

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

STATE OF OHIO, ex rel.
LEE FISHER,

Plaintiff,

vs.

RESERVE ENVIRONMENTAL
SERVICES, INC.

Defendant.

CASE NO. 93 CV 563

JUDGE Moskey

CONSENT ORDER

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 Reserve Environmental Services, Inc. (hereinafter "RES" or "Defendant") having consented to the entry of this Consent Order;

NOW, THEREFORE, without trial of any issues of law or fact, without admission of liability of any kind, and 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 6111. and the rules adopted thereunder. The Complaint states a claim upon which relief

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○ can be granted against the Defendant under those statutory provisions.

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. Defendant shall also provide a copy of this Consent Order to all employees who are responsible for Defendant's compliance with the hazardous waste, solid waste and/or water pollution control laws.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant violated various sections of R.C. Chapters 3734 and 6111 and the rules adopted thereunder at its facility located at 4633 Middle Road, Ashtabula, Ohio 44004 ("facility"). Defendant denies each of the allegations in the 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 Complaint, and for the violations set forth in the following notice of violation letters issued by Ohio EPA: .
April 11, 1989; January 8, 1990; March 12, 1990; August 14, 1990; June 27, 1991; October 28, 1991; June 29, 1992; July 6, 1992; February 22, 1993; March 16, 1993; April 20, 1993; May 28, 1993; June 30, 1991; November 20, 1992; January 13, 1993.

IV. RESERVATION OF RIGHTS

5. This Consent Order does not prevent the State from seeking further relief for groundwater contamination or other contamination caused by Defendant that may be discovered after the entry 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.

6. The State reserves the right to seek further relief regarding ponds 3 through 7 of Site A at Defendant's facility, including an Order requiring the Defendant to perform a final closure of ponds 3 through 7 of Site A, in accordance with R.C. Chapter 3734 and the hazardous waste regulations. Nothing in this Consent Order shall limit the State's authority to seek further relief regarding ponds 3 through 7 of Site A. The Defendant agrees that the State will not have waived this right if the Director approves the interim closure plan referenced in paragraph 24, below.

7. The State reserves the right to obtain additional civil penalties for Defendant's violations, subject to the Ohio EPA's review of the Defendant's financial condition as set forth in paragraph 12, below. Nothing in this Consent Order shall limit the State's authority to obtain civil penalties in addition to the partial civil penalty required by paragraph 11, below.

8. 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. Nothing in this Order shall be construed to limit Defendant's ability to raise any and all defenses that it may legally raise, to allegations or claims not referenced in paragraph 4, above.

9. Nothing in this Consent Order shall be construed as a waiver of any rights that Defendant may have to appeal the approved closure plans, referenced in paragraphs 25, 26 and 27 of this Order, to the Environmental Board of Review pursuant to R.C. Chapter 3745, or to assert any position, claim or defense that it can lawfully assert during such an appeal.

10. Nothing in this Consent Order shall preclude the State from exercising its authority to require the Defendant to perform additional testing with regard to Defendant's underground injection well, or to modify the Defendant's underground injection ("UIC") permit. By this Consent Order Defendant does not waive any rights or remedies it has under federal or state laws, regulations or permit requirements, to seek modification of its UIC Permits to Operate or to challenge any terms, or conditions in any future UIC permit(s) issued subsequent to the entry of this Consent Order.

V. CIVIL PENALTY

11. Defendant shall pay to the State of Ohio a partial civil penalty in the amount of Two-Hundred Thousand Dollars (\$200,000.00), in accordance with the following payment schedule:

\$65,000.00 within 30 days of the filing of this Consent Order;

\$67,500.00 within 360 days of the filing of this Consent Order;

\$67,500.00 within 540 days of the filing of this Consent Order.

The first penalty payment shall be paid pursuant to R.C. Section 3734.28 and the second and third penalty payments shall be paid pursuant to R.C. Section 6111.09. Payment shall be made by tendering bank cashier's checks in the above amounts to Janis Miller, Administrative Assistant, or her successor at 30 East Broad Street, 25th Floor, Environmental Enforcement Section, Columbus, Ohio 43266-0410. Said checks shall be made payable to the "Treasurer of the State of Ohio".

VI. INJUNCTION

12. Within 30 days of the filing of this Consent Order, the Defendant is ordered and enjoined to submit the financial information identified in Appendix "A" of this Consent Order to the Ohio EPA.

Defendant is further ordered and enjoined to fully cooperate with the Ohio EPA during the Ohio EPA's review of Defendant's financial condition and immediately provide the Ohio EPA with any and all additional documentation or information requested by the Ohio EPA.

13. On December 14, 1988, the U.S. Environmental Protection Agency ("U.S. EPA") issued Defendant an order, pursuant to Section 3008(h) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(h), which requires Defendant to conduct a RCRA Facility Investigation and Corrective Measures Study ("RFI/CMS"). Defendant is

hereby ordered and enjoined to complete the RFI/CMS pursuant to Defendant's work plan approved by U.S. EPA on February 25, 1991, and/or any subsequent revisions approved by U.S. EPA. Any noncompliance with the work plan prior to the entry of this Order shall not be considered a violation of this Order.

14. Plaintiff hereby reserves all rights to take any and all actions it deems appropriate to address the remediation and clean-up of any contamination discovered as a result of the RFI/CMS, and does not release Defendant from its liability with regard to the clean-up and/or remediation of the contamination determined by the RFI/CMS.

15. On July 12, 1993, Defendant submitted a report to the Ohio EPA for the purpose of demonstrating compliance with this paragraph. This report is required to contain the documentation demonstrating Defendant's identification of all locations of surface leachate outbreaks at Defendant's facility, as well as Defendant's evaluation of each surface outbreak in order to determine if the waste is hazardous, as required by O.A.C. 3745-52-11. This report is also required to provide the information detailed in subparagraphs 18(c) and (d), below, to Ohio EPA. In the event that the Ohio EPA determines that the July 12, 1993 report does not identify all locations of surface leachate outbreaks and provide an evaluation of each surface leachate outbreak, then the Defendant is

ordered and enjoined to correct those deficiencies within 30 days of receipt of the Ohio EPA's notice of deficiencies.

16. As of the date of the filing of this Consent Order Defendant is ordered and enjoined to inspect all RCRA regulated units at its facility, including Ponds 1 and 3 through 7 of Site A, Site C, and Site E on a daily basis for the existence of surface leachate outbreaks, as well as manage these units in accordance with the hazardous waste regulations, unless otherwise expressly authorized by the Ohio EPA. Defendant is ordered and enjoined to inspect all other units at its facility and the facility in general on a weekly basis for the existence of surface leachate outbreaks. Defendant is ordered and enjoined to document each inspection.

17. On June 10, 1993, the Defendant submitted a revised contingency plan to Ohio EPA for review. This revised plan is required to meet the requirements of O.A.C. 3745-65-51 and 3745-65-52, and at a minimum is required to include the following: (1) the steps that Defendant shall take in the event of a surface leachate outbreak; (2) the waste evaluation procedures that Defendant will follow for the characterization of surface leachate outbreaks in compliance with O.A.C. 3745-52-11; (3) the designation of one person as an emergency coordinator and the listing of other persons in the order in which they will

assume responsibility; (4) actions to be taken by personnel in the event of an emergency; (5) document arrangements and agreements with emergency authorities; and (6) a list of the emergency equipment including location, physical description, and an outline of capabilities. In the event that Defendant receives a notice of deficiency from the Ohio EPA regarding the revised contingency plan, Defendant shall correct the deficiencies, as noted by the Ohio EPA, and resubmit the Contingency Plan in approvable form to Ohio EPA within 30 days.

18. In the event that Defendant discovers an additional surface leachate outbreak pursuant to the inspections identified in paragraph 16 above, it is ordered and enjoined to do the following:

- (a) Notify Ohio EPA's Emergency Response (800-282-9378) within twenty-four (24) hours;
- (b) Implement the most current Contingency Plan and comply with O.A.C. 3745-65-56;
- (c) Within seven (7) days of discovery of the surface leachate outbreak submit a written report to the Ohio EPA detailing the following information:
 - (i) location of the outbreaks on a plan view site map; scale 1" = 50'.
 - (ii) schedule for the elimination and/or control and/or

prevention of the outbreak discharging to, or reaching waters of the State;

(iii) proposed method to temporarily eliminate the leachate discharge to waters of the State;

(d) As soon as possible submit the sample results of the outbreak and/or results of the evaluation procedures as outlined in the Contingency Plan.

19. Defendant is ordered and enjoined to comply with the schedule, identified in paragraph 18(c)(ii) above, as approved by Ohio EPA.

20. Defendant is ordered and enjoined to evaluate, in accordance with O.A.C. 3745-52-11, the waste obtained from the well in the southeast corner of Site C of Defendant's facility, by performing a detailed chemical analysis for all characteristic hazardous waste, defined by O.A.C. 3745-51-21 through 51-24, on one representative sample of the waste from the Site C accumulation tank prior to transportation, whenever this waste is not being sent to Defendant's wastewater treatment plant via the pipeline installed pursuant to a permit issued by the Director (PTI) and/or the wastewater treatment plant is not discharging pursuant to a national pollutant discharge elimination systems (NPDES) permit. Defendant shall submit the results of each evaluation to the Ohio EPA within 30 days of each sampling event.

21. Defendant is ordered and enjoined to manage the waste obtained from the well in the Southeast corner of Site C of Defendant's facility as an F039 listed hazardous waste and a characteristic hazardous waste for any hazardous waste constituents discovered in the analysis referenced in the preceding paragraph.

22. Defendant is enjoined from placing the waste obtained from the well in the southeast corner at Site C into any unauthorized unit, including but not limited to, the neutralization unit at Site A, the ponds at Site A, and/or the nonhazardous underground injection well at Defendant's facility.

23. Unless otherwise expressly authorized by the Ohio EPA, Defendant is ordered and enjoined to manage the standing water in ponds 3 through 7 at Site A as an F039 listed hazardous waste. Defendant is enjoined from placing any hazardous waste, included, but not limited to, the waste from ponds 3 through 7, into the Defendant's nonhazardous underground injection well.

24. Within 30 days of the filing of this Consent Order, the Defendant shall submit an approvable interim closure plan for ponds 3 through 7 at Site A of Defendant's facility by filing an application to modify the October 15, 1992, permit to install a decommissioning plan. The interim closure plan shall provide for an adequate groundwater

○ monitoring system which meets the requirements of the hazardous waste regulations.

25. Within 30 days of the filing of this Consent Order, Defendant is ordered and enjoined to submit an approvable closure plan for Pond 1 of Site A at Defendant's facility. This plan shall meet the requirements of O.A.C. 3745-66-10 through 66-20.

○ 26. Within 90 days of the completion of the Site C landfill portion of the RCRA Facility Investigation at Defendant's facility, Defendant is ordered and enjoined to submit an approvable closure plan for the Site C landfill at Defendant's facility. This plan shall meet the requirements of O.A.C. 3745-66-10 through 66-20.

27. Within 60 days of the filing of this Consent Order, Defendant shall submit approvable closure plans for the former neutralization tank located in the northwest corner of Site A and the Site E landfill at Defendant's facility. Each plan shall meet the requirements of O.A.C. 3745-66-10 through 66-20.

28. Within 30 days of the filing of this Consent Order, Defendant is ordered and enjoined to perform a generator closure of the two current neutralization tanks at Site A, in accordance with O.A.C. 3745-52-34(A)(1), and in a manner which meets the closure performance standards set forth in O.A.C. 3745-66-11. The Defendant shall notify the

Ohio EPA 10 days prior to performing the closure required by this paragraph.

29. Each of the closure plans referenced in paragraphs 25, 26 and 27, above, shall also provide for the closure of all ancillary equipment and piping associated with the hazardous waste units, in accordance with O.A.C. 3745-66-12(B)(4). This ancillary equipment includes, but is not limited to, the pipeline from Site C to Site A which shall be incorporated into the closure plan referenced in paragraph 26 above, and the pipeline from Pond 1 at Site A which shall be incorporated into the closure plan referenced in paragraph 25, above.

30. If the Ohio EPA notifies Defendant that part or all of any closure plan(s) identified in paragraphs 25, 26 and 27, above, and/or the interim closure plan identified in paragraph 24, above, are deficient, then Defendant shall resubmit the deficient portions in approvable form within sixty days of Ohio EPA's notification of deficiency to the Defendant. The Ohio EPA may issue an approval of each plan with additional terms and conditions, pursuant to O.A.C. 3745-66-12.

31. Upon approval of the Ohio EPA, Defendant is ordered and enjoined to implement and comply with each approved closure plan, referenced in paragraphs 25, 26 and 27, above, and the interim closure plan referenced in paragraph 24, above, including all deadlines and

schedules set forth in each approved plan, in accordance with O.A.C. 3745-66-13(B).

32. Defendant is ordered and enjoined to establish and maintain detailed cost estimates and financial assurance mechanisms for closure and post closure care, as well as liability insurance, for the hazardous waste units identified in paragraphs 24 through 27 above, in accordance with O.A.C. 3745-66-42 through 66-47. Within 30 days of the filing of this Consent Order, Defendant is ordered and enjoined to submit detailed cost estimates for the closure of the hazardous waste units identified in paragraphs 24 through 27. Unless otherwise expressly authorized by the Ohio EPA based upon its review of the financial information described in paragraph 12, above, Defendant shall submit documentation demonstrating compliance with the remaining requirements of this paragraph for all the hazardous waste units identified in paragraphs 24, 25, 26 and 27, above, within 180 days of the filing of this Consent Order.

33. Defendant is ordered and enjoined to manage all waste generated by Defendant's implementation of the RFI/CMS in accordance with O.A.C. Chapter 3745-52, including but not limited to, the provisions which require waste characterization, labeling, weekly inspections, and maintaining containers in good condition.

34. Defendant is ordered and enjoined to comply with and manage all solid and hazardous wastes in accordance with R.C. Chapter 3734 and the rules adopted thereunder.

35. Defendant is ordered and enjoined to maintain a written operating record in accordance with O.A.C. 3745-65-73.

36. Defendant is ordered and enjoined to submit complete and accurate facility annual hazardous waste reports in accordance with O.A.C. 3745-65-75, and generator annual hazardous waste reports in accordance with O.A.C. 3745-52-41.

37. Defendant is ordered and enjoined to comply with the inspection requirements as contained in O.A.C. 3745-65-15, including but not limited to, having a written inspection schedule, and conducting and documenting the specific inspections required by that rule.

38. Defendant is ordered and enjoined to provide for security for the facility as required by O.A.C. 3745-65-14.

39. The Defendant is ordered and enjoined to comply with O.A.C. 3745-65-94, including but not limited to, all reporting requirements of that rule.

40. Within 30 days of the filing of this Consent Order, Defendant is ordered and enjoined to submit a Supplemental Annual Ground Water Monitoring Report Form as required by OAC 3746-66-94 and 3745-

65-75 for Site C. The information may be submitted in a format consistent with the U.S. EPA's Ground Water Information Tracking System computer program.

41. Within 30 days of the filing of this Consent Order, Defendant is ordered and enjoined to submit the following information that was omitted from Defendant's 1992 Supplemental Annual Report Form for Ground Water Monitoring Information ("Supplemental Ground Water Report Form") for Site A of Defendant's facility:

- (a) All information and/or data required by Section 2 of the Supplemental Ground Water Report Form for well numbers 711-I, 713-I, 804-D, 805-S, 805-D, 806-S, 806-D, 807-S, 807-D, 703-D, 717-S, 718-S, 719-S, 720-S, 720-D, 721-S, 721-D, 722-S and 722-D at Defendant's facility; and
- (b) All information and/or data required by Table 1 of Section 3 of the Supplemental Ground Water Report Form from the analysis performed on ground water samples obtained during 1992 from Site A of Defendant's facility.

The information and/or data required by this paragraph may be submitted in a form consistent with the U.S. EPA's Ground Water Information Tracking System computer program.

42. On March 1, 1993, the Ohio EPA received Defendant's RCRA Ground Water Quality Assessment Reports for Sites A and C of Defendant's facility ("March 1, 1993 reports"). The Ohio EPA is currently reviewing

the March 1, 1993 reports to determine if the reports comply with the work plans approved by the Ohio EPA on February 18, 1992, and March 10, 1992. In the event that the Ohio EPA determines that either or both of the March 1, 1993 reports are deficient, the Defendant is ordered and enjoined to correct and/or address the deficiencies within 30 days of receipt of Ohio EPA's notice of deficiency letter.

43. Defendant is permanently enjoined from discharging industrial waste, sewage and other wastes into waters of the state in violation of R.C. section 6111.04.

44. Defendant is enjoined and ordered to immediately comply with the requirements of R.C. Chapter 6111. and the terms and conditions of the rules and regulations adopted thereunder and its currently effective NPDES permit, no. 3IN00145*BD and any renewals or modifications thereof, including but not limited to the final effluent limitations, except for the final effluent limitations for zinc, copper and lead set forth in said permit. Between the effective date of this Consent Order and May 16, 1994, Defendant is enjoined to comply with the interim effluent limitations for zinc, copper and lead attached hereto as Appendix "B". On May 16, 1994, Defendant is permanently ordered and enjoined to comply with the final effluent limitations for zinc, copper and lead, set forth in its current NPDES permit, no. 3IN00145*BD, and any renewals or

○ modifications thereof. Defendant is hereby ordered and enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

45. Defendant is ordered and enjoined to complete improvements to its wastewater treatment plant and obtain compliance with the final effluent limitations for zinc, copper and lead set forth in its NPDES permit no. 3IN00145*BD and any modifications and renewals thereof in accordance with the following compliance schedule:

<u>Task</u>	<u>Completion Date</u>
(a) Submission of General Plan	Completed
(b) Submission of application for permit to install (PTI)	Completed
(c) Complete all installation and construction	March 16, 1994
(d) Obtain compliance with final effluent limitations for zinc, copper and lead, set forth in NPDES permit no. 3IN00145*BD	May 16, 1994

46. Defendant is ordered and enjoined to remove the standing water in ponds 3 through 7 at Site A in accordance with the following compliance schedule:

<u>Task</u>	<u>Completion Date</u>
(a) Submission of General Plan	Completed
(b) Submission of approvable application for permit to install (PTI) and for a modification	

to NPDES permit no. 3IN00145*BD, which applications are not limited to the removal of the standing water for ponds 3 through 7 October 16, 1993

- (c) Complete all installation and construction May 16, 1994
- (d) Obtain compliance with final effluent limitations set forth in the NPDES permit referenced in subparagraph (b.),above. June 16, 1994

47. In the event that the Ohio EPA determines that an application for the modification of NPDES permit no. 3IN00145*BD, as setforth in the preceding paragraph, cannot be approved, then the Defendant is ordered and enjoined to submit an approvable plan to the Ohio EPA identifying all steps necessary to remove the standing water from ponds 3 through 7 of Site A within 12 months of the date of the decision that the application for modification cannot be approved. The report shall be submitted within 30 days of notice of the Ohio EPA's decision and shall identify all applications that must be filed with the Ohio EPA, and the dates for filing the applications.

48. If the Ohio EPA notifies the Defendant that part or all of the plan referenced in the preceding paragraph is deficient, the Defendant shall resubmit the deficient portions in approvable form within 60 days of notice of the deficiencies. Upon approval, the Defendant is ordered and enjoined to comply with the plan referenced in the preceding paragraph, including all deadlines and schedules set forth therein.

49. Defendant is enjoined from violating the well head and bottom hole injection pressure limits set forth in section II(C)(2) and Attachment D of Defendant's Class I Nonhazardous Underground Injection Control permit number UIC 05-04-016-PTO-I, ("UIC permit"), as well as the fracture pressure limits set forth in O.A.C. 3734-34-38(A)(1), which ever is more stringent.

50. On September 2, 1993, the Defendant submitted a report to the Ohio EPA. This report is required to demonstrate compliance with O.A.C. 3745-34-38 and to identify the results of the fracture gradient testing performed pursuant to the plan approved on May 5, 1993. The report is also required to include, but not be limited to, an identification of the fracture initiation pressure, fracture propagation pressure, and fracture closure pressure, as well as any information determined regarding the maximum and minimum principle rock stress, and is required to include all logs and pressure data, as well as a complete interpretation in narrative, and where appropriate, graphic form. In the event that the Ohio EPA determines that any of the information, as required by this paragraph, is not contained in the September 2, 1993 report, the Defendant is ordered and enjoined to submit the information within 30 days after receiving notice from the Ohio EPA.

51. In the event that the Ohio EPA determines that Defendant's

current closure plan for Defendant's underground injection well is required to be revised pursuant to Part I (F) of Defendant's UIC permit, Defendant is ordered and enjoined to revise the closure plan as noted by the Ohio EPA, and submit the closure plan to the Ohio EPA for review and approval within 30 days of receipt of notice from the Ohio EPA.

52. Within 10 days of issuance of the NPDES permit referenced in paragraph 46, above, Defendant is ordered and enjoined to permanently cease injection into its underground injection well and provide the Director with the advance notice of closure as required by Part I (F) of Defendant's UIC permit. Unless an alternative timeframe is agreed to by the Ohio EPA, Defendant is ordered and enjoined to implement the most current version of the approved underground injection well closure plan, including any revisions required by the Ohio EPA pursuant to the previous paragraph, at the conclusion of the advanced notice period provided pursuant to Part I (F) of Defendant's UIC permit.

53. Defendant is enjoined from violating the annulus pressure limitations set forth in section II(C)(5) and Attachment D of Defendant's UIC permit.

54. The Defendant is ordered and enjoined to operate and maintain the continuous monitoring and automatic warning and shutoff systems in accordance with the respective plans, as approved by the Ohio

○ EPA on May 5, 1993.

55. Defendant is ordered and enjoined to comply with the reporting requirements of O.A.C. 3745-34-26(L)(7) and section I(E)(12)(e) of Defendant's UIC permit.

56. Defendant is ordered and enjoined to comply with O.A.C. 3745-34-27(B)(6) and section I(H) of Defendant's UIC permit.

57. Defendant is ordered and enjoined to comply with the reporting requirements of O.A.C. 3745-34-38(D)(1)(b) and section II(E) of Defendant's UIC permit.

○ 58. Defendant is ordered and enjoined to continuously monitor the injection and annulus pressures of Defendant's injection well, even when the well is not in operation, as required by section II (D)(4) and Attachment D of Defendant's UIC permit.

59. Defendant is ordered and enjoined to comply with the certification and signatory requirements of O.A.C. 3745-34-17(B) and section I(E)(11) of Defendant's UIC permit.

60. Defendant is ordered and enjoined to comply with O.A.C. Chapter 3745-34.

61. Defendant is ordered and enjoined to comply with Defendant's current UIC permit, and all subsequent renewals, modifications, and/or revisions thereof.

VII. COMPLIANCE WITH APPLICABLE LAWS

62. 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.

VIII. SAMPLING, ACCESS AND DATA/DOCUMENT AVAILABILITY

63. The Defendant shall make available to Ohio EPA, at Ohio EPA's request, the results of all sampling, tests or other data generated by it, or on its behalf, with respect to the implementation of this Consent Order. At the request of Ohio EPA, the Defendant shall allow split or duplicate samples to be taken by Ohio EPA of samples collected by the Defendant during the implementation of the Consent Order. The Defendant shall notify the Ohio EPA not less than ten (10) working days, unless otherwise agreed, in advance of any sample collection.

64. Defendant also agrees that it shall preserve during the pendency of this Consent Order and for a minimum of three (3) years after its termination, at least one copy of all records and documents (other than drafts) within its possession, which are related to actions performed under this Consent Order, despite any document retention policy to the contrary. After the three (3) year period Defendant shall notify Ohio EPA at least thirty (30) days prior to the destruction of any such documents.

() Upon request by Ohio EPA, Defendant shall make available to Ohio EPA such records or copies of any such records unless otherwise privileged under law. Nothing in this paragraph shall be construed to limit any rights of the Plaintiff to conduct inspections and/or to take samples during the performance of any actions related to this Consent Order. This provision is not a limitation upon but rather is to be construed in addition to Plaintiff's statutory authority as set forth in the Revised Code to conduct inspections.

IX. RIGHT OF ENTRY

65. Defendant consents that the Plaintiff and its agents and employees may enter, without a search warrant, at a reasonable time, into and onto the RES Facility to inspect, to take water, soil and any other samples, and to observe Defendant conducting its work as required by this Consent Order. This provision in no way limits the Plaintiff's authority under R.C. Chapters 3734 and 6111 or other statutory authority to conduct inspections and/or to take samples at the facility.

X. STIPULATED PENALTIES

66. In the event that Defendant violates any of the terms, conditions or requirements of Section VI of this Consent Order, with the exception of paragraphs 14, 34, 43, 49, 51, 53, 60 and 61, Defendant shall immediately and automatically be liable for and shall pay stipulated

penalties according to the following schedule: for each day of violation or failure to meet a requirement, up to thirty (30) days - Five Hundred Dollars (\$500.00) per day; for each day of violation or failure to meet a requirement, from thirty-one (31) to sixty (60) days - One Thousand Dollars (\$1,000.00) per day; for each day of violation or failure to meet a requirement, from sixty-one (61) to ninety (90) days - One Thousand Five Hundred Dollars (\$1,500.00) per day; for each day of violation or failure to meet a requirement, over ninety (90) days - Two Thousand Five Hundred Dollars (\$2,500.00) per day.

67. In the event that Defendant violates the pressures limitations set forth in paragraphs 49 and/or 53, above, Defendant shall immediately and automatically be liable for a stipulated penalty of ten thousand dollars (\$10,000.00) for each violation.

68. In the event that the Ohio EPA determines that the plans referenced in paragraphs 15, 17 and/or 51 are deficient, the Defendant will not be liable for stipulated penalties for these deficiencies.

69. Any payment required to be made pursuant to Section X of this Consent Order shall be paid by certified check made payable to "Treasurer, State of Ohio," which check shall be delivered by mail, or otherwise, to Janis Miller, Administrative Assistant, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30

East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, within thirty (30) days of the violation or failure to meet the requirement of this Consent Order. Ohio EPA, in its sole discretion, may waive any penalty called for in paragraphs 66 and 67, above.

70. Nothing in this Consent Order, including but not limited to the previous paragraph, shall be construed as a limitation on the State's authority or rights to seek compliance with any provision of this Consent Order, and/or obtain additional penalties, sanctions and/or orders as a result of Defendant's failure to comply with this Consent Order. As set forth in paragraph 8, this Consent Order shall not be construed to limit Defendant's ability to raise any and all defenses it may legally raise.

71. Defendant shall perform its obligations under this Consent Order within the time limits provided in this Consent Order unless a delay in performance is excused under this Section.

72. If events occur that are beyond Defendant's control and that may delay the performance of any obligation under this Consent Order, Defendant shall notify Ohio EPA by telephone within two days of when Defendant becomes aware of such delay or anticipated delay. Within five business days thereafter, Defendant shall provide in writing the anticipated length of the delay, the precise causes of the delay, the measures taken or to be taken by Defendant to minimize the delay, and the

timetable by which these measures will be implemented.

73. If Ohio EPA agrees that a delay is unavoidable, due to events beyond Defendant's control, the time period for performance of the affected obligation(s) under this Consent Order shall be extended for the time period attributable to such delay, and the delay shall not constitute a violation of this Consent Order. If Ohio EPA does not agree that the delay should be excused, the matter may be submitted to the Court for dispute resolution.

XI. GENERAL PROVISIONS

74. 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.

75. In the event that the parties fail to reach an agreement on the Plaintiff's outstanding civil penalty claims, Defendant's Answer to the State's Complaint will be due within 180 days of the filing of this Consent Order. This Court will, upon Plaintiff's motion, provide an opportunity for a hearing for the purpose of litigating the State's outstanding civil penalty claims.

76. All court costs of this action shall be assessed against the Defendant.

77. 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:

Documents required by paragraph 12 shall be submitted to:

Michael Savage
Asst. Chief
DHMM
Ohio EPA
1800 WaterMark Drive
Columbus, Ohio 43266.

Documents required by paragraphs 15, 17, 18, 20, 24, 25, 26, 27, 28, 30, 32, 40 and 41 shall be submitted to:

Paul Anderson
RCRA Group Leader
Ohio EPA
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087

and

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

Documents required by paragraphs 24, 25, 26, 27 and 28 shall be

submitted to:

Thomas Creapeau
Manager
Data Management Section
Ohio EPA
DHMM
1800 WaterMark Drive
Columbus, Ohio 43266.

Documents required by paragraphs 15, 17, 18(c), 18(d), 45, 46 and 47

shall be submitted to:

Keith Riley
Group Leader
Compliance and Enforcement Section
DWPC
Ohio EPA
Northeast District Office
2116 East Aurora Road
Twinsburg, Ohio 44087

Documents required by paragraphs 44, 46 and 47 shall be submitted

to:

William Zawiski
DWPC
Ohio EPA
Northeast District Office
2116 East Aurora Road
Twinsburg, Ohio 44087

Documents required by paragraphs 50, 52 and 55 shall be submitted

to:

Mary Lou Hodnett
Supervisor of UIC program

Division of Drinking and Ground Waters
Ohio EPA
1800 WaterMark Drive
P.O. Box 1049
Columbus, OH 43266-0149.

XII. TERMINATION

78. Within thirty (30) days after Defendant determines it has fully complied with all of the requirements of this Consent Order, it shall submit to Plaintiff a certification of compliance. If Ohio EPA concurs that Defendant has fully satisfied the requirements of this Consent Order, the parties shall file a joint motion with the Court to terminate this Consent Order. Upon approval of the Court, this Consent Order and the obligations hereunder shall terminate.

79. If Plaintiff does not agree that Defendant has complied with and/or fully satisfied the requirements of this Consent Order, the Defendant may file a motion pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure requesting that the Court terminate this Order. The Plaintiff reserves all rights to respond to any motion to terminate that Defendant may file.



JUDGE, COURT OF COMMON PLEAS,
ASHTABULA COUNTY

APPROVED:

LEE FISHER
ATTORNEY GENERAL OF OHIO

By: Terrence S. Finn
TERRENCE S. FINN (0039391)
CHRISTOPHER KORLESKI (0039770)
Assistant Attorneys General
Environmental Enforcement Section
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(614) 466-2766

Attorneys for Plaintiff
State of Ohio

By: Maureen A. Brennan
MAUREEN A. BRENNAN (0041000)
Baker & Hostetler
3200 National City Center
1900 East 9th Street
Cleveland, Ohio 44114-3485

Attorney for Defendant
Reserve Environmental Services, Inc.

By: Donald R. Koski
DONALD R. KOSKI
President
Reserve Environmental Services, Inc.

APPENDIX A

Pursuant to paragraph 12, above, Defendant is ordered and enjoined to submit the following documents for the past five fiscal years for Reserve Environmental Services, Inc. and Koski Construction Company, as well as a statement identifying the fiscal year for each company:

1. All financial statements and attachments, including balance sheets, statements of income, statements of changes in financial position, and statements of investments and distributions;
2. Any auditors notes regarding the annual financial statements, including accounting policies, contingencies, and numbers of shares of stock outstanding;
3. Table(s) of organization showing the relationship of any and all parent and/or subsidiary companies;
4. Identification of all owners and/or shareholders;
5. Standardize industrial classification code(s);
6. Corporate franchise tax reports;
7. Federal income tax returns.

APPENDIX B

INTERIM EFFLUENT LIMITATIONS

<u>PARAMETER</u>	<u>MONTHLY AVERAGE</u>	<u>DAILY MAXIMUM</u>
ZINC	790 ug/l	1185 ug/l
COPPER	57 ug/l	85 ug/l
LEAD	131 ug/l	131 ug/l

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

STATE OF OHIO, ex. rel.

Plaintiff,

v.

RESERVE ENVIRONMENTAL
SERVICES, INC.

Defendant.

Case No. 93CV 563

JUDGE MACKEY

MODIFICATION OF
CONSENT ORDER

FILED
ASHTABULA COUNTY, OHIO
COURT OF COMMON PLEAS
FEB 7 9 06 AM '95

The Complaint in the above-captioned matter having been filed, and the Plaintiff State of Ohio ("State") and the Defendant Reserve Environmental Services, Inc. ("Defendant") having consented to the entry of this Court's October 14, 1993 Consent Order.

As set forth in the Joint Motion to Modify the October 14, 1993 Consent Order (Joint Motion to Modify), the State and the Defendant have negotiated a resolution of the State's pending civil penalty claims. This resolution is set forth in the terms of this Modification of the October 14, 1994 Consent Order ("Modification").

Now, therefore, it is Ordered, Adjudged, and Decreed as follows:

I. JURISDICTION

1. This Court has jurisdiction over the subject matter herein pursuant to Chapter 3734 and 6111 of the Ohio Revised Code ("R. C."), and paragraph 74 of the October 14, 1993 Consent Order. This Court has jurisdiction over the parties hereto. Venue is proper in this Court.

300

II. EFFECT OF MODIFICATION

2. This Modification shall supplement the terms and conditions of the October 14, 1993 Consent Order, as is fully set forth therein, except for the requirements set forth in paragraphs 7 and 75 of the October 14, 1993 Consent Order, which are superseded by this Modification in the following manner. So long as the Defendant complies with the supplemental injunctive provisions of this Modification, the State hereby waives its rights set forth in paragraph 7 of the October 14, 1993 Consent Order to obtain an additional civil penalty for the violations alleged in the State's Complaint. Further, paragraph 75 of the October 14, 1993 Consent Order referring to a civil penalty hearing is now moot.

3. Nothing in this Modification shall be construed to supersede or modify the October 14, 1993 Consent Order, except as provided in paragraph 2, above.

III. SUPPLEMENTAL INJUNCTION

4. Within 30 days of the filing of this Modification, the Defendant shall submit an erosion control plan for the reduction of sediment and erosion to the Ohio EPA for review and approval. The plan will provide for erosion control at a location(s) in Ashtabula County that is acceptable to the Ohio EPA. By way of illustrative example, the plan may provide for the planting of trees and vegetation to provide for erosion control.

5. In the event that the Ohio EPA notifies the Defendant that part or all of the plan is deficient, then the Defendant shall address the deficiency and revise the

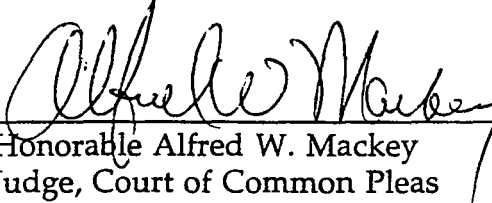
plan within 30 days of receipt of Ohio EPA's deficiencies. Ohio EPA may issue an approval of the plan with additional terms and conditions.

6. The Defendant is ordered and enjoined to comply with the approved erosion control plan, including but not limited to any schedules and/or deadlines contained therein.

IV. SUBMISSION OF DOCUMENTS

7. All documents required to be submitted to the Ohio EPA pursuant to this Modification shall be submitted to:

William Zawiski
DWPC
Ohio EPA
Northwest District Office
2116 East Aurora Road
Twinsburg, Ohio 44087


Honorable Alfred W. Mackey
Judge, Court of Common Pleas
Ashtabula County, Ohio

Approved:

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

BY: Terrence S. Finn
TERRENCE S. FINN (0039391)
CHRISTOPHER KORLESKI (0039770)
Assistant Attorneys General
Environmental Enforcement Section
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Reserve Environmental Services, Inc.

BY: Donald R. Koski
DONALD R. KOSKI
President
Reserve Environmental Services, Inc.