

IN THE COURT OF COMMON PLEAS

COMMON PLEAS COURT OHIO
WARREN COUNTY OHIO
FILED

STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO
30 East Broad Street
Columbus, Ohio 43215,

98 JUL 24 AM 11:36
JAMES L. SPAETH
CLERK OF COURTS

Case No. _____

Plaintiff,

Judge _____

JUDGE FEDDERS

v.

HOWARD W. PURKEY, JR.
127 New Burlington
Waynesville, Ohio 45068,

and

PURKEY PROPERTIES, INC.
127 New Burlington
Waynesville, Ohio 45068,

Defendants.

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff, State of Ohio, by its Attorney General Betty D. Montgomery, and the Defendants, Howard W. Purkey, Jr., and Purkey Properties, Inc., having consented to the entry of this Order, without trial or admission of any issue of law or of fact, and upon the consent of the parties hereto:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

I. DEFINITIONS

1. Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in Revised Code Chapter 3734. and the regulations adopted thereunder. In addition, the following terms are defined as follows:

- a. "Director" means the Director of the Ohio Environmental Protection Agency;
- b. "Ohio EPA" means the Ohio Environmental Protection Agency, its employees, and agents;
- c. "R.C." means the Ohio Revised Code;
- d. "O.A.C." means the Ohio Administrative Code;
- e. "The 174 North Main Street Facility" means the land, buildings, and structures located at 174 North Main Street, Corwin, Warren County, Ohio; and
- f. "The 184 North Main Street Facility" means the land, buildings, and structures located at 184 North Main Street, Corwin, Warren County, Ohio.

II. JURISDICTION

2. The Court has jurisdiction over the subject matter of this action pursuant to R.C. Chapter 3734, and the rules adopted thereunder. This Court has jurisdiction over the parties. The Complaint states a claim upon which relief can be granted against Defendants. Venue is proper in this Court.

III. PARTIES

3. The provisions of this Consent Order shall apply and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest and any person acting in active concert or participation with them who receive actual notice of this Consent Order whether by personal service or otherwise.

IV. SATISFACTION OF LAWSUIT

4. Plaintiff alleges in its Complaint that Defendants have violated provisions of the Ohio's hazardous waste laws, as set forth in R.C. Chapter 3734 and the regulations adopted

thereunder. Except as provided by law, and in paragraph 5 below, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims alleged in the Plaintiff's Complaint.

V. RESERVATIONS OF RIGHTS

5. Nothing in this Consent Order, including the imposition of stipulated or civil penalties, shall limit the authority of the State to Ohio to:

- a. Seek relief for claims or conditions not alleged in the Complaint;
- b. Seek relief for claims or conditions alleged in the Complaint which occur after the entry of this Consent Order;
- c. Enforce this Consent Order through a contempt action or otherwise for violations;
- d. Bring any action against Defendants or against any other person under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. §9601, *et seq.*, R.C. §§ 3734.20 through 3734.27, or R.C. Chapter 6111 to: (1) recover natural resource damages, or (2) to order the performance of, or recover costs for any removal, remedial or corrective activities not conducted pursuant to the terms of this Consent Order, or both.

VI. EFFECT UPON OTHER ACTIONS

6. All activities undertaken by Defendants pursuant to this Consent Order shall be undertaken in accordance with all applicable federal, state or local laws, rules, regulations and permits. Where such laws appear to conflict with the other requirements of the Consent Order, Defendants are ordered and enjoined to immediately notify the Ohio EPA of the potential conflict. This Consent Order is not a permit issued pursuant to any federal, state, or local law or rule. Nothing in this Consent Order shall be construed to relieve Defendants of their obligations to comply with all applicable federal, state or local laws, rules, regulations and permits.

VII. INJUNCTION

7. Defendants are ordered and enjoined to comply with the requirements of R.C. Chapter 3734 and the regulations adopted thereunder.

8. Pursuant to the schedule contained in the Sample, Analysis and Remediation Plan (Exhibit A), Defendants are ordered and enjoined to remove all hazardous waste located at the 174 North Main Street Facility and the 184 North Main Street Facility by lawfully transporting the waste to a lawfully permitted hazardous waste treatment, storage or disposal facility.

9. Defendants are ordered and enjoined to refrain from storing, treating, or disposing of any hazardous wastes, except to facilities described in R.C. 3734.02(F)(1) - (5).

10. Defendants are hereby ordered and enjoined to implement and complete the attached Sample, Analysis, and Remediation Plan ("SARP") pursuant to the schedule contained in the SARP.

11. Within thirty (30) days after completion of the work described in the SARP, Defendants shall submit to Ohio EPA a Sampling and Analysis Report ("SAR") that includes the laboratory analyses and evaluation of data and describes the type and extent of contamination, if any, found at the 174 and 184 North Main Street Facilities. If the evaluation of data within the SAR confirms that no hazardous waste contamination exists at the Facilities, the SAR shall provide a conclusion with supporting justification that no remediation is needed. If the evaluation of data within the SAR indicates that remediation is necessary, the SAR shall include a Remediation Plan. The Remediation Plan shall meet the closure performance standard set forth in O.A.C. 3745-66-11(A) and (B) and shall comply with O.A.C. 3745-66-14. The Remediation Plan shall contain a proposed schedule of implementation.

12. The SAR and Remediation Plan are both subject to Ohio EPA review and approval. In the event that Ohio EPA does not concur with the evaluation of data within the SAR and/or does not concur with the Remediation Plan and provides a written statement of the deficiencies in the SAR and/or Remediation Plan, Defendants shall revise the SAR and/or Remediation Plan and/or further implement the SARP as needed to address the stated deficiencies of the SAR and/or Remediation Plan within thirty (30) days after receipt of such a written statement from Ohio EPA. Ohio EPA may approve the Remediation Plan with modifications. If Ohio EPA modifies the revised Remediation Plan, the modified Remediation Plan shall become the approved Remediation Plan.

13. Upon receipt of approval from Ohio EPA of the Remediation Plan, Defendants shall implement the approved Remediation Plan in accordance with the requirements of O.A.C. 3745-66-11(A) and (B) and 3745-66-14, and in accordance with the specifications and the approved schedule contained in the approved Remediation Plan and any conditions attached to the approval.

14. Within thirty (30) days after completion of the work described in the approved Remediation Plan, Defendants shall submit to Ohio EPA, for review and approval, a certification that the sampling and analysis work has been conducted in accordance with the SARP and documented in the SAR and that the remediation work has been conducted in accordance with the specifications in the approved Remediation Plan. This certification shall be signed by Defendants and by an independent, qualified, registered professional engineer.

VIII. STIPULATED PENALTIES

15. In the event that Defendants violate any of the requirements of this Consent Order, they shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

- a. For each day of each failure to meet a requirement up to thirty (30) days, Seven Hundred and Fifty Dollars (\$750) per day;
- b. For each day of each failure to meet a requirement from thirty-one (31) to sixty (60) days, One Thousand and Five Hundred Dollars (\$1,500) per day;
- c. For each day of each failure to meet a requirement from sixty-one (61) to ninety (90) days, Two Thousand and Five Hundred Dollars (\$2,500) per day; and
- d. From each day of failure to meet a requirement over ninety days, Five Thousand Dollars (\$5,000) per day.

16. Any payment required to be made under the provisions of Paragraphs 15 of this Consent Order shall be made by delivering a certified check or checks for the appropriate amounts, made payable to "Treasurer, State of Ohio" in the manner provided for in Paragraph 20. Any payment required to be made under Paragraph 15 shall be made within ten (10) days from the date of the failure to meet the requirement of the Consent Order.

IX. COSTS

17. Defendants are ordered to pay the court costs of this action.

X. RETENTION OF JURISDICTION

18. This Court shall retain jurisdiction of this action for the purpose of enforcing this Consent Order, and resolving disputes arising under the Order.

XI. MISCELLANEOUS

19. This Order shall be effective upon the date of entry by the Court.
20. All certified payments submitted pursuant to this Order shall be submitted to:

Administrative Assistant
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428

21. All documents dealing with hazardous waste shall be submitted to:

Unit Supervisor
Compliance Monitoring and Enforcement Unit
Division of Hazardous Waste Management
Ohio Environmental Protection Agency
1800 WaterMark Drive
Columbus, Ohio 43266

and

Unit Supervisor
Division of Hazardous Waste Management
Southwest District Office
Ohio Environmental Protection Agency
401 East Fifth Street
Dayton, Ohio 45402-2911

XII. AUTHORITY TO ENTER INTO THE CONSENT ORDER

22. The signatory for Defendants represents and warrants that he or she has been duly authorized to sign this document and so bind Defendants to all terms and conditions thereof.

XIII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

23. Upon signing of this 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 Consent Order 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.

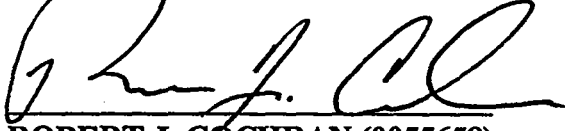
DATED: _____, 1998.

/s/ P. DANIEL FEDDERS

JUDGE
Warren County Court of Common Pleas

Approved:

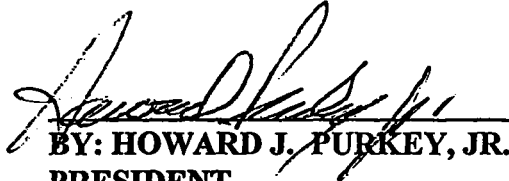
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO



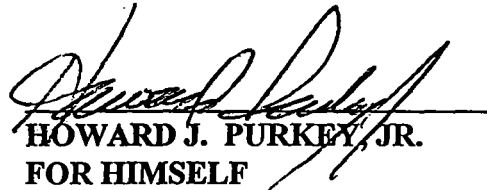
ROBERT J. COCHRAN (0055658)
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(614) 466-2766

Attorney for Ohio EPA

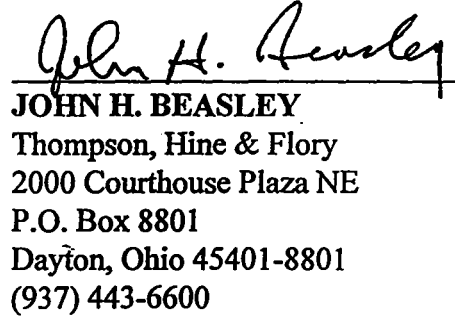
PURKEY PROPERTIES, INC.



BY: HOWARD J. PURKEY, JR.
PRESIDENT



HOWARD J. PURKEY, JR.
FOR HIMSELF



JOHN H. BEASLEY
Thompson, Hine & Flory
2000 Courthouse Plaza NE
P.O. Box 8801
Dayton, Ohio 45401-8801
(937) 443-6600

Attorney for Defendants



Environmental, Inc.

P.O. Box 792
Cedarville, Ohio 45314

513 • 766 • 2100
Fax: 513 • 766 • 2745

9 April 1998

Thompson, Hine & Flory
P.O. Box 8801
Dayton, Ohio 45401-8801
Att: Mr. John Beasley

Re: Sample, analysis and remediation plan outline for Purkey Properties.

Dear Mr. Beasley,

Pursuant to your letter of 12-2-97, the following plan was prepared in accordance with terms outlined in section VII of the draft consent order provided by Mr. Cochran of the Attorney Generals office.

OVERVIEW

This plan has been prepared to address the waste issues which currently exist at 174 & 184 North Main St in Corwin, Ohio. These sites currently have waste drums in various conditions ranging from unshippable cutouts to drums suitable for transport. The contents of most of those containers are known and will require only limited analysis to verify hazardous characteristics. Those that are unknown will require more extensive analysis but we believe this will not be a significant number of containers.

SCOPE OF WORK

1. Preparation and implementation of a site specific Health and Safety Plan which complies with OSHA rules and regulations.
2. All remediation work performed will comply with Ohio EPA's September 1, 1993 Closure Guidance rules.
3. The initial issue of concern is the secure storage of the existing wastes. Many of the containers will require repackaging in 55 gallon or 85 gallon salvage drums. It is our belief that because of the limited number of waste types generated at this site and previous efforts to identify them, repackaging can be safely performed prior to testing.



4. The collection of representative samples will be best done at the time the wastes are being repackaged. Many of the drums contain similar materials and we propose to consolidate like materials and then collect composite samples of those materials.
5. The laboratory of choice will be Belmonte Park Labs located in Trotwood, Ohio. Upon completion of analysis the materials will be profiled to Environmental Enterprises, Inc. of Cincinnati, Ohio as the preferred treatment facility.
6. Following shipment of the wastes off site, closure of the drum storage pads will be initiated. All debris on the pads will be collected and packaged prior to analysis. The concrete surfaces will then be pressure washed with the liquids being collected and packaged. The wash liquids will be analyzed to determine if any hazardous compounds or metals are being removed by the blasting. If any significant concentration of a hazardous constituent is detected the concrete surfaces will be pressure washed again with the rinsate reanalyzed for the constituent previously identified. This process will be repeated until the liquid analysis no longer shows residual constituents. This process will result in containers of potentially hazardous debris and water being collected. Disposal of collected materials will be done in compliance with all federal, state and local regulations.
7. The location of the storage pads is such that neither one is adjacent to any soil area. Visual inspection has failed to identify any evidence of past spillage or product release and as a result no soil sampling is proposed. This sampling strategy will change if inspections performed after the pads are cleaned show any probable release to the soil under them. At that time appropriate measures for collecting soil samples would be initiated.
8. The final report will contain details of the work outlined above. The disposition of waste previously handled by Mr. Robert Maginn of Aerotech Transparencies, Inc. will also be reviewed to the best of our ability. This report will document the proper closure of storage pads located at 174 & 184 N. Main St. in Corwin, Ohio.

SCHEDULE

1. Initiation of closure activities will commence within 30 days of the approval of this plan. (Repackage, Sample Collection and Analysis)

2. Disposal of all waste materials will be complete within 60 days of formal plan approval.
3. Storage pad cleaning and rinsate analysis will commence within 90 days of plan approval. Final cleaning and analysis will be complete within 45 days of commencing the cleaning.
4. The final report documenting all sampling, analysis, disposal and remediation work will be submitted not more than 180 days after formal plan approval is received from the OEPA.

This plan should adequately address the final closure requirements which would normally be expected for a site of this type. If additional information is desired please do not hesitate to contact me.

Sincerely,


William Cernetic