

IN THE COURT OF COMMON PLEAS  
TRUMBULL COUNTY, OHIO

STATE OF OHIO, ex rel. : CASE NO. 03 CV 1570  
MARC DANN :  
ATTORNEY GENERAL OF OHIO : JUDGE STUARD  
 :  
Plaintiff, :  
 :  
v. :  
 :  
WARREN RECYCLING, INC., et al. :  
 :  
Defendants. :

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CONSENT ORDER ON PLAINTIFF'S MOTION FOR CONTEMPT

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This matter is before the Court on the Consent Order entered herein on July 1, 2003 (the "2003 Consent Order"), Motion of the Plaintiff, State of Ohio, by and through its counsel, Attorney General Marc Dann ("Plaintiff"), to Show Cause and Amended Second Written Charges in Contempt and Request for Hearing (the "Motion") filed on June 11, 2007, the Agreed Order entered October 19, 2007 (the "Interim Order") on the Motion requiring Defendants, Warren Recycling, Inc. and Warren Hills LLC ("Defendants") to take certain interim remediation steps and ordering the Motion to mediation and the mediation held thereon on January 16, 2008; and the Court having been advised that Plaintiff and Defendants hereby consent to the entry of this Order.

Now therefore, without trial of any issue of law or fact, without admission of any issues of law or fact, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

*March 25 20 08*  
This is a true and correct copy of the  
original Order  
KAREN INFANTE ALLEN  
Clerk of Courts  
By *[Signature]*

## **I. JURISDICTION AND VENUE**

1. The Court has both personal jurisdiction over the parties to this action and subject matter jurisdiction over the case pursuant to Ohio Revised Code Chapters 3714 and 3734. Solely for the purposes of this Consent Order and the underlying Motion, the Defendants do not contest that the Motion states a claim upon which relief can be granted against the Defendants under R.C. Chapters 3714 and 3734 and the rules and regulations promulgated thereunder. Venue is proper in this Court.

## **II. PERSONS BOUND**

2. All terms and provisions of this Consent Order shall apply to and be binding upon the Plaintiff and the Defendants, the Defendants' agents, officers, employees, assigns, successors in interest, and any other person acting in concert and/or privity in accordance with Ohio Rules of Civil Procedure 65(D).

3. The Defendants shall provide a copy of the Consent Order to each key employee, engineer, facility operator, general contractor, laboratory, agent, and/or other key person hired or employed to perform any and all work or services itemized herein. The Defendants shall provide in any agreement with the Defendants and/or any other agent that the Defendants employ to conduct closure and post-closure care activities or remedial activity at the Warren Recycling, Inc. Construction and Demolition Debris Landfill that the services or work be performed in accordance with the terms and conditions of this Consent Order.

### **III. DEFINITIONS**

4. The terms used in this Consent Order shall have the same meaning as used in R.C. Chapters 3714 and 3734 and applicable rules and regulations promulgated thereunder.

5. The term "WRI Facility," as used in this Consent Order, refers to the construction and demolition debris facility, as defined in R.C. 3714.01(E), and Ohio Adm. Code 3745-400-01(G), located at 300 Martin Luther King Boulevard, Warren, Ohio, which is owned and was operated by the Defendants.

6. The term "ETSI", as used in this Consent Order, shall refer to that certain Ohio corporation known as Environmental Transfer Systems, Inc. that operates a solid waste transfer facility, as defined in R.C. §3734.01(U) and Ohio Adm. Code 3745-27-01(S)(28), located at 300 Martin Luther King Boulevard, Warren, Ohio.

### **IV. AGREED TERMS**

7. This Consent Order supersedes and replaces the 2003 Consent Order. By signing this Consent Order, the Plaintiff agrees to withdraw the Motion.

8. Defendants are ordered and enjoined to conduct a physical inspection of the WRI facility and determine which areas on the landfill, including without limitation, the Grandfathered Area, Phase I and Phase II areas, have exposed waste or greater than two inches of erosion. Defendants shall cover, seed and vegetate all such areas. The cover shall consist of not less than 12 inches of soil over all areas of erosion and exposed waste. Prior to covering and seeding such areas, Defendants are ordered to submit a plan to Ohio EPA by April 1, 2008, describing their plan to cover, seed, and vegetate the WRI facility. Ohio EPA will review such plan and make comments and suggestions to the

plan as it chooses. Defendants will have thirty (30) days from the completion of Ohio EPA's review of the plan to accomplish the requirements set forth in this paragraph and outlined in the proposed plan.

9. Defendants are further ordered and enjoined as follows:
  - a. Defendants are ordered and enjoined to pump leachate as frequently as necessary to ensure that leachate levels remain lower than one (1) foot of head on the liner in Phase I and Phase II.
  - b. Defendants are ordered and enjoined to maintain a leachate pumping log for each day leachate is pumped. The leachate log shall include, at a minimum, the following information for each day of pumping: 1) the time the pump is turned on and turned off, 2) date of the pumping, 3) accurate leachate measurements at each of the Phase I and Phase II risers, and 4) the total number of gallons pumped on the day in question.
  - c. Defendants are ordered and enjoined to continue the hydrogen sulfide monitoring of the perimeter of the entire landfill property at least once a week. Defendants are further ordered and enjoined to perform hydrogen sulfide monitoring of the entire landfill property at least once a month, weather permitting.
  - d. Defendants are ordered and enjoined to accelerate hydrogen sulfide monitoring at the landfill if Defendants attain a sustained reading of 5 parts per billion of hydrogen sulfide for 2 minutes. Upon the occurrence of this event, Defendants shall notify Katharina Snyder, or

her successor, at the Northeast District Office of the Ohio Environmental Protection Agency and shall monitor the landfill daily until all readings are below 5 parts per billion for a sustained 2 minute interval.

- e. Defendants shall not be liable for any failure to perform its obligations under this paragraph where such a failure is as a result of Acts of Nature (including fire, flood, earthquake, tornado, hurricane, or other natural disaster), war, invasion, act of foreign enemies, civil war, rebellion, insurrection, military or usurped power or confiscation, or terrorist activities. In the case of illness, vacation or other temporary leave of absence, Defendants shall be required to find an alternate individual to complete the responsibilities outlined in this paragraph.

10. Defendants are ordered and enjoined to inspect the entirety of the WRI Facility to locate any areas on which waste has become exposed, where erosion is deeper than two inches or in which there are any escaping odors or gas once a month, and to immediately alert the City of Warren as to any such areas.

11. Defendants are ordered and enjoined to inspect the leachate pumps and pumping equipment and maintain and perform all necessary repairs to the leachate pumping equipment to maintain such pumps and equipment to a standard sufficient to move leachate through the pumps and pumping equipment off site. If Defendants lack the funds necessary to maintain the leachate pumping equipment in working order, Defendants shall immediately notify the City of Warren of their inability to repair the leachate pumping equipment and the nature of the repair needed. Defendants shall

further notify Katharina Snyder at Ohio EPA, or her successor, at the address set forth in Paragraph 16 below.

12. Defendants are ordered and enjoined to transfer title to all soil on and at the WRI Facility to the Ohio Environmental Protection Agency (the "Ohio EPA") and to allow Ohio EPA and the Warren City Health Department or their contractors unrestricted access onto the WRI facility to transport and use the soil. If ETSI ceases doing business, the parties agree that Ohio EPA retains possession and control of the soil.

13. Defendants are ordered and enjoined to cause Waste Transfer Systems, Inc. ("WTI") and any other person or entity claiming an interest therein to assign all rights, claims and interests in and to all claims including all insurance proceeds derived from such claims held by it as asserted in that certain case known as *Waste Transfer Systems Inc., v. Regus Industries, et al.*, Trumbull County Court of Common Pleas, Warren, Ohio, Case No. 2006 CV 02397, Judge McKay, to the Ohio EPA. Any proceeds derived by the Ohio EPA from such litigation shall be paid into the Warren Hills Standby Trust Account held by the City of Warren for use in future post-closure or other remedial work at the WRI Facility.

14. So long as ETSI is open, Defendants are ordered and enjoined to designate Rick Jones, c/o ETSI, 300 Martin Luther King Boulevard, Warren, Ohio, to accomplish or oversee the performance of each of the duties set forth in this Consent Order.

15. The parties agree that no money from the Warren Hills Standby Trust Account will be used to accomplish the tasks required of Defendants in this Consent Order.

## V. NOTICES

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

As to the Plaintiff:

Ohio Environmental Protection Agency  
Northeast District Office  
Solid Waste Supervisor  
2110 East Aurora Road  
Twinsburg, Ohio 44087

As to the Defendants:

Warren Hills, LLC  
c/o Jack Walsh  
1093 North Montello St.  
Rockton, Massachusetts 02031

Warren Hills, LLC  
300 Martin Luther King Blvd.  
Warren, Ohio 44483

Warren Recycling, Inc.  
c/o Anthony DiCenso III  
2835 Elm Road  
Warren, Ohio 44483

Steven Bell  
Steven D. Bell Co., LPA  
8803 Brecksville Road  
Suite 11  
Brecksville, Ohio 44141

#### **VI. SITE ACCESS**

17. The Defendants agree and consent that Ohio EPA, its employees and agents, upon proper identification and upon stating the purpose and necessity of an inspection, may enter the WRI Facility at reasonable times to inspect or investigate, obtain samples, and examine or copy records, as may be necessary for the

implementation of this Consent Order, the performance of Ohio EPA's statutory duties or the performance or oversight of any task necessary or useful to post-closure care of the WRI Facility.

18. To the extent that the WRI Facility or any other property to which access is required for the implementation of this Consent Order is owned or controlled by persons or companies other than the Defendants, then the Defendants shall use their best efforts to secure from such person(s) access for the Defendants and Ohio EPA as necessary to effectuate this Consent Order. Copies of all access agreements obtained by the Defendants shall be submitted to Ohio EPA within ten (10) days of receipt by the Defendants. If any access required to effectuate this Consent Order is not obtained within thirty (30) days of the date of the filing of this Consent Order with the Court, or within thirty (30) days of the date that Ohio EPA notifies the Defendants in writing that additional access beyond that previously secured is necessary, the Defendants shall promptly notify Ohio EPA in writing of the steps they have taken to obtain access. Ohio EPA may, as it deems appropriate, assist the Defendants in obtaining access.

19. Paragraphs 17 and Paragraph 18 of this Consent Order shall not be construed to eliminate or restrict any right of the State of Ohio to seek access to the WRI Facility that it may otherwise have under federal or state law.

#### **VII. SATISFACTION OF LAWSUIT**

20. Except as otherwise provided in this Consent Order, compliance with the terms of this consent order shall constitute full satisfaction of any civil liability of

Defendants, Defendants' agents, officers, and employees, assigns, and successors in interest to the Plaintiff of all claims alleged in the Motion.

### **VIII. RESERVATION OF RIGHTS**

21. The Plaintiff reserves the right to seek further relief from this Court or any other court, including, but not limited to, further preliminary and/or permanent injunctive relief, civil penalties and cost recovery for work outside the scope of this Consent Order. This Consent Order in no way waives any defenses that the Defendants may have as to such further relief.

22. The Plaintiff expressly reserves, and this Consent Order shall be without prejudice to any civil or criminal claims, demands, rights or causes of action, judicial or administrative, that the Plaintiff may have or which may in the future accrue against the Defendants, for any claim, demand, rights, or cause of action not asserted in this Complaint or in Notices of Violation issued by Ohio EPA, Division of Solid & Infectious Waste. Nothing herein shall constitute a waiver of any right or defense Defendants may have to any such action brought by the State of Ohio.

23. Nothing herein shall limit the authority of the Plaintiff to undertake any action against any entity, including the Defendants, to eliminate or control conditions that may present a threat to the public health, safety, welfare, or environment and to seek cost reimbursement for any such action. Nothing herein shall constitute a waiver of any right or defense Defendants may have to any such action brought by the State of Ohio.

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

25. Entering into this Consent Order, the Consent Order itself, or the taking of any action in accordance with it does not constitute an admission by Defendants of any factual or legal matters or opinions set forth herein or in the Motion. Defendants do not admit liability under Ohio law or any other applicable law, rule or regulation or admit any issues of fact or law, any wrongdoing, or any responsibility with regard to the WRI Facility. Defendants do not admit, and reserve their rights to contest or legally challenge, jurisdiction and venue with regard to activities not required or contemplated by this Consent Order. Nothing herein absolves the Defendants from the duty to comply with this Consent Order.

26. Nothing herein is intended to operate as an approval of ETSI's pending application for a license to operate a waste transfer facility at the WRI Facility.

27. The Defendants reserve all rights that they may have against any person under all federal, state, and local laws, except as may be set forth in a separate agreement or agreements.

#### **IX. EFFECTIVE DATE**

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

#### **X. TERMINATION OF THIS CONSENT ORDER**

29. This consent order does not terminate until ETSI ceases doing business and dissolves as an Ohio corporation.

**XI. RETENTION OF JURISDICTION**

30. This Court shall retain jurisdiction of this matter for the purpose of enforcing this Consent Order.

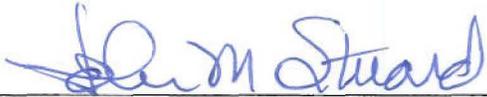
**XII. COURT COSTS**

31. The Defendants shall pay the costs of this action.

**XIII. SIGNATORIES**

32. The undersigned parties certify that they have read and understand the terms and conditions of this Consent Order, that they have not been threatened or offered anything for their consent herewith, and certify that they are authorized to enter into the terms and conditions of this Consent Order. By agreement of the parties to this Consent Order, this Consent Order may be executed by the signing of multiple signature pages.

**IT IS SO ORDERED.**



JUDGE, TRUMBULL COUNTY COURT  
OF COMMON PLEAS

3/17/08

DATE

KAREN INFANTE ALLEN  
CLERK OF COURTS  
TRUMBULL COUNTY  
2008 MAR 25 AM 9:00  
TRUMBULL COUNTY  
CLERK OF COURTS

**APPROVED:**



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By: Steven D. Bell  
Title: Attorney for Warren Hills LLC

WARREN RECYCLING, INC.

By:   
Title: Attorney for Warren Recycling, Inc.