

FILED
LORAIN COUNTY

Jan 25 1 45 PM '96

IN THE COURT OF COMMON PLEAS
CLERK OF COMMON PLEAS
DONALD J. BETHGERY LORAIN COUNTY, OHIO

STATE OF OHIO, ex. rel.
BETTY MONTGOMERY,

Plaintiff,

vs.

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

Defendants.

CASE NO. 89-CV-102519

JUDGE LYNETT M. MCGOUGH

CONSENT ORDER BETWEEN THE
STATE OF OHIO AND MICHAEL PRUITT

The Second Amended Complaint in the above-captioned case having been filed herein, and the Plaintiff, State of Ohio, by its Attorney General, Betty Montgomery (hereinafter "Plaintiff") and Michael Pruitt (hereinafter "Pruitt" 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 Second Amended 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 and be binding in accordance with Rule 65 (D) of the Ohio Rules of Civil Procedure.

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/operator of a hazardous waste facility located at 1228 W. 15th Street, Lorain, Ohio, (hereinafter, the "facility"). The Defendant does not admit to the allegations asserted by Plaintiff in its Second Amended Complaint. However, for the purposes of resolution the Defendant will enter into this Consent Order with the State of Ohio.

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. Nothing herein shall restrict the right of the Defendant to raise any administrative, legal, or equitable defenses that defendant may legally raise with respect to such further actions which the Ohio EPA or U.S. EPA may seek to require of the Defendant. Further, the Defendant reserves the right to raise any administrative, legal, or equitable defenses that the defendant may legally raise, except any challenge to the lawful binding effect of this Consent Order, in the event that the Ohio EPA or U.S. EPA claims that he is not in compliance with this Consent Order or the laws or regulations set forth in the Ohio Revised Code or the U.S. Code.

IV. INJUNCTION

6. Defendant is ordered and enjoined to close the facility in accordance with a plan approved by the Ohio EPA in the manner set forth in this section.

7. In the event that the Ohio EPA approves the closure plan submitted by the Nimon Company pursuant to the Consent Order entered by the Court on February 22, 1995, then within 30 days of the Ohio EPA's approval, the Defendant is ordered and enjoined to implement and comply with that closure plan, including all deadlines and schedules set forth in the approved plan.

8. In the event that the Ohio EPA notifies the Defendant to submit a closure plan, then within thirty days of the date of Ohio EPA's notification, the Defendant is ordered and enjoined to submit a closure plan to the Ohio EPA for approval, meeting the requirements of O.A.C. 3745-66-10 through 66-20.

9. 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.

10. Defendant is ordered and enjoined to implement and comply with the closure plan identified in paragraph 8, above, including all deadlines and schedules set forth therein, within 30 days after Ohio EPA approves the plan.

11. Defendant is permanently ordered and enjoined to comply with R.C. Chapter 3734. and the regulations adopted thereunder.

V. CIVIL PENALTY

12. Defendant shall pay to the State of Ohio a civil penalty in the amount of thirty thousand dollars (\$30,000.00) within 30 days of the filing of this order. The money shall be deposited into the hazardous waste clean up fund, pursuant to R.C. Section 3734.28. Payment shall be made by tendering a bank cashier's check in the above amount to Matt Sanders, Administrative Assistant, or his successor at 30 East

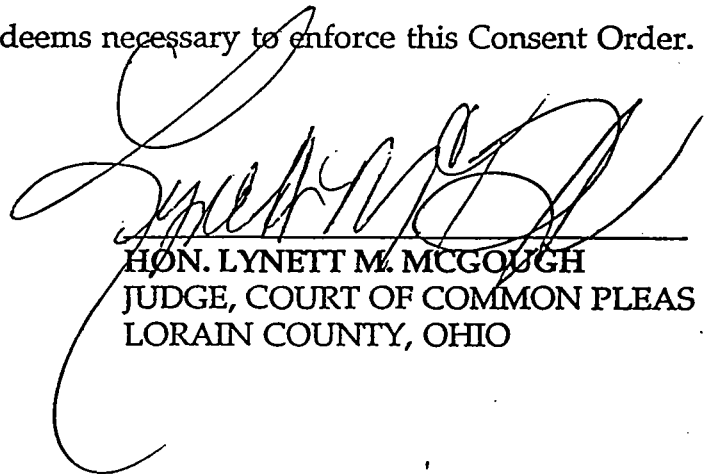
Broad Street, 25th Floor, Environmental Enforcement Section, Columbus, Ohio 43215-3428. Said check shall be made payable to the "Treasurer of the State of Ohio".

13. In addition to the cash civil penalty payment identified in the preceding paragraph, Defendant Pruitt and Defendant Robert Grace have assigned their mortgage interest in the facility to the Director of the Ohio EPA. A copy of this assignment is attached to this Consent Order as Attachment I, and is fully incorporated herein. Any proceeds received by the Director as a result of the mortgage identified in Attachment I shall be deposited into the hazardous waste clean up fund, pursuant to R.C. Section 3734.28

VI. GENERAL PROVISIONS

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


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




HON. LYNETT M. MCGOUGH
JUDGE, COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

APPROVED:

BETTY MONTGOMERY
ATTORNEY GENERAL OF OHIO

BY 
TERRENCE S. FINN (0039391)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
(614) 466-2766

Attorney for Plaintiff
State of Ohio

BY 
PATRICK D. RILEY
520 Broadway Avenue
Lorain, Ohio 44052

Attorney for Defendant
Michael Pruitt

BY: 
MICHAEL PRUITT

ATTACHMENT I

FILED
LORAIN COUNTY

ASSIGNMENT

JAN 25 1 45 PM '96
This Assignment is made _____, 19____, by

Mike Pruitt, 4655 N. T111 Bamook Trail, Lima, Ohio, 45805, and Bob Grace, _____, North Olmsted, Ohio, 44070, (hereinafter collectively referred to as "Assignors"), who as Assignors assign and transfer to the State of Ohio, Environmental Protection Agency (hereinafter referred to as "Assignee"), that certain Assignment Of Judgment and Judgment Lien, acquired by Assignors from the United States Of America, Small Business Administration, on February 26, 1985, a copy of which Assignment Of Judgment and Judgment Lien is marked Exhibit A, attached hereto and made a part hereof by reference.

WHEREAS, Mike Pruitt is a party defendant in the case of State of Ohio, ex rel. Lee Fisher v. Pruitt & Grace Development Corp., et al., pending in the Lorain County Court of Common Pleas, Case No. 89-CV-102519; and,

WHEREAS, Bob Grace was a party defendant in said cause; and,

WHEREAS, Mike Pruitt and Robert Grace are the owners of an Assignment Of Judgment and Judgment Lien which Judgment and Judgment Lien was owned by the United States of America, Small Business Administration, and assigned to Mike Pruitt and Bob Grace on February 26, 1985, as is shown in the document marked Exhibit A, attached hereto and made a part hereof by reference; and,

WHEREAS, in partial settlement of the claims against Mike Pruitt, the Judgment and Judgment Lien identified in Exhibit A hereto is to be assigned to the State of Ohio;

NOW, THEREFORE, for value received, we, the undersigned, hereinafter referred to as "Assignors", assign and transfer to the State of Ohio, Environmental Protection Agency, hereinafter referred to as "Assignee", that certain Judgment and Judgment Lien, recovered by and obtained by the United States of America, Small Business Administration, from the Nimon Company on December 27, 1984, as set forth in Exhibit A hereto, in the Court of Common Pleas of the County of Lorain, State of Ohio, Case No. 93776-84, against Nimon Company, for the sum of \$133,595.26, and costs of suit plus interest.

This assignment is without recourse, and assignor does not guarantee payment of the assigned judgment.

The judgment assigned is free from all liens and encumbrances, either in favor of any attorney at law, or otherwise.

Assignors appoint assignee, his attorney with power to demand and receive satisfaction of the assigned judgment and, in the name of assignors, but at assignee's expense, to sue out execution or any other legal process for the enforcement of the judgment.

Dated: 1-25-96



 Mike Pruitt

 Robert Grace

FILED
CLERK IN CHIEF'S OFFICE

35 FEB 27 A 8:38

ORIGINAL CLERKERY
LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

Ameritrust Company	*	Case No. 93776-84
Plaintiff	*	Judge: Floyd D. Harris
vs.	*	<u>ASSIGNMENT OF JUDGMENT</u>
Nimon Co., Inc., aka	*	<u>AND JUDGMENT LIEN</u>
The Nimon Company, et. al.	*	
Defendant	*	

This Assignment is made February 26, 1985, by the United States of America, Small Business Administration (Cleveland District Office, 1240 East Ninth Street, Cleveland, Ohio 44199), as Assignor, and MICHAEL PRUITT and BOB GRACE, Lorain, Ohio, as Assignee.

Whereas, Judgment was entered in the Lorain County Court of Common Pleas, in the above captioned case, on December 27, 1984, in favor of the Assignor and against the Nimon Co., Inc., a.k.a. The Nimon Company, for One Hundred Thirty-Three Thousand Five Hundred Ninety-Five and 26/100 Dollars (\$133,595.26), plus interest at the daily accrual of Thirty-Nine and 36/100 Dollars (\$39.36) from October 12, 1984. The Judgment was duly filed and docketed in the office of the Clerk of the Lorain County Court of Common Pleas on December 27, 1984; and,

Whereas, said Judgment is a valid and subsisting second lien on the premises described in the December 27, 1984 Judgment Entry of the Court, and wherein Assignor is entitled to payment from the proceeds of sale in accordance with the priorities of lien holders as established in said Judgment Entry;

Now, therefore, the parties have agreed as follows:

1. The Assignor hereby assigns and transfers to the Assignee all of its interest and rights in the Judgment and in all sums of money

EXHIBIT

that may be obtained from the Sheriff's Sale of the described property in accordance with the priorities and amounts as established by the Court's Judgment Entry of December 27, 1984 except as follows: The Assignor specifically limits the scope of this assignment to the extent the Judgment is secured by a mortgage or judgment lien on the described property and to the proceeds of the Sheriff's Sale.

2. The Assignor hereby irrevocably appoints the Assignee its Attorney, with power of substitution and revocation, at the expense of the Assignee, to use all lawful means for the recovery of the money due or to become due on the Judgment as a result of the Sheriff's Sale of the property and upon payment, to acknowledge satisfaction or to discharge the Judgment.

3. The Assignor represents and covenants that there is now due on such Judgment the sum of One Hundred Thirty-Three Thousand Five Hundred Ninety-Five and 76/100 Dollars (\$133,595.76), plus accrued interest from October 12, 1984; the Assignor will not collect or receive any part thereof from the proceeds of the Sheriff's Sale, nor release or discharge the Judgment before such sale.

4. The Assignor represents that this assignment transfers Assignors interest in the above mentioned Judgment including the Assignor's priority status as a second lien holder on the described property and to Assignor's right and interest to the proceeds of sale.

IN WITNESS WHEREOF, the Assignor, The United States of America, Small Business Administration, by its attorney, has signed and acknowledged this instrument.

The United States of America,
Small Business Administration

By Elmer G. Korberer
Elmer G. Korberer, Assistant Director
for Finance and Investment

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