

Talking Points - Southdown Corporation  
Landfill #1, **Clark and Greene Counties** Ohio

Fraudulent Transfer  
March 3, 1998

1) In July of 1993 the Greene Environmental Coalition sued Southdown in Federal Court in Dayton, Ohio. The Coalition charged the company with operating a large industrial waste landfill that discharged pollution into a tributary of Ohio's last remaining native trout stream. The discharge from the landfill contaminates ground water in addition to the stream. The discharge includes the dangerous heavy metals- arsenic and selenium in addition to others.

2) In March of 1994 after 5 years of struggling in an attempt to get EPA approval for a substandard hazardous waste burning program, the company was denied its permit to run its hazardous waste operation. Citing "sloppy engineering, sloppy science"<sup>1</sup>, the state denied Southdown a permit for the storage and treatment of handling hazardous waste. The State further listed 20 serious inaccuracies in the company's permit application and in its **Final Opinion And Orders** charged that "not only is Applicant's evidence not competent or credible, in several instances, identified supra, it could be surmised that Applicant *intended for the information to be misleading.*"<sup>2</sup> [emphasis added]

No company had ever been deemed so incompetent and untrustworthy that the State of Ohio denied the company a permit to store and treat hazardous waste.

The company has continued to mislead - the events in this chronology will show that the Company has misled its shareholders with a statement about selling its liability. The company misled the court by failing to disclose the transfer of the property and letting both the Court and the plaintiffs believe the negotiations were in good faith. The company's behavior confirms that this Texas corporation has no regard for the laws of the United States or the laws of Ohio.

3) In January of 1995 the Coalition agreed to allow Southdown an extended stay which the Court granted for Southdown to prepare a remediation plan. Southdown's chief legal council, Edgar Marsden, promised us that they would put forth their best effort to clean up the site. [the company had just completed an interim cleanup of yet another local hazardous landfill that was contaminating the Beaver creek Wetlands, one of Ohio's highest quality wetlands]

4) In April of 1997 the company issued a report proposing to simply try to dilute the pollution from the landfill to the point where it would meet discharge standards and let the heavy metals continue to enter the stream.

5) In May of 1997 the Coalition hired experts who declared the report to be more "sloppy science", again citing disregard of the basic laws of nature. For example, the report detailed a water table 90 feet above the surface of the ground, requiring the groundwater to run uphill for half a mile.<sup>3</sup>

6) On September 24 of 1997 the Coalition's hydro-geologists visited the site with company officials [including vice president of environmental affairs, Daniel Heinz, Houston]. Our experts verified that the site was still discharging poisons into the stream. According to the company's own numbers, the site has discharged about 12,000 gallons of poisoned water **every day** since we notified the company of the illegal discharge in January of 1992. This is over **25 million gallons of poisoned water poured into our stream** after we told the company. Who knows how many millions of gallons poisoned the stream before discovered the poison?<sup>4</sup> [according to EPA reports a nearby city well was closed in the 70s due to contamination from the heavy metal chromium]<sup>5</sup>

7) On October 16 of 1997 the federal judge ordered the Coalition and Southdown to meet in his chambers on Nov. 13th to settle the issues surrounding the remediation of the contaminated site.

8) According to the company, on September 30 of 1997 it "sold" the contaminated landfill to two assetless corporations, one arrogantly named "Dirtvest, Ltd." and the other named 444-Sandhill Corp. [444-Sandhill is named for major roads near the site, one wonders if the name Dirtvest refers to the "dirty investment"]

9) Southdown's Securities and Exchange 10-Q report for the period ending Sept. 30, 1997 brazenly declares:

“On September 30, 1997, the Company sold the property that is the subject of these lawsuits to independent third parties. The property was sold “as is, where is” and the company assumed no obligations to remediate the property....Also, since the company no longer owns this property, the Company believes it should not have ongoing obligation under the Clean Water Act to obtain a permit...”

10) On November 7 (a Friday afternoon at 5:30 PM) Southdown's attorney faxed a letter to the Coalition's attorney informing us that they had transferred the contaminated property - 2 business days before their scheduled appearance in front of the judge.

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This shows that the company knowingly abdicated responsibility to shadow companies without resources to remediate the pollution problem. Further, the timeline shows a blatant disregard for the Federal Court, the law of the United States, and the people of the State of Ohio. The company misled the court and the company has misled its shareholders into believing it sold its liability.

Given the pattern of lawlessness and blatant corporate irresponsibility, the Coalition calls on Southdown's Board of Directors to immediately investigate and dismiss the persons responsible .

The Coalition today has amended its suit in Federal Court to include Dirtvest and 444-Sandhill and the owners of the corporations - if any really exist. The amended claim also seeks the full civil penalty - \$25,000 per day since notice of the illegal discharge was given - for a total of \$50 million dollars and counting.

## Attachments

- 1 Ohio Hazardous Waste Facility Board Meeting transcript
- 2 Ohio Hazardous Waste Facility Board Opinion and Orders
- 3 Transmittal from consultant, Hydrolog, to Greene Environmental Coalition
- 4 Transmittal from consultant, Hydrolog, to Greene Environmental Coalition
- 5 US EPA site assessment