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LUCAS COUNTY

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IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO

COURT OF COMMON PLEAS
CLERK OF COURTS

STATE OF OHIO, ex rel.
MICHAEL DEWINE
OHIO ATTORNEY GENERAL

Case No. CI0201007960

Judge James Bates

Plaintiff,

v.

DELTA FUELS, INC., et al.,

Defendants.

CONSENT ORDER AND FINAL JUDGMENT ENTRY

Plaintiff, State of Ohio, on relation of its Attorney General ("Plaintiff"), has filed the Complaint in this action to enforce Ohio's air quality and hazardous waste laws found in Chapters 3704 and 3734 of the Revised Code and the rules adopted thereunder, respectively. Delta Fuels Inc., Knight Enterprises, Inc., and Carroll Knight (collectively "Defendants"), consent to the entry of this Order and all parties agree that compliance with this Consent Order resolves the claims in the Complaint.

NOW, THEREFORE, without trial of any issue of fact or law, 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. **"Clean Closure"** means an owner or operator has, in closure, either:

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1. Demonstrated to Ohio EPA's satisfaction that suspected contaminants cannot be detected, cannot be detected above naturally occurring background levels, or cannot be detected above regulatory levels; or
 2. Through a risk assessment, demonstrated to Ohio EPA's satisfaction, that contaminant levels are low enough that they do not pose a threat to human health or the environment.
- B. **"Closure Plan(s)"** means a Closure Plan or Closure Plans that meet the requirements of Ohio Adm.Code 3745-55-11 through 3745-55-20 and 3745-54-90 through 3745-54-100.
- C. **"Consent Order"** means this Consent Order and Final Judgment Entry.
- D. **"Contractor"** means the individual(s) or company or companies retained by or on behalf of Defendants to undertake and complete the work required by this Consent Order.
- E. **"Defendants"** means Delta Fuels Inc. and Knight Enterprises, Inc. Any requirement, obligation or liability imposed in this Consent Order upon Defendants is imposed jointly and severally.
- F. **"Director"** means Ohio's Director of Environmental Protection.
- G. **"Effective Date"** means the date the Lucas County Court of Common Pleas enters this Consent Order.
- H. **"Facility"** refers to the gasoline storage facility where the alleged treatment, storage, disposal, or other placement of hazardous waste was conducted which is located at 1820 Front Street in the City of Toledo, Lucas County, Ohio ("Toledo facility").

- I. **“Hazardous Waste Management Unit”** means a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A unit includes containers and the land or pad upon which they are placed.
- J. **“Ohio EPA”** means the Ohio Environmental Protection Agency.
- K. **“Plaintiff”** means the State of Ohio by and through its Attorney General.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Defendants under R.C. Chapters 3704 and 3734, and venue is proper in this Court.

III. PERSONS BOUND

3. The provisions of this Consent Order shall apply to and be binding upon Plaintiff and upon Defendants Delta Fuels Inc. and Knight Enterprises, Inc., and their officers, agents, servants, employees, successors-in-interest, assigns, and any other person who would be bound pursuant to Rule 65(D) of the Ohio Rules of Civil Procedure, including any person acting in concert, privity or participation with Defendants who receives actual notice of this Consent Order whether by personal service or otherwise and who will provide work or services on behalf of Defendants related to this Consent Order. Defendants are ordered and enjoined to provide a copy of this Consent Order to each general contractor, subcontractor, laboratory, consultant, agent,

employee and person hired by or who will provide work or services on behalf of Defendants related to this Consent Order.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

4. Except as otherwise provided in paragraphs 5 and 30 of this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendants to Plaintiff for the claims alleged in the Complaint.

5. Nothing in this Consent Order, including the imposition of stipulated civil penalties, shall limit the authority of Plaintiff 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 Effective Date;
- C. Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;
- D. Bring any action against any Defendants 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 any Defendant, to eliminate or mitigate conditions at the Facility that may

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

F. Nothing in this Consent Order shall constitute or be construed as an admission of liability, 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. Plaintiff also specifically reserves its right to sue against any entity that is not a signatory to this Consent Order.

6. Nothing in this Consent Order shall be construed to limit the statutory authority of the Director or his authorized representatives to enter at reasonable times upon any private or public property, real or personal, to inspect or investigate, obtain samples and examine or copy any records to determine compliance with R.C. Chapters 3704 and 3734 or other applicable chapters of the Revised Code which the Director administers.

7. Nothing in this Consent Order shall be construed to relieve Defendants of obligations to comply with applicable federal, state, or local statutes, regulations, rules, or ordinances.

8. Nothing herein shall restrict the right of the Defendants to raise any administrative, legal or equitable claim or defense with respect to such further actions. In the event the Ohio EPA takes an administrative action against Defendants regarding the requirements of Section V., below, Defendants reserve the right to appeal such action by Ohio EPA.

9. 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 raised by Plaintiff in any subsequent judicial or administrative proceeding were, could, or should have been brought in the instant case.

V. PERMANENT INJUNCTION
General Injunctive Relief

10. Upon the Effective Date, Defendants are 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, Ohio Adm.Code Chapters 3745-50 through 3745-69, and Ohio Adm.Code Chapters 3745-270 through 3745-279. Upon the Effective Date, Defendants are also hereby permanently enjoined and ordered to immediately comply with all applicable provisions of the Ohio air laws and rules as set forth in R.C. Chapter 3704, Ohio Adm.Code Chapters 3745-15 and 3745-21.

11. Upon the Effective Date, Defendants are ordered and enjoined to comply with the requirements of Ohio Adm.Code 3745-55-11 which requires Defendants to close the facility in a manner that minimizes the need for further maintenance and controls, minimizes or eliminates, to the extent necessary to prevent threats to human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere, and complies with the closure requirements of rules promulgated under Ohio Adm.Code Chapter 3745-55.

12. Upon the Effective Date, Defendants are ordered and enjoined to conduct inspections at the Facility as required by Ohio Adm.Code 3745-54-15.

13. Defendants are ordered and enjoined to maintain and repair, as necessary, security measures at the Facility as required by Ohio Adm.Code 3745-54-14 and 3745-54-15.

14. Within ninety (90) days of the Effective Date, Defendants are ordered and enjoined to submit a contingency plan for the Facility pursuant to Ohio Adm.Code 3745-54-50 through 3745-54-56.

15. Defendants are ordered and enjoined to fully comply with R.C. Chapter 3704 and the rules promulgated thereunder with respect to all air contaminant sources at the Facility.

Closure

16. Defendants are ordered and enjoined to comply with the Director's Final Findings and Orders (Attachment 1) upon issuance by the Director, which is attached to and incorporated in this Consent Order in its entirety, in accordance with the schedule presented in the Director's Final Findings and Orders and in the Closure Plan.

17. Defendants are ordered and enjoined to further amend the Closure Plan pursuant to Ohio Adm.Code 3745-55-12 whenever:

- A. Changes in operating plans or design affect the Closure Plan; or
- B. There is a change in the expected year of closure, if applicable; or
- C. In conducting partial or final closure activities, unexpected events require a modification of the Closure Plan; or
- D. Defendants are unable to achieve the closure performance standard identified in Ohio Adm.Code 3745-55-11 by implementing the Closure Plan.

18. Amendment to the Closure Plan shall be conducted in accordance with the following protocol:

- A. Following review of the amended Closure Plan, if Ohio EPA determines that the amended Closure Plan is deficient and gives Defendants written notice of such deficiencies in the amended Closure Plan, Defendants are ordered and enjoined to submit to Ohio EPA a revised amended Closure Plan within thirty (30) days of receipt of the notice of deficiencies.
- B. Following review of a revised amended Closure Plan, if Ohio EPA determines that the revised amended Closure Plan is deficient, Ohio EPA may modify the plan and approve the revised plan as modified by Ohio EPA.
- C. Immediately upon receipt of notice of approval by Ohio EPA of the amended Closure Plan either as originally submitted, as revised, or as revised and modified, Defendants are ordered and enjoined to implement the approved amended Closure Plan in the manner and time frames set forth in the approved amended Closure Plan.

19. In the event that Defendants cannot achieve Clean Closure, Defendants are ordered and enjoined to commence post-closure activities pursuant to Ohio Adm.Code 3745-55-17 thru 3745-55-20. In addition, Defendants shall submit a post-closure care cost estimate and establish financial assurance for post-closure care in accordance with Ohio Adm.Code 3745-55-44 and 3745-55-45.

20. The Closure Plan and any amendments or modifications to the Closure Plan shall be enforceable under this Consent Order as though fully incorporated herein.

VI. FACILITY ACCESS

21. As of the Effective Date, Ohio EPA and its representatives and contractors shall

have access at reasonable times to the Facility, and shall have access to any other property controlled by or available to Defendants to which access is necessary to effectuate the actions required by this Consent Order. Access shall be allowed for the purposes of conducting activities related to this Consent Order including but not limited to:

- A. Monitoring the work or any other activities taking place at the Facility;
- B. Verifying any data or information submitted to Ohio EPA;
- C. Conducting investigations relating to contamination at or near the Facility;
- D. Obtaining samples;
- E. Assessing the need for, planning, or implementing additional response actions at or near the Facility;
- F. Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Defendants or their agents, consistent with this Consent Order and applicable law; or
- G. Assessing Defendant's compliance with this Consent Order.

22. Nothing in this Consent Order shall be construed to limit the statutory authority of the Director or his authorized representatives to enter at reasonable times upon the Property or any other private or public property, real or personal, to inspect or investigate, obtain samples and examine or copy any records to determine compliance with R.C. Chapters 3704 and 3734 or any other statute which the Director administers.

VII. DOCUMENT SUBMITTAL

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

Ohio Environmental Protection Agency
Division of Materials and Waste Management
50 W. Town St., Suite 700
Columbus, Ohio 43215
Attn: Manager, Compliance Assurance Section

and

Ohio Environmental Protection Agency
Division of Materials and Waste Management
Northwest District Office
347 North Dunbridge Road
Bowling Green, Ohio 43402
Attn: DMWM Manager

VIII. CIVIL PENALTIES

24. Defendants, jointly and severally, are ordered and enjoined to pay to the State of Ohio, a total civil penalty in the amount of Four Hundred Forty Thousand Dollars (\$440,000.00). Of the total civil penalty, a civil penalty in the amount of Three Hundred Seventy Five Thousand (\$375,000.00) is intended as settlement of the State's claims brought pursuant to R.C. 3734. Further, of the total civil penalty, subject to the provisions of paragraph 26, a civil penalty in the amount of Fifty Five Thousand (\$55,000.00) is intended as settlement of the State's claims brought pursuant to R.C. 3704. 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, Paralegal, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, two certified checks in the amounts of Three Hundred Seventy Five Thousand (\$375,000.00) and Fifty Five Thousand (\$55,000.00) payable to the order of "Treasurer, State of Ohio" within thirty (30) days of the Effective Date. The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 343258."

IX. ENFORCEMENT COSTS

25. Included in the total civil penalty, Defendants shall pay the enforcement costs of the Ohio Attorney General tabulated prior to the entry of this Consent Order, totaling Ten Thousand Dollars (\$10,000.00), by delivering an additional certified check in such amount for payment into the State Treasury to the credit of the Attorney General's General Reimbursement account made payable to the order of "Treasurer, State of Ohio" to Martha Sexton, or her successor, Paralegal, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, within thirty (30) days of the Effective Date. The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 343258." 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.

X. SUPPLEMENTAL ENVIRONMENTAL PROJECT

26. In lieu of payment of Eleven Thousand Dollars (\$11,000.00) of the Fifty Five Thousand Dollar (\$55,000.00) civil penalty intended as settlement of the State's claims brought pursuant to R.C. 3704, Defendants may pay Eleven Thousand Dollars (\$11,000.00) to the Clean Diesel School Bus Program (Fund 5CD0). Such program has been established by the Director for the purpose of installing, in accordance with Ohio Environmental Protection Agency guidelines, diesel particulate filters and other controls for school buses operated by school districts in the State of Ohio. The Eleven Thousand Dollars (\$11,000.00) shall be paid by an additional certified check payable to the order of "Treasurer, State of Ohio" and delivered within thirty (30) days of entry of this Consent Order to the Plaintiff, c/o Martha Sexton or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement

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Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 343258" and a notation that such monies are to be deposited into Fund 5CD0 established by Ohio Environmental Protection Agency for the Clean Diesel School Bus Program. If the Eleven Thousand Dollar (\$11,000.00) payment is made, the separate check for the civil penalty intended as settlement of the State's claims brought pursuant to R.C. 3704 shall be in the amount of \$44,000.00, rather than Fifty Five Thousand Dollar (\$55,000.00) as set forth in paragraph 24, above.

XI. STIPULATED PENALTIES

27. In the event that any requirement of this Consent Order set forth in Paragraphs 10 through 25 is not met, Defendants shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

- A. For each day of each failure to comply with a requirement or deadline of this Consent Order, up to and including thirty (30) days, two hundred and fifty dollars (\$250) per day for each requirement or deadline not met;
- B. For each failure to comply with a requirement or deadline of this Consent Order, from thirty-one (31) to sixty (60) days, five hundred dollars (\$500) per day for each requirement or deadline not met; and
- C. For each day of each failure to comply with a requirement or deadline of this Consent Order, over sixty (60) days, seven hundred and fifty dollars (\$750) per day for each requirement or deadline not met.

28. Any payment required to be made under the provisions of this paragraph of this Consent Order shall be made by certified check for the appropriate amount, made payable to

“Treasurer, State of Ohio,” and delivered by mail, or otherwise, c/o Martha Sexton, or successor, Paralegal, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, without the requirement of further demand by Plaintiff. A letter indicating what violations are being covered by the specific check shall accompany the check. The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to “A.G. EAGO No. 343258.”

29. The payment of stipulated penalties by Defendants and the acceptance of such stipulated penalties by Plaintiff pursuant to this Section shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to R.C. Chapters 3704 and 3734, including civil penalties under R.C. 3704.06 and 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.

XII. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS

30. All activities undertaken by Defendants pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state and local laws, rules, regulations, permits, or other approvals. Defendants shall submit timely applications and requests for any such permits and approvals. Defendants are 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, 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.

XIII. MODIFICATION

31. No modification shall be made to this Consent Order without the written agreement of the Parties and the Court.

XIV. RETENTION OF JURISDICTION

32. The Court shall retain jurisdiction of this action for the purpose of administering and enforcing Defendants' compliance with this Consent Order.

XV. COSTS

33. Defendants shall pay the costs of this action.

XVI. ENTRY OF ORDER

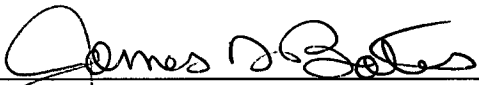
34. Upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is directed to serve upon all parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

XVII. AUTHORITY TO ENTER INTO THE CONSENT ORDER

35. The signatory for each Defendant represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation or individual to all terms and conditions thereof.

IT IS SO ORDERED:


DATE


JUDGE JAMES BATES
LUCAS COUNTY
COURT OF COMMON PLEAS

APPROVED:

MICHAEL DEWINE
ATTORNEY GENERAL

By:

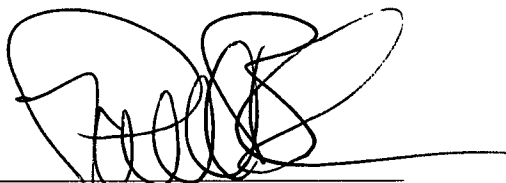

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