

IN THE COURT OF COMMON PLEAS
HANCOCK COUNTY, OHIO

HANCOCK COUNTY, OH
FILED
2007 FEB -9 A 11:17
CATHY PROSSER WILCOX
CLERK OF COURTS

STATE OF OHIO, ex. rel.	:	
JIM PETRO	:	CASE NO. 2006 CV 00540
ATTORNEY GENERAL OF OHIO	:	
	:	JUDGE JOSEPH H. NIEMEYER
Plaintiff,	:	
	:	
v.	:	
	:	
BUCKEYE PIPE LINE COMPANY, L.P.:	:	
	:	
Defendant.	:	
	:	

CONSENT ORDER AND FINAL JUDGMENT ENTRY

WHEREAS, Plaintiff, State of Ohio, ex rel. Marc Dann, Attorney General of Ohio ("Plaintiff"), having filed the Complaint in this action against Defendant Buckeye Pipe Line Company, L.P. ("Defendant") to enforce Ohio's hazardous waste laws found in Chapter 3734 of the Revised Code and the rules adopted thereunder; and Plaintiff and Defendant having consented to the entry of this Order; and

WHEREAS, the objectives of this Consent Order include the protection of human health and the environment by requiring Defendant to comply with the provisions of R.C. Chapters 3734 and 6111 and the rules adopted thereunder and to take certain other actions; and

WHEREAS, Defendant does not admit the allegations set forth in the Complaint and denies any violation of any state or federal statute, regulation or common law. This

Consent Order does not establish that Defendant is or is not subject to the Resource Conservation and Recovery Act (RCRA).

THEREFORE, without trial or admission of any issue of law or of fact, and upon the consent of the parties hereto, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

I. DEFINITIONS

1. As used in this Consent Order:

- A. **“Consent Order”** means this Consent Order and Final Judgment Entry and all appendices attached hereto. In the event of conflict between this Consent Order and any appendix, the Consent Order shall control.
- B. **“Contractor”** means the individual(s) or company or companies retained by or on behalf of Defendant to undertake and complete the work required by this Consent Order.
- C. **“Defendant”** means Buckeye Pipe Line Company, L.P.
- D. **“Director”** means Ohio’s Director of Environmental Protection.
- E. **“Effective Date”** means the date the Hancock County Court of Common Pleas enters this Consent Order.
- F. **“Facility”** refers to the facility where the alleged generation, treatment, storage, disposal, or other placement of hazardous waste was conducted by Defendant, which is located at the following addresses: 3757 Township Road 38, Mt. Cory, Ohio.
- G. **“Ohio EPA”** means the Ohio Environmental Protection Agency.

- H. **"Pit Area"** means the excavated area where the hazardous waste contents of tanks T-1 and T-2 were emptied.
- I. **"Sampling and Analysis Plan" or "SAP"** means a plan prepared by Defendant in order to conduct an investigation of the nature and extent of contamination. The SAP is subject to approval by Ohio EPA.
- J. **"Sampling Analysis and Remediation Plan or "SARP"** is a plan prepared by Defendant outlining the steps to remediate the environmental conditions delineated by the SAP.
- K. **"Surface Impoundment Area"** means the area where during the dilution and solidification process, the wastes were tracked into the large and small lagoons thus making the two lagoons indistinguishable from one another and creating a single unit.
- L. **"Plaintiff"** means the State of Ohio by and through the Attorney General of Ohio.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapter 3734 and the rules adopted thereunder. This Court has jurisdiction over the parties. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted.

III. PERSONS BOUND

3. The provisions of this Consent Order shall apply to and be binding upon Plaintiff and Defendant, its agents, officers, employees, assigns, successors in interest and any person acting in concert or participation with it. Defendant is ordered and enjoined

to provide a copy of this Consent Order to each contractor it employs to perform work itemized herein.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

4. Except as otherwise provided in this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendant to Plaintiff for all claims alleged in the Complaint.

5. Nothing in this Consent Order, including the imposition of stipulated civil penalties, shall limit the authority of the State of Ohio to:

- A. Seek relief for claims or conditions not alleged in the Complaint;
- B. Seek relief for claims or conditions alleged in the Complaint that occur after the entry of this Consent Order;
- C. Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;
- D. Bring any action against Defendant or against any other person, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. §9601, et seq. and/or R.C. 3734.20 through 3734.27 to: (1) recover natural resource damages, and/or (2) order the performance of, and/or recover costs for any removal, remedial or corrective activities not conducted pursuant to the terms of this Consent Order.
- E. Take any action authorized by law against any person, including Defendant, to eliminate or mitigate conditions at the Facility that may

present an imminent threat to the public health or welfare, or the environment.

- F. Nothing in this Consent Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged in the Complaint, against any person, firm, trust, joint venture, partnership, corporation, association, or other entity not a signatory to this Consent Order. The State also specifically reserves against any entity that is not a signatory to this Consent Order, the claims set forth in Paragraph 5, above.

V. CLOSURE AND OTHER INJUNCTIVE RELIEF

Standards for the Management of Hazardous Waste

6. Upon the Effective Date of this Consent Order, Defendant is hereby permanently enjoined and ordered to immediately comply with all applicable provisions of the Ohio hazardous waste laws and rules as set forth in R.C. Chapter 3734 and Ohio Admin. Code Chapters 3745-50 through 3745-69, Ohio Admin. Code Chapter 3745-270 through 3745-279, as those rules apply to the remediation of the facility under this Consent Order.

7. Upon the Effective Date of this Consent Order, Defendant is immediately ordered and permanently enjoined from disposing of any hazardous waste at the Facility except in accordance with R.C. 3734.02(E) or R.C. 3734.02(F).

8. Upon the Effective Date of this Consent Order, Defendant is ordered and enjoined from storing any hazardous waste at the Facility except in accordance with R.C.

3734.02(E) or R.C. 3734.02(F) or, for wastes generated at the Facility, in accordance with Ohio Admin. Code 3745-52-34.

9. Upon the Effective Date of this Consent Order, Defendant is ordered and enjoined to comply with the requirements of Ohio Admin. Code 3745-52-11 which requires Defendant to evaluate waste generated at the facility.

Sampling, Remediation and Closure

10. Defendant shall submit a Sampling and Analysis Plan (SAP) within 45 days of the entry of this consent order and final judgment entry.

11. The SAP shall at a minimum address all areas of the Facility where hazardous wastes were stored, treated, or disposed of, including the areas of alleged generation, storage, treatment, or disposal that includes but is not limited to: (1) the Pit Area; (2) the Surface Impoundment Area and (3) the hazardous waste storage tanks.

12. The SAP is subject to Ohio EPA review and approval. If Ohio EPA does not approve the SAP and provides Defendant with a written statement of deficiencies, Defendant shall revise the SAP or submit a new SAP for approval that corrects the stated deficiencies within 30 days after receipt of such written statement of deficiencies. Ohio EPA may approve the SAP with modifications. If Ohio EPA modifies the SAP, the modified SAP becomes the approved SAP. Upon Defendant's receipt of approval from Ohio EPA of the SAP, Defendant shall implement the approved SAP in accordance with the terms, conditions and schedules contained therein.

13. Following receipt of the analytical results generated by the implementation of the approved SAP, Defendant shall, pursuant to the schedule in the approved SAP, submit to Ohio EPA a report (SAP Report) that includes the laboratory analysis and

evaluation of data generated from implementing the approved SAP. Using the format found in Ohio Admin. Code 3745-50-42(D) and fully incorporated herein, Defendant shall certify that the sampling and analysis was conducted in accordance with the approved SAP. The certification shall be signed by Defendant and shall be included in the SAP Report.

14. A Sampling Analysis and Remediation Plan (SARP) shall be submitted to Ohio EPA within 30 days after Ohio EPA's approval of the SAP Report. The SARP shall propose methods of and a schedule for remediation of the areas at the Facility where hazardous waste was stored and disposed without a permit, in violation of R.C. 3734.02(E) and (F) and the rules promulgated thereunder.

15. The SARP is subject to Ohio EPA review and approval. If Ohio EPA does not approve the SARP and provides Defendant with a written statement of deficiencies, Defendant shall revise the SARP or submit a new SARP for approval that corrects the stated deficiencies within 30 days after receipt of such written statement.

16. Upon receipt of Ohio EPA's approval of the SARP, Defendant shall implement the SARP in accordance with the requirements of Ohio Admin. Code 3745-66-11 and 3745-66-14 and the specifications and schedules contained in the approved SARP and any conditions attached thereto.

Previous Environmental Investigation of the Defendant

17. During settlement discussions prior to this Order, Defendant has undertaken sampling and analysis of the waste to be removed, the estimated quantity of such waste, and the condition of groundwater and soils under said waste. That work is identified, in part, in the following technical reports:

- Sampling and Analysis Plan Waste Characterization Buckeye Pipe Line Company Mount Cory, Ohio, June 2002.
- Report on Waste Characterization Activities Former Buckeye Pipe Line Property Mount Cory, Ohio, 2 October 2002 & Errata Insert for Report on Waste Characterization Activities, Former Buckeye Pipe Line Property Mount Cory, Ohio, 18 October 2002.
- Sampling and Analysis Plan Groundwater Investigation Buckeye Pipe Line Company Mount Cory, Ohio, October 2003, Revised December 2003.
- Report on Groundwater Characterization Activities Former Buckeye Pipe Line Property Mt. Cory, Ohio, 8 July 2003.
- Sampling and Analysis Plan Soil Investigation Former Buckeye Pipe Line Company Property Mount Cory, Ohio, September 2004.

18. Within 60 days after the completion of work required by the approved SARP, Defendant shall submit to Ohio EPA, for review and approval, a certification that the sampling and remediation work was conducted in accordance with the approved SARP. The certification shall be signed by Defendant using the format found in Ohio Admin. Code 3745-50-42(D) and fully incorporated herein.

V. SUBMITTAL OF DOCUMENTS

19. All documents required to be submitted to Ohio EPA pursuant to this Consent Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio Environmental Protection Agency
Division of Hazardous Waste Management
50 West Town Street, Suite 700
Columbus, Ohio 43215
Attn: Manager, Compliance Assurance Section

Ohio Environmental Protection Agency
Northwest District Office
347 North Dunbridge Road
Bowling Green, Ohio 43402
Attn: DHWM Manager

VI. CIVIL PENALTY

20. Defendant is ordered and enjoined to pay to the State of Ohio a total civil penalty in the amount of Thirty Thousand Dollars (\$30,000.00). The civil penalty required to be paid under this Consent Order shall be paid by delivering to Plaintiff, c/o Martha Sexton, or her successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, a cashier's or certified check in that amount payable to the order of "Treasurer, State of Ohio" within thirty (30) days of the effective date of this Consent Order. This civil penalty shall be deposited into the Hazardous Waste Clean-up Fund created by R.C. 3734.28.

VII. STIPULATED PENALTIES

21. In the event that Defendant fails to comply with any requirement or deadline contained in this Consent Order or any requirement or deadline contained in any document approved in accordance with this Consent Order, Defendant is liable for and shall pay stipulated penalties in accordance with the following schedule for each failure to comply:

- A. For each day of each failure to comply with a requirement or deadline of this Consent Order or any document approved in accordance with this Consent Order, up to and including thirty (30) days, One Hundred Dollars (\$100.00) per day for each requirement or deadline not met.
- B. For each failure to comply with a requirement or deadline of this Consent Order or any document approved in accordance with this Consent Order, from thirty-one (31) to sixty (60) days, Two Hundred

Fifty Dollars (\$250.00) per day for each requirement or deadline not met.

- C. For each day of each failure to comply with a requirement or deadline of this Consent Order or any document approved in accordance with this Consent Order, over sixty (60) days, Five Hundred Dollars (\$500.00) per day for each requirement or deadline not met.

22. Any payment required to be made under the provisions of this Section of the Consent Order shall be made by delivering to Plaintiff, c/o Martha Sexton or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, a cashier's or certified check or checks made payable to the order of "Treasurer, State of Ohio," for the appropriate amount within thirty (30) days from the date of the failure to meet the requirement or deadline of this Consent Order. A letter briefly describing the type of violation, deadline or requirement not met and the date upon which the violation of this Consent Order occurred shall accompany the payment of the stipulated penalty. This penalty shall be deposited into the Hazardous Waste Clean-up Fund created by R.C. 3734.28.

23. The payment of stipulated penalties by the Defendant and the acceptance of such stipulated penalties by Plaintiff pursuant to this Article shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to R.C. Chapter 3734, including civil penalties under R.C. 3734.13, or to otherwise seek judicial enforcement of this Consent Order, for the same violation for which a stipulated penalty was paid or for other violations.

VIII. ENFORCEMENT COSTS

24. Defendant shall pay the enforcement costs of the Ohio Attorney General expended prior to the entry of this Consent Order, totaling \$2,400.00, by delivering a certified check in such amount for payment into the State Treasury to the credit of the Attorney General's General Reimbursement account (also known as CAS Fund 106) made payable to the order of "Treasurer, State of Ohio" to Martha Sexton, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, within fourteen (14) days of the entry of this Consent Order. Any check submitted in compliance with this Section shall be in addition to and separate from any check submitted pursuant to any other Section of this Consent Order.

IX. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS

25. All activities undertaken by Defendant pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state and local laws, rules, regulations and permits or other. Defendant shall submit timely applications and requests for any such permits and approvals. Where such laws appear to conflict with the other requirements of this Consent Order, Defendant is ordered and enjoined to immediately notify Ohio EPA of the potential conflict. Defendant is ordered and enjoined to include in all contracts or subcontracts entered into for work required under this Consent Order, provisions stating that such contractors or subcontractors, including their agents and employees, Defendant shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and rules. This Consent Order is not a permit issued pursuant to any federal, state or local law or rule.

X. RETENTION OF JURISDICTION

26. This Court shall retain jurisdiction of this action for the purpose of enforcing this Consent Order.

XI. COSTS

27. Defendant shall pay the court costs of this action.

XII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

28. Upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. 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 date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

XIII. AUTHORITY TO ENTER INTO THE CONSENT ORDER

29. Each signatory for a corporation represents and warrants that he or she has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof.

XIV. DISCLAIMER, RELEASE, AND WITHDRAWAL OF FFOs

30. Buckeye Pipe Line Company, L.P. has entered into this Consent Order to resolve issues and allegations noted in a Notice of Violation dated September, 2002, to resolve an appeal of FFOs dated April 14, 2003, and to resolve unilateral orders contained in a certified letter dated April 15, 2003.

31. Buckeye Pipe Line Company, L.P. does not admit and expressly denies the allegations in the Complaint and is consenting to this Consent Decree solely in the interest of settlement. This Consent Order may not be construed as an admission

otherwise and may not be introduced or considered in any other proceeding, either administrative or judicial, for any purpose, except as necessary for Ohio EPA to enforce the provisions of this Consent Order.


32. This Consent Order and the actions required by it shall not be construed, nor may it be introduced in any proceeding, administrative or judicial, to establish that Buckeye Pipe Line Company, L.P. is subject to the Resource Conservation and Recovery Act or the Ohio Solid Waste Disposal laws and duly enacted regulations thereunder.

33. Entry of this Consent Order is a full and final settlement of any and all claims of the State of Ohio arising from the facts and circumstances stated in the Notice of Violation of September 2002 and the FFOs, and constitutes a release and waiver of all claims stated in the Complaint filed in this matter by the State of Ohio for injunctions, penalties, damages or otherwise arising from the facts and circumstances thereof.

XV. WITHDRAWAL OF FFOS & DISMISSAL OF APPEAL

34. The terms of any agreement to withdraw relevant agency FFOs and to dismiss defendant's appeal at the Environmental Review Appeals Commission shall be established in a separate document.

IT IS SO ORDERED:


JUDGE
HANCOCK COUNTY COURT
OF COMMON PLEAS

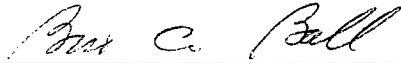
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DATE

[SIGNATURE PAGE FOLLOWS]

Approved:

MARC DANN
OHIO ATTORNEY GENERAL

By:



Brian A. Ball (0078285)
Assistant Attorney General
Environmental Enforcement Section
Public Protection Division
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
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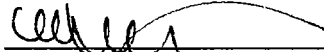
Attorneys for Plaintiff State of Ohio

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Administrative and Legal Affairs
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*Authorized representative of
Defendant Buckeye Pipe Line
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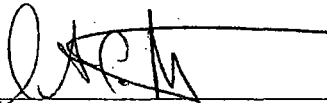
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