

IN THE COURT OF COMMON PLEAS  
MARION COUNTY, OHIO

COMMON PLEAS COURT  
MARION CO. OHIO

2000 MAY 27 PM 1:36

STATE OF OHIO ex rel.  
RICHARD CORDRAY  
OHIO ATTORNEY GENERAL

Plaintiff

v.

ENGLEFIELD, INC., et al.

Defendants.

CASE NO. 20 JULIE R. KAGEL 53  
CLERK OF COURTS  
JUDGE JUDGE ROBERT S. DAVIDSON  
AGREED CONSENT ORDER

The Complaint and Answer in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio, by its Attorney General Richard Cordray (hereinafter "Plaintiff" or "State"), and Defendants Englefield, Inc., F.W. Englefield III, F.W. Englefield IV, and Benjamin Englefield ("Defendants") having consented to the entry of this Order;

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

**I. JURISDICTION AND VENUE**

1. 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 Chapter 3737 of the Ohio Revised Code, and venue is proper in this Court.

**II. PARTIES**

2. The provisions of this Consent Order shall apply and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest and any person

acting in concert or privity with any of them. Defendants shall provide a copy of this Consent Order to each contractor they employ to perform work itemized herein, and Defendants shall ask each general contractor to provide a copy of this Consent Order to each of its subcontractors for such work. The undersigned representatives of each party to this Consent Order certifies that he or she is fully authorized by the party or parties whom he or she represents to enter into the terms and conditions of the Consent Order and to execute and legally bind that party or parties to it.

3. The obligation of Defendants to pay the amounts and implement the requirements of this Consent Order are joint and several. In the event of insolvency, bankruptcy, or other failure of any Defendant to pay any required amount and/or implement any requirement, the remaining Defendants shall pay the amount and/or implement the requirement as required by this Consent Order.

### **III. SATISFACTION OF LAWSUIT**

4. Plaintiff alleges in its Complaint that Defendants have violated various provisions of R.C. Chapter 3737 and the rules adopted thereunder at 262 N. Marion Street, Waldo, Marion County, Ohio (the "Site"). Except as otherwise provided in paragraph 5 of this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendants for all claims under such laws as alleged in the Complaint.

5. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief from Defendants for: (a) claims or violations not referenced in the Complaint; (b) any violations arising out of acts or omissions first occurring after the entry of this Consent Order; or (c) claims or violations under the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. 9601, et seq. or R.C. 3734.20 through 3734.27 for any emergency, removal, remedial, corrective actions, or natural resource damages.

Further, nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek immediate relief to abate any conditions that pose a threat to human health or the environment. Defendants retain all rights, defenses, and/or claims they may legally raise to the extent that the State seeks further relief from them in the future, or in any action brought to enforce the terms of this Consent Order, except that they 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 the State in subsequent proceedings were or should have been brought in the instant case.

6. Entering into this Consent Order, the Consent Order itself, or the taking of any action in accordance with it and/or any work performed at the Facility to date does not constitute an admission of any liability, wrongdoing, or misconduct on the part of the Defendants, their officers, employees or representatives.

7. Nothing herein shall be construed to relieve Defendants of their obligation to comply with all applicable federal, state, or local statutes, regulations, or ordinances, including but not limited to the applicable permit requirements thereunder.

#### **IV. PERMANENT INJUNCTION**

8. Defendants are hereby permanently ordered and enjoined to immediately comply with the requirements of R.C. Chapter 3737 and the rules adopted under that Chapter, subject to the terms and conditions of this Consent Order.

#### **V. CORRECTIVE ACTION COMPLIANCE**

9. Defendants are hereby ordered and enjoined to perform the following corrective actions at the Site:

a. Define ground water contamination to appropriate Tier 1 action levels, as

set forth in Ohio Adm. Code 1301:7-9-13(J), by further assessing the northwest portion of the Site. The necessary well or wells shall be installed within seven (7) calendar days from receiving approval from an Ohio Department of Transportation (“ODOT”) local representative. The assessment report defining ground water contamination shall be submitted to BUSTR within seven (7) calendar days of Defendants’ receipt of data collected from the well or wells installed to comply with this paragraph.

b. Complete all the required Tier 2 Evaluation activities and submit a complete Tier 2 Evaluation Report in accordance with Ohio Adm. Code 1301:7-9-13(L) to the Fire Marshal on or before August 1, 2009.

c. If site-specific target levels are to be further developed under a Tier 3 Evaluation, the Defendants shall, in accordance with Ohio Adm. Code 1301:7-9-13(M), prepare and submit a Tier 3 Evaluation work plan for approval with the Tier 2 Evaluation report on or before August 1, 2009.

d. If Defendants elect to implement a Tier 3 Evaluation, Defendants shall implement the approved Tier 3 Evaluation work plan and complete the work in accordance with the approved implementation schedule and projected completion date, as set forth in the work plan. Within ninety days from the projected completion date stated in the approved Tier 3 Evaluation work plan, a report summarizing the activities conducted in accordance with the Tier 3 Evaluation and the results of the Tier 3 decisions shall be submitted to the Fire Marshal for approval in accordance with Ohio Adm. Code 1301:7-9-13(M).

e. If Defendants implement a Tier 3 Evaluation and the concentrations of chemicals of concern are above the Tier 3 site-specific target levels, then the Defendants

shall conduct one or a combination of the following:

i. A Remedial Action Plan (“RAP”) developed and implemented in accordance with Ohio Adm. Code 1301:7-9-13(N). The RAP shall be prepared and submitted to the Fire Marshal within ninety days of approval of the Tier 3 Evaluation report pursuant to Ohio Adm. Code 1301:7-9-13(M)(4). The RAP shall be implemented in accordance with Ohio Adm. Code 1301:7-9-13(N)(2) and (3) and shall be completed, and the Completion Report submitted to the Fire Marshal in accordance with approved deadlines set forth in accordance with Ohio Adm. Code 1301:7-9-13(N)(1)(i) and (4); or

ii. An Interim Response Action (“IRA”) developed in accordance with Ohio Adm. Code 1301:7-9-13(K). An IRA notification shall be submitted to the Fire Marshal within ten days prior to the implementation of the IRA. The IRA must be implemented within ninety days of approval of the Tier 3 Evaluation report. A report summarizing the IRA shall be submitted to the Fire Marshal sixty days after implementation of the IRA as required by Ohio Adm. Code 1301:7-9-13(K)(4).

f. If further corrective actions are required and the Defendants do not elect to perform a Tier 3 Evaluation, after receiving notice from the Fire Marshal that the submitted Tier 2 Evaluation Report is approved, the Defendants shall conduct one or a combination of the following:

i. A Remedial Action Plan (“RAP”) developed and implemented in accordance with Ohio Adm. Code 1301:7-9-13(N). The RAP shall be prepared and submitted to the Fire Marshal within ninety days of approval of the Tier 2

Evaluation report. The RAP shall be implemented in accordance with Ohio Adm. Code 1301:7-9-13(N)(2) and (3) and shall be completed, and the Completion Report submitted to the Fire Marshal in accordance with approved deadlines set forth in accordance with Ohio Adm. Code 1301:7-9-13(N)(1)(i) and (4); or

ii. An Interim Response Action (“IRA”) developed in accordance with Ohio Adm. Code 1301:7-9-13(K). An IRA notification shall be submitted to the Fire Marshal within ten days prior to the implementation of the IRA. The IRA must be implemented within ninety days of approval of the Tier 2 Evaluation report. A report summarizing the IRA shall be submitted to the Fire Marshal sixty days after implementation of the IRA as required by Ohio Adm. Code 1301:7-9-13(K)(4).

g. The Defendants shall conduct semi-annual testing, beginning at least by July 1, 2009, of all potable drinking water wells within 300 feet of the UST system for the appropriate chemicals of concern listed in Table 1 of Ohio Adm. Code 1301:7-9-13(H)(1)(c) until a No Further Action (“NFA”) status is achieved or the Fire Marshal instructs Defendants to cease semi-annual testing of potable wells. Within seven days of receiving the analytical results, the Defendants shall submit the written results to the Fire Marshal. If access to a potable drinking water well is denied by the property owner, the Defendants shall notify the Fire Marshal within seven days of such denial of access.

h. All other corrective actions are to be conducted pursuant to the requirements set forth in Ohio Adm. Code 1301:7-9-13 until a NFA status is achieved.

i. Extensions for any deadline specified in this Order or in Ohio Adm. Code 1301:7-9-13 shall be requested in accordance with Ohio Adm. Code 1301:7-9-13(Q).

## **VI. REVIEW OF SUBMITTALS, NOTICE, AND RESUBMITTALS**

10. Upon the submission of any report or other document by Defendants pursuant to any provision of this Order, if the Bureau of Underground Storage Tank Regulations ("BUSTR") determines that the report is incomplete or insufficient, Defendants shall respond in writing to BUSTR within fourteen (14) days of notification of the deficiencies from BUSTR. In reviewing any report or other document required to be submitted by this Consent Order, BUSTR will conduct its review in a manner consistent with all applicable provisions of this Consent Order and any applicable statutes, rules, and/or scientific or professional guidance documents. Defendants' responses shall address the specific concerns raised by BUSTR and include the changes requested by BUSTR, unless Defendants can demonstrate to the satisfaction of BUSTR that a requested change is not required by the Corrective Action Compliance requirements, Section V, of this Consent Order.

11. All reports or other documents approved by BUSTR and submitted pursuant to this Consent Order shall be considered incorporated into this Consent Order and fully enforceable as required by under this Consent Order.

12. The reports and documents required by Paragraph 9 and any other written notification applications, correspondence, permit applications, and plans as required by this Consent Order, shall be sent to:

Bureau of Underground Storage Tank Regulations  
6606 Tussing Road, P.O. Box 687  
Reynoldsburg, Ohio 43068-9009  
Attn: David Biskner, Environmental Specialist II

## **VII. CIVIL PENALTY**

13. Pursuant to R.C. 3737.882, Defendants are ordered and enjoined to pay a civil penalty of One Hundred Sixty-One Thousand, Five Hundred Fifty Dollars (\$161,550) to the

State. Payments shall be made pursuant to the following schedule: a first payment of \$61,550 fifteen (15) calendar days after entry of this Consent Order by the Court; a second payment of \$40,000 by August 30, 2009; a third payment of \$35,000 by December 30, 2009; and a fourth and final payment of \$25,000 by April 30, 2010. Each payment shall be made by delivering to Karen Pierson, Paralegal, or her successor, Office of the Attorney General, Environmental Enforcement Section, 30 E. Broad Street, 25th Floor, Columbus, Ohio 43215-3400, a certified check for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

### **VIII. STIPULATED PENALTIES**

14. In the event that Defendants fail to meet a submittal or implementation deadline set forth in Paragraphs 9 and 10 of the Consent Order; an implementation deadline set forth in an approved implementation schedule; a corrective action deadline set forth in Ohio Adm. Code 1301:7-9-13; or a civil penalty payment deadline set forth in Paragraph 13 of the Consent Order, Defendants shall immediately, automatically, and without notice be liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of each failure to meet a requirement, up to thirty (30) days – one hundred dollars (\$100) per day for each requirement not met. For each day of each failure to meet a requirement, from thirty-one (31) to sixty (60) days – two hundred and fifty dollars (\$250) per day for each requirement not met. For each day of each failure to meet a requirement, from sixty-one (61) to ninety (90) days- five hundred dollars (\$500) per day for each requirement not met. For each day of each failure to meet a requirement, over ninety (90) days -one thousand dollars (\$1,000) per day for each requirement not met.

15. In the event Defendants, after receiving a deficiency notice from BUSTR, submit a report to BUSTR as required by Paragraph 10 but fail to correct the deficiency or deficiencies



and/or fail to submit documentation showing the corrections to BUSTR, Defendants shall pay a stipulated penalty as set forth in Paragraph 14 of the Consent Order. The accrual of stipulated penalties begins on the date BUSTR sends notice to the Defendants that the deficiency or deficiencies still has/have not been corrected, and continues until the date Defendants correct the deficiencies to the satisfaction of BUSTR.

16. Any payment required to be made under the provisions of Paragraph 14 and 15 of this Consent Order shall be made by delivering, within fifteen (15) calendar days from the date the failure to meet the requirement of the Consent Order is cured, a certified check or checks for the appropriate amounts made payable to "Treasurer, State of Ohio" to Karen Pierson, Paralegal, or her successor, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215-3400. Defendants shall also state in writing the specific violation of the Consent Order and the date(s) of non-compliance. The payment of stipulated penalties by Defendants and the acceptance of such stipulated penalties for specific violations pursuant to Section VIII of this Order shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order.

17. If any event occurs which causes or may cause a delay of any requirements of this Order, Defendants shall notify the BUSTR in writing within ten (10) calendar days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken to prevent or minimize the delay and the timetable by which measures will be implemented. Defendants will adopt all reasonable measures to avoid or minimize any such delay.

18. With the provision that the notification in Paragraph 17, above, does not

necessarily terminate or delay any requirement in the Consent Order, in any action by the State to enforce any of the provisions of this Order, Defendants may raise that they are entitled to a defense and that their conduct was caused by reasons entirely beyond their control such as, by way of example and not limitations, acts of God, strikes, acts of war, civil disturbances, or vandalism. While the State does not agree that such a defense exists, it is, however, hereby agreed upon by Defendants and the State that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that a proceeding to enforce this Consent Order, if any, is commenced by the State. At that time, Defendants will bear the burden of providing that any delay was or will be caused by circumstances entirely beyond the control of Defendants. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, shall not serve as a basis for an extension of time under this Consent Order. Any extension of a date based on a particular incident does not mean that Defendants shall receive an extension of a subsequent date or dates. Defendants must make an individual showing of proof for each incremental step or other requirement for which an extension is sought.

#### **IX. RETENTION OF JURISDICTION**

19. The Court will retain jurisdiction of this action for the purpose of administering and enforcing Defendants' compliance with the terms and provisions of this Order.

#### **X. ATTORNEY GENERAL ENFORCEMENT COSTS**

20. Pursuant to R.C. 3737.89, Defendants are ordered and enjoined to pay the enforcement costs of the Ohio Attorney General in the amount of \$3,446.25 fifteen (15) calendar days after entry of this Consent Order by the Court. This payment shall be delivered to Karen Pierson, Paralegal, or her successor, at the Office of the Attorney General of Ohio,

Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215-3400 to be deposited into the Attorney General's General Reimbursement Account (also known as CAS Fund 106).

**XI. COSTS**

21. Defendants are hereby ordered to pay the court costs of this action.

**XIII. ENTRY OF CONSENT ORDER**

22. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the Order upon the journal, the clerk is directed to serve upon all parties notice of the Order and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and to note the service in the appearance docket.

**SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2009.**

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**JUDGE  
MARION COUNTY  
COURT OF COMMON PLEAS**

APPROVED BY:

**RICHARD CORDRAY  
OHIO ATTORNEY GENERAL**



Sari Mandel (0082721)  
Assistant Attorney General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215-3400  
Telephone (614) 466-2766  
Fax: (614) 644-1926  
sari.mandel@ohioattorneygeneral.gov

*Counsel for Plaintiff, State of Ohio*

ENGLEFIELD, INC., through its duly authorized representative, consents to the terms and conditions of this Consent Order on this 22<sup>nd</sup> day of May, 2009.

Signature: [Signature]

Title: President  
Type or Print

Name: FW Englefield IV  
Type or Print

**F.W. ENGLEFIELD III** consents to the terms and conditions of this Consent Order on this 22<sup>nd</sup> day of May, 2009.

Signature: [Signature]

Name: F.W. Englefield III  
Type or Print

**F.W. ENGLEFIELD IV** consents to the terms and conditions of this Consent Order on this 22<sup>nd</sup> day of May, 2009.

Signature: [Signature]

Name: FW Englefield IV  
Type or Print

**BENJAMIN B. ENGLEFIELD** consents to the terms and conditions of this Consent Order on this 22<sup>nd</sup> day of May, 2009.

Signature: [Signature]

Name: BB Englefield  
Type or Print

Signature: [Signature]

Kristin Watt (0042333), Vorys, Sater, Seymour and Pease LLP  
Attorney for Defendants

Name: KRISTIN L. WATT  
Type or Print