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

FILED

AUG 29 2000

Kenneth J. Murphy, Clerk  
Columbus, Ohio ✓

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

Plaintiff,

v.

UNION CARBIDE CORPORATION, et al.

Defendants.

CASE NO.

JUDGE C2 00 - 950

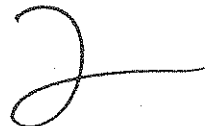
JUDGE GRAHAM

MAGISTRATE JUDGE KEMP

CONSENT DECREE

Plaintiff, State of Ohio, on relation of Betty D. Montgomery, Attorney General of Ohio, having filed the Complaint in this action against Defendants 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 for injunctive relief and reimbursement of response costs pursuant to Ohio Revised Code ("R.C.") Chapters 6111., 3734. and 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. **"Defendants"** means the Union Carbide Corporation, the Shell Chemical Company, and Newport Water and Sewer District.
  - C. **"Ohio EPA"** means the Ohio Environmental Protection Agency, and its designated representatives.
  - D. **"PW2"** means Newport Water and Sewer District production well #2 located approximately 250 feet west of well #1 near the Ohio River.
  - E. **"Response Costs"** means all direct and indirect costs incurred by the State related to the response and remedial actions conducted at the Site by Defendants, other PRPs, 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.
  - F. **"Site"** shall mean, solely for the purposes of this Consent Decree, the former burn pits, next to Newport's wellfield, and adjacent area which were used by the Washington County Mutual Aid Fire Protection Association for training exercises and where the treatment, storage, or disposal of Waste Material was conducted, including any other area contaminated or threatened to be contaminated by Waste Materials migrating therefrom.
  - G. **"State"** means the State of Ohio by and through its Attorney General on behalf of the Ohio Environmental Protection Agency.
  - H. **"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 wastes" 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 U.S.C. Section 9601(14); and (6) any "hazardous waste constituent" as that term is defined under OAC Section 3745-50-10(A)(43).

## BACKGROUND

2. The wellfield for Newport consists of two municipal wells, which are designated as well #1 and well #2. The wellfield serves about 900 residents in Newport, which is located in Washington County, Ohio near the Ohio River.

3. Quarterly sampling for volatile organic compounds (VOCs) at the Newport wellfield beginning in April, 1986 revealed that well #2 has had periodic contamination from trichloroethylene (TCE) and cis-1, 2 dichloroethylene (cis-1, 2 DCE). Beginning in December 1989, vinyl chloride was periodically detected in well #2. Vinyl chloride is a known carcinogen and TCE is a suspected carcinogen.

4. Ohio EPA identified two pits, adjacent to the wellfield, that were used for training exercises by local fire departments, according to information provided by residents of Newport and local firefighters. The former burn pits are located about 110 feet northwest of well #2. The two pits and adjacent area are located on property owned by the Newport Water and Sewer District and Kermit Harris. Sampling from the burn pits showed that the following contaminants were present: TCE; toluene; ethylbenzene; styrene; xylene; lead; chromium; trans- 1, 2 DCE; cis-1, 2 DCE; benzene; and vinyl chloride.

5. In response to information requests made by Ohio EPA, Union Carbide Corporation responded that its Sistersville, West Virginia plant participated in training exercises conducted by the Washington County Mutual Aid Fire Protection Association. Interviews with current and former Union Carbide employees revealed that waste solvents were shipped to the burn pits in Newport from 1971 until 1976. Information

from Shell Chemical Company indicated that a former employee recalled that the Shell Belpre plant participated in the fire training exercises once about 30 years ago.

6. In November of 1994, Union Carbide and Shell signed Director's Final Findings and Orders for the performance of an interim action to control the sources of contamination at the Newport Site and to address the pathways of migration affecting the Newport wellfield.

7. Union Carbide and Shell completed the removal of the known sources of contamination in the Spring of 1996. Monitoring activities have been going on since that time.

8. Defendants have consented to the entry of this Consent Decree without acknowledging liability to the claims and allegations set forth in the State's Complaint or this Decree, 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. Defendants waive 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 Defendants, their successors in interest, assigns, receivers, officers, agents, servants, and employees and upon the State, as defined herein. 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 BY DEFENDANTS UNION CARBIDE CORPORATION AND SHELL CHEMICAL COMPANY

12. No later than forty-five (45) calendar days after entry of this Consent Decree, Defendants Union Carbide Corporation ("Union Carbide") and Shell Chemical Company ("Shell") shall together pay a total of Two Hundred Thousand Dollars (\$200,000.00) as reimbursement for the State's Response Costs.

- A. Seventy Thousand Dollars (70,000.00) shall be paid to Ohio EPA
- B. One Hundred, Thirty Thousand Dollars (130,000.00) shall be paid to Newport Water and Sewer District for costs associated with the installation of a new drinking water well

The obligation to pay this amount owed to the State under this Consent Decree is joint and several.

13. The payments made pursuant to Paragraph 12.A above shall be made in the form of checks payable to "Treasurer, State of Ohio" and sent to the Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, ATTN: Vicki Galilei, or her

successor. Defendants Union Carbide and Shell shall send copies of the transmittal letters and checks 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.

14. The payments made pursuant to Paragraph 12.B above shall be made in the form of checks payable to Newport Water and Sewer District and sent to P.O. Box 367, Newport, Ohio 45768. Defendants Union Carbide and Shell shall send copies of the transmittal letter and checks 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.

**PLAINTIFF'S COVENANT NOT TO SUE AS TO DEFENDANTS UNION  
CARBIDE CORPORATION AND SHELL CHEMICAL COMPANY**

15. In consideration of the payments made by Defendants Union Carbide and Shell pursuant to Paragraph 12.A and B. and subject to the reservation of rights set forth herein, the State covenants not to sue or to take administrative action against Defendants Union Carbide and Shell, their successors in interest, assigns, receivers, officers, agents, servants, or employees (a) for injunctive relief to conduct any work or any other activity at the Site and (b) for any Response Costs related to the Site pursuant to 107(a) of CERCLA, 7003 of the Resource Conservation and Restoration Act ("RCRA"), and R.C. Chapters 6111., 3734., and 3745.

16. The State reserves all rights it may have to seek any other relief from Defendants Union Carbide and Shell, including but not limited to the following:

A. sanctions for violation of this Consent Decree;

- B. if the total payments required by Paragraph 12 are not made, injunctive relief, administrative order, and/or claims for Response Costs at the Site under state or federal law;
- C. any claims arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;
- D. any claims arising from the future disposal of Waste Materials at the Site;

17. In addition to the reservation of rights set forth in Paragraph 16. above, the State reserves the right to seek injunctive relief, administrative order, and/or claims for Response Costs under state or federal law from Defendants Union Carbide and Shell for conditions at the Site previously unknown to the State. The conditions known to the State either are described in the following documents or reflect the migration of contamination described in the following documents: 1. Focused Site Characterization Source Control Interim Action Work Plan, dated March 1995, 2. Interim Summary Report, Focused Site Characterization, dated July 1995, 3. Interim Source Removal Report, dated May 1996, 4. Quarterly Ground Water Sampling Reports – Second Quarter 1996 through Fourth Quarter 1999, and 5. Ohio EPA, Division of Emergency and Remedial Response/Southeast District Office Newport Wellfield Files 1 through 8, as of the date of entry of this Consent Order. Any other conditions at the Site are therefore unknown to the State.

18. Except as set forth in Paragraph 19., Defendants Union Carbide and Shell reserve all defenses they may have to any of the State's claims described in Paragraphs 16. and 17.

19. 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, Defendants Union Carbide and Shell 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 15.

**INJUNCTIVE RELIEF AS TO DEFENDANT NEWPORT WATER AND SEWER DISTRICT**

20. Defendant Newport Water and Sewer District ("Newport") is ordered and enjoined to use the One Hundred, Thirty Thousand Dollars (130,000.00) paid to it pursuant to paragraph 12.B. above, solely for costs associated with the installation of a new drinking water well.

21. Until such time as the new drinking water well is operational, Newport shall continue to operate wells PW-1 and PW- 2 simultaneously at rates of 120 to 150 gallons per minute for PW-1 and 50 to 70 gallons per minute for PW-2, or at such other rates approved by Ohio EPA.

22. After the new well is operational, Defendant Newport is ordered and enjoined to use drinking water well PW-2 only as set forth below:

A. PW-2 will not be used for any potable purpose until it can be demonstrated to the satisfaction of Ohio EPA that TCE, cis-1, 2 DCE and vinyl chloride have not been detected in PW-2 in four consecutive quarterly sampling events. Upon such demonstration and the return of PW-2 to unrestricted use, quarterly sampling



of PW-2 must be conducted for a minimum of two years. In the event TCE, cis-1, 2 DCE or vinyl chloride is detected in PW-2 during that period, it must again be restricted from potable use until such time as it can be demonstrated to the satisfaction of Ohio EPA that TCE, cis-1, 2 DCE and vinyl chloride have not been detected in PW-2 in four consecutive quarterly sampling events.

B. If PW-2 has been restricted from potable use for greater than 5 years and site contaminants are still present in detectable quantities in PW-2, Newport Water and Sewer District may submit to Ohio EPA a demonstration that TCE, cis-1, 2 DCE and vinyl chloride would not be present in detectable quantities in the Newport Water and Sewer District Distribution System if PW-2 is put back on-line. Based on this demonstration and data collected from routine sampling of monitoring wells, Ohio EPA will, at its sole discretion, determine the circumstances, if any, under which PW-2 may be returned to use.

C. At any time, Newport may petition Ohio EPA for permission to use PW-2 for potable purposes in the event of an emergency. Ohio EPA will, at its sole discretion, determine the circumstances, if any, under which PW-2 may be returned to use.

#### **REQUESTS FOR OPERATIONAL CHANGES**

23. Requests by Newport to Ohio EPA for approval of changes to pumping rates for PW-1 and PW-2 pursuant to paragraph 21, or petitions made pursuant to paragraph 22, shall be made in writing and sent to:

Kris Vanecko, Site Coordinator (or her successor)  
Ohio EPA , Southeast District Office  
2195 Front Street  
Logan, Ohio 43138

Responses from Ohio EPA to the requests or petitions described above shall be in writing and sent to:

Newport Water and Sewer District  
P.O. Box 367  
Newport, Ohio 45768

**PLAINTIFF'S COVENANT NOT TO SUE AS TO DEFENDANT NEWPORT  
WATER AND SEWER DISTRICT**

24. In consideration of Defendant Newport's compliance with the injunctive relief requirements set forth in Paragraphs 20., 21. and 22.A., B., and C. and subject to the reservation of rights set forth herein, the State covenants not to sue or take administrative action against Defendant Newport, its successors in interest, assigns, receivers, officers, agents, servants, or employees (a) for additional injunctive relief and (b) for any Response Costs related to the Site pursuant to 107(a) of CERCLA, 7003 of the Resource Conservation and Restoration Act ("RCRA"), and R.C. Chapters 6111., 3734., and 3745.

25. The State reserves all rights it may have to seek any other relief from Defendant Newport, including but not limited to the following:

- A. sanctions for violation of this Consent Decree;
- B. any claims arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;
- C. any claims arising from the future disposal of Waste Materials at the Site;

26. In addition to the reservation of rights set forth in Paragraph 25. above, the State reserves the right to seek injunctive relief, administrative order, and/or claims for Response Costs under state or federal law from Defendant Newport for conditions at the

Site previously unknown to the State. The conditions known to the State either are described in the following documents or reflect the migration of contamination described in the following documents: 1. Focused Site Characterization Source Control Interim Action Work Plan, dated March 1995, 2. Interim Summary Report, Focused Site Characterization, dated July 1995, 3. Interim Source Removal Report, dated May 1996, 4. Quarterly Ground Water Sampling Reports – Second Quarter 1996 through Fourth Quarter 1999, and 5. Ohio EPA, Division of Emergency and Remedial Response/Southeast District Office Newport Wellfield Files 1 through 8, as of the date of entry of this Consent Order. Any other conditions at the Site are therefore unknown to the State.

27. Except as set forth in Paragraph 28., Defendant Newport reserves all defenses they may have to any of the State's claims described in Paragraphs 25. and 26.

28. In any subsequent administrative or judicial proceeding initiated by the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Defendant Newport 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 24.

#### **COVENANT NOT TO SUE BY DEFENDANTS**

29. Defendants covenant not to sue and agree not to assert any claims or causes of action against each other, their successors in interest, assigns, receivers, officers,

agents, servants, employees or contractors, with respect to Response Costs or this Consent Decree, including but not limited to any claim arising out of the performance of response actions taken at the Site pursuant to the Director's Final Findings and Orders of November, 1994 or the performance of the injunctive actions to be undertaken at the Site pursuant to this Consent Decree.

**STATE RESERVATION OF RIGHTS AS TO NONPARTIES TO THIS  
CONSENT DECREE**

30. 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, political subdivision, 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 AS TO DEFENDANTS UNION CARBIDE  
CORPORATION AND SHELL CHEMICAL COMPANY**

31. The Parties agree, and by entering this Consent Decree this Court finds, that Defendants Union Carbide and Shell are entitled, upon full payment of the response costs required to be paid pursuant to this Consent Decree, to protection from contribution claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. 9613(f)(2) for the matters addressed in paragraph 15. of this Consent Decree. This contribution protection does not extend to the claims reserved by the State as set forth in paragraphs 16., 17., and 19. of this Consent Decree.

**CONTRIBUTION PROTECTION AS TO DEFENDANT NEWPORT WATER  
AND SEWER DISTRICT**

32. The Parties agree, and by entering this Consent Decree this Court finds, that Defendant Newport is entitled to protection from contribution claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. 9613(f)(2) for the matters addressed in paragraph 22. of this Consent Decree. This contribution protection does not extend to the claims reserved by the State as set forth in paragraphs 23., 24., and 26. of this Consent Decree.

**TERMINATION OF 1994 DIRECTOR'S FINAL FINDINGS AND ORDERS  
(1994 DIRECTOR'S ORDERS)**

33. Ohio EPA acknowledges that Defendants Union Carbide and Shell have provided to Ohio EPA, in accordance with Section XV of the 1994 Director's Orders, a complete demonstration and certification that all activities required under those Orders have been completed. This demonstration is found in Attachment #1 to this Consent Order.

34. Upon entry of this Consent Decree, Ohio EPA will terminate the 1994 Director's Orders.

**ENTRY OF CONSENT DECREE**

35. 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**

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

COSTS

37. Defendants shall pay the costs of this action.

Entered this 29<sup>th</sup> day of August, 2000.

  
U.S. DISTRICT JUDGE

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

**BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO**

By: Timothy Kern  
**TIMOTHY KERN (0034629)**  
Assistant Attorney General  
Environmental Enforcement Section  
30 East Broad Street - 25<sup>th</sup> Floor  
Columbus, Ohio 43215-3428  
Telephone: (614) 644-2766

Attorney for Plaintiff  
State of Ohio

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. Union Carbide Corporation, et al.

**UNION CARBIDE CORPORATION**

Law Department  
39 Old Ridgebury Road  
Danbury, CT 06817-000

Address

By:   
Signature of Representative

MARK E. TAPP  
Name of Representative (Print or Type)

MANAGER, UNION CARBIDE REMEDIATION  
Title

7/25/00  
Date

  
Signature of Counsel for Union Carbide Corporation

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. Union Carbide Corporation, et al.

SHELL CHEMICAL COMPANY

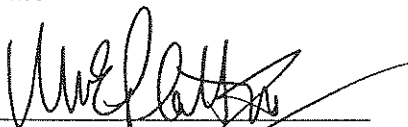
910 Louisiana Street, One Shell Plaza Bldg.  
Address

By:   
Signature of Representative

Tev Jenkins  
Name of Representative (Print or Type)

Remediation Manager  
Title

8/08/2000  
Date

  
Signature of Counsel for Shell Chemical Company



The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. Union Carbide Corporation, et al.

**NEWPORT WATER AND SEWER DISTRICT**

P.O. Box 367, Newport, OH 45768  
Address

By: Wayne Stephens  
Signature of Representative

Wayne Stephens  
Name of Representative (Print or Type)

President  
Title

07/20/00  
Date

Janet Byrd  
Signature of Counsel for Newport Water and Sewer District