

**FILED**  
IN THE COURT OF COMMON PLEAS  
LAKE COUNTY, OHIO

MAY 7 1 39 PM '97  
CASE NO. 94CV-0629

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

: LYNNE L. MAZEIKA  
LAKE CO CLERK OF COURT  
: JUDGE MARTINO PARKS  
LAKE CO CLERK OF COURT

**Plaintiff,**

v.

**JOHN J. CASSIDY, JR., et al.**

**MODIFIED CONSENT ORDER**

**Defendants**

Plaintiff, the State of Ohio, by its Attorney General Betty D. Montgomery, at the written request of the State Fire Marshal, has filed a Complaint seeking injunctive relief and civil penalties from Defendants John J. Cassidy ("Cassidy") and Sun Company Inc. (R & M) ("Sun") for violations of Revised Code ("R.C.") Chapter 3737 and the rules promulgated thereunder, and all parties have consented to the entry of this Modified Consent Order.

Therefore, without the trial, admission, or determination of any issue of fact or law, 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 for which relief can be granted, and venue is proper in this Court.

**II. PERSONS BOUND**

2. The provisions of this Modified Consent Order set forth the reasons for its issuance; is specific in terms; describes in reasonable detail the act or acts sought to be

restrained; and is binding upon the parties to this action, and, to the extent provided by Rule 65(D) of the Ohio Rules of Civil Procedure, their officers, agents, servants, employees, attorneys, successors, assigns, and those persons in active concert or participation with them who receive actual notice of this Modified Consent Order whether by personal service or otherwise.

### **III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS**

3. Compliance with the terms of this Modified Consent Order shall constitute full satisfaction of any civil liability of Defendants Cassidy and Sun to the Plaintiff for the claims alleged in the Plaintiff's Complaint.

4. 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 Complaint which occur after the entry of this Order;

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

(c) Take any action authorized by law against any person, including Defendants, to eliminate or mitigate conditions at or released from the property located at 7851 Reynolds Road, Mentor, Lake County, which may present an imminent threat to the public health or welfare, or the environment.

(d) Except as otherwise provided in this Order, Defendants expressly reserve their rights to seek contribution or indemnification from any and all responsible persons, whether or not those responsible persons are named in this Modified Consent Order as a Defendant.

Further, nothing in this Modified Consent Order shall bar Defendant Sun from bringing a claim

against any party not named in this Order for any release prior to or after the release date alleged in the complaint.

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

5. Defendants agree and are hereby permanently enjoined to fully comply with R.C. Chapter 3737 and the regulations promulgated thereunder. This provision shall apply only to 7851 Reynolds Road, Mentor, Lake County, Ohio.

#### **V. PRELIMINARY INJUNCTION**

6. Immediately upon the entry of this Modified Consent Order, Defendant Sun agrees and is hereby permanently enjoined to clean up the petroleum contaminated property located at 7851 Reynolds Road, Mentor, Lake County, Ohio, in accordance with O.A.C. Rule 1301:7-9-13. For purposes of compliance with the timing provisions of O.A.C. Rule 1301:7-9-13, the date of release shall be considered the date of entry of this Modified Consent Order.

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

7. Pursuant to R.C. 3737.882(C)(2), Defendants are enjoined and ordered to pay a penalty of Fifteen Thousand Five Hundred Dollars (\$15,500) to the State of Ohio. Of this total amount, Defendant Cassidy is enjoined and ordered to pay a penalty of \$7,500. Of this total amount, Defendant Sun is enjoined and ordered to pay a penalty of \$8,000. Payment shall be made by Defendant Cassidy by delivering a certified check, and payment shall be made by Defendant Sun by delivering a check. Both checks shall be payable to the Order of the Treasurer, State of Ohio for their respective above-stated amounts, and shall be delivered to: Administrative Secretary, or his/her successor, Office of the Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio

43215-3428, within thirty (30) days of the entry of this Order.

**VII. SUBMITTAL OF DOCUMENTS**

8. All reports or other documents required by this Modified Consent Order to be submitted to the Plaintiff shall be sent to the following address:

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

**VIII. RETENTION OF JURISDICTION**

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

**IX. COURT COSTS**

10. Defendants are enjoined and ordered to pay all court costs.

**X. EFFECT OF MODIFIED CONSENT ORDER**

11. The parties agree that with the modifications contained herein, this Modified Consent Order shall supersede and replace the Partial Consent Order filed in this matter on February 14, 1996.

**XI. ENTRY OF MODIFIED CONSENT ORDER AND JUDGMENT BY CLERK**

12. Upon signing of this Modified Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three 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.

**XII. AUTHORITY TO ENTER INTO THE MODIFIED CONSENT ORDER**

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

**IT IS SO ORDERED:**

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MARTIN O. PARKS, JUDGE  
LAKE COUNTY COURT OF COMMON PLEAS

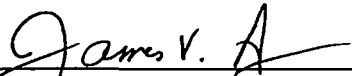
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**APPROVED BY:**

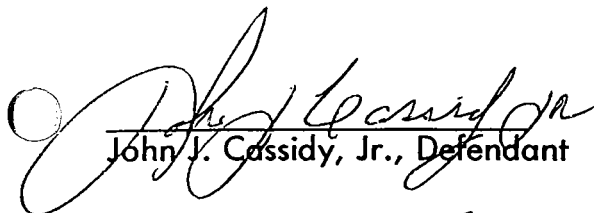
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ATTORNEY GENERAL OF OHIO





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John J. Cassidy, Jr., Defendant

  
Authorized representative of *vi*  
Sun Company, Inc. (R&M), Defendant

  
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