

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

STATE OF OHIO, <i>ex. rel.</i>)	CASE NO.: 3: 15-cv-00376
MICHAEL DEWINE)	
OHIO ATTORNEY GENERAL,)	
)	
Plaintiff,)	District Judge Thomas M. Rose
v.)	Magistrate Judge Michael J. Newman
)	
JOHN D. MUNCY, <i>et al.</i>,)	
)	
Defendants.)	

CONSENT DECREE AND FINAL JUDGMENT

Plaintiff, the State of Ohio (“the State”), having filed a Complaint in this action against Defendant John D. Muncy and Defendant Andrew H. Elder, Administrator of the Estate of James O’Dell Miller, is seeking separately or jointly the reimbursement of response costs incurred and to be 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 injunctive relief and monetary and compensatory damages pursuant to Ohio Rev. Code § 6111.07(B), Ohio Rev. Code § 3734.10, Ohio Rev. Code § 3734.13(C), Ohio Rev. Code § 3734.20, Ohio Rev. Code § 3767.02 through Ohio Rev. Code § 3767.06, Common Law Public Nuisance, and Ultrahazardous Activity. The State and Defendants have consented to the entry of this Consent Decree and Final Judgment (“Consent Decree”).

Now therefore, without trial of any issue of law or fact, without admission of any issues of law or fact, and upon consent of the Parties, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has both personal jurisdiction over the Parties to this action and subject matter jurisdiction over the case pursuant to CERCLA, 28 U.S.C. § 2201, 28 U.S.C. § 1367, and Ohio Rev. Code Chapters 6111, 3734, and 3767 and the common law. The Complaint states a claim upon which relief can be granted against the Defendants under those statutes. Venue is proper in this Court.

II. PERSONS BOUND

2. The terms and provisions of this Consent Decree shall apply to and be binding upon the State, Defendants, and Defendants' successors in interest and assigns.

3. No transfer of assets or real or personal property shall in any way alter the Defendants' obligations under this Consent Decree.

III. DEFINITIONS

4. The following terms are defined as follows:

- a) **"CERCLA"** means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*
- b) **"Defendants"** means John D. Muncy and Andrew H. Elder, Administrator of the Estate of James O'Dell Miller.
- c) **"Effective Date"** means the date the Clerk of Court enters this Consent Decree.
- d) **"Ohio EPA"** means the Ohio Environmental Protection Agency and its designated representatives.
- e) **"Paragraph"** means a portion of this Consent Decree identified by an arabic numeral or an uppercase or lowercase letter.
- f) **"Parties"** means the Defendants and the State.
- g) **"Section"** means a portion of this Consent Decree identified by a Roman numeral.

- h) **“Site”** means the property located at 2601 Enon Road in the Village of Enon, Clark County, Ohio, parcel numbers 1800500001201012 1800500001201011, and any locations where contamination that originated at or resulted from activities conducted at the property is present, including any such contamination that has emanated from the property.
- i) **“State”** means the State of Ohio by and through its Attorney General on behalf of the Ohio Environmental Protection Agency.

IV. PAYMENTS

- 5. Within thirty (30) days of the Effective Date, Defendant Andrew H. Elder, Administrator of the Estate of James O’Dell Miller shall pay Ohio EPA the amount of Two Hundred, Eighteen Thousand, Five Hundred Ninety-Two Dollars (\$218,592.00).
- 6. Within thirty (30) days of the Effective Date, Defendant John D. Muncy shall pay Ohio EPA the amount of Twenty-Five Thousand Dollars (\$25,000.00).
- 7. Defendants shall remit the payments pursuant to Paragraphs 5 and 6 as follows:
 - a. Payment shall be made by certified check payable to "Treasurer, State of Ohio" and shall be forwarded to Sandra Finan, or her successor, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.
 - b. A copy of the check and transmittal letter shall be sent to the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, and to the Site Coordinator and the Assistant Attorney General assigned to this case.
- 8. If the amounts are not timely paid in accordance with the deadlines in Paragraphs 5 and 6, interest under Ohio Rev. Code § 131.02(D) shall become due and owing from the late paying Defendant and shall accrue at the rate per annum required by Ohio Rev. Code § 5703.47 calculated from the deadlines provided in Paragraphs 5 and 6. In addition, the Attorney General may collect the unpaid amount under Ohio Rev. Code § 131.02, and pursuant to Ohio Rev. Code § 109.081, in addition to the outstanding balance due under this Consent Decree, may assess

collection costs of ten percent, which shall be owing and fully recoverable from the late paying Defendant to be paid into the State Treasury to the credit of the Attorney General Claims Fund.

9. Each of the Defendants, by making the payment required of that Defendant under Paragraph 5 or Paragraph 6, satisfies whatever obligations that this Defendant has now or may have in the future to pay costs related to the Site to the State, including Ohio EPA and the Ohio Attorney General's Office, except for any costs arising out of that Defendant's future activity undertaken at the Site, if any, which may present a threat to the public health, safety, welfare or environment, as described in Paragraph 14.

V. RELEASES AND COVENANTS NOT TO SUE

10. In consideration of the payments made by Defendant Andrew H. Elder, Administrator of the Estate of James O'Dell Miller pursuant to Paragraphs 5, 7, and 16, the State releases and covenants not to sue, Defendant Andrew H. Elder, Administrator of the Estate of James O'Dell Miller and that Defendant's successors in interest and assigns for the claims alleged against Andrew Elder in Counts One, Three, and Five through Seven and the Prayer for Relief of the Complaint. Such releases and covenants not to sue are effective upon the full payments as required by Paragraphs 5, 7, and 18.

11. In consideration of the payment made by Defendant John D. Muncy pursuant to Paragraphs 6 and 7, the State releases and covenants not to sue, Defendant John D. Muncy and that Defendant's successors in interest and assigns for the claims alleged against John D. Muncy in Counts Two through Seven and the Prayer for Relief of the Complaint. Such releases and covenant not to sue are effective upon the full payment required by Paragraphs 6 and 7.

12. The State, including Ohio EPA, shall not file any lawsuits or issue any administrative orders or other administrative actions requiring Defendants to take any action related to the Site or to enforce the “1994 Orders” or the “2006 Orders,” as defined in Paragraphs 31 and 43 of the Complaint filed in this case, except for any action against a Defendant to eliminate or control conditions, caused by and/or resulting from any future activity undertaken at the Site by that Defendant, which may present a threat to the public health, safety, welfare or environment, and to seek cost reimbursement for any such action.

VI. RESERVATION OF RIGHTS

13. The State also expressly reserves, and this Consent Decree shall be without prejudice to, criminal liability. This Consent Decree does not waive defenses that the Defendants may have as to such claims, demands, rights or causes of action set forth in this Paragraph and Paragraph 14, except that the 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, demands, rights or causes of action raised by the State in the subsequent proceeding were or should have been brought in the instant case.

14. Nothing herein shall limit the authority of the State to undertake any action against a Defendant to eliminate or control conditions, caused by and/or resulting from any future activity undertaken at the Site by that Defendant, which may present a threat to the public health, safety, welfare or environment, and to seek cost reimbursement for any such action.

15. Entering into this Consent Decree, the Consent Decree itself, or the taking of any action in accordance with it does not constitute an admission by the Defendants of any factual or legal matters or opinions set forth herein.

16. Defendants reserve all rights that they may have against other persons under all federal, state and local laws and the common law except as may be set forth in a separate agreement or agreements with those other persons.

VII. MODIFICATIONS

17. This Consent Decree may be modified by agreement of the Parties. Modifications shall be in writing, signed by counsel for each Party and the authorized representative of each of the Defendants, and memorialized in an order executed and entered by the court. Any such modifications shall be effective on the date the court enters its order approving such modifications.

VIII. OHIO ATTORNEY GENERAL FEES

18. Within thirty (30) days of the Effective Date, Defendant Andrew H. Elder, Administrator of the Estate of James O'Dell Miller shall pay the Ohio Attorney General's fees in the amount of Six Thousand, Four Hundred, Eight Dollars (\$6,408.00). Payment shall be made by certified check payable to "Treasurer, State of Ohio" and shall be forwarded to Sandra Finan, or her successor, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

19. If the amount is not paid in accordance with Paragraph 18, interest under Ohio Rev. Code § 131.02(D) shall immediately become due and owing and shall accrue at the rate per annum required by Ohio Rev. Code § 5703.47 calculated from the deadline provided in Paragraph 18. In addition, the Attorney General may collect the unpaid amount under Ohio Rev.

Code § 131.02, and pursuant to Ohio Rev. Code § 109.081, in addition to the outstanding balance due under this Consent Decree, may assess collection costs of ten percent, which shall be owing and fully recoverable from Defendant Elder to be paid into the State Treasury to the credit of the Attorney General Claims Fund.

IX. OTHER CLAIMS

20. Nothing in this Consent Decree shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation not a Party to this Consent Decree, for any liability arising from, or related to, events or conditions at the Site.

X. RETENTION OF JURISDICTION

21. This Court shall retain jurisdiction of this matter for the purpose of overseeing compliance with and resolving disputes arising under this Consent Decree.

XI. ENTRY OF CONSENT DECREE BY CLERK

22. Upon signing of this Consent Decree by the Court, the Clerk is directed to enter it upon the journal and the Parties will be served electronically. Within three (3) days of entering the judgment upon the journal, the Clerk is directed to serve upon all Parties notice of the judgment and its Effective Date upon the journal, in the manner prescribed by Rule 5(b) of the Federal Rules of Civil Procedure and note the service in the appearance docket.

XII. AUTHORITY TO ENTER INTO THE CONSENT DECREE

23. The signature for each Defendant represents and warrants that he has been duly authorized to sign this document and so bind that Defendant to all terms and conditions

thereof.

IT IS SO ORDERED AND AGREED.

**s/Thomas M. Rose*

JUDGE THOMAS M. ROSE
United States District Court
Southern District of Ohio

APPROVED:

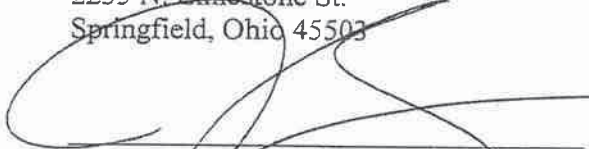
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OHIO ATTORNEY GENERAL



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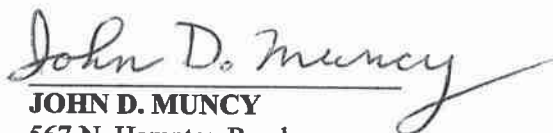
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