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**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO EX REL. NANCY ROGERS  
Plaintiff

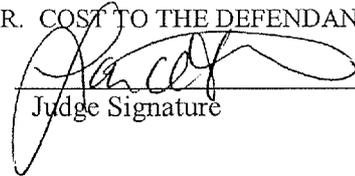
ROBERT D MOONEY ET AL.  
Defendant

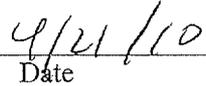
Case No: CV-08-678002

Judge: LANCE T MASON

**JOURNAL ENTRY**

PARTIES HAVE SUBMITTED THE AGREED CONSENT ORDER. COST TO THE DEFENDANTS. FINAL/OSJ.

  
Judge Signature

  
Date

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APR 23 2010

GERALD E. FUERST, CLERK  
By  Deputy

PROCESSED

APR 27 2010

GERALD E. FUERST, CLERK  
IMAGING DEPARTMENT



undersigned representative of each party to this Consent Order certifies that he or she is fully authorized by the Party or Parties whom she or he represents to enter into the terms and conditions of the Consent Order and to execute and legally bind that Party or Parties to it. This Consent Order is in settlement and compromise of disputed claims, and nothing in this Consent Order is to be construed as an admission of any facts or liability, which liability Defendant expressly denies.

### **III. SATISFACTION OF LAWSUIT**

3. Plaintiff alleges in its Complaint that Defendants have violated various provisions of R.C. Chapter 3737 and the rules adopted thereunder at 27000 Chagrin Blvd. Cuyahoga County, Ohio (the "Site"). Except as otherwise provided in paragraph 4 of this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendants for all claims under such laws as alleged in the Complaint.

4. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief from Defendants for: (a) claims or violations not referenced in the Complaint; (b) any violations arising out of acts or omissions first occurring after the entry of this Consent Order; or (c) claims or violations under the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. 9601, et seq. or R.C. 3734.20 through 3734.27 for any emergency, removal, remedial, corrective actions, or natural resource damages. Further, nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek immediate relief to abate any conditions that pose a threat to human health or the environment. Defendants retain all rights, defenses, and/or claims they may legally raise to the extent that the State seeks further relief from them in the future, or in any action brought to enforce the terms of this Consent Order, except that they shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue

preclusion, claim splitting, or other defenses based upon any contention that the claims raised by the State in subsequent proceedings were or should have been brought in the instant case.

5. Entering into this Consent Order, the Consent Order itself, or the taking of any action in accordance with it and/or any work performed at the Site to date does not constitute an admission of any liability, wrongdoing, or misconduct on the part of the Defendants, their officers, employees or representatives.

6. Nothing herein shall be construed to relieve Defendants of their obligation to comply with all applicable federal, state, or local statutes, regulations, or ordinances, including but not limited to the applicable permit requirements thereunder.

#### **IV. PERMANENT INJUNCTION**

7. Defendants are hereby permanently ordered and enjoined to immediately comply with the requirements of R.C. Chapter 3737 and the rules adopted under that Chapter.

#### **V. CORRECTIVE ACTION COMPLIANCE**

8. Defendants are hereby ordered and enjoined to perform the following corrective actions at the Site:

A. By August 1, 2010, pursuant to Ohio Adm. Code 1301:7-9-13(I)(4), complete a Tier 1 Delineation at the Site.

B. Pursuant to Ohio Adm. Code 1301:7-9-13(I)(4), upon approval by the Bureau of Underground Storage Tank Regulations (“BUSTR”) of the completeness of the Tier 1 Delineation, Defendant shall conduct one or a combination of the following:

1. Submit a Tier 2 Evaluation pursuant to Ohio Adm. Code 1301:7-9-13(L); and/or

2. Perform an Interim Response Action, pursuant to Ohio Adm. Code 1301-7-9-13(K), and submit a completion report within 60 days of completing the Interim Response Action; and/or
  3. Submit a Remedial Action Plan pursuant to Ohio Adm. Code 1301:7-9-13(N).
- C. If Defendants elect to submit a Tier 2 Evaluation, Defendants shall submit to BUSTR for approval the planned submittal date sixty days after Defendants receive BUSTR's approval of the Tier 1 Delineation. If Defendants elect to implement a Remedial Action Plan it shall be submitted to BUSTR for approval one hundred and twenty days after Defendants receive BUSTR's approval of the Tier 1 Delineation.
- D. Where free product is present, Defendant shall perform all of the following activities:
1. Pursuant to Ohio Adm. Code 1301:7-9-13(G)(3)(a) immediately implement a free product recovery program that removes free product to the maximum extent practicable, while continuing other actions required by Ohio Adm. Code 1301:7-9-13; and
  2. Pursuant to Ohio Adm. Code 1301:7-9-13(G)(3)(c) submit a written report to the fire marshal, on a monthly basis, until free product has been removed to the maximum extent practicable.

- D. All other corrective actions are to be conducted pursuant to the requirements set forth in Ohio Adm. Code 1301:7-9-13 until an NFA status is achieved.
- E. Extensions for any deadline specified in this Order or in Ohio Adm. Code 1301:7-9-13 shall be requested in accordance with Ohio Adm. Code 1301:7-9-13(Q).

9. All reports or other documents approved by BUSTR and submitted pursuant to this Consent Order shall be considered incorporated into this Consent Order and fully enforceable as required by under this Consent Order.

10. The reports and documents required by Paragraph 8 and any other written notification applications, correspondence, permit applications, and plans as required by this Consent Order, shall be sent to:

Bureau of Underground Storage Tank Regulations  
8895 East Main Street  
Reynoldsburg, Ohio 43068  
Attn: Charlie Zepp, Environmental Specialist II

#### **VI. CIVIL PENALTY**

11. Pursuant to R.C. 3737.882, Defendants are ordered and enjoined to pay a civil penalty of thirty thousand dollars (\$30,000.00) to the State. Payment shall be made within within three calendar years of the date the Order is journalized on the court docket, and in accordance with the schedule below, by delivering to Karen Pierson, Paralegal, or her successor, Office of the Attorney General, Environmental Enforcement Section, 30 E. Broad Street, 25th Floor, Columbus, Ohio 43215-3400, a certified check for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

- A total of \$2,500.00 by June 1, 2010;

- A total of \$5,000.00 by September 1, 2010;
- A total of \$7,500.00 by December 1, 2010;
- A total of \$10,000.00 by March 1, 2011;
- A total of \$12,500.00 by June 1, 2011;
- A total of \$15,000.00 by September 1, 2011;
- A total of \$17,500.00 by December 1, 2011;
- A total of \$20,000.00 by March 1, 2012;
- A total of \$22,500.00 by June 1, 2012;
- A total of \$25,000.00 by September 1, 2012;
- A total of \$27,500.00 by December 1, 2012;
- A total of \$30,000.00 by March 1, 2013.
- In the event that Defendants fail to make full payment of any of the civil penalty payments by the date due, all remaining civil penalty payments become immediately due and owing without further notice.
- In the event that Defendants fail to make full payment of any of the civil penalty payments by the date due, interest will immediately begin to accumulate, pursuant to R.C. 1343.03, on the full civil penalty amount of \$30,000, and continue to run until the entire penalty is paid in full.

#### **VII. STIPULATED PENALTIES**

12. In the event that Defendants fail to meet a deadline set forth in Paragraph 8 of the Consent Order; a corrective action deadline set forth in Ohio Adm. Code 1301:7-9-13; or the

civil penalty payment deadline set forth in Paragraph 11 of the Consent Order, Defendants shall immediately, automatically, and without notice be liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of each failure to meet a requirement, up to thirty (30) days – one hundred dollars (\$100) per day for each requirement not met. For each day of each failure to meet a requirement, from thirty-one (31) to sixty (60) days – two hundred and fifty dollars (\$250) per day for each requirement not met. For each day of each failure to meet a requirement, from sixty-one (61) to ninety (90) days- five hundred dollars (\$500) per day for each requirement not met. For each day of each failure to meet a requirement, over ninety (90) days -one thousand dollars (\$1,000) per day for each requirement not met.

13. Any payment required to be made under the provisions of Paragraph 12 of this Consent Order shall be made by delivering, within fifteen (15) calendar days from the date the failure to meet the requirement of the Consent Order is cured, a certified check or checks for the appropriate amounts made payable to “Treasurer, State of Ohio” to Karen Pierson, Paralegal, or her successor, Ohio Attorney General’s Office, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215-3400. Defendants shall also state in writing the specific violation of the Consent Order and the date(s) of non-compliance. The payment of stipulated penalties by Defendants and the acceptance of such stipulated penalties for specific violations pursuant to Section VII of this Order shall not be construed to limit Plaintiff’s authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order.

14. If any event occurs which causes or may cause a delay of any requirements of this Order, Defendants shall notify the BUSTR in writing within two (2) calendar days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay,

the measures taken and to be taken to prevent or minimize the delay and the timetable by which measures will be implemented. Defendants will adopt all reasonable measures to avoid or minimize any such delay.

15. With the provision that the notification in Paragraph 14, above, does not necessarily terminate or delay any requirement in the Consent Order, in any action by the State to enforce any of the provisions of this Order, Defendants may raise that they are entitled to a defense and that their conduct was caused by reasons entirely beyond their control such as, by way of example and not limitations, acts of God, strikes, acts of war, civil disturbances, or vandalism. While the State does not agree that such a defense exists, it is, however, hereby agreed upon by Defendants and the State 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 a proceeding to enforce this Consent Order, if any, is commenced by the State. At that time, Defendants will bear the burden of providing that any delay was or will be caused by circumstances entirely beyond the control of Defendants. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, shall not serve as a basis for an extension of time under this Consent Order. Any extension of a date based on a particular incident does not mean that Defendants shall receive an extension of a subsequent date or dates. Defendants must make an individual showing of proof for each incremental step or other requirement for which an extension is sought.

#### **VIII. RETENTION OF JURISDICTION**

16. The Court will retain jurisdiction of this action for the purpose of administering and enforcing Defendants' compliance with the terms and provisions of this Order.

**IX. ATTORNEY GENERAL ENFORCEMENT COSTS**

17. Pursuant to R.C. 3737.89, Defendants are ordered and enjoined to pay the enforcement costs of the Ohio Attorney General in the amount of \$2,000 by May 1, 2010. This payment shall be made by delivering to Karen Pierson, Paralegal, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215-3400 a certified check for the appropriate amount, payable to the order of "Treasurer, State of Ohio" to be deposited into the Attorney General's General Reimbursement Account (also known as CAS Fund 106).

**X. SIGNATORIES**

18. Each of the undersigned representatives of the Parties represents that he/she is fully authorized to enter into the terms and conditions of this Consent Order and legally bind the respective Party to this document.

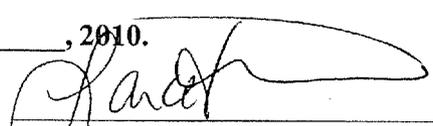
**XI. COSTS**

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

**XII. ENTRY OF CONSENT ORDER**

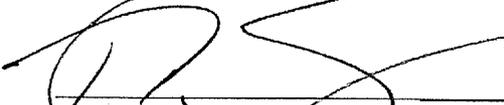
20. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the Order upon the journal, the clerk is directed to serve upon all parties notice of the Order and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and to note the service in the appearance docket.

SO ORDERED THIS 26<sup>th</sup> DAY OF April, 2010.

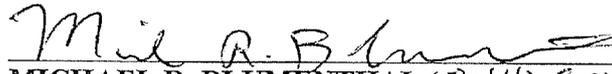
  
\_\_\_\_\_  
JUDGE  
CUYAHOGA COUNTY  
COURT OF COMMON PLEAS

APPROVED BY:

**RICHARD CORDRAY**  
**OHIO ATTORNEY GENERAL**

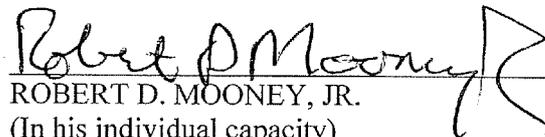
  
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*Attorney for the State*

  
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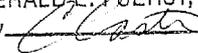
*Attorney for Defendants*

  
**ROBERT D. MOONEY, SR.**  
(In his individual capacity)

  
**ROBERT D. MOONEY, JR.**  
(In his individual capacity)

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By  Deputy