

ISSUED: JANUARY 30, 2001  
EFFECTIVE: JANUARY 30, 2001  
TRACKING NO.: 60000280-AO00001

**BEFORE THE OHIO DEPARTMENT OF COMMERCE  
DIVISION OF STATE FIRE MARSHAL**

IN THE MATTER OF:

ENGLEFIELD OIL COMPANY  
447 JAMES PARKWAY  
NEWARK, OH 43056

Respondent

SITE: DILLON DUCHESS  
5955 NEWARK RD  
NASHPORT OH  
MUSKINGUM COUNTY  
FAC/ENF #60000280-AO00001

**STATE FIRE MARSHAL'S  
FINAL FINDINGS AND ORDERS**

**PREAMBLE**

It is agreed by and among the parties to these Final Findings and Orders as follows:

**I. JURISDICTION**

These Final Findings and Orders ("Orders") are hereby issued by the State Fire Marshal, ("SFM"), by and through the State Fire Marshal's Bureau of Underground Storage Tank Regulations ("BUSTR"), to Englefield Oil Company ("Respondent") pursuant to the authority vested in the State Fire Marshal under sections 3737.88 and 3737.882 of the Ohio Revised Code ("ORC").

**II. PARTIES**

These Orders shall apply to and be binding upon the Respondent as the owner and/or operator of the underground storage tank ("UST") system(s) located at 5955 Newark Road, Nashport Ohio, Muskingum, Ohio, known as Dillon Duchess ("the Site"), and the Respondent's officers, employees, assigns, and successors in interest. No changes in ownership relating to the Site will in any way alter the Respondent's responsibilities under these Orders. The Respondent is hereby ordered to provide a copy of these Orders to any prospective or successor owner prior to any transfer of ownership. Any transfer of ownership must be conditioned on the Respondent's right of entry to carry out these Orders. The Respondent's obligations under these Orders may only be altered by the written approval of the State Fire Marshal.

### III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in ORC Chapter 3737.87 *et seq.* and the regulations promulgated thereunder.

### IV. FINDINGS OF FACT

The State Fire Marshal's BUSTR has determined the following findings of fact:

1. The Respondent is the owner and/or operator of at least the following five USTs located at 5955 Newark Road, Nashport Ohio, Muskingum County: two 8,000 gallon and one 6,000 gallon gasohol tanks, one 4,000 gallon diesel fuel tank, and one 2,000 gallon kerosene tank.
2. On or about April 16, 1989, a suspected petroleum release was reported to BUSTR when the Respondent's gas station attendant noticed free product in a monitoring well located on the Site and in a nearby sewer.
3. On May 8, 1989, BUSTR issued a Notice of Violation letter informing the Respondent of its obligations pursuant to Ohio Administrative Code ("OAC") 1301:7-7-36(C)(1), as that rule was effective on May 9, 1988, to investigate the aforementioned suspected release in a manner consistent with OAC 1301:7-7-28(K), as that rule was effective on May 9, 1988, to confirm or disprove the occurrence of a petroleum release by conducting an analysis of soil core samples or, if appropriate, ground water samples, for hydrocarbon and/or chemical contamination.
4. On or about July 20, 1989, the Respondent submitted a subsurface investigation report that included analytical results from soil and ground water samples, which results confirmed that a petroleum release had occurred from one or more of the UST's located at the Site and indicated that there is remnant contamination of soil and ground water at the Site.
5. On October 18, 1989, BUSTR issued an Administrative Order requiring the Respondent to comply with OAC 1301:7-7-36, as that rule was effective on May 9, 1988, and:
  - (a) conduct additional investigations to determine the full extent and location of soil and ground water contaminated by the release and submit the information collected during the investigation no later than January 4, 1990; and
  - (b) submit a corrective action plan for additional soil and ground water cleanup no later than February 5, 1990.
6. On or about July 10, 1991, the Respondent submitted a report to BUSTR summarizing some of the site assessment activities conducted at the Site, which report, admittedly, did not determine the full extent of soil and ground water contaminated by the release.
7. On or about March 15, 1993, a neighbor whose residence is located adjacent to the Site (Hittle residence) filed a complaint with BUSTR, stating that gasoline vapors had been noted in the basement.
8. The Respondent, under the direction of BUSTR, conducted free product recovery from on-site observation wells and a drainage ditch, re-routed a floor drain that ran across the corner of the UST cavity and tied into the floor drains of the Hittle residence, and submitted a report of the incident to BUSTR on May 10, 1993. The report did not define the full extent of contamination from the confirmed release as required by OAC 1301:7-9-13(I), replacing OAC 1301:7-7-36 effective September 1, 1992, and the aforementioned Administrative Order.

9. BUSTR issued letters to the Respondent on June 13, 1997, October 29, 1998, and January 20, 2000 requesting that the required corrective action activities (i.e., site assessment and remedial action plan) be completed and that the associated reports be submitted to BUSTR within 30 days.
10. On or about April 4, 2000, free product was migrating off the Site along the spillway ditch east of State Route 146 and was found in a monitoring well located on the Site. Free product was recovered from the monitoring well and impacted soil extending approximately 300 feet along the spillway was excavated.
11. On or about October 2, 2000, free product was again migrating off the Site along the spillway ditch east of State Route 146 and was found in a monitoring well located on the Site. Again, free product was recovered from the monitoring well and impacted soil along the spillway was excavated.
12. To date, Respondent has failed to conduct a site assessment to delineate the full extent of contamination from the petroleum release that was confirmed on July 20, 1989 and/or submit a written report to the Fire Marshal in violation of OAC 1301:7-9-13(I), effective September 1, 1992, and former OAC 1301:7-7-36(E).
13. To date Respondent has failed to submit a remedial action plan for soil and groundwater cleanup to the Fire Marshal in violation of OAC 1301:7-9-13(I), effective September 1, 1992, and former OAC 1301:7-7-36(E).

#### **V. ORDERS**

The Respondent is ordered to achieve compliance with ORC Chapter 3737 and the regulations promulgated thereunder in accordance with the following schedule:

1. Within thirty (30) days of receipt of these Orders, the Respondent shall complete a site assessment to delineate the full extent of contamination from the petroleum release that was confirmed on July 20, 1989 and submit a written report to the Fire Marshal in accordance with the requirements of OAC 1301:7-9-13(I), effective September 1, 1992.
2. Within ninety (90) days of BUSTR's acknowledgement of completeness of the site assessment report, the Respondent shall submit a remedial action plan in accordance with the requirements of OAC 1301:7-9-13(J), effective September 1, 1992, and provide notice to the public of the planned remedial action in a manner consistent with OAC 1301:7-9-13(K), effective September 1, 1992.
3. Upon approval of the remedial action plan by BUSTR, immediately implement and complete the remedial action plan in accordance with the requirements of paragraphs (L) and (M) of OAC 1301:7-9-13, effective September 1, 1992.

#### **VI. CIVIL PENALTY**

The Respondent shall pay to the State of Ohio a civil penalty of Ninety One Thousand and Seventy Five Dollars (\$91,075) pursuant to ORC 3737.882. Thirty Eight Thousand Four Hundred and Seventy Five Dollars (\$38,475) of the civil penalty shall be suspended, provided that the Respondent complies with all of the deadlines set forth in these Orders. No later than thirty (30) days from the effective date of these Orders, the Respondent shall deliver a certified or cashiers check made payable to the order of the "Treasurer, State of Ohio" in the amount of Fifty Two Thousand Six Hundred Dollars (\$52,600) to the SFM/BUSTR as set forth below in Section VII of these Orders. The certified or cashiers check shall contain the notation "civil penalty for Administrative Order Number 60000280-AO00001".

In the event the Respondent fails to comply with any of the deadlines set forth in these Orders, then the full amount of the civil penalty set forth herein shall be paid to the SFM/BUSTR within 30 days of receipt of notice to the Respondent that said payment is due and owing and Respondent shall be subject to additional action by the State Fire Marshal pursuant to ORC 3737.882 as set forth in Section XII of these Orders.

## **VII. NOTICE**

Unless otherwise indicated in these Orders, all documents demonstrating compliance with these Orders and all other documents required under these Orders are to be submitted to:

State Fire Marshal  
Bureau of Underground Storage Tank Regulations  
Attn: Enforcement Section  
6606 Tussing Road  
P.O. BOX 687  
Reynoldsburg, Ohio 43068  
Case Tracking No. 60000280-AO00001

Or to such persons and addresses as the State Fire Marshal or the SFM/BUSTR may otherwise specify in writing.

## **VIII. STIPULATED PENALTIES**

In the event that the Respondent fails to comply with any of the deadlines set forth in Section V of these Orders, Respondent shall pay a stipulated penalty of Two Hundred Dollars (\$200) for each day of each violation until the Respondent comes into compliance. Any payment required to be made under this provision shall be made within 30 days of receipt of notice to the Respondent that said payment is due and owing in accordance with the provisions for payment of the civil penalty as set forth in Section VI of these Orders.

## **IX. POTENTIAL OF FORCE MAJEURE**

In any action by the SFM to enforce any of the provisions of these Orders, Respondent may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While the SFM does not agree that Respondent is entitled to raise such a defense, the appropriate point at which to raise and adjudicate the existence of such a defense is at the time that an enforcement action, if any, is commenced by the SFM. At that time the burden of proving that any delay was or will be caused by circumstances beyond the control of the Respondent shall rest with the Respondent. Unanticipated or increased costs associated with the implementation of any action required by these Orders, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of the Respondent, or serve as a basis for an extension of time for compliance with these Orders. Respondent's execution of the waiver provision of these Orders shall not constitute a waiver of Respondent's rights under the federal bankruptcy code.

## **X. TERMINATION AND SATISFACTION**

These Orders shall terminate when the Respondent certifies in writing and demonstrates to the satisfaction of the State Fire Marshal that all obligations under these Orders have been performed, and the State Fire Marshal or his representative approves in writing this certification.

This certification shall be signed by the Respondent, an authorized representative of the Respondent, and acknowledged before a notary public. The certification shall make the following attestation: "I certified that the information contained in or accompanying this certification is true, accurate, and complete."

Compliance with these Orders shall be a full accord and satisfaction of the Respondent's liability for the violations cited in the Findings of Fact section of these Orders.

## **XI. OTHER CLAIMS**

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a signatory to these Orders for any liability arising out of or relating to the ownership or operation of the Respondent's UST system facilities.

## **XII. OTHER APPLICABLE LAWS**

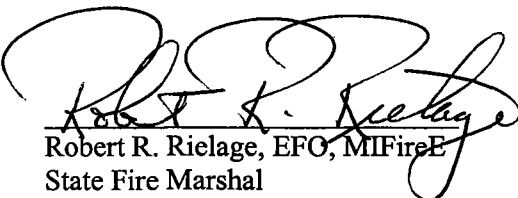
All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of applicable local, state and federal laws and regulations. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to ownership or operation of the Respondents UST system facility. The SFM reserves all rights and privileges except as otherwise specified in these Orders.

## **XIII. RESERVATION OF RIGHTS**

Nothing contained herein shall be construed to prevent the SFM from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including penalties against the Respondent for noncompliance with these Orders.

Nothing contained herein shall be construed to prevent the SFM from exercising his lawful authority to require the Respondent to perform additional activities to attain compliance with ORC Chapter 3737 and the regulations adopted thereunder. Nothing in these Orders shall be construed to limit the authority of the SFM to seek relief for violations not identified in the Section IV of these Orders.

IT IS SO ORDERED:

  
Robert R. Rielage, EFO, MIFireE  
State Fire Marshal

24 JAN 01  
Date

#### XIV. SIGNATORIES

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document. In the event the Respondent is a partnership or corporation, the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of these Orders on behalf of the corporation or partnership and to legally bind such signatory to this document.

#### XV. WAIVER

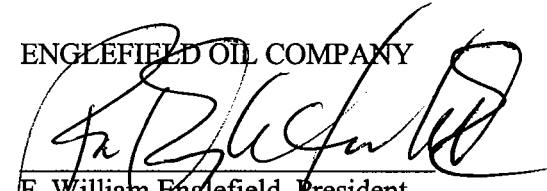
In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by the State Fire Marshal for only those violations identified in the Findings of Fact section of these Orders, the Respondent agrees that these Final Findings and Orders are lawful and reasonable, and that the Respondent agrees to comply with these Orders.

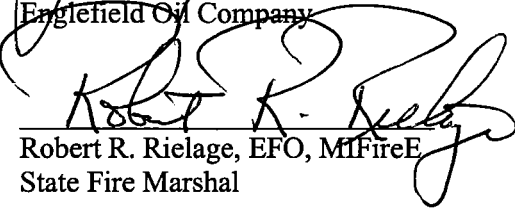
The Respondent waives the right to appeal the issuance, terms, and service of these Orders before the Environmental Reviews Appeals Commission or any other court of competent jurisdiction and waives any and all rights it may have to seek judicial review of these Orders either in law or equity.

The parties further agree that in the event that these Orders are appealed by any other party to the Environmental Reviews Appeals Commission or any other court, the Respondent retains the right to intervene and participate in such appeal. In such event, the Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

IT IS SO AGREED:

ENGLEFIELD OIL COMPANY

  
F. William Englefield, President  
Englefield Oil Company

  
Robert R. Rielage, EFO, MIFireE  
State Fire Marshal

01/24/01  
Date

30 JAN 01  
Date