

IN THE COURT OF COMMON PLEAS  
LUCAS COUNTY, OHIO

STATE OF OHIO, ex rel.  
LEE FISHER  
ATTORNEY GENERAL OF OHIO  
30 East Broad Street  
Columbus, OH 43266-0410

Plaintiff,

v.

THE ANDERSONS  
A Limited Partnership  
c/o THE ANDERSONS  
MANAGEMENT CORP.  
Beverly J. McBride  
Statutory Agent  
480 W. Dussel Drive  
P.O.Box 119  
Maumee, Ohio 43537

and

THE ANDERSONS MANAGEMENT  
CORP.  
Beverly J. McBride  
Statutory Agent  
480 W. Dussel Drive  
P.O.Box 119  
Maumee, Ohio 43537

Defendants.

CASE NO. 94-3153

JUDGE ASSIGNED TO JUDGE LANZINGER

CONSENT ORDER

FILED  
LUCAS COUNTY  
NOV 14 2 21 PM '94  
COMMON PLEAS COURT  
HALL  
CLERK

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Lee Fisher (hereinafter "Plaintiff") and Defendants The Andersons and The Andersons Management Corp. (hereinafter "Defendants") having consented to the entry of this Consent Order,

NOW THEREFORE, without trial or admission of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. DEFINITIONS

1. "Facility" means Defendant's grain storage elevator operation at 440 Kuhlman Drive, Toledo, Ohio, 43609.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Defendants under Chapter 6111 of the Ohio Revised Code, and 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 concert or privity with any of them.

IV. SATISFACTION OF LAWSUIT

4. Except as otherwise provided in this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil, criminal and/or administrative liability of Defendants to Plaintiff for claims alleged in the Complaint.

5. Nothing in this Consent Order, including the imposition of stipulated civil penalties for violations of this Consent 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;

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

(c) Enforce this Consent Order through a contempt action or otherwise for violations of this Consent 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 Chapter 3734, and/or R.C. Chapter 6111 to: (1) recover natural resource damages which occur after the entry of this consent order and/or (2) to enjoin the performance of, and/or recover response costs for, any removal, remedial or corrective activities.

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

## V. GENERAL INJUNCTIVE RELIEF

6. Defendants are hereby permanently enjoined and ordered to comply with all applicable provisions of R.C. Chapter 6111 and rules promulgated thereunder in managing all sewage, industrial waste, or other waste (hereinafter "wastewater") pumped or otherwise actively removed from the foundation of Defendants' Facility.

7. Defendants are hereby permanently enjoined and ordered to refrain from pumping or otherwise actively removing any wastewater from the foundation of Defendants' Facility, into the Maumee River and all other waters of the state except in accordance with a National Pollution Discharge Elimination System ("NPDES") Permit issued by the Director of the Ohio Environmental Protection authorizing such discharges.

8. Defendants are hereby permanently enjoined and ordered to test all wastewater pumped or otherwise actively removed from the foundation of the Facility prior to transporting that wastewater or arranging for the transporting of that wastewater from that Facility, unless Defendants assume said wastewater is a hazardous waste and handle it in accordance with hazardous waste laws. If the Defendants test the wastewater, however, Defendants shall have the wastewater analyzed at an independent laboratory for arsenic using the toxicity characteristic leaching procedure in accordance with the most current methods established in SW 846. Defendants shall maintain a copy of all such analyses at the Facility for inspection by Ohio EPA. If the test results indicate that the wastewater is a "hazardous waste", as defined in Ohio Administrative Code ("OAC") Rule 3745-51-

03, Defendants shall comply with the standards for generators contained in OAC Chapter 3745-52.

9. This Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Approval for any such construction or modification shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules, or regulations.

#### VI. CIVIL PENALTY

10. Defendants are ordered and enjoined to pay to the State of Ohio a civil penalty of \$430,000.00 (Four Hundred Thirty Thousand Dollars). The penalty shall be paid by delivering to Matthew Sanders, or his successor, Administrative Assistant, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, a certified or cashier's check payable to the order of "Treasurer, State of Ohio" within thirty days of the entry of this Consent Order.

#### VII. STIPULATED PENALTIES

11. In the event that Defendants fail to comply with Paragraph 7 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 - \$1000.00 per day for each requirement not met.

(b) For each day of each failure to meet a requirement from thirty-one (31) to sixty (60) days - \$2,000.00 per day for each requirement not met.

(c) For each day of each failure to meet a requirement, from sixty-one (61) to ninety (90) days - \$3,000.00 per day for each requirement not met.

(d) For each day of each failure to meet a requirement, over ninety (90) days - \$5,000.00 per day for each requirement not met..

12. In the event that Defendants fail to meet any of the requirements of this Consent Order other than Paragraph 7 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 sixty (60) days - \$500.00 per day for each requirement not met.

(b) For each day of each failure to meet a requirement from sixty-one (61) to ninety (90) days - \$1000.00 per day for each requirement not met.

(c) For each day of each failure to meet a requirement, from ninety-one (91) to one hundred twenty (120) days - \$1,500.00 per day for each requirement not met.

(d) For each day of each failure to meet a requirement, over one hundred twenty days (120) - \$2,500.00 per day for each requirement not met.

13. Any payment required to be made under the provisions of the Paragraphs 11 and 12 of this Consent Order shall be made by delivering a certified or cashier's check or checks for the appropriate amounts, to Matthew Sanders, or his successor, Administrative Assistant, Environmental Enforcement Section, 30 East Board Street, 25th Floor, Columbus, Ohio 43266-0410, within forty-five (45) days from the

date of the failure to meet the requirement of the Consent Order, made payable to "Treasurer, State of Ohio."

#### VIII. POTENTIAL FORCE MAJEURE

14 . If any event occurs which causes or may cause a delay or interruption in meeting any requirement of Section V of this Consent Order, Defendants shall notify the Ohio EPA, in accordance with Section X of this Consent Order, in writing within ten (10) days of the event, describing in detail the anticipated length of the delay or interruption, the precise cause or causes of the delay or interruption, the measures taken and to be taken by Defendants to prevent or minimize the delay or interruption, and the timetable by which measures will be implemented.

15. Upon receipt of the notice referenced in the preceding paragraph, Plaintiff may agree to waive or defer one or more requirements herein or the enforcement thereof. Plaintiff will inform Defendants of its decision in writing by certified mail. Plaintiff is not bound by oral representations of Ohio EPA personnel concerning the validity of Defendants' reason for delay or interruption. A decision by Plaintiff to waive or defer any requirement of this Consent Order shall not be a bar to any enforcement action for Defendants' failure to meet the requirement as deferred. Any deferred requirement shall be considered enforceable in place of the specified requirement and shall be subject to the same stipulated penalty provisions as the original requirement. A decision by Plaintiff to defer enforcement of any requirement or stipulated penalties set forth in this Consent Order shall not

constitute a waiver of enforcement action with regard to the terms of this Consent Order, unless the Plaintiff expressly so agrees.

16. In any action by the State of Ohio to enforce any of the provisions of this Consent Order, Defendants may raise that they are entitled to a defense that their conduct was caused by reasons entirely beyond their control such as, by way of example and not limitation, acts of God, strikes, acts of war, civil disturbances and orders or actions of any court or regulatory agency. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed upon by Defendants and the State of Ohio that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an action to enforce the terms of this Consent Order is commenced by Plaintiff. At that time, the burden of proving that any delay or interruption was or will be caused by circumstances entirely beyond the control of Defendants shall rest with said Defendants. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order shall not constitute circumstances entirely beyond the control of Defendants or serve as a basis for an extension of time under this Consent Order. Failure by Defendants to comply with the notice requirements of this Section shall render this section void and of no force and effect as to the particular incident involved. Acceptance of this Consent Order with this Potential Force Majeure clause does not constitute a waiver by Defendants of any rights or defenses they may have under applicable law.



## IX. INSPECTIONS

17. Defendants are enjoined and ordered to allow representatives of the Ohio EPA, upon proper identification, to enter upon the Defendants' Facility at reasonable times during business hours, to inspect, investigate, take samples and pictures and examine or copy records in order to determine compliance with the terms of this Consent Order and R.C. Chapters 6111, 3734, and rules promulgated thereunder. Nothing in this Consent Order shall limit the rights of the Ohio EPA or U.S. EPA to conduct inspections or investigations pursuant to statute or regulation.

## X. NOTICE AND SUBMITTAL OF DOCUMENTS

18. Any notice or submission to the Ohio EPA required by this Consent Order shall be sent by certified mail to each of the following addresses:

- a. Ohio EPA  
Northwest District Office  
347 North Dunbridge Road  
Bowling Green, OH 43402  
Attn: Naajy Abdullah or his successor
  
- b. Ohio EPA  
Northwest District Office  
347 North Dunbridge Road  
Bowling Green, OH 43402  
Attn: Gary Deutschman or his successor
  
- c. Ohio EPA  
Division of Water Pollution Control  
P.O. Box 1049  
1800 WaterMark Drive  
Columbus, Ohio 43266-0149  
Attn: James Mehl, or his successor

19. Any notice or submission to Defendants required by this Consent Order, unless otherwise indicated, shall be sent by certified mail to each of the following addresses:

- a. Beverly J. McBride, Esq.  
The Andersons Management Corp.  
480 W. Dussel Drive  
P.O. Box 119  
Maumee, Ohio 43537
  
- b. Shane A. Farolino, Esq.  
Spengler Nathanson  
608 Madison Avenue  
Suite 1000  
Toledo, Ohio 43604-1169

XI. RETENTION OF JURISDICTION

20. The Court will retain jurisdiction of this action for the purpose of making any order or decree which it deems appropriate to carry out this Consent Order.

XII. COURT COSTS

21. Defendants are hereby ordered to pay the costs of this action.

10-11-94  
\_\_\_\_\_  
Date

*Julia A. Lanzetta*  
\_\_\_\_\_  
JUDGE, COURT OF COMMON PLEAS  
LUCAS COUNTY, OHIO

APPROVED:

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

BY: 

JOHN K. MCMANUS  
E. DENNIS MUCHNICKI  
Assistant Attorneys General  
Environmental Enforcement  
Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43266-0410  
(614) 466-2766

THE ANDERSONS  
and  
THE ANDERSONS MANAGEMENT CORP.

BY: 

THOMAS H. ANDERSON  
Chairman, Board of Directors  
The Andersons Management Corp.  
P.O. Box 119  
Maumee, Ohio 43537  
(419) 891-6405

BY: 

SHANE FAROLINO  
Spengler Nathanson  
608 Madison Avenue  
Suite 1000  
Toledo, Ohio 43604-1169  
(419) 241-2201

IN THE COURT OF COMMON PLEAS  
LUCAS COUNTY, OHIO

FILED  
LUCAS COUNTY

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STATE OF OHIO, ex rel.,

FEB 19 10 34 AM '99 CASE NO. 94-3153

Plaintiff,

JUDGE JUDITH ANN LANZINGER  
COMMON PLEAS COURT  
HARRY EARLGS  
CLERK OF COURTS

vs.

THE ANDERSONS, et al.

Defendants.

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JOINT ENTRY AND ORDER FOR TERMINATION OF CONSENT ORDER

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Now come the Parties to this action and jointly move the court to terminate the above-captioned consent order.

The Parties jointly agree that the termination of this consent order shall not be construed so as to limit the authority of the State of Ohio to seek relief against Defendants or other appropriate persons for claims or conditions not alleged in the complaint, including claims or conditions alleged in the complaint which may have occurred after the filing of the consent order, nor shall anything in the consent order limit the right of Defendants to any defenses they may have against such claims.

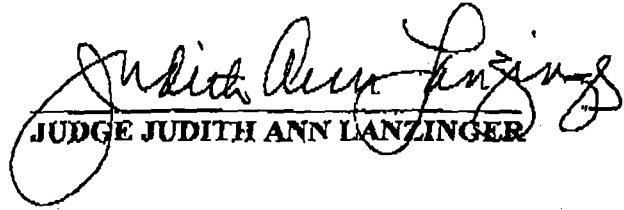
Plaintiff and Defendants have agreed to a termination of this consent order, and the court, having reviewed the motion for termination and this entry, finds the motion to be fair and reasonable. It is hereby the order of the court that the consent order shall be terminated.

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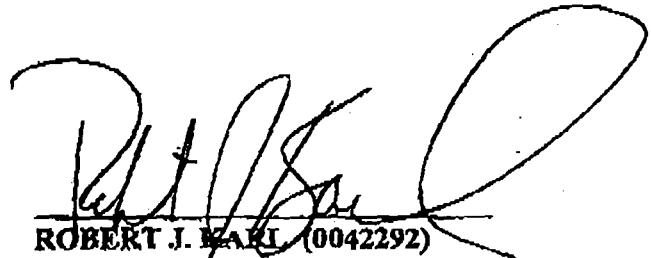
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PC 260

IT IS SO ORDERED.

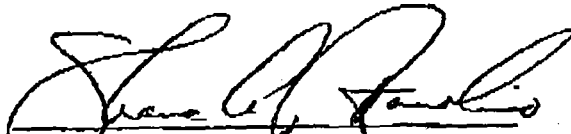
2-19-99  
Date

  
JUDGE JUDITH ANN LANZINGER

APPROVED:

  
ROBERT J. EARL (0042292)  
Assistant Attorney General  
Environmental Enforcement Section  
30 E. Broad Street, 25th floor  
Columbus, Ohio 43215-3428  
(614) 466-2766

*Counsel for Plaintiff State of Ohio*

  
SHANE A. FAROLINO (0040310)  
Roetzel & Andress  
222 South Main Street  
Akron, Ohio 44308

*Counsel for Defendants*

JOURNALIZED

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