

IN THE COURT OF COMMON PLEAS
BELMONT COUNTY, OHIO

FILED
COMMON PLEAS COURT
BELMONT CO. OHIO

'96 SEP 20 PM 1 24

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

Plaintiff,

v.

COMMUNITY FUELS, INC.,

Defendant.

CASE NO. 94-CIV-115
BY L. MARPLE
CLERK OF COURT
JUDGE CHARLES F. KNAPP

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio by its Attorney General Betty D. Montgomery (hereinafter Plaintiff") and Defendant Community Fuels, Inc. (hereinafter "Defendant") having consented to the entry of this Order,

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 as follows:

I. JURISDICTION AND VENUE

1. The Court has both personal and subject matter jurisdiction over Defendant. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 3737 of the Ohio Revised Code and the rules promulgated thereunder. Venue is proper in this Court.

II. PERSONS BOUND BY THE ORDER

2. All terms and provisions of this Consent Order shall apply to and be binding upon Defendant and its assigns, successors in interest, agents, representatives, servants, employees, officers, directors, contractors, consultants, subsidiaries or divisions, and/or all persons, firms, or corporations who are or will be acting in concert or in privity with the Defendant. Defendant shall provide a copy of this Consent Order to each contractor it employs to perform work itemized herein.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

3. Plaintiff alleges in its Complaint that Defendant failed to comply with an administrative order and Ohio's underground storage tank law and regulations which required Defendant to assess and remediate petroleum contamination resulting from a release of petroleum from two underground storage tanks at 165 East Main Street, St. Clairsville, Belmont County, Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for the claims under such laws as alleged in the Complaint against Defendant, except as otherwise provided in this section.

4. Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint. This Consent Order shall not bar the State from bringing any action against Defendant for any violations or conditions which occur or are discovered

after the entry date of this Consent Order, including, but not limited to, misrepresentations about the financial condition of the Defendant.

Notwithstanding any other provision of this Consent Order, if performance of the site assessment activities provided for in section V of this Consent Order show the existence of petroleum contamination that exceeds the action levels set forth in rule 1301:7-9-13 of the Ohio Administrative Code ("OAC"), and which requires further corrective action in accordance with OAC rule 1301:7-9-13, the Plaintiff shall not be barred from pursuing Defendant and any other appropriate parties for appropriate relief. By entering into this Consent Order the Defendant does not waive any rights, claims or defenses which it may have against any others not a party to this action.

5. 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 Defendant, to eliminate or mitigate conditions which may present a threat to the public health, welfare or the environment.

6. Nothing in this Consent Order shall constitute a release or satisfaction of liability for any potential joint tortfeasors.

IV. PERMANENT INJUNCTION

7. Defendant is hereby immediately and permanently enjoined and ordered to comply with all applicable provisions of Chapter 3737 of the Ohio Revised Code ("RC") and the rules promulgated thereunder in OAC Chapter 1301:7-9.

V. SITE ASSESSMENT AND OTHER INJUNCTIVE RELIEF

8. Within seven (7) days of the Court's entry of this Consent Order, Defendant shall make arrangements with an environmental contractor experienced in the remediation of petroleum contamination to conduct site assessment activities in accordance with this Section of the Consent Order and OAC rule 1301:7-9-13.

a. Within thirty (30) days of the Court's entry of this Consent Order, Defendant shall begin performing an assessment of the vertical and horizontal extent of soil and ground water contamination in the vicinity of the underground storage tank systems at 165 East Main Street, St. Clairsville, Ohio.

b. Within sixty (60) days of the Court's entry of this Consent Order, Defendant shall make four (4) or more borings in the soil. All soil borings drilled to determine the vertical extent of contamination shall be drilled to auger refusal, a ground water confining layer, the ground water table or forty-five (45) feet, whichever is encountered first. If a confining layer of groundwater ("groundwater table") is encountered, the borings shall be advanced five feet into the groundwater table. If "auger refusal" occurs (typically caused when an auger hits bedrock), and the auger cannot bore any deeper, then the boring is satisfactory at that depth. At least one of the four or more borings shall be located upgradient and at least three borings shall be placed downgradient of the UST systems. The downgradient borings may be located in the alley on the north side of the site building (as this is the nearest accessible location downgradient of the tanks). The exact location of the borings will

be determined through joint agreement between representatives of the Plaintiff and Defendant. Defendant agrees to be responsible to contact the appropriate utility companies to ensure borings will not be placed in unsafe or problematic locations.

c. Defendant shall take soil samples during the installation of the soil borings by taking one split spoon sample, using acceptable, standard protocol, every two feet during the installation of each soil boring. Defendant shall divide each soil sample, using acceptable, standard protocol, into duplicate samples—one half for field screening and another half for possible laboratory analysis. Each of the samples divided for field screening shall be field screened and the duplicate sample of each of the boring field samples found to have the highest level of volatile organic contamination shall be analyzed by a laboratory for benzene, ethylbenzene, toluene and xylene ("BETX") by U.S. EPA method 8020 and for total petroleum hydrocarbons by U.S. EPA method 8015, as modified by California Leaking Underground Fuel Tank Standards for gasoline range organics.

d. Within thirty (30) days after completing the installation of the soil borings referenced in Paragraphs 8.b. and 8.c. of this section, Defendant shall install wells to sample groundwater in each of the borings. Each well shall have a well screen of sufficient length to pass through the groundwater table, taking into account the seasonal fluctuations of the table. Each well shall be installed to include a flush mount access plate (to allow access to the well) and locked protective cap to prevent unauthorized access.

e. Within twenty-four to forty-eight hours after the ground water

wells have been completed, Defendant shall purge each well of at least three well volumes of water. Immediately after well purging, Defendant shall take one sample of groundwater from each well and have the sample analyzed by a laboratory for BETX by U.S. EPA method 602.

f. Within seven (7) days of the Defendant's receipt of an initial site assessment report from Defendants' contractor, and in any event before March 1, 1997, Defendant shall submit to the Division of State Fire Marshal, Bureau of Underground Storage Tank Regulations in accordance with Section VI. of this Consent Order, an initial site assessment report which includes the information required by OAC rules 1301:7-9-13(I)(3)(a) through (j).

g. If the soil or groundwater samples, analyzed as provided by Paragraphs 8c. or 8.e. of this Consent Order, or the initial site assessment report, shows any of the BETX constituents exist at levels exceeding site specific action levels as determined in accordance with OAC rule 1301:7-9-13(E), then Defendant shall proceed, in consultation with the Division of State Fire Marshal, Bureau of Underground Storage Tank Regulations, to install and monitor additional soil borings and ground water monitoring wells as necessary to determine the vertical and horizontal extent of contamination in accordance with OAC rule 1301:7-9-13(I). In addition, the Division of State Fire Marshal, Bureau of Underground Storage Tank Regulations will notify the Defendant in writing of any deficiencies in the initial site assessment submitted by the Defendant and indicate to the Defendant any additional investigations that must be carried out to complete the site assessment

pursuant to this paragraph.

h. After receiving written notice of deficiencies regarding the initial site assessment, but not later than November 28, 1997, Defendant shall complete the additional investigations required pursuant to paragraph 8.g. of this Consent Order, up to a total cost not to exceed thirty-five thousand dollars (\$35,000.00) as provided in paragraph 9 of this Consent Order. The Defendant shall submit, to the Division of State Fire Marshal, Bureau of Underground Storage Tank Regulations, the results of such investigations in an amended site assessment report, which report contains the information required by OAC rules 1301:7-9-13(I)(3)(a) through (j).

9. In no event is Defendant obligated pursuant to this Consent Order to perform site assessment activities where the total cost of such activities exceed thirty-five thousand dollars (\$35,000.00).

VI. NOTICE AND SUBMITTAL OF DOCUMENTS

10. Unless otherwise noted in this Consent Order, all submissions required to be made by the Defendant to the Division of State Fire Marshal, Bureau of Underground Storage Tank Regulations shall be submitted to the attention of Kelly Gill or his successor, Bureau of Underground Storage Tank Regulations, 8895 East Main Street, P.O. Box 687, Reynoldsburg, Ohio 43068-0687, or at a different address as notified in writing.

VII. PROPERTY ACCESS

11. To the extent the activities required by the Consent Order must be carried out on property owned or controlled by persons other than Defendant,

Defendant shall use its best efforts to secure from such persons reasonable access for Defendant and the Division of State Fire Marshal, Bureau of Underground Storage Tank Regulations as necessary to effectuate this Consent Order. Defendant shall provide the Division of State Fire Marshal, Bureau of Underground Storage Tank Regulations with copies of any access agreement or other document providing for access. In the event that Defendant is unable to obtain such access rights, Defendant shall promptly notify the Court and the Division of State Fire Marshal, Bureau of Underground Storage Tank Regulations of its inability to reach such agreement and Defendant's efforts to obtain such agreements. Within seven (7) days of Defendant's inability to obtain access, Defendant shall seek an Order from this Court granting access to those persons identified in this paragraph. The Division of State Fire Marshal, Bureau of Underground Storage Tank Regulations may assist Defendant in obtaining such access rights.

VIII. RETENTION OF JURISDICTION

12. The Court will retain jurisdiction of this action for the purpose of enforcing this Consent Order.

IX. COURT COSTS

13. Defendant is ordered to pay the court costs of this action.

X. ENTRY OF CONSENT ORDER AND FINAL JUDGEMENT BY CLERK

14. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the 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:

CHARLES F KNAPP


JUDGE CHARLES F. KNAPP
COURT OF COMMON PLEAS
BELMONT COUNTY, OHIO

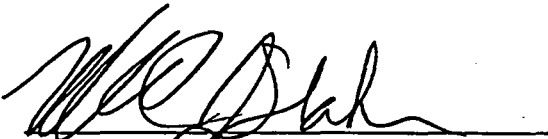
DATE

Approved:

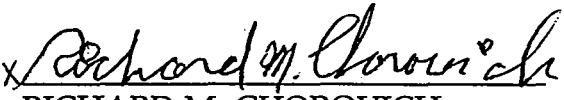
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

COMMUNITY FUELS, INC.

BY: 
SUSAN C. KROEGER (0059311)
Assistant Attorney General
Environmental Enforcement
Section, 25th Floor
30 East Broad Street
Columbus, Ohio 43215-3428
Telephone: (614) 466-2766
Facsimile: (614) 752-2441

BY: 
MICHAEL J. SHAHEEN (0042155)
SOMMER, SOLOVAN,
LIBERATI & SHAHEEN
153 West Main Street
St. Clairsville, Ohio 43950-1224
Telephone: (614) 695-4448
Facsimile: (614) 695-6511

ROBERT J. SCHMIDT (0062261)
Assistant Attorney General
Environmental Enforcement
8895 East Main Street
Reynoldsburg, Ohio 43068-0687
Telephone: (614) 752-7938
Facsimile: (614) 752-7942

BY: 
RICHARD M. CHOROVICH
Owner, Community Fuels, Inc.
127 East Lawn
P.O. Box 104
St. Clairsville, Ohio 43950

*Authorized representative of
Community Fuels, Inc.*

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BELMONT COUNTY, OHIO

STATE OF OHIO ex rel.	:	CASE NO. 94-CIV-115
BETTY D. MONTGOMERY	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE CHARLES F. KNAPP
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
COMMUNITY FUELS, INC.,	:	
	:	
Defendant.	:	

FILED
 COMMON PLEAS COURT
 BELMONT CO., OHIO
 96 OCT 9 AM 9 28
 RANDY L. MARPLE
 CLERK OF COURT

CERTIFICATE OF JUDGMENT

Belmont County Clerk, Clerk of the Common Pleas Court of Belmont County, do hereby certify that on September 20, 1996, judgment was rendered by the Court in favor of the Plaintiff, State of Ohio, by its Attorney General Betty D. Montgomery ("judgment creditor") against Defendant Community Fuels, Inc. ("judgment debtor") for injunctive relief. The injunctive relief sought, as described in the Consent Order, is as follows:

1. Defendant is hereby immediately and permanently enjoined and ordered to comply with all applicable provisions of Chapter 3737 of the Ohio Revised Code ("RC") and the rules promulgated thereunder in Chapter 1301:7-9 of the Ohio Administrative Code ("OAC").
2. Within seven (7) days of the Court's entry of the Consent Order, Defendant shall make arrangements with an environmental contractor experienced in the remediation of petroleum contamination to conduct site assessment activities in accordance with this Section of the Consent Order and OAC rule 1301:7-9-13.
 - a. Within thirty (30) days of the Court's entry of the Consent Order, Defendant shall begin performing an assessment of the vertical

and horizontal extent of soil and ground water contamination in the vicinity of the underground storage tank systems at 165 East Main Street, St. Clairsville, Ohio.

- b. Within sixty (60) days of the Court's entry of this Consent Order, Defendant shall make four (4) or more borings in the soil. All soil borings drilled to determine the vertical extent of contamination shall be drilled to auger refusal, a ground water confining layer, the ground water table or forty-five (45) feet, whichever is encountered first. If a confining layer of groundwater ("groundwater table") is encountered, the borings shall be advanced five feet into the groundwater table. If "auger refusal" occurs (typically caused when an auger hits bedrock), and the auger cannot bore any deeper, then the boring is satisfactory at that depth. At least one of the four or more borings shall be located upgradient and at least three borings shall be placed downgradient of the UST systems. The downgradient borings may be located in the alley on the north side of the site building (as this is the nearest accessible location downgradient of the tanks). The exact location of the borings will be determined through joint agreement between representatives of the Plaintiff and Defendant. Defendant agrees to be responsible to contact the appropriate utility companies to ensure borings will not be placed in unsafe or problematic locations.
- c. Defendant shall take soil samples during the installation of the soil borings by taking one split spoon sample, using acceptable, standard protocol, every two feet during the installation of each soil boring. Defendant shall divide each soil sample, using acceptable, standard protocol, into duplicate samples--one half for field screening and another half for possible laboratory analysis. Each of the samples divided for field screening shall be field screened and the duplicate sample of each of the boring field samples found to have the highest level of volatile organic contamination shall be analyzed by a laboratory for benzene, ethylbenzene, toluene and xylene ("BETX") by U.S. EPA method 8020 and for total petroleum hydrocarbons by U.S. EPA method 8015, as modified by California Leaking Underground Fuel Tank Standards for gasoline range organics.
- d. Within thirty (30) days after completing the installation of the soil borings referenced in Paragraphs 8.b. and 8.c. of this section, Defendant shall install wells to sample groundwater in each of

the borings. Each well shall have a well screen of sufficient length to pass through the groundwater table, taking into account the seasonal fluctuations of the table. Each well shall be installed to include a flush mount access plate (to allow access to the well) and locked protective cap to prevent unauthorized access.

- e. Within twenty-four to forty-eight hours after the ground water wells have been completed, Defendant shall purge each well of at least three well volumes of water. Immediately after well purging, Defendant shall take one sample of groundwater from each well and have the sample analyzed by a laboratory for BETX by U.S. EPA method 602.
- f. Within seven (7) days of the Defendant's receipt of an initial site assessment report from Defendants' contractor, and in any event before March 1, 1997, Defendant shall submit to the Division of State Fire Marshal, Bureau of Underground Storage Tank Regulations in accordance with Section VI. of the Consent Order, an initial site assessment report which includes the information required by OAC rules 1301:7-9-13(I)(3)(a) through (j).
- g. If the soil or groundwater samples, analyzed as provided by Paragraphs 8c. or 8.e. of the Consent Order, or the initial site assessment report, shows any of the BETX constituents exist at levels exceeding site specific action levels as determined in accordance with OAC rule 1301:7-9-13(E), then Defendant shall proceed, in consultation with the Division of State Fire Marshal, Bureau of Underground Storage Tank Regulations, to install and monitor additional soil borings and ground water monitoring wells as necessary to determine the vertical and horizontal extent of contamination in accordance with OAC rule 1301:7-9-13(I). In addition, the Division of State Fire Marshal, Bureau of Underground Storage Tank Regulations will notify the Defendant in writing of any deficiencies in the initial site assessment submitted by the Defendant and indicate to the Defendant any additional investigations that must be carried out to complete the site assessment pursuant to this paragraph.
- h. After receiving written notice of deficiencies regarding the initial site assessment, but not later than November 28, 1997, Defendant shall complete the additional investigations required pursuant to paragraph 8.g. of the Consent Order, up to a total cost not to exceed thirty-five thousand dollars (\$35,000.00) as provided in

paragraph 9 of the Consent Order. The Defendant shall submit, to the Division of State Fire Marshal, Bureau of Underground Storage Tank Regulations, the results of such investigations in an amended site assessment report, which report contains the information required by OAC rules 1301:7-9-13(I)(3)(a) through (j).

This judgment was rendered in an action pending in said Court, case no. 94-CIV-115 on the docket wherein said judgment creditor State of Ohio was plaintiff and said judgment debtor Community Fuels, Inc. was Defendant.

WITNESS by hand and the seal of the Court, this ____ day of October, 1996.

Handwritten signature

SEAL

Clerk of Court
Belmont County
Common Pleas Court

By: *Cindy M. De*
Deputy *Clerk*

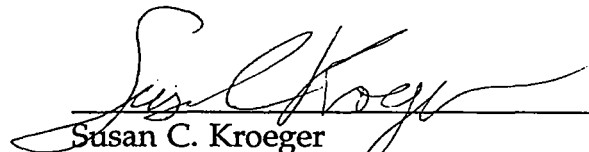
cc: Michael J. Shaheen
Susan C. Kroeger

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing State's Praeipice for Certificate of Judgment has been sent by regular U.S. mail, postage prepaid, on this 7th day of October, 1996, to:

Michael J. Shaheen, Esq.
Sommer, Solovan, Liberati & Shaheen
153 W. Main Street
St. Clairsville, Ohio 43950-1531

Counsel for Defendant Comunity Fuels, Inc.


Susan C. Kroeger
Assistant Attorney General