

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

FILED
KENNETH J. MURPHY
CLERK
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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

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

Plaintiff,

v.

A.E. CLEVITE INCORPORATED, et al.,

Defendants.

: CASE NO. **C2 01 0197**

:
: JUDGE **JUDGE KINNEARY**

:
: **MAGISTRATE JUDGE ABEL**

CONSENT DECREE

Plaintiff, State of Ohio, ex rel. 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 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. **"Hazardous substance"** shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
- C. **"National Contingency Plan"** or "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, referred to in the Comprehensive Environmental Response, Compensation and Liability Action of 1980 ("CERCLA") as the National Contingency Plan, and codified at 40 C.F.R. Part 300.
- D. **"Ohio EPA"** means the Ohio Environmental Protection Agency, and its designated representatives.
- E. **"Response Costs"** means all direct and indirect costs incurred by the State of Ohio related to the response and remedial actions conducted at the Fultz Landfill Site by the Settling Defendants, 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, report or other items, and costs of the Ohio Attorney General's Office in representing Ohio EPA in this action.
- F. **"Settling Defendants"** means those Parties, other than the State, who sign this Consent Decree and the affiliated companies, if any, designated by such Party on its signature page attached hereto.
- G. **"Site" or "Fultz Landfill Site"** shall mean, solely for the purposes of this Consent Decree, the Fultz Landfill located on 30 acres approximately one-half mile northeast of Byesville, Guernsey County, Ohio, and any area where hazardous substances have come to be located as a result of a release from said landfill.
- 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 and its designated representatives.

BACKGROUND

2. The United States Environmental Protection Agency ("U.S. EPA"), pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, placed the Fultz Landfill Site on the NPL, which is set forth at 40

C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 21, 1984, 48 Fed. Reg. 40658-40682.

3. In 1985 in response to a release or a substantial threat of a release of hazardous substances at the Site, U.S. EPA commenced a Remedial Investigation and Feasibility Study ("RI/FS") pursuant to 40 C.F.R. § 300.430.

4. U.S. EPA completed its Remedial Investigation ("RI") Report and its Feasibility Study ("FS") Report on June 21, 1991.

5. The decision by U.S. EPA on the remedial action to be implemented at the Site was embodied in a final Record of Decision ("ROD"), executed on September 30, 1991. The State of Ohio concurred with the ROD, which includes the remedial action selected for the Site, as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) and (d) of CERCLA.

6. In November, 1994, U.S. EPA contractors submitted a Final Design Document.

7. On May 19, 1995, USEPA modified the Final Design by issuing an Explanation of Significant Difference ("ESD"). Notice of the ESD was published on August 12, 1995 in the Daily Jeffersonian (Cambridge/Byesville, Ohio) newspaper.

8. On June 25, 1997, a Judicial Consent Decree was entered in this court, between U.S. EPA and American Home Products, Saltire Industrial, A.E. Clevite, T&N Industries, Glacier Vandervell, Westinghouse Electric, Gould Electronics, and The Pullman Company, which requires those Settling Defendants to implement the ROD remedy as amended by the ESD.

9. On December 22, 1997, a Judicial Consent Decree was entered in this court, between

U.S. EPA and ARMCO, which require Settling Defendant ARMCO to reimburse U.S. EPA for \$6 million in past costs.

10. The State has incurred Response Costs that were not inconsistent with the NCP in addressing releases or the threat of releases of hazardous substances at and from the Site.

11. The Settling Defendants have consented to the entry of this Consent Decree without admitting any facts or acknowledging liability of any type, and the entry of this Decree shall not represent a finding of fact or an admission or adjudication of liability.

12. The Parties agree, and the Court by entering this Consent Decree finds, that entry of this Consent Decree is in the public interest and will avoid prolonged and complicated litigation between the Parties.

JURISDICTION

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

PARTIES BOUND

14. This Consent Decree applies to and is binding upon the Settling Defendants, their successors in interest, assigns, receivers, officers, agents, servants, employees, and those acting in concert, privity, or participation with them. The undersigned representative of each Party to this Consent Decree certifies that he or she is fully authorized by the Party whom she or he represents to enter into the terms and conditions of the Consent Decree and to execute and legally bind that Party,

and any designated affiliate of such Party, to it.

CALCULATION OF TIME

15. 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 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

16. No later than thirty (30) days after entry of this Consent Decree, Settling Defendants shall pay to the State a total of One Hundred Three Thousand, Five Hundred Dollars (\$103,500.00) as reimbursement for past Response Costs incurred by the State through December 31, 1999. All Response Costs reimbursed pursuant to this Consent Decree were incurred by the State of Ohio as costs of removal or remedial action, as defined under CERCLA, and were not inconsistent with the NCP.

17. The payments made pursuant to Paragraph 16 above shall be made in the form of a certified or cashier's check, marked as payment for the Fultz Landfill, 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. Settling Defendants shall send a copy of the transmittal letter and copy of the check to: a) the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, ATTN: Patricia Campbell or her successor; b) the Site Coordinator, Ohio EPA,

Southeast District Office, DERR, 2195 Front Street, Logan, Ohio 43138, ATTN: Kristin Vanecko or her successor; and c) the Assistant Attorney General representing the State in this case.

COVENANT NOT TO SUE

18. In consideration of the payments made by Settling Defendants pursuant to Paragraph 16 above, the State covenants not to sue Settling Defendants or their officers, directors, employees, successors or agents for any Response Costs related to the Site which were incurred by the State prior to and including December 31, 1999.

19. Except as expressly provided in Paragraph 18 above, the State reserves all rights it may have to seek any other relief from the Settling Defendants, or any other person or entity, including but not limited to the following:

- A. sanctions for violation of this Consent Decree;
- B. if the payments required by Paragraph 16 are not made, cost recovery for Response Costs incurred prior to and including December 31, 1999;
- C. reimbursement for any Response Costs incurred by the State after December 31, 1999; these Response 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;
- 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; and
- I. intervention into any civil or administrative action brought by the U.S. EPA against Settling Defendants.
- J. judicial relief for natural resource damages.

Settling Defendants reserve all defenses they may have to any of the State actions described in this Paragraph, except that Settling Defendants shall not assert, and may not maintain any defense or claim based upon the principles of waiver, laches, res judicata, collateral estoppel, issue preclusion, claim splitting or other defenses based upon any contention that claims raised by the State in a 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 18.

20. 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 or a designated affiliate of 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 not reimbursed in accordance with this Consent Decree. The State expressly reserves the right to sue any person other than Settling Defendants, in connection with the Site.

CONTRIBUTION PROTECTION

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

ENTRY OF CONSENT DECREE

22. 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

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

COSTS

24. Settling Defendants shall pay the costs of this action.

IT IS SO ORDERED:

Entered this ____ day of _____, 2001.

UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF OHIO

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

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO



ANN M. WOOD (0064894) Trial Attorney

TIMOTHY J. KERN (0034629)

Assistant Attorneys General

Environmental Enforcement Section

30 East Broad Street, 25th Floor

Columbus, Ohio 43215

(614) 466-2766

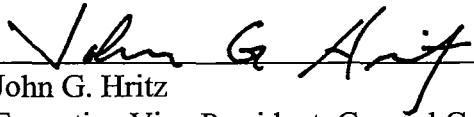
Attorneys for Plaintiff State of Ohio

SIGNATURES CONTINUED ON NEXT PAGE

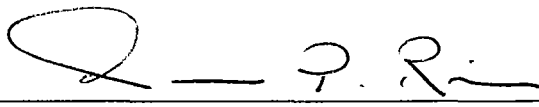
The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. A.E. Clevite Incorporated, et al.

AK Steel Corporation, successor-by-merger to Armco Inc.

Address: 703 Curtis Street
Middletown, OH 45043-0001

By: 
John G. Hritz
Executive Vice-President, General Counsel

Date: January 31, 2001


Dennis P. Reis
Quarles & Brady
411 East Wisconsin Avenue
Milwaukee, WI 53202-4497

Date: 2-5-01

Attorney for AK Steel Corporation

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. A.E. Clevite Incorporated, et al.

Gould Electronics Inc.

Address: 34929 Curtis Boulevard
Eastlake, OH 44095

By: Michael C. Veysey
Michael C. Veysey
Senior Vice President

Date: 1/26/2001

John A. Rego
John A. Rego (0039774)
Jones, Day, Reavis & Pogue
901 Lakeside Avenue
Cleveland, Ohio 44114-1190
(216) 586-7542

Date: 2/1/01

Attorney for Defendant Gould Electronics

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. A.E. Clevite Incorporated, et al.

American Home Products Corporation

Address: Five Giralda Farms
Madison, NJ 07940

By: Steven A. Tasher
Steven A. Tasher
Vice President - Environmental Affairs

Date: 2/5/01

Steven A. Tasher
Steven A. Tasher
Vice President - Environmental Affairs

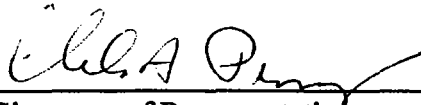
Date: 2/5/01

Attorney for American Home Products

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. American Home Products, Inc., et al.

Saltire Industrial, Inc. (f/k/a Scovill, Inc.)
Name of Defendant

Address: 800 Third Avenue, 24th Floor
New York, New York 10022

By: 
Signature of Representative

Charles A. Perry
Name of Representative (Print or Type)

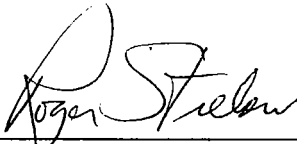
It's Attorney in Fact
Title

12/27/00
Date

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. American Home Products, Inc., et al.

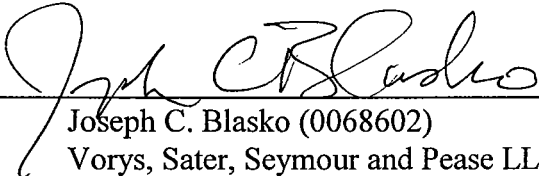
Federal-Mogul Corporation,
for T & N Industries Inc., A.E. Clevite Inc. and Glacier Vandervell Inc.

Address: 26555 Northwestern Highway
Southfield, MI 48034

By: 

Roger Strelow
Manager, Environmental, Health & Safety

Date: 11/29/00



Joseph C. Blasko (0068602)
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, OH 43216-1008

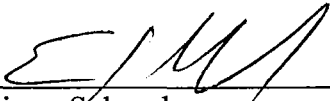
Date: 12/5/00

Attorney for Federal-Mogul Corporation

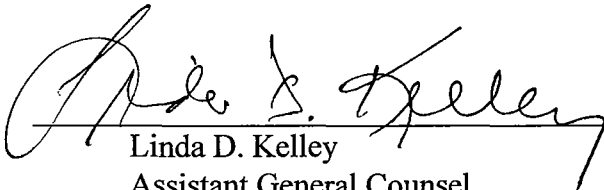
The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. A.E. Clevite Incorporated, et al.

Viacom Inc.,
successor-by-merger to CBS Corporation f/k/a Westinghouse Electric Corporation.

Address: 11 Stanwix Street
Pittsburgh, PA 15222

AKK
1/26/01 By: 
Eric J. Sobczak
Assistant Secretary

Date: 1/29/01


Linda D. Kelley
Assistant General Counsel
Viacom Inc.

Date: 1-26-01

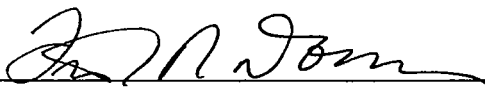
11 Stanwix Street, Room 216
Pittsburgh, PA 15222

Attorney for Viacom Inc.

The undersigned Defendant hereby consents to the foregoing Consent Decree in State of Ohio v. A.E. Clevite Incorporated, et al.

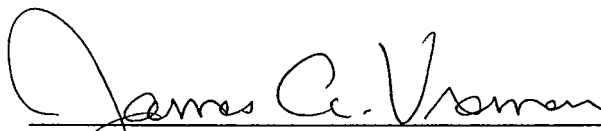
The Pullman Company,
for itself and its affiliate, Tenneco Automotive, Inc.

Address: 500 North Field Drive
Lake Forest, IL 60045

By: 

Timothy R. Donovan
Vice President

Date: February 1, 2001



James A. Vroman
Jenner & Block
One IBM Plaza
330 North Wabash
Chicago, Illinois 60611

Date: January 26, 2001

Attorney for the Pullman Company