

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO



JUN 08 '11 PM 4:03:00 S

STATE OF OHIO, ex rel.	:	CASE NO.: CV 11 752933
MICHAEL DEWINE,	:	
OHIO ATTORNEY GENERAL	:	JUDGE DAVID T. MATIA
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CSX TRANSPORTATION, INC. and	:	
ARCADIS U.S., INC.	:	
	:	
Defendants.	:	

CONSENT ORDER BETWEEN STATE OF OHIO AND CSX TRANSPORTATION, INC.

Plaintiff, State of Ohio, by and through its Attorney General, Michael DeWine, and CSX Transportation, Inc. ("CSXT") hereby consent to the entry of this Consent Order.

NOW THEREFORE, without trial of any issue of law or fact, and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED 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 Revised Code ("R.C.") Chapter 6111. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted against CSXT.

II. PERSONS BOUND

2. The provisions of this Consent Order shall apply to and be binding upon CSXT, CSXT's agents, officers, employees, assigns, successors in interest (collectively "CSXT") and others to the extent provided by Civil Rule 65(d). The undersigned

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

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

3. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by CSXT for all claims, violations, or known conditions relating to the discharges alleged in the Complaint.

4. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief against CSXT or other appropriate persons, including but not limited to Arcadis U.S., Inc. ("Arcadis"), for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint. Conditions not alleged in the Complaint include, but are not limited to, unknown conditions and/or new information relating to the discharges alleged in the Complaint. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief against other appropriate persons, other than CSXT, including but not limited to Arcadis, for claims or conditions alleged in the Complaint.

5. Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to undertake any action against any person, including CSXT and Arcadis, to eliminate or mitigate conditions that may present a threat to the public health, welfare or the environment.

6. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order.

7. Nothing herein shall restrict the right of CSXT to raise any administrative, legal or equitable claim or defense with respect to such further actions reserved by the State of Ohio in this Section. However, CSXT 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 the subsequent proceeding were, could, or should have been brought in the instant case.

IV. INJUNCTIVE RELIEF

8. From date of entry of this Consent Order, CSXT is hereby permanently enjoined and immediately ordered to comply with the requirements of R.C. Chapter 6111 and the rules adopted thereunder.

V. CIVIL PENALTY

9. CSXT shall pay to the State of Ohio a civil penalty of Two Hundred Thousand Dollars (\$200,000.00) within thirty (30) days of the entry of this Consent Order. The penalty payment shall be paid by certified check for the appropriate amount, made payable to "Treasurer State of Ohio," which check shall be delivered to Karen Pierson, Paralegal, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

10. CSXT shall pay to the State of Ohio an additional One Hundred, Fifty

Thousand Dollars (\$150,000.00) to the Surface Water Improvement Fund (5Y30). The check, made payable to "Treasurer State of Ohio," shall be delivered within thirty (30) days of entry of this Consent Order. The official check and a cover letter identifying CSXT shall be delivered to Brenda Case, or her successor, at Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216.

VII. OHIO ATTORNEY GENERAL ENFORCEMENT COSTS

11. Defendant shall pay the Ohio Attorney General Enforcement Costs through entry of this Consent Order in the amount One Thousand, Two Hundred Fifty Dollars (\$1,250) by delivering a certified check in such amount for payment into the State Treasury to the credit of the Attorney General's General Reimbursement account made payable to the order of "Treasurer, State of Ohio" to Karen Pierson, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, within thirty (30) days of the entry of this Consent Order. Any check submitted in compliance with this Section shall be in addition to and separate from any check submitted pursuant to any other Section of this Consent Order.

VIII. RETENTION OF JURISDICTION

12. The Court shall retain jurisdiction of this action for purposes of enforcing this Consent Order.

13. There shall be no modification of this Consent Order without written approval by all of the Parties and the Court.

IX. COSTS

14. Arcadis and CSXT are jointly and severally liable for the court costs of this action.

X. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

15. The parties state that final approval by the State of Ohio and CSXT and entry of this Consent Order is subject to the requirement of 40 C.F.R. § 123.27(d)(2)(iii), which provides for notice of the lodging of this Consent Order, opportunity for public comment, and the consideration of any public comment. Both the State of Ohio and CSXT have the right to withdraw consent to this Consent Order based on comments received during the public comment period. CSXT shall pay the cost of publishing the public notice within thirty (30) days of receipt of a bill or notice from Ohio EPA.

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

XI. TERMINATION

17. No earlier than two (2) years after the entry of this Consent Order, and contingent on Defendant having paid the civil penalty, the supplemental environmental project and the enforcement costs required by this Consent Order, Defendants may move the Court, pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure, to terminate this Consent Order. Plaintiff takes no position with regard to such motion at this time, and reserves its rights to oppose the motion. Termination of any or all of the provisions of this Consent Order may also be granted upon joint motion of the parties. The provisions in

Section II, Satisfaction of Lawsuit and Reservation of Rights shall survive and not be affected by any termination of this Consent Order.

IT IS SO ORDERED.

DATE

JUDGE
COURT OF COMMON PLEAS
CUYAHOGA, OHIO

APPROVED:

**MICHAEL DEWINE,
OHIO ATTORNEY GENERAL**

KATE MONTI BARCALOW (0084310)
TIMOTHY J. KERN (0034629)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
(614) 644-9776
kate.barcalow@ohioattorneygeneral.gov
timothy.kern@ohioattorneygeneral.gov

Counsel for Plaintiff

McMAHON DEGULIS LLP

MICHAEL S. McMAHON (0014285)
The Caxton Building
812 Huron Rd., Suite 650
Cleveland, OH 44115
(216) 621-1312x102
mmcmahon@mdlip.net

Counsel for Defendant CSX Transportation, Inc.

CSX TRANSPORTATION, INC.

By:
Print Name: Howard R. Elliott
Title: Vice President

RECEIVED FOR FILING

JUN 10 2011

by
Clerk

