

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

CLERK OF COURT
STARK COUNTY, OHIO
2017 JAN 27 AM 8:46

STATE OF OHIO, *ex rel.*
MICHAEL DEWINE,
OHIO ATTORNEY GENERAL,

Plaintiff,

v.

GEKKO HOLDINGS, LLC, et al.,

Defendants.

CASE NO.: 2016CV01782

JUDGE TARYN L. HEATH

CONSENT ORDER AND FINAL JUDGMENT ENTRY

The State of Ohio ("Plaintiff"), upon written request of the Director of Ohio EPA, has filed a Complaint in this action on August 3, 2016 against Defendants Gekko Holdings, LLC and Daniel D. Buxton (collectively, "Defendants") to enforce Ohio's hazardous waste laws found in Chapter 3734 of the Revised Code and the rules adopted thereunder; and Plaintiff and Defendants having consented to the entry of this Order;

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

I. DEFINITIONS

1. As used in this Consent Order:

A. "Closure Plan" means a written closure plan that has been approved by the Director and is in accordance with Ohio Adm.Code 3745-55-10 through 3745-55-20.

The approved closure plan may be a closure plan approved by the Director as submitted

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by Defendants, or a closure plan approved by the Director after being submitted by Defendants and modified by the Director.

B. **“Consent Order”** means this Consent Order and Final Judgment Entry.

C. **“Defendants”** means Gekko Holdings, LLC and Daniel D. Buxton.

D. **“Director”** means Ohio’s Director of Environmental Protection.

E. **“Effective Date”** means the date the Stark County Clerk of Courts files this Consent Order.

F. **“Facility”** refers to the facility where the alleged treatment, storage, disposal, or other placement of hazardous waste occurred, which is located 5020 Southway Street, Canton, Ohio 44706.

G. **“Hazardous Waste Management Units”** mean any and all areas where hazardous wastes, as defined by R.C. 3734.01(J) and Ohio Adm.Code 3745-51-03, have been stored and/or disposed of at the Facility.

H. **“Ohio EPA”** means the Ohio Environmental Protection Agency.

I. **“Plaintiff”** means the State of Ohio by and through the Attorney General of Ohio.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, pursuant to Revised Code Chapter 3734 and the rules adopted thereunder. This Court has jurisdiction over the parties. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted.

III. PERSONS BOUND

3. The provisions of this Consent Order shall apply to and be binding upon Plaintiff and Defendants, and Defendants’ agents, officers, employees, assigns, successors-in-interest, and

any other person who would be bound pursuant to Rule 65(D) of the Ohio Rules of Civil Procedure, including any person acting in concert, privity or participation with Defendants who receives actual notice of this Consent Order. Defendants are ordered and enjoined to provide a copy of this Consent Order to any person they employ and/or contract with to perform work itemized herein.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

4. Except as otherwise provided in this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendants to Plaintiff for all claims alleged in the Complaint.

5. Nothing in this Consent Order, including the imposition of stipulated civil penalties, shall limit the authority of the State of Ohio to:

- A. Seek relief for claims or conditions not alleged in the Complaint;
- B. Seek relief for claims or conditions alleged in the Complaint that occur after the entry of this Consent Order;
- C. Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;
- D. Bring any action against Defendants or against any other person, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. §9601, et seq. and/or Revised Code 3734.20 through 3734.27 to:
(1) recover natural resource damages, and/or (2) order the performance of, and/or recover costs for, any removal, remedial or corrective activities not conducted pursuant to the terms of this Consent Order.

E. Take any action authorized by law against any person, including Defendants, to eliminate or mitigate conditions at the Facility that may present an imminent threat to the public health or welfare, or the environment.

6. Nothing in this Consent Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged in the Complaint, against any person, firm, trust, joint venture, partnership, corporation, association, or other entity not a signatory to this Consent Order. The State also specifically reserves against any entity that is not a signatory to this Consent Order.

7. Nothing in this Consent Order shall be construed to limit the statutory authority of the Director or his authorized representatives to enter at reasonable times upon any private or public property, real or personal, to inspect or investigate, obtain samples and examine or copy any records to determine compliance with R.C. Chapter 3734.

8. Nothing in this Consent Order shall be construed to relieve any Defendant of his or its obligations to comply with applicable federal, state, or local statutes, regulations, or ordinances.

9. Nothing herein shall restrict the right of the Defendants to raise any administrative, legal or equitable claim or defense with respect to such further actions reserved by the State in this Section. However, Defendants 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.

V. CLOSURE OF HAZARDOUS WASTE MANAGEMENT UNITS

10. Defendants, jointly and severally, are ordered and enjoined to comply with the requirements of Ohio Adm.Code 3745-55-10 through Ohio Adm.Code 3745-55-20 in closing the Hazardous Waste Management Units at the Facility. The Hazardous Waste Management Units shall be closed in a manner that minimizes the need for further maintenance and controls, and that minimizes or eliminates, to the extent necessary to prevent threats to human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere, and complies with the closure requirements of Ohio Adm.Code 3745-55-10 through 3745-55-20.

11. Within sixty (60) days of the Effective Date, Defendants are ordered and enjoined to submit to Ohio EPA, at the addresses set forth in Section VI of this Consent Order, a Closure Plan in accordance with Ohio Adm.Code 3745-55-10 through 3745-55-20 for the Hazardous Waste Management Units at the Facility.

A. After public notice of the Closure Plan and comment pursuant to Ohio Adm.Code 3745-66-12(D)(4), if Ohio EPA determines that the Closure Plan is deficient and gives Defendants written notice of such deficiencies in the Closure Plan, Defendants are ordered and enjoined to submit to Ohio EPA a revised Closure Plan within thirty (30) days of receipt of the notice of deficiencies.

B. Following review of the revised plan, if Ohio EPA determines that the revised Closure Plan is deficient, Ohio EPA may modify the plan and approve the revised plan as modified by Ohio EPA.

C. Immediately upon receipt of notice of approval by Ohio EPA of the Closure Plan, either as originally submitted, as revised, or as revised and modified,

Defendants are ordered and enjoined to implement the approved Closure Plan in the manner and time frames set forth in the approved Closure Plan.

12. If Defendants are required to submit an amended Closure Plan to Ohio EPA, the Closure Plan shall be amended in accordance with Ohio Adm.Code 3745-55-12(C). Ohio EPA will approve, revise, or revise and modify the amended Closure Plan as set forth in Paragraph 11., and Defendants shall implement the approved amended Closure Plan as set forth in Paragraph 11.

13. Pursuant to the schedule contained within the approved Closure Plan, Defendants shall submit a closure cost estimate and documentation demonstrating that Defendants have established financial assurance and liability coverage for the areas of the Facility subject to closure, pursuant to Ohio Adm.Code 3745-55-42 through Ohio Adm.Code 3745-55-47.

14. Defendants are ordered and enjoined to amend the approved Closure Plan pursuant to Ohio Adm.Code 3745-55-12 whenever:

- A. Changes in operating plans or facility design affect the Closure Plan; or
- B. There is a change in the expected year of closure, if applicable; or
- C. In conducting partial or final closure activities, unexpected events require a modification of the Closure Plan.

15. Within thirty (30) days of completion of closure, Defendants are ordered and enjoined to submit certification of closure to Ohio EPA, pursuant to Ohio Adm.Code 3745-55-15, and a survey plat, pursuant to Ohio Adm.Code 3745-55-16 (if necessary).

16. All closure and post-closure plans developed for the Facility shall be enforceable under this Consent Order as though fully incorporated herein.

17. Nothing in this Section shall limit Defendants' or any other entity's rights to appeal any final action of the Director regarding approval, denial or approval with conditions of

the Closure Plan to the Environmental Review Appeals Commission.

VI. FACILITY ACCESS

18. As of the Effective Date, Ohio EPA and its representatives and contractors shall have access at reasonable times to the Facility, and shall have access to any other property controlled by or available to Defendants to which access is necessary to effectuate the actions required by this Consent Order. Access shall be allowed for the purposes of conducting activities related to this Consent Order including but not limited to:

- A. Monitoring the work or any other activities taking place at the Facility;
- B. Verifying any data or information submitted to Ohio EPA;
- C. Conducting investigations relating to contamination at or near the Facility;
- D. Obtaining samples;
- E. Assessing the need for, planning, or implementing additional response actions at or near the Facility;
- F. Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Defendants or their agents, consistent with this Consent Order and applicable law; or
- G. Assessing Defendants' compliance with this Consent Order.

Nothing in this Consent Order shall be construed to limit the statutory authority of the Director or his authorized representatives to enter at reasonable times upon the Facility or any other private or public property, real or personal, to inspect or investigate, obtain samples and examine or copy any records to determine compliance with R.C. Chapters 3734 and 6111.

VII. SUBMITTAL OF DOCUMENTS

19. All documents required to be submitted to Ohio EPA pursuant to this Consent Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio EPA
Division of Environmental Response and Revitalization
50 West Town Street, Suite 700
Columbus, Ohio 43215
Attn: Hazardous Waste Program Compliance Manager

Ohio EPA
Northeast District Office
Division of Emergency Response and Revitalization
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: Hazrdous Waste Program Manager

VIII. CIVIL PENALTY

20. Within sixty (60) days of the Effective Date, Defendants, jointly and severally, shall pay to the State of Ohio a total civil penalty in the amount of Five Thousand Dollars (\$5,000.00). The civil penalty shall be paid by delivering to Plaintiff, c/o Paralegal Scott Hainer, or his successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, a cashiers' or certified check payable to the order of "Treasurer, State of Ohio" and shall include a reference to "A.G. EAGO No. 521457". The civil penalty shall be deposited into the Environmental Protection Remediation Fund created by Revised Code 3734.281.

21. Should Defendants fail to make payment in full as required by Paragraph 20, the remaining unpaid balance of the total civil penalty, plus applicable interest pursuant to R.C. 131.02(D), shall become immediately due and owing. The amount of the delinquent payment

shall accrue interest at the maximum statutory rate under R.C. 5703.47, calculated from the Effective Date.

22. The State reserves the right to file a certificate of judgment lien against Defendants for the remaining unpaid balance of the total civil penalty, plus applicable interest per Paragraph 21 above, if the full payment is not paid within sixty (60) days of the Effective Date.

IX. STIPULATED PENALTIES

23. In the event that Defendants fail to comply with any requirement or deadline contained in this Consent Order, or any requirement or deadline contained in any document approved in accordance with this Consent Order, the Defendants are liable for and shall pay stipulated penalties in accordance with the following schedule for each failure to comply:

A. The first time Defendants violate the terms or conditions of this Consent Order, Defendants shall be liable for Five Hundred Dollars (\$500.00).

B. The next time Defendants violate the terms or conditions of this Consent Order, Defendants shall be liable for One Thousand Dollars (\$1,000.00)

C. For every occurrence that Defendants violate the terms or conditions of this Consent Order following the second violation, Defendants shall be liable for One Thousand Five Hundred Dollars (\$1,500.00) for each day of each violation.

24. Any payment required to be made under the provisions of this Section of the Consent Order shall be made by delivering to Plaintiff, c/o Paralegal Scott Hainer, or his successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, a cashiers' or certified check made payable to the order of "Treasurer, State of Ohio," for the appropriate amount within thirty (30) days from the date of the failure to meet the requirement or deadline of this Consent Order. A

letter briefly describing the type of violation, deadline or requirement not met and the date upon which the violation of this Consent Order occurred and a reference to AG EAGO No. 521457 shall accompany the payment of the stipulated penalty. This penalty shall be deposited into the Environmental Protection Remediation Fund created by Revised Code 3734.281.

25. The payment of stipulated penalties and the acceptance of such stipulated penalties by Plaintiff pursuant to this Section shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to Revised Code Chapter 3734, including civil penalties under Revised Code 3734.13, or to otherwise seek judicial enforcement of this Consent Order, for the same violation for which a stipulated penalty was paid or for other violations.

26. The requirement to pay any stipulated penalty as set forth herein is self-executing upon any violation of the terms and conditions of this Consent Order by Defendants. No further demand need be made by Plaintiff.

27. The parties to this Order agree that the stipulated penalties established in Section IX are coercive in nature, and are designed to ensure Defendants' compliance with the terms of this Order. The parties further agree that the stipulated penalties in this Order are not punishment for past acts or omissions by Defendants regarding the specific terms of this Order.

X. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS

28. All activities undertaken by Defendants pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state and local laws, rules, regulations and permits or other. Defendants shall submit timely applications and requests for any such permits and approvals. Where such laws appear to conflict with the other requirements of this Consent Order, Defendants are ordered and enjoined to immediately notify Ohio EPA of the potential conflict. Defendants are ordered and enjoined to include in all contracts or subcontracts entered into for work required under this Consent Order provisions

stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and rules. This Consent Order is not a permit issued pursuant to any federal, state or local law or rule.

XI. RETENTION OF JURISDICTION

29. This Court shall retain jurisdiction of this action for the purpose of enforcing this Consent Order or in resolving any conflicts concerning the interpretation of this Consent Order.

XII. COSTS

30. Defendants shall pay the court costs associated with this action.

XIII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

29. Upon signing of this Consent Order by the Court, the Clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the Clerk is directed to serve upon all 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.

XIV. AUTHORITY TO ENTER INTO THE CONSENT ORDER

30. Each signatory for a corporation represents and warrants that he or she has been duly authorized to sign this document and so bind the corporation to all terms and conditions in this Consent Order.

IT IS SO ORDERED:



JUDGE
STARK COUNTY COURT
OF COMMON PLEAS

11/25/17

DATE

**COUNSEL/PARTY WHO PREPARED
THIS ENTRY SHALL PRESENT A
COPY OF THIS ENTRY TO ALL OTHER
COUNSEL/PARTIES OF RECORD
PURSUANT TO LOC. R. 18
JUDGE TARYN L. HEATH**

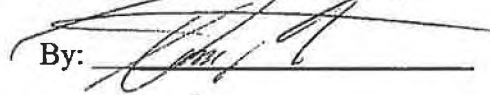
APPROVED BY

**MICHAEL DEWINE
OHIO ATTORNEY GENERAL**

Jennifer A. Barrett
**TIMOTHY KERN (0034629)
JENNIFER A. BARRETT (0087974)**
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30 East Broad Street, 25th Floor
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*Counsel for Plaintiff State of Ohio ex
rel. Michael DeWine, Ohio Attorney General*

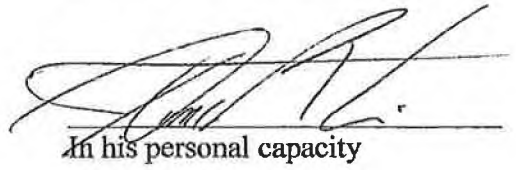
GEKKO HOLDINGS, LLC

By: 

Title: TRUSTEE

Print Name: DANIEL BUXTON

DANIEL D. BUXTON


In his personal capacity



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Environmental Enforcement
Office 614-466-2766
Fax 614-752-2441

30 East Broad Street, 25th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

January 23, 2017

Sent via Regular Mail

The Office of Judge Taryn L. Heath
115 Central Plaza N., Suite 400
Canton, Ohio 44702

To Whom It May Concern:

Enclosed please find a Consent Order signed by all parties in Case No. 2016CV01782. Pursuant to a conversation with Ms. Lisa Williams on January 23, 2017, I am sending this directly to this Office for Judge Heath's review and signature.

Very respectfully yours,

Michael DeWine
Ohio Attorney General

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