

3  
2

**IN THE COURT OF COMMON PLEAS  
SENECA COUNTY, OHIO**

**STATE OF OHIO, ex rel.  
NANCY H. ROGERS  
ATTORNEY GENERAL OF OHIO**

**CASE NO: 07-CV-0694  
JUDGE STEVEN SHUFF**

**FILED**  
**COMMON PLEAS COURT**  
**SENECA COUNTY, OHIO**  
2008 JUL 24 PM 3:02  
MANUELA V. BROWN

**Plaintiff,**

**vs.**

**CONSENT ORDER AND FINAL  
JUDGMENT ENTRY**

**SUNNY FARMS LANDFILL LLC, et al**

**Defendants.**

The Complaint in the above-captioned matter having been filed, and Plaintiff State of Ohio, by its Attorney General, Nancy H. Rogers ("Plaintiff" or "State"), and Defendants Regus Industries, LLC ("Regus") and Sunny Farms Landfill, LLC ("SFLF") (collectively referred to as "Defendants") having consented to the entry of this Order;

NOW THEREFORE, without trial of any issues of fact or law, without admission of any issues of law, liability or fact, and upon the 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 Chapters 3704, 3714 and 3734 of the Ohio Revised Code ("R.C."). Venue is proper in this Court. Solely for the purposes of this Consent Order and the underlying Complaint, and without admission of any allegation contained therein, Defendants do not contest that the Complaint states a claim upon which relief can be granted against Defendants.

## II. PARTIES

2. Defendant Sunny Farms Landfill, LLC is an Ohio Limited Liability Company engaged in the business of solid waste ("MSW") and construction and demolition debris ("C&DD") disposal, and owns and operates the Sunny Farms Landfill (the "Facility"). The Facility is a sanitary landfill facility located at 12500 West County Road 18, Fostoria, Seneca County, Ohio.

3. Defendant Regus Industries, LLC is a New York Limited Liability Company that owned 100% of Sunny Farms Landfill, LLC until January 1, 2008 and has engaged in the business of solid waste and construction and demolition debris disposal.

4. On January 2, 2008, Live Earth, LLC purchased 100% of Sunny Farms Landfill, LLC from Regus Industries, LLC.

5. The provisions of this Consent Order shall apply to, and are binding upon, the Parties to this action, their successors in interest, and, in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure, their officers, agents, employees and those persons in active concert or participation with them.

6. Defendants shall provide a copy of this Consent Order to any person that it employs at the Facility who is responsible for, or oversees, the acceptance, management and/or disposal of waste at the Facility. Defendants shall ensure that any agreement made with any person it employs to operate or conduct work at the Facility, or for services or work related to this Consent Order, expressly provides that the services or work shall be performed in accordance with this Consent Order and with R.C. Chapters 3704, 3714, 3734 and the regulations promulgated thereunder.

### III. SATISFACTION OF LAWSUIT AND EFFECT OF ORDER

7. The State has alleged that Defendants have violated numerous provisions of Ohio law, including but not limited to R.C. Chapters 3704, 3714, 3734 and Ohio Administrative Code ("Ohio Adm. Code") Chapter 3745-27, in connection with the operation of the Facility. Defendants deny all such allegations. The parties have agreed to resolve the disputed issues in this matter without adjudication of any issues of fact or law. The entry of this Consent Order shall constitute full satisfaction of any civil and administrative liability of Defendants, and their successors in interest and assigns, for all alleged violations associated with the operation of the Facility through the date of entry of this Consent Order, including the violations alleged in the State's Complaint.

8. Except as otherwise provided in paragraphs 9-12 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 all violations with which Defendants have been cited in connection with the operation of the Facility through the date of the entry of this Consent Order, including the violations alleged in the State's Amended Complaint. The parties agree further that the entry of this Consent Order and compliance with the terms of this Consent Order shall resolve the alleged violations referenced above and place Defendant SFLF on a legally enforceable schedule and continued compliance with applicable environmental laws and rules will result in compliance with the environmental laws of Ohio and other jurisdictions for purposes of the issuance of future licenses and/or permits for the Facility.

9. 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 State's

Amended Complaint; (B) any violations arising out of acts or omissions first occurring after the effective date of this Consent Order; or (C) claims 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, corrective actions, or 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 them in the future, or in any action brought to enforce the terms of this Consent Order, except that they 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, 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.

10. 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 Facility does not constitute an admission of any liability, wrongdoing or misconduct on the part of Defendants, their officers, employees or agents, and this Consent Order shall not be admissible into evidence in any proceeding for the purpose of making any inference of liability, wrongdoing or misconduct on the part of Defendants, their officers, employees or agents, except in a contempt action by Plaintiff for non compliance with this Consent Order.

11. 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 any applicable permit requirements thereunder.

12. 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 Facility.

#### **IV. PERMANENT INJUNCTION**

13. Except as provided in Section V below, Defendant SFLF is ordered and enjoined to comply with R.C. Chapters 3704, 3714, 3734 and the rules promulgated thereunder, including the applicable provisions of Ohio Adm. Code Chapter 3745-27 in connection with the operation of the Facility.

#### **V. INJUNCTIVE RELIEF AND COMPLIANCE SCHEDULE**

##### **FACILITY OPERATION**

14. Within five (5) days after Defendant SFLF's receipt of entry of this Consent Order, Defendant SFLF shall:

- A. Initiate the process for obtaining the approvals necessary for the installation of a scale designed to allow all rail cars hauling all waste received at the Facility to pass over and be weighed. Defendant SFLF shall complete the installation of this scale within 120 days of the receipt of all approvals necessary for the scale installation project, and shall maintain the scale thereafter.
- B. Operate and maintain two additional scales at the Facility: one to weigh all hauling and disposal vehicles entering the Facility from off-site; and one to weigh all vehicles hauling C&DD rail waste from the rail car unloading area at the Facility to the working face of the landfill.
- C. For purposes of incoming rail cars containing both MSW and C&DD rail waste, calculate the weights of the materials disposed of at the Facility as follows: (i) the weight of all C&DD rail waste shall be determined by weighing all vehicles hauling C&DD rail waste from the rail car unloading area at the Facility to the working face of the landfill; (ii) the weight of all MSW rail waste shall be determined by subtracting the weight of all C&DD rail waste (unloaded from a given rail car and hauled by truck from the rail unloading area at the Facility to the working face of the landfill) from the original incoming weight of overall waste volume in the rail car. For purposes of incoming rail cars containing only MSW rail waste, the weight of the incoming MSW rail waste shall be based solely on the original incoming weight of overall waste volume in the rail car.

- D. Complete the original daily log form at the Facility each day;
- E. Complete each entry on the daily log form for C&DD rail waste accepted at the Facility within one half (1/2) hour after each truck of incoming C&DD rail waste has been weighed;
- F. Include an attestation, signed and attested to by a "key employee" (as the term "key employee" is defined in R.C. Chapter 3734) who was at the Facility that day, on each daily log form that the form is completed accurately and the information contained and conveyed therein complies with R.C. Chapters 3734 and 3714 and this Consent Order;
- G. At a minimum, document all rail-waste that Defendant SFLF is attempting to characterize as C&DD through the following procedure:
  - (1) The proposed C&DD rail-waste shall be off-loaded from incoming rail cars via a tined hydraulic excavator grapple attachment that utilizes clamping tines to lift and remove the material from the rail car.
    - i) When the proposed C&DD waste is lifted out of the rail car, it shall be placed into the appropriate truck for weighing, classifying, and disposal at the Facility.
    - ii) Waste that cannot be removed and/or will not remain in the tined hydraulic excavator grapple attachment shall not be classified and/or disposed of as C&DD at the Facility.
    - iii) Waste shall not be classified until it passes over the scale. The ability to remove waste from a rail car using tined hydraulic excavator grapple attachment does not automatically qualify the waste as C&DD.
- H. Not classify as C&DD any waste removed from rail cars with a bucket or bucket like apparatus.
- I. Notwithstanding any arguments to the contrary regarding the nature of the waste, not classify any "pulverized debris," as that term is defined in Ohio Revised Code Section 3714.01(I), as C&DD.
- J. Not classify any solid waste as C&DD.
- K. Notwithstanding any arguments to the contrary regarding the nature of the waste, classify all "pulverized debris," as that term is defined in Ohio Revised Code Section 3714.01(I), as MSW. Notwithstanding the foregoing, the Facility must comply with the disposal restrictions identified in Ohio Adm. Code 3745-27-19(E)(8).

- L. If the Ohio EPA or the Seneca County Health Department disagrees with the determination made by Defendant SFLF that a particular truck load of rail-waste meets the definition of C&DD or other material under Ohio law, in accordance with Paragraph 15 below, the designation of the waste shall be in accordance with the Ohio EPA's or Seneca County Health Department's designation.

15. Within forty-five (45) days of entry of this Consent Order, Defendant SFLF shall submit a plan to Ohio EPA, for approval, to take photographs of the rail-waste designated as C&DD. This plan shall include, but is not limited to, type of photo, distance from waste that photo is taken, lighting for photo, scale of waste in photo, and depth into the waste that the photo is taken.

- A. Ohio EPA shall respond to Defendants submission in a reasonable amount of time.
- B. Defendant SFLF shall implement the plan upon approval by the Director.
- C. At least two (2) photograph(s) per truck of C&DD rail-waste that has been off-loaded from incoming rail cars, one (1) of which shall depict both (i) the rail-waste in the truck in which it is being hauled to the scale and the working face, and (ii) an identifier on the truck in question, and one (1) of which shall depict the rail-waste in the truck after it has been designated as C&DD, which photographs shall be taken in conformance with the photograph plan that has been approved by the Ohio EPA.
- D. Include an attestation, signed and attested to by a Facility employee that is responsible for, and has been specifically trained to oversee, the designation of all incoming rail-waste as either C&DD or MSW, who was at the Facility that day, that the documentation submitted in accordance with Paragraph 14 above complies with the specification contained therein.
- E. Send the documentation required in Paragraph 14 to the Ohio EPA Northwest District Office ("NWDO") and to the Seneca County Health Department once per week, such that the documentation in question arrives at the agencies every Tuesday (or the first business day thereafter if the given Tuesday is a holiday) and covers the entire preceding week.

16. Ohio EPA or the Seneca County Health Department may, at their discretion, disagree with Defendant SFLF's determination made pursuant to Paragraph 14. Any such

disagreement regarding a waste designation made by Defendant SFLF shall be reasonably supported by the Ohio EPA or the Seneca County Health Department and must be made within thirty (30) days of the date the waste photos and daily logs are received at NWDO or the Seneca County Health Department respectively. In evaluating any determination made by Defendant SFLF pursuant to Paragraph 14, the Ohio EPA or the Seneca County Health Department shall review any and all documentation received from Defendant SFLF concerning the origin and nature of the waste at issue. When notified of a disagreement by the Ohio EPA or the Seneca County Health Department, Defendant SFLF shall have seven (7) days to either (a) redact the incorrect designation on the original daily log, replace it with the corrected designation, and remit the appropriate fees, including late fees if applicable, in accordance with Ohio law; or (b) refer the disagreement for resolution pursuant to the Dispute Resolution provisions outlined in Section XI of this Consent Order. The parties acknowledge and agree, however, that during the pendency of the resolution of any disagreement raised by the Ohio EPA or the Seneca County Health Department, Defendant SFLF shall not be considered to be in violation of this Consent Order and/or any otherwise applicable Ohio statute or rule, and no stipulated penalties shall be due and payable under Section VII of this Consent Order, except and until the events described in Section XI, Paragraph 54 occur.

17. Ohio EPA and the Seneca County Health Department reserve the right not to view each and every photo submitted by Defendant SFLF. The fact that Ohio EPA and/or the Seneca County Health Department do not send a letter pursuant to Paragraph 16, above, shall not be construed as an acknowledgement of proper waste characterization and fee payment. Notwithstanding the foregoing, nothing in this paragraph shall alter or extend the time period

established in Paragraph 16 for notifying Defendant SFLF of a disagreement with respect to any determination made by Defendant SFLF pursuant to Paragraph 14 above.

18. On the Tuesday after Defendant SFLF's receipt of entry of this Consent Order and each subsequent Tuesday thereafter, Defendant SFLF shall submit all waste photos and the daily log forms for the previous calendar work week to the Ohio EPA NWDO and to the Seneca County Health Department on a compact disc ("CD") in the form of EXCEL<sup>®</sup> spreadsheets or another agreed upon electronic format.

In the event a Tuesday falls on a holiday, Defendant SFLF shall submit the daily log forms for that previous workweek to the Ohio EPA NWDO and to the Seneca County Health Department on the Wednesday following the Tuesday holiday.

19. Upon Defendant SFLF's receipt of entry of this Consent Order, Defendant SFLF shall allow representatives of Ohio EPA and/or the Seneca County Health Department reasonable access to the Facility, at reasonable times, in order to determine compliance with R.C. Chapters 3704, 3714, and 3734, this Consent Order, and all other Ohio environmental laws and rules. Defendant SFLF shall not prevent, delay, or inhibit such representatives from conducting an inspection of the Facility.

20. Nothing in this Consent Order shall be construed to limit the statutory authority of the Director of Ohio EPA ("Director"), or his authorized representatives, to enter at reasonable times upon any private or public property, real or personal, to inspect or investigate, obtain samples and examine or copy any records to determine compliance with R.C. Chapters 3714 or 3734.

21. Defendant SFLF shall only accept waste onto the Facility property, operate the Facility, and dispose of waste at the Facility within the hours specified in the pertinent licenses,

permits and/or agreements governing the operation of the Facility. Notwithstanding the foregoing, nothing in this Paragraph shall limit when rail cars may be delivered to the Facility, provided that such rail cars are unloaded solely within the hours specified in the pertinent licenses, permits and/or agreements governing the operation of the Facility.

22. Upon Defendant SFLF's receipt of entry of this Consent Order, Defendant SFLF shall make all original daily log forms available to Ohio EPA and the Seneca County Health Department for inspection at any reasonable time.

23. Within sixty (60) days after Defendant SFLF's receipt of entry of this Consent Order, Defendant SFLF shall construct and maintain one observation deck that allows representatives of Ohio EPA and/or the Seneca County Health Department a close, safe, and unobstructed view of the trucks hauling the incoming C&DD rail-waste that is accepted for disposal at the Facility. Defendant SFLF shall position the observation deck in such location so as not to place those representatives of Ohio EPA or the Seneca County Health Department gaining access to and using the observation deck in an unsafe situation.

24. Within thirty (30) days after Defendant SFLF's receipt of entry of this Consent Order, Defendant SFLF shall construct and maintain thereafter all access roads at the Facility in such a fashion to support all waste hauler traffic to and from the working face. All roads constructed within the horizontal limits of waste placement, used for hauling waste to the working face, shall comply with Ohio Adm. Code 3745-27-08(D)(18). Empty vehicles, owned and operated by Defendant SFLF, may use roads that do not comply with Ohio Adm. Code 3745-27-08(D)(18) when leaving the working face. Additional improvements may be needed to ensure access is provided to all areas of the Facility necessary for proper operation and maintenance of the Facility.

25. Within fifteen (15) days after Defendant SFLF's receipt of entry of this Consent Order, Defendant SFLF shall manage leachate at the Facility in accordance with Ohio Adm. Code 3745-27-19(K).

26. Within thirty (30) days after Defendant SFLF's receipt of entry of this Consent Order, Defendant SFLF shall send a letter to the Ohio EPA and the Seneca County Health Department documenting that the leachate level indicator on the outside of the leachate storage tank has been repaired so the level of the leachate can be monitored during inspections conducted by Ohio EPA and/or the Seneca County Health Department.

- A. Thereafter Defendant SFLF shall maintain the leachate level indicator on the outside of the leachate storage tank and keep said indicator in proper good working order.

27. Within thirty (30) days after Defendant SFLF's receipt of entry of this Consent Order, Defendant SFLF shall send a letter to the Ohio EPA and the Seneca County Health Department documenting that a float switch with an alarm has been installed on the leachate storage tank for the rail unloading building and is being properly maintained. Defendant SFLF shall pump leachate from this storage tank once the alarm is triggered or more often as needed.

- A. Thereafter Defendant SFLF shall maintain the float switch with alarm on the leachate storage tank and keep said float switch in proper good working order.

28. Within thirty (30) days after Defendant SFLF's receipt of entry of this Consent Order, Defendant SFLF shall retrofit the fleet of waste hauling trucks such that solid waste, C&DD and other material being hauled remains within the capacity of the truck until Defendant SFLF tips the truck at the working face.

- A. Thereafter Defendant SFLF shall maintain the retrofitting and keep said retrofitting in proper good working order.

29. Within sixty (60) days after Defendant SFLF's receipt of entry of this Consent Order, Defendant SFLF shall submit alteration requests that update the design of the unconstructed portions of the Facility so that the design is consistent with the design standards established in Ohio Adm. Code 3745-27-08. Defendant SFLF shall incorporate and respond directly to Ohio EPA's letter and accompanying attachment dated January 26, 2006 that outlines Defendant SFLF's deficiencies to its March 2, 2004 report entitled "Ten Year Engineering Design Analysis." The alteration requests shall be submitted as an addendum to the response.

If any of these alteration requests are found to be deficient, a deficiency letter will be issued by Ohio EPA. Defendant SFLF shall respond to any and all deficiencies within forty-five (45) days of receipt of a deficiency letter from the Ohio EPA, unless an extension of the time for response has been provided by the Ohio EPA.

#### GROUND WATER INVESTIGATION

30. Within sixty (60) days after Defendant SFLF's receipt of entry of this Consent Order, Defendant SFLF shall:

- A. Provide documentation verifying that an assessment well (MP-29A) was installed west of MP-20A in November of 2007, and install one (1) additional well to the east of MP-20A and one (1) additional well to the north of MP-26A to determine the width(s) of the plume(s), and
- B. Install an appropriate number of additional wells downgradient of the contaminated wells in the MP-20A and MP-26A area to evaluate and delineate the rate, extent and concentration of waste-derived constituents in the groundwater.

31. Within one hundred twenty (120) days after Defendant SFLF's receipt of entry of this Consent Order, Defendant SFLF shall conduct any on-site investigation needed to determine the full rate, extent and concentration of all constituents, including arsenic and nickel, identified in the operating record in accordance with Ohio Adm. Code 3745-27-10(E)(5)(c) in ground

water such that Defendant SFLF demonstrates compliance with Ohio Adm. Code 3745-27-10(E)(6).

32. Within one hundred fifty (150) days after Defendant SFLF's receipt of entry of this Consent Order and after making the determination required by Paragraph 31 above, Defendant SFLF shall submit a Ground Water Quality Assessment Report in accordance with Ohio Adm. Code 3745-27-10(E)(7).

33. Upon Defendant SFLF's receipt of entry of this Consent Order, Defendant SFLF shall properly apply the statistical method contained in the current ground water quality assessment plan or any subsequent revisions to the ground water quality assessment plan for the downgradient wells to comply with Ohio Adm. Code 3745-27-10(C)(6) including conducting any statistical analyses of arsenic and nickel data utilizing the lowest PQL reliably achievable by the laboratory as the statistical limit to comply with Ohio Adm. Code 3745-27-10(C)(7)(c).

34. Within three hundred thirty (330) days after Defendant SFLF's receipt of entry of this Consent Order, Defendant SFLF shall submit a corrective measures plan in compliance with Ohio Adm. Code 3745-27-10(F), unless otherwise specified in paragraph (E)(8) or (E)(9) of Ohio Adm. Code 3745-27-10.

35. The detection and assessment monitoring rules are self-implementing; therefore, Ohio EPA will not need to approve documents listed in paragraphs 30 through 32. In the event that Ohio EPA notifies Defendant SFLF of deficiencies in any of the documents which Defendant SFLF is required to submit under the terms of Paragraphs 30 – 36 of this Consent Order, Defendant SFLF shall, within sixty (60) days of the date of Ohio EPA's comment letter(s), revise such document(s) in accordance with Ohio EPA's comments and the rules, unless the parties agree in writing to an alternative schedule. Notwithstanding the foregoing, nothing in

this Paragraph shall limit, or be construed to limit, the authority the Ohio EPA may have to take action against Defendant SFLF for alleged violations that occur at the Facility after the entry of this Consent Order.

36. In the event that Ohio EPA notifies Defendant SFLF of deficiencies in the document required in paragraph 33 above, Defendant SFLF shall, within sixty (60) days of the date of Ohio EPA's notice of deficiency, revise such document(s) in accordance with Ohio EPA's comments, unless the parties agree in writing to an alternative schedule. Ohio EPA may approve of the above plans with modifications and/or conditions, to the extent it is authorized to do so within its rules. Defendant SFLF does not waive any right it may legally have to appeal such an action of the Ohio EPA.

If subsequent laws and rules are passed or adopted that change or implement the requirements set forth in any portion of Paragraphs 30-36, these laws and rules shall supersede that paragraph which is changed. The remainder of the Consent Order shall remain in effect.

#### VI. CIVIL PENALTY

37. Pursuant to R.C. Chapter 3734, Defendant SFLF is enjoined and ordered to pay to the State of Ohio a total civil penalty in the amount of Seven Hundred and Fifty-Two Thousand Dollars (\$752,000.00) into the account set up by Ohio EPA pursuant to R.C. 3734.28.1. The total civil penalty shall be paid in accordance with the following schedule:

- One Hundred and Fifty-Two Thousand Dollars (\$152,000.00) within fifteen (15) days of the entry of this Consent Order or the approval of the initial background investigation submittal that was made by Live Earth, LLC, whichever is later.

- One Hundred Thousand Dollars (\$100,000.00) within six (6) months of the entry of this Consent Order or the approval of the initial background investigation submittal that was made by Live Earth, LLC, whichever is later.

- One Hundred Thousand Dollars (\$100,000.00) within twelve (12) months of the entry of this Consent Order or the approval of the initial background investigation submittal that was made by Live Earth, LLC, whichever is later.

- One Hundred Thousand Dollars (\$100,000.00) within eighteen (18) months of the entry of this Consent Order or the approval of the initial background investigation submittal that was made by Live Earth, LLC, whichever is later.

- One Hundred Thousand Dollars (\$100,000.00) within twenty-four (24) months of the entry of this Consent Order or the approval of the initial background investigation submittal that was made by Live Earth, LLC, whichever is later.

- One Hundred Thousand Dollars (\$100,000.00) within thirty (30) months of the entry of this Consent Order or the approval of the initial background investigation submittal that was made by Live Earth, LLC, whichever is later.

- One Hundred Thousand Dollars (\$100,000.00) within thirty-six (36) months of the entry of this Consent Order or the approval of the initial background investigation submittal that was made by Live Earth, LLC, whichever is later.

Payments shall be made by certified check made payable to "Treasurer, State of Ohio." The certified checks shall be submitted to Martha Sexton or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215-3400. The memorandum portion of the checks, or some other prominent location on the transmittal letters or documentation, shall include a reference to

“Sunny Farms Landfill Civil Penalty.” A copy of each letter and check shall be sent to Ohio EPA, Division of Solid and Infectious Waste Management, Supervisor, Systems Management Unit, 50 West Town Street, Suite 700, Columbus, Ohio 43215.

38. Pursuant to R.C. 3704.06, Defendant SFLF shall pay to the State of Ohio a civil penalty of \$98,000.00. Of this amount, Defendant SFLF is ordered to pay, within fifteen (15) days of the entry of this Consent Order or the approval of the initial background investigation submittal that was made by Live Earth, LLC, whichever is later, \$78,400.00 by delivering a cashier's or certified check payable to the order of "Treasurer, State of Ohio" to Martha Sexton, Paralegal, or her successor, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215-3400.

39. As a Supplemental Environmental Project, Defendant SFLF shall pay \$19,600.00 of the total civil penalty referenced in paragraph 38 within fifteen (15) days of entry of this Consent Order or the approval of the initial background investigation submittal that was made by Live Earth, LLC, whichever is later, to the Clean Diesel School Bus Program established by the Director of Ohio EPA for the purpose of installing, in accordance with Ohio EPA guidelines, diesel particulate filters for school buses operated by school districts in the State of Ohio. Money in the fund shall be made available to school districts in accordance with a grant established by the Director of Ohio EPA. Defendant SFLF shall make payment by cashier's or certified check made payable to "Treasurer, State of Ohio" and submitted to Martha A. Sexton, Paralegal, or her successor, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215-3400. The check shall specify that such monies are to be deposited into the fund established by Ohio EPA for the Clean Diesel School Bus Program by writing "Fund 5CD0" on the memo line of the check.

40. Compliance with Paragraphs 37-39 above shall be a full accord and satisfaction of the State of Ohio's civil and administrative penalty claims against Defendants for the violations alleged in Plaintiff's Amended Complaint and referenced in this Consent Order.

#### **VII. STIPULATED PENALTIES**

41. In the event that Defendant SFLF fails to comply with any of the requirements of Section V, VI, and XI (Paragraph 53 only) of this Consent Order, Defendant SFLF shall immediately and automatically be liable for and pay a stipulated penalty in accordance with the following schedule:

- A. Defendant SFLF shall pay two hundred fifty dollars (\$250.00) 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, Defendant SFLF shall pay five hundred dollars (\$500.00) per day;
- C. For each day any requirement of this Consent Order is violated, greater than (90) days of violation, Defendant SFLF shall pay seven hundred fifty dollars (\$750.00) per day.

Stipulated penalties shall not, however, be due and payable during the resolution, pursuant to the Dispute Resolution provisions outlined in Section XI of this Consent Order, of any dispute associated with actions taken by Defendant SFLF pursuant to Section V, Paragraphs 14, 15, 16, and 17 of this Consent Order until the events described in Section XI, Paragraph 53 occur. Stipulated penalties due under this Consent Order shall be paid by certified check or money order payable to "Treasurer, State of Ohio" and mailed to Martha Sexton or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215-3400.

## VIII. NOTICES

42. All documents required to be submitted to Ohio EPA or Defendants under this Consent Order shall be submitted to the following, or their successors:

As to Plaintiff:

Ohio Environmental Protection Agency  
Northwest District Office  
Solid Waste Supervisor  
347 North Dunbridge Road  
Bowling Green, Ohio 43402

As to Defendant SFLF:

Sunny Farms Landfill LLC  
c/o Christopher M. Valerian  
Live Earth LLC  
6140 Parkland Blvd.  
#300  
Mayfield Heights, OH 44124

With a copy to:

Shane A. Farolino, Esq.  
Roetzel & Andress, LPA  
222 South Main Street  
Akron, OH 44308

43. Any Party may change the name and/or address of its contact person(s) by sending written notice to the other parties.

## IX. TERMINATION

44. No earlier than (a) two (2) years after Defendant SFLF achieves compliance with Section V of this Consent Order; and (b) after Defendant SFLF has paid all civil penalties due hereunder, Defendant SFLF may move the Court, pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure, to terminate this Consent Order. Plaintiff takes no position with regard to such motion at this time, and reserves its rights to oppose the motion. Termination of any or all of the

provisions of this Consent Order may also be granted upon joint motion of the parties. Notwithstanding the foregoing, the parties acknowledge that the Ohio Attorney General's Office and the Ohio EPA are currently reviewing a background investigation application that was filed on behalf of Live Earth, LLC and Christopher M. Valerian seeking approval from the agencies of the acquisition of Sunny Farms Landfill, LLC by Live Earth, LLC. The parties further acknowledge, understand and agree that, in the event that Live Earth, LLC and/or Christopher M. Valerian are not approved by the agencies, within thirty (30) days of the Effective Date of this Consent Order, to acquire Sunny Farms Landfill, LLC and/or operate the Facility, this Consent Order shall terminate immediately and in its entirety and be deemed null and void thereafter, and the parties shall have no further liability, obligations or responsibility under this Consent Order whatsoever. The parties agree that if Live Earth, LLC and/or Christopher M. Valerian are not approved by the agencies, within thirty (30) days of the Effective Date of this Consent Order, and the Consent Order is terminated, the underlying action and the claims referenced in the State's Complaint shall remain in effect against Defendant SFLF and Regus.

45. Regardless of the previous paragraph, at any point in the future, if the requirements contained in Paragraphs 14, 15, 18, 19, 21, 22, and 23 are included in the owner's and/or operator's license for the Facility, Defendant SFLF and its successors/assigns agree that these requirements are reasonable and that they will not challenge said requirements.

#### **X. POTENTIAL FORCE MAJEURE**

46. If any event occurs which causes or may cause a delay in Defendants compliance with any requirement of this Consent Order, Defendants shall notify Ohio EPA in writing within fourteen (14) days from when the Defendants knew, or by the exercise of reasonable due diligence should have known of the event, describing in detail the anticipated length of the delay,

the cause or causes of the delay, and the measures taken or anticipated to be taken by Defendants to prevent or minimize the delay. Financial hardship and/or inability to pay, and any failure of either Defendants to take actions necessary to carry out the requirements of this Consent Order because of financial hardship and/or inability to pay, shall not be considered force majeure events. If Defendants fail to give notice of a potential force majeure event to Ohio EPA as required under this Paragraph, Defendants may not assert a potential force majeure defense with respect to the event in question.

47. In any action by Plaintiff to enforce any of the provisions of this Consent Order, Defendants may raise at that time the question of whether it is entitled to a defense that its conduct was caused by circumstances beyond its control such as, by way of example and not limitation, acts of God, acts of war, and civil disturbances. While Plaintiff does not agree that such a defense exists, it is, however, agreed to by Defendants and Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense, and that the appropriate time to adjudicate the existence of such a defense is at the time Plaintiff initiates an action to enforce the provisions of this Consent Order.

#### **XI. DISPUTE RESOLUTION**

48. This Dispute Resolution Section shall only be applicable to the following portions of this Consent Order: Section V, Paragraphs 14, 15, 16, 17, and 18.

49. The Facility Manager and Environmental Specialist, Division of Solid and Infectious Waste Management, Northwest District Office ("DSIWM/NWDO") assigned to the Facility shall, whenever possible, operate by consensus. In the event that a disagreement exists about either the adequacy or disapproval of any work plan, report, or other item required to be submitted by Defendant SFLF pursuant to this Consent Order, any action taken by Defendant

SFLF pursuant to Section V, Paragraphs 14, 15, 16, 17, & 18 of this Consent Order, then the Facility Manager and Environmental Specialist, DSIWM/NWDO assigned to the Facility shall have fifteen (15) days from the date the dispute arises to collaborate in good faith in an attempt to resolve the differences. The dispute arises when either the Environmental Specialist, DSIWM/NWDO assigned to the Facility provides a brief written notice of dispute to Defendant SFLF's Facility Manager, or Defendant SFLF's Facility Manager provides a brief written notice of dispute to the Environmental Specialist, DSIWM/NWDO assigned to the Facility. This fifteen (15) day period may be extended by mutual agreement of the parties, up to an additional seven (7) days.

50. In the event that the Facility Manager and Environmental Specialist, DSIWM/NWDO assigned to the Facility are unable to reach consensus on the dispute, then each party shall reduce his or her position to writing within fifteen (15) days of the end of the good faith negotiations referenced in the preceding paragraph. Those written positions shall be immediately exchanged by the Facility Manager and Environmental Specialist, DSIWM/NWDO assigned to the Facility and the dispute shall be referred to the Assistant Chief, DISWM Central Office for a determination as to whether the waste classification of the Environmental Specialist, DSIWM/NWDO was lawful and reasonable. Following the exchange of written positions and the referral of the dispute to the Assistant Chief, DSIWM Central Office for resolution, the parties shall have an additional seven (7) days to resolve their dispute. If the Assistant Chief, DSIWM Central Office concurs with the position of Defendant SFLF, then the disagreement shall be resolved in a manner consistent with Defendant SFLF's position. If necessary, either party may petition this Court for modification of the Consent Order to include any required extensions of time or variances of required work.

51. If Ohio EPA does not concur with the position of Defendant SFLF, the Assistant Chief, DSIWM Central Office will notify Defendant SFLF in writing. Upon receipt of such written notice, the parties shall have seven (7) days to forward a request for resolution of the dispute, along with each party's written statement of the dispute, to the Chief, DSIWM Central Office for a determination as to whether the waste classification of the Environmental Specialist, DSIWM/NWDO, was lawful and reasonable. The statements of dispute shall be limited to a concise presentation of each party's position on the dispute. The Chief, DSIWM Central Office will resolve the dispute based upon, and in a manner consistent with, this Consent Order; Ohio law, including R.C. Chapters 3714 and 3734, and the rules and regulations promulgated thereunder; and other appropriate state and federal laws.

52. Defendant SFLF waives any right it may legally have to appeal, challenge, or contest the final decision and determination of the Chief, DSIWM Central Office.

53. Upon the issuance of a decision of the Chief, DSIWM Central Office, Defendant SFLF shall correctly re-log the load of waste and shall pay the corrected fee amount within seven (7) days. If payment is not timely made pursuant to this Paragraph, Defendant SFLF shall be in violation of this Consent Order and the stipulated penalty provisions in Section VII shall be instituted and stipulated penalties shall be calculated from the date seven (7) days after Defendant SFLF receives notice of the decision by the Chief, DSIWM Central Office.

54. Unless otherwise expressly provided for in this Consent Order, the procedures of this Section XI shall be the exclusive mechanism to resolve disputes associated with actions taken by Defendant SFLF pursuant to Section V, Paragraphs 14, 15, 16, 17, and 18 of this Consent Order.

**XII. EFFECTIVE DATE**

55. This Consent Order shall become effective upon the date of its entry by the Court.

**XIII. COURT COSTS**

56. Defendants are hereby ordered to pay the court costs of this action. Each party shall be responsible for their own attorneys' fees and consultants' fees associated with this action.

**XIV. RETENTION OF JURISDICTION**

57. This Court shall retain jurisdiction over this action for the purposes of making any order or decree which it deems appropriate to carry out this Consent Order.

**XV. SIGNATORIES**

58. Each of the undersigned representatives for 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.

**XVI. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK**

59. Upon the signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby 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 appearance docket.

**IT IS SO ORDERED.**

July 24, 2008  
DATE

*Alvin [Signature]*  
JUDGE, SENECA COUNTY  
COURT OF COMMON PLEAS

FILED  
COMMON PLEAS COURT  
SENECA COUNTY, OHIO  
2008 JUL 24 P 3:10  
KAREN K. WILSON  
CLERK

APPROVED BY:

NANCY ROGERS  
ATTORNEY GENERAL OF OHIO



NICHOLAS J. BRYAN (0079570)  
Assistant Attorney General  
Environmental Enforcement Section  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, OH 43215-3400  
Telephone: (614) 466-2766  
Facsimile: (614) 644-1926  
E-Mail:

*Attorney for Plaintiff*

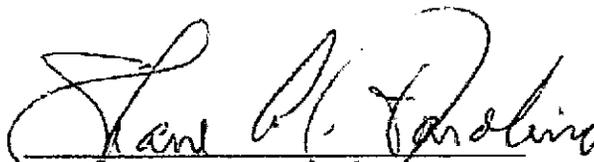
REGUS INDUSTRIES, LLC

By: \_\_\_\_\_  
GORDON REGER  
*Authorized Representative of  
Regus Industries, LLC*

SUNNY FARMS LANDFILL, LLC

BY: 

CHRISTOPHER M. VALERIAN  
*Authorized Representative of  
Sunny Farms Landfill, LLC*



SHANE A. FAROLINO (0040310)  
Roetzel & Andress, LPA  
222 South Main Street  
Akron, OH 44308  
Telephone: (330) 376-2700  
Facsimile: (330) 376-4577  
E-Mail: sfarolino@ralaw.com

ROBERT B. CASARONA (0036715)  
Roetzel & Andress, LPA  
One Cleveland Center  
1375 E. Ninth Street, Tenth Floor  
Cleveland, OH 44114  
Telephone: (216) 623-0150  
Facsimile: (216) 623-0134  
E-Mail: rcasarona@ralaw.com

*Attorneys for Defendant Sunny Farms  
Landfill, LLC*

APPROVED BY:

NANCY ROGERS  
ATTORNEY GENERAL OF OHIO

SUNNY FARMS LANDFILL, LLC

---

NICHOLAS J. BRYAN (0079570)  
Assistant Attorney General  
Environmental Enforcement Section  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, OH 43215-3400  
Telephone: (614) 466-2766  
Facsimile: (614) 644-1926  
E-Mail:

*Attorney for Plaintiff*

REGUS INDUSTRIES, LLC

By:   
GORDON REGER  
*Authorized Representative of  
Regus Industries, LLC*

BY: 

---

CHRISTOPHER M. VALERIAN  
*Authorized Representative of  
Sunny Farms Landfill, LLC*

---

SHANE A. FAROLINO (0040310)  
Roetzel & Andress, LPA  
222 South Main Street  
Akron, OH 44308  
Telephone: (330) 376-2700  
Facsimile: (330) 376-4577  
E-Mail: sfarolino@ralaw.com

ROBERT B. CASARONA (0036715)  
Roetzel & Andress, LPA  
One Cleveland Center  
1375 E. Ninth Street, Tenth Floor  
Cleveland, OH 44114  
Telephone: (216) 623-0150  
Facsimile: (216) 623-0134  
E-Mail: rcasarona@ralaw.com

*Attorneys for Defendant Sunny Farms  
Landfill, LLC*