

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN RE:
SOUTHDOWN, INC., LITIGATION,

Case No. C-3-93-270

Judge Walter Herbert Rice

**PLAINTIFF'S 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**

Plaintiff hereby moves to join 444 Sandhill, Inc., an Ohio corporation whose address is 18 West First Street, Suite 200, Dayton, Ohio 45402, and Dirtvest, Ltd., an Ohio limited liability company whose address is 18 West First Street, Suite 200, Dayton, Ohio 45402, as defendants in the within action.

Plaintiff also moves for leave to amend its Complaint under Rule 15 of the Federal Rules of Civil Procedure to reflect the additional parties and claims.

Plaintiff further moves to join a claim against Southdown, 444 Sandhill, and Dirtvest for fraudulent conveyance to its Complaint.

Shostak Law Office
14 North Court Street
Suite 301
Athens, Ohio 45701-2429
(740) 593-5828 Fax (740) 594-6446
E-Mail: Internet:102250,3154@compuserve.com

A Memorandum in Support of this Motion is attached.

Respectfully submitted:

Robert J. Shostak, Esq. Date
Sup. Ct. Regis. # 0045216
Attorney for Green Environmental Coalition

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MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF PLAINTIFF'S 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

I. BACKGROUND OF THE CASE

On July 20, 1993, the Greene Environmental Coalition ("GEC") filed a Complaint against Southdown, Inc. ("Southdown") under the citizens suit provisions of the Clean Water Act ("Act"), 33 U.S.C. § 1365, seeking abatement of a pollution discharge and civil penalty damages. The pollution discharge emanates from a large landfill located on what was then Southdown's property and operated by Southdown and its predecessors. The landfill is believed to contain principally cement kiln dust, along with chrome bricks and other industrial waste products generated in the course of operation of the portland cement plant. The pollution discharge (known as leachate) enters waters of the United States, a stream known as Mud Run, causing a significant degradation of its water quality to the extent that the stream below the discharge point is devoid of aquatic life in stark contrast to

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its upstream condition.

The Act provides civil penalties of up to \$25,000 per day per violation (33 U.S.C. 1319(d)) to be determined by the Court. Notice of intent to sue was provided to Southdown on January 31, 1992, thus if the maximum penalty is assessed by this Court, the penalty could amount to more than \$50,000,000. Indeed, under the recent facts of this case, Plaintiff will justifiably strongly urge this Court to assess a significant civil penalty against Southdown.

A short time after GEC filed its lawsuit against Southdown, Southdown sued the former owner of the property USX Corporation under the Federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601, *et seq.*, seeking damages and indemnification for the discharge from Landfill No. 1. See Case No. C-3-93-354.

Because of common issues of fact, the cases were consolidated by Entry dated June 29, 1994.

On January 23, 1995, after discussions among the parties and in consultation with the Court, a stay of proceedings of nearly two years was entered to allow sufficient time to Southdown and USX to evaluate the landfill site and propose a settlement of the matter. It was in the contemplation of the parties that Southdown and USX would propose a plan to remedy the leachate discharge to Mud Run.