

IN THE FRANKLIN COUNTY MUNICIPAL COURT  
ENVIRONMENTAL DIVISION  
COLUMBUS, OHIO

STATE OF OHIO, *ex rel.* JIM PETRO, :  
ATTORNEY GENERAL OF OHIO, :

Plaintiff, :

v. :

CONTAINER RECYCLERS, INC., *et al.* :  
(dba Columbus Steel Drum), :

Defendants. :

Case No. 2002-EVH-060329

Judge Harland H. Hale

2005 JUL -6 PM 2:31

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CONSENT ORDER AND FINAL JUDGMENT ENTRY

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Plaintiff, State of Ohio, ex rel. Jim Petro, Attorney General of Ohio ("Plaintiff"), having filed the Complaint in this action, and subsequent amendments, against Defendants to enforce Ohio's environmental laws found in R.C. Chapters 3704, 3734 and 6111 and rules adopted thereunder; and Plaintiff and Defendants having consented to the entry of this Consent Order and Final Judgment Entry;

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

## **I. DEFINITIONS**

1. As used in this Order, the following terms are defined as follows:
  - a. "Air contaminant source" or "source" has the same meaning as set forth in R.C. 3704.01(C) and Ohio Adm.Code 3745-31-01(D) and 3745-35-01(B)(1).
  - b. "Consent Order" or "Order" means this Consent Order and Final Judgment Entry.
  - c. "Director" means the Director of Ohio EPA.
  - d. "Defendants" means Container Recyclers, Inc. and Columbus QCB, Inc.
  - e. "Facility" means Defendants' facility and all related operations located at 1385 Blatt Boulevard, City of Gahanna, Franklin County, Ohio, or are considered a part of the operations having facility I.D. No. 01-25-07-0213.
  - f. "Ohio EPA" means the Ohio Environmental Protection Agency.
  - g. "Permit to Operate" or "PTO" has the same meaning as set forth in Ohio Adm.Code Chapter 3745-35.
  - h. "Permit to Install" or "PTI" has the same meaning as set forth in Ohio Adm.Code Chapter 3745-31 for air pollution control of means a permit issued pursuant to Ohio Adm.Code 3745-42 for water pollution control.
  - i. "Title V Permit" shall have the same meaning as set forth in Ohio Adm.Code Chapter 3745-77.

The lodging of this Consent Order is the date on which the Consent Order is presented to this court with signatures of all parties prior to the public comment period. The entry of this Consent Order is the date upon which the Court signs the Consent Order.

## **II. JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapters 3704, 3734 and 6111 and the rules adopted thereunder. This Court has jurisdiction over the parties. Venue is proper in this Court. Defendants consent to the filing of the Third

Amended Complaint.

### **III. PERSONS BOUND**

3. The provisions of this Consent Order shall apply to and be binding upon Plaintiff and Defendants, and Defendants' agents, officers, shareholders, employees, assigns, successors-in-interest, any person acting in concert, privity or participation with them and any purchaser of the Facility who receives actual notice of this Consent Order whether by personal service or otherwise. Defendants agree to provide actual notice of this Consent Order and relevant terms thereof to each contractor employed to perform design, engineering or consulting services for work itemized herein and to each purchaser of the Facility. Where this Consent Order references "Defendants," obligations of Defendants to perform the requirements are joint and several. Plaintiff agrees not to enforce any of the terms of the Consent Order against Container Recyclers, Inc. unless Columbus QCB, Inc. fails to perform under the Consent Order, provided, however, that if Columbus QCB, Inc. fails to perform for any reason, nothing in this Consent Order requires exhaustion of remedies against Columbus QCB, Inc. in advance of an action against Container Recyclers, Inc. to enforce this Consent Order. Nothing in this Consent Order shall constitute or be construed as a release by the State or by Defendants of any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation, not a party to this Consent Order for any liability arising from, or related to, events or conditions at the Site. Nor shall anything in the Consent Order be construed to be an assumption by Defendants of any liabilities not expressly stated herein.

### **IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS**

4. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendants to the Plaintiff for the claims alleged in the Plaintiff's Third Amended Complaint. Compliance with the terms of this Consent Order shall also constitute full

satisfaction of any civil liability of Defendants to the Plaintiff for violations alleged to have occurred at the facility in any Notice of Violation sent to Defendants prior to the lodging of this Consent Order by the Division of Air Pollution Control, the Division of Hazardous Waste Management, or the Division of Surface Water, provided that nothing herein shall limit the State's authority to seek enforcement with respect to continuing or recurring violations for days of violation that occur after the entry of this Consent Order.

5. This Consent Order shall not be construed to limit the authority of the Plaintiff to seek relief for violations not alleged in the Third Amended Complaint or the Notices of Violation referenced in Paragraph 4, above, nor shall this Consent Order bar the State from bringing any action against the Defendants for any violations that occur after the entry of this Order. Nothing in this Consent Order shall be construed to relieve Defendants of their obligations to comply with applicable federal, state or local statutes, regulations, or ordinances.

6. Defendants are ordered and enjoined from taking any actions that interfere with or hinder Defendants' ability to fulfill the terms of this Consent Order. Defendants shall provide Plaintiff with audited financial statements for each year, including balance sheets and operating statements, annually, no later than four months following the conclusion of Defendants' fiscal year. If the audited financial statements rely on financial statements from subsidiaries, those statements shall be supplied with the audited financial statements. If Defendants do not have audited financial statements performed for a particular fiscal year, Defendants shall, instead, produce, no later than four months following the conclusion of Defendants' fiscal year, an annual independent review of its financial statements performed by a certified public accountant. If Defendants produce an annual independent review in lieu of the audited financial statements, the annual independent review shall contain all information that is required for such reviews in the ordinary course of business by the certified public accountant, and Defendants must supply

financial statements from subsidiaries and a supplemental schedule detailing transfers involving Container Recycler, Inc.'s and any of its subsidiaries, as well as any transfers between or among Container Recycler's, its subsidiaries or related parties. Should Plaintiff make a good faith determination that audited financial statements is required to evaluate compliance with this paragraph, Plaintiff reserves the right to request that audited financial statements be performed and produced to Plaintiff. Unless the court determines that the audited financial statements are not required to evaluate compliance with this paragraph, Defendants must produce the audited financial statements within three months of such a request. The obligation to produce the annual financial statements shall cease upon the completion or termination of all obligations in the compliance schedules contained herein. Upon request of Plaintiff, Defendants shall provide access to any existing financial documents designated hereafter by Ohio EPA. All financial information produced pursuant to this paragraph shall be subject to the Stipulated Protective Order signed by the Court on November 13, 2003, and filed August 30, 2004.

7. In the event that the State pursues enforcement of this Consent Order through charges in contempt in a subsequent court action, the State may bring those charges in this case or may bring those charges in a new case without limiting the remedies it may seek for those charges. Defendants waive any right to challenge the State's ability to present, and the court's authority to hear, in a single action, charges in contempt of this Consent Order together with any other violations of Ohio statutes or rules adopted thereunder. Defendants reserve all other defenses to such action.

## **V. INJUNCTIVE RELIEF**

### **Compliance Schedules for Air Pollution Control**

8. Columbus QCB, Inc. is ordered and enjoined to perform all stack tests required by this Consent Order in accordance with U.S. EPA approved test methods. Columbus QCB, Inc. shall indicate the test method in the notice of intent to test and the test method shall be subject to the approval of Ohio EPA. Columbus QCB, Inc. shall allow Ohio EPA to witness the stack test in accordance with Section VI of this Consent Order on facility access.

9. If Ohio EPA provides comments or a notice of deficiency to Columbus QCB, Inc. regarding the Facility's 2002 and 2003 Title V Permit compliance certifications, Columbus QCB, Inc. is ordered and enjoined to revise those compliance certifications to address the comments or a notice of deficiency and resubmit the compliance certifications in accordance with and pursuant to the Facility's Title V Permit within 30 days of receiving those comments or a notice of deficiency.

10. Columbus QCB, Inc. is ordered and enjoined to submit a complete PTI application for emissions units K001, K002 and K003 within 14 days of the lodging of this Consent Order. This application must include a Best Available Technology (BAT) analysis that includes consideration of the capture of all emissions from all three emissions units by one or more Permanent Total Enclosures (PTEs). If Ohio EPA finds that the PTI application is not approvable and provides written notice of deficiencies, Columbus QCB, Inc. shall provide an approvable PTI application within 30 days of receiving the notice of deficiencies or within 30 days of the entry of this Consent Order whichever is later. The application shall include:

- Assurances that the Regenerative Thermal Oxidizer (RTO) shall meet a minimum destruction and removal efficiency of 98% of organic compounds;
- Continuous monitoring and recording of the temperature for the RTO; and
- Continuous monitoring and recording of differential pressure for any required PTE.

Columbus QCB, Inc. shall comply with the requirements of this paragraph, including the installation of the control equipment, in accordance with the following schedule:

- |    |  |   |
|----|--|---|
| a. | Award contracts  | within thirty (30) days from the date of Ohio EPA's issuance of the PTI.              |
| b. | Initiate construction  | within sixty (60) days from the date of Ohio EPA's issuance of the PTI.               |
| c. | Complete on-site construction and provide Ohio EPA with notice of intent to test providing Ohio EPA with at least thirty days notice of the stack test | within one hundred eighty (180) days from the date of Ohio EPA's issuance of the PTI. |
| d. | Perform a stack test demonstrating compliance with the PTI   | within ( 210) days from the date of Ohio EPA's issuance of the PTI.                   |
| e. | Provide Ohio EPA with a written report of the stack test results   | within two hundred forty (240) days from the date of Ohio EPA's issuance of the PTI.  |

All activities identified in this paragraph shall be conducted in accordance with the terms of the PTI and any applicable terms of the Facility's Title V Permit.

11. Caustic Cleaning Operations

- (A) Columbus QCB, Inc. may submit a notice of intent to test to Ohio EPA for emissions units P015 and P016 within fourteen (14) days of the lodging of this Consent Order for the purpose of determining if these emissions units are exempt sources pursuant to Ohio Adm.Code 3745-15-05. If Columbus QCB, Inc. submits the notice of the intent to test, Columbus QCB, Inc. is ordered and enjoined to perform the stack test to determine the mass of emissions of VOCs and sodium hydroxide within fifty (50) days of the lodging of the Consent Order and shall give Ohio EPA at least thirty (30) days notice in

advance of the test. Columbus QCB, Inc. shall provide Ohio EPA with a written report of the stack test results within thirty (30) days of the performance of the stack test.

(B) Except as provided in Subparagraph (C), below, Columbus QCB, Inc. is ordered and enjoined to submit a complete PTI application for emissions units P015 and P016 within thirty (30) days of the submission of the written report of the stack test results required by Subparagraph A, or, if no stack test is conducted under Subparagraph A, within 30 days of the entry of this Consent Order. If Ohio EPA finds that the PTI application is not approvable and provides written notice of deficiencies, Columbus QCB, Inc. shall provide an approvable PTI application within 30 days of receiving the notice of deficiencies. That application shall satisfy the BAT requirement in Ohio Adm.Code Chapter 3745-31 and include one or more scrubbers. The scrubber(s) shall also be used to control emissions from P017 and the PTI application shall include necessary engineering drawings and schematics demonstrating the manner in which all three emissions units shall be connected to the scrubber. The application shall include assurance that the scrubber(s) shall be adequately designed and sized for emissions units P015, P016 and P017. With respect to P015 and P016, the application shall include:

- Assurances that the scrubber(s) shall meet a minimum control efficiency of 98% for sodium hydroxide when tested at a process weight rate of at least 90% of the emissions unit's maximum process weight rate;
- Continuous monitoring and recording of the pressure drop across each scrubber;



- Continuous monitoring and recording of the water flow rate through each scrubber;
- Assurances that Columbus QCB, Inc. will completely replace the scrubber liquid at the end of each work day;
- Assurances that Columbus QCB, Inc. will measure and record the pH of the scrubber liquid at the beginning of each work day, immediately before adding any acidic materials to the scrubber liquid and at the end of each work day immediately before replacing the scrubber liquid;
- Assurances that if the pH of the scrubber liquid exceeds 10 in any measurement, Columbus QCB will install equipment for continuously monitoring and recording the pH of the scrubber liquid;
- Continuous monitoring and recording of the pressure drop across each mist eliminator; and
- Assurance that Columbus QCB, Inc. will follow the recommendations and specifications of the manufacturer of the scrubber(s) unless Columbus QCB, Inc. has written approval from Ohio EPA to forego monitoring of a particular parameter.

Columbus QCB, Inc. shall comply with the requirements of this paragraph, including the installation of the control equipment, in accordance with the following schedule:

- |    |  |   |
|----|--|---|
| a. | Award contracts  | within thirty (30) days from the date of Ohio EPA's issuance of the PTI.              |
| b. | Initiate construction  | within sixty (60) days from the date of Ohio EPA's issuance of the PTI.               |
| c. | Complete on-site construction and provide Ohio EPA with notice of intent to test providing Ohio EPA with at least thirty days notice of the stack test | within one hundred twenty (120) days from the date of Ohio EPA's issuance of the PTI. |

- d. Perform a stack test demonstrating compliance with the PTI within one hundred fifty (150) days from the date of Ohio EPA's issuance of the PTI.
- e. Provide Ohio EPA with a written report of the stack test results within (180) days from the date of Ohio EPA's issuance of the PTI.

All activities identified in this paragraph shall be conducted in accordance with the terms of the PTI and any applicable terms of the Facility's Title V Permit.

- (C) If either or both P015 or P016 are determined to be exempt sources in the testing conducted pursuant to Subparagraph A, above, Columbus QCB, Inc., in lieu of including that exempt source in the PTI application required by Subparagraph (B), may, within 120 days of the lodging of this Consent Order, vent all the emissions from that exempt source through the existing scrubber(s) at the facility, which scrubber(s) shall be operated and maintained in accordance with manufacturers specifications and any other applicable permit requirements.

12. Columbus QCB, Inc. is ordered and enjoined to conduct, within 60 days of the entry of this Consent Order, a stack test for emissions units P001, P005, P012 and P013 demonstrating compliance with all applicable emissions limits. Columbus QCB, Inc. shall give Ohio EPA written notice of the date of the stack test at least 30 days in advance of the stack test and shall allow Ohio EPA to witness the stack test in accordance with Section VI of this Consent Order on facility access. Columbus QCB, Inc. shall provide Ohio EPA with a written report of the results of the stack test within 30 days of the stack test. In the event the stack test demonstrates noncompliance for any parameter, Columbus QCB, Inc. shall take corrective action and shall conduct a retest demonstrating compliance for that parameter within 90 days of the

original stack test. Columbus QCB, Inc. shall provide Ohio EPA with written notice of the date of the retest at least 30 days in advance of the stack test and shall allow Ohio EPA to witness the retest in accordance with Section VI of this Consent Order on facility access.. Columbus QCB, Inc. shall provide Ohio EPA with a written report of the results of the retest within 30 days of the retest.

### **Continuing Obligations for Air Pollution Control**

13. Columbus QCB, Inc. is ordered and enjoined from “installing” or “modifying” any “air contaminant source,” as those terms are defined by Ohio Adm.Code 3745-31-01, at the Facility without first applying for a Permit to Install from the Director in accordance with Ohio Adm.Code 3745-31-02 unless the source is exempted from the requirement to obtain a PTI under state law.

14. Columbus QCB, Inc. is ordered and enjoined to obtain from each coating supplier and maintain a certification that Method 24 analysis was used to determine VOC content for each coating formulation.

15. Columbus QCB, Inc. is ordered and enjoined to perform daily checks for visible particulate emissions from the stack(s) serving emissions units P001, P005, P012 and P013 and to record any visible emissions in an operations log, as required by the Facility’s Title V Permit.

16. Columbus QCB, Inc. is ordered and enjoined to operate and maintain equipment properly to monitor the pressure drop across the baghouse for emissions units P001, P005, P012 and P013 and to record the pressure drop at least once per shift, as required by the Facility’s Title V Permit.

17. Columbus QCB, Inc. is ordered and enjoined to operate and maintain equipment to continuously measure (or monitor) and record the average hourly carbon monoxide emissions, by volume in parts per million, from emissions unit N002, and to maintain those records, as

required by the Facility's Title V Permit.

18. Columbus QCB, Inc. is ordered and enjoined to maintain and operate a monitoring system that continuously measures and records the value of the differential pressure to verify the organic compound capture rate during operation of emissions unit N002, as required by the Facility's Title V Permit.

19. Columbus QCB, Inc. is ordered and enjoined to perform daily checks, when emissions unit N002 is in operation and when the weather conditions allow, for any visible particulate emissions from emissions unit N002 and/or to further note the presence or absence of any visible emissions in an operations log, in accordance with the Facility's Title V Permit.

20. Columbus QCB, Inc. is ordered and enjoined to conduct inspections of Emissions unit N002 at least monthly as required by the Facility's Preventative Maintenance and Malfunction Abatement Plan ("PM&MAP"), to document all repairs within 24 hours of the repair being made and to maintain a written record of all such repairs.

21. Columbus QCB, Inc. is ordered and enjoined to comply with all emission limits in the Facility's Title V Permit and PTIs. Stipulated penalties shall only apply for violations of emissions limits for the following parameters: particulate emissions, visible emissions, lead, beryllium, nickel, chromium, arsenic, mercury and cadmium.

22. Columbus QCB, Inc. is ordered and enjoined to submit complete and accurate reports and certifications in accordance with the Facility's Title V Permit and PTIs. So long as Columbus QCB, Inc makes a good faith effort to submit a complete and accurate report or certification, as applicable, no stipulated penalty will be assessed for a timely submitted report unless Ohio EPA indicates in writing that the report is deficient and Columbus QCB, Inc. fails to submit a fully corrected report within 14 days of Ohio EPA issuing the notice.

23. Columbus QCB, Inc. is hereby ordered and enjoined to report to Ohio EPA all

malfunctions in accordance with and pursuant to Ohio Adm. Code 3745-15-06(B).

24. Columbus QCB, Inc. is hereby ordered and enjoined to comply with the emission testing requirements in Ohio Adm. Code 3745-15-04.

25. Columbus QCB, Inc. is ordered and enjoined to capture all air contaminants from all air contaminant sources that are enclosed by a permanent total enclosure in accordance with the Facility's Title V Permit and PTIs. No stipulated penalty shall be assessed if a violation of this paragraph occurs as a result of action taken in response to an emergency that threatens human health or safety.

26. Columbus QCB, Inc. is ordered and enjoined to keep lids on waste paint buckets at all times except when removing liquids from those buckets. Lids may have a hole of sufficient size for the insertion of the waste paint feed tube.

27. Columbus QCB, Inc. is ordered and enjoined to maintain a minimum 95% overall control efficiency for organic compounds from emissions unit N002 in accordance with the Facility's Title V Permit.

28. Columbus QCB, Inc. is ordered and enjoined to maintain a minimum temperature of 1800 degrees Fahrenheit for the thermal oxidizer for emissions unit N002 until all the wastes are combusted and each burn-down cycle is complete, in accordance with the Facility's Title V Permit and PTIs. No stipulated penalty will be assessed for a violation of this paragraph if the violation results from a system failure that causes an automatic stoppage of operations, and readings from the carbon monoxide continuous emissions monitor demonstrate that instantaneous carbon monoxide levels, when extrapolated to an hourly average, stayed below permit limits.

29. On May 31, 2003, Ohio EPA received a document known as "the Heavy Drum Policy." The Facility sent Ohio EPA correspondence dated December 4, 2003, that was received

by Ohio EPA on December 15 and which elaborates on and supplements the Heavy Drum Policy. The parties agree that these documents are enforceable as the current version of the drum inspection plan required by the Facility's Title V Permit.

### **Compliance Schedules for Hazardous Waste Management**

30. Defendants expressly deny that the Facility is a hazardous waste facility under the Ohio's hazardous waste regulations and deny that the Facility is subject to the corrective action or closure, but agree to conduct closure of the container storage pad at the Facility where hazardous waste was accumulated for a period in excess of ninety (90) days in accordance with this Consent Order. Plaintiff does not agree with Defendants regarding the legal status of the Facility under Ohio's hazardous waste rules, but agrees that Defendants' consent to the entry of this Consent Order does not constitute an admission as to the status of the Facility or the obligation to conduct corrective action. The language of the regulations contained in Ohio Adm.Code Chapter 3745-55 is incorporated by reference for purposes of definition and clarity only. Within thirty (30) days after the effective date of this Consent Order, Columbus QCB, Inc. is ordered and enjoined to submit to Ohio EPA, a closure plan in accordance with Ohio Adm.Code 3745-55-10 through 3745-55-20 for the container storage pad at the Facility where hazardous waste was accumulated for a period in excess of ninety (90) days.

31. Following review of the closure plan, if Ohio EPA determines that the closure plan is deficient and gives Columbus QCB, Inc. written notice of the deficiencies in the closure plan, Columbus QCB, Inc. is ordered and enjoined to submit to Ohio EPA a revised closure plan within thirty (30) days of receipt of the notice of deficiencies.

32. Following review of the revised plan, if Ohio EPA determines that the revised closure plan is deficient, Ohio EPA may modify the plan and approve the revised plan as modified by Ohio EPA. Defendants reserve the right to appeal Ohio EPA's action on the closure plan to the

Environmental Review Appeals Commission (ERAC).

33. Unless ERAC issues a stay of Ohio EPA's action on the closure plan, immediately upon receipt of the notice of approval by Ohio EPA of Defendants' closure plan, either as originally submitted, as revised, or as revised and modified, Columbus QCB, Inc. is ordered and enjoined to implement the approved closure plan in the manner and pursuant to time frames set forth in the approved closure plan and Ohio Adm.Code 3745-55-13.

34. Columbus QCB, Inc. is ordered and enjoined to amend the closure plan in accordance with Ohio Adm.Code 3745-55-12(C) whenever:

- a. Changes in operating plans or facility 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.

35. In the event that Columbus QCB, Inc. is unable to achieve the closure performance standard identified in Ohio Adm.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 Adm.Code 3745-55-12.

36. In the event that Columbus QCB, Inc. cannot achieve clean closure, then a closure plan amendment shall incorporate post-closure care, maintenance, and monitoring activities, in accordance with Ohio Adm.Code 3745-55-18, and Columbus QCB, Inc. shall incorporate a post-closure plan within the amended closure plan. Upon completion of closure activities specified within the approved closure plan Columbus QCB, Inc. is ordered and enjoined to commence post-closure activities, pursuant to Ohio Adm.Code 3745-55-16 through 3745-55-20.

37. Within sixty (60) days of completion of closure, Columbus QCB, Inc. is ordered and enjoined to submit certification of closure to Ohio EPA, pursuant to Ohio Adm.Code

3745-55-15.

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

39. Within thirty (30) days after the effective date of this Consent Order, Columbus QCB, Inc. is ordered and enjoined to submit to Ohio EPA detailed closure cost estimates that are calculated pursuant to Ohio Adm.Code 3745-55-42 and 3745-55-44.

40. Within thirty (30) days after the effective date of this Consent Order, Columbus QCB, Inc. is ordered and enjoined to submit to Ohio EPA documentation of financial assurance for closure pursuant to Ohio Adm.Code 3745-55-43 and 3745-55-45.

41. Within thirty (30) days after the effective date of this Consent Order, Columbus QCB, Inc. is ordered and enjoined to submit to Ohio EPA documentation demonstrating financial responsibility pursuant to Ohio Adm.Code 3745-55-47.

42. In the event Columbus QCB, Inc. fails to complete the requirements of the Compliance Schedules for Hazardous Waste Management, as required by this Consent Order, the obligations in the Compliance Schedules for Hazardous Waste Management survive and, to the extent not completed by Columbus QCB, Inc., shall be completed by Container Recyclers, Inc.

**Continuing Hazardous Waste Management Obligations**

43. Columbus QCB, Inc. is ordered and enjoined from storing containers of hazardous waste generated at the Facility for more than ninety (90) days.

44. Columbus QCB, Inc. is ordered and enjoined to evaluate all waste generated at the Facility to determine if it is hazardous waste as required by Ohio Adm.Code 3745-52-11.

45. Columbus QCB, Inc. is ordered and enjoined from transporting or disposing of hazardous waste, or causing hazardous waste to be transported or disposed, except in accordance with Ohio law.



46. Columbus QCB, Inc. is ordered and enjoined to provide training in hazardous waste management procedures to employees within six months after the date of their employment or assignment to the Facility, and provide a review of the initial training thereafter, in accordance with Ohio Adm.Code 3745-52-34(A)(4) and Ohio Adm.Code 3745-65-16.

**Compliance Schedules for Water Pollution Control**

47. Columbus QCB, Inc. is ordered and enjoined to make all necessary improvements to the management and treatment of storm water to ensure compliance with Ohio Water Quality Standards, Ohio Adm.Code Chapter 3745-1, and all requirements of NPDES Permit No. 4IN00108\*DD and any modifications or renewals thereof, in accordance with the following schedule:

- A. No later than nine months after the entry of this Consent Order, Columbus QCB, Inc. shall submit an engineering study of the industrial sources contributing to the contamination of storm water at the site. Additionally, this study shall include specific proposed remedies for reducing and, where possible, eliminating sources of contamination.
- B. No later than eleven months after entry of this Consent Order, Columbus QCB, Inc. shall submit to Ohio EPA for approval a complete Permit to Install application and engineering drawings (where applicable). This PTI shall be in accordance with the remedies proposed in the engineering study. However, if the remedy does not require the submittal of a PTI then Columbus QCB, Inc. shall submit detailed engineering drawings signed by a professional engineer to Ohio EPA for approval.
- C. No later than 150 days after the issuance of the PTI or plan approval Columbus QCB, Inc. shall complete construction of the remedy.
- D. No later than 200 days after the issuance of the PTI or plan approval, Columbus QCB, Inc. shall ensure that all storm water from the Facility is in compliance with Ohio Water Quality Standards, Ohio Adm.Code Chapter 3745-1, and all requirements of NPDES Permit No. 4IN00108\*DD, and any modifications or renewals thereof.

48. No later than 14 days from the entry of this Consent Order, Columbus QCB, Inc. shall submit to Ohio EPA for approval an interim storm water management plan for minimizing the impact of contaminated storm water to waters of the state. Columbus QCB, Inc. shall begin

to implement the plan immediately upon submittal. Columbus QCB, Inc. shall revise and resubmit its interim plan within 14 days of receiving written comments from Ohio EPA. The interim storm water management plan shall become an enforceable part of this Consent Order.

## **VI. FACILITY ACCESS**

49. As of the effective date of this Consent Order, Plaintiff and its representatives and contractors shall have access at all reasonable times to the Facility. 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 air emissions, water discharges or 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 relating to the Facility maintained or generated by Defendants or their agents, consistent with this Consent Order and applicable law and excluding attorney client communication and attorney work product; and
- g. Assessing Defendants' compliance with this Consent Order.

50. 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 the terms of this Consent Order and R.C. Chapters

3704, 3734 and 6111.

## **VII. SUBMITTAL OF DOCUMENTS**

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

Director  
Ohio Environmental Protection Agency  
Division of Air Pollution Control  
Attn: James Orlemann, Enforcement Coordinator  
Lazarus Government Center  
122 South Front Street  
Columbus, Ohio 43215

Isaac Robinson  
Air Unit Supervisor  
Ohio EPA  
Central District Office  
3232 Alum Creek Drive  
P.O. Box 1049  
Columbus, Ohio 43207-3461

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

Ohio Environmental Protection Agency  
Central District Office  
Division of Hazardous Waste Management  
3232 Alum Creek Drive  
Columbus, Ohio 43207-3461  
Attn: DHWM Manager

Ohio EPA Central Office at the following address:

For mailings, use the post office box number:

Joseph P. Koncelik, Director  
Ohio Environmental Protection Agency  
Lazarus Government Center

Division of Hazardous Waste Management  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attn: Manager, Compliance Assurance Section

For deliveries to the building:

Joseph P. Koncelik, Director  
Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Hazardous Waste Management  
122 South Front Street  
Columbus, Ohio 43215  
Attn: Manager, Compliance Assurance Section

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

Enforcement Supervisor  
Division of Surface Water  
Ohio EPA  
Central District Office  
3232 Alum Creek Drive  
P.O. Box 1049  
Columbus, Ohio 43207-3461

Director  
Ohio Environmental Protection Agency  
Division of Surface Water  
Attn: Enforcement Coordinator  
Lazarus Government Center  
122 South Front Street  
Columbus, Ohio 43215

## VIII. CIVIL PENALTY

54. Defendants are enjoined and ordered to pay a total civil penalty of Five Hundred Thousand Dollars (\$500,000.00). The penalty shall be paid in accordance with the following schedule:

- A. Defendants shall pay \$25,000 on or before July 31, 2005, October 1, 2005, January 1, 2006, and April 1 2006, for a total of \$100,000, to the Clean Diesel School Bus Program Supplemental Environmental Project described in Paragraph 56 below. A copy of these checks shall be mailed to:

Ohio Environmental Protection Agency  
Division of Air Pollution Control  
Attn: James Orlemann, Enforcement Coordinator  
Lazarus Government Center  
122 South Front Street  
Columbus, Ohio 43215

- B. Defendants shall pay \$25,000 on July 1, 2006, and \$25,000 on each succeeding October 1, January 1, April 1 and July 1 thereafter until Defendant has made a total of twelve quarterly payments for a total of \$300,000. For each \$25,000 payment, the payment shall be credited by Ohio EPA to its accounts in the following manner:

- i. \$21,250 shall be credited to the environmental education fund and the air pollution control administration fund in accordance with 3704.06.
- ii. \$2,250 shall be credited to the hazardous waste cleanup fund in accordance with R.C.3734.13.
- iii. \$1,500 shall be credited to the environmental education fund and the water pollution control administration fund in accordance with R.C. 6111.09.

C. On or before July 1, 2009, Defendants shall pay \$100,000. The payment shall be credited by Ohio EPA to its accounts in the following manner:

- i. \$85,000 shall be credited to the environmental education fund and the air pollution control administration fund in accordance with 3704.06, unless reduced on the basis of early compliance as described below.
- ii. \$9,000 shall be credited to the hazardous waste cleanup fund in accordance with R.C.3734.13.
- iii. \$6,000 shall be credited to the environmental education fund and the water pollution control administration fund in accordance with R.C. 6111.09.

If the Columbus QCB, Inc. completes either of the air pollution control projects included in **paragraphs 10 and 11(B)** of this consent order in advance of the scheduled completion dates in those paragraphs, Defendants are eligible for a reduction in the amount of the final \$100,000 penalty payment. The reduction shall be in the amount of \$500 per day for each day that a project was completed ahead of the scheduled completion date for that project. The completion date shall be the date upon which Columbus QCB, Inc. provide Ohio EPA with a written report of the stack test results demonstrating compliance with the PTI in accordance with **Subparagraphs 10.e and 11(B).e**. The maximum total reduction shall be \$50,000. To claim this reduction, Defendants shall present Ohio EPA and the Ohio Attorney General's Office with an explanation of its basis for the reduction no later than 60 days after the completion of both projects. Ohio EPA may dispute the claim for the reduction. If Ohio EPA disputes the claim, Defendants shall, within 30 days of Ohio EPA notifying Defendants of the dispute, either pay the amount that Ohio EPA disputes or file a motion with this Court seeking resolution of the dispute. The Court shall hold a hearing on the dispute. In any action seeking court resolution, the rules of

evidence shall apply and Defendants shall have the burden of proving by a preponderance of the evidence that they have completed all terms of Paragraphs 10 and 11(B), provided Ohio EPA with a written report of the stack test results demonstrating compliance with the PTI in accordance with Subparagraphs 10.e and 11(B).e in advance of the completion dates contained therein and that Defendants presented Ohio EPA with an explanation of its basis for the reduction no later than 60 days after the completion of both projects. Any penalty reduction agreed upon or awarded by the Court shall be from monies that were to be credited to pursuant to 3704.06. Nothing herein shall prevent the parties from resolving any dispute arising under this paragraph through informal dispute resolution, including negotiations. Any effort at informal dispute resolution does not extend any deadline contained in this Consent Order unless agreed in writing by Ohio EPA.

55. Each payment shall be paid by cashier's or certified check payable to the Order of "Treasurer, State of Ohio" and delivered to Amy Laws, 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 memo portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 227664."

#### **IX. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

56. Money designated herein for the Clean Diesel School Bus Program Supplemental Environmental Project shall be contributed to Ohio EPA's 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 this fund shall be made available to school districts in accordance with a grant process established by the Director.

#### **X. STIPULATED PENALTIES**

57. For purposes of the Stipulated Penalty section of this Consent Order, the deadlines listed in paragraphs 10.d, 11(B).d, 37 and 47(A) and (D) and second stack test required by paragraph 12 shall be considered final deadlines. If Columbus QCB fails to demonstrate or attain compliance as required by those paragraphs by the those final deadlines, then Columbus QCB is liable for and shall pay stipulated penalties in accordance with the following schedule:

- a. For each day that Defendant fails to meet a deadline, up to and including thirty (30) days—Five Hundred Dollars (\$500.00) per day for each requirement or deadline not met.
- b. For each day that Defendant fails to meet a deadline, from thirty-one (31) to sixty (60) days—Seven Hundred Fifty Dollars (\$750.00) per day for each requirement or deadline not met.
- c. For each day that Defendants fails to meet a deadline, over sixty (60) days-- One Thousand Dollars (\$1,000.00) per day for each requirement or deadline not met.

58. In the event that either Defendant fails to comply with any deadline contained in the compliance schedules in Paragraphs 10, 11 30 through 38 and 47 of this Consent Order, other than a final deadline, that Defendant is liable for and shall pay stipulated penalties of Two Hundred Fifty Dollars (\$250.00) per day for each requirement or deadline not met.

59. In the event that either Defendant fails to comply with any deadline contained in the compliance schedules in Paragraphs 8, 9, 12, 39, 40, 41, and 48 of this Consent Order, other than



a final deadline, that Defendant is liable for and shall pay stipulated penalties in accordance with the following schedule:

- a. For each day that Defendant fails to meet a deadline, up to and including thirty (30) days—Two Hundred Fifty Dollars (\$250.00) per day for each requirement or deadline not met.
- b. For each day that Defendant fails to meet a deadline, from thirty-one (31) to sixty (60) days— Four Hundred Dollars (\$400.00) per day for each requirement or deadline not met.
- c. For each day Defendants fail to meet a deadline, over sixty (60) days-- Six Hundred Dollars (\$600.00) per day for each requirement or deadline not met.

60. In the event that either Defendant fails to comply with any requirement contained in continuing compliance obligations identified in Paragraphs 13 through 28 and 43 through 46 of this Consent Order, that Defendant is liable for and shall pay stipulated penalties, except as otherwise indicated in the Consent Order, in accordance with the following schedule for each failure to comply:

- a. For each day of each failure to comply with a requirement, up to and including thirty (30) days—Two Hundred Dollars (\$200.00) per day for each requirement or deadline not met.
- b. For each day of each failure to comply with a requirement, from thirty-one (31) to sixty (60) days—Four Hundred Dollars (\$400.00) per day for each requirement or deadline not met.

- c. For each day of each failure to comply with a requirement, over sixty (60) days-- Six Hundred Dollars (\$600.00) per day for each requirement or deadline not met.

61. 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 Amy Laws, Paralegal, or her successor, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, 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. The payment of the stipulated penalty shall be accompanied by 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. The memo portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 227664."

62. If a dispute arises as to the payment of a stipulated penalty, the parties may attempt to resolve the dispute through informal dispute resolution, including negotiations. Either party may request that the Court resolve the dispute through a hearing on whether a stipulated penalty is required under this Consent Order.

63. The payment of stipulated penalties by Defendants and the acceptance of such stipulated penalties by Plaintiff pursuant to this Section shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to R.C. Chapters 3704, 3734 and 6111, including civil penalties under R.C. 3734.06, 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. In the event that Plaintiff seeks civil penalties in addition to stipulated penalties and/or contempt

penalties for any violation, the amount of the stipulated penalty and/or contempt penalty paid shall be a credit toward any civil penalty imposed by the Court.

## **XI. PROGRESS REPORTS AND NOTICE**

64. Unless otherwise directed by Ohio EPA, Defendants shall submit a written progress report to Ohio EPA by the twentieth day of every month following the month in which this Consent Order was entered. At a minimum, the progress reports shall identify the Facility and:

- a. Describe the status of the progress since the previous progress report, or for the first report, the progress to date;
- b. Describe difficulties encountered during the reporting period and actions taken to address any difficulties;
- c. Describe activities planned for the next month;
- d. List target and actual completion dates for each compliance schedule in the Consent Order;
- e. Provide an explanation for any deviation from any applicable schedules;
- f. Describe any potential noncompliance with the terms of this Consent Order. The description shall not constitute an admission or a waiver of any defenses Defendants may have.

Failing to comply with the requirements of this paragraph shall not be grounds for contempt unless and until Plaintiff provides Defendants with notice of the failure to submit a report, or the deficiency of a report, and Defendants fail to cure the failure or deficiency within fifteen (15) days after the receipt of such notice.

## **XII. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS**

65. 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 should notify Ohio EPA of the potential conflict. This Consent Order is not a permit issued pursuant to any federal, state or local law or rule. All actions of Ohio EPA or the Director are subject to review under the exclusive jurisdiction of the Environmental Review Appeal Commission, except as otherwise provided by this Consent Order.

## **XIII. RETENTION OF JURISDICTION**

66. This Court shall retain jurisdiction of this action for the purpose of enforcing this Consent Order.

## **XIV. COSTS**

67. Defendants shall pay the court costs of this action. Court costs, as used in this section, are limited to those costs assessed by the clerk of courts and do not include the costs of court reporters, deposition transcripts, exhibits, copying telephone charges attorneys fees or similar charges incurred by the parties. The parties have been informed by the clerk that the costs are currently limited to the initial filing fee of the case.

## **XV. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK**

68. Upon signing of this Consent Order by the Court, it shall operate as a final judgment and 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.

#### **XVI. TERMINATION**

69. Defendants may move the Court, pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure, to terminate the stipulated penalty schedules as to a particular program if Defendants are current in the payment of the civil penalty, have paid any stipulated penalties that are or may be due, have completed all work required by the compliance schedules for that program, and demonstrated compliance with the terms of this Consent Order applicable to that program for twelve consecutive months following the completion of the work under the compliance schedules for that program. Plaintiff takes no position with regard to such motion at this time, and reserves its rights to oppose the motion.

70. After Defendants paid all civil and/or stipulated penalties that are or may be due, and demonstrated compliance with the terms of this Consent Order for twelve consecutive months, Defendants 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.

71. This order terminates and supersedes all previous Orders issued and/or agreed to between the parties except for the Stipulated Protective Order signed by the Court on November 13, 2003, and filed August 30, 2004.

72. With respect to Paragraphs 8 to 29 relating to air compliance, termination of operations at the facility by Defendants shall relieve Defendants of the obligation to comply with those Paragraphs.

73. With respect to Paragraphs 47 and 48 relating to stormwater compliance, transfer of the NPDES permit shall relieve Defendants of the obligation to comply with those Paragraphs.

#### **XVII. POTENTIAL FORCE MAJEURE**

74. If any event occurs that causes or may cause a delay in Defendants' compliance with any requirement of this Consent Order, Defendants shall notify Ohio EPA, in writing, within ten (10) days of Defendants' actual or constructive knowledge of the event, describing 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 measures will be implemented. Defendants will adopt all reasonable measures to avoid or minimize any such delay.

75. In any action by Plaintiff to enforce any of the provisions of this Order, Defendants may raise that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitation, acts of God, acts of war or civil disturbances. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by the parties 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 that an action to enforce the terms and conditions of this Consent Order, if any, is commenced by Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendants shall rest with Defendants. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Defendants or serve as a basis for an extension of time under this Stipulated Order. Failure by Defendants to comply with the notice requirements of Paragraph 74

shall render this paragraph 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 Order based on such incident. An extension of one compliance date based on a particular incident does not mean that Defendants qualify for an extension of a subsequent compliance date or dates. Defendants must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought.

#### **XVIII. AUTHORITY TO ENTER INTO THE CONSENT ORDER**

76. The parties agree and acknowledge that final approval by Plaintiff and Defendant and entry of this Consent Order is subject to the requirements of 40 CFR 123.27(d)(2)(iii), which provides for notice of the lodging of the Consent Order, opportunity for public comment, and the consideration of any public comments. Both the State and the Defendants, reserve the right to withdraw this Consent Order prior to its entry by the Court as a final judgment based on comments received during the public comment period.

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

**IT IS SO ORDERED:**

**JUDGE HALE**

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**JUDGE HARLAND H. HALE  
FRANKLIN COUNTY MUNICIPAL COURT  
ENVIRONMENTAL DIVISION**

Respectfully submitted,

**Jim Petro**  
**Attorney General**

**Container Recyclers, Inc.**

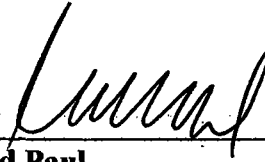
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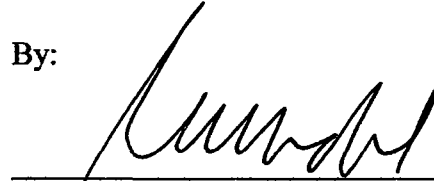
By:



**Edward Paul**  
President, Chief Executive Officer  
and Sole Shareholder

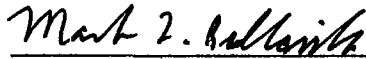
**Columbus QBC, Inc.**

By:



**Edward Paul**  
President and Chief Executive Officer

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