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HURON COUNTY
COMMON PLEAS COURT
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KATHLEEN L. WALCHER
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
HURON COUNTY, OHIO

STATE OF OHIO *ex rel.*,
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO,

Case No. 97 CVH 420
JUDGE ROBERT V. FRANKLIN

Plaintiff,

vs.

J.W. KELLEY, *et al.*,

Defendants.

JOURNALIZED 10-07-97
VOL. 301 PG 769

CONSENT ORDER AND
FINAL JUDGMENT ENTRY

Plaintiff, State of Ohio, by its Attorney General, Betty D. Montgomery, at the written request of the State Fire Marshal, James J. McNamee (the "State"), on June 27, 1997 filed an Amended Complaint seeking injunctive relief, civil penalties and cost recovery from Defendants J.W. Kelley, individually and dba Kelley Petroleum and Kelley Oil Company (collectively referred to as "Kelley"), and Norfolk and Western Railway Company ("N&W"), and Wheeling & Lake Erie Railway ("W&LE") for violations of Revised Code ("R.C.") Chapter 3737 and the rules promulgated thereunder. All of the parties to this matter have consented to the entry of this Consent Order and Final Judgment Entry ("Consent Order") solely for settlement of contested claims.

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

COPIES TO: JUDGE ROBERT FRANKLIN/SUSAN KROEGER/ROBERT SCHMIDT/J W KELLEY/REESE WINEMAN/
C J WEHRMEISTER/HENRY BILLINGSLEY II/VINCENT ATRIANO/THOMAS GREVER/
JAMES MARTIN/WILLIAM CALLISON

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I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the parties and the subject matter of this case. The Amended Complaint states a claim for which relief can be granted. Venue is proper in this Court.

II. PERSONS BOUND

2. The provisions of this Consent Order shall apply to and be binding upon the State and Defendants, and the State's and each Defendant's agents, officers, employees, assigns, heirs, successors in interest and any person acting in concert or participation with them who receives actual notice of this Consent Order whether by personal service or otherwise. Defendant N&W shall provide a copy of this Consent Order to each contractor they employ to perform work itemized herein.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

3. Except as otherwise provided in this Consent Order, Each Defendant's compliance with its obligations under the terms of this Consent Order shall constitute full satisfaction of any civil liability of that Defendant to the State for all claims and conditions alleged in the State's Amended Complaint:

4. Compliance with the terms of this Consent Order by Kelley shall constitute full satisfaction of any claim of any type either N&W or W&LE may have against Kelley arising from the underground storage tank systems located at 53 North Main Street, New London, Huron

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County, Ohio ("the Site"), the lease of the Site from N&W or W&LE.

5. Compliance with the terms of this Consent Order by W&LE shall constitute full satisfaction of any claims of any type related to the Site or any petroleum contamination or existing or former underground storage tanks located at or near the Site that N&W or Norfolk Southern Corporation may have against W&LE arising from the November 18, 1994 debt restructuring agreement between N&W, Norfolk Southern Corporation and W&LE or otherwise, including any applicable law as well as any claim that Kelley may have against W&LE.

6. Compliance with the terms of this Consent Order by N&W shall constitute full satisfaction of any claims of any type related to the Site or any petroleum contamination or existing or former underground storage tanks located at or near the Site that W&LE may have against N&W and Norfolk Southern Corporation arising from the November 18, 1994 debt restructuring agreement between N&W, Norfolk Southern Corporation and W&LE or otherwise, including any applicable law as well as any claim that Kelley may have against N&W. W&LE represents and warrants that there are no liens or encumbrances on the Site arising out of any obligation of W&LE.

7. Nothing in this Order shall limit the authority of the State of Ohio to:

(a) Seek relief for claims or conditions not alleged in the Amended Complaint nor satisfied by Section III of this Consent Order;

(b) Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order; or

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(c) Take any action authorized by law against any person, including Defendants, to eliminate or mitigate conditions at or released from the Site, which may present an imminent threat to the public health or welfare, or the environment other than any events or conditions addressed by this Consent Order.

8. Defendants agree to waive any and all claims in law or equity against the State of Ohio, its departments and agencies, employees, or contractors arising at any time prior to the entry of this Consent Order, concerning any alleged misconduct, wrongful act, or negligence committed by the Ohio Department of Commerce, the Ohio Department of Commerce's Division of the State Fire Marshal, the Ohio Department of Commerce's Division of the State Fire Marshal's Bureau of Underground Storage Tank Regulations, or any current or former employees or contractors thereof, whether acting in their individual or official capacity, relating in any way to the investigation of or the corrective actions taken in response to the petroleum contamination at, on or near the Site, including, without limitation, the installation, operation and maintenance of the free petroleum product recovery and ground water depression system installed by the State in January 1994 (the "System").

IV. AGREED TO ACTIVITIES

9. Each Defendant agrees and is subject to the contempt authority of this Court to fully comply with its respective obligations as set forth below.

As to N&W:

10. N&W agrees to complete any and all necessary investigatory activities and

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remediate the petroleum contamination on and near the Site in the most reasonably expedient manner possible, including, without limitation, removing any UST systems currently at the Site, in accordance with the provisions of R.C. Chapter 3737 and the rules promulgated thereunder, including, without limitation, Ohio Adm. Code 1301:7-9-13. N&W shall remediate the petroleum contamination on and originating from the Site until "no further action" is required pursuant to Ohio Adm. Code 1301:7-9-13(M). N&W conduct the remediation of contamination on and originating from the Site in accordance with the following:

(a) N&W shall begin the necessary investigatory activities and the remediation of the contamination on and originating from the Site, including the removal of the UST systems at the Site, immediately after Kelley vacates the Site in accordance with Paragraph 11(b) of this Consent Order. N&W may, at its own discretion, begin any activity required under this Consent Order prior to Kelley vacating the Site.

(b) N&W shall conduct the investigation and remediation of the petroleum contamination on and originating from the Site, including, without limitation the removal of the UST systems at the Site, in the most reasonably expedient manner possible. N&W and the State have agreed that N&W shall be allowed to use appropriate risk-based clean up standards in remediating the petroleum contamination on and originating from the Site, if the use of those standards is possible within the context of accepted scientific principles and Ohio Adm. Code 1301:7-9-13.

(c) N&W shall take any and all immediate corrective actions necessary to protect the

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sanitary and storm sewers of the Village of New London, and to prevent further migration of petroleum contamination from the Site or otherwise to protect human health or the environment, immediately following the discontinuation of the operation of the System currently installed at the Site and operated by the State. The State will discontinue the operation of the System currently installed at the Site on or after October 25, 1997, or the date Kelley vacates the Site in accordance with Paragraph 11(b) of this Consent Order, whichever occurs first. N&W may request that the State discontinue the operation of the System currently installed at the Site and remove the System from the Site at any time prior to October 25, 1997 if N&W is prepared to take those actions necessary to prevent further migration of petroleum contamination from the Site and to prevent migration of petroleum product or vapors into the sanitary and storm sewers of New London, or otherwise to protect human health or the environment. N&W may request to purchase the System currently installed at the Site from the State for a price to be negotiated and a full release of liability as to the State.

(d) N&W shall obtain all the necessary permits for the removal of any and all underground storage tank ("UST") systems located at the Site;

(e) N&W shall obtain the services of a certified UST installer to supervise the removal of the UST systems at the Site in accordance with R.C. 3737.881(F);

(f) N&W shall obtain the services of either a certified UST inspector or an inspector of the Division of the State Fire Marshal's Bureau of Underground Storage Tank Regulations ("BUSTR") to inspect the removal of the UST systems from the Site in accordance with the

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requirements of the permit to remove the UST systems. N&W reserves the right to select in its own discretion whether to employ the services of a certified UST inspector or an inspector of BUSTR;

(g) N&W agrees to give Kelley three (3) days notice of the removal of the two (2) three thousand (3,000) gallon USTs at the Site. N&W further agrees to load these USTs in "as is" condition and deliver them to Kelley if, and only if, Kelley provides suitable transportation for the removal of the USTs from the Site at the time of their removal from the ground. N&W may, if Kelley is not able to provide suitable transportation for the removal of the USTs from the Site, properly discard the USTs.

(h) The State agrees to provide to N&W access to all monitoring or recovery wells on or near the Site. N&W agrees to maintain the wells as necessary to complete remediation of the contamination on and originating from the Site. N&W shall expeditiously and properly abandon any well that is no longer necessary for the completion of the necessary investigatory activities or remediation of the contamination on and originating from the Site.

As to Kelley:

11. Kelley agrees and is hereby permanently enjoined to do all of the following:

(a) Kelley shall, prior to October 10, 1997, empty and secure all UST systems currently located at the Site. Kelley shall assure that the vent lines from the UST systems remain open and functional and that all lines, pumps, manways and ancillary equipment are capped and secured.

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(b) Kelley shall, prior to October 25, 1997, vacate the Site. Kelley shall remove from the Site any of his property prior to vacating the Site. N&W may, at its discretion, dispose of any property remaining on the Site after October 25, 1997 as N&W sees fit.

(c) Kelley shall at all times prior to vacating the Site or transferring the ownership of the Site under Paragraph 11(d) of this Consent Order grant to N&W reasonable access to the Site to perform any of the work required under this Order.

(d) Kelley shall, as requested by N&W, transfer ownership of the Site by conveying a Quitclaim Deed to N&W or its designee. Kelley represents and warrants that the Site is not currently encumbered by any liens or other obligations. Further, Kelley shall not encumber the Site with any liens, or pledge it as security for any obligation prior to the transfer of the deed to N&W.

As to W&LE:

12. W&LE agrees to reimburse the State for past corrective action and enforcement costs incurred by the State at the Site in the amount of one-hundred thousand dollars (\$100,000). W&LE shall reimburse the State in accordance with the following provisions:

- (a) W&LE shall make twenty (20) quarterly payments of five thousand (\$5,000) dollars each to the State;
- (b) W&LE shall make the initial payment to the State within ninety (90) days of the entry of this Order;
- (c) W&LE shall reduce the amount of its initial payment to the State under this

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Paragraph by the amount it is required to pay under Paragraph 14 of this Consent Order. The amount of this reduction shall also be deducted from the total amount owed by W&LE to the State under this Paragraph;

(d) W&LE shall make each subsequent payment on or before the 90th day after the preceding payment was due. In the event that the 90th day falls on a non-business day, W&LE shall make the payment on or before the next business day;

(e) W&LE shall make the payments required pursuant to this Paragraph by delivering a company check(s) in the appropriate amount(s) made payable to the order of "Treasurer, State of Ohio -- BUSTR Administration Fund" to the following address, or to such addresses as the State may hereafter designate in writing:

Jena Subadolnik or her successor
Administrative Assistant
Attorney General's Office
Environmental Enforcement Section
25th Floor, State Office Tower
30 East Broad Street
Columbus, Ohio 43215-3428.

(f) Where any check submitted pursuant to this Paragraph of the Consent Order is returned for insufficient funds, W&LE agrees to pay to the State interest at the rate established by R.C. 1343.03(A) and any fees or charges associated with the returned check. W&LE thereafter agrees to make payments required pursuant to this Paragraph by certified or cashier's check(s). The payment of interest, fees or charges in accordance with this Paragraph shall not be construed to limit the State's authority to seek judicial enforcement of this Consent Order.

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13. W&LE agrees to pay N&W twenty thousand dollars (\$20,000) in accordance with the following:

(a) W&LE shall make four (4) quarterly payments of five thousand dollars (\$5,000) each to N&W; and

(b) W&LE shall make the initial payment to N&W on or before September 1, 1997 and N&W acknowledges that payment has been timely made.

14. W&LE shall pay to Kelley two thousand dollars (\$2,000) on or before October 25, 1997.

VI. SUBMITTAL OF DOCUMENTS

15. All reports or other documents required by this Consent Order to be submitted to the State shall be sent to the following address, or to such addresses as the State may hereafter designate in writing:

The Bureau of Underground Storage Tank Regulations
6606 Tussing Road, Box 687
Reynoldsburg, Ohio 43068-9009
Attn: Verne Ord, or his successor.

VII. RETENTION OF JURISDICTION

16. The Court will retain jurisdiction of this action for purposes of enforcing this Consent Order. The parties reserve any and all rights they may have under Rule 60 of the Ohio Rules of Civil Procedure.

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17. The State has assessed a civil penalty against Kelley in the amount of Ten Thousand Dollars (\$10,000) for violations alleged in its Amended Complaint. However, due to Kelley's financial inability to pay such a civil penalty, the collection of that civil penalty so assessed under this Paragraph of the Consent Order is hereby waived. The waiver in this Paragraph shall not be construed to limit the State's authority to seek relief pursuant to R.C. Chapter 3737, including civil penalties under R.C. 3737.882, or to otherwise seek judicial enforcement of this Consent Order, for any violations of R.C. Chapter 3737 or the rules promulgated thereunder which occur after the entry of this Consent Order.

IX. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

18. 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.

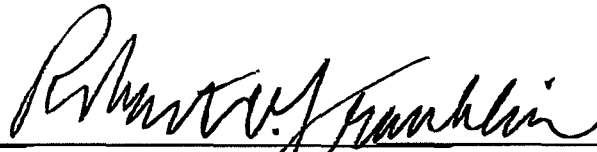
19. Pursuant to prior Orders of the Court, costs assessed as court costs are to be divided equally among the parties.

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X. AUTHORITY TO ENTER INTO THE CONSENT ORDER

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

IT IS SO ORDERED:



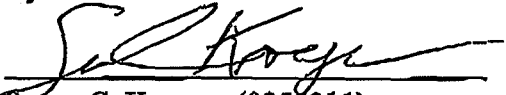
**JUDGE ROBERT V. FRANKLIN
HURON COUNTY COURT OF COMMON PLEAS**

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The undersigned represents that he/she consents to the terms of this Consent Order in State v. J.W. Kelley, et al. Case No. 97 CVH 420.

Betty D. Montgomery
Attorney General

By:



Susan C. Kroeger (0059311)
Robert J. Schmidt (0062261)
Assistant Attorneys General
Environmental Enforcement Section
30th East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
Telephone: 614-466-2766
Facsimile: 614-644-1926

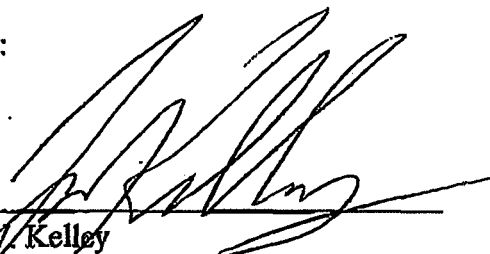
Counsel for Plaintiff State of Ohio

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The undersigned represents that he/she consents to the terms of this Consent Order in State v. J.W. Kelley, et al., Case No. 97 CVH 420:

Defendant J.W. Kelley, individually and dba
Kelly Petroleum or Kelley Oil Company

By:



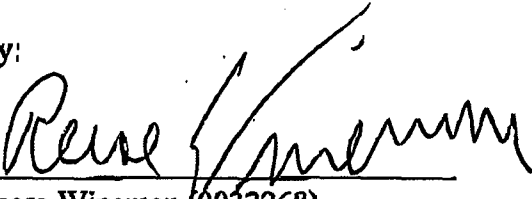
J.W. Kelley
28 Walnut Street
Norwalk, Ohio 44857

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The undersigned represents that he/she consents to the terms of this Consent Order in State v. J.W. Kelley, et al. Case No. 97 CVH 420.

Defendant J.W. Kelley, individually and dba
Kelley Petroleum or Kelley oil Company

By:



Reese Wineman (0032268)

26 West Main Street

Norwalk, ohio 44857

Telephone/facsimile: (419) 668-6840

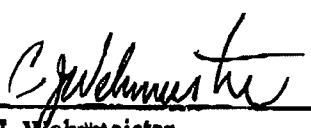
Counsel for J.W. Kelley

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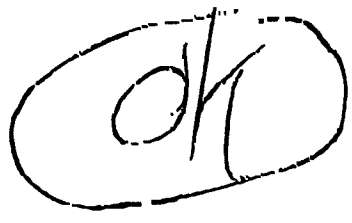
The undersigned represents that he consents to the terms of this Consent Order in State v. J.W. Kelly, et al. Case No. 97 CV11 420.

Defendant Norfolk and Western
Railway Company

By:



C.J. Wehrmeister
Assistant Vice President of Safety &
Environment
Norfolk and Western Railway
110 Franklin Road SE
Roanoke, VA 24042

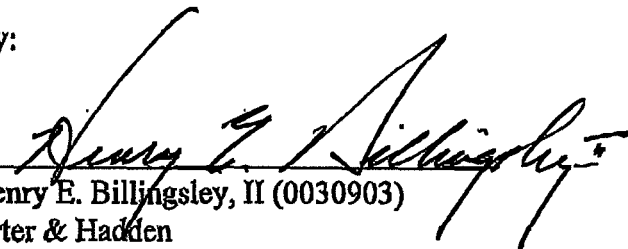


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The undersigned represents that he/she consents to the terms of this Consent Order in State v. J.W. Kelley, et al. Case No. 97 CVH 420.

Defendant Norfolk and Western
Railway Company

By:



Henry E. Billingsley, II (0030903)
Arter & Hadden
Suite 1100
925 Euclid Avenue
Cleveland, Ohio 44115-1475
Telephone: (216) 696-1100
Facsimile: (216) 696-2645

*Counsel for Norfolk and Western
Railway Company*

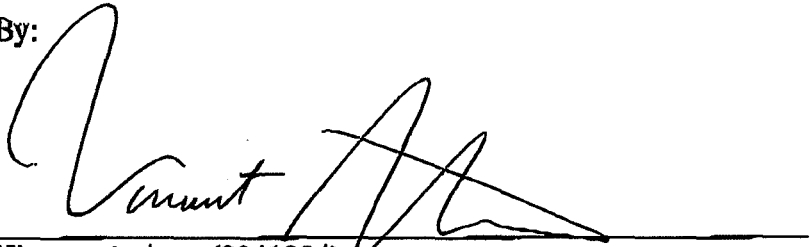
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ENVIRONMENTAL
ENFORCEMENT

The undersigned represents that he has approved this Consent Order in State v. J.W. Kelley, et al. Case No. 97 CVH 420 as to form.

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Defendant Wheeling & Lake Erie Railway Company

By:



Vincent Atriano (0041084)
Thomas J. Grever (0059786)
Squire, Sanders & Dempsey L.L.P.
41 South High Street
Columbus, Ohio 43215
Telephone: (614) 365-2700
Facsimile: (614) 365-2499

James J. Martin (0008500)
Owens & Martin Co., LPA
1050 South Main Street
Willard, Ohio 44890
Telephone: (419) 933-2691
Facsimile: (419) 7103

Counsel for Wheeling & Lake Erie Railway Company

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The undersigned represents that he/she consents to the terms of this Consent Order in State v. I. W. Kelley, et al. Case No. 97 CVH 420.

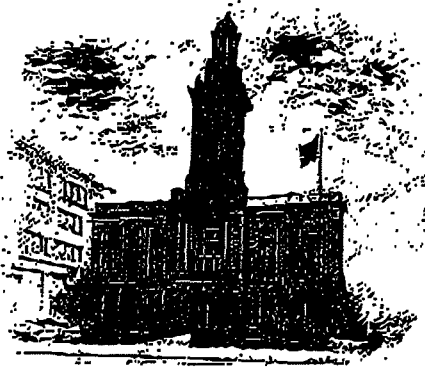
Defendant Wheeling & Lake Erie Railway Company

By:



William A. Callison, Esq.
Vice President Law & Government Relations
Wheeling & Lake Erie Railway Company
100 East First Street
Brewster, Oh 44613

Counsel for Wheeling & Lake Erie Railway Company



Susan S. Hazel
Huron County Clerk of Courts
Huron County Courthouse
Two East Main Street
Norwalk, Ohio 44857-1534
Phone (419) 668-5113
Fax (419) 663-4048
Email: clerk@huroncountyclerk.com

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DATE 5-20-10

PLEASE DELIVER THE FOLLOWING INFORMATION TO:

Attn: Martha

FAXNUMBER 614-644-1926

TOTAL NUMBER OF PAGES (INCLUDING COVER PAGE) 20

MESSAGE RE: Case No. CVH 97-0420
Judgment Consent order filed
10-7-97

SENDER'S NAME Stacey

SENDER'S FAX NUMBER: (419) 663-4048

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