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IN THE COURT OF COMMON PLEAS
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HOLMES COUNTY, OHIO

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COMMON PLEAS COURT
HOLMES COUNTY, OHIO

STATE OF OHIO ex. rel.	:	**CASE NO. 83-C-129**
BETTY MONTGOMERY	:	**40-12988**
ATTORNEY GENERAL OF OHIO,	:	
	:	
Plaintiff,	:	
	:	**JUDGE WHITE**
v.	:	
	:	
UNION CHEESE COMPANY,	:	
et. al.,	:	**STIPULATION OF FACT**
	:	
Defendants.	:	

Now come the parties to the above captioned case, and hereby agree to the following stipulations to be entered into the record for the March 28, 1995 Show Cause Hearing:

1. In response to this Court's January 12, 1995 Journal Entry of the Court's Findings of Facts, Conclusions of Law and Order (hereinafter "January 12, 1995 Order"), counsel for the State sent counsel for the Defendants a letter, via U.S. mail and facsimile transmission, on January 19, 1995. In this letter, the State identified five (5) separate plans that the Defendants must to submit to the Ohio EPA in order to comply with the January 12, 1995 Order. In addition, in that same letter, the State also identified the amount of the outstanding civil penalty, with interest, due to the State through January 16, 1994.

2. During the first week of February, 1995, counsel for the State spoke with Defendants' counsel over the phone and confirmed that Defendants' counsel received the State's January 19, 1995 letter.

3. On February 8, 1995, counsel for the State sent a second letter, via U.S. mail and facsimile transmission, to counsel for the Defendants, notifying the Defendants that the State still had not received a response to the State's January 19, 1995 request for submission of plans, nor had the State received the outstanding civil penalty.

4. On February 17, 1995, Defendant Gangale and his consultant met with representatives of the Ohio EPA to discuss the plans identified in the State's January 19, 1995 letter.

5. On February 24, 1995, the Defendants' consultant sent a letter to the Ohio EPA as a follow-up to the February 17, 1995 meeting.

6. On March 15, 1995, Defendants' consultant sent an additional letter to the Ohio EPA informing the Ohio EPA that the Defendants conducted additional sampling at various locations, including the two lagoons located at Defendants' property in Buck Township which are the subject of this contempt action.

7. As a result of recent negotiations between the State and the Defendants, the Defendants will be undertaking the activities identified in subparagraphs 7A through 7D, below, on or before the corresponding date for each activity. By way of this stipulation, the Defendants represent that they will comply with this schedule. The State represents that this schedule is acceptable to the State to remediate the specific violations that are identified in those paragraphs.

7A. BUCKS TOWNSHIP PONDS (CHARGE II. A.)[1]

i. Based upon the analytical results represented in the Defendants' March 15, 1995 letter, the Defendants will not be required to take any further remedial action for the pond identified in that letter as Rainbow 1.

ii. With regard to Rainbow 2, as identified in the Defendants' March 15, 1995 letter, the Defendants will do the following:

1) May 15, 1995 - Commence trucking of 4,000 gallons per day of Rainbow 2 liquid contents to a treatment plant that has been preapproved by the Ohio EPA to accept this waste.

2) October 1, 1995 - Complete the hauling of the liquid contents of Rainbow 2.

3) August 30, 1996 - Complete hauling of the dry sludge/solids within Rainbow 2, and manage the same in accordance with a sludge management plan that has been approved by the Ohio EPA.

7B. SLUDGE MANAGEMENT PLAN (CHARGE II. B.)

July 15, 1995 - Defendants will submit to the Ohio EPA for review and approval a sludge management plan for the management of the sludge generated by the Union Cheese facility's wastewater treatment

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[1]Charge II. A. refers to the violation identified in the corresponding section in the State's Charges in Contempt.

plant, as well as the management of the sludge from Rainbow 2. This plan must meet the requirements of O.A.C. 3745-31-02(B).

7C. WASTEWATER TREATMENT PLANT PERFORMANCE EVALUATION (CHARGE II.D.)

June 30, 1995 - The submission of a plan to the Ohio EPA for review and approval, formulated from a comprehensive performance evaluation ("CPE"), conducted in accordance with U.S. EPA's publication entitled Retrofitting POTW's. This plan shall identify all steps necessary in order to correct any problems identified within the CPE, as well as dates by which those items will be completed. Further, the Defendants shall implement all steps necessary in order to correct any problems identified within the approved CPE, by the dates identified therein.

7D. OUTSTANDING CIVIL PENALTY (CHARGE II. E.)

As of May 16, 1995, the Defendants will owe the State of Ohio $73,466.40 in unpaid civil penalties and interest. The Defendants shall pay this outstanding balance no later than May 31, 1995.

8. Attachment I to this stipulation contains a number of air analytical reports obtained at the Troyers' home by Barry Ramsey from October 13, 1994 through March 20, 1995. These reports are true and accurate copies of the reports maintained by Mr. Ramsey at the Department of Industrial Relations. These results identified in these reports were obtained using the same sampling and analytical methodologies described by Mr. Ramsey during the October 3 and 4, 1995 hearing.

9. Attachment II to this stipulation contains three monthly operating reports ("MOR") for the Defendants' wastewater treatment plant at the Union Cheese facility. These MOR's are true and accurate copies of the MOR's submitted to the Ohio EPA by the Defendants as required by the Defendants NPDES permit, and which are maintained by the Ohio EPA. These MORs identify the following violations for the parameter BOD_5 for the corresponding months:

MONTH	REPORTED	LIMIT
September, 1994	26 mg/L	20 mg/L (30 day average)
December, 1994	23.5 mg/L	20 mg/L (30 day average)
January 1995	37.5 mg/L	20 mg/L (30 day average)

10. Attachments I and II to this Stipulation are fully incorporated herein.

11. The State requests that Attachment I and II be admitted into evidence as State's Exhibits 21 and 22, respectively, and be placed into the State's exhibit binder. The Defendants are not opposed to Attachments I and II being admitted into evidence.

Respectfully submitted,

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

TERRENCE S. FINN (0039391)
JOAN R. KOOISTRA (0055226)
Assistant Attorneys General
Environmental Enforcement Section
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Columbus, Ohio 43215-3428

Paul Gordon / by T.S.F. per phone authorization

PAUL GORDON, Esq.
404 N. Walnut
Dover, Ohio 44622

ATTACHMENT I

AIR MONITORING RESULTS

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF MINES LABORATORY
CAMBRIDGE, OHIO 43725

AIR SAMPLE ANALYSIS

MINE **MINE NO.**

COMPANY John Troyer, 3718 T-162 Sugarcreek, OH 44681

COLLECTED BY Barry Ramsay

DATE RECEIVED 10-13-94

Date Taken	Time Taken	Bottle Number	Lab Number	Location Sampled	Air Quantity	Carbon Dioxide	Oxygen	Methane	Carbon Monoxide	Ethane	Hydrogen	Nitrogen	*Calcu.* Argon	Propane	Ethylene	Acetylene
10-13-94	11:14 A.M	BR-1	M-143	Kitchen floor		0.19	20.95	0.00	0.00	0.00	0.00	77.92	0.94	0.00	0.00	0.00
10-13-94	11:18 A.M	BR-2	M-144	Living room floor		0.18	20.95	0.00	0.00	0.00	0.00	77.92	0.95	0.00	0.00	0.00
10-13-94	11:21 A.M	BR-3	M-145	Basement floor		2.38	18.87	0.00	0.00	0.00	0.00	77.81	0.94	0.00	0.00	0.00

DATE 10-14-94

CHIEF CHEMIST Barry Ramsay

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF MINES LABORATORY
CAMBRIDGE, OHIO 43725

AIR SAMPLE ANALYSIS

MINE **MINE NO.**

COMPANY John Troyer , 3718 T-162 Sugarcreek, OH 44681

COLLECTED BY Barry Ramsay

DATE RECEIVED 10-20-94

Date Taken	Time Taken	Bottle Number	Lab Number	Location Sampled	Air Quantity	Carbon Dioxide	Oxygen	Methane	Carbon Monoxide	Ethane	Hydrogen	Nitrogen	*Calcu.* Argon	Propane	Ethylene	Acetylene
10-20-94	9:36 A.M.	BR-1	M-146	Kitchen floor	N/A	0.22	20.95	0.00	0.00	0.00	0.00	77.88	0.95	0.00	0.00	0.00
10-20-94	9:39 A.M.	BR-2	M-147	Living room floor	N/A	0.24	20.95	0.00	0.00	0.00	0.00	77.86	0.95	0.00	0.00	0.00
10-20-94	9:42 A.M.	BR-3	M-148	Basement floor	N/A	3.21	18.11	0.00	0.00	0.00	0.00	77.73	0.95	0.00	0.00	0.00

DATE 10-20-94

CHIEF CHEMIST Barry Ramsay /BLT

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF MINES LABORATORY
CAMBRIDGE, OHIO 43725

AIR SAMPLE ANALYSIS

MINE **MINE NO.**

COMPANY John Troyer 3718 T-162 Sugarcreek, Ohio 44681

COLLECTED BY Barry Ramsay

DATE RECEIVED 10-27-94

Date Taken	Time Taken	Bottle Number	Lab Number	Location Sampled	Air Quantity	Carbon Dioxide	Oxygen	Methane	Carbon Monoxide	Ethane	Hydrogen	Nitrogen	*Calcu.* Argon	Propane	Ethylene	Acetylene
10-27-94	11:59 A.M	BR-1	M-149	Kitchen Floor	N/A	0.23	20.95	0.00	0.00	0.00	0.00	77.89	0.93	0.00	0.00	0.00
10-27-94	12:01 P.M	BR-2	M-150	Living room floor	N/A	0.23	20.95	0.00	0.00	0.00	0.00	77.88	0.94	0.00	0.00	0.00
10-27-94	12:05 P.M	BR-3	M-151	Basement floor	N/A	0.23	20.95	0.00	0.00	0.00	0.00	77.89	0.93	0.00	0.00	0.00

DATE 10-28-94

CHIEF CHEMIST Barry Ramsay / MT

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF MINES LABORATORY
CAMBRIDGE, OHIO 43725

AIR SAMPLE ANALYSIS

MINE **MINE NO.**

COMPANY John Troyer 3718 T-162 Sugarcreek, Oh. 44681

COLLECTED BY Barry Ramsay

DATE RECEIVED 11-17-94

Date Taken	Time Taken	Bottle Number	Lab Number	Location Sampled	Air Quantity	Carbon Dioxide	Oxygen	Methane	Carbon Monoxide	Ethane	Hydrogen	Nitrogen	*Calcu.* Argon	Propane	Ethylene	Acetylene
11-17-94	10:09 A.M	BR-1	M-166	Kitchen floor	N/A	0.15	20.95	0.00	0.00	0.00	0.00	77.95	0.95	0.00	0.00	0.00
11-17-94	10:11 A.M	BR-2	M-167	Livingroom floor	N/A	0.14	20.95	0.00	0.00	0.00	0.00	77.97	0.94	0.00	0.00	0.00
11-17-94	10:13 A.M	BR-3	M-168	Basement floor	N/A	1.85	19.31	0.00	0.00	0.00	0.00	77.90	0.94	0.00	0.00	0.00

DATE 11-17-94

CHIEF CHEMIST Barry Ramsay /mt

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF MINES LABORATORY
CAMBRIDGE, OHIO 43725

AIR SAMPLE ANALYSIS

MINE **MINE NO.**

COMPANY John Troyer 3718 T-162 Sugarcreek, OH. 4681

COLLECTED BY Barry Ramsay

DATE RECEIVED 12-01-94

Date Taken	Time Taken	Bottle Number	Lab Number	Location Sampled	Air Quantity	Carbon Dioxide	Oxygen	Methane	Carbon Monoxide	Ethane	Hydrogen	Nitrogen	Calcu. Argon	Propane	Ethylene	Acetylene
12-01-94	10:09 A.M	BR-1	M-169	Center of kitchen floor	N/A	0.22	20.95	0.00	0.00	0.00	0.00	77.88	0.95	0.00	0.00	0.00
12-01-94	10:11 A.M	BR-2	M-170	Center of living room floor	N/A	0.20	20.95	0.00	0.00	0.00	0.00	77.91	0.94	0.00	0.00	0.00
12-01-94	10:13 A.M	BR-3	M-171	Center of basement floor	N/A	3.27	18.43	0.00	0.00	0.00	0.00	77.35	0.95	0.00	0.00	0.00

DATE 12-02-94

CHIEF CHEMIST Barry Ramsay /mt

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF MINES LABORATORY
CAMBRIDGE, OHIO 43725

AIR SAMPLE ANALYSIS

MINE **MINE NO.**

COMPANY John Troyer 3718 T-162 Sugarcreek, OH. 44681

COLLECTED BY Barry Ramsay

DATE RECEIVED 12-08-94

Date Taken	Time Taken	Bottle Number	Lab Number	Location Sampled	Air Quantity	Carbon Dioxide	Oxygen	Methane	Carbon Monoxide	Ethane	Hydrogen	Nitrogen	*Calcu.* Argon	Propane	Ethylene	Acetylene
12-08-94	10:05 A.M	BR-1	M-172	Kitchen floor	N/A	0.08	20.95	0.00	0.00	0.00	0.00	78.02	0.95	0.00	0.00	0.00
12-08-94	10:07 A.M	BR-2	M-173	Living room floor	N/A	0.09	20.95	0.00	0.00	0.00	0.00	78.01	0.95	0.00	0.00	0.00
12-08-94	10:09 A.M	BR-3	M-174	Basement floor	N/A	0.64	20.82	0.00	0.00	0.00	0.00	77.60	0.94	0.00	0.00	0.00

DATE 12-09-94

CHIEF CHEMIST Barry Ramsay /mt

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF MINES LABORATORY
CAMBRIDGE, OHIO 43725

AIR SAMPLE ANALYSIS

MINE **MINE NO.**

COMPANY John Troyer 3718 T-162 Sugarcreek, OH. 44681

COLLECTED BY Barry Ramsay

DATE RECEIVED 12-15-94

Date Taken	Time Taken	Bottle Number	Lab Number	Location Sampled	Air Quantity	Carbon Dioxide	Oxygen	Methane	Carbon Monoxide	Ethane	Hydrogen	Nitrogen	*Calcu.* Argon	Propane	Ethylene	Acetylene
12-15-94	9:10 A.M.	BR-1	M-175	Center of kitchen floor	N/A	0.20	20.95	0.00	0.00	0.00	0.00	77.90	0.95	0.00	0.00	0.00
12-15-94	9:11 A.M.	BR-2	M-176	Center of living room floor	N/A	0.20	20.95	0.00	0.00	0.00	0.00	77.90	0.95	0.00	0.00	0.00
12-15-94	9:14 A.M.	BR-3	M-177	Center of basement floor	N/A	1.50	20.06	0.00	0.00	0.00	0.00	77.50	0.94	0.00	0.00	0.00

DATE 12-16-94

CHIEF CHEMIST Barry Ramsay /mt

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF MINES LABORATORY
CAMBRIDGE, OHIO 43725

AIR SAMPLE ANALYSIS

MINE **MINE NO.**

COMPANY John Troyer 3718 T-162 Sugarcreek, OH. 44681

COLLECTED BY Barry Ramsay

DATE RECEIVED 12-22-94

Date Taken	Time Taken	Bottle Number	Lab Number	Location Sampled	Air Quantity	Carbon Dioxide	Oxygen	Methane	Carbon Monoxide	Ethane	Hydrogen	Nitrogen	*Calcu.* Argon	Propane	Ethylene	Acetylene
12-22-94	9:26 A.M.	BR-1	M-178	Center of kitchen floor	N/A	0.36	20.95	0.00	0.00	0.00	0.00	77.75	0.94	0.00	0.00	0.00
12-22-94	9:28 A.M.	BR-2	M-179	Center of living room floor	N/A	0.39	20.95	0.00	0.00	0.00	0.00	77.72	0.94	0.00	0.00	0.00
12-22-94	9:30 A.M.	BR-3	M-180	Center of basement floor	N/A	2.92	18.31	0.00	0.00	0.00	0.00	77.83	0.94	0.00	0.00	0.00

DATE 12-22-94

CHIEF CHEMIST Barry Ramsay /mt

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF MINES LABORATORY
CAMBRIDGE, OHIO 43725

AIR SAMPLE ANALYSIS

MINE **MINE NO.**

COMPANY John Troyer 3718 T-162 Sugarcreek, OH. 44681

COLLECTED BY Barry Ramsay Barometer Reading 29.75

DATE RECEIVED 01-05-95

Date Taken	Time Taken	Bottle Number	Lab Number	Location Sampled	Air Quantity	Carbon Dioxide	Oxygen	Methane	Carbon Monoxide	Ethane	Hydrogen	Nitrogen	*Calcu.* Argon	Propane	Ethylene	Acetylene
01-05-95	8:21 A.M.	BR-1	M-204	Center of kitchen floor	N/A	0.23	20.95	0.00	0.00	0.00	0.00	77.88	0.94	0.00	0.00	0.00
01-05-95	8:23 A.M.	BR-2	M-205	Center of living room floor	N/A	0.22	20.95	0.00	0.00	0.00	0.00	77.79	1.04	0.00	0.00	0.00
01-05-95	8:25 A.M.	BR-3	M-206	Basement floor	N/A	9.01	11.00	0.00	0.00	0.00	0.00	79.06	0.93	0.00	0.00	0.00

DATE 01-05-95

CHIEF CHEMIST Barry Ramsay

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF MINES LABORATORY
CAMBRIDGE, OHIO 43725

AIR SAMPLE ANALYSIS

MINE **MINE NO.**

COMPANY John Troyer 3718 T-162 Sugarcreek, OH. 44681

COLLECTED BY Barry Ramsay

DATE RECEIVED 01-12-95 Barometer Reading: 29.30

Date Taken	Time Taken	Bottle Number	Lab Number	Location Sampled	Air Quantity	Carbon Dioxide	Oxygen	Methane	Carbon Monoxide	Ethane	Hydrogen	Nitrogen	*Calcu.* Argon	Propane	Ethylene	Acetylene
01-12-95	11:09 A.M	BR-1	M-234	Center of kitchen floor	N/A	0.39	20.83	0.00	0.00	0.00	0.00	77.83	0.95	0.00	0.00	0.00
01-12-95	11:12 A.M	BR-2	M-235	Center of living room floor	N/A	0.37	20.85	0.00	0.00	0.00	0.00	77.82	0.96	0.00	0.00	0.00
01-12-95	11:15 A.M	BR-3	M-236	Basement floor near the water purifier	N/A	7.39	12.14	0.00	0.00	0.00	0.00	79.52	0.95	0.00	0.00	0.00

DATE 01-13-95

CHIEF CHEMIST Barry Ramsay /mt

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF MINES LABORATORY
CAMBRIDGE, OHIO 43725

AIR SAMPLE ANALYSIS

MINE **MINE NO.**

COMPANY John Troyer 3718 T-162 Sugarcreek, OH. 44681

COLLECTED BY Barry Ramsay

DATE RECEIVED 01-19-95 Barometer Reading : 29.60

Date Taken	Time Taken	Bottle Number	Lab Number	Location Sampled	Air Quantity	Carbon Dioxide	Oxygen	Methane	Carbon Monoxide	Ethane	Hydrogen	Nitrogen	Calcu. Argon	Propane	Ethylene	Acetylene
01-19-95	10:47 A.M	BR-1	M-259	Center of kitchen floor	N/A	0.35	20.85	0.00	0.00	0.00	0.00	77.85	0.95	0.00	0.00	0.00
01-19-95	10:48 A.M	BR-2	M-260	Center of living room floor	N/A	0.32	20.88	0.00	0.00	0.00	0.00	77.85	0.95	0.00	0.00	0.00
01-19-95	10:53 A.M	BR-3	M-261	Basement floor near the water purifier	N/A	10.19	7.86	0.00	0.00	0.00	0.00	80.99	0.96	0.00	0.00	0.00

DATE 01-19-95

CHIEF CHEMIST Barry Ramsay

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF MINES LABORATORY
CAMBRIDGE, OHIO 43725

AIR SAMPLE ANALYSIS

MINE **MINE NO.**

COMPANY John Troyer 3718 T-162 Sugarcreek, OH. 44681

COLLECTED BY Barry Ramsay

DATE RECEIVED 01-26-95 Barometer Reading: 29.82

Date Taken	Time Taken	Bottle Number	Lab Number	Location Sampled	Air Quantity	Carbon Dioxide	Oxygen	Methane	Carbon Monoxide	Ethane	Hydrogen	Nitrogen	*Calcu.* Argon	Propane	Ethylene	Acetylene
01-26-95	10:05 A.M	BR-1	M-001	Center of kitchen floor	N/A	0.14	20.95	0.00	0.00	0.00	0.00	77.96	0.95	0.00	0.00	0.00
01-26-95	10:07 A.M	BR-2	M-002	Center of living room floor	N/A	0.13	20.95	0.00	0.00	0.00	0.00	77.97	0.95	0.00	0.00	0.00
01-26-95	10:10 A.M	BR-3	M-003	Basement floor near the water purifier	N/A	2.41	18.62	0.00	0.00	0.00	0.00	78.02	0.95	0.00	0.00	0.00

DATE 01-26-95

CHIEF CHEMIST Barry Ramsay

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF MINES LABORATORY
CAMBRIDGE, OHIO 43725

AIR SAMPLE ANALYSIS

MINE **MINE NO.**

COMPANY John Troyer 3718 T-162 Sugarcreek, OH. 44681

COLLECTED BY Barry Ramsay

DATE RECEIVED 02-02-95 Barometer Reading: 29.52

Date Taken	Time Taken	Bottle Number	Lab Number	Location Sampled	Air Quantity	Carbon Dioxide	Oxygen	Methane	Carbon Monoxide	Ethane	Hydrogen	Nitrogen	*Calcu.* Argon	Propane	Ethylene	Acetylene
02-02-95	7:58 A.M.	BR-1	M-028	Center of kitchen floor	N/A	0.20	20.95	0.00	0.00	0.00	0.00	77.90	0.95	0.00	0.00	0.00
02-02-95	8:00 A.M.	BR-2	M-029	Center of the living room floor	N/A	0.20	20.95	0.00	0.00	0.00	0.00	77.90	0.95	0.00	0.00	0.00
02-02-95	8:10 A.M.	BR-3	M-030	Basement floor near the water purifier	N/A	5.22	15.82	0.00	0.00	0.00	0.00	78.02	0.94	0.00	0.00	0.00

DATE 02-02-95

CHIEF CHEMIST Barry Ramsay /mt

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF MINES LABORATORY
CAMBRIDGE, OHIO 43725

AIR SAMPLE ANALYSIS

MINE **MINE NO.**

COMPANY John Troyer 3718 T-162 Sugarcreek, OH. 44681

COLLECTED BY Barry Ramsay

DATE RECEIVED 02-09-95 **BAROMETER READING:** 29.64

Date Taken	Time Taken	Bottle Number	Lab Number	Location Sampled	Air Quantity	Carbon Dioxide	Oxygen	Methane	Carbon Monoxide	Ethane	Hydrogen	Nitrogen	*Calcu.* Argon	Propane	Ethylene	Acetylene
02-09-95	10:05 A.M	BR-1	M-035	Center of kitchen floor	N/A	0.30	20.95	0.00	0.00	0.00	0.00	77.80	0.95	0.00	0.00	0.00
02-09-95	10:07 A.M	BR-2	M-036	Center of the living room floor	N/A	0.29	20.95	0.00	0.00	0.00	0.00	77.82	0.94	0.00	0.00	0.00
02-09-95	10:10 A.M	BR-3	M-037	Basement floor near the water purifier	N/A	8.80	10.81	0.00	0.00	0.00	0.00	79.46	0.93	0.00	0.00	0.00

DATE 02-09-95

CHIEF CHEMIST Barry Ramsay

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF MINES LABORATORY
CAMBRIDGE, OHIO 43725

AIR SAMPLE ANALYSIS

MINE **MINE NO.**

COMPANY John Troyer 3718 T-162 Sugarcreek, OH. 44681

COLLECTED BY Barry Ramsay

DATE RECEIVED 02-24-95 **BAROMETER READING:** 29.73

Date Taken	Time Taken	Bottle Number	Lab Number	Location Sampled	Air Quantity	Carbon Dioxide	Oxygen	Methane	Carbon Monoxide	Ethane	Hydrogen	Nitrogen	*Calcu.* Argon	Propane	Ethylene	Acetylene
02-24-95	7:39 A.M.	BR-1	M-038	Center of kitchen floor	N/A	0.26	20.90	0.00	0.00	0.00	0.00	77.91	0.93	0.00	0.00	0.00
02-24-95	7:40 A.M.	BR-2	M-039	Center of the living room floor	N/A	0.25	20.92	0.00	0.00	0.00	0.00	77.90	0.93	0.00	0.00	0.00
02-24-95	7:41 A.M.	BR-3	M-040	Basement floor near the water purifier	N/A	4.97	15.38	0.00	0.00	0.00	0.00	78.72	0.93	0.00	0.00	0.00

DATE 02-24-95

CHIEF CHEMIST Barry Ramsay

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF MINES LABORATORY
CAMBRIDGE, OHIO 43725

AIR SAMPLE ANALYSIS

MINE **MINE NO.**

COMPANY John Troyer 3718 T-162 Sugarcreek, OH. 44681

COLLECTED BY Barry Ramsay

DATE RECEIVED 03-02-95 **BAROMETER READING:** 30.10

Date Taken	Time Taken	Bottle Number	Lab Number	Location Sampled	Air Quantity	Carbon Dioxide	Oxygen	Methane	Carbon Monoxide	Ethane	Hydrogen	Nitrogen	*Calcu.* Argon	Propane	Ethylene	Acetylene
03-02-95	10:00 A.M.	BR-1	M-054	Center of the Kitchen floor	N/A	0.15	20.95	0.00	0.00	0.00	0.00	77.98	0.92	0.00	0.00	0.00
03-02-95	10:03 A.M.	BR-2	M-055	Center of the Living Room floor	N/A	0.16	20.95	0.00	0.00	0.00	0.00	77.97	0.92	0.00	0.00	0.00
03-02-95	10:07 A.M.	BR-3	M-056	Basement floor near the water purifier	N/A	0.83	20.30	0.00	0.00	0.00	0.00	77.94	0.93	0.00	0.00	0.00

DATE 03-02-95

CHIEF CHEMIST Barry Ramsay

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF MINES LABORATORY
CAMBRIDGE, OHIO 43725

AIR SAMPLE ANALYSIS

MINE **MINE NO.**

COMPANY John Troyer 3718 T-162 Sugarcreek, OH. 44681

COLLECTED BY Barry Ramsay

DATE RECEIVED 03-09-95 **BAROMETER READING:** 29.88

Date Taken	Time Taken	Bottle Number	Lab Number	Location Sampled	Air Quantity	Carbon Dioxide	Oxygen	Methane	Carbon Monoxide	Ethane	Hydrogen	Nitrogen	*Calcu.* Argon	Propane	Ethylene	Acetylene
03-09-95	9:00 A.M.	BR-1	M-087	Center of kitchen floor	N/A	0.12	20.95	0.00	0.00	0.00	0.00	78.01	0.92	0.00	0.00	0.00
03-09-95	9:03 A.M.	BR-2	M-088	Center of the living room floor	N/A	0.14	20.95	0.00	0.00	0.00	0.00	77.99	0.92	0.00	0.00	0.00
03-09-95	9:06 A.M.	BR-3	M-089	Center of basement floor	N/A	0.28	20.88	0.00	0.00	0.00	0.00	77.93	0.91	0.00	0.00	0.00

DATE 03-09-95

CHIEF CHEMIST Barry Ramsay

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF MINES LABORATORY
CAMBRIDGE, OHIO 43725

AIR SAMPLE ANALYSIS

MINE **MINE NO.**

COMPANY John Troyer 3718 T-162 Sugarcreek, OH. 44681

COLLECTED BY Barry Ramsay

DATE RECEIVED 03-20-95 **BAROMETER READING:** 29.05

Date Taken	Time Taken	Bottle Number	Lab Number	Location Sampled	Air Quantity	Carbon Dioxide	Oxygen	Methane	Carbon Monoxide	Ethane	Hydrogen	Nitrogen	*Calcu.* Argon	Propane	Ethylene	Acetylene
03-20-95	12:48 P.M.	BR-1	M-093	Center of the kitchen floor	N/A	0.09	20.95	0.00	0.00	0.00	0.00	78.00	0.96	0.00	0.00	0.00
03-20-95	12:51 P.M.	BR-2	M-094	Center of the living room floor	N/A	0.10	20.94	0.00	0.00	0.00	0.00	78.01	0.95	0.00	0.00	0.00
03-20-95	12:56 P.M.	BR-3	M-095	Basement floor near the water purifier	N/A	6.93	11.43	0.00	0.00	0.00	0.00	80.69	0.95	0.00	0.00	0.00

DATE 03-20-95

CHIEF CHEMIST Barry Ramsay

ATTACHMENT II

MONTHLY OPERATING REPORTS

9401 9412 831202

4500

NTHLY REPORT FORM

NION CHEESE CO 3IH00065001 XXXXX 1994 SEPT. 1 1 10/30/93 OH008377

ROUTE 1, BOX 482 001 INDUSTRIAL WASTEWATER TREATMENT PLANT
SUGARCREEK 44681 HOLMES

FORM

Water & Wastewater Labs., Inc. John Ondo

3	3	3	1
1	1	1	999
BOD 5 DAY MG/L	PH S.U.	RESIDU T. NFL MG/L	CONDUI FLOW MGD
00310	00400	00530	50050
29	7.9	14	0.014
23	8.5	12	0.014
52	16.4	26	0.028
26	8.2	13	0.014
29	8.5	14	0.014
23	7.9	12	0.014

94 OCT 21 AM 10: 10

OHIO EPA RECEIVED DSW

REPORTER

3IH00065001

9401 9412 831202 4500

NTHLY REPORT FORM

REPORTED

ADDRESS CITY COUNTY ZIP | STATION CODE | DATE MONTH YEAR

UNION CHEESE CO | 3IH00065001 DEC 1994 | 1 1 10/30/93 OH008377

SAMPLING STATION DESCRIPTION

ROUTE 1, BOX 482
SUGARCREEK 44681 HOLMES

001 INDUSTRIAL WASTEWATER TREATMENT PLANT

FORM

WATER & WASTEWATER LABS, INC. JOHN ONDO

J. Ondo

	BOD 5 DAY MG/L	PH S.U.	RESIDU T. NFL MG/L	CONDUI FLOW MGD
	00310	00400	00530	50050
01				
02				
03				
04				
05				
06				
07				
08	17	7.7	11	0.014
09				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26	30	7.8	21	0.014
27				
28				
29				
30				
31				
	47	15.5	32	0.028
	23.5	7.75	16	0.014
	30	7.8	21	0.014
	17	7.7	11	0.014

REPORTER

3IH00065001

9501 ☐ 9512 831202 4500

THLY REPORT FORM

NION CHEESE CO 3IH00065001 JAN 1995 1 1 11/11/94 OH008377

P.O. BOX 765 001 INDUSTRIAL WASTEWATER TREATMENT PLANT
SUGARCREEK 44681 HOLMES

FORM

Water & Wastewater Labs, Inc. John Ondo J. Ondo

3	3	3	1
1	1	1	999

	BOD 5 DAY MG/L	PH S.U.	RESIDU T. NFL MG/L	CONDUI FLOW MGD
	00310	00400	00530	50050
1				
2				
3				
4	30	7.0	24	0.014
5				
6				
7				
8				
9				
10				
11				
12				
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14				
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17				
18	45	7.7	11	0.014
19				
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25				
26				
27				
28				
29				
30				
	75	14.7	35	0.028
	37.5	7.35	17.5	0.014
	45	7.7	24	0.014
	30	7.0	11	0.014

REPORTER

In The Court of Common Pleas

Holmes County, Ohio

FILED

'95 JAN 12 AM 11 46

DONOAD L. MILLER, CLERK
PLEAS COURT
HOLMES COUNTY, OHIO

STATE OF OHIO, ex. rel. LEE FISHER, ATTORNEY GENERAL OF OHIO, * **CASE NO. 83-CV-129**

Plaintiff, *

vs *

UNION CHEESE COMPANY, et. al. * **JOURNAL ENTRY**

Defendants. *

* *

DOCKET: FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING STATE'S MOTION FOR CONTEMPT; DEFENDANTS' FOUND IN CONTEMPT; DEFENDANTS ORDERED TO SUBMIT REMEDIAL PLANS AND APPEAR TO SHOW CAUSE WHY THEY SHOULD NOT BE PUNISHED AT 8:30 A.M. ON 3/28/95.

* *

I. Introduction.

This is a contempt action brought by the State of Ohio against Union Cheese Company and its principle owner and operator, Dominic Gangale, for their violations of the 1985 Consent Judgment and a 1988 Modification of that Judgment. The 1985 Consent Judgment sought to remedy Defendants' violations of Ohio's water pollution and control laws and nuisance laws, R.C. 6111 and 3767 respectively. As a result of Defendants continued and repeated noncompliance with this Court's orders, I find that both

THOMAS D. WHITE, Judge
(216) 674-5086
MILLERSBURG, OHIO 44654

y 115
p 206-214

Defendants are in contempt of court for the reasons set forth in the Statement of Facts and Conclusions of Law which follow.

II. Findings of Facts.

A. Background. Defendants are Dominic Gangale and Union Cheese Company, who operate a cheese processing plant located in Holmes County, Ohio. Defendants generate whey as a by-product of their cheese-processing. Whey is the thin, watery part of milk that separates from the curds, the thicker part, during the processing of cheese. Defendants also produce sludge as a by-product of their cheese processing and sewage treatment process.

As early as 1981, the Defendants began violating Ohio's environmental pollution control laws, by discharging pollutants into waters of the State without a permit and disposing of their whey in a manner causing a nuisance and polluting waters of the State. As a result, the Director of Environmental Protection (hereafter "Director") issued Final Findings and Orders to Defendants in February, 1982.

The 1982 Orders required Defendants to submit an application for a National Pollution Discharge Elimination System (hereafter "NPDES") permit and an approvable plan of action for the disposal of whey in a manner that the waters of the State would not be polluted. The Order also required installation of a wastewater treatment facility.

Subsequently, Defendants obtained an NPDES Permit and installed a wastewater treatment facility. They proceeded, however, to violate their NPDES permit by discharging inadequately treated wastewater into a nearby creek. Also, the whey disposal

plan, which was submitted two years late, was not approved. Even more disturbing, Defendants continued to illegally dispose of whey and other waste products to the detriment of the waters of the State. Thus, in 1985, the State filed a Complaint against Defendants for violations of Ohio's water pollution control and nuisance laws, R.C. Chapters 6111 and 3767. This Court resolved this litigation in a Consent Judgment Entry in 1985.

The Consent Judgment required Defendants to do the following:

1.) Withdraw their application for land application as the method of disposal of whey;

2.) Refrain from disposing of the whey on the land without prior approval of the Director;

3.) Refrigerate their whey, ship it to a facility that uses whey as raw material, and obtain a receipt for each truckload of whey delivered to such facility;

4.) Pay a civil penalty;

5.) Reclaim all ponds and surface impoundments into which Defendants previously disposed of whey; and,

6.) Comply with Ohio's water pollution laws, including Defendants' NPDES permits.

In 1988, the State filed charges in contempt with this Court as a result of Defendant's failure to comply with the civil penalty requirements of the 1985 Consent Judgment. In April 1988, this Court, at the request of the parties, entered a modification

of Consent Judgment which provided Defendants with a new more lenient civil penalty payment schedule. It is important to note that the 1988 Modification only modified the civil penalty provisions of the 1985 Consent Judgment, and specifically required Defendant to continue to comply with remaining provisions.

Subsequent to the entry of the 1988 Modification, Defendants continue to violate provisions of the 1985 Consent Judgment and 1988 Modification. These violations threaten to degrade the quality of waters of the State and pose health risks if Defendants are not required to abate the violations and further require penalties for disobedience of this Court's Orders.

B. State's Current Charges.

1. Illegal Disposal of Whey. Defendant's have been repeatedly disposing of their whey in a manner which pollutes the waters of the State and causes a public nuisance as early as 1981. Thus, the 1985 Judgment prohibited such actions. Despite the express language of the 1985 Judgment prohibiting land application of whey, Defendants have illegally disposed of their whey at a location in Bucks Township, Tuscarawas County, Ohio on several occasions since the entry of the 1985 Consent Order. The State proved that these violations occurred in at least 1990, 1992, 1993, and as late as August, 1994. Further, the State's evidence proved that this illegal disposal has contaminated a nearby tributary of the waters of the State.

2. Illegal Disposal of Sludge. In addition to the whey, Defendants have taken the sludge generated by their waste-water treatment plant to the same location in Bucks

Township, Tuscarawas County. This action is in violation of the State's water pollution laws, and thus a violation of the general injunctive provision of Sec. X of the 1985 Consent Judgment.

3. Failure to Meet Effluent Limits. Defendants have failed to comply with the effluent's limits contained within Defendants' NPDES permit on numerous occasions. These violations based on reports to the Director by the Defendants were identified and admitted into evidence at hearing.

4. Failure to Pay Civil Penalty. Defendants have failed to comply with either the 1985 Consent Judgment or the more lenient Modification in 1988 and are delinquent in unpaid civil penalties and interest.

5. Failure to Reclaim Former Disposal Site. While Defendants largely did not contest the other four contempt citations, Defendants stringently contest that their depositing large quantities of whey into an abandoned strip pit,improper reclamation of the pit and sale of the land resulted in very high levels of carbon dioxide in the basement of the home built on the site.

It is this dispute between the parties that has taken most of the Court's time in determining this matter. As late as 1984 Defendants had dumped "hundreds of thousands of gallons" of whey in a strip mine pit described in State's Exhibit 4 (See Testimony of Martin Polaski, Senior Environmental Engineer, Scientific Applications. Former Ohio Environmental Protection Agency Investigator responsible for this Case).

The Court finds by clear and convincing evidence that this repository of whey was

not reclaimed at the time the 1985 Consent Judgment was entered into by Defendants. Thus, Defendants had the obligation pursuant to Section XII of the 1985 Consent Judgment to reclaim the area in a manner approved by Ohio EPA.

Defendants never submitted the required reclamation plan to Ohio EPA for approval and never properly reclaimed the area.

By clear and convincing evidence I find that when EPA Agent Polaski and Defendants' consulting engineer, Thomas J. Weber, went to the site, Defendants had already covered over the site with some dirt thus negating the express mandate of the 1985 Consent Judgment.

Jennifer Troyer testified that she and her husband built their house on the subject land in September 1992. She did not know Defendant Dominic Gangale and purchased the land through Kauffman Realty. Kauffman Realty was acting as Defendant's agent and after the purchase agreement was signed, the Troyers were told that there was a holdup in the proceedings mentioning that there might have been a problem with whey being disposed of on the property but that it was "cleared up".

The representation to the Troyers by Defendant's real estate agent was patently false.

After building their home on the site, the Troyers had difficulties keeping their gas hot water heater in their basement lighted, having to replace the gas water heater with an electric water heater.

The Troyers subsequently noticed a shortness of breath in family members when

they went into the basement and problems with their family pets who were in the basement.

The Troyers were referred upon inquiry to the government to Perry Ramsay of the Division of Mines of the Department of Industrial Relations, Laboratory Division. Mr. Ramsay testified that the Troyer basement contained unhealthful levels of carbon dioxide.

The bone of contention between the parties is the cause of the excessive carbon dioxide in the Troyer residence. Defendants contend that the carbon dioxide is generated by natural conditions and/or is a byproduct of the strip mining.

Defendants' contention is contradicted by Defendants' expert witness, David Bennett. Mr. Bennett opined that when low-grade coal oxidizes it emits carbon dioxide. However, in response to the Court's questions, Mr. Bennett indicated that he had never heard of a carbon dioxide problem like the Troyers have when building on a reclaimed strip mine. Furthermore, the length of time between last mining operations (sometime in the 1960's) and the time when Defendants covered over the pit (post 1985) would most certainly have allowed for oxidation of most if not all of the low-grade coal left as a result of the strip mining operation.

I am thus left with a pit within hundreds of feet of the Troyer residence which contained hundreds of thousands of gallons of whey improperly covered over with one to two feet of topsoil. All experts agree that decomposing whey generates gas.

In my opinion, the thing speaks for itself and the doctrine of res ipsa loquitur must apply.

By clear and convincing evidence, I find that the high levels of carbon dioxide in the Troyer residence are not natural byproducts of reclaimed strip mines nor is it a naturally occurring phenomenon in the area. (No neighbors of the Troyers have experienced similar problems.)

Therefore, by the elimination of all other possible causes of high levels of carbon dioxide I find that the Troyers' unhealthful home has been caused by the hundreds of thousands of gallons of whey dumped and improperly covered over on what is now the Troyer property.

The Defendants, as a direct result of their violation of the Court's 1985 Consent Order, have created the Troyers' unhealthful living situation.

III. CONCLUSIONS OF LAW.

Based upon the above Findings of Fact, I find the Defendants, Union Cheese Company and Dominic Gangale, jointly and severally, in contempt of this court for failure to abide by prior Orders of this Court.

Specifically, I find that Defendants are in contempt of this Court for violating the 1985 Consent Order and the 1988 Modification Order in that Defendants have:

1.) Illegally disposed of whey from their operation in Bucks Township, Tuscarawas County, Ohio.

2.) Illegally disposed of sludge generated by their wastewater treatment plant in Bucks Township, Tuscarawas County, Ohio.

3.) Defendants have failed to comply with effluent limits contained within

Defendants' NPDES Permit on numerous occasions.

4.) Defendants have failed to pay the civil penalty and interest agreed to in the 1985 Consent Judgment and the 1988 Modification Order; and,

5.) The Defendants violated Section XII of the 1985 Consent Judgment which required that the area under the Troyer property be reclaimed in the manner approved by Ohio EPA.

IV. ORDER.

Defendants having been found in contempt, they are Ordered to immediately submit to the Attorney General plans acceptable by the state to remedy these citations and to purge themselves of Contempt of Court.

Defendants shall appear before a Judge of this Court at 8:30 a.m. on March 28, 1995, and thereat show cause why they should not be punished for Contempt of Court.

SO ORDERED,

JUDGE, COURT OF COMMON PLEAS

cc: AAG Finn, Atty. Gordon, Union Cheese Co., Dominic Gangale

[ ] Copies distributed on _____, by ____,