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DANIEL M. HOPKINSON

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SUMMIT COUNTY CLERK OF COURTS
IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

Original

STATE OF OHIO, ex rel.
RICHARD CORDRAY
OHIO ATTORNEY GENERAL,

: CASE NO.: 2007-07-5117
:
: JUDGE ROWLANDS
:
:

Plaintiff,

v.

CONSENT ORDER

SUMMIT TRANSFER &
RECYCLING, INC., et al.

Defendants.

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio, by its Attorney General, Richard Cordray ("Plaintiff" or "State"), and Defendants Summit Transfer & Recycling, Inc. ("STRI"), Law, Ltd. ("Law"), and Larry Hardesty ("Mr. Hardesty") (collectively referred to as "Defendants") having consented to the entry of this Order;

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

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the Parties and the subject matter of this action pursuant to Revised Code Chapters 3704, 3714, 3734, and 6111. Venue is proper in this Court. Solely for purposes of this Consent Order and the underlying Complaint, Defendants do not contest that the Complaint states a claim upon which relief can be granted against Defendants.

II. PARTIES

2. Law, an Ohio limited liability company, is the owner of a 10.06 acre parcel of land identified in the records of the Summit County Recorder's Office as parcel number 68-55043, and located at 1830 Firestone Parkway Extension, Akron, Summit County, Ohio (the "Site").

3. STRI is the owner and operator of a construction and demolition debris facility located on the Site. STRI was formerly known as Summit Environmental Management.

4. Defendants are the owners of a facility located at 1830 Firestone Parkway Extension, Akron, Summit County, Ohio.

5. STRI is registered as the owner of a Site operating as a Class IV compost facility as defined by Ohio Adm. Codes 3745-27-01(C)(5) and 3745-27-41.

6. Mr. Hardesty is an Ohio resident whose address is 284 East Baird Avenue, Barberton, Summit County, Ohio 44203.

7. Law is a Domestic Limited Liability Company organized and registered on or about October 9, 1997, with the Secretary of State of Ohio, and whose address is 284 E. Baird Avenue, Barberton, Summit County, Ohio 44203.

8. Law was created for the purpose of holding title to property which is the subject of this Complaint located at 1830 Firestone Parkway Extension, Akron, Summit County, Ohio 44301.

9. Law holds title to the Property, and has held title to the Site, approximately 9.81 acres and a .25 acre plot, since February 25, 2000 (Parcel No. 68-55043) and February 8, 2001 (Reception Number 54510584).

10. Larry Hardesty is the president and/or principal officer and owner of Law and

STRI.

11. Defendants are each a "person" as that term is defined in R.C. Section 3734.01(G) and Ohio Administrative Code ("OAC") 3745-27-01(P)(3), as amended by OAC 3745-27-01(P)(3) (effective August 15, 2003).

12. The provisions of this Consent Order shall apply to and are binding upon the Parties to this action, and, in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure, their officers, agents, servants, employees, successors in interest, and those persons in active concert or participation with them who receive actual notice of this Consent Order whether by personal service or otherwise.

III. SATISFACTION OF LAWSUIT

13. The State alleges in its Complaint that the Defendants have violated Revised Code Chapters 3704, 3714, and 3734 and O.A.C. Chapters 3745-15, 3745-17, 3745-20, 3745-31, 3745-37, 3745-27 and 3745-400. Defendants deny such allegations. The parties have agreed to resolve the disputed issues in this matter without adjudication of any issues of fact or law. Entry into this Consent Order shall constitute full satisfaction of any civil liability for matters addressed in Plaintiff's Complaint.

14. Except as otherwise provided in Paragraph 15 of this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil and administrative liability of Defendants and their successors in interest and assigns for the claims alleged in the State's Complaint.

15. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief from Defendants for: (A) claims or violations not referenced in the Complaint; (B) any violations arising out of acts or omissions first occurring after the effective date of this

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Consent Order; or (C) claims or violations under the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. §§9601 et seq., or R.C. 3734.20 through 3734.27 for any emergency, removal, remedial, or corrective actions, or for natural resource damages. Defendants retain all rights, defenses, and/or claims they may legally raise to the extent that the State seeks further relief from Defendants in the future, or in any action brought to enforce the terms of this Consent Order, except that 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, laches or other defenses based upon any contention that the claims raised by the State in subsequent proceedings were or should have been brought in the instant case.

16. Entering into this Consent Order, the Consent Order itself, or the taking of any action in accordance with the Consent Order and/or any work performed at the Site does not constitute an admission of any liability, wrongdoing, or misconduct on part of the Defendants, their officers, employees, or agents.

17. Nothing herein shall be construed to relieve Defendants of their obligation to comply with all applicable federal, state, or local statutes, regulations, or ordinances including, but not limited to, the applicable permit requirements.

18. Nothing in this Consent Order shall constitute or be construed as a satisfaction of lawsuit, release, or a covenant not to sue regarding any claim alleged in the Complaint, or any other claim or cause of action, against any person, firm, trust, joint venture, partnership, corporation, association, or other entity not a signatory to this Consent Order for any liability they may have arising out of, or relating to, the Site including, but not limited to, those identified in the Complaint.

19. Defendants Summit Transfer & Recycling Inc., Law, Ltd., and Larry Hardesty, in his individual capacity, agree that each are jointly and severally liable for the obligations and requirements in this Consent Order, including, but not limited to, everything in Section IV, Section V, Section VI and Section VII.

IV. PERMANANT INJUNCTION

20. Defendants agree and are ordered and enjoined to comply with Revised Code Chapters 3714, 3734, 3745, and 6111 and the rules promulgated thereunder, including, but not limited to, the applicable provisions of Ohio Adm. Code Chapters 3745-1, 3745-27, 3745-37, and 3745-400 at the Site.

21. Defendants shall immediately cease acceptance of any and all materials, debris and/or waste at the Site.

22. Beginning on the last day of the first calendar month after entry of this Consent Order, and continuing every calendar month thereafter until the removal is complete, Defendants shall have removed, by the last day of each calendar month, a cumulative amount of materials, debris, and/or waste equal to or greater than 2000 cubic yards times the number of calendar months since the date of entry of this Consent Order (for example a total of 2000 cubic yards removed after the first month, 4000 cubic yards removed after the second month, etc.). By the fifteenth day of each month, Defendants shall provide a report of proof of the removal, for the previous calendar month, to Ohio EPA and City of Akron Department of Health, including, but not limited to, removal and/or disposal receipts from the removal/disposal site(s).

- a. All material, debris, and waste removed from the Site shall be disposed of at either a licensed Solid Waste Landfill or a licensed Construction and Demolition Debris landfill depending on whether the material, debris, and waste has been

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pulverized or shredded beyond the point of recognition as construction and demolition and debris unless each of the following conditions is satisfied:

- i. Defendants provide a written request to Ohio EPA prior to removing the materials, debris, and waste from the Site;
- ii. Ohio EPA approves the alternative disposal or use of the materials, debris, and waste; such approval not to be unreasonably withheld;
- iii. Receipts are provided to Ohio EPA of a sale price of the material as well as the amount of materials purchased; and
- iv. Any proceeds or payment for the materials, debris, and waste are immediately used for further removal at the Site or paid to Ohio EPA as an additional civil penalty.

23. Within forty-two (42) months after the entry of this Consent Order, Defendants shall have removed and properly disposed of all materials, debris, and waste from the Site.

24. Upon the entry date of this Consent Order, Respondents shall maintain compliance with the terms and conditions of these Orders, its NPDES permit, air pollution control permits, R.C. Chapter 6111 and all applicable state and federal laws, regulations and rules.

V. CIVIL PENALTY

25. Within thirty (30) days of entry of this Consent Order, Defendants are ordered and enjoined to pay a civil penalty of \$350,000. Such payment shall be made by delivering to Karen Pierson, Paralegal, or her successor, Office of the Attorney General, 30 E. Broad St., 25th Floor, Columbus, Ohio 43215-3400, a certified check or checks for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

26. In lieu of the requirements stated above in Paragraph 25, Defendants shall transfer, via Quitclaim Deed, ownership of the Site, located at 1830 Firestone Parkway Extension, Akron, Summit County, Ohio, to the City of Akron within forty-three (43) months after the entry of this Consent Order, but not before the entire Site is cleared of all materials, debris, and waste. If Defendants fail to execute a Quit Claim Deed transferring ownership of the Site in accordance with this paragraph within 43 months of entry of this Consent Order, Defendants shall immediately pay the civil penalty set forth in paragraph 25 herein.

27. Notwithstanding the provisions of Paragraphs 25 and 26 herein, if at any time the City of Akron so demands in writing, Defendants shall, within thirty (30) days of such demand, transfer the Site, via Quitclaim Deed, to the City of Akron.

28. Defendants are liable for all taxes on the Property, including any delinquent taxes, through the date of transfer of ownership of the Property.

VI. STIPULATED PENALTIES

29. In the event that Defendants fail to comply with any of the requirements of Sections IV, V, VI and/or VII herein, with the exception of Paragraph 22 herein, Defendants shall immediately and automatically be liable for and shall pay a stipulated penalty in accordance with the following schedule:

- a. Defendants shall pay three hundred dollars (\$300.00) per day for each day any requirement of this Consent Order is violated up to the first thirty (30) days of violation;
- b. For each day any requirement of this Consent Order is violated, between thirty (30) days and ninety (90) days of violation, Defendants shall pay six hundred dollars (\$600.00) per day;
- c. For each day any requirement of this Consent Order is violated, greater than (90) days of violation, Defendants shall pay one thousand dollars (\$1000.00) per day.

30. In the event that Defendants fail to comply with the requirements of Paragraph 22 of this Consent Order, Defendants shall immediately and automatically be liable for and shall pay a stipulated penalty in accordance with the following schedule:

- a. If Defendants fail to provide a(ny) monthly report as referenced above in Paragraph 22 herein, Defendants shall automatically be liable for and shall within ten (10) days of the failure pay a civil penalty of one thousand dollars (\$1,000).
- b. If, as of the end of any calendar month, Defendants have failed to remove the cumulative total of the amount of materials, debris, and waste required to have been removed as of the end of that calendar month, as set out in Paragraph 22 herein, Defendants shall automatically be liable for and shall within ten (10) days of the failure pay a civil penalty of ten dollars (\$10) per every cubic yard of the cumulative total of the amount of materials, debris, and waste required to have been removed and which Defendants have failed to remove.

31. Stipulated penalties due under this Consent Order shall be paid by check or money order, payable to "Treasurer, State of Ohio" and mailed to Karen Pierson or her successor, Paralegal, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

VII. SITE ACCESS

32. Defendants agree and consent that Ohio Environmental Protection Agency, the City of Akron, and their employees and agents shall have full access to the Site and any appurtenant property within Defendants' control at all reasonable times, without the need for a warrant, as may be necessary for the implementation of this Consent Order and/or to monitor compliance with this Consent Order and/or Ohio environmental laws. Defendants further agree and consent that any and all contractors, subcontractors, consultants, or other persons working for or on behalf of Ohio Environmental Protection Agency, and/or the City of Akron shall have full access to the Site and any appurtenant property within Defendants' control at all reasonable

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From-ATTORNEY GENERAL/EES

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times, without the need for a warrant, as may be necessary to perform inspections, assessments, post-closure care, sampling, monitoring, surveying, remediation and/or emergency response work, and/or to remove materials, waste and/or debris.

33. Paragraph 32 of this Consent Order shall not be construed to eliminate or restrict any right Ohio Environmental Protection Agency and/or the City of Akron may otherwise have under Federal, State or local law to seek access to the Site.

VIII. NOTICES

34. All documents required to be submitted under this Consent Order shall be submitted to the following, or their successor:

As to Plaintiff:

Ohio Environmental Protection Agency
Northeast District Office
Division of Solid and Infectious Waste Management
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: Unit Supervisor, DSIWM

and to:

City of Akron Department of Health
177 South Broadway
Akron, Ohio 44308
Attn: Health Commissioner

As to Defendants:

Larry E. Hardesty
284 Baird Avenue
Barberton, Ohio 44203

35. Either Party may change the name or address of its contact person(s) by serving written notice to the other party.

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IX. RETENTION OF JURISDICTION AND WAIVER OF SERVICE

36. The Court will retain jurisdiction of this action for purposes of enforcing this Consent Order during the effective term thereof. Defendants waive service of the Complaint and summons in this action.

X. EFFECTIVE DATE

37. This Consent Order shall be effective upon the date of its entry by the Court.

XI. COURT COSTS

38. Defendants are hereby ordered to pay all court costs of this action.

XII. SIGNATORIES

39. Each of the undersigned representatives of the Parties represents that he/she is fully authorized to enter into the terms and conditions of this Consent Order and legally bind the respective party to this document.

XIII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

40. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, 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 current docket.

IT IS SO ORDERED.



Honorable Mary Margaret Rowlands
Judge, Summit County Court of Common Pleas

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Date

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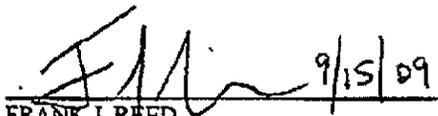
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