

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO



STATE OF OHIO ex rel.  
MICHAEL DeWINE  
OHIO ATTORNEY GENERAL

Plaintiff,

v.

OTHO CASTO, et al.

Defendants.

Judge: CAROLYN B FRIEDLAND

CV 11 752778

**CONSENT ORDER**

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio, by its Attorney General, Michael DeWine ("Plaintiff" or "State"), and Defendants Otho Casto and Ron Casto ("Defendants") having consented to the entry of this Order;

**NOW THEREFORE**, without trial of any issues of fact or law, without any admission of any issues of law, liability or fact, and upon the consent of the Parties hereto, it is **ADJUDGED, ORDERED, and DECREED** as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the parties and the subject matter of this action pursuant to Chapter 3737 of the Ohio Revised Code ("R.C."). Venue is proper in this Court. Solely for purposes of this Consent Order and the underlying Complaint, Defendants do not contest that the Complaint states a claim upon which relief can be granted.

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**I. JURISDICTION AND VENUE**

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## **II. PARTIES**

2. The provisions of this Consent Order shall apply to and are binding upon the parties and their respective successors in interest and assigns, agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them, in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure. The Defendants shall provide a copy of this Consent Order to each contractor they employ to perform work itemized herein, and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work. The undersigned representatives of each party to this Consent Order 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 the Consent Order and to execute and legally bind that party or parties to it.

3. The obligation of Defendants to pay the amounts and implement the requirements of this Consent Order are joint and several. In the event of insolvency, bankruptcy, or other failure of any Defendant to pay any required amount and/or implement any requirement, the remaining Defendant shall pay the amount and/or implement the requirement as required by this Consent Order.

## **III. SATISFACTION OF LAWSUIT AND EFFECT OF CONSENT ORDER**

4. The State has alleged in its Complaint that Otho Casto, an owner of an underground storage tank system as defined in R.C. 3737.87(H), and Ron Casto, an operator of an underground storage tank system as defined in R.C. 3737.87(G), have violated various provisions of R.C. Chapter 3737, and the rules adopted thereunder by the Ohio State Fire Marshal, Bureau of Underground Storage Tank Regulations ("BUSTR"), in regards to the Underground Storage Tank system ("UST") located at 4512 Broadview Road, in Cleveland,

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Cuyahoga County, Ohio (the "Facility"). Except as otherwise provided in paragraph 5 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.

5. 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 effective date 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.

6. 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 Facility to date does not constitute an admission of any liability, wrongdoing, or misconduct on the part of the Defendants, their employees or representatives.

7. 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

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7. 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**

8. 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, subject to the terms and conditions of this Consent Order.

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

9. Defendants are hereby ordered and enjoined to perform the following corrective actions at the Facility:

a. By June 13, 2011, Defendants shall conduct a revised Tier 1 Source Investigation, as required by Ohio Adm. Code 1301:7-9-13(H);

b. Defendants shall submit a Tier 1 Investigation report as required by Ohio Adm. Code 1301:7-9-13(I)(3) to the Fire Marshal by July 13, 2011 that includes the following information;

1. Define soil contamination back to delineation levels north and east of SB-10 (soil boring 10).
2. Install a monitoring well in the area of SB-10.
3. Re-evaluate whether the groundwater at the site is drinking water.
4. Complete custodial records of handling and collection of soil samples.

c. If the laboratory results of the Tier 1 Delineation show that contamination is above action levels, then Defendants shall choose one or a combination of one of the following options in accordance with Ohio Adm. Code 1301: 7-9-13(I)(4)(c):

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2. Install a monitoring well in the area of SB-10.
3. Re-evaluate whether the groundwater at the site is drinking water.
4. Complete custodial records of handling and collection of soil samples.

c. If the laboratory results of the Tier 1 Delineation show that contamination is above action levels, then Defendants shall choose one or a combination of one of the following options in accordance with Ohio Adm. Code 1301: 7-9-13(I)(4)(c):

1. Within 45 days of formal BUSTR approval of the Tier 1 Investigation report, Defendants shall conduct a Tier 2 Evaluation and submit a Tier 2 Evaluation report to the Fire Marshal, as required by Ohio Adm. Code 1301:7-9-13(L); or
  2. Within 90 days of formal BUSTR approval of a Tier 1 Investigation report, Defendants shall prepare and submit to the Fire Marshal a Remedial Action Plan, as required by Ohio Adm. Code 1301: 7-9-13(N); or
  3. Within 90 days of formal BUSTR approval of a Tier 1 Investigation report, Defendants shall conduct an Interim Response Action and within 60 days of completing the Interim Response Action, submit to the Fire Marshal a summary report as required by Ohio Adm. Code 1301: 7-9-13 (K).
- d. The Defendants shall continue to conduct all necessary corrective actions to address the release(s) of petroleum at the Facility, in strict accordance with all requirements and deadlines specified in Ohio Adm. Code 1301:7-9-13 until a No Further Action status is achieved.
10. 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), the granting or denial of which shall be in the sole, unreviewable discretion of the State Fire Marshal.

#### **VI. REVIEW OF SUBMITTALS, NOTICE, AND DOCUMENTS**

11. Upon the submission of any report or other document by the Defendants pursuant to any provision of this Order, if BUSTR determines that the report is incomplete or insufficient,

1. Within 45 days of formal BUSTR approval of the Tier 1 Investigation report, Defendants shall conduct a Tier 2 Evaluation and submit a Tier 2 Evaluation report to the Fire Marshal, as required by Ohio Adm. Code 1301:7-9-13(L); or
2. Within 90 days of formal BUSTR approval of a Tier 1 Investigation report, Defendants shall prepare and submit to the Fire Marshal a Remedial Action Plan, as required by Ohio Adm. Code 1301: 7-9-13(N); or
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## **VI. REVIEW OF SUBMITTALS, NOTICE, AND DOCUMENTS**

11. Upon the submission of any report or other document by the Defendants pursuant to any provision of this Order, if BUSTR determines that the report is incomplete or insufficient,

the Defendants shall respond in writing to BUSTR within fourteen (14) business days from the mailing of the notification of the deficiencies from BUSTR. In reviewing any report or other document required to be submitted by this Consent Order, BUSTR shall conduct its review in a manner consistent with all applicable provisions of this Consent Order and any applicable statutes, rules, and/or professional guidance documents. The Defendants' responses shall address the specific concerns raised by BUSTR and include the changes requested by BUSTR, unless Defendants can demonstrate to the satisfaction of BUSTR that a requested change is not required by the Corrective Action Compliance requirements, Section V, of this Consent Order

12. 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 under this Consent Order.

13. All written notifications or correspondence, including compliance reports, as required by this Consent Order, shall be sent to:

Bureau of Underground Storage Tank Regulations  
Ohio State Fire Marshal  
Corrective Actions  
Attn: Charlie Zepp  
8895 East Main Street  
Reynoldsburg, Ohio 43068-9009

## **VII. CIVIL PENALTY**

14. Pursuant to R.C. 3737.882, Defendants are ordered and enjoined to pay a civil penalty of \$27,703 to the State in six equal payments of \$4,617.16. Within fifteen (15) calendar days after entry of this Consent Order by the Court, the first payment shall be made 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." The

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remaining payments of \$4,617.16 shall be due on June 1, 2011; August 1, 2011; October 1, 2011; December 1, 2011, and February 1, 2012, respectively.

### **VIII. STIPULATED PENALTIES**

15. In the event that Defendants fail to meet a submittal or implementation deadline set forth in Paragraphs 9 or 10 of the Consent Order; an implementation deadline set forth in an approved implementation schedule; a corrective action deadline set forth in Ohio Adm. Code 1301:7-9-13; a deadline set by BUSTR pursuant to an extension requested in accordance with Ohio Adm. Code 1301:7-9-13(Q); or a civil penalty payment deadline set forth in Paragraph 14 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.

16. In the event Defendants, after receiving a deficiency notice from BUSTR, submit a report to BUSTR as required by Paragraph 9 or 10, but fail to correct the deficiency or deficiencies and/or fail to submit documentation showing the corrections to BUSTR, Defendants shall pay a stipulated penalty as set forth in Paragraph 15 of the Consent Order. The accrual of stipulated penalties begins on the date BUSTR sends notice to the Defendants that the deficiency

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17. Any payment required to be made under the provisions of Paragraphs 15 or 16 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 VIII 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.

18. 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 ten (10) 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.

19. With the provision that the notification in Paragraph 18, 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 timely compliance was delayed by reasons entirely beyond their control

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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.

**IX. ATTORNEY GENERAL ENFORCEMENT COSTS**

20. 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 \$2,850 fifteen (15) calendar days after entry of this Consent Order by the Court. 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."

**X. EFFECTIVE DATE**

21. This Consent Order shall become effective upon the date of its entry by the Court.

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#### **X. EFFECTIVE DATE**

21. This Consent Order shall become effective upon the date of its entry by the Court.

**XI. COSTS**

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

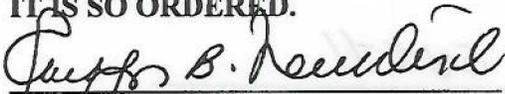
**XII. RETENTION OF JURISDICTION**

23. This Court shall retain jurisdiction of this action for the purposes of making any Order or Decree, which it deems appropriate to carry out this Consent Order.

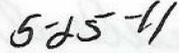
**XIII. SIGNATORIES**

24. 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.

IT IS SO ORDERED.



JUDGE  
CUYAHOGA COUNTY  
COURT OF COMMON PLEAS



DATE

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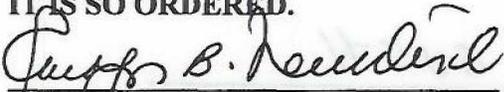
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CUYAHOGA COUNTY  
COURT OF COMMON PLEAS



DATE

APPROVED BY:

MICHAEL DEWINE  
OHIO ATTORNEY GENERAL

*Sari Levin*

SARI MANDEL LEVIN (0082721)  
Assistant Attorney General  
Environmental Enforcement Section  
441 Vine Street, 16<sup>th</sup> Floor  
Cincinnati, OH 45202  
Phone: (513) 852-1572  
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*Attorney for Plaintiff State of Ohio*

*Suzanne Fisher Edwards / AMS*  
SUZANNE FISHER EDWARDS (0070228)  
MCMAHON DEGULIS, LLP  
1335 Dublin Road, Suite 216A  
Columbus, OH 43215  
Telephone: (614) 678-5370  
Facsimile: (614) 485-9108  
*Attorney for Defendants Otho and Ron  
Casto*

*Otho Casto*

OTHO CASTO  
*In his individual capacity*

*Ron Casto*

RON CASTO  
*In his individual capacity*

RECEIVED FOR FILING

MAY 26 2011

GERALD E. PURODT, CLERK  
By *B. Conway* Deputy

APPROVED BY:

MICHAEL DEWINE  
OHIO ATTORNEY GENERAL

Sari Levin  
SARI MANDEL LEVIN (0082721)  
Assistant Attorney General  
Environmental Enforcement Section  
441 Vine Street, 16<sup>th</sup> Floor  
Cincinnati, OH 45202  
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Fax: (513) 852-2845  
Email: sari.levin@ohioattorneygeneral.gov  
*Attorney for Plaintiff State of Ohio*

Suzanne Fisher Edwards / AMS  
SUZANNE FISHER EDWARDS (0070228)  
MCMAHON DEGULIS, LLP  
1335 Dublin Road, Suite 216A  
Columbus, OH 43215  
Telephone: (614) 678-5370  
Facsimile: (614) 485-9108  
*Attorney for Defendants Otho and Ron  
Casto*

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Otho Casto  
OTHO CASTO  
*In his individual capacity*

Ron Casto  
RON CASTO  
*In his individual capacity*