

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

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

Plaintiff,

vs.

JOHN J. CASSIDY, JR.,

Defendant,

and

JOHN J. CASSIDY, JR.,

Third-Party Plaintiff,

vs.

SUN OIL COMPANY
OF PENNSYLVANIA

Third-Party Defendant.

CASE NO. 94-CV-000629

JUDGE MARTIN O. PARKS

FILED
FEB 14 1 27 PM '94
CLERK OF COURT

PARTIAL CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein on May 13, 1994, and the Plaintiff, State of Ohio, by its Attorney General Betty D. Montgomery ("Plaintiff"), Defendant/Third-Party Plaintiff, John J. Cassidy, Jr. ("Cassidy") and Third-Party Defendant, Sun Oil Company of Pennsylvania ("Sun"), having agreed to the entry of this Partial Consent Order in the above captioned matter,

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the parties hereto, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that:

I. JURISDICTION AND VENUE

1. For purposes of this Partial Consent Order only, this Court has jurisdiction over the subject matter herein, pursuant to Ohio Revised Code ("O.R.C.") Chapter 3737 and the rules adopted thereunder. For purposes of this Partial Consent Order only, the Complaint states a claim upon which relief can be granted against Cassidy. For purposes of this Partial Consent Order only, Cassidy's July 21, 1994 Third-Party Complaint states a claim upon which relief can be granted against Sun. For purposes of this Partial Consent Order only, this Court has jurisdiction over the parties hereto and venue is properly in this Court.

II. PERSONS BOUND

2. As provided for by Ohio Rule of Civil Procedure 65(D), the provisions of this Partial Consent Order shall apply to and be binding upon the parties to this action, their officers, agents, servants, employees and those persons in active concert or participation with the parties to this action who receive actual notice of this Partial Consent Order, whether by personal service or otherwise. Cassidy and Sun shall provide a copy of this Partial Consent Order to any consultants who will perform any work pursuant to this Partial Consent Order.

III. SATISFACTION OF LAWSUIT

3. Plaintiff has alleged in its Complaint that Cassidy has violated various sections of O.R.C. Chapter 3737 and the rules adopted thereunder, as the "owner" and "operator" of an "underground storage tank system" which was located at a facility currently known as Spark's Tune-Up, at 7851 Reynolds Road, Mentor, Lake County, Ohio, ("the Site") , and which has "released" "petroleum" products into the

environment, and therefore has alleged that Cassidy is a "responsible person", as those terms are defined by O.R.C. §3737.87(H)(2), (G), (P), (Q), (M), (J), (I) and (N), respectively.

4. Cassidy has alleged, in part, in his July 21, 1994 Third-Party Complaint, that Sun has violated various sections of O.R.C. Chapter 3737 and the rules adopted thereunder, as the "owner" and "operator" of an "underground storage tank system" which was located at the site and which has "released" "petroleum" products into the environment, and therefore has alleged that Sun is a "responsible person", as those terms are defined by O.R.C. §3737.87(H)(2), (G), (P), (Q), (M), (J), (I) and (N), respectively.

5. Except as otherwise provided for by this Partial Consent Order and/or by law, and with the specific exceptions detailed in Paragraphs 9(B) and 14(B) of this Partial Consent Order, compliance with the terms of this Partial Consent Order shall constitute: (a) full and complete satisfaction and release of Cassidy's civil liability to Plaintiff for all claims alleged in Plaintiff's Complaint; (b) full and complete satisfaction of Sun's civil liability to Cassidy for all claims alleged in Cassidy's Third-Party Complaint; (c) full and complete satisfaction of Sun's civil liability to Plaintiff for all claims alleged against Cassidy in Plaintiff's Complaint as if Sun were named in lieu of Cassidy therein; and (d) full and complete satisfaction of Cassidy's civil liability to Sun for any and all potential subrogation claims arising herein, except as otherwise addressed in this Partial Consent Order.

IV. RESERVATION OF RIGHTS

6. This Partial Consent Order does not prevent Plaintiff from seeking further relief for groundwater contamination or other contamination caused by Cassidy and/or Sun that may be discovered after the entry of this Partial Consent Order.

7. Nothing in this Partial Consent Order shall be construed to limit the authority of Plaintiff to seek relief as against Cassidy for claims not referenced in it's Complaint. Nothing in this Partial Consent Order shall be construed to limit the

authority of Plaintiff to seek relief as against Sun for claims not referenced in it's Complaint against Cassidy. Nothing in this Partial Consent Order shall be construed to limit Cassidy's and/or Sun's ability to raise any and all claims or defenses that they may legally raise, to allegations or claims not referenced in Paragraphs 1 - 7.

8. Any and all rights which have been specifically reserved in this Partial Consent Order are hereby incorporated into Section IV of this Partial Consent Order.

V. INJUNCTION

9. Sun Shall Perform a Site Assessment and Submit a Site Assessment

Report:

A. Within 30 days of entry of this Order, Sun is hereby enjoined and ordered to commence a Site Assessment, in compliance with Ohio Administrative Code ("O.A.C.") §1301:7-9-13(I), on the following areas of the Site: 1) the former underground storage tank farm, associated dispenser island area and the area where the piping from the farm was connected to the dispenser island; and 2) the area between the former tank cavity and the Ponderosa Steak House Building. Sun is hereby enjoined and ordered to perform the Site Assessment in compliance with and pursuant to O.A.C. §1301:7-9-13(I), and in accordance with the following:

(i) Sun has agreed, for purposes of settlement, to drill six (6) soil borings in an attempt to determine the vertical and horizontal extent of the release at the Site. These six (6) soil borings shall be placed in the following six locations:

- 1) Immediately north of the former pump island overexcavation cavity;
- 2) Immediately west of the former pump island overexcavation cavity;
- 3) Immediately east of the former pump island overexcavation cavity;
- 4) Immediately south of the former pump island overexcavation cavity;

- 5) South of soil sample number 1 as identified in the August 29, 1994 D-U Construction Company report site map;
- 6) South of soil sample number 3 as identified in August 29, 1994 D-U Construction report site map; and

(ii) Samples taken pursuant to O.A.C. §1301:7-9-13(I) need only be analyzed for the following five parameters:

- 1) benzene;
- 2) toluene;
- 3) ethylbenzene;
- 4) xylene; and
- 5) total petroleum hydrocarbon.

B. If, as a result of drilling the six (6) soil borings described in Paragraph 9(A)(i), Sun is not able to determine the vertical and horizontal extent of the release at the Site, then Sun shall have the option of either drilling more soil borings in an attempt to determine the vertical and horizontal extent of the release at the Site and then submitting a Site Assessment Report to Plaintiff pursuant to and in compliance with Paragraph 9(C) ("Option Y"), or of requiring all parties to follow the requirements of Paragraph 9(B)(i) and (ii) of this Partial Consent Order ("Option Z").

(i) Option Z: If, after full compliance with Paragraph 9(A)(i) and (ii) of this Partial Consent Order and/or full compliance with Option Y described in Paragraph 9(B), Sun is unable to determine the vertical and horizontal extent of the release at the Site, and if Sun notifies Plaintiff and Cassidy, in writing, within thirty (30) days after it has concluded that the vertical and horizontal extent of the release at the Site has not been determined, that it does not intend to drill any more soil borings or to otherwise complete the task of determining the vertical and horizontal extent of the release at the

Site, then the parties shall do the following:

(a) within 15 days of receipt of said notification, Plaintiff, Sun and Cassidy shall inform the Judge that the parties to the above-captioned matter were unable to achieve a complete settlement of this matter, by filing a Joint Motion for Status Conference; and

(b) within 15 days of receipt of said notification, Plaintiff will file a Motion for Leave to File an Amended Complaint. If the Court gives Plaintiff leave to so amend, then Plaintiff will file an Amended Complaint which will name Sun as a Defendant in this matter. Should the Court deny Plaintiff's Motion then Plaintiff will withdraw its Complaint filed in this matter against Cassidy and will file a new Complaint naming both Cassidy and Sun as Defendants.

(ii) It is hereby understood and agreed that Plaintiff, Sun and Cassidy retain all of their respective legal rights against each other, with the exception of those rights which were waived and released in Paragraph 9(D) of this Partial Consent Order, if they were so waived and released in consideration for Sun's completion of a Site Assessment which delineates the vertical and horizontal extent of the release at the Site pursuant to O.A.C. 1301:7-9-13(I) and submittal of a Site Assessment Report pursuant to Paragraph 9(C) of this Partial Consent Order, and that no settlement of any issue in the above-captioned case will have occurred.

C. Sun is hereby enjoined and ordered to submit to Plaintiff for its approval, within 90 days of implementing the Site Assessment described in Paragraph 9(A) of this Partial Consent Order, a Site Assessment Report done in compliance with and pursuant to O.A.C. §1301:7-9-13(I).

D. No later than thirty (30) days after (1) Sun's completion of a Site Assessment which delineates the vertical and horizontal extent of the release at the Site pursuant to O.A.C. 1301:7-9-13(I), and (2) the submittal to Plaintiff of the Site Assessment Report, done in accordance with Paragraph 9(C) of this Partial Consent Order, the parties agree to do the following:

(i) Plaintiff will file a Voluntary Waiver and Release with this Court and Cassidy will file a Voluntary Waiver and Release with this Court, of all respective rights they may have, as against Sun, to any and all past response and/or enforcement costs, incurred prior to the entry of this Partial Consent Order, by Plaintiff and/or Cassidy, in conjunction with the investigation and remediation of the Site. The Voluntary Waiver and Release filed by Plaintiff shall not be construed to include the costs for filing the current action as referenced in Paragraph 21 of this Partial Consent Order; and

(ii) Sun will file with this Court a Voluntary Waiver and Release of all rights it may have, as against Cassidy or Plaintiff, to reimbursement for any and all costs it has incurred by performance of a Site Assessment as required by Paragraph 9(A) of this Partial Consent Order and/or by the completion of a Site Assessment Report as required by Paragraph 9(C) of this Partial Consent Order, as well as for all legal fees or other miscellaneous costs incurred in the defense of this matter through the date of completion of the Site Assessment Report; and

(iii) Plaintiff will file with this Court a Voluntary Waiver and Release of all rights it may have, as against Cassidy and Sun, to reimbursement for any and all costs it has incurred as a result of the clean-up conducted at the site by DU Construction between August 12 - 16, 1994 and for all attorney costs it has incurred through the date of the entry of this Partial Consent

Order. As to Defendant Cassidy only, this Voluntary Waiver and Release shall not include the costs incurred by Plaintiff for performance of a Site Check at the site (\$3500), for the costs associated with Defendant location costs (\$436.25), nor for the costs associated with filing the current action as referenced in Paragraph 21 of this Partial Consent Order.

E. If the Site Assessment Report demonstrates that the Site meets approved target levels, Plaintiff will issue to Sun and Cassidy, pursuant to O.A.C. 1301:7-9-14(J)(3), a written notice that no further action is required at the site ("NFA").

(i) If Plaintiff issues an NFA to Sun and Cassidy under Paragraph 9(E) of this Partial Consent Order, then Cassidy shall pay to Plaintiff a total of three thousand nine hundred thirty-six dollars and twenty-five cents (\$3936.25), pursuant to O.R.C. §3737.89(A), as recovery for performance of a Site Check and Defendant location costs. Payments shall be in the form of certified checks in the amount of three-hundred and twenty-eight dollars (\$328), due monthly for a period of twelve (12) months, and shall be made payable to "Treasurer - State of Ohio" and be delivered to

The Bureau of Underground Storage Tank Regulations
8895 East Main Street, P.O. Box 687
Reynoldsburg, Ohio 43068-0687
Attn: Legal Department

The first payment shall be due to Plaintiff within thirty (30) days after Cassidy receives the NFA from Plaintiff.

(ii) If Plaintiff issues an NFA to Sun and Cassidy under Paragraph 9(E) of this Partial Consent Order, and if Cassidy pays to Plaintiff three thousand nine hundred thirty-six dollars and twenty-five cents (\$3936.25) in compliance with Paragraph 9(E)(i) of this Partial Consent Order, then the

parties shall do the following:

(a) Plaintiff will file with the Court a Notice of Satisfaction of Claim against Defendant Cassidy within thirty (30) days after receiving the total amount of \$3936.25 due to Plaintiff from Defendant Cassidy;

(b) Plaintiff will agree that the actions of Sun and Cassidy constitute full satisfaction and release of any and all civil liability by Sun and Cassidy as to the State for all claims under such laws alleged in its Complaint. Nothing in this Section shall be construed as an admission of liability. However, nothing in this Partial Consent Order shall be construed to limit the authority of Plaintiff to seek relief for claims or conditions not alleged in Plaintiff's Complaint, as against Cassidy and/or Sun, including any violations which may occur after the filing of this Partial Consent Order. Nothing in this Partial Consent Order shall be construed to limit Cassidy's and/or Sun's ability to raise any and all claims or defenses that they may legally raise, to allegations or claims not referenced in Paragraphs 1 - 7.; and

(c) Cassidy shall file with the Court a Notice of Satisfaction of Claim against Sun within thirty (30) days of receipt of the NFA. Within thirty (30) days of Cassidy's filing with the Court of a Notice of Satisfaction of Claim against Sun, Sun shall release Cassidy from all further civil liability for Sun's expenses in remediating the Site together with all legal and other miscellaneous costs associated with this Partial Consent Order.

10. If the Site Assessment Report Concludes That the Approved Target Levels Have Been Exceeded at the Site, Sun Shall Prepare a Remedial Action Plan:

A. If after its review of the Site Assessment Report submitted to Plaintiff, Plaintiff notifies Sun in writing that a Remedial Action Plan must be submitted to Plaintiff, Sun is hereby enjoined and ordered to submit, within 90 days of receipt of such written notification, a Remedial Action Plan, written in compliance with and pursuant to O.A.C. §1301:7-9-13(J), and which shall include, but not be limited to, a schedule of activities necessary to achieve an NFA for the Site.

11. If the Remedial Action Plan concludes that NFA status can be achieved at the site for \$13,936.25 or less, then Sun Shall Implement the Remedial Action Plan:

A. If the Remedial Action Plan, written in compliance with and pursuant to O.A.C. §1301:7-9-13(J), concludes that NFA status can be achieved at the Site, in Sun's sole discretion, after Sun's review of a lump-sum remediation proposal submitted by its environmental consultant, for an expenditure of thirteen thousand nine-hundred and thirty-six dollars and twenty-five cents (\$13,936.25) or less for all costs and expenses necessary to prepare and implement the Remedial Action Plan ("Remedial Expenses"), then Sun is hereby enjoined and ordered to implement, within thirty (30) days after submittal of the Remedial Action Plan to Plaintiff, the Remedial Action Plan in accordance with O.A.C. §1301:7-9-13(L) and the terms of the approved Remedial Action Plan.

B. Upon completion of implementation of the Remedial Action Plan as approved and as required by O.A.C. §1301:7-9-13(L), Sun is hereby enjoined and ordered to prepare a "Completion Report", pursuant to O.A.C. §1301:7-9-13(M), that demonstrates that the remediation objectives of the plan have been met. The report shall contain documentation supporting termination of

the remedial program and shall be submitted to Plaintiff within thirty (30) days after completion of implementation of the Remedial Action Plan.

C. If the Completion Report meets with Plaintiff's approval, Plaintiff shall issue an NFA to Sun and Cassidy.

i) If Plaintiff provides Sun and Cassidy with a written NFA under Paragraph 11(C) of this Partial Consent Order, then the parties agree to do the following:

(a) if Sun's Remedial Expenses were greater than ten-thousand dollars (\$10,000), Sun shall submit to Plaintiff and Cassidy, within thirty (30) days of receiving an NFA from Plaintiff, a detailed summary of those costs; and

(b) Cassidy shall, immediately upon receipt of an NFA from Plaintiff and receipt from Sun of its detailed summary of the costs it incurred to remediate the Site to NFA status, pay Sun all costs incurred by Sun over the amount of ten thousand dollars (\$10,000) to achieve an NFA status at the Site, not to exceed three thousand nine hundred thirty-six dollars and twenty-five cents (\$3936.25).

(aa) However, if the costs incurred by Sun to achieve an NFA status at the Site are greater than ten thousand dollars (\$10,000) but less than thirteen thousand nine hundred thirty-six dollars and twenty-five cents (\$13,936.25), then Cassidy shall pay to Plaintiff the difference between three thousand nine hundred thirty-six dollars and twenty-five cents (\$3936.25) and the amount remitted to Sun. In no event shall Cassidy pay Sun, or Sun and Plaintiff together, an amount in sum greater than three thousand nine hundred thirty-six dollars and twenty-five cents (\$3936.25). Any amounts paid to Plaintiff pursuant to this Paragraph shall be made payable to the

name and sent to the address listed in Paragraph 9(E)(i) of this Partial Consent Order and shall be in the form of certified checks in the amount of three-hundred and twenty-eight dollars (\$328), due monthly, until the total amount due to Plaintiff is paid in full. The first payment shall be due to Plaintiff within thirty (30) days after Cassidy receives the NFA.

(bb) Further, if the costs incurred by Sun to achieve an NFA status at the site are less than ten-thousand dollars (\$10,000), then Cassidy shall pay to Plaintiff three-thousand nine-hundred thirty-six dollars and twenty-five cents (\$3936.25), made payable to the name and sent to the address listed in Paragraph 9(E)(i) of this Partial Consent Order and shall be in the form of certified checks in the amount of three-hundred and twenty-eight dollars (\$328), due monthly, for a period of twelve (12) months. The first payment shall be due to Plaintiff within thirty (30) days after Cassidy receives the NFA.

ii) If Plaintiff issues an NFA to Sun and Cassidy under Paragraph 11(C) of this Partial Consent Order, and if Sun and Cassidy comply with Paragraphs 11(C)(i)(a) and (b) of this Partial Consent Order, then the parties shall do the following:

(a) Plaintiff will file with the Court a Notice of Satisfaction of Claim against Defendant Cassidy within thirty (30) days after receiving the total amount of \$3936.25 due to Plaintiff from Defendant Cassidy;

(b) Plaintiff will agree that the actions of Sun and Cassidy constitute full satisfaction and release of any and all civil liability by Sun and Cassidy as to the State for all claims under such laws alleged in its Complaint. Nothing in this Section shall be construed as an admission

of liability. However, nothing in this Partial Consent Order shall be construed to limit the authority of Plaintiff to seek relief as against Sun and Cassidy for claims or conditions not alleged in Plaintiff's Complaint, including any violations which may occur after the filing of this Partial Consent Order. Nothing in this Partial Consent Order shall be construed to limit Cassidy's and/or Sun's ability to raise any and all claims or defenses that they may legally raise, to allegations or claims not referenced in Paragraphs 1 - 7.; and

(c) Cassidy shall file with the Court a Notice of Satisfaction of Claim against Sun within thirty (30) days of receipt of the NFA. Within thirty (30) days of Cassidy's filing with the Court of a Notice of Satisfaction of Claim against Sun, Sun shall release Cassidy from all further civil liability for Sun's expenses in remediating the Site together with all legal and other miscellaneous costs associated with this Partial Consent Order.

12. If the Remedial Action Plan Concludes That NFA Status Cannot be Achieved at the Site for \$13,936.25 or Less, Then Sun Shall Choose Either Option A or Option B:

A. If the Remedial Action Plan, written in compliance with and pursuant to O.A.C. §1301:7-9-13(J), concludes that NFA status cannot be achieved at the Site, in Sun's sole discretion, after Sun's review of a lump-sum remediation proposal submitted by its environmental consultant, for an expenditure of thirteen thousand nine-hundred and thirty-six dollars and twenty-five cents (\$13,936.25) or less, for all Remedial Expenses, then Sun shall have the option to chose whether it follows the requirements of Paragraphs 13(A) and (B) of this Partial Consent Order by implementing the Remedial Action Plan until NFA status is achieved at the Site ("Option A"), or whether all parties must

follow the requirements of Paragraphs 14(A) and (B) of this Partial Consent Order ("Option B"). If the Remedial Action Plan concludes that NFA status cannot be achieved at the Site for less than thirteen thousand nine-hundred and thirty-six dollars and twenty-five cents (\$13,936.25), then Sun shall notify Plaintiff and Cassidy in writing, within thirty (30) days of receipt of the plan, whether or not Sun intends to exercise Option A by implementing the Remedial Action Plan until NFA status is achieved.

13. "Option A" - Sun Shall Implement the Remedial Action Plan:

A. If the Remedial Action Plan, written in compliance with and pursuant to O.A.C. §1301:7-9-13(J), concludes that NFA status cannot be achieved at the Site, in Sun's sole discretion, after Sun's review of a lump-sum remediation proposal submitted by its environmental consultant, for an expenditure of thirteen thousand nine-hundred and thirty-six dollars and twenty-five cents (\$13,936.25) or less, for all Remedial Expenses, and if Sun notifies Plaintiff and Cassidy in writing, within thirty (30) days of receipt of the Remedial Action Plan, that it intends to implement the Remedial Action Plan until NFA status is achieved at the site, then Sun and Cassidy shall do the following:

i) Sun shall:

(a) comply with Paragraphs 11(A) and (B) of this Partial Consent Order until Plaintiff issues an NFA to Sun and Cassidy pursuant to Paragraph 11(C) of this Partial Consent Order; and

(b) submit to Plaintiff and Cassidy, within thirty (30) days of receiving an NFA from Plaintiff pursuant to Paragraph 11(C) of this Partial Consent Order, a detailed summary of the costs incurred by Sun to remediate the Site to NFA status; and

ii) Cassidy shall, immediately upon receipt of an NFA from Plaintiff and receipt from Sun of its detailed summary of the costs it incurred to remediate the Site to NFA status, pay Sun all costs incurred by Sun over the amount of ten thousand dollars (\$10,000) to achieve an NFA status at the site, not to exceed three thousand nine hundred thirty-six dollars and twenty-five cents (\$3936.25).

B. If Plaintiff issues an NFA to Sun and Cassidy under Paragraph 11(C) of this Partial Consent Order, and if Sun and Cassidy comply with Paragraph 13 of this Partial Consent Order, then the parties shall do the following:

(i) Plaintiff will file with the Court a Notice of Satisfaction of Claim against Defendant Cassidy within thirty (30) days after issuance of the NFA;

ii) Plaintiff will agree that the actions of Sun and Cassidy constitute full satisfaction and release of any and all civil liability by Sun and Cassidy as to the State for all claims under such laws alleged in its Complaint.

Nothing in this Section shall be construed as an admission of liability.

However, nothing in this Partial Consent Order shall be construed to limit the authority of Plaintiff to seek relief as against Sun and Cassidy for claims or conditions not alleged in Plaintiff's Complaint, including any violations which may occur after the filing of this Partial Consent Order.

Nothing in this Partial Consent Order shall be construed to limit Cassidy's and/or Sun's ability to raise any and all claims or defenses that they may legally raise, to allegations or claims not referenced in Paragraphs 1 - 7.;

and

iii) Cassidy shall file with the Court a Notice of Satisfaction of Claim against Sun within thirty (30) days of receipt of the NFA. Within thirty (30) days of Cassidy's filing with the Court of a Notice of Satisfaction of

Claim against Sun, Sun shall release Cassidy from all further civil liability for Sun's expenses in remediating the Site together with all legal and other miscellaneous costs associated with this Partial Consent Order.

14. "Option B" - Sun Will not Implement the Remedial Action Plan, the Parties Will File a Joint Motion for Status Conference and Plaintiff Will File a Motion for Leave to Amend Complaint:

A. If the Remedial Action Plan, written in compliance with and pursuant to O.A.C. §1301:7-9-13(J), concludes that NFA status cannot be achieved at the Site, in Sun's sole discretion, after Sun's review of a lump-sum remediation proposal submitted by its environmental consultant, for an expenditure of thirteen thousand nine-hundred and thirty-six dollars and twenty-five cents (\$13,936.25) or less, for all Remedial Expenses, and if Sun notifies Plaintiff and Cassidy in writing, within 30 days of submission of the plan, that it does not intend to implement the Remedial Action Plan until NFA status is achieved at the Site, then the parties shall do the following:

i) within 15 days of receipt of said notification, Plaintiff, Sun and Cassidy shall inform the Judge that the parties to the above-captioned matter were unable to achieve a complete settlement of this matter, by filing a Joint Motion for Status Conference; and

ii) within 15 days of receipt of said notification, Plaintiff will file a Motion for Leave to File an Amended Complaint. If the Court gives Plaintiff leave to so amend, then Plaintiff will file an Amended Complaint which will name Sun as a Defendant in this matter. Should the Court deny Plaintiff's Motion then Plaintiff will withdraw its Complaint filed in this matter against Cassidy and will file a new Complaint naming both Cassidy and Sun as Defendants.

B. It is hereby understood and agreed that Plaintiff, Sun and Cassidy retain all of their respective legal rights against each other, with the exception of those rights which were waived and released in Paragraph 9(D) of this Partial Consent Order, if they were so waived and released in consideration for Sun's compliance with Paragraph 9(A) and 9(C) of this Partial Consent Order, and that no settlement of any issue in the above-captioned case will have occurred.

VI. POTENTIAL FORCE MAJEURE

15. If any event occurs which causes or may cause a delay of any requirement of this Partial Consent Order, Sun shall notify BUSTR in writing within twenty (20) 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 by Sun to prevent or minimize the delay, and the timetable by which measures will be implemented. Sun will adopt all reasonable measures to avoid or minimize any such delay.

16. In any action by the Plaintiff to enforce any of the provisions of this Partial Consent Order, Sun may raise whether it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Sun and Plaintiff 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 an enforcement action, if any, is recommended by Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Sun shall rest with Sun. Unanticipated or increased costs associated with the implementation of any action required by this Partial Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Sun, or serve as a basis for an extension of time under this Partial Consent Order. Failure by Sun to

comply with the notice requirements of Paragraph 15 shall render this Paragraph void and of no force and effect as to the particular incident involved and shall constitute a waiver of Sun's right to request an extension of its obligations under this Partial Consent Order based on such incident. An extension of one compliance date based on a particular incident does not mean that Sun qualifies for an extension of a subsequent compliance date or dates. Sun must make an individual showing or proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Partial Consent Order without a Force Majeure Clause does not constitute a waiver by Sun of any rights or defenses it may have under applicable law.

VII. DOCUMENT SUBMITTAL

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

The Bureau of Underground Storage Tank Regulations
8895 East Main Street, P.O. Box 687
Reynoldsburg, Ohio 43068-0687
Attn: Verne Ord

VIII. RETENTION OF JURISDICTION

18. The Court will retain jurisdiction of this action for the purpose of overseeing compliance with the terms and conditions of this Partial Consent Order and for making any order or decree which it deems appropriate to carry out this Partial Consent Order.

IX. NON-WAIVER PROVISION AND RESERVATION OF RIGHTS

19. This Partial Consent Order does not limit nor affect the rights of Cassidy, Sun or the Plaintiff as against third parties.

X. COMPLIANCE WITH APPLICABLE LAWS

20. Nothing herein shall affect Cassidy's or Sun's obligation to comply with all applicable federal, state, or local laws, regulations, rules, or ordinances. Cassidy shall cooperate with Sun to, and Sun shall, obtain all federal, state, or local permits, licenses, and/or written approvals necessary to comply with this Partial Consent Order.

XI. COSTS

21. Defendant/Third-Party Plaintiff Cassidy and Third-Party Defendant Sun are hereby ordered to pay the costs of this action.

IT IS SO ORDERED:



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

DATE

APPROVED BY:

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

Michael R. Blumenthal

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BY: *Lauren C. Angell 1/30/96*
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Sun Oil Company

Counsel for Plaintiff, State of Ohio

James V. Aveni 2/7/96
James V. Aveni (0061918)
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Painesville, Ohio 44077

Counsel for Defendant and
Third-Party Plaintiff, John J. Cassidy, Jr.

John J. Cassidy, Jr. 2/7/96
John J. Cassidy, Jr.
Defendant and Third-Party Plaintiff,

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:

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

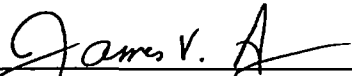
DATE

APPROVED BY:

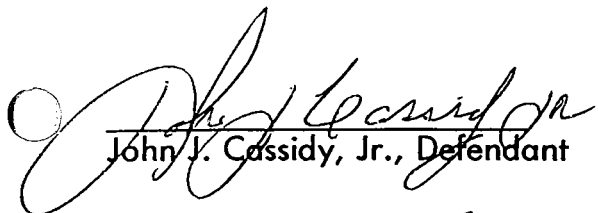
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John J. Cassidy, Jr., Defendant


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


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