

IN THE COURT OF COMMON PLEAS
2007 OCT 12 PM 2:05 GAUGA COUNTY, OHIO

STATE OF OHIO, ex rel. ^{WIDM}
MARC DANN, ^{CLERK OF COURTS}
ATTORNEY GENERAL OF OHIO, ^{GAUGA COUNTY}

Plaintiff,

v.

BOB'S BEVERAGE, INC., et al.,

Defendants.

CASE NO. 06M 655

JUDGE
JUDGE DAVID L. FUHRY

A-18

CONSENT ORDER

I. INTRODUCTION

Plaintiff State of Ohio by and through its Attorney General, Marc Dann, at the written request of the Director of the Ohio Environmental Protection Agency, together with Defendants Bob's Beverage, Inc. and Kim Ullman ("Defendants") hereby consent to the entry of this Consent Order.

Plaintiff, acknowledges, that Defendants, Bob's Beverage, Inc. and Kim Ullman, were previously found to be innocent landowners in the case of *Bob's Beverage, Inc. v. ACME, Inc.*, 169 F. Supp. 2d 695 (N.D. Ohio 1999); however, Plaintiff does not agree that this finding has any effect on the claims set forth in the Complaint or the requirements set forth in this Consent Order.

NOW, THEREFORE, without trial of any issues of fact, without admission of liability, and upon the consent of the parties hereto, it is ADJUDGED, ORDERED, and DECREED as follows:

II. JURISDICTION AND VENUE

1. The Court has jurisdiction over the undersigned parties to this action and the subject matter of the Complaint. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted.

III. PARTIES BOUND

2. The provisions of this Consent Order shall apply to and be binding upon Defendants Bob's Beverage, Inc. and Kim Ullman ("Defendants"), their successors in interest and assigns, and others to the extent provided by Civil Rule 65(D). The undersigned representative of each party to this Consent Order 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 Order and to execute and legally bind that Party or Parties to it. This Consent Order is in settlement and compromise of disputed claims and nothing in this Consent Order is to be construed as an admission of any facts or liability.

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

4. The obligation of Defendants to pay the amounts and implement the requirements of this Consent Order are joint and several. In the event of the insolvency, bankruptcy, or other failure of a Defendant to pay any required amount and/or implement any requirement, the remaining Defendant shall pay the amount and/or implement the requirement as required by this Consent Order.

IV. DEFINITIONS

5. The terms used in this Consent Order shall have the same meaning as used in Ohio Revised Code ("R.C.") Chapters 3734 and 6111, and the rules promulgated thereunder.
6. "Effective Date" is the date this Consent Order is filed by the Court.
7. "Person" means those entities set forth in R.C. 1.59 and 3734.01(G) and includes Defendants.
8. "Response Costs" means all direct and indirect costs incurred by the State overseeing the work required by the September 1994 Director's Orders and/or any response and remedial actions conducted at the Ullman Oil Site, including but not limited to, payroll costs, contractor costs, travel costs, oversight costs, enforcement related costs (both legal and technical), 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.
9. "September 1994 Director's Orders" means the Director's Final Findings and Orders issued by the Director of Ohio EPA on September 13, 1994 to Defendant Bob's Beverage.
10. "State" or "State of Ohio" means the Ohio EPA and the Ohio Attorney General's Office.
11. "Ullman Oil Site" or "Site" as used in this Consent Order refers to the property located at 9812 East Washington Street, Chagrin Falls, Geauga County, Ohio,

V. SATISFACTION OF LAWSUIT

12. Compliance with the terms of this Consent Order shall constitute full satisfaction of all requirements set forth in the September 1994 Director's Orders.

13. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil and administrative liability, of Defendants, their successors in interest and assigns to Plaintiff for all claims alleged in the Complaint and claims that may be brought under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9607, regarding the payment of Past Response Costs.

VI. AGREEMENT NOT TO SUE

14. As long as Defendants remain in compliance with the requirements of this Consent Order, the State agrees not sue Defendants for any environmental claims that could have been alleged in the Complaint and/or that could be brought under R.C. Chapters 3734, 3767, 6111, or any comparable Federal statutes regarding the identified chlorinated volatile organic compound (CVOC) contamination located in the area north of the Ullman Oil Building. This area, shown on Exhibit A and identified in the 1996 Remedial Investigation Report, submitted by Defendants as required by the September 1994 Director's Orders, is the approximately 1/3 acre area to be covered as required by Section VIII of this Consent Order. The identified CVOCs are the following: 1,1,1-trichloroethane, Tetrachloroethene, Trichloroethene, 1,1,2-trichloroethane, 1,1-dichloroethene, Vinyl chloride, 1,2-dichloroethane, and Methylene chloride.

15. This agreement not to sue shall not apply to the following: (1) any wastes, including but not limited to the CVOCs identified in paragraph 13, above, disposed at the Ullman Oil Site by Defendants, (2) any new conditions or new information regarding wastes disposed at the Ullman Oil Site by any Person, (3) any claims that may be brought by the Bureau of Underground Storage Tank Regulations on behalf of the State Fire Marshal, and (4) any claims reserved by Section VII., Reservation of Rights. This agreement not to sue shall also not apply if Defendants fail to conduct the Work as required by Section VIII of this Consent Order.

VII. RESERVATION OF RIGHTS

16. Nothing in this Consent Order or the Complaint shall limit the authority of the State of Ohio to:
- (a) Seek relief for claims or conditions not alleged in the Complaint or for claims or conditions that did not arise or exist prior to the Effective Date of this Consent Order;
 - (b) Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order.
 - (c) Take any action authorized by law against any Person, including Defendants, to eliminate or mitigate conditions at the Ullman Oil Site that may present an imminent threat to the public health or welfare or the environment, and to seek cost reimbursement for any such action.
17. Nothing herein shall restrict the right of the Defendants to raise any administrative, legal, or equitable claim or defense with respect to such further actions. Furthermore, regarding the claims reserved to the State by Paragraphs 14 and 15, Defendants 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.
18. Nothing herein shall be construed to relieve the Defendants of their obligation to comply with applicable federal, state or local statutes, regulations or ordinances, including but not limited to permit requirements.
19. Defendants reserve all rights that they may have against any other person under all federal, state, and local laws, except as may be set forth in a separate agreement or agreements.

20. The State of Ohio reserves all rights that it may have against any Person other than Defendants.

VIII. WORK REQUIREMENTS

21. Defendants shall properly close the monitoring wells installed under the requirements of the September 1994 Director's Orders within ninety (90) days of entry of this Consent Order. The abandonment of the monitoring wells shall be implemented in accordance with the *State of Ohio Technical Guidance for Sealing Unused Wells* (State Coordinating Committee on Ground Water, 1996). Within fifteen (15) days of the proper closure of the monitor wells, Defendant shall file the Water Well Sealing Reports, which demonstrate the proper well closure, with the Ohio Department of Natural Resources, Division of Waters, and submit a copy to Ohio EPA. This work shall include the abandonment of all monitoring wells (except for those wells required by the Bureau of Underground Storage Tank Regulations for corrective action) connected with the remedial investigation installed pursuant to the September 1994 Director's Orders and identified in the 1996 Remedial Investigation Report.

22. By July 1, 2008, Defendants shall submit a plan to Ohio EPA for installation of a cover over the approximately 1/3 acre area identified in Exhibit A. The parties have already agreed that correspondence dated May 8, 2007, attached hereto and marked Exhibit B, shall be used as the basis for the proposed plan. In addition, the parties agree that the plan shall include the following requirements: (1) stockpiled soils from on-site excavation to be used for cover shall be free of visual petroleum contamination; (2) asphalt cover that is constructed shall be in a form suitable for at least 20 years of life, with an underlying drainage layer or an alternative design of asphalt cover with an underlying drainage layer, provided it has an equivalent low permeability; (3) for non-asphalted areas to be covered, the cover shall have 18 inches of suitable,

low permeability clay based on an in-situ bulk permeability of 1×10^{-5} cm/s or less with 6 inches of topsoil as a vegetative cover; (4) a cover installation schedule with an installation start date of at least October 1, 2008; and (6) an operation and maintenance plan for continued maintenance of the cover and vegetation that at a minimum shall specify seeding and fertilizer rates for maintenance of the vegetative cover, asphalt cover repair requirements, and inspection schedules during the life of the cover.

23. Ohio EPA will either approve the plan, amend the plan, or require revisions to the plan. Upon approval of the plan by Ohio EPA, Defendants shall implement the plan as approved by Ohio EPA.

24. A licensed professional engineer shall certify that the construction of the cap was conducted in accordance with the approved plan and that accepted industrial standards were followed. This certification shall be submitted to Ohio EPA within thirty (30) days after the cap is installed as required by the approved schedule.

25. Two copies of the plan and certification shall be submitted to the following address:

Ohio EPA
Northeast District Office
Division of Emergency & Remedial Response
Attn: Nancy Zikmanis
2110 East Aurora Road
Twinsburg, Ohio 44087.

IX. SITE ACCESS

26. Defendants consent that Ohio EPA, its employees and agents, shall have full access to the Ullman Oil Site, upon proper identification, at all reasonable times without the need for a warrant, as may be necessary for the implementation of this Consent Order.

27. Paragraph 26 of this Consent Order shall not be construed to eliminate or restrict any State right to seek access to the Facility that it may otherwise have under Federal or State law.

X. ENVIRONMENTAL COVENANT

28. Environmental Covenant Agreement:

By November 15, 2008,, Defendant Bob's Beverage Inc. shall record with the Geauga County Recorder's Office an Environmental Covenant for the property that is part of the Site owned by Defendant Bob's Beverage Inc. The Environmental Covenant shall be consistent with the template attached hereto as Exhibit C, shall be signed by Defendants Bob's Beverage Inc. and Kim Ullman and shall be approved and signed by Ohio EPA. The Environmental Covenant must be recorded in the deed or official records of the County Recorder of Geauga County, Ohio pursuant to R.C. 5301.82. The terms and conditions of the Environmental Covenant are incorporated into this Order and shall be binding upon Defendants. Thereafter, if Defendant Bob's Beverage Inc. conveys any interest in the property included in the Site, each deed, title, or other instrument shall contain a notice stating that the property is subject to this Order and shall reference any monitoring, treatment, or containment systems present on the property as a result of this Order.

29. Proof of Filing Environmental Covenant

Within thirty (30) days after filing with the Geauga County Recorder's Office the executed Environmental Covenant, Defendants shall certify to Ohio EPA that the Environmental Covenant has been filed for recording, and include with the certification a file and date-stamped copy of the recorded Agreement. Upon each conveyance by Defendant Bob's Beverage Inc. of an interest in any portion of the Property, including but not limited to easements, deeds, leases

and mortgages, Defendant Bob's Beverage Inc. shall include in the instrument of conveyance a restatement consistent with paragraph 10 of the Environmental Covenant. The terms and conditions of the Environmental Covenant are hereby incorporated into these Orders and shall be binding upon the Defendants. If the Environmental Covenant is violated or breached by Defendants, the Defendants shall be in violation of this Order.

30. Land Use Self-Reporting Requirement

Defendants shall ensure that no portion of the Site will be used in any manner that would adversely affect the integrity of any containment, treatment, or cover systems at the Site, spread the CVOC contamination described in paragraph 13 of this Consent Order, or violate the Environmental Covenant applicable to the Site under this Order. Defendants agree that should any work at the Site be contemplated that would adversely affect the integrity of any containment, treatment, or cover systems, spread the CVOC contamination, or violate the Environmental Covenant, Defendants shall provide Plaintiff with forty-five (45) days' notice of the proposed work and Plaintiff will have the opportunity to approve the manner and method of said work. Plaintiff's approval will not be unreasonably withheld. Should an emergency situation arise which would require immediate disturbance of the Site, Plaintiff will be notified immediately. However, work that does not adversely affect the integrity of any containment, treatment, or cover systems at the Site, spread the CVOC contamination or violate the Environmental Covenant may be performed by Defendants without notifying Plaintiff.

31. Defendants shall submit on an annual basis, written documentation verifying that any containment, treatment, or cover systems are in place and operational, and the Environmental Covenant remain in place and are being complied with. Defendants may choose to submit the documentation required pursuant to this paragraph in a progress report pursuant to

the Work Requirements Section of this Order. If Defendants choose to submit the documentation required pursuant to this paragraph in a progress report, Defendants shall clearly identify the land use reporting requirement in the progress report and indicate in a cover letter to the progress report that the land use reporting requirement is included in the progress report.

32. Notice of Transfer of Property

Prior to each conveyance by Defendant Bob's Beverage Inc. of an interest in any portion of the Site, including but not limited to easements, deeds, leases and mortgages, Defendant Bob's Beverage Inc. shall notify Transferee of the existence of the use limitations in the Environmental Covenant, and shall provide a copy of these Orders and the Environmental Covenant to Transferee. Defendant Bob's Beverage Inc. shall notify Ohio EPA at least thirty (30) days in advance of each conveyance of an interest in any portion of the Site that is owned by the Defendant Bob's Beverage Inc. Defendant Bob's Beverage Inc.'s notice shall include the name and address of the Transferee and a description of the provisions made for the continued access to and maintenance of any containment, treatment, and monitoring systems.

33. Confirmation of Conveyance

Within thirty (30) days after each conveyance of an interest in any portion of the Site that is owned by the Defendant Bob's Beverage Inc., the Defendants shall submit to Ohio EPA, via certified mail, the following information:

- a. A copy of the deed or other documentation evidencing the conveyance;
- b. The name, address, and telephone number of the new property owner and the name, address, and telephone number of the contact person for the property owner;
- c. A legal description of the property, or the portion of the property, being transferred;

- d. A survey map of the property, or the portion of the property, being transferred;
- e. The closing date of the transfer of ownership of the property, or portion of the property.

XI. REIMBURSEMENTS OF PAST COSTS AND FUTURE RESPONSE COSTS

Past Costs

34. Within thirty (30) days of entry of this Consent Order, Defendants shall pay \$64,027.04 as reimbursement for past Response Costs incurred by the State prior to and up through the Effective Date of this Consent Order. This amount shall be paid to Ohio EPA by delivering a check in this amount made to the order of "Treasurer, State of Ohio" and forwarding it to the Hazardous Waste Special Cleanup Account, Office of Fiscal Administration, ATTN: Brenda Case or her successor, Ohio EPA, Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-0149, and to the Fiscal Officer, DERR, ATTN: Steven Snyder or his successor, Ohio EPA, Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-0149. Defendants shall send a copy of the transmittal letter and check to the Ohio EPA Site Coordinator and the Assistant Attorney General representing the State in this case forwarded to Assistant Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428. Upon payment of this amount, Defendants shall have no further liability for any claim of Response Costs incurred by the State prior to the Effective Date of this Consent Order.

Future Response Costs

35. Defendants shall reimburse the State all future Response Costs incurred by the State, after the Effective Date of this Consent Order, regarding Ohio EPA's review and approval of work plans, reports, and certifications; Ohio EPA's oversight of work performed; and future

inspections and institutional control reviews. However, Defendants are not required to reimburse the State for any such future Response Costs that exceed \$5,000.

36. Ohio EPA will submit an invoice, with an itemized statement, for these Response Costs to Defendants on an annual basis. Ohio EPA will submit the invoice to the following address: Bob's Beverage, Inc., Attention: Kim Ullman, 9812 East Washington Street, Chagrin Falls, Ohio 44023-0399. Defendants shall make payment of these Response Costs within thirty (30) days of receipt of the invoice to the address and in the manner set forth in paragraph 34. A copy of the transmittal letter and check shall also be submitted as set forth in paragraph 34. Failure by Ohio EPA to submit an invoice on an annual basis does not relieve Defendants from their obligation to make the Response Cost payment for any such year. In such a situation, Defendants shall make the Response Cost payment upon receipt of a later invoice.

XII. INDEMNITY

37. Defendants agree to indemnify, save, and hold harmless the State of Ohio from any and all claims or causes of action arising from, or related to, events or conditions at the Ullman Oil Site. The State agrees to provide notice to Defendants within thirty (30) days of receipt of any claim which may be the subject of indemnity as provided in this Section, and to cooperate with Defendants in the defense of any such claim or action against the State. The State 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 Consent Order.

XIII. TERMINATION

38. This Consent Order shall terminate upon joint motion of the Parties, and approval of the Court following completion of all requirements. This Section, and the Sections of this

Consent Order on Satisfaction of Lawsuit, Agreement Not To Sue, Reservation of Rights, and Environmental Covenant of this Consent Order shall survive this Termination Provision.

XIV. MODIFICATION

39. No modification shall be made to this Consent Order without the written agreement of the Parties and the Court.

XV. RETENTION OF JURISDICTION

40. This Court shall retain jurisdiction of this matter for the purpose of overseeing the compliance by Defendants with this Consent Order.

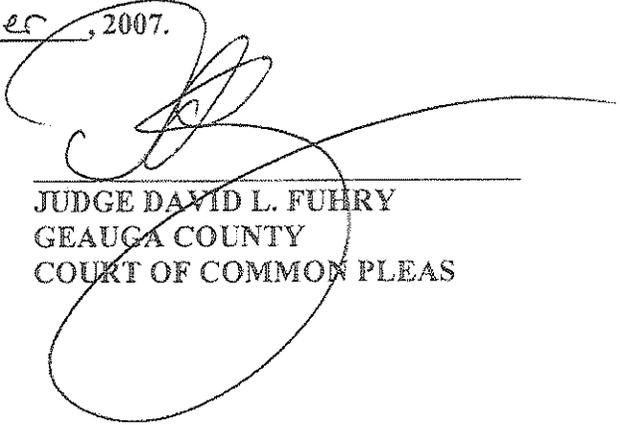
XVI. AUTHORITY TO ENTER INTO THE CONSENT ORDER

41. Each signatory for a corporation represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof, and that he/she submits with this Consent Order an authenticated and certified resolution from the corporation establishing that he/she is so empowered.

XVII. COURT COSTS

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

SO ORDERED THIS 12 DAY OF October, 2007.



JUDGE DAVID L. FUHR
GEAUGA COUNTY
COURT OF COMMON PLEAS

C. Timothy Kern, Esq.
Charles Royer, Esq.

APPROVED BY:

MARC DANN
ATTORNEY GENERAL OF OHIO



TIMOTHY J. KERN (0034629)

Principal Assistant
Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
Telephone: (614) 466-2766
Facsimile: (614) 644-1926

*Counsel for Plaintiff
State of Ohio*

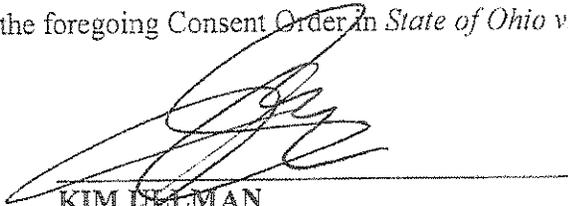


CHARLES P. ROYER

McCarthy, Lebit, Crystal & Liffman
1800 Midland Building
101 West Prospect Avenue
Cleveland, Ohio 44115
Telephone: (216) 696-1422
Facsimile: (216) 696-1210

*Attorney for Defendants
Bob's Beverage, Inc.*

The undersigned Defendants hereby consent to the foregoing Consent Order in *State of Ohio v. Bob's Beverage Inc., et al.*



KIM UELMAN

On behalf of Bob's Beverage, Inc.



KIM UELMAN

On behalf of himself as an individual

EXHIBIT A

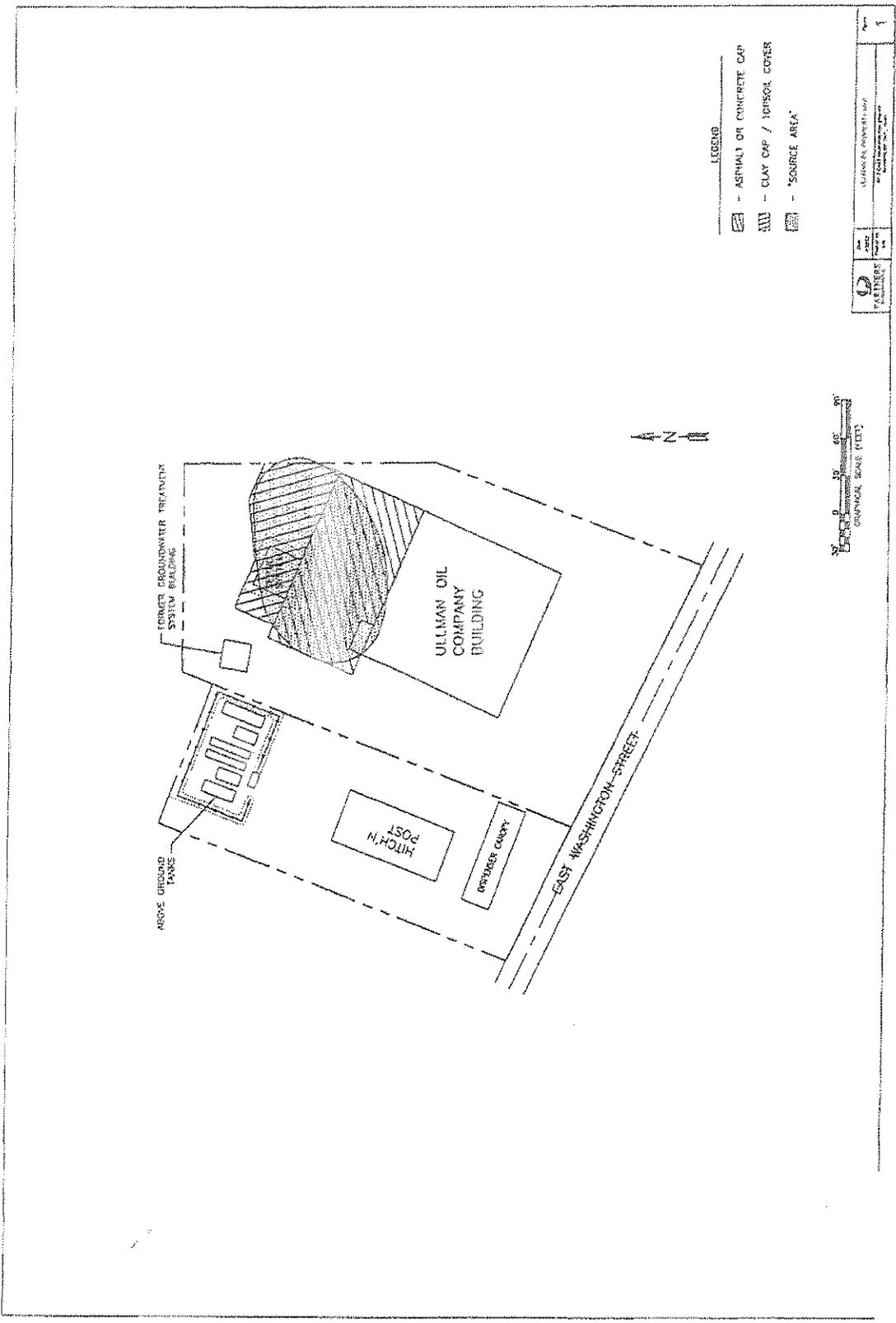


EXHIBIT B



May 8, 2007

Mr. Charles P. Royer, Esq.
McCarthy, Lebit, Crystal & Liffman Co., L.P.A.
101 West Prospect Avenue
Suite 1800
Cleveland, Ohio 44115-1088

RE: "Source Area" Capping
Ullman Oil Company
9812 East Washington Street
Bainbridge Twp., Ohio

Dear Mr. Royer:

In support of settlement discussions in the matter concerning State of Ohio v. Bob's Beverage Inc., et al. (Case No. 06M000655), this letter and the attached drawing present the proposed location, composition, and general construction specifications for the cap over an area of approximately 18,100 square feet, at the above Ullman Oil Company (Ullman) facility. The proposed cap encompasses the area identified as the "source area" in a Feasibility Study (FS), dated July 2, 1998, prepared by Sanborn, Head & Associates, Inc. (Sanborn).

The objective of capping is to reduce surface water infiltration in the "source area" and thus reduce the risk that the existing chlorinated solvent plume will increase in extent or concentration. Two (2) different cap systems will be used. Approximately 10,500 square feet will be capped with full-depth asphalt. The remainder of the "source area" will be capped with clay and topsoil and then seeded. See the attached drawing for the approximate extent of each cap type. Actual surface grades and asphalt pavement section design will be determined as part of the redesign of the bulk plant facility. Therefore, final design of the cap systems will be completed as part of the overall facility redesign and modification. The final plans for the cap systems will be in accordance with the general descriptions provided in this letter and will be provided to the Ohio EPA for their approval prior to construction of the cap systems. The following provides additional detail regarding the two (2) cap systems.

Asphalt

In the area of planned pavement, asphalt is proposed as the cap material. The existing surface will be graded and recompact. The asphalt will be placed in three (3) layers, or lifts, with each lift being compacted prior to placement of the next. The surface of the asphalt will be pitched to drain to the outer edges, away from the "source area", or to storm water catch basins, if installed as part of the redesigned facility.

Clay/Topsoil

Prior to construction of the clay cap, topsoil will be stripped and stockpiled for re-use, the water filtration ("septic system") and evapo-transpiration system components and associated backfill will be removed, and remaining native soil will be cut to a minimum of 24 inches below planned final grade. It is anticipated

Partners Environmental Consulting, Inc.

Corporate Office: 31100 Solon Road, Suite G • Solon, Ohio 44139 • phone: (440) 248.6005 • fax: (440) 248.6374
Offices in Maryland

May 8, 2007

that the native soil will be clay suitable for use in the cap. Cohesive soils will be suitable for use in the cap if they meet the following criteria:

At least 50% of the soil by weight will pass the #200 sieve, and
the soil shall plot above the A-line in the Unified Soil Classification System (ASTM D 2487)

The clay cap will consist of 18 inches of well compacted cohesive soil, placed in maximum eight (8) inch thick loose lifts, adjusted to a moisture content at or wet of optimum, and compacted to 95% of Standard Proctor Density. A minimum of six (6) inches of topsoil will be placed over the clay cap. The surface will be graded to provide a slope of no less than 3%, prevent ponding, and provide positive drainage to the north-northeast, away from the source area. The entire capped area will be seeded with perennial grasses to establish a lawn that will be maintained as part of the landscaping.

Please contact the undersigned if you have any questions regarding the information in this letter.

Sincerely,
Partners Environmental Consulting, Inc.


John T. Garvey, CPG
Director of Brownfield Services


Dan B. Brown, CPG
President

cc: Mr. Kim Ullman

Exhibit C
ENVIRONMENTAL COVENANT

To be recorded with Deed
Records - ORC § 317.08

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by **Bob's Beverage, Inc.** ("Owner"), **Kim Ullman** ("Holder") and the **Ohio Environmental Protection Agency** ("Ohio EPA") pursuant to Ohio Revised Code ("ORC") §§ 5301.80 to 5301.92 for the purpose of subjecting the Property to the activity and use limitations set forth herein.

The "Ullman Oil Site" refers to the property located at 9812 East Washington Street, Chagrin Falls, Geauga County, Ohio. This Environmental Covenant is required by the Consent Order dated ??/??/2007 in State of Ohio, ex rel. Marc Dann Attorney General of Ohio v. Bob's Beverage, Inc. et al. in the Court of Common Pleas Geauga County, Ohio, Case No. 06M000655. The administrative record for the Ullman Oil Site is located at Ohio EPA's Northeast District Office at 2110 E. Aurora Road, Twinsburg, Ohio 44087. There are identified chlorinated volatile organic compound (CVOC) contaminants in both soil and ground water at the Ullman Oil Site. The area of soil contamination is shown on Figures 9 and 10 of the 1996 Remedial Investigation Report, submitted by the Owner and Holder as required by the September 13, 1994 Director's Final Findings and Orders, covers the Ullman Oil Site including approximately 1/3 acre to be covered. The identified CVOCs are the following: 1,1,1-trichloroethane, Tetrachloroethene, Trichloroethene, 1,1,2-trichloroethane, 1,1-dichloroethene, Vinyl chloride, 1,2-dichloroethane, and Methylene chloride.

Now therefore, Owner Bob's Beverage, Inc., Holder Kim Ullman, and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.

2. Property. This Environmental Covenant concerns a real property parcel numbered 01-047200 owned by Bob's Beverage, Inc. located at 9812 East Washington Street, in Chagrin Falls, Geauga County, Ohio, and more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein ("Property").

3. Owner. Bobs Beverage, Inc. ("Owner") which is located at 9812 East

Washington, Chagrin Falls, Ohio 44023-0399 is the owner of the Property.

4. Holders. Owner Bob's Beverage, Inc., whose address is listed above, and Kim Ullman whose business address is the same as listed above, are the Holders of this Environmental Covenant.

5. Activity and Use Limitations. As part of the Consent Order dated ???/2007, Owner hereby imposes and agrees to comply with the following activity and use limitations:

Cover Systems

The integrity of any remedial cover systems at the Property shall not be adversely affected.

Land Use Limitations

Soil excavation is prohibited in the source (capped) area, which is within or below the cap as shown in Exhibit B, without prior approval by Ohio EPA under OAC 3745-27-13. This restriction will be relied upon to eliminate the potential for construction workers or other workers to have direct contact with the contaminated soils.

Ground Water Limitations

Ground water located at or underlying the Property as shown on Exhibit B shall not be extracted or used for any purpose, potable or otherwise unless otherwise authorized by Ohio EPA.

If any event or action by or on behalf of a person who owns an interest in or holds an encumbrance on the Property, identified in paragraph 11 below, constitutes a breach of the activity and use limitations, Owner Bob's Beverage, Inc., Holder Kim Ullman, or Transferee shall notify Ohio EPA within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or Holder and Ohio EPA.

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner Bob's Beverage, Inc. and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC § 5301.85, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee

simple, mortgagees, easement holders, and/or lessees.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to ORC § 5301.91. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law.

8. Rights of Access. Owner Bob's Beverage, Inc. and Holder Kim Ullman hereby grant to Ohio EPA, its agents, contractors, and employees the right of access to the Property, upon proper identification, for implementation or enforcement of this Environmental Covenant.

9. Compliance Reporting. Owner Bob's Beverage, Inc. or any Transferee shall submit to Ohio EPA on an annual basis written documentation verifying that the activity and use limitations remain in place and are being complied with.

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 200__, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE COUNTY RECORDER ON _____, 200__, IN [DOCUMENT ____, or BOOK ____, PAGE ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

Cover Systems

The integrity of any remedial cover systems at the Property shall not be adversely affected.

Land Use Limitations

Soil excavation is prohibited in the source (capped) area, which is within or below the cap as shown in Exhibit B, without prior approval by Ohio EPA under OAC 3745-27-13. This restriction will be relied upon to

eliminate the potential for construction workers or other workers to have direct contact with the contaminated soils.

Ground Water Limitations

Ground water located at or underlying the Property as described in Exhibit A shall not be extracted or used for any purpose, potable or otherwise unless otherwise authorized by Ohio EPA.

Owner Bob's Beverage, Inc. and Holder Kim Ullman shall notify Ohio EPA within ten (10) days after each conveyance of an interest in any portion of the Property. The notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the property being transferred.

11. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

- A. that the Owner is the sole owner of the Property;
- B. that the Owner holds fee simple title to the Property which is **free, clear and unencumbered**;
- C. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- D. that the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property and notified such persons of the Owner's intention to enter into this Environmental Covenant;[and]
- E. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.

12. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner Bob's Beverage, Inc. or a Transferee; Holder Kim Ullman and the Ohio EPA, pursuant to ORC § 5301.90 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and

use limitations when there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA and the Owner Bob's Beverage, Inc. or Transferee and Holder Kim Ullman of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner Bob's Beverage, Inc. or Transferee shall file such instrument for recording with the Geauga County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to Ohio EPA.

13. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

15. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner Bob's Beverage, Inc. shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Geauga County Recorder's Office.

16. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Geauga County Recorder's Office.

17. Distribution of Environmental Covenant. The Owner Bob's Beverage, Inc. and Holder Kim Ullman shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA; the City of Chagrin Falls; any lessee, each person holding a recorded interest in the Property; and any other person designated by Ohio EPA; see ORC § 5301.83.

18. Notice. Unless otherwise notified in writing by or on behalf of the current owner or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

