

IN THE COURT OF COMMON PLEAS
SENECA COUNTY, OHIO

STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO,
Environmental Enforcement Section
30 E. Broad St., 25th Floor
Columbus, Ohio 43215-3428,

Plaintiff,

v.

SAN-LAN CORPORATION
c/o Jacob Shiff, Statutory Agent
1167 Pelton Rd.
Fostoria, Ohio 44830

and

JACOB SHIFF
1167 Pelton Rd.
Fostoria, Ohio 44830,

Defendants.

CASE NO. 48854

JUDGE _____

JUDGE M.P. KELBLEY

FILED
COMMON PLEAS COURT
SENECA COUNTY, OHIO
1995 FEB 10 PM 2:09
CARRI CLEVELAND
CLERK

CONSENT DECREE

Plaintiff State of Ohio, by its Attorney General, at the written request of the Director of Environmental Protection, having filed a Complaint against Defendants San-Lan Corporation and Jacob Shiff ("Defendants") alleging violations of Chapter 3734 of the Ohio Revised Code, and the parties having consented to the entry of this Consent Decree,

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

I. DEFINITIONS

1. For the purposes of this decree, the following terms shall have the following meanings:
 - a. "San-Lan Landfill" or "Landfill" shall mean the Defendant San-Lan's facility located on County Road 18 (Bullfrog Rd.) in Loudon Twp., Seneca County, Ohio.
 - b. "Fostoria Facility" shall mean the premises located at 418 North U.S. 23, Fostoria, Seneca County, Ohio.

II JURISDICTION

2. The Court has jurisdiction over the parties and the subject matter of this action pursuant to R.C. Chapter 3734. The Complaint states a claim upon which relief can be granted. Venue is proper in this Court.

III. PARTIES

3. The provisions of this Consent Decree shall apply to and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest and any person acting in concert, privity or participation with them. Defendants shall provide a copy of this Consent Decree to any contractor or sub-contractor engaged to perform work required by this decree.

IV. SATISFACTION OF LAWSUIT

4. Except as provided herein, compliance with the terms of this Consent Decree shall constitute full satisfaction of any civil and/or administrative liability of the Defendants for any and all violations alleged in the Complaint. In addition, except as provided herein, compliance with the terms of this Consent Decree shall constitute full satisfaction of any civil and/or administrative liability of the Defendants for any and all violations of R.C. Chapter 3734. and the rules promulgated thereunder pertaining to the management and/or disposal of solid waste, to the extent that (a) said violations are cited in Ohio EPA inspection reports and/or notices of violation, and (b) said violations occurred prior to the filing of the Complaint. For purposes of this Paragraph,

“solid waste” shall not include any wastes, materials, or substances which constitute “hazardous waste” pursuant to R.C. Chapter 3734. and O.A.C. Chapter 3745-51, or “hazardous substances” pursuant to the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. §9601 et seq.

5. This Consent Decree shall not be construed to act as a bar to the authority of the State to seek relief, by separate action or by charges in contempt, for future violations of law or violations of this Consent Decree.

6. Notwithstanding any provision of Paragraph 4 to the contrary, nothing in this Consent Decree shall prevent the State from seeking further relief for groundwater contamination or other contamination caused by Defendants that may be discovered after the entry of this Consent Decree. In addition, nothing in this Consent Decree shall limit the authority of the State to seek relief for claims or conditions not alleged in the Complaint, or to seek relief for claims or conditions alleged in the Complaint which occur or exist after the entry of this Consent Decree. In addition, to the extent authorized by law, the State hereby specifically reserves the right to take action against any person, including but not limited to the Defendants, pursuant to the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. §9601 *et seq.*, and/or R.C. 3734.20 through 3734.27, for any removal, remedial or corrective actions.

V. INJUNCTIVE RELIEF

7. Defendants are hereby permanently enjoined and ordered to comply with R.C. Chapter 3734 and the rules promulgated thereunder.

8. Defendants are hereby permanently enjoined and ordered to refrain from owning or operating any facility for the treatment or disposal of solid, hazardous, or infectious wastes, including, but not limited to, any sanitary landfill facility, solid waste transfer facility, solid waste composting facility, solid waste incinerator facility, or scrap tire collection, storage, recovery, or monofill facility, provided, however, that this injunction shall not preclude or prohibit Defendant Jacob Schiff from owning or operating Fostoria Iron & Metal Company in Fostoria, Ohio.

9. Defendants are hereby enjoined and ordered to abate all soil contamination which may have resulted from the burning of copper wire at the San-Lan Landfill and the Fostoria

Facility. Said abatement shall be performed in accordance with the following requirements:

- a. Defendants shall conduct all sampling and analysis in accordance with the following requirements:
 - i. Background sampling: Background samples (if obtained) shall be analyzed using total constituent analysis. Background sampling need not be analyzed using the Toxicity Characteristic Leaching Procedure (TCLP) in OAC Rule 3745-51-24.
 - ii. Parameter list: Defendants shall analyze for the following parameters listed in Table No. 1 of OAC Rule 3745-51-24: Arsenic, Barium, Cadmium, Lead, Silver, Mercury, Chromium, and Selenium.
 - iii. Number and locations of samples: Defendants shall adequately define the full extent of vertical and horizontal soil contamination and contaminant concentrations. Sample locations shall include areas of visual contamination as well as locations from grid or directed sampling. Sampling shall continue until the full extent of soil contamination is adequately defined.
 - (1) Vertical and horizontal sample locations shall be determined using the procedures outlined on pages 39-44 of the Closure Plan Review Guidance for RCRA Facilities, Interim Final, September 1, 1993, or in the alternative a horizontal grid interval of 11 feet and a vertical sampling interval of 1 foot may be used to a depth of at least 3 feet below the surface (i.e. samples collected at 0, 1, 2, and 3 feet).
 - iv. Sample type--grab or composite: The area represented by a group of composite samples shall be limited to no more than 5% of the total site area.
 - v. Sampling method: Sampling method shall be consistent with USEPA Publication SW-846, Chapter 9.
 - vi. Analytical method: Analytical methods and data reporting procedures shall be consistent with USEPA Publication SW-846. Methods must be capable of achieving the lowest possible analytical detection limit. Defendants shall report all concentration data, even if estimated, for compounds or elements that have

been positively identified in the sample.

- vii. QA/QC for laboratory and field analysis: Quality Assurance/Quality Control protocols shall be established for laboratory analyses, field methods, and chain-of-custody for sample collection and transportation.
- b. Defendants shall abate all soil contamination at the above-referenced locations in accordance with the following standards:

- i. Description of Removal Efforts: Defendants shall remove soils in the closure area contaminated with the constituents referenced in Paragraph 9(a)(ii), above, in accordance with remediation standards and practices acceptable to the Ohio EPA. Soils removed from the site shall be disposed of at a licensed sanitary landfill unless levels of contaminants in the soil exceed the toxicity characteristic for the parameter in O.A.C. Rule 3745-51-24 or otherwise exhibit a hazardous characteristic as specified in O.A.C. Rule 3745-51-23 (reactivity), in which case the soils shall be removed to a permitted hazardous waste treatment, storage, or disposal facility.

Defendants shall only temporarily store excavated materials on site, and in no case longer than 120 days. Any hazardous waste which may be excavated as a result of activities required by this Consent Decree shall be stored, transported, disposed of, and otherwise managed in accordance with R.C. Chapter 3734 and the regulations promulgated thereunder.

- ii. Analytical Methods: Analytical methods and data reporting procedure shall be consistent with U.S. EPA Publication SW-846. Methods must be capable of achieving the lowest possible analytical detection limit. Defendants shall report all concentration data, even if it is estimated, for compounds or elements that have been positively identified in the sample. Quality Assurance/Quality Control protocols shall be established for laboratory analyses, field methods, and chain-of-custody for sample collection and transportation.
- iii. Certification: Defendants shall submit a certification report verifying that sampling and removal of contaminated soils was performed in accordance with

this Consent Decree . The certification report shall include:

- (1) A certification statement;
- (2) The volume of contaminated soils removed and waste receipts of the facility(s) to which soils were removed;
- (3) A detailed description of the sampling and analysis methods employed;
- (4) Copies of all laboratory analyses, including analyses for purposes of quality assurance/quality control;
- (5) A brief narrative describing all activities performed; and
- (6) Signature of Defendant Jacob Shiff and a qualified, independent, registered engineer.

VIII. CIVIL PENALTY AND RESTITUTION

10. Defendants shall pay a civil penalty of Seventy Thousand Dollars (\$70,000.00) within thirty (30) days after entry of this Decree by delivering a certified check to the Administrative Assistant, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428. The check shall be made payable to "Treasurer, State of Ohio," and will be paid into the Hazardous Waste Cleanup Fund pursuant to R.C. 3734.28.

X. CONTINUING JURISDICTION

11. The Court shall retain jurisdiction over this action for the purposes of enforcing this Consent Decree.

XI. COSTS

12. Defendants shall pay the court costs of this action.

XII. TERMINATION

13. No earlier than two (2) years from the date of the Court's approval of this Consent

Decree, Defendants may move the Court, pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure, to terminate the injunctive provisions of Paragraphs Seven and Nine of this Consent Decree if Defendants can demonstrate that they have been in complete compliance with the obligations of this Consent Decree for a two year period and that they have implemented and/or fulfilled all requirements of this Consent Decree. Plaintiff takes no position as to such motion, and reserves any rights it may have to oppose the motion for any reason, including that two (2) years is not an appropriate time period for termination.

IT IS SO ORDERED

Michael P. Kelly
JUDGE
10 Feb. 1995
DATE

APPROVED:

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

Christopher A. Walker
Christopher A. Walker (0040696)
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(614) 466-2766

JACOB SHIFF, INDIVIDUALLY AND AS
AUTHORIZED AGENT OF
SAN-LAN CORPORATION

Jacob Schiff
Jacob Schiff
d-5.

Shane A. Farolino
Shane A. Farolino (0040310)
Spengler Nathanson
608 Madison Avenue
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Toledo, Ohio 43604-1169

* Counsel for Defendants

I hereby certify that this is a true copy of the original
in 10th February 1995
by Shane A. Farolino Deputy Clerk