

North Cove

IN THE UNITED STATES DISTRICT COURT OF COMMON PLEAS
FOR THE NORTHERN DISTRICT OF OHIO OF LOCAS COUNTY

State of Ohio, *ex rel.*
Betty Montgomery,
Attorney General Of Ohio,

Plaintiff,

v.

Chrysler Corporation,
and the City of Toledo, Ohio,

Defendants,

and

Chrysler Corporation,
and the City of Toledo, Ohio,

Third-Party Plaintiffs.

v.

The Ohio Department of Transportation,

Third-Party Defendant.

Case No.

Judge

STATE OF OHIO

96-2141

ASSIGNED TO JUDGE JENSEN

CONSENT ORDER
FOR PRELIMINARY
INJUNCTION

FILED
LUCAS COUNTY
JUL 11 4 40 PM '96
COMMON PLEAS COURT
HARPER TOWNSHIP
CLERK OF COURTS

Plaintiff State of Ohio by its Attorney General, Betty Montgomery, at the written request of the Director of the Ohio Environmental Protection Agency, together with Defendants Chrysler Corporation and the City of Toledo, Ohio and Third-Party Defendant the Ohio Department of Transportation (hereinafter collectively referred to as "Defendants") hereby consent to the entry of this Order for Preliminary Injunction.

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

I. STATEMENT OF PURPOSE

1. The purposes of this Consent Order for Preliminary Injunction ("COPI") are: (1) to provide for the implementation of the remedial investigation and feasibility study ("RI/FS") of the North Cove Landfill in order to determine the nature and extent of alleged contamination at the landfill and evaluate several alternative responses to the alleged contamination employing sound scientific, engineering and construction practices; and (2) to provide for the payment of response costs to the Ohio EPA as more fully described in Section XVI.

II. JURISDICTION

2. The Parties agree that the Court has jurisdiction over them and the subject matter of this COPI, and that venue is proper in this Court for the purposes and duration of this COPI.

III. PARTIES BOUND

3. The provisions of this COPI shall apply to and be binding upon the Defendants, their successors in interest, assigns, and others to the extent provided by Civil Rule 65(D); provided, however, the Defendants' officers, employees, agents or employees of any contractor or consultant engaged by Defendants to carry out the Work; to be performed pursuant to this COPI shall only be responsible to take action under this COPI in their corporate capacity, and shall not be personally responsible for the obligations assumed under this COPI.

4. No change in corporate ownership or status of Defendants, including without limitation any transfer of assets of real or personal property, shall in any

way alter Defendants' obligations under this COPI. Defendants shall provide a copy of this COPI to any subsequent owner(s) or successor(s) prior to the transfer of the company's ownership rights. For purposes of this COPI, references to the State of Ohio shall not include Third-Party Defendant the Ohio Department of Transportation.

5. Defendants shall provide a copy of this COPI to each general contractor, subcontractor, laboratory, consultant, agent, employee, and person hired by or who will provide work or services on behalf of Defendants related to this COPI.

IV. DEFINITIONS

6. As used in this COPI, the following terms, words, and abbreviations shall have the meanings provided below:

A. "COPI" shall mean this Consent Order for Preliminary Injunction.

B. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended.

C. "Contractor" shall mean a qualified contractor retained by the Defendants pursuant to this COPI, and any subcontractor, representative, agent, employee, or designee thereof.

D. "Days" shall mean calendar days, including weekends and holidays.

E. "Defendants" shall mean Defendants Chrysler Corporation and City of Toledo, Ohio and Third-Party Defendant the Ohio Department of Transportation individually and collectively, unless otherwise indicated.

F. "Director" shall mean the Director of the Ohio Environmental Protection Agency and the Director's duly authorized representatives.

G. "Document" shall mean any record, report, photograph, videotape, correspondence, computer disk or tape, recorded or retrievable information of any kind, including raw data, narrative reports, and any and all documentary evidence, relating to the treatment, storage, or disposal, and concerning the investigation and remediation of, hazardous wastes, solid wastes, industrial wastes, other wastes, hazardous substances, hazardous constituents and radioactive wastes at the Site. "Document" shall be construed broadly to promote the effective sharing between Defendant(s) and Ohio EPA of information and views concerning the work to be performed pursuant to this COPI.

H. "Feasibility Study" ("FS") shall mean the development, evaluation, and analysis of remedial alternatives for the Site in accordance with state and federal environmental laws and with this COPI.

I. "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, referred to in CERCLA as the National Contingency Plan, and codified at 40 C.F.R. Part 300, as amended.

J. "OEPA" or "Ohio EPA" shall mean the Ohio Environmental Protection Agency or its Director and his/her designated representatives as the context or other law or regulation may require

K. "Oversight Costs" shall mean all direct and indirect costs of oversight incurred by Ohio in verifying the Work to be performed by Defendants pursuant to this COPI, or otherwise implementing or enforcing this COPI, including without limitation the costs of payroll, fringe, contractors, travel, oversight, samples, laboratory analysis, data management, safety and general equipment, supplies, general maintenance, reviewing or developing work plans, reports, or other items pursuant to this COPI.

L. "Paragraph" shall mean a portion of the COPI identified by an arabic numeral or an upper case letter.

M. "Parties" shall mean the State of Ohio and the Defendants.

N. "Remedial Investigation" ("RI") shall mean the investigation conducted in accordance with state and federal environmental laws and this COPI by Defendants to determine the nature and extent of the contamination at the Site, and includes the gathering of all necessary data to support the Feasibility Study.

O. "Remedial Investigation/Feasibility Study" ("RI/FS") shall mean the Remedial Investigation and Feasibility Study together.

P. "Response Costs" shall mean all costs incurred by Ohio pursuant to this COPI, verifying the Work};, doing the Work or otherwise implementing or enforcing this COPI, including, without limitation, payroll costs, contractor costs, travel costs, direct costs, indirect costs, legal and enforcement related costs, Oversight Costs, laboratory costs, the costs of reviewing or developing plans, reports, and other items.

Q. "Section" shall mean a portion of this COPI identified by a roman numeral.

R. "Site" shall mean the former North Cove Landfill, located in Toledo, Ohio in the vicinity of Interstate Highway 1-75, the Ottawa River, and the former Willys Test Track, as described and depicted in more detail in the RI/FS Workplan incorporated herein as Appendix A. The full extent of the Site has not been determined, but shall include any additional contiguous property, including waters of the State, where contamination is shown to have migrated from the North Cove Landfill as determined pursuant to the RI/FS.

S. "Statement of Work" ("SOW") shall mean the statement of work for the implementation of the RI/FS as set forth in Appendix C to this COPI.

T. "Waste Material" shall mean (1) any "hazardous waste" as that term is defined under R.C. Section 3734.01(J); (2) any "solid waste" as that term is defined under R.C. Section 3734.01(E); (3) any "industrial waste" as that term is defined under R.C. Section 6111.01(C); (4) any "other waste" as that term is defined under R.C. Section 6111.01(D); (5) any "hazardous substances" as that term is defined under Section 101(14) of CERCLA, 42 USC §9601(14); and, (6) any "hazardous constituent" as that term is defined under Rule 3745-50-10(A) of the Ohio Administrative Code ("OAC").

U. "Work" shall mean all activities pertaining to the Site which Defendants are required to perform under this COPI.

V. "Workplans" shall mean those documents which have been submitted, or which are to be submitted to Ohio EPA by Defendants pursuant to this COPI detailing the requirements for characterizing the Site and for support of the RI/FS, and Site access restrictions. Each

required workplan shall include a detailed description of the proposed investigations and/or implementation activities; a time schedule for conducting those activities; and personnel and equipment needs. For each workplan that includes sampling as an element, the Workplan shall include a sampling plan together with a rationale for the sampling activities, locations, quantity and frequency of sampling, constituents for analysis, and quality control/quality assurance procedures.

7. Except as otherwise defined above, the terms used in this COPI shall have the same meaning as used in Ohio Revised Code Chapters 3734 and 6111 and the regulations promulgated thereunder.

V. DESIGNATIONS OF SITE COORDINATORS

8. The Defendants shall designate a single site coordinator and an alternate site coordinator to oversee and implement all work required by this COPI and to coordinate with the Ohio EPA site coordinator. Each Defendant also may designate a project manager for that respective Defendant.

9. Within ten (10) days of the entry date of this COPI, Defendants shall notify Ohio EPA in writing of the name, address, and telephone number of their designated site coordinator and alternate site coordinator. If a designated site coordinator or alternate site coordinator is changed, the identity of the successor will be given to the other Party at least (5) days before the changes occur, unless impracticable, but in no event later than the actual day the change is made.

10. To the maximum extent practicable, except as specifically provided in this COPI, communications between the Parties regarding the implementation of this COPI shall be made between the Defendants' site coordinator and the Ohio EPA site coordinator, with copies to the alternate site coordinator. Defendants' site

coordinator, or an alternate shall be available, including for communication with Ohio EPA, for the duration of this COPI. Each Party's site coordinator shall be responsible for assuring that all communications from the other Party are appropriately disseminated and processed. Defendants' site coordinator or an alternate shall be present on the Site or on call during all hours of work at the Site. The absence of the Ohio EPA site coordinator shall not be cause for the stoppage of work unless otherwise provided by Ohio EPA in writing.

11. The site coordinators shall, whenever possible, operate by consensus to resolve issues arising under, or concerning implementation of, this COPI. In seeking to reach a consensus, the Defendants' site coordinator may seek; to involve each Defendants project manager to the extent reasonable and appropriate. Without limiting the application of Section XIX (Dispute Resolution) to other disputes arising under this COPI, if the site coordinators are unable to reach consensus through the consultation processes provided under Paragraphs 12. A. or 14. A., then the disputed issue(s) shall be resolved in accordance with Section XIX (Dispute Resolution).

12. Without limiting of any authority conferred by law on Ohio EPA, the authority, of the Ohio EPA site coordinator includes, but is not limited to:

A. Taking samples and, in consultation with the Defendants' site coordinator, determining the type, quantity and location of samples to be taken by Defendants pursuant to an approved workplan;

B. Observing, taking photographs, or otherwise recording information related to the implementation of this COPI, including the use of any mechanical or photographic device;

C. Directing that work stop whenever the site coordinator for Ohio EPA determines that the activities at the Site may create or exacerbate a substantial threat to public health or safety, or threaten to cause or contribute to air or water pollution or soil contamination;

D. Conducting investigations and tests related to the implementation of this COPI;

E. Inspecting and copying records, operating logs, contracts and/or other documents related to the implementation of this COPI subject to Section XIII ACCESS TO INFORMATION AND RECORDS RETENTION;

F. Assessing Defendants' compliance with this COPI.

G. Conducting inspections at any time of all areas of the Site (see Section on SITE ACCESS herein).

H. Acting on behalf of Ohio EPA in implementing Section IX REVIEW OF SUBMITTALS.

VI. SITE ACCESS RESTRICTIONS

13. For the duration of this COPI, Defendants shall maintain in place the existing restrictions to Site access, including without limitation fencing, gates, and/or other means of restricting public access. Defendants shall implement such additional means of restricting public access as are reasonable and necessary during the performance of Work required under this COPI, taking into account the existing use of a portion of the Site as an interstate highway.

VII. REMEDIAL INVESTIGATION/FEASIBILITY STUDY

14. Defendants shall implement a Remedial Investigation/Feasibility Study as described in the approved RI/FS Workplan and pursuant to the terms of this COPI. All Work performed pursuant to this COPI shall be under the direction and supervision of a contractor with expertise in hazardous waste site investigation.

Defendants shall notify Ohio EPA in writing of the name of the supervising contractor and any subcontractor to be used in carrying out the terms of this COPI.

A. The RI/FS Workplan is contained in Appendix A hereto, and is hereby incorporated as an enforceable part of this COPI. The approved Field Sampling Plan, Quality Assurance Project Plan and Site Safety Plan also are incorporated as enforceable parts of this COPI. The Work performed at the Site shall not be inconsistent with the National Contingency Plan 40 C.F.R. Part 300, as amended ("NCP"), and shall comply with the COPI, the guidance documents included in Appendix B attached hereto and incorporated fully herein, and R.C. Chapters 3734 and 6111. In addition, matters not addressed by the approved RI/FS Workplan shall comply with the RI/FS SOW, included in Appendix C attached hereto and incorporated fully herein. If Ohio EPA, in consultation with Defendants, determines that any additional or revised guidance documents affect the work to be performed in implementing the RI/FS Workplan, Defendants shall modify the RI/FS Workplan and other affected documents accordingly.

B. Defendants shall implement the work detailed in the RI/FS Workplan in accordance with the schedule contained therein. Defendants shall submit all plans, reports, or other deliverables required under the approved RI/FS Workplan, in accordance with the approved schedule, for review and approval pursuant to Section IX. REVIEW OF SUBMITTALS of this COPI.

VIII. ADDITIONAL WORK

15. Ohio EPA or Defendants may determine that in addition to the tasks defined in the approved RI/FS Work plan and other requirements of this COPI, additional Work may be necessary to accomplish the purposes set forth in Section I of this COPI. Such additional Work shall be consistent with the approved RI/FS Workplan to the extent feasible.

16. Within ten (10) days after Ohio EPA has determined that additional Work is necessary and has notified the Defendants in writing, Defendants shall prepare and submit a Workplan for Ohio EPA's review and approval for the performance of the additional Work ("Additional Work Workplan"). Defendants shall develop the Additional Work Workplan in conformance with the approved RI/FS Workplan and applicable guidance documents (listed in Appendix B), and, for matters not addressed by the approved RI/FS Workplan, applicable provisions of the RI/FS SOW (Appendix C). Defendants shall submit the Additional Work Workplan for review and approval pursuant to Section IX. REVIEW OF SUBMITTALS. Upon approval of the Workplan by Ohio EPA, Defendants shall implement the Workplan for additional Work in accordance with the schedules contained therein.

17. In the event that defendants determine that additional Work is necessary to achieve the purpose of this COPI, Defendants shall submit a written request for approval to Ohio EPA explaining the need for and detailing the nature of the additional Work prior to performing the additional Work. Upon agreement

by Ohio EPA with Defendants' request, Defendants shall develop and implement an Additional Work Workplan as described in the preceding paragraph.

18. In the event that additional Work is necessary for any task described in this COPI, the deadline for completing such task(s) shall be extended by the amount of time required to perform the additional Work required, including the period of time required to plan and/or obtain approval from the Ohio EPA for the performance of such Work.

IX. REVIEW OF SUBMITTALS

19. Ohio EPA agrees to review any Workplan, report, study, or other document that Defendants are required under this COPI to submit to Ohio EPA. Ohio EPA will attempt to review said documents on an expedited basis as necessary to avoid delay. Ohio EPA may review such Workplan, report, study or other document in accordance with this COPI, applicable policies, guidelines and appropriate state and federal laws. Ohio EPA agrees to consult with Defendants, if requested, prior to and following submission of any Workplan, report, study or other document that Defendants are required under this COPI to submit to Ohio EPA. Upon review, Ohio EPA may:

- A. Approve the submission, in writing, in whole or in part;
 - B. Approve the submission upon specified conditions;
 - C. Direct Defendants to modify the submission;
 - D. Disapprove the submission in whole or in part, notifying Defendants of the deficiencies;
- or
- E. Any combination of the above.

20. In the event of approval or approval upon condition by the Ohio EPA, Defendants shall proceed to take any action required by the submission as approved by Ohio EPA, or as conditionally approved by Ohio EPA. Defendants reserve the right to invoke the Dispute Resolution provisions of this COPI with respect to any original or revised submission which Ohio EPA disapproves, directs Defendants to modify, or approves upon condition, whether in whole or in part.

21. In the event that Ohio EPA initially disapproves a submission, in whole or in part, and notifies Defendants of the deficiencies in writing, Defendants shall within fourteen (14) days, or such longer period of time as specified by the Ohio EPA in writing, correct the deficiencies and resubmit to Ohio EPA for approval a revised submission. By agreement of the site coordinators, the Defendants may be permitted to resubmit only such portions as pertain to the notice of deficiency. The revised submission shall incorporate all of the changes, additions, and/or deletions specified by Ohio EPA in its notice of deficiency. Any Work done by Defendants prior to Ohio EPA's approval of a submission of a corresponding deliverable is subject to later revision to conform such Work with the submission as finally approved.

22. In the event that Ohio EPA disapproves a revised submission, in whole or in part, Ohio EPA may again require Defendants to correct the deficiencies and incorporate all changes, additions, and/or deletions within fourteen (14) days, or such period of time as specified by Ohio EPA in writing. In the alternative, Ohio EPA retains the right to perform any or all of the remediation, including but not

limited to conducting a complete or partial RI/FS.

23. All Workplans, reports, or other items required to be submitted to Ohio EPA under this COPI shall, upon approval by Ohio EPA, be deemed to be incorporated in and made an enforceable part of this COPI and, upon such approval, shall be deemed not inconsistent with the NCP in the opinion of the Ohio EPA. In the event that Ohio EPA approves a portion of a Workplan, report, or other item, the approved portion shall be deemed to be incorporated in and made an enforceable part of this COPI.

24. The Defendants' and Ohio EPA's site coordinators may jointly agree to minor field changes to be made by the Defendants to any document, workplan, report, or study approved by the Ohio EPA. Defendants shall notify Ohio EPA's site coordinator of the nature of and reasons for the desired modification. Within five (5) days of agreement by Ohio EPA's and the Defendants' site coordinators, or longer if the site coordinators agree, the Defendant's site coordinator shall submit written notification describing the agreed minor field changes to Ohio EPA's site coordinator for review and approval. Ohio EPA agrees to document such an agreement by letter to the Defendant's site coordinator setting forth the nature and extent of the minor field changes to be made.

25. In the event of disapproval of any second submittal under Section IX. REVIEW OF SUBMITTALS, or any noncompliance with the terms of or deadlines under this COPI, Ohio EPA may conduct any of the Work required by this COPI, including a complete or partial Remedial Investigation and Feasibility Study.

X. NEGOTIATION OF RD/RA ORDER

26. Upon completion and approval of the RI/FS, the Parties agree to meet and confer in good faith concerning the negotiation of a consent order that would include, but not necessarily be limited to, a permanent injunction implementing the Remedial Design and Remedial Action ("RD/RA") for the selected remedy.

27. The Dispute Resolution procedures set forth in Section XIX do not apply to the provisions of this Section. Nothing in this COPI shall be deemed to waive any right Defendants may have to challenge the Ohio EPA's selection of a remedy, outside of the terms of the COPI.

XI. DOCUMENT SUBMITTAL

28. Unless otherwise provided in this COPI, all documents required to be submitted pursuant to this COPI shall be sent by certified mail return receipt requested, or equivalent, to the following addresses:

Ohio Environmental Protection Agency
1800 WaterMark Drive
P.O. Box 1049
Columbus, Ohio 43266-0149
ATTN: Manager, TPSS, DERR

and

Ohio Environmental Protection Agency
Northwest District Office
347 North Dunbridge Rd.
Bowling Green, Ohio 43402
ATTN: Site Coordinator, North Cove Landfill

29. Unless otherwise provided in the relevant Section, all notices and correspondence to Defendants pursuant to Sections VIII (Additional Work), IX

(Review of Submittals), XVI (Reimbursement of Costs), XVII (Indemnity) and XIX (Dispute Resolution) will be directed to the following addresses:

Chrysler Corporation

W.C. Achinger
Chrysler Corporation
Chrysler Tech Center
CIMS 482-00-51
800 Chrysler Drive
Auburn Hills, MI 48326-2757

Lynn Y. Buhl, Esq.
Chrysler Corporation
Office of the General Counsel
CIMS 485-13-65
1000 Chrysler Avenue
Auburn Hills, MI 48326-2766

City of Toledo

John D. Scouten, Esq.
Department of Law
City of Toledo
One Government Center, Su 2250
Toledo, OH 43604-2293

Alan Ruffell
Environmental & Consumer Health Dept.
City of Toledo
635 Erie Street
Toledo, OH 43624

Ohio Department of Transportation

Lisa Conomy, Esq.
Office of Chief Legal Counsel
Ohio Department of Transportation
25 South Front Street
Columbus, OH 43216-0899

Ellen B. Leidner, Esq.
Transportation Section
Ohio Attorney General
37 West Broad Street
Columbus, OH 43216-0899

XII. DEFENDANTS' PROGRESS REPORTS

30. Unless otherwise directed by Ohio EPA, Defendants shall submit a written progress report to Ohio EPA by the tenth (10) day of every month. At a minimum, each progress report shall:

- A. Identify the Site and activity;
- B. Describe the status of the work and actions taken towards

achieving compliance with this COPI during the reporting period and activities which are scheduled for the next month;

C. Describe difficulties encountered during the reporting period and actions taken to rectify any deficiencies;

D. Describe activities planned for the next month;

E. Identify changes in key personnel;

F. List target and actual completion dates for each element of activity, including project completion; and

G. Provide an explanation for any deviation from any applicable schedules.

XIII. ACCESS TO INFORMATION AND RECORDS RETENTION

31. Defendants shall provide to Ohio EPA, upon written request, copies of all non-privileged documents and information within their possession or control, or that of their contractors or agents relating to events or conditions at the Site including without limitation manifests, reports, correspondence, or other documents, photos, or audiovisual information related to the Work.

32. Unless Defendants show that a document or other information submitted to Ohio EPA pursuant to this COPI is confidential under the provisions of OAC 3745-50-30(A) or R.C. 6111.05(A), Ohio EPA may release the document or other information to the public without notice to Defendants.

33. If Defendants assert that certain documents or other information are privileged and/or confidential under state law, Defendants shall provide Ohio EPA with the following:

A. The title of the document or information;

- B. The date of the document or information;
- C. The name and title of the author of the document or information;
- D. The name and title of each addressee and recipient;
- E. A general description of the contents of the documents or information; and,
- F. The privilege or basis of confidentiality being asserted by Defendants and the basis for the assertion.

34. No claim of confidentiality or privilege shall be made with respect to any data including without limitation all sampling, analytical, monitoring, or laboratory reports.

35. Defendants shall preserve for the duration of the COPI and for a minimum of ten (10) years after its termination, at least one copy of all documents and other information within its possession or control, or within the possession of its contractors or agents, which in any way relate to the Work, notwithstanding any document retention policies to the contrary. Defendants may preserve such documents by microfiche, or other electronic or photographic device. At the conclusion of this document retention period, Defendants shall notify Ohio EPA at least sixty (60) days prior to the destruction of these documents or other information; and upon request, shall deliver such documents and other information to Ohio EPA, unless such documents are privileged.

XIV. SITE ACCESS

36. Ohio EPA, its employees and agents, shall have full access to the Site at all reasonable times without the need for a warrant, as may be necessary for the

implementation of this COPI. Access under this COPI shall be for the limited purpose of carrying out the following activities and related activities of this COPI:

- A. Monitoring the work;
- B. Conducting sampling;
- C. Inspecting and copying non-privileged records, operating logs, contracts, and/or other documents related to the implementation of this COPI; and,
- D. Verifying the data and/or information submitted to Ohio EPA.

37. To the extent that the Site or any other property to which access is required for the implementation of this COPI is owned or controlled by persons other than Defendants, Defendants shall use their best efforts to secure from such persons access for Defendants and Ohio EPA as necessary to effectuate this COPI. Copies of all access agreements obtained by Defendants shall be submitted to Ohio EPA within ten (10) days of receipt by Defendants. If any access required to effectuate this COPI is not obtained within thirty (30) days of the entry date of this COPI, or within thirty (30) days of the date that Ohio EPA notifies Defendants in writing that additional access beyond that previously secured is necessary, Defendants shall promptly notify Ohio EPA in writing of the steps Defendants have taken to obtain access. Ohio EPA may, as it deems appropriate, assist Defendants in obtaining access.

38. This Section shall not be construed to eliminate or restrict any State right to seek access to the Site which it may otherwise have under Federal or State law.

XV. NOTICE OF CONVEYANCE AND DEED NOTICE

39. A Defendant shall not convey any interest in the Site owned by such Defendant without first notifying the Ohio EPA, by certified mail, at least ninety (90) days prior to such conveyance. Prior to conveying any such interest, the Defendant shall also place in the deed for the portion of the Site to be conveyed an appropriate notice as to the condition thereof, which shall first be approved by the Ohio EPA.

XVI. REIMBURSEMENT OF COSTS

40. Defendants shall reimburse the State of Ohio for all Response Costs incurred prior to this COPI and for Response Costs incurred through completion of Work required by this COPI.

41. Within ninety (90) days of the entry of this COPI, Ohio EPA may submit an itemized statement of the Response Costs incurred through December 31, 1994. Within six (6) months after the end of each calendar year beginning with 1995, the Ohio EPA may submit to Defendants an itemized statement of the Response Costs incurred for that calendar year, i.e., January 1st through December 31st. Any failure to submit an itemized statement within the time frames indicated above does not preclude submission of said statement at a later time.

42. Defendants shall pay the Response Costs included in the itemized statement within thirty (30) days of receipt of such itemized statement or, for Response Costs which are disputed under Section XIX. DISPUTE RESOLUTION, within thirty (30) days following resolution of the dispute, to the extent the dispute is resolved in favor of the State of Ohio. The pendency of a dispute with respect to a

portion of the Response Costs included in an itemized statement shall not affect Defendants' obligation to pay the remaining, undisputed Response Costs included in such itemized statement.

43. The provisions of Section XIX. DISPUTE RESOLUTION shall apply to any dispute concerning Response Costs, except that Defendants' ability to dispute Ohio EPA's Response Costs shall be limited to: (1) whether such costs properly are "Response Costs" within the meaning of this COPI and (2) the accuracy of the accounting for such Response Costs.

44. Defendants shall remit payments to Ohio EPA pursuant to this Section as follows:

A. Except as otherwise provided below, payment shall be made by certified check payable to "Treasurer, State of Ohio", and shall be forwarded to the Fiscal Officer, Ohio EPA, P.O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43266-0149, ATTN: Edith Long (or successor).

B. A copy of the transmittal shall be sent to the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43266-0149, ATTN: Patricia Campbell (or successor).

C. For costs incurred by the Ohio Attorney General's office, payment shall be made by certified check; payable to "Treasurer, State of Ohio," and shall be delivered to Matthew A. Sanders, Administrative Assistant, or his successor, Environmental Enforcement Section, Ohio Attorney General's Office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

XVII. INDEMNITY

45. A. Defendant Chrysler Corporation and, to the extent of their respective authorities, Defendants the Ohio Department of Transportation and the

City or Toledo agree to indemnify, save, and hold harmless the State of Ohio from any and all claims or causes of action brought against the State of Ohio for personal injury, death, or property damage, and arising from, or on account of, conditions or events at the Site for which Defendants are responsible, the State of Ohio's oversight of activities at this Site during the duration of this COPI, and acts or omissions of the Defendants, their officers, employees, receivers, trustees, agents, or assigns, in carrying out any activities pursuant to this COPI.

B. Defendant Chrysler Corporation and, to the extent of their respective authorities, Defendants the Ohio Department of Transportation and the City of Toledo agree to indemnify, save, and hold harmless the State of Ohio from any and all claims or causes of action alleging that the State of Ohio is liable, under federal, state or local law, for payment of environmental response costs or performance of environmental response or remedial activities, or any other activities required under any environmental law, concerning the Site.

C. The State of Ohio shall not be considered a party to and shall not be held liable under any contract entered into by Defendants in carrying out the activities pursuant to this COPI.

D. Consistent with federal, state and common law, nothing in this COPI shall render Defendants liable to indemnify the State of Ohio for any negligent or other tortious act or omission of the State of Ohio occurring outside of the State of Ohio's exercise of its discretionary functions. Discretionary functions of the State of Ohio include, without limitation, the State of Ohio's review, approval or

disapproval of Work performed pursuant to this COPI.

E. Nothing in this COPI (i) shall relieve the State of Ohio from any liability, obligation or responsibility to any employee of the State of Ohio under applicable workers' compensation laws, or (ii) shall render Defendants liable to indemnify the State of Ohio for any claim or cause of action by such an employee against the State of Ohio which is subject to applicable workers' compensation laws. Nothing in this COPI shall be deemed to create any right, claim or cause of action by any employee of the State of Ohio against any Defendant.

F. The State of Ohio agrees to provide notice to Defendants within thirty (30) days of receipt of any claim which may be the subject of this Section. Defendants and the State of Ohio will cooperate in the defense or any claim or action against the State of Ohio which may be the subject of this indemnity.

XVIII. RESOLUTION OF INCONSISTENCIES

46. Should Defendants identify any inconsistency between any of the laws, rules, regulations, or guidance documents or orders which they are required to follow pursuant to this COPI, Defendants shall notify Ohio EPA in writing of each such inconsistency and its effect on the work to be performed. Defendants shall recommend, with supporting rationale justifying each recommendation, the requirement which they believe should be followed. Ohio EPA agrees to consult with Defendants to determine the appropriate requirement to be followed. Defendants shall implement the affected Workplan, report, or other deliverable based upon Ohio EPA's determination following such consultation.

XIX. DISPUTE RESOLUTION

47. In the event that Defendants have a good faith dispute involving the implementation of this COPI, the site coordinators shall have seven (7) days from the date the dispute arises to negotiate in good faith in an attempt to resolve the dispute. This seven (7) day period may be extended by mutual agreement of the Parties.

48. In the event the site coordinators are unable to reach consensus on the dispute, each site coordinator shall reduce his/her position to writing within seven (7) days of the end of the good faith negotiation period described in the preceding paragraph. Those written positions shall be immediately exchanged by the site coordinators. Following the exchange of written positions, the site coordinators shall have an additional seven (7) days to resolve the dispute.

49. If Ohio EPA does not concur with Defendants, the Ohio EPA site coordinator will notify Defendants in writing. Upon receipt of such written notice, Defendants shall have seven (7) days to forward a request for resolution of the dispute, along with a written statement of the dispute, to the Chief of the Division of Emergency Response and Remediation (DERR) at Ohio EPA. The statement of dispute shall be limited to a concise presentation of the Defendants' position on the dispute. The Chief of DERR, or his/her designee, will resolve the dispute based upon and consistent with this COPI, applicable policies and guidance documents, and appropriate state and federal laws, and notify Defendants of the resolution within fourteen (14) days of the Defendants' request for dispute resolution.

50. Any Defendant may petition the Court within 14 days of receipt of the Chief of DERR's written notification of dispute resolution as described in the preceding paragraph. The petitioning Party shall bear the burden of demonstrating that the Chief of DERR's resolution of the dispute was unlawful or unreasonable. Without limiting the ability of petitioning Defendant(s) to make other arguments, the petitioning Defendant(s) may seek to show that the Chief of DERR's resolution of the dispute was unlawful or unreasonable on the ground that such resolution was not in accordance with this COPI.

51. The pendency of dispute resolution set forth in this Section shall not affect the time period for completion of the Work to be performed under this COPI, unless otherwise agreed by the Parties or determined by the Court following a petition pursuant to the preceding paragraph.

52. Within thirty (30) days of resolution of any dispute, Defendants shall incorporate the resolution and final determination into the appropriate Workplan, schedule or procedures and proceed to implement this COPI according to the amended Workplans, schedule or procedures as approved.

53. Unless otherwise expressly provided for in this COPI, the dispute resolution procedures of this Section shall be the exclusive mechanism for Defendants to resolve disputes arising under or with respect to this COPI.

54. In any dispute subject to dispute resolution, the Parties may, by written agreement, modify the procedures in the first three paragraphs of this Section.

XX. RESERVATION OF RIGHTS

55. The State of Ohio reserves the right to seek further relief from this or any Court including without limitation further preliminary and/or permanent injunctive relief, civil penalties and cost recovery for work beyond this COPI. This reservation explicitly includes the State's right to pursue an order implementing a remedy for contamination at the Site, including without limitation a Remedial Design ("RD") and Remedial Action ("RA") order (collectively "RD/RA" Order), and to seek recovery of costs for such work. This reservation also explicitly includes the State of Ohio's right to seek relief for claims for damages to natural resources. This COPI in no way waives any defenses which Defendants may have as to such further relief.

56. The State of Ohio expressly reserves, and this COPI shall be without prejudice to, any civil or criminal claims, demands, rights, or causes of action, judicial or administrative, the State of Ohio may have or which may in the future accrue against Defendants or others, regardless of whether such claim, demand, right or cause of action was asserted in the Complaint. This COPI in no way waives any defenses which Defendants may have as to such claims, demands, rights or causes or action.

57. Nothing herein shall limit the authority of the State of Ohio to undertake any action against any entity, including Defendants, to eliminate or control conditions which may present a threat to the public health, safety, welfare or environment, and to seek cost reimbursement for any such action.

58. Nothing herein shall be construed to relieve Defendants of their obligation to comply with applicable federal, state or local statutes, regulations or ordinances, including without limitation permit requirements.

59. Entering into this COPI, the COPI itself, or the taking of any action in accordance with it do not constitute an admission by Defendants of any factual or legal matters or opinions set forth herein. Defendants do not admit liability under Ohio law or any other applicable law, rule or regulation for any purpose or admit any issues of fact or law, any wrongdoing, or any responsibility with regard to Waste Material, releases or threatened releases of hazardous substances at or from the Site, or with regard to any contamination at or from the Site. Defendants do not admit and reserve their rights to contest or legally challenge jurisdiction and venue with regard to activities not required or contemplated by this COPI. Nothing herein absolves Defendants from the duty to comply with this COPI.

60. Defendants reserve all rights that they may have against each other under all federal, state and local laws, except as may be set forth in a separate agreement or agreements.

XXI. APPENDICES

61. All appendices to this COPI are incorporated by reference into and are an enforceable part of this COPI. The following appendices are attached to this COPI at the time of signing by the Parties: A. Approved RI/FS Workplan; B. List of Guidance Documents; and C. Statement of Work (SOW).

XXII. MODIFICATION

62. No modification shall be made to this COPI without the written agreement of the Parties and the Court.

XXIII. STAY OF LITIGATION

63. Other than for the purpose of enforcing compliance with this COPI, the Parties agree that all further proceedings in this case, including but not limited to filing answers and propounding discovery, shall be stayed pending further order of this Court. The Parties reserve the right to move the Court to lift such stay. For purposes of filing answers pursuant to Civil Rule 12, the State of Ohio's Complaint and Chrysler's Third-Party Complaint shall be deemed to be filed on the date the stay is lifted.

XXIV. RETENTION OF JURISDICTION

64. This Court shall retain jurisdiction of this matter for the purpose of overseeing compliance with this COPI.

XXV. TERMINATION

65. Upon completion of all activities required or contemplated under this COPI, including additional Work and payment of all Response Costs owed, some or all of the Defendants may move the Court for an order terminating this COPI. Nothing herein shall preclude Ohio EPA from seeking further investigatory work in connection with implementation of a remedy or to address an imminent threat of harm to the public health or the environment. This Section, and the Sections of this COPI on Reservation of Rights, Indemnity, Notice of Conveyance and Deed

Notice, and Access to Information, shall survive this Termination provision.

XXVI. COURT COSTS

66. Defendants shall pay the court costs of this action.

XXVII. SIGNATORIES

67. Each undersigned representative of each respective Defendant understands the terms and conditions of this COPI and certifies that he or she is fully authorized to enter into the terms and conditions of this COPI and to execute and legally bind the respective Defendants to this document.

EFFECTIVE UPON AND ENTERED THIS _____ DAY OF _____, 1996.



JUDGE COURT OF COMMON PLEAS

Respectfully submitted,

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO



JAMES O. PAYNE, JR. (0008129)
JOSEPH P. KONCELIK (0061692)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410
(614)466-2766

The undersigned settling Defendant hereby consents to the foregoing Consent Order for Preliminary Injunction in State of Ohio v. Chrysler Corporation, et al.

CHRYSLER CORPORATION
1000 Chrysler Drive
CIMS 485-13-65
Auburn Hills, MI 48326-2766

By: L. C. Richie
L. C. Richie
Vice President & General Counsel
Automotive Legal Affairs

By: Lynn Y. Buhl
Lynn Y. Buhl, Esq.
Attorney for Defendant Chrysler Corporation

The undersigned settling Defendant hereby consents to the foregoing Consent Order for Preliminary Injunction in State of Ohio v. Chrysler Corporation, et. al.

CITY OF TOLEDO
One Government Center
Toledo, Ohio 43604-2293

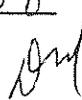
By:



Carleton S. Finkbeiner
Mayor, City of Toledo



Approved as to Form and Content, in accordance with City of Toledo Ordinance 588-95 (attached hereto)


Edward M. Yosses
Acting Director of Law

NCove.Ord
JDS:pkt(Law)
9/05/95

ORDINANCE NO. 588-95

Authorizing the Mayor and Director of Law to enter into the "North Cove Site Participation Agreement" permitting the City of Toledo to join with Chrysler Corporation and the Ohio Department of Transportation to cooperatively participate in performance of a Remedial Investigation/Feasibility Study (RI/FS) of the former North Cove Landfill and, subject to certain conditions, agree to be included in a "Consent Order for Preliminary Injunction" (COPI) involving the Ohio EPA, Chrysler, the Ohio Department of Transportation (ODOT) and the City which will be filed in the U.S. District Court for the Northern District of Ohio; and declaring an emergency.

WHEREAS, Chrysler, ODOT and the City (The Parties) have reached agreement among their respective representatives relative to the terms of the "North Cove Site Participation Agreement"; and

WHEREAS, the purpose of this Agreement is to establish a cooperative arrangement among The Parties, to jointly participate in a Remedial Investigation/Feasibility Study (RI/FS) at the former North Cove Landfill located in the area of the Jeep Plant, which will initially be fully funded by Chrysler; and

WHEREAS, the Agreement would terminate upon completion of the (RI/FS); however, after its termination The Parties have agreed "to engage in good faith negotiations", to reach an agreement relative to final remediation of the North Cove site and allocation of the remediation costs among The Parties; and

WHEREAS, on July 20, 1995, after intensive negotiations, The Parties, reached a tentative agreement with Ohio EPA/OAG relative to the terms of a "Consent Order For Preliminary Injunction" (COPI); however, finalization of the COPI is specifically conditioned upon successful negotiation of a Work Plan for performance of the North Cove RI/FS and its incorporation into the COPI in a manner acceptable to The Parties and Ohio EPA/OAG; NOW, THEREFORE,

Be it ordained by the Council of the City of Toledo:

SECTION 1. That the Mayor and Director of Law be and they are authorized to enter into the "North Cove Site Participation Agreement" which has been previously executed by representatives of Chrysler and Ohio Department of Transportation. Such agreement shall contain such terms and conditions as, in the opinion of the Director of Law, are in the best interests of the City of Toledo.

SECTION 2. That the Mayor and Director of Law be and they are authorized to consent to the inclusion of the City of Toledo as set forth under the terms of the "Consent Order For Preliminary

Injunction" (COPI) and thereby participate in the legal proceedings to be filed in the U.S. District Court for the Northern District of Ohio as set forth therein. Provided, however, prior to consenting to such participation in the "Consent Order For Preliminary Injunction", the Director of Law shall determine that all conditions precedent to finalization of this matter have been achieved, and agreed to among the COPI participants and the COPI contains such terms and conditions as, in the opinion of the Law Director, are in the best interest of the City.

SECTION 3. That this Ordinance hereby is declared to be an emergency measure and shall be in force and take effect from and after its passage. The reason for the emergency lies in the fact that it is necessary for the preservation of the public peace, health, safety, and property, and for the further reason that this Ordinance must be immediately effective in order that a proper Remedial Investigation/Feasibility Study at the North Cove Landfill can be accomplished in a timely manner to protect the residents of the City from any contamination that may be present at this site.

Vote on emergency clause: yeas 11, nays 0

Passed: Sept. 12, 1995, as an emergency measure:
yeas 11, nays 0.

Attest: Larry J. Brewer
Larry J. Brewer
Clerk of Council

Gene Cook
PRESIDENT OF COUNCIL

Approved: September 13, 1995,

Carleton S. Finkbeiner
Mayor

I hereby certify that the above is a true and correct copy of an Ordinance passed by Council _____, 1995.

Attest: _____
Larry J. Brewer
Clerk of Council

PUBLISHED IN TCJ 9-16-95

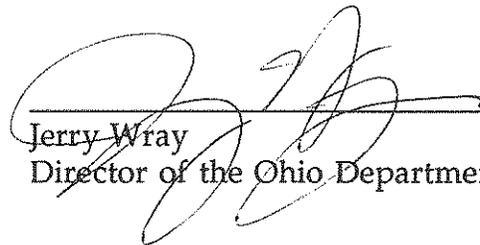
Law

9-13-95

The undersigned settling Third-Party Defendant hereby consents to the foregoing Consent Order for Preliminary Injunction in State of Ohio v. Chrysler Corporation, et. al.

OHIO DEPARTMENT OF TRANSPORTATION
25 South Front Street
Columbus, Ohio 43216-0899

By:



A handwritten signature in black ink, appearing to read 'Jerry Wray', is written over a horizontal line. The signature is stylized and cursive.

Jerry Wray
Director of the Ohio Department of Transportation