

Int. Book

IN THE COURT OF COMMON PLEAS
GALLIA COUNTY, OHIO

STATE OF OHIO, ex rel.
ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO
30 East Broad Street
Columbus, Ohio 43215

Plaintiff,

vs.

DYER BROTHERS LUMBER COMPANY
Route 1
Northup, OH 45655

and

ELMER DYER
Route 1
Northup, OH 45655

and

EMMETT DYER
Route 1
Northup, OH 45655

Defendants.

Case No. 86CL30

CONSENT ORDER

FEB 10 11 40 AM 1986
CLERK OF COURT

FILED

The Complaint in the above-captioned case having been filed herein, and the Plaintiff State of Ohio by its Attorney General Anthony J. Celebrezze, Jr. (hereinafter "Plaintiff"), and Dyer Brothers Lumber Company (hereinafter "DBLC"), Elmer and Emmett Dyer (all three (3) Defendants shall hereinafter be referred to as "Defendants"), having consented to entry of this Decree,

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.

1. This Court has jurisdiction over the parties and the subject matter herein. The Complaint states a claim upon which relief can be granted against Defendants. This Court has jurisdiction over the parties hereto. Venue is proper in this Court.

II.

2. The provisions of this Consent Decree shall apply to and be binding upon the parties to this action, their agents, officers, employees, assigns, and successors in interest.

3. Defendants shall incorporate in all contracts for work done to carry out the requirements of this Consent Decree at the Northup Facility conditions that such work shall be done in compliance with these requirements.

III. SATISFACTION OF LAWSUIT

4. Plaintiff alleges in its Complaint that Defendants have operated this lumber processing facility in Northup, Ohio (hereinafter the "Northup Facility") in violation of various state hazardous waste laws. DBLC, Elmer and Emmett Dyer admit those allegations. Compliance with the terms of this Consent Decree shall constitute full satisfaction of any civil or criminal liability by DBLC, Elmer Dyer and Emmett Dyer and all their subsidiaries, employees, and former employees to the State of Ohio for all claims under such laws known to Plaintiff at this time. All such claims known to the State of Ohio have been alleged in the Complaint.

5. Nothing in this decree shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint or addressed by this Consent Decree.

IV. CIVIL PENALTY

6. Defendants shall pay or cause to be paid to the State of Ohio a civil penalty of sixteen thousand dollars (\$16,000.00). Said penalty shall be paid in the following manner: Defendants shall make sixteen (16) monthly payments of \$1,000 commencing ninety (90) days from the entry of this order. Payment shall be made by delivery to Plaintiff's counsel, J. Michael Marous, or his successor in the Environmental Enforcement Section of the Attorney General's office, 30 East Broad Street, 17th Floor, Columbus, Ohio 43215, for payment into the Hazardous Waste Cleanup Special Account created by Ohio Revised Code Section 3734.28, a certified check (or by other means acceptable to the Ohio Attorney General's Office) in such amount made to the order of "Treasurer of the State of Ohio". The parties further stipulate that the failure of the Defendant to render in a timely manner any of the scheduled payments as set forth above shall render all the remaining unpaid payments to be immediately due and owing to Plaintiff.

V. CLOSURE PLAN FOR IMPOUNDMENT AND SOIL AFFECTED BY CREOSOTE

7. Defendants shall submit to Brian Blair, or his successor, of the Hazardous Waste Section of the OEPA Southeast District Office (OEPA-SEDO) a plan for the removal and disposal

of all hazardous liquids, sludge and contaminated soils from the area that is known as the waste water lagoon or impoundment area which sits in close proximity to the creosote processing facility and has been used as the disposal site for the creosote and chromated copper arsenate injection process, (hereinafter impoundment area) and other process areas within 60 days. Said plan shall be subject to the approval, of OEPA, SEDO and to USEPA and if any portion of said plan does not meet said approval the plan shall be accordingly modified at the direction of OEPA, SEDO. Said plan shall specify, at a minimum:

- (a) Procedures for removal of all hazardous liquids, sludge and contaminated soils.
- (b) The equipment to be used to accomplish said removal.
- (c) The method of transport for all removed materials to an approved hazardous waste disposal site.
- (d) The approved hazardous waste disposal site said materials shall be transported to for disposal.
- (e) The sampling measures to be employed to determine the extent of contamination in the impoundment and process areas.
- (f) The sampling measures to be employed to determine the success and effectiveness of the removal of affected and contaminated soil.
- (g) The plans for final covering and grading of all affected areas after removal of the liquids, sludges, and contaminated soils.
- (h) A hydrogeologic evaluation of the facility's impact on groundwater resources. Such evaluation, to be performed by Defendants, shall determine the vertical and horizontal extent of contamination and shall, at a minimum, include test borings, soil characterization, and groundwater monitoring.
- (i) That if the groundwater is determined to be present, the DBLC, Emmett and Elmer Dyer, shall install monitor wells to evaluate the impact, if any, of the facility upon the groundwater. Said monitoring program shall comply with Ohio Administrative Code (O.A.C.) Section 3745-54-90.

- (j) A written estimate in current dollars of the cost of closing the impoundment and contaminated areas in accordance with the plan.
- (k) A time schedule for completion of clean up and closure activities.
- (l) The analytical methods, including quality assurance procedures, to be employed to establish the nature of the creosote and chromated copper arsenate waste as well as wastewater treatment sludges and contaminated soils in the creosote and chromated copper arsenate areas.

8. Defendants shall commence the closure procedures for the impoundment area in accordance with the EPA approved plan required in Paragraph 7 within sixty (60) days of OEPA approval of said plan.

9. Defendants shall, within sixty (60) days of filing of this Consent Decree demonstrate compliance with O.A.C. standards for generators of hazardous waste, which standards include, but are not limited to, the following:

- (a) Waste Analysis - 3745-52-11 and 55-13.
- (b) Manifest Requirements - 3745-52-20.
- (c) Packaging and Labeling - 3745-52-30 thru 33.
- (d) Waste Accumulation - 3745-52-34.
- (e) Annual Report - 3745-52-41.
- (f) Chemical Analysis - 3745-54-13(A)
- (g) Security - 3745-54-14
- (h) Inspections - 3745-54-15 and 54-33 and 56-26 and 54-31.
- (i) Personnel Training - 3745-54-16.
- (j) Contingency Plan - 3745-54-51 thru 56.
- (k) Written Operating Record - 3745-54-73
- (l) Container Management - 3745-55-72

Compliance with the hazardous waste generator standards shall be established by written verification by a representative of OEPA-SEDO. Failure to obtain said written verification within

the sixty (60) day period shall render Defendants in contempt of Court and subject Defendants to the stipulated penalty set forth in Paragraph 12, for each day (after sixty (60) days) that Defendants have so failed.

10. For purposes of monitoring compliance with the terms of this Consent Decree and O.R.C. Chapters 3734 and 6111, Defendants have agreed by signing this document, to allow personnel from Ohio EPA to have access to the Northup Facility without the need for said EPA personnel to obtain a search warrant. Any person taking a sample for analysis in the implementation of or to determine compliance with the requirements of this Consent Decree shall Provide the parties to this Decree, upon request, with splits of that sample.

11. Nothing in this Consent Decree shall relieve Defendants of their obligations to comply with applicable federal, state or local statutes, regulations or ordinances or shall constitute a waiver or release of any right, remedy, defense or claim of Defendants with regard to any person not a party to this Consent Decree. Nothing in this Consent Order shall prevent the OEPA from taking any action under any of its authorities to address groundwater contamination that may be found at the site.

12. Any violation of the terms of this Order shall render the Defendants in Contempt of Court and automatically result in a penalty of One Thousand Dollars (\$1,000.00) per violation per day. Said stipulated penalty shall be due and owing from each of the Defendants mentioned in Paragraph 1, supra, upon the occurrence of the violation of this Order. Said violation requires the automatic payment to the Court of the aforementioned One Thousand Dollars (\$1,000.00) per day minimum stipulated civil penalties for each day of each violation of


each paragraph in this Order. This stipulated penalty is not to be suspended in part or in whole. Defendants waive any rights they may have to contest the imposition of the stipulated penalty for violation of this Consent Judgment, except the defense that Defendants did in fact comply with said judgment. The terms of this Order shall in no way affect the right of Plaintiff to pursue further penalties pursuant to O.R.C. 3734 and/or 6111, for violations of this Order.

13. Defendants are also prohibited and enjoined from violating Ohio Revised Chapter 6111 and all regulations related thereto. Any such violation will subject Defendants to the stipulated penalty provisions of Paragraph 12, supra, as well as the penalties provided for in 6111.

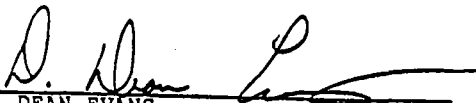
Feb. 10, 1986
Date

s/ Richard Roderick
Judge

APPROVED:


J. MICHAEL MAROUS
DAVID I. SCHIFF
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 17th Floor
Columbus, OH 43215
(614) 466-2766

Attorneys for Plaintiff


D. DEAN EVANS
P.O. Box 409
Gallipolis, OH 45631
(614) 466-2766

Attorney for Defendants
Elmer and Emmett Dyer, and
Dyer Brothers Lumber Company

Elmer Dyer
ELMER DYER
Route 1
Northup, OH 45655

Personally and on behalf of
Dyer Brothers Lumber Company

Emmett Dyer
EMMETT DYER
Route 1
Northup, OH 45655

Personally and on behalf of
Dyer Brothers Lumber Company

IN THE
COURT OF COMMON PLEAS
GALLIA COUNTY, OHIO

STATE OF OHIO, ex rel.	:	CASE NO. 86-CL30
ANTHONY J. CELEBREZZE, JR.	:	
ATTORNEY GENERAL OF OHIO,	:	Judge Donald C. Cox
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
DYER BROTHERS LUMBER COMPANY,	:	<u>JOURNAL ENTRY AND AMENDED</u>
et al.,	:	<u>ORDER</u>
	:	
Defendants.	:	

PRELIMINARY STATEMENT

On January 25, 1990, Plaintiff State of Ohio filed a Motion to Show Cause Propounded to all Defendants. The State's Motion requested the Court to issue an order requiring Defendants Dyer Brothers Lumber Company, Elmer Dyer and Emmette Dyer ("Defendants") to appear and show cause as to why they should not be held in contempt of Court and be fined accordingly, imprisoned or both for their willful failure to comply with this Court's Consent Order of February 10, 1986. Pursuant to Plaintiff's Motion, on January 25, 1990, this Court issued an Order to Appear and Answer Charges in Contempt to Defendants. See, Court's Journal No. 128, p. 516.

On Monday, February 26, 1990, a contempt hearing was convened in the above-captioned case regarding the charges in contempt filed by Plaintiff wherein all parties were either present and/or represented by counsel. During the course of the contempt hearing, the parties engaged in settlement discussions. As a result of those discussions, the parties

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reached an agreement which was manifested in the form of the Court's Journal Entry and Order entered in this matter on March 13, 1990. Pursuant to the terms of the Court's March 13, 1990 Journal Entry and Order ("Order"), Defendants were to have achieved compliance with the financial assurance requirements of Ohio Administrative Code ("O.A.C.") Rule 3745-66-43. Defendants have failed to achieve compliance with O.A.C. Rule 3745-66-43, and are therefore in violation of the terms of the Court's Order.

Since violating the terms of the Court's Order, the parties have engaged in settlement discussions. As a result of these discussions, the parties have reached an agreement. Having reached an agreement, the parties do hereby stipulate that:

STIPULATION OF FACTS

1. On February 10, 1986, Plaintiff filed a Complaint for Injunctive Relief and Civil Penalty against Defendants alleging, inter alia, various violations of Chapter 3734 of the Ohio Revised Code ("RC") and O.A.C. Chapter 3745.

2. On February 10, 1986, with the informed consent of the parties, a Consent Order was issued by this Court requiring Defendants, inter alia, to:

- (a) Pay a civil penalty in the amount of sixteen thousand dollars (\$16,000.00) pursuant to Section IV, paragraph 6 in sixteen (16) equal monthly installments of one thousand dollars (\$1,000.00) each. Failure of Defendants to render payment as required by Section IV, paragraph 6 "shall render all the remaining unpaid payments to be immediately due and owing to Plaintiff."

- (b) Submit to the Ohio EPA within sixty (60) days of the Court's entry of the February 10, 1986 Consent Order a closure plan for the removal and disposal of all hazardous liquids, sludges and soils from Defendants' waste water lagoon and impoundment area pursuant to Section V, paragraph 7.
- (c) Commence closure of the impoundment area within sixty (60) days of the Ohio EPA's approval of Defendants' closure plan pursuant to Section V, paragraph 8.
- (d) Demonstrate by written certification compliance with various Ohio hazardous waste rules within sixty (60) days of the Court's entry of the February 10, 1986 Order pursuant to Section V, paragraph 9.
- (e) Allow Ohio EPA personnel to have access to Defendants' Northup facility for purposes of monitoring compliance with the terms of the February 10, 1986 Order pursuant to Section V, paragraph 10.
- (f) Automatically, pay a stipulated penalty in the amount of one thousand dollars (\$1,000.00) per violation per day pursuant to Section V, paragraph 12. Defendants waived any and all rights to contest the imposition of the stipulated penalty for violation of the terms of the Consent Order, except the defense that Defendants did in fact comply with said Order.
- (g) Comply with the provisions of RC Chapters 3734 and 6111 and the rules adopted thereunder pursuant to Section V, paragraph 13.

3. Defendants made only seven (7) of the required sixteen (16) monthly payments of its civil penalty. Specifically, the May, June, July and August of 1986 payments were all made

simultaneously by check No. 7574, drawn on August 11, 1986. The September of 1986 payment was made by check No. 7613, drawn on September 30, 1986. The October of 1986 payment was made by check No. 7647, drawn on November 14, 1986. The November of 1986 payment was made by check No. 7648, drawn on November 17, 1986. Correspondence & other documents in the Ohio Environmental Protection Agency's ("Ohio EPA" or "Agency") hazardous waste file concerning Defendants' Northup facility and Defendants' records establish that no other payments have been made by Defendants.

4. Defendants submitted a closure plan dated April 11, 1986. The April 11th closure plan, with revisions, was approved by the Ohio EPA on September 10, 1986. The approved closure plan required Defendants, inter alia, to:

- (a) Perform a comprehensive hydrogeological assessment of the area in and around the Northup facility.
- (b) Implement a groundwater monitoring plan for the area in and around the Northup facility.
- (c) Place or drill groundwater monitoring wells in and around the Northup facility.
- (d) Perform average concentration calculations and statistical evaluations for contaminants in and around the Northup facility.
- (e) Perform groundwater sampling for the area in and around the Northup facility.
- (f) Complete closure of the Northup facility within one hundred eighty (180) days of the Ohio EPA's approval of Defendants' closure plan.

Defendants failed to comply with the above-listed terms and conditions of their closure plan as approved by the Ohio EPA on September 10, 1986.

5. Defendants failed to commence closure of the impoundment area within sixty (60) days of the Ohio EPA's approval of Defendants' closure plan pursuant to Section V, paragraph 8. Said closure was to commence no later than November 10, 1986. Said closure did not begin until as late as March 10, 1988.

6. Defendants failed to comply with the provisions of RC Chapters 3734 and 6111 and the rules adopted thereunder pursuant to Section V, paragraph 13. Defendants were notified of these violations on at least the following occasions: May of 1986, February of 1987, March of 1988 and March of 1989.

7. On at least the following occasions, Defendants were notified that a contempt action was available to Plaintiff: the Court's February 10, 1986 Consent Order, August 4, 1986, March 13, 1987, September 9, 1987 and July 26, 1989.

8. Defendants failed to respond to Plaintiff's entreaties to achieve compliance with the terms of the Court's February 10, 1986 Consent Order.

9. Defendants failed to correspond with Plaintiff from July 27, 1988 until August 9, 1989 to negotiate and/or discuss the violations set forth above or possible solutions to the same.

10. Defendants failed to automatically pay the agreed upon stipulated penalties beginning in November of 1986 for each of the violations noted above pursuant to Section V, paragraph 12.

11. To address the violations by Defendants of the Court's February 10, 1986 Order, this Court issued, with the informed consent of the parties, a Journal Entry and Order on March 13, 1990 ("Order"). The Court's Order required Defendants to, *inter alia*:

- (a) Pay a stipulated penalty in the amount of \$18,000.00, \$13,000.00 of which was suspended pending compliance by Defendants with the terms of the Court's February 10, 1986 Order and the Court's recent Order;
- (b) Serve a thirty (30) day jail sentence, all thirty (30) days of which was suspended pending compliance by Defendants with the terms of the Court's February 10, 1986 Order and the Court's recent Order;
- (c) Pay a \$500.00 fine for being in contempt of court for violating any term of the Court's February 10, 1986 Order or the Court's recent Order;
- (d) Complete closure activities in accordance with an approved closure plan and, in the event the approved closure plan required modification, to follow the procedure set forth in O.A.C. Rule 3745-66-12 for modifying such closure plan
- (e) Demonstrate financial assurance for closure costs pursuant to O.A.C. Rule 3745-66-43, and provide documentation demonstrating compliance to the Director of Ohio EPA ("Director"), with a copy to Ohio EPA's Southeast District Office; and

- (f) Pay all Court costs associated with prosecuting the contempt action that resulted in the Court's recent Order.

12. On January 18, 1991, Defendants submitted to the Director a financial package to meet the financial assurance requirements of O.A.C. Rule 3745-66-43.

13. On February 1, 1991, Ohio EPA notified Defendants that the package submitted on January 18, 1991, failed to comply with the financial assurance requirements of O.A.C. Rule 3745-66-43, and that such failure was a violation of the Court's recent Order.

14. Such action, as described above, on the part of Defendants constitutes a violation of the Court's February 10, 1986 Order, the Court's March 13, 1990 Order, represents an obstruction of the administration of justice, and threatened continued harm to the public health, safety and welfare and to the environment.

ORDER

WHEREFORE, Plaintiff State of Ohio and Defendants, having reached an agreement on the issues surrounding Defendant's violation of this Court's February 10, 1986 and March 13, 1990 Orders, the Court does hereby ORDER, DECREE and ADJUDGE as follows:

1. Immediately upon entry of this Amended Order, Defendants are enjoined & ordered to comply with O.R.C. Chapter 3734. and all regulations adopted thereunder.

2. Defendants are ordered to pay a stipulated penalty in the amount of \$13,000.00. The

balance of \$13,000.00 is suspended pending compliance by Defendants with the terms of the Court's February 10, 1986 Consent Order, the Court's March 13, 1990 Order and this Amended Order. In the event Defendants violate any of the terms of the February 10, 1986 Consent Order, the March 13, 1990 Order or this Amended Order, the balance of \$13,000.00 shall become immediately due and owing upon the date of such violation and payment shall be made to Plaintiff's counsel in the form of a certified check payable on demand and made payable to the order of "Treasurer, State of Ohio."

3. Defendants are ordered to serve thirty (30) days in jail. This jail time is suspended pending compliance by Defendants with the terms of the Court's February 10, 1986 Consent Order, the Court's March 13, 1990 Order and this Amended Order. In the event Defendants violate any of the terms of the Court's February 10, 1986 Consent Order, the Court's March 13, 1990 Order or this Amended Order, the balance of the thirty (30) day jail time shall be served immediately upon motion of Plaintiff and Order of the Court.

4. Any violation of any term of this Amended Order shall automatically render Defendants in contempt of court and Defendants shall be required, immediately upon the date of such violation, to pay to Plaintiff's counsel \$500.00 in the form of a certified check payable to the order of "Treasurer, State of Ohio," payable on demand.

5. Defendants are enjoined and ordered to complete closure activities in accordance with the closure plan approved with modifications by Ohio EPA on August 29, 1990. Should it be necessary to modify any provisions of the closure plan that was approved by Ohio EPA on August 29, 1990, Defendants shall follow the procedure set forth in O.A.C. Rule 3745-66-12, and any subsequent amendments, for modifying such closure plan.

6. For being unable to comply with the financial assurance requirements of O.A.C. Rule 3745-66-43, and until such time as Defendants have received from Ohio EPA approval of the certification submitted by Defendants pursuant to O.A.C. Rule 3745-66-15, that the facility has

been closed in accordance with the specifications in the approved closure plan, Defendants are enjoined and ordered to comply with all of the following:

- a.) any and all funds, lines of credit and monies in Defendant's Star Bank account numbers 55246, 02-1216-9 and 397-09602-1, shall be used only for, and allocated, dedicated and applied only to those activities necessary to achieve closure as required by and in accordance with Paragraph 5 of this Amended Order;
- b.) all funds and working capital loans received from the Ohio Valley Regional Development Commission in conjunction with the Appalachian Regional Commission, in their full amounts, shall be used only for, and allocated, dedicated and applied only to those activities necessary to achieve closure as required by and in accordance with Paragraph 5 of this Amended Order;
- c.) all Community Development Block Grants received from the Ohio Department of Development, in their full amounts, shall be used only for, and allocated, dedicated and applied only to those activities necessary to achieve closure as required by and in accordance with Paragraph 5 of this Amended Order;
- d.) all sources of income listed in Paragraphs 6a.), 6b.), and 6c.) above shall be disbursed into a closure expense account only, established for the purpose of engaging in closure activities, and not into any other expense account;
- e.) submit, on or before the fifteenth day of the month, to Ohio EPA and counsel for the Plaintiff a quarterly progress report that: 1) describes the actions which were taken pursuant to the terms and provisions of this Amended Order during the previous quarter; 2) includes or references all results of sampling and tests and all other

engineering data received by Defendants during the course of the work required by this Amended Order; 3) includes all plans and procedures completed pursuant to the work plans approved in support of this Amended Order during the previous quarter; 4) describes all actions, engineering data and plans which are scheduled for the next quarter; and 5) includes information regarding delays encountered or anticipated that may affect the future of the schedule for implementing the closure plan activities required by Paragraph 5 of this Amended Order, as well as a description of the efforts made to mitigate those delays or anticipated delays, but this requirement 5), however, shall not in any way be construed as a release from liability due to delays or anticipated delays. The progress reports are to be submitted by certified mail to the Ohio EPA and counsel for the Plaintiff by the fifteenth (15th) day following each calendar year quarter, beginning with the first calendar year quarter after the date of entry of this Amended Order;

- f.) immediately upon their receipt of notice, actual or constructive, notify Ohio EPA that any of the sources of income listed in Paragraph 6 have been eliminated or exhausted prior to the requirements of Paragraph 5 being satisfied;
- g.) immediately upon their receipt of notice, actual or constructive, notify Ohio EPA that the costs for closing its hazardous waste units in accordance with the requirements of Paragraph 5 have increased or will increase beyond the amount specified in the closure plan approved with modifications by Ohio EPA on August 29, 1990;
- h.) within thirty (30) days of their receipt of notice, actual or constructive, that the costs to achieve closure in accordance with Paragraph 5

exceeds the total amount of funds and/or income available from those sources listed in Paragraph 6, obtain additional funds and/or income in an amount that equals the difference between the closure costs required to satisfy Paragraph 5 and the amount of funds and/or income available from the sources listed in Paragraphs 6a.), 6b.) and 6c.). Any additional funds and/or income obtained by Defendants pursuant to this Paragraph 6h). shall be subject to the requirement of Paragraph 6d.). For purposes of this Paragraph 6h.) only, the amount of funds and/or income available from those sources listed in Paragraphs 6a.), 6b.) and 6c.) shall be in addition to an equity contribution by Defendants of \$58,000.00 in the form of like-kind labor and materials;

- i.) Immediately upon their receipt of all documents and account statements generated by those sources of income identified in Paragraphs 6a.), 6b.) and 6c.) of this Amended Order, and by any additional sources of income obtained in accordance with Paragraph 6h.), Defendants are enjoined and ordered to submit to Ohio EPA and counsel for the Plaintiff copies of those documents and account statements.

7. Defendants are enjoined and ordered to implement the attached escrow account Agreement immediately upon entry of this Amended Order. A copy of this escrow account Agreement is attached hereto as Exhibit "A", and is incorporated into this Amended Order as if fully rewritten herein.

8. Defendants are enjoined and ordered to pay all Court costs associated with prosecuting this action.

9. Except as provided in Order Number 1 above, all other provisions of the February 10, 1986 Consent Order and March 13, 1990 Order continue to remain in full force and effect and are incorporated as if fully rewritten herein.

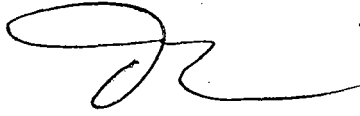
10. For any provision of this Amended Order which requires Defendants to submit documents or provide notice to Ohio EPA or counsel for the

Plaintiff, such provision is satisfied by delivering such documents or providing notice to the following:

- a. Ohio EPA
Southeast District Office
2195 Front Street Logan, Ohio 43138
Attn: Michael Moschell or his successor
- b. Ohio EPA
Division of Solid and Hazardous Waste Management
P.O. Box 1049
1800 Watermark Drive
Columbus, Ohio 43266-0149
Attn: Pamela Allen or her successor
- c. Attorney General Office
Environmental Enforcement Section
30 E. Broad Street
Columbus, Ohio 43266-0410
Attn: David G. Cox or his successor

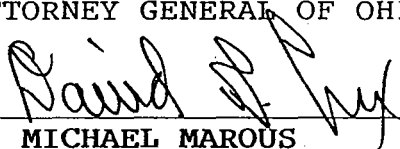
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DATE


JUDGE GALLIA COUNTY
COURT OF COMMON PLEAS

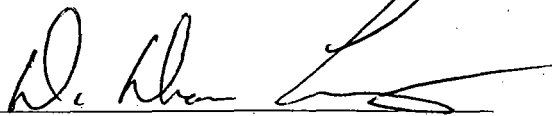
APPROVED:

LEE FISHER
ATTORNEY GENERAL OF OHIO


J. MICHAEL MAROUS
DAVID G. COX

RETANIO Aj RUCKER
Assistant Attorneys General
Environmental Enforcement
30 East Broad Street, 25th fl.
Columbus, Ohio 43266-0410
(614) 466-2766

Counsel for Plaintiff State of Ohio



D. DEAN EVANS, ESQ.
P.O. Box 409
Gallipolis, Ohio 45631
(614) 446-1737

Counsel for Defendants Dyer Brothers
Lumber Company, Elmer Dyer and Emmett Dyer


ELMER DYER

Personally and on behalf of the
Dyer Brothers Lumber Company


EMMETTE DYER

Personally and on behalf of the
Dyer Brothers Lumber Company

2091E
baf

This "Agreement" is entered into as of this 12 day of July, 1991, by and between Dyer Brothers Lumber Company, Inc., an Ohio Corporation, Elmer Dyer, and Emmette Dyer, the "Grantors", and Star Bank N.A., Tri-State, of Gallipolis, Ohio the "Trustee".

WHEREAS, the Ohio Environmental Protection Agency, "Ohio EPA", has established certain rules applicable to the Grantors, requiring that as the owners or operators of a hazardous waste management facility, they must provide assurance that funds will be available when needed for closure and/or post-closure care of the facility, and

WHEREAS, the Grantors have elected to establish an escrow account to provide part of such financial assurance for the facility identified herein, and

WHEREAS, the Grantors, acting through their duly authorized officers, have selected the Trustee to be the Trustee under this Agreement, and the Trustee is willing to act as Trustee, NOW, THEREFORE, the Grantors and the Trustee agree as follows:

SECTION 1. DEFINITIONS

As used in this Agreement:

- (a) The term "Grantors" means Dyer Brothers Lumber Company, Inc., Elmer Dyer, Emmette Dyer and their successors or assigns.
- (b) The term "Trustee" means Star Bank N.A., Tri-State, of Gallipolis, Ohio and any successor Trustee.
- (c) The term "Director" means the Director of the Ohio EPA, or the Director's designee.
- (d) The terms "closure cost estimate" and "post-closure cost estimate" means those terms as defined in O.A.C. Rules 3745-66-42 and 3745-66-42 and 3745-66-44, respectively.

SECTION 2. IDENTIFICATION OF FACILITY AND COST ESTIMATES

This Agreement pertains to the facility identified as Dyer Brothers Lumber Company, Route 1, Northup, Ohio, 45655, U.S. EPA Identification No. OHD 079438081 ("facility") and to the closure and/or post-closure cost estimates for the facility.

SECTION 3. ESTABLISHMENT OF ACCOUNT

The Grantors and the Trustee hereby establish an escrow account ("Account") for the benefit of the State of Ohio. This Account shall be an interest bearing account, and shall yield a daily compound interest rate of 5.18%. This rate may increase or decrease subject to market conditions. The Grantors and the Trustee intend that no third party have access to the Account except as herein provided. The Account is established initially as consisting of \$2000.00 cash, which is acceptable to the Trustee. Such property and any other property subsequently transferred to the Trustee is referred to as the Account, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Account will be held by the Trustee, in trust, as hereinafter, provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantors, any payments necessary to discharge any liabilities of the Grantors established by the Director.

SECTION 4. PAYMENT FOR CLOSURE AND POST-CLOSURE CARE

The Trustee will make such payments from the Account as the Director will direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facility covered by this Agreement. The Trustee will reimburse the Grantors or other persons as specified by the Director from the Account for closure and post-closure expenditures in such amounts as the Director will direct, in writing. In addition, the Trustee will refund to the Grantors such amounts as the Director specifies in writing. Upon refund, such funds will no longer constitute part of the Account as defined herein.

SECTION 5. PAYMENTS COMPRISING THE FUND

Grantors shall deposit into the Account a minimum monthly deposit of \$2000.00. Such deposits shall begin on June 1, 1991 and on the first business day of each month thereafter, and shall continue until the earlier of either: the total amount of the funds, after deposit, in the Account exceed the closure and/or post-closure cost estimate, or; the Grantors have received from the Director a notification of acceptance of the certification of closure and/or post-closure submitted in accordance with Ohio Administrative Code Rules 3745-66-15 and/or 3745-66-20.

SECTION 6. EXPRESS POWERS OF TRUSTEE

Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered to make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.

SECTION 7. TAXES AND EXPENSES

All taxes of any kind that may be assessed or levied against or in respect of the Account will be paid from the Account. All other reasonable expenses incurred by the Trustee in connection with the Administration of this Account, including fees for legal services rendered to the Trustee in connection with the administration of the Account, the compensation of the Trustee to the extent not paid directly by the Grantors, and all other proper charges and disbursements of the Trustee will be paid from the Account.

SECTION 8. QUARTERLY VALUATION

The Trustee will quarterly furnish to the Grantors and to the Director a statement confirming the value of the Account. The failure of the Grantors to object in writing to the Trustee within ninety days after the statement has been furnished to the Grantors and the Director will constitute a conclusively binding assent by the Grantors, barring the Grantors from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

SECTION 9. ADVICE OF COUNSEL

The Trustee may from time to time consult with counsel, who may be counsel to the Grantors, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee will be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

SECTION 10. TRUSTEE COMPENSATION

The Trustee will be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantors.

SECTION 11. SUCCESSOR TRUSTEE

The Trustee may resign or the Grantors may replace the Trustee, but such resignation or replacement shall not be effective until the Grantors have appointed a successor Trustee and this

successor accepts the appointment. The successor Trustee will have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee will assign, transfer and pay over to the successor Trustee the funds and properties then constituting the Account. If for any reason the Grantors cannot or do not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor Trustee shall specify the date on which it assumes administration of the Account in a writing sent to the Grantors, the Director, and the present Trustee by certified mail ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section will be paid as provided in Section 7.

SECTION 12. INSTRUCTIONS TO THE TRUSTEE

All orders, requests and instructions by the Grantors to the Trustee will be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantors may designate by amendment to Exhibit A. The Trustee will be fully protected in acting without inquiry in accordance with the Grantors' orders, requests and instructions. All orders, requests, and instructions by the Director to the Trustee will be in writing, signed by the Director, and the Trustee will act and will be fully protected in acting in accordance with such orders, requests and instructions. The Trustee will have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantors or the Director hereunder has occurred. The Trustee will have no duty to act in the absence of such orders, requests and instructions from the Grantors and/or the Director except as provided for herein.

SECTION 13. NOTICE OF NONPAYMENT

The Trustee shall notify the Director, by certified mail within two business days of the first business day of each month, if the minimum monthly deposit has not been made into the Account by the Grantors.

SECTION 14. AMENDMENT OF AGREEMENT

This Agreement may be amended by an instrument in writing executed by the Grantors, the Trustee, and the Director, and in the event the Grantors file for bankruptcy, by an instrument in writing executed by the Trustee and the Director.

SECTION 15. IRREVOCABILITY AND TERMINATION

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Account will be irrevocable and will continue until terminated by the written agreement of the Grantors, the Trustee, and the Director. Upon termination of the Account, all funds remaining in the Account, less final trust administration expenses, will be delivered to the Grantors.

SECTION 16. IMMUNITY AND INDEMNIFICATION

The Trustee will not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Account, or in carrying out any directions by the Grantors or the Director issued in accordance with this Agreement. The Trustee will be indemnified and saved harmless by the Grantors or from the Account or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantors fail to provide such defense.

SECTION 17. CHOICE OF LAW

This Agreement will be administered, construed and enforced according to the laws of the state of Ohio.

SECTION 18. INTERPRETATION

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement will not affect the interpretation or the legal efficacy of this Agreement.

In witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is substantially identical to the wording specified in paragraph (A)(1) of rule 3745-55-51 of the Ohio Administrative Code as such regulations were constituted on the date first above written.

Elmer Dyer

Elmer Dyer
Personally and on behalf of
Dyer Brothers Lumber Company

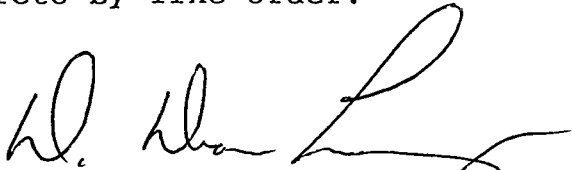
Emmette Dyer

Emmette Dyer
Personally and on behalf of
Dyer Brothers Lumber Company

Daniel P. Davis

Authorized Representative
of Trustee, Star Bank N.A.
Tri-State

"On 6-10-91 before me personally came Elmer and Emmette Dyer who, being by me duly sworn, did depose and say that they reside at Rt 1 Noethan, OH that they are officers of Dyer Brothers Lumber Company, the corporation described in and which executed the above instrument; that they know the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that they signed their name thereto by like order.



[Signature of Notary Public]"

D. DEAN EVANS, Attorney At Law
Notary Public - State of Ohio
My Commission Has No Expiration Date
Section 147.03 R.C.

Exhibit A To The
Escrow Account Agreement

The person authorized to give written orders, requests and instructions to the Trustee is Elmer Dyer, Dyer Brothers Lumber Company.

Date 6-10-91

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