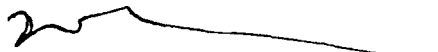


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion of Southdown, Inc. for Summary Judgment has been served upon Robert J. Shostak, Esq., 14 North Court Street, Suite 301, Athens, Ohio 45701-2429 and C. Craig Woods, Esq., Squire, Sanders & Dempsey, 1300 Huntington Center, 41 South High Street, Columbus, Ohio 432 15 by regular U.S. mail, postage prepaid, this 8 day of March, 1999.



Quintin F. Lindsmith (0018327)

FILED
U.S. DISTRICT COURT
WESTERN DIVISION

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U.S. DISTRICT COURT
WESTERN DIVISION
DAYTON, OHIO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

03-93-270

GREENE ENVIRONMENTAL COALITION, :
INC.,
112 Xenia Avenue
Yellow Springs, Ohio 45387

Case No.

Judge

WALTER H. RICE

Plaintiff,

vs.

COMPLAINT

SOUTHDOWN, INC., Successor by
Merger of SOUTHWESTERN PORTLAND :
CEMENT CO.
P.O. Box 191
S06 East Xenia Drive
Fairborn, Ohio 45324,

Defendant.

STATEMENT OF THE CASE

1. This is a citizen's suit brought under Section 505 of the Clean Water Act (herein referred to as "the Act"), 33 U.S.C. §1365. Plaintiff seeks injunctive relief, the imposition of civil penalties, and an award of litigation costs, including attorney fees and expert witness fees. At issue is the Defendant's ongoing discharge of pollutants from its facility in Greene County, Ohio, and into waters of the United States without a permit in violation of §301(a) (33 U.S.C. §1311(a)) and Section 402 of the Act (33 U.S.C. §1342), the Federal Water Pollution Prevention and Control Act (herein referred to as "the Act").

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over the claim set forth in this Complaint under Section 505(a)(1) of the Act, 33 U.S.C. §1365(a)(1).

3. On January 31, 1992, Plaintiff gave notice of the Defendant's violation of the Act and of Plaintiff's intention to bring this lawsuit to the Defendant, the United States Environmental Protection Agency (herein referred to as "USEPA"), and the Ohio Environmental Protection Agency (herein referred to as "OEPA"), as required by Section 505(b)(1)(A) of the Act, 33 U.S.C. §1365(b)(1)(A). A copy of the notice letter is attached hereto as Exhibit A and incorporated herein by reference.' More than sixty (60) days have elapsed since the service of the Notice of Intent to Sue and Plaintiff is informed that neither the USEPA or the OEPA have commenced and diligently prosecuted a court action to redress Defendant's violations of the Act.

4. Since the violations set forth in this Complaint have occurred and continue to occur within the judicial district of the United States District Court for the Southern District of Ohio, Western Division, venue is proper in this Court pursuant to Section 505(c)(1) of the Act (33 U.S.C. §1365(c)(1)).

PARTIES

5. Plaintiff, Greene Environmental Coalition, Inc. (Coalition), is a not-for-profit Ohio corporation comprised of citizens who reside, work, and recreate in Greene County, Ohio. Members of the Coalition own property near or recreate on, in, or

near the Mud Run Creek watershed into which the Defendant is discharging unpermitted pollutants. The interests of the Coalition and its members have been, are being, and will be adversely affected by the Defendant's unpermitted discharge of pollutants into Mud Run Creek and the Defendant's failure to comply with the requirements of the Act. In particular, the Defendant's unpermitted discharge of pollutants into Mud Run Creek and the water system of which it is a part directly affects the health, economic, recreational, aesthetic, and environmental interests of the Coalition and its members. The Coalition maintains its office at 112 Xenia Avenue, Yellow Springs, Ohio 45387.

6. Defendant Southdown, Inc. (herein referred to as "Southdown"), which acquired by merger Southwestern Portland Cement Co., owns and operates a cement manufacturing facility and landfills located on lands in Fairborn, Greene and Clarke Counties, Ohio. Upon information and belief, Southdown is a Texas corporation. Southdown's mailing address is P.O. Box 191, Fairborn, Ohio 45324.

THE VIOLATION

7. Section 301(a) of the Act, 33 U.S.C. §1311(a), prohibits the discharge of any pollutants into navigable waters of the United States, except as authorized by permit issued under the National Pollutant Discharge Elimination System (NPDES Permit).

8. Defendant owns hundreds of acres of land upon which it operates several landfills for the disposal of wastes generated by its cement manufacturing facility. One of these landfills, which the Defendant has designated as Landfill No. 1, is located near Haddix Road, in Clarke County, Ohio. Landfill No. 1 is discharging a liquid known as "leachate" into Mud Run Creek. Leachate is produced by water percolating through the waste deposited in the landfill.

9. On June 12, 1991, OEPA and the Clarke County Health Department obtained samples of the leachate discharging from Defendant's Landfill No. 1 into Mud Run Creek and had a chemical analysis conducted on these samples. A copy of a memo from Louise T. Snyder, which contains the results of the analysis, is attached hereto, marked as Exhibit B, and incorporated herein by reference.

10. Landfill No. 1 is located adjacent to Mud Run Creek and is hydrologically upgradient from Mud Run Creek.

11. Plaintiff believes and, therefore, alleges that Defendant's Landfill No. 1 discharges leachate, which contains toxic pollutants, including copper, lead, zinc, aluminum, and selenium, as well as other pollutants, through a discernible, confined, and discrete rivulet into Mud Run Creek. Photographs and verified affidavit depicting the discharge are attached hereto and incorporated herein as Exhibit C.

12. Plaintiff believes and, therefore, alleges, that Defendant Southdown does not possess a NPDES permit authorizing the discharge of pollutants from Landfill No. 1 into Mud Run Creek.

13. Plaintiff believes and, therefore, alleges that Defendant Southdown is currently and will continue into the foreseeable future to discharge pollutants from its Landfill No. 1 through the discernible, confined, and discrete rivulet and into Mud Run Creek in violation of the Act unless enjoined and restrained by this Court.

PRAYER FOR RELIEF

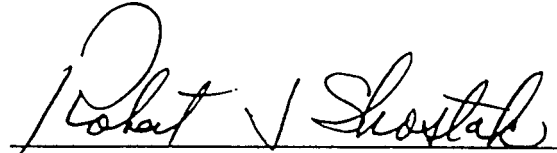
WHEREFORE, Plaintiff respectfully requests the Court to grant the following relief:

- A. Declare Defendant Southdown to have violated and to be in violation of the Act;
- B. Issue an injunction permanently enjoining Defendant from any and all future violations of the Act;
- C. Order Defendant to pay civil penalties pursuant to 33 U.S.C. §1319(d) for each day it has violated the Act;
- D. Order Defendant to pay Plaintiff's reasonable attorney fees and costs, including expert witness fees, as authorized by 33 U.S.C. §1365(d); and

E. Grant such other relief as the Court deems just and proper.

Dated this 15 day of July, 1993.

Respectfully submitted:



Robert J. Shostak
Sup. Ct. Regis. #0045216
Jeffrey A. Kodish
sup. Ct. Regis. #0052071
Attorneys for Plaintiff

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