IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO, ex. rel.	:	
RICHARD CORDRAY	:	
OHIO ATTORNEY GENERAL	:	**CASE NO.** 2010 CV 1416
	:	
	:	**JUDGE** McKay
Plaintiff,	:	
	:	
v.	:	
	:	**CONSENT ORDER**
TOTAL WASTE LOGISTICS LAS, LLC	:	
	:	
Defendant.	:	

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio, by its Attorney General, Richard Cordray ("Plaintiff" or "State"), and Defendant Total Waste Logistics LAS, LLC ("Defendant") have consented to the entry of this Order;

NOW THEREFORE, without trial of any issues of fact or law, without any 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 R.C. Chapters 3714 and 3734. Venue is proper in this Court. Solely for purposes of this Consent Order and the underlying Complaint, Defendant does not contest that the Complaint states a claim upon which relief can be granted against Defendant.

II. PARTIES

2. The provisions of this Consent Order shall apply to and are binding upon the Defendant and its respective successors in interest and assigns to the extent provided by Rule 65(D) of the Ohio Rules of Civil Procedure. The undersigned representatives of each party to this Consent Order certifies that he or she is fully authorized by the party or parties whom he or she

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represents to enter into the terms and conditions of the Consent Order and to execute and legally bind that party or parties to it.

3. Defendant shall provide a copy of this Consent Order to any person that it employs at the Total Waste Logistics Construction and Demolition Debris Landfill located at 1025 Bundy Road, Girard, Ohio ("Facility") who is responsible for, or oversees, the acceptance, management and/or disposal of waste at the Facility. Defendant 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 3714 and the regulations promulgated thereunder.

III. SATISFACTION OF LAWSUIT AND EFFECT OF CONSENT ORDER

4. The State has alleged that Defendants have violated R.C. Chapter 3714 and the rules promulgated thereunder.

5. Except as otherwise provided in paragraph 6 of this Consent Order, compliance with the terms of this Consent Order shall constitute a full release and satisfaction of any civil and administrative liability of Defendant and its successors in interest and assigns for the claims alleged in the State's Complaint or known by the Ohio Environmental Protection Agency at the time this Consent Order is entered by the Court.

6. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief from Defendant for: (A) claims or violations not known by the Ohio Environmental Protection Agency; (B) any violations arising out of acts or omissions first occurring after the effective date of this Consent Order; or (C) claims or violations under the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. §§9601 et seq. or R.C. 3734.20 through 3734.27 for any emergency, removal, remedial, corrective actions, or natural resource damages. Defendant retains all rights, defenses, and/or claims it 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 it 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.

7. Entering into this Consent Order, the Consent Order itself, or the taking of any action in accordance with it and/or any work performed at the Facility to date does not constitute an admission of any liability, wrongdoing, or misconduct on the part of Defendant, its officers, employees or representatives.

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

IV. PERMANENT INJUNCTION

9. Except as set forth in Section V, Defendant agrees and is ordered and permanently enjoined to comply with R.C. Chapter 3714 and the rules promulgated thereunder.

V. INJUNCTIVE RELIEF

10. Effective immediately, Defendant shall unload all debris accepted for disposal at the Facility in a clearly designated and marked unloading zone separate from the working face in accordance with Ohio Adm. Code 3745-400-11(F)(3)(a).

11. Effective immediately, Defendant shall not place any solid waste on the working face at the Facility in accordance with R.C. 3714.021.

12. Effective immediately, Defendant shall not accept pulverized debris, as that term is defined in R.C. 3714.01(I), for disposal at the Facility in accordance with R.C. 3714.081(A).

13. Within ten (10) days of entry into this Consent Order, Defendants shall either accept or reject incoming loads at the Facility through the following procedure:

a. Upon entry into the Facility, the truck proceeds onto the scale at the scale house for the "in" weight and is handed an inspection form. Thereafter, Defendant may direct the truck to the old tarp rack area and current inspection zone (hereafter referred to as the "inspection zone").

b. If the truck was directed to the inspection zone, Defendant may conduct an inspection of the load for prohibited material including, but not limited to, pulverized debris, solid waste, and other prohibited material. This inspection may include up to, and including, placing the materials on the ground for inspection.

c. If Defendant determines that the load is preliminarily viewed as ineligible at the inspection zone and rejected, the driver shall be directed to immediately turn around, exit the site and return the waste to the generator or to dispose of the waste at an authorized facility. If the load is rejected at the inspection zone, there shall not be a violation of R.C. 3714.081(A).

d. If a load reaches the unloading zone that is then determined to be pulverized debris, and therefore unacceptable for disposal, the load shall be rejected and the driver shall be instructed to return to the scale house. At the scale house, the information required by R.C. 3714.083(A) shall be recorded on the official OEPA Rejection Log. The driver shall be provided a document with the information required by R.C. 3714.083(B) and shall be directed to immediately exit the site.

    i. The existence of a load of pulverized debris deposited in the unloading zone of the Facility constitutes a violation of R.C. Chapter 3714.081(A) and the rules adopted thereunder. However, the violation shall be deemed to be "cured" upon proof of compliance with R.C. 3714.083.

14. Within ten (10) days of entry into this Consent Order, Defendant shall correct the conditions causing ponding or erosion in the active or inactive licensed disposal areas at the Facility, and maintain the Facility in such a manner that ponding and erosion do not occur hereafter, in accordance with Ohio Adm. Code 3745-400-11(Q)(3).

15. Defendant agrees and consents that any and all contractors, subcontractors, consultants, or other persons working for or on behalf of Ohio Environmental Protection Agency

or United States Environmental Protection Agency shall have full access to the Facility at all reasonable times, without the need for a warrant, as may be necessary to perform closure, post-closure care, remediation and/or emergency response work at the Facility.

16. Paragraph 15 of this Order shall not be construed to eliminate or restrict any right Ohio Environmental Protection Agency may otherwise have under Federal or State law to seek access to the Facility.

VI. CIVIL PENALTY.

17. Defendant is ordered and enjoined to pay a civil penalty of ten thousand ($10,000) to the State within thirty (30) days of the entry of this Consent Order. Such payment shall be made by delivering to Karen Pierson, Paralegal, or her successor, Office of the Attorney General, 30 E. Broad Street, 25th Floor, Columbus, Ohio 43215-3400, a check or checks for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

VII. STIPULATED PENALTIES

18. In the event that Defendant fails to comply with any of the requirements of Sections IV, V and/or VI of this Consent Order, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty that is meant to be coercive in nature in accordance with the following schedule:

a. Defendant shall pay two hundred fifty dollars ($250.00) per day for each day any requirement of this Consent Order is violated up to thirty (30) days;

b. From thirty-one (31) days through ninety (90) days, Defendant shall pay five hundred dollars ($500.00) per day for each day any requirement of this Consent Order is violated;

c. After ninety (90) days, Defendant shall pay seven hundred and fifty dollars ($750.00) per day for each day any requirement of this Consent Order is violated.

19. 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 Karen Pierson or her successor, Office Manager, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

VIII. NOTICES

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

As to Plaintiff:

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

As to Defendant:

Guy Fragle
Total Waste Logistics LLC
7131 Akron-Canfield Road
Canfield, Ohio 44406

and

Michael A. Cyphert
Walter & Haverfield LLP
The Tower at Erieview - Suite 3500
1301 E. 9th Street
Cleveland, Ohio 44114

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

X. EFFECTIVE DATE

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

XI. COSTS

23. Defendant is hereby ordered to pay the court costs of this action.

XII. RETENTION OF JURISDICTION

24. This Court shall retain jurisdiction of this action for the purposes of making any Order or Decree, which it deems appropriate to carry out this Consent Order.

XIII. SIGNATORIES

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

IT IS SO ORDERED

W. Wyatt McKay

JUDGE
TRUMBULL COUNTY
COURT OF COMMON PLEAS

5/26/10

DATE

KAREN INFANTE ALLEN
CLERK OF COURTS
TRUMBULL COUNTY
2010 MAY 26 PM 3:50
TRUMBULL COUNTY
CLERK OF COURTS

APPROVED BY:

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

NICHOLAS J. BRYAN (0079570)
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State of Ohio

TOTAL WASTE LOGISTICS LAS, LLC

MICHAEL CYPHERT (0007086)
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The Tower at Erieview
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Facsimile: (216) 575-0911
Attorney for Defendant

TOTAL WASTE LOGISTICS LAS, LLC

By: Guy F Fragle
Print Name: Guy F Fragle
Title: Director of Operations