

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO

AUG 14 5 00 PM '90

FILED

STATE OF OHIO, ex rel., ANTHONY
J. CELEBREZZE, JR., ATTORNEY
GENERAL, STATE OF OHIO,

PLAINTIFF,

V.

BP AMERICA, INC.,
AND
E. I. DU PONT DE NEMOURS &
COMPANY, INC.,

DEFENDANTS.

CASE NO. 1:89CV2311

JUDGE JOHN D. MANOS

CONSENT DECREE

This Consent Decree is made and entered into by and among the State of Ohio and BP America, Inc., a Delaware Corporation (hereinafter "BP America"), and E.I. Du Pont De Nemours & Company, Inc., a Delaware Corporation (hereinafter "Du Pont"), collectively referred to as the parties.

WITNESSETH

WHEREAS, the State of Ohio is acquiring through the power of eminent domain certain real property for bridge construction related to the I-490 highway project; and

WHEREAS, a dispute among the Parties has arisen out of alleged contamination found on the subject real property; and

WHEREAS, the State of Ohio, in connection with the aforesaid dispute, has filed a Complaint in the above captioned matter (hereinafter the "Lawsuit"); and

Issued 8/14/90 KAS

WHEREAS, Du Pont has filed an Answer in the Lawsuit; and

WHEREAS, BP America has filed an Answer and Counterclaim against the State of Ohio in the Lawsuit; and

WHEREAS, the Parties have agreed to settle and terminate the Lawsuit by this Consent Decree;

NOW THEREFORE, in consideration of the releases from claims and performance of the mutual promises contained herein, including the payment of the sums of money described herein and other good and valuable consideration, the parties mutually agree as follows:

1. Du Pont agrees to pay to the State of Ohio the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00).

2. BP America agrees to pay to the State of Ohio the sum of Five Hundred Twenty Five Thousand Dollars (\$525,000.00).

3. The payments described in Paragraphs One and Two shall be made by check(s) payable to the order of "Treasurer, State of Ohio," and delivered to counsel for the State within Sixty (60) days of entry of this Consent Decree. Three Thousand Three Hundred and Seventy Eight Dollars (\$3,378.00) from these payments shall be paid into the "Hazardous Waste Clean-up Fund" and the remainder shall be paid to the Ohio Department of Transportation.

4. The State of Ohio, on behalf of itself, its political subdivisions, and its employees, agents, representatives, attorneys, and assigns, hereby releases and forever discharges Du Pont and BP America, their employees, employers, agents, representatives, attorneys, predecessors, parents, subsidiaries, affiliates,

successors and assigns, from any and all claims, demands, actions, causes of action, rights, debts, contracts, accounts, promises, liabilities, judgments, damages, costs, and expenses of every type, nature and description, whether in law or in equity, whether known or unknown, and whether accrued or to accrue, which the State of Ohio ever had against Du Pont or BP America, arising from or in any way related to any claim of alleged contamination included in the Lawsuit, except as to those claims that are expressly reserved in this Consent Decree.

5. BP America, on behalf of itself, its employees, employers, agents, representatives, attorneys, predecessors, parents, subsidiaries, affiliates, successors and assigns, hereby releases and forever discharges the State of Ohio, its employees, agents, representatives, attorneys, predecessors, successors and assigns, from any and all claims, demands, actions, causes of action, rights, debts, contracts, accounts, promises, liabilities, judgments, damages, costs, and expenses of every type, nature and description, whether in law or in equity, whether known or unknown, and whether accrued or to accrue, which BP America ever had against the State of Ohio, arising from or in any way related to any claim of alleged contamination included in the Lawsuit, except as to those claims that are expressly reserved in this Consent Decree.

6. Du Pont, on behalf of itself, its employees, employers, agents, representatives, attorneys, predecessors, parents, subsidiaries, affiliates, successors and assigns, hereby releases

and forever discharges the State of Ohio, its employees, agents, representatives, attorneys, predecessors, successors and assigns, from any and all claims, demands, actions, causes of action, rights, debts, contracts, accounts, promises, liabilities, judgments, damages, costs, and expenses of every type, nature and description, whether in law or in equity, whether known or unknown, and whether accrued or to accrue, which Du Pont ever had against the State of Ohio, arising from or in any way related to any claims of alleged contamination included in the Lawsuit, except as to those claims that are expressly reserved in this Consent Decree.

7. The Parties agree that no declaratory relief shall issue in the Lawsuit.

8. The Parties hereto understand and agree that, although all claims have been released as to any clean-up costs incurred prior to the date of this Consent Decree, each party reserves its rights, unhindered by this Consent Decree, to assert and litigate claims of alleged liability for clean-up costs incurred subsequent to the date of this Consent Decree, except for costs related to:

(a) lead contamination discovered by the State before the entry of this Consent Decree in the footings for the I-490 bridge piers (hereinafter "footings");

(b) lead contamination in soil stockpiled by the State on the I-490 property at any time before the entry of this Consent Decree;

(c) 2, 4 dichlorophenol discovered by the State before the entry of this Consent Decree in the footings or any contiguous soil excavated by the State; or

(d) aniline discovered by the State before the entry of this Consent Decree in the footings or any contiguous soil excavated by the State.

It is further understood and agreed by the Parties that this Consent Decree does not constitute an admission of liability by any of the Parties hereto with regard to any of the disputes described in the preceding paragraphs, but that the obligations pursuant to this Consent Decree were agreed to by the Parties for the sole purpose of disposing of disputed claims and terminating litigation and limiting litigation costs.

9. Notwithstanding the provisions of the preceding paragraph, BP America agrees to hold the State of Ohio harmless from any future liability for reasonable and lawful costs of clean-up of contamination at the subject I-490 property, but only to the extent that such contamination is proved to have been caused by BP America or its predecessor companies. Notwithstanding the provisions of the preceding paragraph, Du Pont agrees to hold the State of Ohio harmless from any future liability for reasonable and lawful costs of clean-up of contamination at the subject I-490 property, but only to the extent that such contamination is proved to have been caused by Du Pont or its predecessor companies.

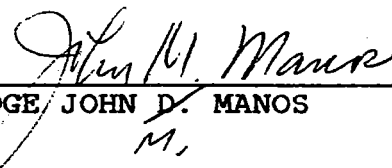
10. The parties hereto represent and warrant that each of them has never assigned to anyone any of the claims asserted in the Lawsuit, and that each of them is duly authorized to enter into this binding Consent Decree.

11. This Consent Decree sets forth the full and complete agreement of the Parties and supersedes any and all proposals, negotiations, and representations made or had prior to the execution hereof relative to the subject matter of this Consent Decree.

12. BP America and Du Pont shall pay the court costs, if any, of this Lawsuit.

13. Each party hereto represents and warrants that it has carefully read the foregoing instrument and that it understands the contents thereof and that it has signed this Consent Decree as its own free act.

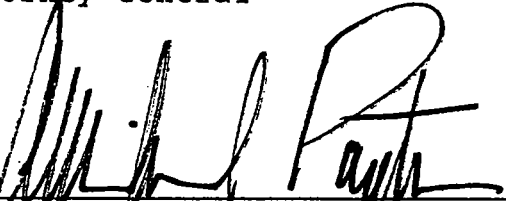
IN WITNESS WHEREOF, the Parties have executed this Consent Decree by their duly authorized officers on the date and year set forth below.



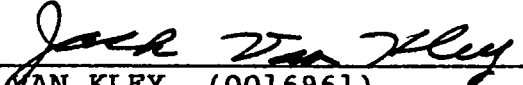
JUDGE JOHN D. MANOS
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APPROVED:

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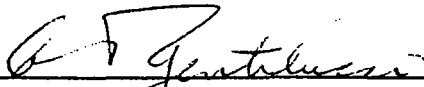
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