

person's interest in the litigation is such that complete relief cannot be accorded among those already **parties**. In this case, Plaintiff has sought, in addition to **damages penalty, equitable** relief from the Court requesting the abatement of a discharge of pollution. If granted in any form, that relief would require entry on the land to implement any plan of abatement ordered. Indeed, the Panterra plan calls for work on the remediate the surface to pollutional discharge. If the land in question is owned by one other than a litigant or party subject to the Court's jurisdiction, there would be no authority of this Court to order entry upon such land for the implementation of the abatement or remediation plan. In the case at bar, the Court and the parties are informed by the deeds of record and admissions of Southdown that the land, which is the subject matter of this action, is now owned by 444 Sandhill and Dirtvest. Thus, for complete **relief** to be awarded to Plaintiff in the nature of an abatement or remediation plan of the pollution discharge, the present owner of the land who controls entry upon that land must be made a party to this litigation. The criteria of Rule 19(A)(1) is, therefore, met in this case. Otherwise, polluters could frustrate the purpose and intent of environmental protection laws, such as the Clean Water Act, by transferring **property** to others at the first sign that they may be held responsible for remediation.

Once it is determined that a party must be joined in the action if the party's absence would deprive the litigants of complete relief, Rule 19 requires an examination of whether joinder of such person will deprive the Court of jurisdiction over the subject matter

of the action. The pending lawsuit is based on federal question jurisdiction set forth in § 33 U.S.C. 1365(a) of the Act:

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an effluent standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties under section 1319(d) of this title.

Thus, joinder of 444 Sandhill and Dirtvest would have no effect upon the jurisdiction of the Court to retain the case raising no bar to joinder of the current owners of the property.

#### IV. JOINDER OF FRAUDULENT CONVEYANCE CLAIM AGAINST SOUTHDOWN AND 444 SANDHILL AND DIRTVEST

It is obvious that Southdown is attempting to escape liability for civil penalties and remediation of a Clean Water Act violation by transferring the “problem” to another entity. It is unknown if the new owners of the “problem” have the assets to respond in civil penalty damages and to remediate the polluting discharge. Rule 18(b) of the Federal Rules of Civil Procedure specifically provides a right of action to set aside a conveyance as fraudulent to a plaintiff if the purpose of the transfer is to deprive the plaintiff of a right to full relief. *Super-Value Stores, Inc. v. Parkers Food Town, Inc.*, 525 F.Supp.730 (D.C.GA. 1981).

Thus, Plaintiff moves to join 444 Sandhill, Inc., and Dirtvest, Ltd., as defendants in the within litigation since their property interest is at stake. Plaintiff further moves to join a claim of fraudulent conveyance against Southdown and 444 Sandhill, Inc., Dirtvest, Ltd.,

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as a part of Plaintiffs Complaint.

Finally, the Complaint in this matter should be amended to reflect the addition of the new defendants and the claim for fraudulent conveyance. Plaintiff, therefore, moves, pursuant to Rule 15 of the Federal Rules of Civil Procedure Complaint in the appropriate manner.

Respectfully submitted:

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing Motion to Join Parties as Defendants Under Rule 19; Motion to Join a Claim Under Rule 18; and Motion to Amend Complaint Appropriately Under Rule 15 and supporting Memorandum of Points and Authorities in Support was served on C. Craig Woods, Esq., Attorney for USX Corporation, at Squire, Sanders & Dempsey, 41 South High Street, Columbus, Ohio 43215; Frank L. Merrill, Esq., Attorney for Southdown, Inc., at Bricker & Eckler, 100 South Third Street, Columbus, Ohio 43215-4291; Jacob Myers, Agent for Dirtvest, Inc., at 18 West First Street, Suite 200, Dayton, Ohio 45402; and Robert L. Kohner, Agent for 444 Sandhill, Inc., at P.O. Box 250, Dayton, Ohio 45449, by Regular U.S. Mail, this day of March, 1998.

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Attorney at Law

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