

I. DEFINITIONS

1. As used in this Consent Order:

- A. **“Amended Closure Plan”** means a plan that meets the requirements of Ohio Administrative Code Sections 3745-55-11 through 3745-55-20.
- B. **“Approved Closure Plan”** means a closure plan that has been approved by the Director. The approved closure plan may be a closure plan approved by the Director as submitted by Defendant, or a closure plan approved by the Director after being submitted by Defendant and modified by the Director.
- C. **“Clean Closure”** means an owner or operator has, in closure, either:
 - 1. Demonstrated to Ohio EPA’s satisfaction that suspected contaminants cannot be detected, cannot be detected above naturally occurring background levels, or cannot be detected above regulatory levels; or
 - 2. Through a risk assessment, demonstrated to Ohio EPA’s satisfaction, that contaminant levels are low enough that they do not pose a threat to human health or the environment.
- D. **“Closure Plan”** means a plan that meets the requirements of Ohio Administrative Code Sections 3745-55-11 through 3745-55-20.
- E. **“Consent Order”** means this Partial Consent Order and all appendices attached hereto. In the event of conflict between this Consent Order and any appendix, the Consent Order shall control.

- F. **“Contractor”** means the individual(s) or company or companies retained by or on behalf of Defendants to undertake and complete the work required by this Consent Order.
- G. **“Defendants”** means Brandon Partners, William Baumann, Robert Baumann, Myron Priebe and Rita Musso unless otherwise specifically noted in this Consent Order. Any requirement, obligation or liability imposed in this Consent Order upon Defendants is imposed jointly and severally.
- H. **“Director”** means Ohio’s Director of Environmental Protection.
- I. **“Effective Date”** means the date the Cuyahoga County Court of Common Pleas enters this Consent Order.
- J. **“Facility”** refers to the facility where the alleged treatment, storage, disposal, or other placement of hazardous waste was conducted at the facility located at 3301 Monroe Avenue, Cleveland, Ohio, Cuyahoga County, Parcel ID 007-14-002.
- K. **“Ohio EPA”** means the Ohio Environmental Protection Agency.
- L. **“Plaintiff”** means the State of Ohio by and through the Attorney General of Ohio.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, pursuant to Revised Code Chapter 3734 and the rules adopted thereunder. This Court has jurisdiction over the parties. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted.

III. PERSONS BOUND

3. The provisions of this Consent Order shall apply to and be binding upon Plaintiff and Defendants, their agents, officers, employees, assigns, successors in interest and any person acting in concert or participation with them. Defendants are ordered and enjoined to provide a copy of this Consent Order to each contractor they employ to perform work itemized herein.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

4. Except as otherwise provided in this Consent Order, compliance with the terms of this Consent Order shall constitute partial satisfaction of certain liabilities of Defendants to Plaintiff for claims alleged in the Complaint.

5. Nothing in this Consent Order, including the imposition of stipulated civil penalties, shall limit the authority of the State of Ohio to:

- A. Seek relief for claims or conditions not alleged in the Complaint;
- B. Seek relief for claims or conditions alleged in the Complaint that are not addressed by this Partial Consent Order or may occur after the entry of this Consent Order;
- C. Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;
- D. Bring any action against Defendants or against any other person, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. §9601, et seq. and/or Revised Code 3734.20 through 3734.27 to: (1) recover natural resource damages, and/or (2) order the performance of, and/or recover costs for any removal, remedial or

corrective activities not conducted pursuant to the terms of this Consent Order.

- E. Take any action authorized by law against any person, including Defendants, to eliminate or mitigate conditions at the Facility that may present an imminent threat to the public health or welfare, or the environment.
- F. Nothing in this Consent Order shall constitute or be construed as an admission of liability, satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged in the Complaint, against any person, firm, trust, joint venture, partnership, corporation, association, or other entity not a signatory to this Consent Order. The State also specifically reserves its right to sue against any entity that is not a signatory to this Consent Order.

V. CLOSURE AND OTHER INJUNCTIVE RELIEF

6. Defendants shall remain subject to the hazardous waste closure plan approved by the Director of Ohio EPA on May 9, 2001 until such time that the Director approves the Amended Closure Plan referenced in Paragraph 9.

7. Upon the Effective Date of this Consent Order, Defendants are hereby permanently enjoined and ordered to immediately comply with all applicable provisions of the Ohio hazardous waste laws and rules as set forth in Revised Code Chapter 3734,, Ohio Administrative Code Chapters 3745-50 through 3745-69, and Ohio Administrative Code Chapters 3745-270 through 3745-279.

8. Upon the Effective Date of this Consent Order, Defendants are ordered and enjoined to comply with the requirements of Ohio Administrative Code 3745-55-11 for each and every area which requires Defendants to close the facility in a manner that minimizes the need for further

maintenance and controls, minimizes or eliminates, to the extent necessary to prevent threats to human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere, and complies with the closure requirements of rules promulgated under Ohio Administrative Code Chapter 3745-55.

Closure

9. Within sixty (60) days of the Effective Date of this Consent Order, Defendants are ordered and enjoined to submit to Ohio EPA, at the addresses set forth in Section VI of this Consent Order, an Amended Closure Plan in accordance with Ohio Administrative Code 3745-55-10 through 3745-55-20 for the Facility.

10. Following review of the Closure Plan, if Ohio EPA determines, through its reasonable discretion, that the Amended Closure Plan is deficient and gives Defendants written notice of the deficiencies in the Closure Plan, Defendants are ordered and enjoined to submit to Ohio EPA a revised Amended Closure Plan within thirty (30) days of receipt of the notice of deficiencies.

11. Following review of the revised plan, if Ohio EPA determines that the revised Amended Closure Plan is deficient, Ohio EPA may, through its reasonable discretion, modify the plan and approve the revised plan as modified by Ohio EPA.

12. Immediately upon receipt of notice of approval by Ohio EPA of Defendants' Amended Closure Plan, either as originally submitted, as revised, or as revised and modified, Defendants are ordered and enjoined to implement the approved Amended Closure Plan in the manner and time frames set forth in the approved Amended Closure Plan pursuant to Ohio Administrative Code 3745-55-13.

13. Defendants are ordered and enjoined to amend the Closure Plan whenever:
 - A. Changes in operating plans or design affect the Closure Plan; or
 - B. There is a change in the expected year of closure, if applicable; or
 - C. In conducting partial or final closure activities, unexpected events require a modification of the Closure Plan.

14. In the event that Defendants are unable to achieve the closure performance standard identified in Ohio Administrative Code 3745-55-11 by implementing the Approved Closure Plan in accordance with the schedule contained therein, the Closure Plan shall be amended in accordance with Ohio Administrative Code 3745-55-12.

15. In the event that Defendants cannot achieve clean closure, then a Closure Plan amendment shall incorporate post-closure care, maintenance, monitoring activities and financial assurance, in accordance with Ohio Administrative Code 3745-55-18, 3745-55-44 and 3745-55-45 and Defendants shall incorporate a Post-Closure Plan within the Amended Closure Plan. Upon completion of closure activities specified within the Approved Closure Plan, the Defendants are ordered and enjoined to commence post-closure activities, pursuant to Ohio Administrative Code 3745-55-17 thru 3745-55-20.

16. Within thirty (30) days of completion of closure, Defendants are ordered and enjoined to submit certification of closure to Ohio EPA, pursuant to Ohio Administrative Code 3745-55-15 and a survey plat, pursuant to Ohio Administrative Code 3745-55-16 (if necessary).

17. All closure and post-closure plans developed for the Facility shall be enforceable under this Consent Order as though fully incorporated herein.

Closure Cost Estimate, Financial Assurance and Financial Responsibility

18. Within thirty (30) days after the approval of the closure plan, Defendants are ordered and enjoined to submit to Ohio EPA detailed updated closure cost estimates which are calculated pursuant to Ohio Administrative Code 3745-55-42.

19. Within thirty (30) days after the approval of the closure plan, Defendants are ordered and enjoined to submit to Ohio EPA documentation of closure cost estimates and financial assurance for closure pursuant to Ohio Administrative Code 3745-55-42 and 3745-55-43.

20. Within thirty (30) days after the approval of the closure plan, Defendants are ordered and enjoined to submit to Ohio EPA documentation demonstrating financial responsibility pursuant to Ohio Administrative Code 3745-55-47.

Hazardous Waste Facility Standards

21. Defendants are ordered and enjoined to conduct inspections at the Facility as required by Ohio Administrative Code 3745-54-15.

22. Defendants are ordered and enjoined to maintain and repair, as necessary, security measures at the Facility as required by Ohio Administrative Code 3745-54-14 and 3745-54-15.

23. Within thirty (30) days of entry of this Order, Defendants are ordered and enjoined to submit a contingency plan for the Facility pursuant to Ohio Administrative Code 3745-54-50 through 3745-54-56.

24. As of the effective date of this Consent Order, Plaintiff and its representatives and contractors shall have access at all times to the Facility, and shall have access to any other property controlled by or available to Defendants to which access is necessary to effectuate the

actions required by this Consent Order. Access shall be allowed for the purposes of conducting activities related to this Consent Order including but not limited to:

- A. Monitoring the work or any other activities taking place at the Facility;
- B. Verifying any data or information submitted to Plaintiff;
- C. Conducting investigations relating to contamination at or near the Facility;
- D. Obtaining samples;
- E. Assessing the need for, planning, or implementing additional response actions at or near the Facility;
- F. Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Defendants or their agents, consistent with this Consent Order and applicable law; or
- G. Assessing Defendants' compliance with this Consent Order.

25. Nothing in this Consent Order shall be construed to limit the statutory authority of the 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. Chapter 3734.

VII. SUBMITTAL OF DOCUMENTS

26. All documents required to be submitted to Ohio EPA pursuant to this Consent Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio Environmental Protection Agency
Division of Hazardous Waste Management
50 West Town Street, Suite 700
Columbus, OH 43215
Attn: Harry Sarvis, Manager

Ohio Environmental Protection Agency
Northeast District Office
2110 East Aurora Road
Twinsburg, OH 44087
Attn: DHWM Manager

VIII. CIVIL PENALTY

27. This Partial Consent Order does not resolve any issues pertaining to civil penalty and nothing in this Partial Consent Order shall be construed to prevent or limit Plaintiff State's right to obtain civil penalties for the violations alleged in the Complaint.

IX. STIPULATED PENALTIES

28. In the event that Defendants fail to comply with any requirement or deadline contained in this Consent Order, or any requirement or deadline contained in any document approved in accordance with this Consent Order, the Defendants are liable for and shall pay stipulated penalties in accordance with the following schedule for each failure to comply:

- A. For each day of each failure to comply with a requirement or deadline of this Consent Order, up to and including thirty (30) days, two hundred and fifty dollars (\$250) per day for each requirement or deadline not met.
- B. For each failure to comply with a requirement or deadline of this Consent Order, from thirty-one (31) to sixty (60) days, five hundred dollars (\$500) per day for each requirement or deadline not met.
- C. For each day of each failure to comply with a requirement or deadline of this Consent Order, over sixty (60) days, seven hundred and fifty dollars (\$750) per day for each requirement or deadline not met.

29. Any payment required to be made under the provisions of this Section of the Consent Order shall be made by delivering to Plaintiff, c/o Martha Sexton, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, a cashier's or certified check or checks made payable to the order of "Treasurer, State of Ohio," for the appropriate amount within thirty (30) days from the date of the failure to meet the requirement or deadline of this Consent Order. A letter briefly describing the type of violation, deadline or requirement not met and the date upon which the violation of this Consent Order occurred and a reference to "AG EAGO No. 223526" shall accompany the payment of the stipulated penalty. This penalty shall be deposited into the Hazardous Waste Clean-up Fund created by R.C. 3734.28.

30. The payment of stipulated penalties and the acceptance of such stipulated penalties by Plaintiff pursuant to this Article shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to Ohio Revised Code Chapter 3734, including civil penalties under R.C. 3734.13, or to otherwise seek judicial enforcement of this Consent Order, for the same violation for which a stipulated penalty was paid or for other violations.

31. The parties to this Consent Order agree that the stipulated penalties established in Section IX are coercive in nature, and are designed to ensure Defendants' compliance with the terms of this Consent Order. The parties further agree that the stipulated penalties in this Consent Order are not punishment for past acts or omissions by Defendants regarding the specific terms of this Consent Order.

X. POTENTIAL FORCE MAJEURE

32. If any event occurs which causes or may cause a delay in Defendants' compliance with any requirement of this Consent Order, Defendants shall notify the Ohio EPA

in writing within ten (10) days from when Defendants knew, or by the exercise of due diligence should have known, of the event. The notification to Ohio EPA shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendants to prevent or minimize the delay, and the timetable by which those measures will be implemented. Defendants shall adopt all reasonable measures to avoid or minimize any such delay.

33. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendants may raise a defense that its conduct was caused by force majeure events that were beyond Defendants' control including but not limited to acts of God, strikes, acts of war or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendants and the Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time, if ever, that a court proceeding to enforce this Consent Order is commenced by the Plaintiff. At that time, Defendants will bear the burden of proving that any delay was or will be caused by circumstances beyond the control of Defendants. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or a change in Defendants' financial circumstances, shall not constitute circumstances entirely beyond the control of Defendants or serve as a basis for an extension of time under this Consent Order. Failure by Defendants to timely comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendants' right to request an extension of its obligations under this Consent Order based on such incident. An extension of one date based on a particular incident does not mean that Defendants qualify for an extension of

a subsequent date or dates. Defendants must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order without a Force Majeure Clause does not constitute a waiver by Defendants of any rights or defenses it may have under applicable law.

XI. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS

34. All activities undertaken by Defendants pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state and local laws, rules, regulations and permits or other. Defendants shall submit timely applications and requests for any such permits and approvals. Where such laws appear to conflict with the other requirements of this Consent Order, Defendants are ordered and enjoined to immediately notify Ohio EPA of the potential conflict. Defendants are ordered and enjoined to include in all contracts or subcontracts entered into for work required under this Consent Order, provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and rules. This Consent Order is not a permit issued pursuant to any federal, state or local law or rule.

XII. RETENTION OF JURISDICTION

35. This Court shall retain jurisdiction of this action for the purpose of enforcing this Consent Order or in resolving any conflicts concerning the interpretation of this Consent Order as well as for the purpose of the final resolution of Plaintiff's remaining claims.

XIII. COSTS

36. Defendants shall pay the court costs of all matters pertaining to this action.

XIV. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

37. Upon the signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is directed to serve upon all parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

XV. AUTHORITY TO ENTER INTO THE CONSENT ORDER

38. Each signatory for a corporation represents and warrants that he or she has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof.

IT IS SO ORDERED:

8/4/2010

DATE



JUDGE STEVEN J. TERRY
CUYAHOGA COUNTY
COURT OF COMMON PLEAS

[SIGNATURE PAGE FOLLOWS]

APPROVED:

NANCY H. ROGERS
ATTORNEY GENERAL

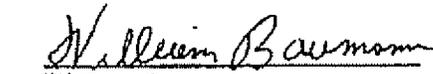
By:



Amanda K. Sturm (0029931)
James A. Carr (0022840)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400
Telephone: (614) 466-2766
Facsimile: (614) 644-1926

Attorneys for Plaintiff

By:


X William Baumann
On behalf of Brandon Partners
X William Baumann
X Robert Baumann
Myron Priebe
Rita Musso LAUREN CRUZ July 2008
POA
Jeffrey L. Miller (0062882)
Johnson, Miller & Schmitz LLP
100 Lakeside Dr., Suite 1700
Cleveland, OH 44114
Telephone: (216) 696-5222

Attorney for Defendants

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AUG - 4 2010

GERALD E. FUERST, CLERK
By  Deputy