

CAM/DJ/17

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

STATE OF OHIO, ex. rel.
LEE FISHER,

Plaintiff,

vs.

PRUITT AND GRACE DEVELOPMENT
CORP., et. al.,

Defendants.

CASE NO. 89-CV-102519

JUDGE LYNETTE MCGOUGH

**CONSENT ORDER BETWEEN THE
STATE OF OHIO AND THE NIMON COMPANY**

The Complaint in the above-captioned case having been filed herein,
and the Plaintiff, State of Ohio, by its Attorney General, Lee Fisher
(hereinafter "Plaintiff") and the Defendant Nimon Company (hereinafter
"Nimon" or "Defendant") having consented to the entry of this Consent
Order;

NOW, THEREFORE, upon consent of the parties hereto, it is hereby
ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter herein, pursuant to Ohio Revised Code ("R.C.") Chapters 3734 and the rules adopted thereunder. The Complaint states a claim upon which relief can be granted against the Defendant. This Court has jurisdiction over the parties hereto. Venue is proper in this Court.

II. PERSONS BOUND

2. The provisions of this Consent Order shall apply to and be binding upon the Defendant, its agents, officers, employees, assigns, and successors in interest. The provisions of this Consent Order shall also apply to those in active concert or participation with Defendant who receive actual notice of this Consent Order, whether by personal service or otherwise. Defendant shall provide a copy of this Consent Order to any consultants who will perform any work pursuant to this Consent Order.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Second Amended Complaint that Defendant violated various sections of R.C. Chapter 3734 and the rules adopted thereunder as the owner of a hazardous waste facility located at

1228 W. 15th Street, Lorain, Ohio, (hereinafter, the "facility"). The Defendant denies that it is liable for the violations alleged in the Plaintiff's Complaint.

4. Except as otherwise provided for by this Consent Order and/or by law, compliance with the terms of this Consent Order shall constitute full and complete satisfaction of Defendant's civil liability to Plaintiff for all claims alleged in the Plaintiff's Second Amended Complaint.

5. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief for claims not referenced in paragraph 4, above, including any violations occurring after the filing of this Consent Order. In addition, nothing in this Consent Order shall be construed to release Defendant from any liability Defendant may have pursuant to R.C. 3734.20 through 3734.27 or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., including any liability of Defendant for future response or oversight costs incurred by the State.

IV. INJUNCTION

6. Within 30 days of the filing of this Consent Order the Defendant shall submit a soil sampling and analysis plan for the purpose

of determining the extent of soil contamination at the facility, to the Ohio EPA for review and approval.

7. If the Ohio EPA notifies Defendant that part or all of the plan identified in the preceding paragraph is deficient, then Defendant shall resubmit the deficient portions in approvable form within thirty days after receipt of Ohio EPA's notification of deficiency to the Defendant. The Ohio EPA may issue an approval of the soil sampling and analysis plan as originally submitted, as resubmitted, or with additional terms and conditions.

8. Within 30 days of the filing of this Consent Order, the Defendant shall establish a closure/post closure trust fund which shall be identical in substance to the trust fund set forth in O.A.C. 3745-55-51. In addition, the trust fund document shall also provide that any monies remaining in the trust fund after the completion of closure, as set forth in paragraphs 10 or 13, below, shall be released to the Director for deposit into the hazardous waste cleanup fund established under R.C. Section 3734.13. The State of Ohio agrees to partially fund this trust fund with monies obtained from settlements entered into with the other defendants in this case.

9. Within 30 days after being notified by the Ohio EPA of the partial funding of the trust fund referenced in the preceding paragraph, or within 30 days after the approval of the plan identified in paragraph 7 above, whichever occurs later in time, the Defendant shall implement the approved plan identified in paragraph 7, above, and submit the results to the Ohio EPA.

10. If the Ohio EPA determines that the analytical results of the soil samples obtained from the facility, pursuant to the plan identified in paragraph 7, above, do not contain any hazardous waste constituents, then the Defendant shall submit a certificate of closure to the Ohio EPA, pursuant to O.A.C. 3745-66-15, within 30 days of the Ohio EPA's notification.

11. In the event that the Ohio EPA determines that the analytical results do contain hazardous waste constituents, then the Defendant shall submit a closure plan to the Ohio EPA for approval, meeting the requirements of O.A.C. 3745-66-10 through 66-20.

12. If the Ohio EPA notifies Defendant that part or all of the plan identified in the preceding paragraph is deficient, then Defendant shall resubmit the deficient portions in approvable form within thirty days of Ohio EPA's notification of deficiency to the Defendant. The Ohio EPA may

issue an approval of the plan as originally submitted, as resubmitted, or with additional terms and conditions.

13. Defendant shall implement the closure plan within 30 days after Ohio EPA approves the plan.

V. COMPLIANCE WITH APPLICABLE LAWS

14. Nothing herein shall affect Defendant's obligation to comply with all applicable federal, state, or local law, regulation, rule, or ordinance. Defendant shall obtain all federal, state, or local permits necessary to comply with this Consent Order.

VI. GENERAL PROVISIONS

15. This Court shall retain jurisdiction of this matter for the purpose of making any order or decree which it deems necessary to carry out this Consent Order.

16. Unless specified otherwise, the following documentation required to be submitted pursuant to this order shall be submitted by the Defendant to the following designated individuals or their respective successors:

**Group Leader
Compliance Monitoring and Enforcement Section
DHMM
Ohio EPA
Northeast District Office
2116 East Aurora Road
Twinsburg, Ohio 44087**

and

**Manager Compliance Monitoring and Enforcement Section
Ohio EPA
DHMM
1800 WaterMark Drive
Columbus, Ohio 43266.**

17. All court costs shall be assessed against the Defendant.

JUDGE, COURT OF COMMON PLEAS

APPROVED:

**LEE FISHER
ATTORNEY GENERAL OF OHIO**

BY *Terrence S. Finn*
 TERRENCE S. FINN (0039391)
 Assistant Attorney General
 Environmental Enforcement
 Section
 30 East Broad Street, 25th Floor
 Columbus, Ohio 43266-0410
 (614) 466-2766

Attorney for Plaintiff
 State of Ohio

BY *Gino Pulito*
 GINO PULITO (E 37912)
 230 Third St. Suite 200
 704 Lorain County Bank Bldg.
 Elyria, OH 44035
 (216) 322-1329

Attorney for Defendant
 Nimon Company

BY: *Kenneth A. Nimon*
 KENNETH NIMON
 President and authorized
 representative of the
 Nimon Company