

IN THE COURT OF COMMON PLEAS
ALLEN COUNTY, OHIO

STATE OF OHIO, *ex rel.*, : CASE NO. CV98 02 0095
BETTY D. MONTGOMERY, :
ATTORNEY GENERAL OF OHIO, : JUDGE
:
Plaintiff, :
:
vs. :
:
BP OIL COMPANY : CONSENT ORDER
:
Defendant. :

COMMON PLEAS COURT
FILED
98 APR -6 PM 2:24
ANNE E. GELBERG
CLERK OF COURTS
ALLEN COUNTY, OHIO

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General (hereinafter "Plaintiff" or "State of Ohio") and Defendant, BP Oil Company (hereinafter "Defendant" or "BP") having consented to the entry of this Consent Order.

NOW THEREFORE, without trial and upon the 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 Defendant under Chapters 3734 and 6111 of the Ohio Revised Code (hereinafter "RC"). Venue is proper in this Court.

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II. PARTIES

2. The provisions of this Consent Order shall apply and be binding upon the parties to this action, BP, its agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them. BP shall provide a copy of this Consent Order to each contractor and consultant it employs to perform the work itemized herein. BP shall require each general contractor to provide a copy of this Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

3. Plaintiff alleged in its Complaint that Defendant operated its Lima, Ohio oil refinery in such a manner as to result in violations of the requirements of the National Pollution Discharge Elimination System ("NPDES") Permits issued to it by the Director of Ohio EPA and of the water pollution and hazardous waste laws of the State of Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims under such laws alleged in the Complaint.

4. (a) Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against appropriate persons other than BP for claims or conditions alleged in the complaint.

(b) Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against BP or other appropriate persons for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint.

(c) Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to undertake any action against any person, including BP, to eliminate or mitigate conditions which may present a threat to the public health, welfare or the environment.

(d) Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;

(e) Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to bring any action against 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 Ohio Revised Code Sections 3734.20 through 3734.27 to: (1) recover natural resource damages, and/or (2) to 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.

IV. PERMANENT INJUNCTION

5. BP is hereby permanently enjoined and immediately ordered to comply with the requirements of R.C. Chapters 3734 and 6111 and the rules adopted under each of those chapters, and the terms and conditions of its currently effective NPDES Permit No. 2IG00001*KD, and any renewals or modifications thereof, except as otherwise expressly provided in Section IV of this Consent Order.

6. BP shall properly operate and maintain its wastewater treatment plant, disposal system and any associated equipment and structures. BP is further prohibited from constructing, installing or connecting any new source of pollutants to, or otherwise make a modification to, its wastewater treatment plant and disposal system unless and until such time as a Permit to Install ("PTI") and/or plan approval is obtained by Defendant from the Ohio EPA as required by Revised Code §6111.45 and O.A.C. Chapter 3745-31.

7. Defendant shall not discharge from outfall 2IG00001002 (i.e. the emergency spillway) except as expressly provided in Part I,A of Defendant's NPDES Permit No. 2IG00001*KD as the same may be from time to time modified or renewed. Defendant shall operate the wastewater treatment plant and the storm water collection and storage system at the Lima facility either:

(A) in accordance with:

(1) the operational assumptions concerning wastewater treatment rate and the availability of capacity to treat and impound storm water set forth in the December 28, 1995 update to the storm water impoundment report *and*

(2) the operational practices set forth in the wet weather operations plan as approved by Ohio EPA; or

(B) if Ohio EPA agrees that operations at the Lima facility have changed such that the operational assumptions concerning wastewater treatment rate and the availability of capacity to treat and impound storm water referenced above no longer apply, then in accordance with:

- (1) new operational assumptions concerning wastewater treatment rate and the availability of capacity to treat and impound storm water necessitated by the change in operations set forth in a new update, approved by Ohio EPA, to the storm water impoundment report *and*
- (2) new operational practices, necessitated by the change in operations, set forth in a wet weather operations plan update approved by Ohio EPA.

V. CIVIL PENALTY

8. Within thirty (30) days of the effective date of this Consent Order, it is hereby ordered that Defendant shall pay to the State of Ohio a civil penalty of Four Hundred Thousand Dollars and No Cents (\$400,000.00). The civil penalty payment shall be paid by delivering a certified check for the appropriate amount, made payable to "Treasurer, State of Ohio", to Lyndia Jennings, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

9. In lieu of payment of Two Hundred Fifty Thousand Dollars (\$250,000.00) of the civil penalty set forth in Section V, Paragraph 8 of this Consent Order, and in furtherance of the objective of improving the environment and reducing the impacts to soils and waters of the State of Ohio, Defendant agrees to and is hereby ordered to implement the following Supplemental Environmental Project ("the Project"): Defendant shall create a trust account with an established banking institution. Defendant shall pay Two Hundred Fifty Thousand Dollars (\$250,000.00)

into the trust account. Moneys in the trust shall be used only for the purpose of design and construction of the North Leonard Avenue Sewer Improvement Project to be constructed by Allen County to abate unsanitary conditions in that service area. The trust agreement creating the trust account shall provide that payments to Allen County shall be made out of the trust account by the trustee only for the purpose of design and construction of the North Leonard Avenue Sewer Project and only after receipt of a written request that describes the work performed and itemizes the costs incurred. The trustee shall also be required by the trust agreement to telefax to Ohio EPA, at the following address, a copy of each request of Allen County within three days after it is received and three business days before any disbursement is made from the trust:

Ohio EPA
Northwest District Office
Division of Surface Water
347 North Dunbridge Road
Bowling Green, Ohio 43402
Telefax: (419) 352-3468

Regarding water pollution laws:
ATTN: Elizabeth Wick (or her successor)

The trustee shall also be required by the trust agreement to report to the Ohio EPA upon request the trust balance, and a list of all disbursements from, income to, and charges to the trust. Costs of administration of the account shall be paid by Defendant, to the extent that such costs are not paid out of interest generated by the trust account. Interest not expended on administration of the trust shall be added to the principal of the trust to be expended on the design and construction of the North Leonard Avenue Sewer Project. The trust account shall be further designed so that within thirty days after October 1, 2002, the unexpended balance remaining in the trust account shall be paid to the Ohio EPA. Payment of the unexpended balance shall be paid by delivering a

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certified check for the appropriate amount, made payable to "Treasurer, State of Ohio," to Jena Suhadolnik, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428. Payment of the unexpended balance shall be deposited into the hazardous waste clean-up fund created by R.C. Section 3734.28.

VII. STIPULATED PENALTIES

10. In the event that Defendant fails to comply with any of the requirements set forth in paragraphs 5 and 6 of this Consent Order, and/or fails to comply with Defendant's NPDES permit terms or conditions, other than a failure described in paragraph 11, Defendant shall pay a stipulated penalty according to the following schedule:

(1) For each day of each failure up to thirty (30) days--five hundred dollars (\$500.00) per day per requirement not met;

(2) For each day of each failure from thirty-one (31) to sixty days (60) -- one thousand dollars (\$1000.00) per day per requirement not met; and

(3) For each day of each failure over (61) days--one thousand five hundred dollars (\$1,500.00) per day per requirement not met.

11. In the event that Defendant discharges from outfall 2IG00001002 in violation of the NPDES permit, or otherwise violates the requirements of paragraph 7 above, Defendant shall pay a stipulated penalty according to the following schedule:

(1) For each day of each failure to meet a requirement and/or failure to comply for the first four occasions, two thousand dollars (\$2000.00) per day per requirement not met; and

(2) For each day of each failure to meet a requirement and/or failure to comply for occasions five through eight, four thousand dollars (\$4000.00) per day per requirement not met; and

(3) For each day of each failure to meet a requirement and/or failure to comply for occasions nine through twelve, eight thousand dollars (\$8000.00) per day per requirement not met; and

(4) For each day of each failure to meet a requirement and/or failure to comply which occurs after there have been twelve occasions, ten thousand dollars (\$10,000.00) per day per requirement not met.

12. Any payment required to be made under the provisions of Section VIII of this Consent Order shall be made by delivering to Lyndia Jennings, or her successor, at the address set forth in Section VI, Paragraph 10, a certified check or checks, for the appropriate amounts within forty-five (45) days from the date of the failure to meet the requirement of this Consent Order, made payable to "Treasurer, State of Ohio". Defendant shall also state in writing the specific failure of the Consent Order and/or NPDES permit term and condition, which was not complied with and the date(s) of non-compliance. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to Section IX shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order.

VIII. MISCELLANEOUS

13. Nothing in this Consent Order shall affect BP's obligation to comply with all applicable federal, state or local law, regulation, rule or ordinance. BP shall obtain any and all federal, state, or local permits necessary to comply with this Consent Order.

14. Any acceptance by the State of Ohio of any payment, document or other work due hereunder subsequent to the time that the obligation is due under this Consent Order shall not relieve BP of the obligation created by the Consent Order.

15. BP shall inform the Ohio EPA of any change of its business addresses or telephone numbers, or the cessation of business.

IX. RETENTION OF JURISDICTION

16. The Court will retain jurisdiction of this action for the purpose of enforcing BP's compliance with this Consent Order.

X. TERMINATION

17. The parties recognize that the use of the facility is expected to undergo substantial change upon cessation of crude oil refining, scheduled to occur near the end of the year 1998. Accordingly, Defendant may, upon substantial changes to the facility that alter conditions giving rise to the claims alleged in the Complaint, move the court that the injunctive provisions of this consent decree be terminated. Plaintiff's consent to such termination shall not be unreasonably withheld provided that Plaintiff is satisfied that the substantial changes to the facility substantially reduce the risk of an overflow of benzene-contaminated wastewaters.

XI. COSTS

18. Defendant is hereby immediately ordered to pay the costs of this action.


XII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

19. The parties agree and acknowledge that final approval by the Plaintiff and Defendant, and entry of this Consent Order is subject to the requirement of 40 C.F.R. §123 (d)(1)(iii), which provides for notice of the lodging of this Consent Order, opportunity for public comment, and the consideration of any public comment. The Plaintiff and Defendant, reserve the right to withdraw consent to this Consent Order based on comments received during the public comment period. Defendant shall pay the cost of publishing the public notice.

20. Upon the signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three days of entering the judgment upon the journal, the clerk is hereby 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.

IT IS SO ORDERED:

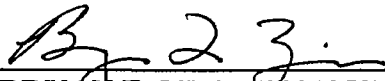


**JUDGE, ADLEN COUNTY
COURT OF COMMON PLEAS**

4/6/98
DATE


APPROVED:

**BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO**



**BRYAN F. ZIMA (0001053)
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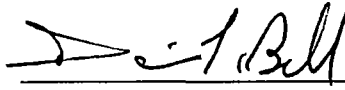
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