



John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Scott J. Nally, Director

**CERTIFIED MAIL**

April 11, 2013

Mr. Kenneth Gray  
Gray Container, LLC  
2800 E. 90<sup>TH</sup> St.  
Cleveland, OH 44104

**RE: GRAY CONTAINER LLC, CUYAHOGA COUNTY, OHD980903827, NOV**

Dear Mr. Gray:

Ohio EPA's Division of Materials and Waste Management (DMWM) has conducted several hazardous waste compliance evaluation inspections (CEI) at the Gray Container, LLC (Gray Container) facility located at 2800 East 90<sup>TH</sup> Street in Cleveland, Ohio. The purpose of these inspections was to determine your facility's compliance with Ohio's hazardous waste laws as found in Chapter 3734 of the Ohio Revised Code (ORC) and the rules promulgated thereunder in Chapter 3745 of the Ohio Administrative Code (OAC), as well as the 2008 Preliminary Injunction Orders (State of Ohio v. Gray Container, LLC, et. al., Case No. CV-09-699288). The following summarizes Ohio EPA-DMWM's involvement at the Gray Container facility since 2009:

- On January 6, 2009, DMWM issued a Notice of Violation (NOV) letter to you concerning the unabated violations at your facility. These violations were documented by Ohio EPA in 2007 and 2008.
- On February 11, 2009, DMWM conducted an inspection at your facility due to a release of oil and other wastes.
- On March 2, 2009, Gray Container submitted its response to DMWM's January 6, 2009 NOV letter.
- On March 30, 2009, DMWM issued a letter to Gray Container concerning the status of the unabated violations at the facility.
- On April 20, 2009, Gray Container submitted its response to DMWM's March 30, 2009 letter.
- On April 30, 2009, DMWM issued a letter to Gray Container concerning the status of the unabated violations at the facility.
- July 9 and July 10, 2009, DMWM observed visible emissions from the incinerator unit at the Gray Container facility.
- On July 22, 2009, a Temporary Restraining Order (TRO) concerning the Gray Container facility was filed in the Cuyahoga County Court of Common Pleas.

- On July 27, 2009, DMWM observed the operation of the incinerator unit at the Gray Container facility. Further, DMWM observed that Gray Container had accepted containers that were not empty as specified in OAC rule 3745-51-07.
- On July 28, 2009, DMWM obtained a sample of the waste from the non-empty containers discovered on July 27, 2009. The analytical results revealed the presence of ignitable hazardous waste in these containers.
- On August 3, August 4 and August 5, 2009, DMWM observed the operation of the incinerator unit at the Gray Container facility. Further, DMWM observed that Gray Container had accepted containers that were not empty.
- On August 10, 2009, the Cuyahoga County Court of Common Pleas extended the conditions of the TRO. Additionally, Gray Container submitted an empty drum acceptance procedure and an outline for a contingency plan.
- On August 12, 2009, the contents of the non-empty containers discovered on July 27, 2009, were shipped off-site as hazardous waste to a permitted facility.
- On August 19, 2009, DMWM split a sample with your consultant of the waste found in the roll-off box located east of the incinerator unit. Additionally, DMWM provided Gray Container with comments on the drum acceptance procedure and contingency plan submitted on August 10, 2009.
- On August 26, 2009, a Preliminary Injunction Order concerning the Gray Container facility was filed in the Cuyahoga County Court of Common Pleas.
- On August 28, 2009, DMWM met with you and your consultant to discuss the August 19, 2009 comments concerning the drum acceptance procedure and contingency plan.
- On September 3, 2009, DMWM observed the operation of the incinerator unit at the Gray Container facility. Further, DMWM observed that Gray Container had accepted containers that were not empty.
- On September 14, 2009, DMWM observed the operation of the incinerator unit at the Gray Container facility. Further, DMWM observed that Gray Container had accepted containers that were not empty. In particular, these containers were labeled as "hazardous waste."
- On September 17, 2009, DMWM conducted a follow-up inspection at the Gray Container facility concerning the non-empty containers discovered on September 14, 2009.
- On September 18 and September 21, 2009, Gray Container submitted a revised drum acceptance procedure and a contingency plan.
- On September 28, 2009, DMWM provided Gray Container with comments on the revised drum acceptance procedure and contingency plan.
- On September 30, 2009, nine of the non-empty containers, discovered on September 14 and September 17, 2009, were removed from the Gray Container facility. The containers were manifested off-site as hazardous waste to a permitted facility.
- On October 6, 2009, Gray Container submitted a revised drum acceptance procedure and a revised contingency plan.
- On October 7, 2009, DMWM provided Gray Container with comments on the revised contingency plan. On the same day, Gray Container submitted a revised page for the contingency plan to address DMWM's comments.
- On October 15, 2009, DMWM issued a letter to Gray Container concerning the status of the unabated violations at the facility.

- On November 5, 2009, Gray Container submitted documentation that employees were trained on the contingency plan and empty drum acceptance procedures.
- On November 8, 2009, Gray Container submitted documentation that the facility's contingency plan was distributed to emergency authorities.
- On November 11, 2009, DMWM conducted a follow-up inspection at the Gray Container facility. Additionally, DMWM met with you and your consultant to discuss waste evaluation and management activities.
- On December 15, 2009, a Preliminary Injunction Order concerning the Gray Container facility was filed in the Cuyahoga County Court of Common Pleas.
- On January 7, 2010, DMWM conducted a follow-up inspection at the Gray Container facility.
- On February 9, 2010, DMWM issued a letter to Gray Container concerning the status of the unabated violations at the facility.
- On March 11, 2010, Gray Container's consultant submitted a status report concerning the containers located in the Old Process Building.
- On July 7, 2010, DMWM conducted a follow-up inspection at the Gray Container facility.
- On August 18, 2010, DMWM conducted a follow-up inspection at the Gray Container facility.
- On February 28, 2011, DMWM conducted a follow-up inspection at the Gray Container facility.
- On March 7, 2011, DMWM issued a letter to Gray Container concerning the status of the unabated violations at the facility. No response was received concerning this letter.
- On March 7, 2011, DMWM conducted a follow-up inspection at the Gray Container facility and obtained samples from five plastic totes located inside the Process Building. The analytical results revealed the presence of corrosive hazardous waste in these containers.
- On April 28, 2011, DMWM conducted a follow-up inspection at the Gray Container facility.
- On December 12, 2011, DMWM conducted a follow-up inspection at the Gray Container facility.
- On February 2, 2012, DMWM conducted a follow-up inspection at the Gray Container facility.
- On May 29, 2012, DMWM conducted a follow-up inspection at the Gray Container facility.
- On June 25, 2012, Gray Container shipped off-site one roll-off box (20 yards) of D004/D006/D007/D008/D018/D035/D039/D040/F001/F002/F003/F005 hazardous waste to a permitted facility. The roll-off box contained solid hazardous wastes that had been present in the Old Process Building.
- March 19, 2013, DMWM conducted a follow-up inspection at the Gray Container facility.

The following violations have been documented at the Gray Container facility:

1. **ORC § 3734.02(E)&(F), Unlawful Storage and Disposal of Hazardous Waste:**
  - A. As observed by DMWM during the March 19, 2013 inspection, Gray Container continues to unlawfully store hazardous wastes at the facility. Reportedly, liquid hazardous wastes present in the Old Process Building were transferred into six totes and placed into trailer

7221. The six totes from trailer 7221 were relocated to the current Process Building. Additionally, solid hazardous wastes present in the Old Process Building were transferred into the roll-off box located west of the Incinerator Unit. The contents of the roll-off box were subsequently shipped off-site on June 25, 2012 as a D004/D006/D007/D008/D018/D035/D039/D040/F001/F002/F003/F005 hazardous waste. **In accordance with the August 26 (received for filing on September 8, 2009) and December 15, 2009 Preliminary Injunction orders (State of Ohio v. Gray Container, LLC, et. al., Case No. CV-09-699288), Gray Container was required to ship the aforementioned hazardous wastes to a permitted facility. Gray Container must immediately comply with the Preliminary Injunction orders through shipping the aforementioned hazardous wastes to a permitted facility. Submit documentation (i.e., hazardous waste manifests) that verifies the contents of the totes were shipped to a permitted facility.**

- B. On March 7, 2011, DMWM obtained samples from five plastic totes located inside the Process Building. DMWM's analytical results demonstrated that the contents of three totes are a corrosive (D002) hazardous waste. Specifically, the contents exhibited a pH less-than two (<2). **Gray Container must immediately ship the hazardous waste to a permitted facility. In addition, Gray Container has unlawfully stored these hazardous wastes in violation of ORC § 3734.02(E)&(F). This area will require closure as described below.**
- C. As previously documented, Gray Container unlawfully accepted, stored and disposed of hazardous wastes, in violation of ORC § 3734.02(E)&(F), at the following locations: G05, G33, F22, Trailer 1, Trailer 5, Trailer 6, Trailer 7, Trailer 8, Trailer 7221, Old Process Building, Receiving Building, Process Building and Incinerator Unit Area including the roll-off box area located west of the Incinerator Unit.

In accordance with OAC rule 3745-55-10 through 3745-55-20, Gray Container must conduct closure activities for all areas where hazardous wastes were unlawfully stored and/or disposed. Closure activities will entail the following: removing and disposing of all waste and residues, removing or decontaminating contaminated equipment and structures, remediating contaminated soils and groundwater if necessary, and managing all wastes generated from these activities in accordance with the hazardous waste laws and rules. You must submit a Closure Plan which ensures that the closure performance standards set forth in OAC rule 3745-55-11 are met. The closure performance standards require you to remove and remediate contamination in these areas to prevent it from posing a risk to human health and the environment. The Closure Plan should be prepared in accordance with Ohio EPA's *Closure Plan Review Guidance for RCRA Facilities*. Additionally, Gray Container must comply with the closure cost estimate, financial assurance and liability requirements found in OAC rules 3745-55-40 to 3745-55-51. **In accordance with the Preliminary Injunction orders, Gray Container was required to submit the Closure Plan by December 7, 2009. Currently, DMWM has not received the Closure Plan. Gray Container must submit the Closure Plan to the attention of the undersigned.**

Since you have violated ORC § 3734.02(E)&(F), your facility is subject to all applicable general facility standards found in OAC Chapters 3745-54 and 3745-55. Additionally, at any time Ohio EPA may assert its right to have you begin facility-wide cleanup pursuant to the Corrective Action process under Ohio law.

**2. General Waste Analysis, OAC rule 3745-54-13 and OAC rule 3745-52-11, Waste Evaluation:**

- A. In accordance with the Preliminary Injunction orders, Gray Container must conduct an inspection of the Gray Container facility and adjacent properties to identify any container or tank of waste that is present. **Currently, Gray Container has not completed these actions for its facility in violation of the Preliminary Injunction orders. Gray Container must immediately comply with the Preliminary Injunction orders and submit documentation verifying compliance with it.**
- B. During the March 19, 2013 inspection, DMWM observed that wastes were present at the following locations of the facility:
- Seven, 55-gallon plastic containers located near the Old Process Building Area / southwest corner of the facility;
  - Six plastic totes in the Process Building (previously located in the Old Process Building and subsequently relocated to Trailer 7221 prior to being placed into the current Process Building);
  - Three plastic totes located south of the Receiving Building;
  - Nine, 55-gallon containers located on the west side of the Incinerator Unit;
  - Floor trenches and a pit in the Process Building; and
  - Other areas of the facility not specifically mentioned.

In accordance with the hazardous waste laws and the Preliminary Injunction orders, Gray Container must evaluate and lawfully ship all wastes to a permitted facility. **Gray Container must immediately comply with the hazardous waste laws and Preliminary Injunction orders and submit documentation concerning the evaluation (e.g., analytical results) and lawful, off-site shipment of the waste (e.g., manifests).**

Please carefully review the August 26 and December 15, 2009 Preliminary Injunction orders. For reference purposes, I have enclosed a copy of each.

As an unlawful hazardous waste facility, Gray Container remains in violation of:

3. **OAC rule 3745-54-14, Security**
4. **OAC rule 3745-54-15, General Inspection Requirements**
5. **OAC rule 3745-54-16, Personnel Training**
6. **OAC rule 3745-54-17, Requirements for Wastes**

7. **OAC rules 3745-54-30 to 3745-54-37, Emergency Preparedness & Prevention**
8. **OAC rule 3745-54-31, Maintenance & Operation**
9. **OAC rules 3745-55-70 to 3745-55-77, Use and Management of Hazardous Waste Containers**
10. **OAC rules 3745-55-40 through 3745-55-51, Closure Cost Estimate, Financial Assurance and Liability Requirements**

You must immediately take the necessary measures to return to compliance with the Preliminary Injunction Orders and Ohio's environmental laws. Within 14 days of receipt of this letter, you are requested to provide documentation to this office including the steps taken to abate the violations cited above. Documentation of steps taken to return to compliance may be submitted via the postal service or electronically to [frank.zingales@epa.ohio.gov](mailto:frank.zingales@epa.ohio.gov).

Please be advised that the violations cited above will continue until the violations have been properly abated. It is imperative that you return to compliance.

Should you have any questions, please contact me at (330) 963-1108.

Sincerely,



Frank A. Zingales  
Environmental Specialist  
Division of Materials and Waste Management

FAZ:ddw

cc: Timothy Kern, AGO  
ec: Frank Popotnik, DMWM, NEDO  
Natalie Oryshkewych, DMWM, NEDO  
John Palmer, DERR, NEDO  
Kelly Smith, DMWM, CO



Gray Container Facility  
Locations identified in **RED**.  
Aerial Source – Cuyahoga County Geographical Information System, 2011.



59173512

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



STATE OF OHIO EX REL. RICHARD CORDRAY  
Plaintiff

Case No: CV-09-699288

Judge: JOAN SYNENBERG

GRAY CONTAINER LLC. ET AL  
Defendant

**JOURNAL ENTRY**

AGREED ORDER FOR PRELIMINARY INJUNCTION . . . OSJ . . .

\_\_\_\_\_  
Judge Signature

\_\_\_\_\_  
Date

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

AUG26'09 PM 3:19

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

CASE NO. CV 09 699288

Plaintiff,

JUDGE JOAN SYNENBERG

v.

Gray Container LLC, et al.

AGREED ORDER FOR  
PRELIMINARY INJUNCTION

Defendants.

The parties with counsel present appeared August 11, 2009 for a scheduled hearing on the State of Ohio's Motion for Preliminary Injunction. The parties and counsel held discussions to arrive at a mutually agreeable resolution of the State's request for preliminary relief. Upon agreement of the parties, it is therefore ORDERED that:

1. The terms of the Temporary Restraining Order granted July 22, 2009 are hereby extended, subject to any conflicting terms herein, until further order of this Court.
2. The parties shall conduct a phone conference with the Court on August 26, 2009, at 10:00 A.M.
3. Defendants Gray shall cease operation of their incinerator until they have complied with Paragraphs 4, 5, 6(c)-(d), and 7 of this Order.
4. Within 21 days of the entry of this Order, Defendants Gray shall perform all repairs described in Attached Exhibit A as well as the following repairs:
  - a. For the purpose of preventing visible emissions and open burning, slow the speed of the conveyor by either:
    - i. Changing the drive sprockets on the conveyor; or

AUG26'09 PM 3:19

- ii. Installing a variable sleeve drive.
  - b. Develop any other necessary operating procedures to eliminate visible emissions during the startup of the incinerator and incorporate these procedures into the operation of the incinerator.
- 5. Within 28 days of the entry of this Order, Defendants Gray shall certify that they performed all repairs and developed the operating procedures described in Paragraph 4 by submitting a protocol of repairs to Mike Samec, Cleveland Department of Health, Division of Air Quality, 75 Erieview Plaza, 2nd Floor, Cleveland, Ohio, 44114, MSamec@city.cleveland.oh.us, (216) 420-7682.
- 6. After certifying that they have performed all repairs and developed the operating procedures described in Paragraph 4, Defendants Gray:
  - a. May test the effectiveness of the repairs by using a small number of barrels, in accordance with notice and other provisions described in this Order;
  - b. May lawfully operate their incinerator upon successful passage of any incinerator test, in accordance with notice and other provisions of this Order;
    - i. "Successful passage" shall mean no visible emissions from the incinerator during the test.
  - c. Shall limit operating its incinerator to 3 hours a day within the hours of 7:30 A.M. and 1:00 P.M.;
  - d. Shall give at least 24 hours notice of the exact date and time that any test or operation of the incinerator will begin to Mike Samec, Cleveland Department of Health, Division of Air Quality, 75 Erieview Plaza, 2nd

Floor, Cleveland, Ohio, 44114, MSamec@city.cleveland.oh.us, (216) 420-7682, and to Frank Zingales, Ohio EPA Northeast District Office, Division of Hazardous Waste Management, 2110 East Aurora Road, Twinsburg, Ohio, 44087, Frank.Zingales@epa.state.oh.us, (330) 963-1108; and

- e. Shall demonstrate compliance by conducting emissions testing, pursuant to the requirements found in their Permit to Operate ("PTO"), within 90 days of submitting the certification.
  - i. Defendants Gray shall give 48 hours notice of the emissions testing and submit the test results within 7 days of the test to Mike Samec, Cleveland Department of Health, Division of Air Quality, 75 Erieview Plaza, 2nd Floor, Cleveland, Ohio, 44114, MSamec@city.cleveland.oh.us, (216) 420-7682.
  - ii. Following a successful compliance demonstration of the incinerator, such emissions testing shall satisfy Defendants Gray's obligation to perform emissions testing for the incinerator 6 months prior to the expiration of the PTO, as the PTO currently requires.

7. Defendants Gray shall immediately take the following actions to prevent open burning at their facility until Defendants Gray fully implement the repairs described in Paragraph 8:

- a. Remove the gaskets on any container lids entered into the incinerator to minimize open burning, and/or, employ two persons to place water upon any burning or smoking containers to minimize open burning; and

- b. Collect, manage, and properly dispose of any wastewater (created by the use of water being placed on the barrels) at a facility permitted to receive the wastewater.

8. Defendants Gray shall take the following actions to prevent open burning at their facility within 49 days of the entry of this Order:

- a. Extend the refractory lined tunnel by not less than 10 feet. The extension must be refractory lined on the top and one side. The side with the conveyor chain drive and motor shall be accessible to conduct maintenance; thus the cover on this side should be removable;
- b. Install two weatherproof blowers in the incinerator exit tunnel, which shall direct any smoke from the barrels into the incinerator;
- c. Install appropriate shielding to prevent smoke from escaping below the tunnel; and
- d. After 49 days following the entry of this Order, there shall be no burning or smoking barrels or lids that exit the incinerator.

9. Defendants Gray shall submit their quarterly report for emissions units K004 and K005 and their semi-annual report no later than September 2, 2009, to Mike Samec, Cleveland Department of Health, Division of Air Quality, 75 Erieview Plaza, 2nd Floor, Cleveland, Ohio, 44114, MSamec@city.cleveland.oh.us, (216) 420-7682.

10. Defendants Gray shall immediately install and maintain a tarp over the roll-off box containing incinerator-related wastes, which is located directly east of the incinerator unit. The tarp must prevent precipitation from entering the roll-off box.

11. Within 14 days of the entry of this Order, Defendants Gray shall resubmit a contingency plan for minimizing the risk of fire, explosion, or release of hazardous waste

that includes the following additional information: 1) a description of emergency procedures for responding to fires, explosions, or releases of hazardous wastes; 2) a list with the location and description of capabilities of all emergency response equipment; 3) a description of evacuation routes; 4) a description of coordination agreements or plans with the local fire department; and 5) the name, phone numbers and addresses of emergency coordinators. The revised contingency plan shall be submitted to Frank Zingales, Ohio EPA Northeast District Office, Division of Hazardous Waste Management, 2110 East Aurora Road, Twinsburg, Ohio, 44087, Frank.Zingales@epa.state.oh.us, (330) 963-1108.

12. Defendants Gray shall ensure and maintain documentation that all employees are trained on the contingency plan, as described in Paragraph 11, once every 12 months. Within 30 days after entry of this Order, Defendants Gray shall submit documentation that all employees were trained on the contingency plan to Frank Zingales, Ohio EPA Northeast District Office, Division of Hazardous Waste Management, 2110 East Aurora Road, Twinsburg, Ohio, 44087, Frank.Zingales@epa.state.oh.us, (330) 963-1108.

13. Upon written approval by Ohio EPA, Defendants Gray shall immediately implement the plan for drum inspection and rejection/acceptance procedures. Defendants Gray shall ensure and maintain documentation that all employees are trained on the plan described in this Paragraph once every 12 months. Within 30 days after entry of this Order, Defendants Gray shall submit documentation that all employees were trained on the plan to Frank Zingales, Ohio EPA Northeast District Office, Division of Hazardous Waste Management, 2110 East Aurora Road, Twinsburg, Ohio, 44087, Frank.Zingales@epa.state.oh.us, (330) 963-1108.

14. Defendants Gray shall immediately make arrangements to lawfully transport or dispose of the drums containing insecticide residues observed by Ohio EPA in the old process building.

15. Defendants Gray shall inspect all land and buildings at Defendants Gray's property, including the adjacent parcels owned by Defendant Northcoast Developers, Inc., to identify any containers or tank of waste. Defendants Gray shall identify and document the location of each container or tank of waste. Defendants Gray shall stage all containers of waste in one location at the old process building where other waste containers are currently kept. Defendants Gray shall perform all tasks described in this Paragraph within 21 days of the entry of this Order. Defendants Gray shall give 48 hours notice of any moving or staging of any waste containers to Frank Zingales, Ohio EPA Northeast District Office, Division of Hazardous Waste Management, 2110 East Aurora Road, Twinsburg, Ohio, 44087, Frank.Zingales@epa.state.oh.us, (330) 963-1108.

16. Defendant Northcoast shall permit access to its property and cooperate with Defendants Gray, any consultants, and Ohio EPA so that the tasks in Paragraph 15 may be completed.

17. Defendants Gray shall complete the evaluation of all wastes, including, but not limited to those found in containers, tanks, or roll-off boxes, by no later than November 1, 2009. Defendants Gray shall complete the evaluation all wastes in accordance with Ohio Adm.Code 3745-52-11 and 3745-54-13. All documentation demonstrating the waste evaluation shall be submitted by November 1, 2009 to Frank Zingales, Ohio EPA Northeast District Office, Division of Hazardous Waste Management, 2110 East Aurora Road, Twinsburg, Ohio, 44087, Frank.Zingales@epa.state.oh.us, (330) 963-1108.

18. Defendants Gray shall remove all wastes off site and lawfully dispose of them at a permitted facility by no later than December 31, 2009. Defendants Gray shall submit all manifests and shipping papers within 3 days of waste transportation, and give 48 hours notice prior to any sampling or waste management activities, to Frank Zingales, Ohio EPA Northeast District Office, Division of Hazardous Waste Management, 2110 East Aurora Road, Twinsburg, Ohio, 44087, Frank.Zingales@epa.state.oh.us, (330) 963-1108.

19. Within 30 days of the entry of this Order, Defendants Gray shall submit a plan for the management and disposal of wastewater generated from the incinerator unit to Frank Zingales, Ohio EPA Northeast District Office, Division of Hazardous Waste Management, 2110 East Aurora Road, Twinsburg, Ohio, 44087, Frank.Zingales@epa.state.oh.us, (330) 963-1108.

20. Within 30 days of the entry of this Order, Defendants Gray and their technical consultants shall meet with Ohio EPA to discuss the composition of an approvable closure plan that complies with Ohio Adm.Code 3745-55-10 through 3745-55-20. Within 90 days of the entry of this Order, Defendants Gray shall submit an approvable closure plan prepared in accordance with Ohio Adm.Code 3745-55-10 through 3745-55-20 that addresses any areas where hazardous wastes were stored, treated, or disposed of by Defendants Gray on the Gray and Northcoast properties. Defendants Gray shall submit the closure plan to Frank Zingales, Ohio EPA Northeast District Office, Division of Hazardous Waste Management, 2110 East Aurora Road, Twinsburg, Ohio, 44087, Frank.Zingales@epa.state.oh.us, (330) 963-1108. Defendant Northcoast shall permit access and otherwise cooperate with the other parties and their consultants so that a closure plan may be completed and implemented.

21. If Ohio EPA determines that the closure plan is deficient and gives Defendants Gray written notice of the deficiencies in the closure plan, Defendants Gray shall submit a revised closure plan within 30 days of receiving the written notice of deficiencies. If Ohio EPA determines that the revised closure plan is deficient, Ohio EPA may modify the revised plan and approve the revised plan as modified by Ohio EPA.

22. Immediately upon receiving notice that Ohio EPA approved Defendants Gray's closure plan, either as originally submitted, as revised, or as revised and modified, Defendants Gray shall implement the approved closure plan in the manner and in the time frames set forth in the approved closure plan, pursuant to Ohio Adm. Code 3745-55-13. The Court shall have continuing jurisdiction to enforce the terms and conditions of the approved closure plan as well as any post-closure plans.

It is so Ordered.

*Joan Synenberg* 8/27/09  
JUDGE JOAN SYNENBERG

By: *Thod Dossaint* / *Mark E. Mast* AAG.  
Assistant Attorney General

*Counsel for Plaintiff State of Ohio*

By: *Henry Hilow* / *Mark E. Mast* via phone consent 8-24-09  
Henry Hilow

*Counsel for Defendants Gray*

By: *Mark E. Mast* / *Mark E. Mast* via email consent 8/25/09  
Martin Lewis

*Counsel for Defendant Northcoast*

RECEIVED FOR FILING

SEP 08 2009

GERALD E. FUERST, CLERK  
By: *[Signature]* Deputy

FROM

(THU) SEP 17 2009 15:47/ST. 15:45/No. 6868570204 P 11

**EXHIBIT A**

FROM

(THU) SEP 17 2009 15:47/ST. 15:45/No. 6868570204 P 12  
2100511010

AUG 10, 2009 11:39K



Gray Barrel and Drum  
2800 East 90<sup>th</sup> Street  
Cleveland, OH 44104  
(216) 721-9000 Fax (216) 721-1361

RE: Drum Incinerator Repair  
Procedure request

Edward J. Haddad, Jr., P.E.  
President

Gentlemen: & Henry Nilow:

3619 Walton Avenue, #5  
Cleveland, Ohio 44113

The drum incinerator Needs to be repaired before any additional operations test can be done. Mr. Ray Keller-authorized service man for North American Manufacturing was consulted to advise Gray Barrel as to what should be done and how.

(216) 651-3000  
Fax: 651-1840

The following list was obtained in a conversation with Leonard Gray, Ray Keller, Edward Haddad Jr. P.E. and Bert Klein

Professional Engineering  
Consultants and Contractors

- Chemical
- Civil
- Environmental
- Process
- Fire Safety

1. Replace 4 main burner blocks -high strength castable refractory - 12"X12"with 8" hole.
2. Remove debris from silo which is old fire brick and refractory (approximately 3')
3. Repair refractory wall areas, and any other internal repairs needed would be performed.
4. The burners are North American excess air burners 1970's vintage designed to operate at 16 air to 1 fuel(dual fuel). Design is 70to 80 % efficient.
5. Start up the burners to adjust the air ratio-this cannot be done without starting the incinerator.
6. No drums would be burned at this time.
7. After technician has completed adjustments the system can be brought up to operating temperature by limiting air into burning chamber and after burner with either drums (pre-cleaned) or air limiter covers at the front and back of the incinerator. Then the system would be ready for operating testing. Gray B. will notify Cleveland Air Pollution Mike Samec and Ohio EPA Frank Zingales one-day prior to testing.

- aka -  
Jan Haddad & Son  
Consultants Co.  
(Founded 1923)

E-mail us at  
cleancomp@ecoglobal.net

or visit us at the  
Hildebrandt Building

If there are any further questions please contact Edward J. Haddad Jr., P.E. or  
Berthold Klein, P.E. of Clean CEMP Engineering at 216-651-3000.

August 5, 2009

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, <i>ex rel.</i>	:	CASE NO. CV 09 699288
RICHARD CORDRAY	:	
OHIO ATTORNEY GENERAL	:	
	:	
Plaintiff,	:	JUDGE JOAN SYNENBERG
	:	
v.	:	
	:	
	:	
GRAY CONTAINER LLC, et al.	:	<u>AGREED ORDER FOR</u>
	:	<u>PRELIMINARY INJUNCTION</u>
	:	
Defendants.	:	
	:	

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Counsel appeared on October 22, 2009, for a status conference regarding the injunctive relief required of Gray Container LLC, et al. (“Defendants Gray”). Counsel held discussions to arrive at a mutually agreeable resolution of the State’s request for preliminary relief. Upon agreement of the parties, it is therefore ORDERED that the Agreed Order for Preliminary Injunction entered into August 26, 2009 (“August 26 Agreed Order”), is modified as follows:

1. The terms of the August 26 Agreed Order are hereby extended, subject to any conflicting terms herein, until further order of this Court.
2. Defendants Gray shall take the following steps at the facility:
  - a. Comply with the conveyor speed adjustments specified in Paragraph 4 of the August 26 Agreed Order, which require Defendants Gray to either:
    - i. Change the drive sprockets on the conveyor; or
    - ii. Install a variable speed drive.

b. Comply with the open burning repairs provided in Paragraph 8 of the August 26 Agreed Order, which require Defendants Gray to do the following:

i. Extend the refractory lined outlet tunnel by not less than 10 feet.

The extension must be refractory lined on the top and one side.

The side with the conveyor chain drive and motor shall be accessible to conduct maintenance; thus, the cover on this side should be removable;

ii. Install two weatherproof blowers in the incinerator exit tunnel, which shall direct any smoke from the barrels into the incinerator;

iii. Install appropriate shielding to prevent smoke from escaping below the tunnel; and

iv. Operate the incinerator such that no burning or smoking drums or lids exit the incinerator.

c. Demonstrate that the incinerator is capable of consistently maintaining a minimum exhaust gas temperature of 1600 degrees Fahrenheit.

3. Defendants Gray shall submit a written statement pursuant to the terms and conditions of this Paragraph.

a. Defendants Gray shall certify that they have complied with the terms of Paragraph 2 of this Order;

b. Defendants Gray shall list a daily schedule of operation in conformity with Paragraph 4.a of this Order; and

c. Defendants Gray shall submit the written statement described in this Paragraph to the following:

- i. The Court;
- ii. Mike Samec, Cleveland Department of Health, Division of Air Quality, 75 Erievue Plaza, 2nd Floor, Cleveland, Ohio, 44114, MSamec@city.cleveland.oh.us, (216) 420-7682; and
- iii. Frank Zingales, Ohio EPA Northeast District Office, Division of Hazardous Waste Management, 2110 East Aurora Road, Twinsburg, Ohio, 44087, Frank.Zingales@epa.state.oh.us, (330) 963-1108.

4. Upon submitting the written statement described in Paragraph 3, Defendants Gray may operate their incinerator according to the following restrictions and provisions:

- a. The operation of the incinerator may occur for a total of 10 days, between the hours of 7:30 AM and 11:30 AM, for a total of not more than 3 hours a day.
- b. Defendants Gray shall give notice of their intention to operate the incinerator at least 24 hours prior to the operation to Mike Samec, Cleveland Department of Health, Division of Air Quality, 75 Erievue Plaza, 2nd Floor, Cleveland, Ohio, 44114, MSamec@city.cleveland.oh.us, (216) 420-7682; and to Frank Zingales, Ohio EPA Northeast District Office, Division of Hazardous Waste Management, 2110 East Aurora Road, Twinsburg, Ohio, 44087, Frank.Zingales@epa.state.oh.us, (330) 963-1108.

- c. While processing drums and/or lids, the incinerator shall maintain a minimum exhaust gas temperature of 1600 degrees Fahrenheit.
- d. Defendants Gray shall continuously monitor and record the exhaust gas temperature of the incinerator.
- e. Defendants Gray shall take the following steps to address open burning while operating the incinerator, pursuant to Paragraph 7 of the August 26 Agreed Order:
  - i. Remove the gaskets on any container lids that enter the incinerator to minimize open burning and/or employ two persons to place water upon any burning or smoking containers to minimize open burning; and
  - ii. Collect, manage, and properly dispose of any wastewater (created by the use of water being placed on the drums) at a facility permitted to receive the wastewater.
- f. Defendants Gray shall comply with all hazardous waste provisions and deadlines of the August 26 Agreed Order and State law governing hazardous waste. Only RCRA-empty drums shall be processed in the incinerator.

5. Pursuant to Defendants Gray's compliance with the terms of this Order and the terms of past Orders still in effect, Ohio Environmental Protection Agency and its delegated authorities ("Ohio EPA") agree to the following:

- a. During the limited 10-day operation of the incinerator, Defendants Gray need not terminate the operation of the incinerator, so long as the operation does not emit beyond a 5% opacity limit as a 6-minute average;

and Ohio EPA reserves the right, pursuant to statutory authority and past Agreed Orders between the Parties, to enforce against Defendants Gray for violations of law and Orders by this Court;

- b. Ohio EPA may consider data obtained during the 10-day operation of the incinerator to evaluate the acceptability of an application by Defendants Gray to modify their air permit.

It is so Ordered.

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JUDGE JOAN SYNENBERG

By: Thaddeus H. D'Isidoro / per consent.  
Assistant Attorney General

*Counsel for Plaintiff State of Ohio*

By: [Signature]  
Henry Hilow

*Counsel for Defendants Gray*

By: Martin Lewis / per consent  
Martin Lewis

*Counsel for Defendant Northcoast*

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GERALD E. FUERST, CLERK  
By: [Signature] Deputy