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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
AKRON

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

5:00CV

716

STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

REILLY INDUSTRIES, INC.

Defendant.

CASE NO.

JUDGE

JUDGE DOWD

MAG. JUDGE GALLAS

CONSENT DECREE

Plaintiff, State of Ohio, on relation of Betty D. Montgomery, Attorney General of Ohio, having filed the Complaint in this action against Defendant for reimbursement of response costs incurred by the State pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, 42 U.S.C. § 9601 *et seq.* ("CERCLA") and Ohio Revised Code ("R.C.") Chapter 3745.

NOW, THEREFORE, without trial and upon the consent of the parties hereto, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

DEFINITIONS

1. Whenever the following terms are used in this Consent Decree, the following definitions shall apply:
- A. **“Consent Decree”** means this Decree.
 - B. **“Defendant”** means Defendant Reilly Industries, Inc. (“Reilly Industries”).
 - C. **“Hazardous substance”** shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
 - D. **“National Contingency Plan”** shall be used as that term is used in Section 105 of CERCLA, 42 U.S.C. § 9605.
 - E. **“Ohio EPA”** means the Ohio Environmental Protection Agency, and its designated representatives.
 - F. **“Site”** shall mean, solely for the purposes of this Consent Decree, the Reilly Chemical & Tar Site located at Third Street on the southwest edge of the City of Dover, southeast of junction of State Route 211 and State Route 39, three-quarters of a mile north of the juncture of Sugar Creek and the Tuscarawas River, in Dover, Tuscarawas County, Ohio. This Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
 - G. **“Response Costs”** means all direct and indirect costs incurred by the State related to the response and remedial actions conducted at the Reilly Industries Site by Defendant, other PRPs, U.S. EPA, and Ohio EPA, including, but not limited to, payroll costs, contractor costs, travel costs, oversight costs, laboratory costs, costs of reviewing or developing plans, reports or other items, and costs of the Ohio Attorney General’s Office in representing Ohio EPA in this action.
 - H. **“State”** means the State of Ohio by and through its Attorney General on behalf of the Ohio Environmental Protection Agency.
 - I. **“U.S. EPA”** means the United States Environmental Protection Agency.

BACKGROUND

2. The United States Environmental Protection Agency ("U.S. EPA"), pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, placed the Reilly Industries Site in June, 1988 on the National Priorities List, which is set forth at 40 C.F.R. Part 300, Appendix B.

3. In response to a release or a substantial threat of a release of a hazardous substances at or from the Site, Defendant Reilly Industries commenced on December, 1989, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.

4. Defendant Reilly Industries completed a Remedial Investigation ("RI") Report in June of 1993, and completed a Feasibility Study ("FS") Report in December of 1996.

5. Upon completing the RI/FS, U.S. EPA selected a remedial action embodied in a Record of Decision ("ROD"), executed on March 31, 1997.

6. U.S. EPA and Defendant Reilly Industries entered into a Consent Order on June 18, 1998 in the United States District Court, Northern District of Ohio. This Consent Decree required implementation of the remedy for the Site.

7. Plaintiff State of Ohio has incurred costs in addressing releases or the substantial threat of releases of hazardous substances at and from the Site.

8. Defendant Reilly Industries has consented to the entry of this Consent Decree without acknowledging liability of any type, and the entry of this Decree shall not represent an admission or adjudication of liability.

JURISDICTION

9. This Court has jurisdiction over the subject matter herein, and over the Parties consenting hereto. The Parties shall not challenge this Court's jurisdiction to enter and enforce this Consent Decree. Defendant waives service of the complaint and summons in this action. Venue is proper in this Court.

PARTIES BOUND

10. This Consent Decree applies to and is binding upon Defendant, their successors in interest, assigns, receivers, officers, agents, servants, and employees. The undersigned representative of each party to this Consent Decree certifies that he or she is fully authorized by the party or parties whom she or he represents to enter into the terms and conditions of the Consent Decree and to execute and legally bind that party to it.

CALCULATION OF TIME

11. Unless otherwise stated in this Consent Decree, where this Decree requires actions to be taken within a specified period of time (e.g. "within thirty (30) days"), this time period shall begin the day after the entry of this Consent Decree. In computing any period of time under this Consent Decree, 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.

REIMBURSEMENT

12. No later than thirty (30) calendar days after entry of this Consent Decree, Defendant shall pay to the State, One Hundred Thirty Thousand, Eight Hundred Twenty-Nine Dollars and Forty Cents (\$130,829.40) (includes \$150.00 filing fee) in reimbursement for past Response Costs incurred by the State through the date of the entry of this Consent Decree.

13. The payment made pursuant to Paragraph 12 above shall be made in the form of a certified or cashier's check payable to "Treasurer, State of Ohio" and sent to the Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, ATTN: Edith Long, or her successor. Defendant shall send a copy of the transmittal letter and copy of the check to: the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, ATTN: Patricia Campbell or her successor, to the Ohio EPA Site Coordinator, and the Assistant Attorney General representing the State in this case.

COVENANT NOT TO SUE

14. In consideration of the payment made by Defendant pursuant to Paragraph 12 above, the State covenants not to sue Defendant, their successors in interest, assigns, receivers, officers, agents, servants, or employees for any Response Costs related to the Site which were incurred by the State prior to the entry of this Consent Decree.

15. Except as expressly provided in Paragraph 14 above, the State reserves all rights it may have to seek any other relief from Defendant, or any other person or entity, including but not limited to the following:

- A. sanctions for violation of this Consent Decree;
- B. if the payment required by Paragraph 12 is not made, cost recovery for past Response Costs;
- C. reimbursement of any future costs; these future costs may include, but are not limited to, oversight costs, the State's 10% matching share of the cost for any U.S. EPA remedial action, the State's costs for operation and maintenance, and the costs of any actions taken by the State to address contamination at the Site;
- D. injunctive relief under state or federal law;
- E. civil and criminal sanctions for violations of law;
- F. liability arising from hazardous substances removed from the Site;
- G. administrative orders; and
- H. judicial relief pursuant to Section 121(e)(2), 121(f), or 310 of CERCLA, 42 U.S.C. §§ 9621(e)(2), 9621(f), and 9659, or any other provision of federal or state law in the event the State becomes dissatisfied with the Work;
- I. relief for natural resource damages.

Except as set forth in Paragraph 16, Defendant reserves all defenses they may have to any of the State's claims described in this paragraph.

16. In any subsequent administrative or judicial proceeding initiated by the State for injunctive relief, recovery of response costs not paid as required by Paragraph 12, or other appropriate relief relating to the Site, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this paragraph affects the enforceability of the covenant not to sue set forth in Paragraph 14.

17. Nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity not a signatory to this Consent Decree for any liability it may have arising out of or relating to the Site, including but not limited to, liability for any Response Costs unreimbursed by this Consent Decree.

CONTRIBUTION PROTECTION

18. This Consent Decree provides Defendant with contribution protection as provided in Section 113(f) of the Superfund Amendments and Reauthorization Act of 1986.

ENTRY OF CONSENT DECREE

19. Pursuant to Federal Rules of Civil Procedure 58 and 79, the Clerk of Courts is hereby directed to enter this judgment into the civil docket of the Court.

RETENTION OF JURISDICTION

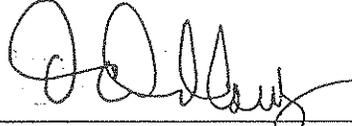
20. The Court retains jurisdiction over this action for the purpose of enforcing the Consent Decree or providing other appropriate relief in this action.

COSTS

21. Defendant shall pay the costs of this action relating to the filing and administration of the Complaint and Consent Decree up to the amount of \$800.00. The

parties reserve their rights regarding any other court costs.

Entered this 12th day of May, 2000.



U.S. DISTRICT JUDGE

The parties whose signature appear below hereby consent to the terms of this Consent Decree.

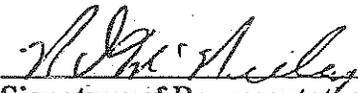
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

REILLY INDUSTRIES, INC.



TIMOTHY J. KERN (0034629)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
(614) 466-2766

Trial Attorney for Plaintiff State of Ohio

By: 

Signature of Representative

R. D. McNeeley
Name of Representative
(Print of Type)

President
Title

February 15, 2000
Date