subject to the Court's approval;

WHEREAS, in settlement of these pending contempt charges, the parties agree that the State will dismiss its Amended Written Charges in Contempt without prejudice as to Defendant New Boston Coke and with prejudice as to Defendants Fred Dery and Gil Mains, Jr.;

WHEREAS, the parties have agreed to resolve and settle all pending contempt charges with the understanding that no findings are being made;

WHEREAS, in settlement of the pending contempt charges, Defendants Fred Dery and Gil Mains, Jr., individually agree to pay seventy-five thousand dollars (\$75,000.00) each, i.e., a total of one hundred fifty thousand dollars (\$150,000.00), to the Environmental Protection Remediation Fund of the State of Ohio as established by R.C. Section 3734.281, in full satisfaction and settlement of the contempt charges against them individually as set forth in the Amended Written Charges in Contempt;

NOW THEREFORE, without trial or admission of any issue of law or fact, and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. The Court has jurisdiction over the undersigned parties to this action and the subject matter of the Amended Written Charges in Contempt under R.C. Chapters 2705, 3704, 3734, 3752 and 6111. Venue is proper in this Court.

2. The provisions of this Stipulation and Order shall apply to and be binding upon the State and Defendants, their agents, officers, employees, assigns, successors in interest, and any person acting in concert, privity or participation with them.

3. As to Defendant New Boston Coke, the State's Amended Written Charges in Contempt are dismissed without prejudice. Nothing contained in this Stipulation and Order nor the entry of this Stipulation and Order shall constitute an admission of liability on the part of Defendant New Boston Coke.

4. As to Defendants Fred Dery and Gil Mains, Jr., the State's Amended Written Charges in Contempt are dismissed with prejudice.

5. Within thirty (30) days of this Order, Defendants Fred Dery and Gil Mains, Jr. shall each pay seventy-five thousand dollars (\$75,000.00), i.e., a total of one

hundred fifty thousand dollars (\$150,000.00), to the Environmental Protection Remediation Fund of the State of Ohio. The payments made by Defendants Fred Dery and Gil Mains, Jr. pursuant to this paragraph shall be made in the form of a certified or cashier's check payable to "Environmental Protection Remediation Fund" and sent to:

Merle Pratt
Deputy Director
Office of the Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400

In addition, Defendants Fred Dery and Gil Mains, Jr. shall send a copy of the transmittal letter and copy of the check to the following:

- 1) Fiscal Officer,
DERR
Ohio EPA
P.O. Box 1049
Columbus, Ohio 43216-1049
ATTN: Patricia Campbell
- 2) Ohio EPA Site Coordinator Christine Osborne
Ohio EPA
Southeast District Office
2195 Front St.
Logan, Ohio 43138
- 3) Michael Idzkowski
Assistant Attorney General
Ohio Attorney General's Office
Environmental Enforcement Section,
30 East Broad St., 25th Floor
Columbus, Ohio 43215-3400.

6. Except as otherwise provided for by this Stipulation and Order, compliance with the terms of this Stipulation and Order shall constitute full and complete satisfaction of any civil or criminal contempt liability of Defendants Fred Dery and Gil Mains, Jr. for all claims alleged in the original and/or the Amended Written Charges in

Contempt. It is understood that Fred Dery and Gil Mains, Jr. are not responsible for each other's performance as required by Paragraph 5 of this Stipulation and Order, and that if one of the two of them fails to perform his obligations hereunder, the dismissal with prejudice of the charges against the individual who has so complied remains in full force and effect.

7. Nothing in this Stipulation and Order shall affect Defendant New Boston Coke's obligation to comply with the Court's December 20, 2002 Decision and Judgment Entry and its May 2, 2003 Judgment Entry.

8. Nothing in this Stipulation and Order shall affect Defendants' obligation to comply with all applicable federal, state or local laws, regulations, rules, or ordinances, or the orders of any other Court. However, it is acknowledged that Fred Dery and Gil Mains have resigned from all their capacities in relation to the New Boston Coke Corporation.

9. Nothing in this Stipulation and Order shall limit the authority of the State of Ohio to:

- A. Seek any relief against Defendant New Boston Coke for claims or conditions either alleged or not alleged in the Amended Written Charges in Contempt;
- B. Except as stated above, seek any relief against any party, person or legal entity for claims or conditions alleged in the Amended Written Charges in Contempt that occur after the entry of this Stipulation and Order;
- C. Enforce this Stipulation and Order through a contempt action or otherwise for violations of this Stipulation and Order;
- D. Bring any action (aside from contempt for matters settled herein) against Defendants or against any other person, under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9601, et seq., R.C. Chapters 3704, 3734, 3752,

6111 or any other environmental statutes or regulations of the State of Ohio;

- E. Take any legal action authorized by law or equity against Defendant New Boston Coke to eliminate or mitigate pollution at the site of the former coke production facility owned and/or operated by Defendant New Boston Coke which may present a threat to the public health and safety and the environment; and
- F. Institute collection proceedings against Defendant New Boston Coke to collect the civil penalties awarded to the State of Ohio by the Court's December 20, 2002 Decision and Judgment Entry.

10. The motion of Foley & Lardner, LLP, to withdraw as counsel for Defendant New Boston Coke in this proceeding is granted. As such, Foley & Lardner, LLP, has no continuing duties with respect to New Boston Coke other than those imposed by Paragraphs 13 and 14 and applicable ethical rules.

11. This Stipulation and Order shall be effective and enforceable upon its date of entry by the Court and its provisions shall be self-executing.

12. This Court will retain jurisdiction of this action for the purpose of enforcing compliance with this Stipulation and Order until such time as the obligations in paragraphs 5 and 14 herein are satisfactorily completed, at which time jurisdiction over Defendants Dery and Mains will terminate, except that the duties in paragraph 13 below shall continue to be applicable against Defendants and their current representatives.

13. Defendants and their representatives shall fully disclose and surrender to the Court or the State, through its representatives herein, any funds or other assets with a value of two hundred dollars (\$200.00) or more which Defendants or their representatives know to be attributable to New Boston Coke or to Defendant's former activities on behalf of New Boston Coke received by them subsequent to the date of this Order. Further disposition of such surrendered assets by the State shall be subject to or in conjunction

with the requirements of any previously existing lien held by the Pension Benefit Guaranty Corporation. This paragraph shall not apply to any attorneys' fees or cost reimbursements paid to Defendants' representatives for services provided.

14. Defendant Fred Dery and non-party Foley and Lardner, LLP, shall split the court costs related solely to these contempt proceedings estimated at \$800.00.

15. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Stipulation and Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three days of entering the Stipulation and Order upon the journal, the clerk is hereby directed to serve upon all parties notice of the Stipulation and Order and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

IT IS SO ORDERED.



**HOWARD H. HARCHA III,
JUDGE, SCIOTO COUNTY
COMMON PLEAS COURT**

APPROVED:

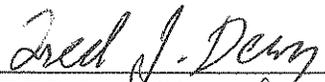
**STATE OF OHIO, ex rel. JIM PETRO
ATTORNEY GENERAL OF OHIO
*Plaintiff***

By: 

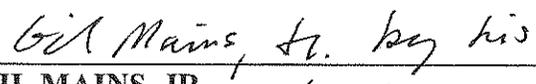
**Michael E. Idzkowski, Esq.
Assistant Attorney General
*Attorney for Plaintiff State of Ohio***

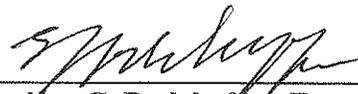
**NEW BOSTON COKE CORPORATION, INC.,
Defendant**

By: 
Salvatore A. Barbatano, Esq.
Foley & Lardner, LLP
Attorneys for New Boston Coke Corporation, Inc.


FRED J. DERY, *Conquered in, his behalf*
Defendant *and with instructions*
by his attorney
(William R. Case)


William R. Case, Esq.
Thompson Hine
Attorneys for Defendant Fred J. Dery


GIL MAINS, JR. *legal counsel*
Defendant


Stephen C. Rodeheffer, Esq.
Attorney for Gil Mains, Jr.