

New Boston Coke (exempted parcels)

SCIOTO COUNTY
OHIO
FILED

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Virginia E. Thompson
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SCIOTO COUNTY, OHIO

STATE OF OHIO, *ex rel.* Jim Petro
Attorney General for the State of Ohio,

Plaintiff,

v.

DLD ONE, LLC,

Defendant.

Case No. 04 CIH 182
Judge Howard H. Harcha III

Consent Order and
Judgment Entry

I. INTRODUCTION

WHEREAS, On December 20, 2002, this Court issued a Decision and Judgment Entry awarding over \$2.6 million in civil penalties against New Boston Coke Corporation ("NBCC") and in favor of the State of Ohio. As part of that Decision and Judgment Entry, this Court ordered and enjoined NBCC to take certain corrective actions with respect to environmental hazards, including on the Three Parcels, as defined below. NBCC has failed to fully comply with this Court's orders issued in the NBCC Environmental Enforcement Action;

WHEREAS, On July 7, 2003, NBCC filed with this Court a Notice of Intent to Abandon and Statement of Financial Affairs of New Boston Coke Corporation ("Abandonment Notice"). In its Abandonment Notice, NBCC stated that it was abandoning the Coke Plant property due to a lack of funds with which to conduct environmental cleanup in accordance with this Court's orders in the NBCC Environmental Enforcement Action. On July 31, 2003, the Bankruptcy Court formally dismissed the NBCC Bankruptcy Case;

WHEREAS, This Court previously determined in the NBCC Environmental Enforcement Action that NBCC caused the contamination and the violations of Ohio environmental law at the Coke Plant site, including failure to clean up hazardous waste and regulated substances upon closure of the facility in compliance with Ohio's Cessation of Regulated Operations ("CRO") statute and the regulations promulgated thereunder (collectively, "Environmental Violations");

WHEREAS, There is no evidence that Defendant caused any contamination or violations of any Ohio environmental laws at the Coke Plant, including the Three Parcels, including under R.C. Chapter 3704, 3734 and 6111 for which this Court has found liability against NBCC in the NBCC Environmental Enforcement Action;

WHEREAS, Defendant obtained title to the Three Parcels site through the Bankruptcy Court on or about November 19, 2003;

WHEREAS Plaintiff, State of Ohio, *ex rel.* Jim Petro, Attorney General of Ohio ("Plaintiff"), having filed the Complaint in this action against the Defendant to enforce Ohio's hazardous waste laws found in Chapter 3734 of the Revised Code and the rules adopted thereunder;

WHEREAS, Plaintiff and Defendant having consented to the entry of this Consent Order; and,

WHEREAS, Defendant does not admit the allegations set forth in the Complaint and deny any violation of any local, state or federal statute, regulation or common law;

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

II. DEFINITIONS

As used in this Consent Order, the following terms, words, and abbreviations shall have the meanings provided below:

- a. “**CERCLA**” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, *et seq.*, as amended.
- b. “**Days**” shall mean calendar days, including weekends and holidays.
- c. “**DLD**” shall mean Defendant DLD One, LLC.
- d. “**Effective Date**” means the date the Scioto County Court of Common Pleas enters this Consent Order.
- e. “**NBCC**” shall mean New Boston Coke Corporation.
- f. “**NBCC Bankruptcy Case**” shall mean the Voluntary Petition for Chapter 11 bankruptcy filed by NBCC in the United States Bankruptcy Court for the Eastern District of Michigan (“**Bankruptcy Court**”) on June 28, 2002 and dismissed by the Bankruptcy Court on July 31, 2003.
- g. “**NBCC Environmental Enforcement Action**” shall mean *State of Ohio, ex rel. Attorney General v. New Boston Coke Corp.*, Scioto County Common Pleas Case No. 99-CIG-003.
- h. “**New Boston Coke Corporation Facility**” or “**Coke Plant**” shall mean the New Boston Coke Corporation plant located on U.S. Route 52, in New Boston, Scioto County, Ohio.
- i. “**Ohio EPA**” shall mean the Ohio Environmental Protection Agency.

- j. "Consent Order" shall mean this Consent Order and all Appendices attached hereto.
- k. "Parties" shall mean the State of Ohio and Defendant DLD One, LLC.
- l. "Three Parcels" shall mean the three parcels described and depicted in more detail in Exhibit A, and incorporated into this Complaint as if stated herein.

III. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, including pursuant to R.C. Chapter 3734 and the rules adopted thereunder. This Court has jurisdiction over the parties. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted.

IV. INJUNCTIVE RELIEF

2. Within thirty (30) days of the Effective Date of this Consent Order, Defendant shall evaluate the contents of all containers and tanks in the boiler house in accordance with OAC 3745-52-11, and upon evaluation, submit the waste evaluation to Ohio EPA. Based on the evaluation, all hazardous wastes must be recycled or disposed of within thirty (30) days of the date of this Order at a permitted treatment, storage or disposal facility in accordance with Ohio hazardous waste laws and regulations. Copies of all manifests must be submitted to Ohio EPA within 30 days of the date of disposal or recycling. All waste which is determined by the waste evaluation to be nonhazardous must be recycled or disposed of at licensed solid waste facility in accordance with Ohio solid waste laws and regulations, within thirty (30) days of the date of this Order. Copies of receipts for recycling or disposal of all nonhazardous waste shall be submitted to Ohio EPA within thirty (30) days of the date of recycling or disposal.

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3. All tanks which previously contained hazardous waste must be decontaminated prior to disposal using decontamination methods as described in 3.10 of the Ohio EPA Division of Hazardous Waste Management Closure Plan Review Guidance (the Guidance), dated March 1999. Either analytical standards or performance-based physical extraction methods described in the guidance may be used to demonstrate that tanks have been properly decontaminated. All residual material generated as a result of decontamination efforts must be managed as hazardous waste unless proven otherwise. A demonstration that standards have been met and that rinseate has been properly handled must be submitted to Ohio EPA within thirty (30) days of decontamination. As an alternative to decontamination, the tanks may be sold as scrap metal, if they will be recycled by a secondary steel producer in accordance with the Guidance. Should this alternative be used, within thirty (30) days of recycling, the Defendant must submit to Ohio EPA documentation in the form of sales agreements, shipping papers, or other documentation, proving the final destination and disposition of the material.

4. Defendant shall submit such additional documentation of its proper removal of the wastes as Ohio EPA may deem necessary.

V. PERSONS BOUND

5. In accordance with Ohio Civ.R. 65(D), this Consent Order shall be binding upon the Defendant, officers, principals, partners, directors, agents, servants, employees, representatives and those persons acting in concert or participation with them.
6. The Defendant shall provide a copy of this Consent Order to each contractor, subcontractor and consultant employed to perform any of the work itemized or referenced herein. The Defendant shall condition all contracts entered into for performance of the work contemplated herein upon performance of the Work in conformity with the terms of this Consent Order. The Defendant shall ensure that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Order.
7. No change in corporate ownership or status of the Defendant, including without limitation, any transfer of assets or real or personal property, shall in any way alter the Defendant's obligations under this Consent Order. Defendant shall provide a copy of this Consent Order to any subsequent owner(s) or successor(s) prior to transfer of Defendant's ownership rights in the Three Parcels.

VI. CALCULATION OF TIME

8. Unless otherwise stated in this Consent Order, where this Consent Order requires actions to be taken within a specified period of time (e.g., "within thirty days"), this time period shall begin on the Effective Date of this Consent Order. In computing any period of time under this Consent Order, 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.

VII. POTENTIAL FOR FORCE MAJEURE

9. If any event occurs which causes or may cause a delay of any of the injunctive relief requirements of this Consent Order, as set out in Section V of the Consent Order, in addition to any requirements set forth under applicable state law, Defendant shall notify the Ohio EPA, in accordance with Section VIII. NOTICES, in writing, within fourteen (14) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by the Defendant to prevent or minimize the delay and the timetable by which measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay, including making timely requests for extensions of time to the Plaintiff as required by applicable law to complete the Work required under this Consent Order.

10. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendant may raise that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitation, acts of God, strikes, unforeseen negative economic circumstances, Acts of War or civil disturbances. While the Plaintiff does not agree that such defenses exist, it is, however, hereby agreed upon by Defendant and the Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at a proceeding to enforce this Consent Order. At that time, Defendant will bear the burden of proving that any delay was or will

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Attorney for DLD One, LLC

Either Party may change the name and/or address of its contact person(s) by sending written notice of the change(s) to the other Party via certified mail.

IX. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

12. Except as otherwise provided in this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of the Defendant to Plaintiff for all claims alleged in the Complaint.

13. Except as otherwise provided for in this Consent Order, including but not limited to Section IV. INJUNCTIVE RELIEF, issuance of a covenant not to sue under R.C. 3746.12 for the Three Parcels, subject to the conditions of such covenant, shall constitute full satisfaction of any civil liability of the Defendant to Plaintiff for all claims alleged in the Complaint. Provided that Defendant commences and continues investigation and remediation of the Three Parcels site pursuant to the Voluntary Action Program as set forth in R.C. Chapter 3746 and rule promulgated thereunder, Plaintiff agrees not to move this Court or file a separate action under Ohio law seeking remediation of the Three Parcels under R.C. Chapter 3734, the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§ 6901 et seq. (RCRA), or CERCLA, for a period of four (4) years after the Effective Date of the Consent Decree, unless Ohio EPA obtains evidence that the Three Parcels present an imminent threat to human health or the environment;

14. Nothing in this Consent Order shall limit the authority of the State of Ohio to:
- a. seek relief for claims and conditions not alleged in the Complaint;
 - b. seek relief for claims or conditions alleged in the Complaint that occur after the effective date of this Consent Order except as provided in paragraph 15 of this Consent Order;
 - c. enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;
 - d. bring any action against Defendant or against any other persons, under CERCLA and/or R.C. 3734.20 through 3734.27 to: (1) recover natural resource damages, and/or (2) order the performance of, and/or recover the costs for any removal, remedial or corrective actions not conducted pursuant to the terms of this Consent Order, except as provided in paragraph 15; or
 - e. take any action authorized by law against any person, including Defendant, to eliminate or mitigate conditions at the Three Parcels which may present an imminent threat to the public health or safety, or the environment.

15. This Consent Order shall be without prejudice to, any civil claims, demands, rights, or causes of action, judicial or administrative, including rights to cost recovery and/or contribution, the Defendant may have or which may in the future accrue to the benefit of the Defendant against others not a party to this Consent Order regarding the Three Parcels.

X. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS

16. All activities undertaken by Defendant pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws, rules, regulations, and permits. For work both on and off the Three Parcels, Defendant is ordered and enjoined to obtain all permits or approvals necessary under applicable federal, state, or local laws and shall submit timely applications and requests for any such permits and approvals. Where such laws appear to conflict with the other requirements of this Consent Order, Defendant is ordered and enjoined to immediately notify Ohio EPA of the potential conflict and to comply with the requirements in law unless Ohio EPA immediately provides Defendant with written notice of a resolution of such conflict and of which requirement Defendant must follow. Defendant is ordered and enjoined to include in all contracts or subcontracts entered into work required under this Consent Order, provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and rules. This Consent Order is not a permit issued pursuant to any federal or state or local law or rule.

XI. RETENTION OF JURISDICTION

17. This Court shall retain jurisdiction of this matter for the purpose of enforcing compliance with this Consent Order.

XII. TERMINATION

18. No earlier than four (4) years from the effective date of this Consent Order, Defendant may move the Court to terminate this Consent Order if Defendant has completed the requirements of Section IV. INJUNCTIVE RELIEF. Plaintiff takes no position at this time as to such motion and reserves any rights it may have to oppose the motion. Termination of this Consent Order shall not affect the provisions of paragraphs 14 through 18.

XIII. ENTRY OF ORDER

19. Upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is directed to serve upon all parties notice of the judgment 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.

XIV. COURT COSTS

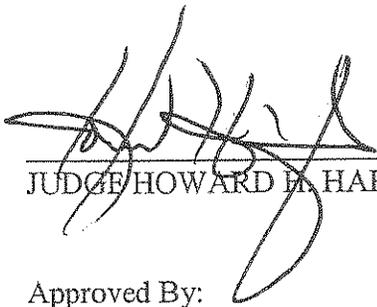
20. Defendant shall pay the court costs of this action.

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XV. AUTHORITY TO ENTER INTO THE CONSENT DECREE

21. Each signatory for a corporation represents and warrants that he/she has been duly authorized to sign this document and bind the corporation to all terms and conditions thereof.

IT IS SO ORDERED.



JUDGE HOWARD B. HARCHA, III

Approved By:

8/24/04

Date

JIM PETRO
ATTORNEY GENERAL OF OHIO

By:



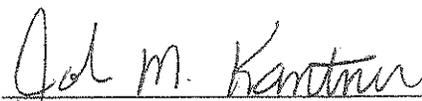
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PARCELS D, E, R

Exhibit "A"Legal Description

PARCEL ONE:

Situated in the State of Ohio, County of Scioto, City of New Boston, being part of Section 12, Township 1-N, Range 21 W and containing 0.957 acres of land, more or less being all out of Tract One as same was conveyed to New Boston Coke Corporation of record Deed Book 739, Page 750 (all references used in this description refer to the records of the Recorder's Office) said 0.957 acres being more particularly subscribed as follows:

Beginning at a 5/8 inch rebar found at the most northwesterly corner of said Tract One;

Thence NORTH 86°00'34" EAST with the north line of said Tract One a distance of 62.85 feet to a 5/8 inch rebar found at an angle point;

Thence NORTH 88°05'34" EAST continuing with a northerly line of said Tract One a distance of 123.03 feet to a 3/4 inch ID iron pipe set at an angle point;

Thence SOUTH 84°26'51" EAST continuing with the northerly line of said Tract One a distance of 69.04 feet to a railroad spike found in the City Corporation line;

Thence SOUTH 10°10'04" EAST with said City Corporation line a distance of 118.29 feet to a railroad spike set;

Thence SOUTH 69°46'25" WEST with a new division line across said Tract One a distance of 254.74 feet to a railroad spike found at the southwestly corner of said Tract One;

Thence NORTH 10°07'57" WEST with a westerly line of said Tract One a distance of 205.93 feet to the true point of beginning and containing 0.957 acres of land, more or less.

Split from Parcel No. 28-0287.000

APPROVED AS TO ACCURACY OF
DESCRIPTION ONLY. DA 01/16/04
DEPUTY COUNTY ENGINEER - DATE

Exhibit "A"

Legal Description

PARCEL TWO:

Situate in Section 12, Township 1-N, Range 21-W, Village of New Boston, Scioto County, Ohio, and being part of Parcel No. 1 in a deed from Detroit Steel Corporation to Cyclops Corporation dated September 22, 1977, and recorded in Volume 698, Page 589, of the Scioto County Deed Records and being more particularly bounded and described as follows:

Beginning at an iron pin on the Southerly right-of-way line of U. S. Route 52 and also on the property line between Cyclops Corporation and Alex B. Fisher (recorded in Volume 456, page 21); thence, with the following three calls along said right-of-way: North 88 deg. 53' 11" East, a distance of 88.42 feet to an iron pin; South 82 deg. 01' 08" East, a distance of 28.84 feet to a steel fence post; and North 84 deg. 02' 58" East, a distance of 37.84 feet to an iron pin; thence, South 6 deg. 02' 16" East, a distance of 60.05 feet to a railroad spike; thence, South 83 deg. 53' 40" West, a distance of 154.03 feet to an iron pin on the aforementioned property line; thence, along said property line, North 5 deg. 57' 02" West, a distance of 74.86 feet to the original place of beginning, containing 0.237 acres, more or less.

Parcel No. 28-1402.000

PARCEL THREE:

Situate in Section 12, Township 1-N, Range 21-W, Village of New Boston, Scioto County, Ohio, and being part of Parcels Numbers 1, 7 and 8 in a deed from Detroit Steel Corporation to Cyclops Corporation dated September 22, 1977, and recorded in Volume 698, Page 589 of the Scioto County Deed Records and part of a 0.037 acre portion of Taylor Avenue vacated by the Village of New Boston by Ordinance No. 2819 dated November 6, 1980, and recorded in Volume 739, Page 349 of the Scioto County Deed Records, and being more particularly bounded and described as follows:

Beginning at a railroad spike on the Westerly right-of-way line of Taylor Avenue at the Northeast corner of Lot 49 in Lakeside Addition (now partially vacated) to the Village of New Boston as shown on the plat of said addition as recorded in Volume 2A, page 133 of the Scioto County Plat Records; thence, along said right-of-way South 0 deg. 51' 02" East, a distance of 16.17 feet to a railroad spike and the true place of beginning; thence, N. 78 deg. 15' 59" East, a distance of 7.70 feet to a railroad spike; thence South 11 deg. 51' 21" East, a distance of 252.67 feet to an iron pin; thence South 77 deg. 00' 14" West, a distance of 96.90 feet to an iron pin; thence, South 88 deg. 51' 29" West, a distance of 457.41 feet to an iron pin; thence, North 31 deg. 33' 17" East, a distance of 198.76 feet to a railroad spike; thence, North 72 deg. 13' 03" E. a distance of 247.55 feet to a railroad spike; thence, North 78 deg. 15' 59" East, a distance of 155.78 feet to the true place of beginning, containing 2.378 acres, more or less.

Parcel No. 28-1398.000

INACCURATE OR INCOMPLETE DESCRIPTION
CAN BE TRANSFERRED 3 MORE TIMES
BEFORE NEW SURVEY IS REQUIRED.

This Conveyance has been examined and the Grantor has complied with section 319.202 of the Revised Code.
FEE \$ 16.80
David L. Green, Attorney
176094