

## SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT is made and entered into by and between Buckeye Water Service Company ("Buckeye Water") whose address is P.O. Box 409, New Concord, Ohio 43762 and Edward P. Jirles ("Jirles"), whose address is 65040 Slaughter Hill Rd., Cambridge, Ohio 43725 and the Division of Mineral Resources Management ("Division") of the Ohio Department of Natural Resources whose address is 1855 Fountain Square Court, Bldg. H-3, Columbus, Ohio 43224, on this, the <sup>June</sup>14<sup>th</sup> day of ~~May~~, 2002.

### WHEREAS:

1. On or about March 4, 2002, the Division was preparing to file a complaint against Buckeye Water and Jirles, and the Division sent a draft copy of that complaint to Buckeye Water.
2. Prior to the filing of the complaint, Buckeye Water indicated a willingness to settle the case.
3. The Division agreed to not file a complaint as long as Buckeye Water agreed to negotiate a settlement agreement in good faith and agree to the terms of a settlement acceptable to the Division.
4. The terms described herein are mutually acceptable to the parties to this agreement, disposing of the necessity for the Division to file a complaint in court or take further enforcement action.

WHEREFORE, Buckeye Water, Jirles, and the Division agree that,

1. Based on one event occurring on or about May 9, 2001, as described in subsections (a) and (b) of this paragraph, Buckeye Water Service Company admits to violating R.C. 1509.22(A), R.C. 1509.22 (C)(6) and Ohio Admin. Code 1501:9-3-04 (A) by:

- (a) Buckeye Water and Jirles, both individually and in his official capacity as an employee of Buckeye Water, knowingly releasing brine oil, and oil-field waste<sup>1</sup> from a Buckeye Water water tanker truck into an open strip-mine pit located in Madison Township, Muskingum County, Ohio on and/or in the vicinity of Oxford Mining Coal permit D-1131 on or about May 9, 2001;
- (b) Buckeye Water and Jirles, releasing brine, oil, and oil-field waste in a manner causing pollution to soil and surface.

2. Due to the above described violations, Buckeye Water shall pay to the State of Ohio ten thousand dollars (\$10,000.00), with five thousand dollars (\$5,000.00) waivable under the terms and conditions as described in paragraph 4 below. All payments to the State shall be by certified checks to the order of "Treasurer, State of Ohio" under the payment schedule described in paragraphs 3 and 4 below. The checks shall be delivered to counsel for the State of Ohio, Brett A. Kravitz, Assistant Attorney General or other Assistant Attorney General representing the Division of Mineral Resources Management at the Ohio Attorney General's Office, Ohio Department of Natural Resources, Fountain Square, Bldg. D-2, Columbus, Ohio 43224. Buckeye Water and Jirles are joint and severally liable for all payments specified in this Settlement Agreement.

3. Buckeye Water shall pay a non-waivable payment of one thousand two hundred and fifty dollars (\$1,250.00) on each of the following four dates for a total of five thousand dollars (\$5,000.00):

July 1, 2002  
December 1, 2002  
June 1, 2003  
December 1, 2003

<sup>1</sup> The reference to brine, oil, and oil-field waste as used in this Complaint refers to how these terms are defined and used under Ohio Revised Code 1509.01 (B), (H), (U), R.C. 1509.22, R.C. 1509.222, R.C. 1509.224, R.C. 1509.226 and Ohio Admin. Code 1501:9-3-01(E), 1501:9-1-01(A)(5), and 1501:9-1-01(A)(2) and (9).

4. Buckeye Water shall pay the remaining five thousand dollars (\$5,000.00) unless Buckeye Water meets the conditions specified in (a) and (b) below in which case the additional five thousand (\$5,000.00) payment shall be waived. The conditions for such a waiver are the following:

- (a) Buckeye Water has paid the five thousand dollars (\$5,000.00) in payments described in paragraph 3 on or prior to December 1, 2003; and
- (b) Buckeye Water and its employees do not engage in any further illegal brine hauling and/or disposal activities that are prohibited under the Ohio Revised Code Chapter 1509 and Ohio Administrative Code 1501:09-3-04(A)(B).

5. In the event that Buckeye Water must pay the additional five thousand dollars (\$5,000.00) because of its failure to comply with the terms and conditions specified in paragraph 4 (a) and (b) of this Agreement, Buckeye Water must pay the five thousand dollar (\$5,000.00) amount within twenty days of written notification by the Division that this amount is due and owed to the State.

6. In the event of any default on this Settlement Agreement, the Division may elect any and all remedies it deems appropriate. Further, in the event of default, Buckeye Water, Jirles, their heirs, assignees, and successors in interest agree that, in any litigation brought by the Division to enforce this Settlement Agreement: a) venue shall be proper in the Franklin County Court of Common Pleas; b) they consent to service of process and summons thereof; and c) interest on any of the unpaid payments specified in paragraphs 3 and 4 shall be assessed at ten percent (10%) per annum, along with costs and reasonable attorney fees.

7. The payments required in this agreement shall not be evidence of a civil penalty assessment. Nothing in this Settlement Agreement shall limit the Division from pursuing any civil or criminal penalties, upon breach of this Agreement.

8. Nothing in this Settlement Agreement shall be construed so as to prejudice the right of the Division of Mineral Resources Management to issue other decisions and Orders and enforce the provisions of Ohio Revised Code Chapter 1509 and Chapter 1501:09 of the Ohio Administrative Code.

9. The debt created herein shall not be reduced or released in the event that Buckeye Water is subject to a bankruptcy proceeding.

10. This Settlement Agreement shall become effective upon the signature of the Chief of the Division of Mineral Resources Management of the Ohio Department of Natural Resources.

11. The provisions of this Settlement Agreement shall apply to and be binding upon the parties hereto, their agents, officers, employees, assignees, heirs, and successors in interest.

12. This Settlement Agreement represents the entire agreement between the parties and supercedes any written or verbal communication occurring prior to the effective date hereof.

**Signed and subscribed** on behalf of the parties hereto.

**IN WITNESS WHEREOF**, the parties have executed this **Settlement Agreement** in three counterparts, any of which may be considered an original without presentation of the other. The parties acknowledge that they have read this **Settlement Agreement**, understand its terms, are capable of complying with them, and agree to comply with them fully.

IT IS SO AGREED.

Fred Badutcher  
Buckeye Water Service Company  
President, who is authorized to sign this Agreement and  
bind Buckeye Water Service Company

DATE 6-14-2002

Edward P. Jirles  
Edward P. Jirles, Individually

DATE 6-14-02

Michael Sponsler  
The Division of Mineral Resources Management  
Chief Michael Sponsler

DATE 6/19/02

Approved:

William J. Taylor  
William J. Taylor  
Counsel for Buckeye Water Service Company  
50 North Fourth Street, P.O. Box 1030  
Zanesville, Ohio 43702-1030  
(740) 454-2591

DATE June 17, 2002

Brett A. Kravitz  
Brett A. Kravitz, Assistant Attorney General  
Counsel for the Division of Mineral Resources Management  
Fountain Square, Bldg. D-2  
Columbus, Ohio 43224  
(614) 265-6870

DATE 6/19/02