

ENTERED  
OCT 11 1991  
IMAGE 2/2

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

STATE OF OHIO, :  
Plaintiff, :  
v. : CASE NO. A 8004895  
PRISTINE, INC., et al., : JUDGE ROBERT KRAFT  
Defendants. :

ENTRY APPROVING CONSENT DECREES

Whereas, the parties to this action have reached a settlement and have voluntarily entered into Consent Decrees; and

WHEREAS, this Court has fully reviewed the attached Consent Decrees;

IT IS HEREBY ORDERED, that the Consent Decrees entered into by the parties in this case are APPROVED.

---

ROBERT KRAFT, JUDGE  
Court of Common Pleas

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

STATE OF OHIO, : CIVIL ACTION A 8004895  
 :  
 Plaintiff, : (Judge Robert Kraft)  
 :  
 v. :  
 :  
 PRISTINE, INC., et al., : CONSENT DECREE  
 :  
 Defendants. :

*WHEREAS*, in November 1974, Pristine, Inc. began operating a hazardous waste incinerator and neutralization facility (the "Facility") in the City of Reading, Hamilton County, Ohio;

*WHEREAS*, the State of Ohio filed a Complaint in the above-captioned case for civil penalties and injunctive relief under state law and negotiated a Partial Consent Decree under which the Defendants named in this action were ordered to undertake certain cleanup activities;

*WHEREAS*, in September 1984, U.S. EPA commenced a Remedial Investigation and Feasibility Study for the Facility, and such reports were issued on November 12, 1987;

*WHEREAS*, U.S. EPA in consultation with the State reached a decision on the final remedy for the Facility which is embodied in the Record of Decision, as amended, to which the State of Ohio has given its concurrence.

*WHEREAS*, the Settling Defendants, De Minimis Settling Defendants, Settling State Agencies, and Settling Federal Agencies have agreed to finance and perform the Work at the

Facility by entering into a consent decree with the U.S. EPA in United States v. American Corp., et al., No. C-1-89-837, (S.D. Ohio) (hereinafter "American Greetings Consent Decree");

*WHEREAS*, the Settling Defendants have agreed to implement the remedy in the amended Record of Decision as required by the American Greetings Consent Decree;

*WHEREAS*, pursuant to §113(g)(1) of CERCLA, 42 U.S.C. §9613(g)(1), the State notified the President of the United States of damage or potential damage done to natural resources as a result of the operation of Pristine, Inc. and of the State's intention to proceed against potentially responsible parties;

*WHEREAS*, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9601 et seq., state and common law, the State of Ohio filed a Complaint against the Ohio Settlers, De Minimis Settling Defendants, Settling State Agencies, Settling Federal Agencies, Riley Kinman, David Gravely, and Pristine, Inc. in the case captioned State of Ohio v. Pristine, Inc. et al., Case No. C-1-89-709 (S.D. Ohio) (hereinafter the "federal case") for the recovery of past and future response costs, for declaratory relief, for injunctive relief, for nuisance abatement, and for civil penalties;

*WHEREAS*, this Court stayed proceedings in the above-captioned case pending developments in the federal case;

*WHEREAS*, the State of Ohio has entered into the Pristine Consent Decree with the Ohio Settlers, De Minimis

Settling Defendants, Settling Federal Agencies, and Settling State Agencies in the federal case and voluntarily dismissed without prejudice its claims against Riley Kinman and Pristine, Inc. in the federal case;

*WHEREAS*, the State enters into this Consent Decree in order to settle all claims, unless specifically reserved herein, which were raised by the State or could have been raised by the State in this case or in the federal case to settle the alleged liability of Riley Kinman and Pristine, Inc. as a result of the operation of the Pristine, Inc. Facility;

*WHEREAS*, Riley Kinman and Pristine, Inc. enter into this Consent Decree on the condition that the defendants who filed cross-claims against Riley Kinman and Pristine, Inc. in the federal case will dismiss without prejudice those claims against Riley Kinman and Pristine, Inc. and pay all court costs in that action;

*WHEREAS*, Riley Kinman and Pristine, Inc. deny any responsibility for hazardous substances or pollutants located at the Facility, and deny any legal or equitable liability under statute, regulation, ordinance, or common law for any costs or damages caused by or resulting from storage, treatment, or disposal activities or the actual or threatened release of hazardous substances or pollutants at or from the Facility;

*WHEREAS*, the State of Ohio, Riley Kinman and Pristine, Inc. agree that settlement of this matter and entry of this Consent Decree is in the public interest and is made in good

faith in an effort to avoid expensive and protracted litigation, without any admission as to fact or liability for any purpose, to settle and resolve claims that are disputed as to validity and amount; and

*WHEREAS*, the Court finds that the settlement of this lawsuit in the manner provided in this Consent Decree is in the public interest;

*NOW, THEREFORE*, it is hereby *Ordered, Adjudged, and Decreed*:

I.

JURISDICTION

The Court has jurisdiction to issue this Consent Decree and over the Parties consenting hereto. The Parties shall not challenge this court's jurisdiction to enter and enforce this Consent Decree.

II.

PARTIES BOUND

This Consent Decree applies to and is binding upon the undersigned Parties, and their successors and assigns. The undersigned representative of each Party to this Consent Decree certifies that he or she is fully authorized by the Party or Parties whom he or she represents to enter into the terms and conditions of this Consent Decree and to execute and legally bind that Party to this Consent Decree.

### III.

#### DEFINITIONS

Whenever the following terms are used in this Consent Decree, the following definitions specified in this Section shall apply:

A. "American Greetings Consent Decree" refers to the consent decree entered in United States v. American Greetings Corp., et al., No. C-1-89-837 (S.D. Ohio).

B. "Consent Decree" means this Decree, entered in the case captioned State of Ohio v. Pristine, Inc., et al., Case No. A8004895.

C. "De Minimis Settling Defendants" means those persons who have signed the "American Greetings Consent Decree," are listed in Appendix 8D thereto, and have paid the said amount set forth in Appendix 8D.

D. "Facility" means the "facility" as that term is defined at Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and specifically means the property upon which Pristine, Inc. conducted operations in the City of Reading, Hamilton County, Ohio, and the concrete structure referred to as the Magic Pit, as both are depicted on the map attached hereto, and any other area to which hazardous substances have migrated therefrom.

E. "National Contingency Plan" or "NCP" shall be used as that term is used in Section 105 of CERCLA, 42 U.S.C. §9605, and means the regulations codified at 40 C.F.R. Part 300.

F. "OEPA" means the Ohio Environmental Protection Agency, and its successors and assigns;

G. "Ohio Settlers" are those Settling Defendants who are signatories to the Pristine Consent Decree and their successors and assigns.

H. "Oversight Costs" mean any costs incurred by OEPA after the entry of the Pristine Consent Decree that are not inconsistent with the NCP and are incurred by OEPA in monitoring the performance of the Work pursuant to the American Greetings Consent Decree. These costs include but are not limited to site investigation and sampling related costs in connection with the performance of the Work and costs incurred in reviewing and commenting on documents regarding the performance of the Work.

I. "Parties" means the Plaintiff and Riley Kinman and Pristine, Inc.

J. "Plaintiff" means the State of Ohio, including its agencies and departments, except Settling State Agencies.

K. "Pristine Consent Decree" refers to the consent decree entered in the case captioned State of Ohio v. Pristine, Inc., et al., No. C-1-89-709 (S.D. Ohio) between the State of Ohio and the Ohio Settlers, DeMinimis Settling Defendants, Settling State agencies, and Settling Federal Agencies.

L. "Response Costs" means any costs incurred by Plaintiff with respect to the Facility pursuant to 42 U.S.C. §§9601 et seq. that are not inconsistent with the NCP.

M. "ROD" means the Record of Decision as amended by U.S. EPA, in March, 1990, which provides the basis for the remedial action specified in the American Greetings Consent

Decree.

N. "RD/RA Work Plan" means the work plan for remedial design and remedial action at the Facility to implement the RAP, all documents and reports required to be submitted pursuant to Paragraph D of Section V of the American Greetings Consent Decree, and any modification made to such work plan.

O. "Remedial Action Plan" or "RAP" means the plan for implementation of the remedial design, remedial action and operation and maintenance of the remedial action at the Facility, as set forth in the ROD, and any modification made to such plan in accordance with the provisions of the American Greetings Consent Decree.

P. "Settling Defendants" means those persons who have signed the American Greetings Consent Decree and are listed in its Appendix 8A and Appendix 9A, including the Schedule C Settling Defendants.

Q. "Settling Federal Agencies" means those federal agencies or departments that are listed in Appendix 8B of the American Greetings Consent Decree and have made payments in accordance with the schedule set forth in Appendix 9B therein.

R. "Settling State Agencies" means those state agencies or departments that are listed in Appendix 8C of the American Greetings consent decree and have made payments in accordance with the schedule set forth in Appendix 9C therein.

S. "State" means the State of Ohio, including without limitation, its agencies, departments, successors, and assigns. "State" shall specifically include the Ohio EPA.



T. "U.S. EPA" means the United State Environmental Protection Agency, its representatives, successors, and assigns.

U. "Work" means the design, construction and implementation, in accordance with Section V of the American Greetings Consent Decree, of the tasks described in the ROD, the RAP, and the RD/RA Work Plan.

#### IV.

#### CIVIL PENALTY

A. Defendants Riley Kinman and Pristine, Inc. shall pay the State a civil penalty of \$10,000.00. Payment shall be made by delivering a certified or cashier's checks to "Counsel to the Director of Environmental Protection for the Pristine Site," at P.O. Box 1049, 1800 Watermark Drive, Columbus, Ohio 43266-0419 pursuant to the following schedule:

- a. Defendants Riley Kinman and Pristine, Inc. shall pay \$5,000.00 for their alleged violations of Ohio's air pollution control laws within one hundred and eighty (180) days after the entry of this Consent Decree. The payment shall be made payable to the Treasurer of the State of Ohio.
- b. Defendants Riley Kinman and Pristine, Inc. shall pay \$5,000.00 for their alleged violations of Ohio's water pollution control laws within one hundred and eighty (180) days after the entry of this Consent

Decree. The payment shall be made payable  
to the Treasurer of the State of Ohio.

A copy of such check shall be sent to "Fiscal Officer, Division of Emergency and Remedial Response" at the address noted above. In consideration of receipt of such monies, the State releases and covenants not to sue Riley Kinman and Pristine, Inc. in this case, the federal case, or any subsequent state or federal case for any local, state, or federal civil penalty claims based upon events related to or arising from the Facility and its operations as of the effective date of this Consent Decree. The State reserves its rights to seek civil penalties from any and all persons not a party to this Consent Decree.

V.

RESERVATION OF RIGHTS

A. In the event the State becomes dissatisfied with the Work at the Facility, the State reserves its rights, if any, to obtain further injunctive relief against Riley Kinman and Pristine, Inc. pursuant to any provision of law, including but not limited to Ohio Rev. Code §§6111, 3734, 3704, common law nuisance, and ultra hazardous activity. Riley Kinman and Pristine, Inc. reserve all of their defenses, if any, to such claims.

B. The State reserves any and all rights it has under CERCLA including but not limited to the right to seek any and all Response Costs and Oversight Costs, including interest, and

natural resource damages from Pristine, Inc., Riley Kinman, and any and all persons not a party to this Consent Decree. The State reserves its rights, if any, to take any action under CERCLA, including but not limited to any rights described in Sections 121(e)(2), 121(f), and 310.

C. Except as otherwise provided in this Consent Decree, Riley Kinman and Pristine, Inc. reserve all defenses, if any, that may have against any past or future action brought by the State, the Federal government, or any person not a party to this Consent Decree.

D. Riley Kinman and Pristine, Inc. reserve all claims that they may have that State is a responsible party under CERCLA for any activities at the Facility.

E. Riley Kinman and Pristine, Inc. reserve all defenses and claims they may have under CERCLA, including cross and counter claims, against the State of Ohio and any other parties not a party to this Consent Decree.

## VI.

### RELEASE & COVENANT NOT TO SUE

A. Except as otherwise provided in this Consent Decree and in consideration of the payments that will be made by Riley Kinman and Pristine, Inc., the Parties covenant not to sue or to take any administrative action against each other or their respective agents, successors or assigns in this case, the federal case, or any subsequent state or federal case for Covered Matters. Covered Matters shall include all common law claims and all claims and causes of action under laws,

statutes, or regulations, including subsequently enacted laws, statutes, or regulations administered and enforced by the State of Ohio or the United States which have been or could have been asserted against the Parties as of the effective date of this Consent Decree arising out of all matters which were raised or could have been raised relating to or arising from the Facility or its operations.

B. Except as expressly provided herein, nothing in this Consent Decree constitutes a covenant not to sue or not to take action or otherwise limits the ability of the Parties to seek or obtain relief available pursuant to the terms of the American Greetings Consent Decree or the Pristine Consent Decree.

C. Nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity not a signatory to this Consent Decree for any liability it may have arising from or relating to this Facility or its operations.

## VII.

### MODIFICATION

There shall be no modification of this Consent Decree without written approval of all Parties to this Consent Decree or upon order of the Court following notice and opportunity for hearing by all Parties. No oral modification of this Consent Decree shall be effective.

VIII.

AVAILABILITY OF INFORMATION

A. The State of Ohio agrees to make information concerning the Work available to Riley Kinman and Pristine, Inc. upon request pursuant to the provisions of Ohio Revised Code §149.43.

B. The State agrees to provide notice to Riley Kinman and Pristine, Inc. at least fourteen (14) days in advance of any public meetings that may be held or sponsored by the State to explain activities at or concerning the Facility.

IX.

USE OF CONSENT DECREE

This Consent Decree was negotiated and executed by the Parties in good faith to avoid expensive and protracted litigation and is a settlement of claims that were contested, denied and disputed as to validity and amount. The execution of this Consent Decree is not a finding or an admission of any fact or liability on any issue dealt with in the Consent Decree. Accordingly, it is the intention of the Parties that, with the exception of this proceeding, including any proceeding reserved under Section V, and proceedings to enforce this Consent Decree, this Consent Decree shall not be admissible in any judicial or administrative proceeding (except that it may be admissible in a judicial or administrative proceeding between Riley Kinman and Pristine, Inc. and their insurance company and in suits brought by Riley Kinman and Pristine, Inc.

for contribution against any person or firm not a party to this Consent Decree. It may also be admissible, if applicable, as a defense to other proceedings).

X.

EFFECTIVE DATE AND TERMINATION

A. This Consent Decree shall be effective immediately upon entry by the Court.

B. Upon showing that all applicable terms of this Consent Decree, have been complied with, this Consent Decree shall be terminated upon motion of any Party. Termination of this Consent Decree shall not affect the Covenant Not to Sue under Section VI or the Reservation of Rights under Sections V.

XI.

MAINTENANCE OF JURISDICTION

This Court shall retain jurisdiction to grant additional injunctive relief deemed necessary, and any Party may apply to the Court for any further orders that may be necessary to construe, carry out or enforce compliance with the terms and conditions set forth in this Consent Decree.

XII.

COURT COSTS

The Defendants in this case shall pay all court costs.

CONSENT TO SETTLEMENT

By the signature below, consent to this Consent Decree is hereby given:

STATE OF OHIO

By: Jeffrey Howard Handley, Assistant Attorney General  
Date: June 10, 1991

Pristine, Inc.  
(Type Name of Signatory)  
Big Four & Smalley Rd.  
Reading, Ohio  
(Address)

By: Piley M. Kirman  
(Signature of Authorized Person)

Chairman of Board of Directors  
(Title)

June 10, 1991  
Date:

Piley M. Kirman  
(Type Name of Signatory)  
Dept. of Civil & Environmental Engrs.  
University of Cincinnati  
Cincinnati, Ohio 45221  
(Address)

By: Piley M. Kirman  
(Signature of Authorized Person)

Chairman of Board of Directors  
(Title)

June 10, 1991  
Date:

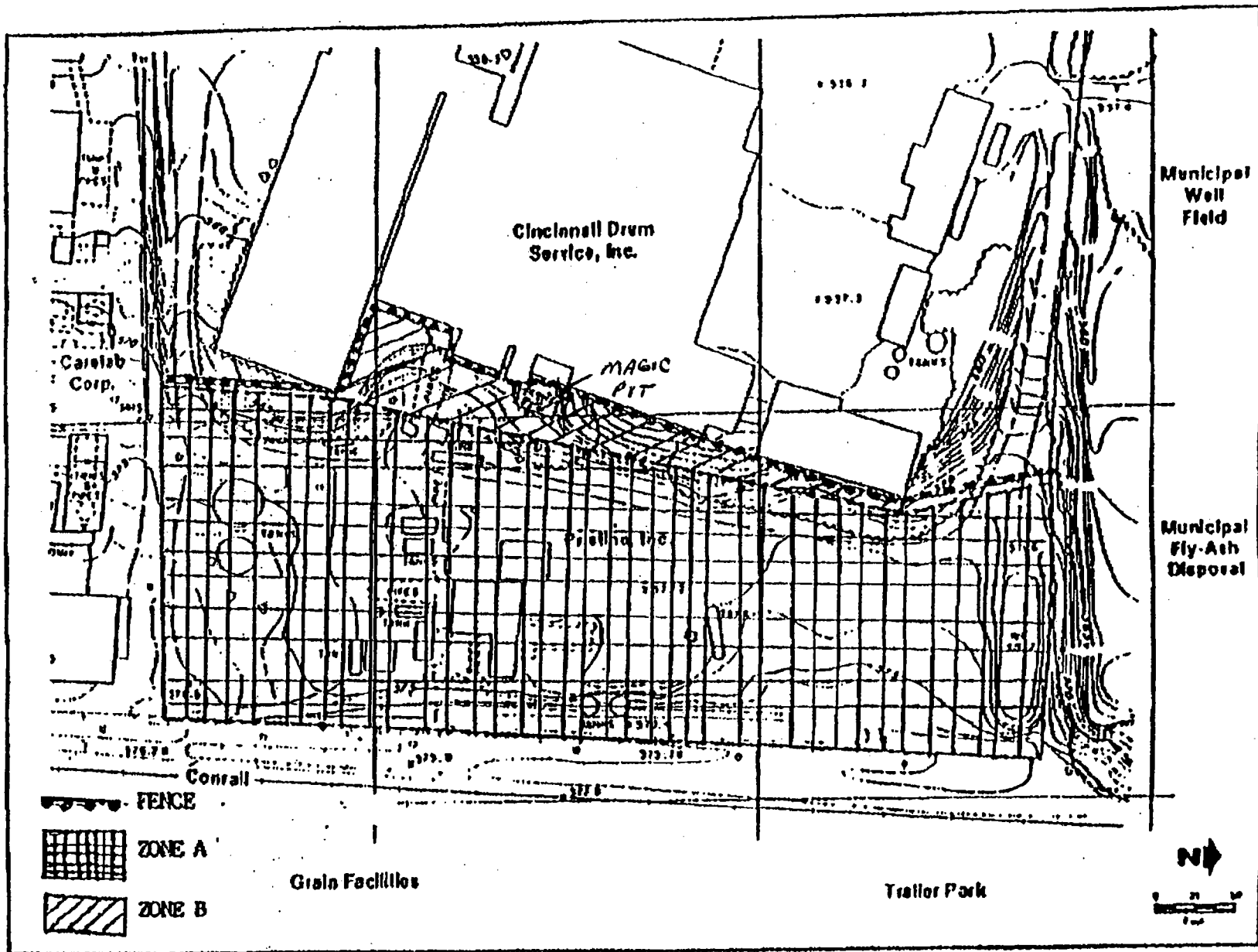


FIGURE 1