

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

CASE NO.

00CV125972

JUDGE

JUDGE KOSMA J. GLAVAS

STATE OF OHIO, *ex rel.*
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

Plaintiff,

vs.

ROSS INCINERATION SERVICES,
INC.

Defendant

CONSENT ORDER AND FINAL JUDGMENT ENTRY

Plaintiff, State of Ohio, ex rel. Betty D. Montgomery, Attorney General of Ohio, having filed the Complaint in this action against Defendant Ross Incineration Services, Inc. to enforce Ohio's hazardous waste and air pollution control laws found in Chapters 3734 and 3704 of the Revised Code and the rules adopted thereunder; and Plaintiff and Defendant having consented to the entry of this Consent Order;

THEREFORE, without trial or admission 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 Consent Order:
 - a. "Consent Order" means this Consent Order and Final Judgment Entry and all appendices hereto. In the event of conflict between this Consent Order and any appendix, the Consent Order shall control.
 - b. "Defendant" means Ross Incineration Services, Inc.
 - c. "Director" means Ohio's Director of Environmental Protection.
 - d. "Effective Date" means the date the Lorain County Court of Common Pleas enters this Consent Order.

- e. **"Facility"** refers to the location(s) where the treatment, storage, disposal, or other placement of hazardous waste was conducted by Defendant, and refers to the incinerator located at 36790 Giles Road, Grafton, Lorain County, Ohio.
- f. **"Ohio EPA"** means the Ohio Environmental Protection Agency.
- g. **"Plaintiff"** means the State of Ohio by and through the Attorney General of Ohio.
- h. **"Air contaminant source"** or **"source"** has the same meaning as set forth in R.C. 3704.01(C) and Ohio Administrative Code ("O.A.C") 3745-31-01(D) and 3745-35-01(B)(1).
- i. **"Permit to Operate"** or **"PTO"** has the same meaning as set forth in O.A.C. Chapter 3745-35.
- j. **"Permit to Install"** or **"PTI"** has the same meaning as set forth in O.A.C. Chapter 3745-31.
- k. **"Title V Permit"** has the same meaning as set forth in O.A.C. Chapter 3745-77.
- l. **"VOC"** has the same meaning as set forth in O.A.C. Chapter 3745-21.
- m. **"HAP"** has the same meaning as set forth in R.C. 3704.01(L).

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapters 3734 and 3704 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 Defendant, their agents, officers, servants, employees, assigns, successors in interest and any person acting in concert or participation with them who receives actual notice of this Consent

Order whether by personal service or otherwise.

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 full satisfaction of any civil liability of Defendant to Plaintiff for all claims alleged in the Complaint. Defendant's signing of this Consent Order shall not be construed as an admission of the allegations contained in the Complaint.

5. Nothing in this Consent Order, including the imposition of stipulated or 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 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 Defendant 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 R.C. 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 and/or remedial activities not conducted pursuant to the terms of this Consent Order.
- e. Take any action authorized by law against any person, including Defendant, to eliminate or mitigate conditions at the Facility that may present an imminent threat to the public health or safety or the environment.

6. Nothing in this Consent Order shall be construed to limit the State of Ohio from requiring Defendant, pursuant to R.C. Chapters 3734 and 6111 and the rules adopted thereunder and/or any other law or regulation, to initiate appropriate corrective and/or responsive action to address contamination of the ground water, surface water and/or soils at the Facility, or to recover costs incurred by the State of Ohio for such remediation. In addition, nothing in this

Consent Order shall be construed as an admission by Defendant that such contamination exists at the Facility.

7. Ohio EPA is currently reviewing Defendant's application for renewal of its hazardous waste installation and operation permit ("Ohio Part B Permit"). Nothing in this Consent Order shall be construed to limit the State of Ohio from approving or denying that application or from requiring Defendant, pursuant to R.C. Chapter 3734 and the rules adopted thereunder and/or any other law or regulation, from including in the Ohio Part B Permit, terms and conditions which address Defendant's handling, treatment, storage or disposal of hazardous waste based in whole or in part on the violations alleged in the Complaint. If Defendant is issued an Ohio Part B Permit or any other permit by the Director or the Hazardous Waste Facility Board, Defendant shall comply with the requirements of any such permit. Further, any provisions in this Consent Order which may conflict with or contradict a requirement of Defendant's Ohio Part B Permit or any other permit shall be superseded by the permit requirement and shall not relieve Defendant from complying with permit requirements.

V. AIR POLLUTION INJUNCTIVE RELIEF

8. Defendant is hereby enjoined and ordered to immediately and permanently comply with R.C. Chapter 3704 and the regulations adopted thereunder, including but not limited to all terms and conditions of all existing and future Permits to Install and operating permits, and any subsequent renewals or modifications thereafter. Specifically, Defendant is hereby permanently enjoined from "installing" or "modifying" any air contaminant source, as those terms are defined by O.A.C. 3745-31-01(LL) and (VV), at the Facility without first applying for and obtaining a Permit To Install from the Director in accordance with O.A.C. 3745-31-02, and Defendant is hereby permanently enjoined from operating any air contaminant source at the

C Facility without first complying with the requirements of O.A.C. Chapters 3745-31, 3745-35 and/or 3745-77 as applicable, unless otherwise exempt. In addition, Defendant is enjoined and ordered to properly operate and maintain each air contaminant source and each piece of control equipment at the Facility in accordance with all permits issued to each respective source and control equipment.

VI. HAZARDOUS WASTE INJUNCTIVE RELIEF

9. Defendant is ordered and enjoined to comply with all applicable provisions of R.C. Chapter 3734 and the rules adopted thereunder.

10. Defendant is ordered and enjoined not to perform any "modification" as defined by O.A.C. 3745-50-51 at the Facility except in accordance with and pursuant to R.C. Chapter 3734 and the rules adopted thereunder.

VII. SUBMITTAL OF DOCUMENTS

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

Ohio EPA
Northeast District Office
Attn: Supervisor, Division of Air Pollution Control
2110 East Aurora Road
Twinsburg, Ohio 44087;

(with a copy to)

Director, Ohio EPA
Attn: Manager, Engineering Section
Division of Air Pollution Control
122 South Front Street
Columbus, Ohio 43216-1049.

VIII. EFFECT UPON OTHER ACTIONS

12. Nothing in this Consent Order shall be construed to relieve Defendant of the obligation to comply with applicable federal, state or local laws, rules or ordinances, or shall constitute a waiver or release of any right, remedy, defense or claim against Defendant with regard to any person not a party to this Consent Order.

IX. EFFECT OF CONSENT ORDER

13. This Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing hazardous waste facility. Approval for any such construction or modification shall be by permit issued by the Director, the Hazardous Waste Facility Board or other such permits as may be required by applicable federal, state or local laws, rules or regulations. Defendant 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, Defendant is ordered and enjoined to immediately 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.

X. CIVIL PENALTY

14. Pursuant to R.C. 3704.06, Defendant is enjoined and ordered to pay to the State of Ohio a civil penalty in the amount of Twenty-five Thousand Dollars (\$25,000). Of this amount, Defendant Ross is enjoined and ordered to pay \$20,000.00 cash by delivering a certified check payable to the Order of "Treasurer, State of Ohio," to Jena Suhadolnik or her successor, Administrative Assistant, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, in that amount on or before thirty (30) days after entry of this Order. The remaining \$5,000.00 shall be paid to fund a

supplemental environmental project. Specifically, Defendant Ross is hereby enjoined and ordered to deliver a certified check in the amount of \$5,000 made payable to the Ohio Department of Natural Resources, Division of Forestry, Bicentennial Urban Tree Planting Grant Program (Fund No. 502) for the purpose of funding urban area tree-planting projects in Ohio. This check shall be delivered to Jena Suhadolnik or her successor, Administrative Assistant, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428 on or before thirty (30) days of entry of this Consent Order.

15. Pursuant to R.C. 3734.11, Defendant is enjoined and ordered to pay to the State of Ohio a civil penalty in the amount of One Hundred Ten Thousand Dollars (\$110,000). This amount shall be paid by Defendant by delivering certified checks to Plaintiff, c/o Jena Suhadolnik, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, in accordance with the following schedule:

- a. on or before 30 days from the entry of this Consent Order, a certified check in the amount of \$25,000 payable to the order of "Treasurer, State of Ohio" to be deposited into the hazardous waste cleanup fund created by R.C. 3734.28; and
- b. on or before June 1, 2001, a certified check in the amount of \$42,500 payable to the order of "Treasurer, State of Ohio" to be deposited into the hazardous waste cleanup fund created by R.C. 3734.28; and
- c. on or before June 1, 2002, a certified check in the amount of \$42,500 payable to the order of "Treasurer, State of Ohio" to be deposited into the hazardous waste cleanup fund created by R.C. 3734.28.

XI. STIPULATED PENALTIES

16. In the event that Defendant fails to comply with any requirement or deadline contained paragraphs 14 and 15 of this Consent Order or any requirement or deadline contained

in any document approved in accordance with this Consent Order, Defendant is 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 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 or deadline of this Consent Order, from 31 to 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 or deadline of this Consent Order, over 60 days--Six Hundred Dollars (\$600.00) per day for each requirement or deadline not met.

17. 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 Jena Suhadolnik or her successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a cashier's or certified check made payable to the order of "Treasurer, State of Ohio," for the appropriate amount immediately upon 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.

18. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff pursuant to this Section XI shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to R.C. Chapters 3704 or 3734, including civil penalties, 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.

XII. RIGHT OF ENTRY

19. Nothing in this Consent Order shall be construed to limit the State's statutory or permit authority under R.C. Chapters 3704 and 3734 and the rules adopted thereunder to conduct inspections, surveys and/or take samples, and/or to review facility records.

XIII. RETENTION OF JURISDICTION

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

XIV. COURT COSTS

21. Defendant shall pay the court costs of this action.

XV. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

22. Upon 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.

XVI. AUTHORITY TO ENTER INTO THE CONSENT ORDER

23. 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:

6/2/00

DATE

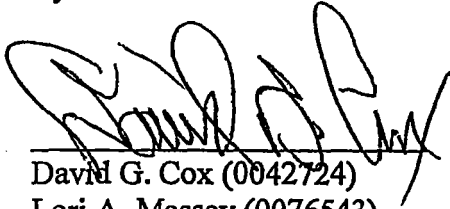


JUDGE, LORAIN COUNTY
COURT OF COMMON PLEAS

APPROVED:

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By:



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State of Ohio*

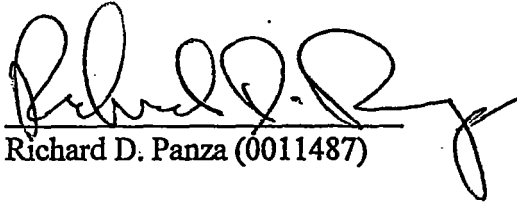
By:

Maureen M. Cromling, President
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*Authorized Representative of
Ross Incineration Services, Inc.*

Ross Incineration Services, Inc.

By:



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