

DEC 13 1994

OHIO EPA NEDO

IN THE
COURT OF COMMON PLEAS
STARK COUNTY, OHIO

FILED
DEC 07 1994
PHIL G. GIAVASIS
STARK COUNTY OHIO
CLERK OF COURTS

STATE OF OHIO ex rel.
LEE FISHER
ATTORNEY GENERAL OF OHIO

CASE NO. 88-1258
JUDGE HARRY E. KLIDE

Plaintiff,

vs.

AGREED ORDER

VALLEY CORES, INC. AND
JAMES VALENTINE,

Defendants.

Pending before this Court is Plaintiff's Motion For Order To Show Cause, and the parties having reported to the Court the terms of an agreed order with respect to the issue therein presented;

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED, that this agreed order ("Agreed Order") be entered against Defendants:

I. JURISDICTION

The Court has authority to issue this Agreed Order pursuant to R.C. Chapter 3734 and the rules adopted thereunder, R.C. §§2705.02 and 2727.12.

II. PARTIES

The provisions of this Agreed Order shall apply to and be binding upon the Defendants, their agents, officers, employees, assigns, and successors in interest. In addition, this Agreed Order shall apply to all persons, firms, corporations and other entities having notice of this Order and acting in privity with Defendants.

Defendants shall provide a copy of this Agreed Order to any consultant or contractor

hired by Defendants to conduct the work required by this Agreed Order.

III. COMPLIANCE REQUIREMENTS

1. Defendants shall immediately comply with the requirements of this Agreed Order and with the requirements of the June 1991 Order not in conflict with the requirements of this Agreed Order.

2. Defendants are ordered and enjoined to complete the following actions:

Closure Plan and Closure Cost Estimate

a. If Defendants wish to revise the Closure Plan approved by the Ohio EPA, October 23, 1991 ("Approved 1991 Closure Plan"), Defendants shall submit a request to revise the Approved 1991 Closure Plan within forty-five 45 days after entry of the Agreed Order. If Defendants wish to revise the closure cost estimate, Defendants shall also submit any request for revision of the closure cost estimate within forty-five (45) days after entry of this Agreed Order.

b. If upon review of the revised closure plan, Ohio EPA finds deficiencies in the revised closure plan, Defendants shall submit to Ohio EPA a modified revised closure plan, addressing deficiencies identified by Ohio EPA, within 30 days after receiving written notification of the deficiencies from Ohio EPA.

c. If Defendants submit a request to revise the Approved 1991 Closure Plan or the closure cost estimate, Ohio EPA may approve, disapprove, or modify and approve, such request by Defendants. Ohio EPA's decision shall be a final decision. Defendants waive any rights they may have to appeal the decision of Ohio EPA to

the Ohio EPA.

(i) If Ohio EPA approves a revision to the Approved 1991 Closure Plan, Defendants shall implement the approved revised closure plan within 90 days after receipt of Ohio EPA's approval of the closure plan.

(ii) If Ohio EPA disapproves Defendants' request to revise the Approved 1991 Closure Plan, Defendants shall implement the Approved 1991 Closure Plan in the form approved by Ohio EPA on October 23, 1991, within 90 days after receipt of Ohio EPA's disapproval of Defendants' request to revise the Approved 1991 Closure Plan or if Defendants do not implement the Approved 1991 Closure Plan, Plaintiff may file new charges in contempt in an effort to address Defendants' failure.

d. If Defendants do not submit a revised closure plan, within the deadline set forth above, Defendants shall implement the Approved 1991 Closure Plan as approved by Ohio EPA on October 23, 1991, within 90 days after the first respective deadline has passed.

Ground Water Monitoring

e. Defendants shall install two groundwater monitoring wells in accordance with the requirements of the Approved 1991 Closure Plan and the June 1991 Order and shall monitor one monitoring well upgradient of the disposal pit and three monitoring wells downgradient of the disposal pit, in accordance with the requirements of the Approved 1991 Closure Plan and the June 1991 Order.

Defendants may not request a revision of these groundwater requirements.

Financial Assurance and Financial Responsibility

f. Within ten (10) days following approval or disapproval of the revised closure cost estimate, or, if no request is made to revise the closure cost estimate, within fifty-five(55) days following entry of this Agreed Order, if the value of the trust fund established pursuant to the terms of the June 1991 Order is less than the total amount of the latest approved closure cost estimate, Defendants shall pay into the trust an amount equal to the difference between the current closure cost estimate and the amount currently in the trust. If the value of the trust fund established pursuant to the terms of the June 1991 Order is greater than the total amount of the current closure cost estimate, Defendants may submit a written request to the Director for release of the amount in excess of the current closure cost estimate.

g. If all on-site activities, not including groundwater monitoring, cannot be completed within One Hundred Eighty (180) days of entry of this Agreed Order, or within One Hundred Eighty (180) days of approval by Ohio EPA of a revised closure plan, whichever is later, Defendants shall demonstrate financial responsibility for sudden and non-sudden accidental occurrences as required by O.A.C. Section 3745-66-47 and shall submit to Ohio EPA documentation of the demonstration.

Civil Penalty

h. Within 10 days after entry of this Agreed Order, Defendants shall pay to the State of Ohio \$7,000.00 as the balance of the civil penalty which this Court required Defendants to pay in the June, 1991 Order. This civil penalty shall be

deposited into the hazardous waste cleanup fund created by R.C. §3734.28.

Stipulated Penalty

i. Defendants shall pay to the State of Ohio a stipulated penalty of five thousand dollars (\$5,000.00). Upon compliance by Defendants with all of the requirements of this Agreed Order, the June 1991 Order, the Approved 1991 Closure Plan, and as applicable, any revisions to the Approved 1991 Closure Plan approved by the Ohio EPA, payment of this amount shall constitute full satisfactions of all claims for stipulated penalties accrued to the date of entry of this Agreed Order. This amount shall be paid within twenty (20) days from the date of entry of this Agreed Order. This stipulated penalty shall be paid into the hazardous waste cleanup fund created by R.C. §3734.28. Upon failure of Defendants to meet any of the deadlines set forth in this Agreed Order, the June 1991 Order, the Approved 1991 Closure Plan, and as applicable, any revisions to the Approved 1991 Closure Plan approved by the Ohio EPA, all previously accrued stipulated penalties shall become due and payable. In addition, new stipulated penalties as described in the June, 1991 Order shall begin to accrue again upon failure of Defendants to meet any of the deadlines set forth in the June 1991 Order, the Approved 1991 Closure Plan, and as applicable, any revisions to the Approved 1991 Closure Plan approved by the Ohio EPA.

Removal of "Slag" Piles And/Or Other Excavated Materials

j. Within three weeks after entry of this Agreed Order, Defendants shall take all necessary, proper, and legal measures to remove from the Valley Cores site all existing piles of nonhazardous slag and other nonhazardous soils or materials

that were excavated as part of remediation activities since July of 1991. Within six weeks after entry of this Agreed Order, Defendants shall take all necessary, proper, and legal measures to remove from the Valley Cores site all existing piles of hazardous slag and other hazardous soils or materials that were excavated as part of remediation activities since July of 1991.

Miscellaneous

k. Payments by Defendants to Plaintiff required by this Agreed Order shall be paid by delivering to Plaintiff, care of Matt Sanders, or his successor at the office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, a certified check in that amount payable to the order of "Treasurer, State of Ohio".

IV. RESERVATION OF RIGHTS

Nothing in this Agreed Order shall limit the authority of the State of Ohio to:

(a) Seek any legal or equitable relief for claims or conditions not alleged in the Complaint or Charges in Contempt;

(b) Seek any legal or equitable relief for claims or conditions alleged in the complaint which occur or exist after the entry of the Agreed Order;

(c) Enforce this Agreed Order through a contempt action or otherwise for violations of this Agreed Order or the June 1991 Order;

(d) Bring any legal or equitable action against Defendants or against any person, to the extent allowed by law, under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. §9601,

et. seq., Ohio Revised Code ("R.C.") Chapter 3734, and/or R.C. Chapter 6111 to: (1) recover natural resources damages, and/or (2) to enjoin the performance of, and/or recover response costs for, any removal, remedial or corrective activities at the Valley Cores site.

(e) Take any action authorized by law against any person, including Defendants, to eliminate or mitigate conditions at the Valley Cores site which may represent an imminent threat to the public health or welfare, or the environment.

V. RETENTION OF JURISDICTION

This court will retain jurisdiction of this action for the purpose of enforcing this Agreed Order and the June 1991 Order.

VI. COSTS

Defendant is hereby ordered to pay the court costs of this action.

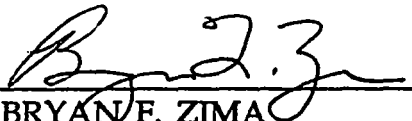
SIGNED:

W Harry E. Klide
JUDGE HARRY E. KLIDE

A TRUE COPY TESTE:
PHD G. GIAVASIS, CLERK
By *G. Giavasis* Deputy
Date *12/7/94*

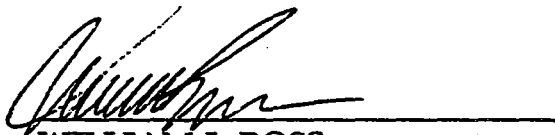
APPROVED:

LEE FISHER
ATTORNEY GENERAL OF OHIO

BY: 
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Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428

Attorney for Plaintiff State of Ohio


JAMES VALENTINE, Individually
and on behalf of VALLEY CORES, INC.


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Attorney for Defendants