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LORAIN COUNTY  
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CLERK OF COMMON PLEAS  
DONALD J. BOHNER

COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

STATE OF OHIO, ex rel., \* CASE NO. 99291-87  
ANTHONY J. CELEBREZZE, JR. \*  
ATTORNEY GENERAL OF OHIO \* JUDGE FLOYD D. HARRIS

Plaintiff \*

v. \*

ROSS INCINERATION SERVICES, \*  
INC. \*

Defendant \* CONSENT DECREE

\*\*\*\*\*

This cause came on through the filing of a Complaint with this Court by Plaintiff the State of Ohio, by its Attorney General Anthony J. Celebrezze, Jr., (hereinafter referred to as "Plaintiff") against the Defendant Ross Incineration Services, Inc., (hereinafter referred to as "Ross").

Based upon the agreement of the parties, the Court finds as follows:

A. The Complaint was filed in this action by the State of Ohio at the request of the Ohio Environmental Protection Agency (hereinafter referred to as "OEPA"). The complaint alleges violations of the ORC Section 3734.11 and various regulations adopted thereunder including OAC Sections 3745-65-91(A)(1), 3745-65-92(B), and 3745-65-94(A). Plaintiff claims that Ross is liable for civil penalties pursuant to ORC

section 3734.13(C) and that Plaintiff is entitled to injunctive relief pursuant to ORC Sections 3734.10 and 3734.13(C).

B. This action involves the alleged failure of Ross to perform certain tasks required by OAC 3745-65 including Ross' alleged failure to install a sufficient number of groundwater monitoring wells at its facility in locations hydraulically upgradient from the limit of the waste management area which yield groundwater samples representative of background water quality in the uppermost aquifer near the facility and not affected by the facility; Ross' alleged failure to obtain and analyze samples from the groundwater monitoring wells and determine the concentration or value of various parameters that, in part, characterize the suitability of groundwater as a drinking water supply and establish groundwater quality; and Ross' alleged failure to tender reports involving samples of groundwater taken from wells installed by Ross in the so-called "till layer" underlying its facility.

C. Ross has filed an Answer denying any violation of or failure to comply with ORC Section 3734.11 or any pertinent regulation adopted thereunder including OAC Sections 3745-65-91(A)(1), 3745-65-92(B), and 3745-65-94(A). Ross asserts that it has fully complied with all requirements of OAC Chapter 3745-65, and that all actions taken by Ross in the establishment of and reporting of analytical results of samples taken from its groundwater monitoring system were done with the knowledge of, consent of and at the express direction of the OEPA. In

addition, Ross has filed a counterclaim seeking this Court's construction and interpretation of ORC Chapter 3734 and OAC Chapters 3745-50 and 3745-65 and a declaration that Ross has fully complied with such statutes and regulations.

D. The parties, including the OEPA, presently desire to resolve the dispute by agreeing to the conditions hereinafter set forth which will resolve all issues raised by the Complaint, Answer and Counterclaim involving the groundwater monitoring system at Ross' facility at 394 Giles Road, Grafton, Ohio 44044. During the period that this Consent Decree is in effect, the parties stipulate that resolution of the issues herein shall serve as a resolution of these same issues present in Ross' closure/post-closure plans presently under review by the OEPA. The parties further desire to have the Complaint, the Counterclaim and the within action dismissed with prejudice without any party named in the Complaint, in the Counterclaim, or the OEPA making any admission or concession with respect to the allegations set forth in the Complaint or Ross' defenses thereto or the Counterclaim.

E. By its participation in this Consent Decree, Ross neither concedes nor admits that the glacial till underlying the Ross facility (sometimes referred to as the "till layer") is or is a part of the uppermost aquifer beneath the Ross facility.

F. The Plaintiff, the OEPA and Ross agree that the terms, conditions, findings and requirements set forth here may be approved and adopted by the Court.

As the parties have come to an agreement as to the terms and conditions of terminating the present litigation without trial of any issue of fact or law, it is therefore ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court has jurisdiction over the subject matter of the dispute pursuant to Ohio Rev. Code Ann. Chapter 3734 and rules adopted thereunder. The Complaint states a claim upon which relief can be granted under these statutory and regulatory provisions. This Court has jurisdiction over the parties hereto. Venue is proper in this Court.

2. This Consent Decree shall apply to and be binding upon each of the parties hereto including the State of Ohio and Ross, shall be binding upon the OEPA, and shall be binding upon each respective party's agents, officers, employees, representatives, successors and assigns, and those persons in active concert or participation with them who receive actual notice of this Consent Decree whether by personal service or otherwise.

3. The fact that the parties have resolved this matter by a Consent Decree does not limit the power and authority of this Court to enforce this Decree and this Court shall retain jurisdiction of this action for the purpose of

making any Order or Decree which it may deem necessary to carry out the provisions of this Consent Decree.

4. Ross is ordered to continue to designate and use Well Nos. MW-16 and MW-17 as upgradient monitoring wells as part of its groundwater monitoring system. Monitoring well Nos. MW-16 and MW-17, designated by Ross as upgradient wells in its groundwater monitoring system before the commencement of this action, presently meet and fully comply with all requirements of OAC 3745-65-91(A)(1).

5. Henceforth, Ross is ordered to designate and use monitoring well No. SI-8 as an additional upgradient monitoring well as part of its groundwater monitoring system. Monitoring well No. SI-8 presently meets and fully complies with all requirements of OAC 3745-65-91(A)(1).

6. Ross is ordered to continue to conduct sampling of wells MW-16 and MW-17 and submit reports to the OEPA of such sampling events in the manner and time frames set forth in OAC Sections 3745-65-92 (D) and (E) and 3745-65-94 (A)(2)(b).

7. Ross is ordered to conduct sampling of Monitoring Well No. SI-8 and submit reports to the OEPA of such sampling events in the manner and time frame of OAC 3745-65-92(C) and (E) and 3745-65-94(A)(2)(a).

8. Ross shall pay \$1,000.00 to the Plaintiff as allowed by R.C. 3734.13(C). By paying such sum, Ross neither concedes nor admits that such amount is a penalty or that it has violated or failed to comply with Ohio Rev. Code Ann. Section

3734.11 or any regulation adopted thereunder including, but not limited to, OAC Sections 3745-65-91(A)(1), 3745-65-92(B), and 3745-65-94(A). Such payment shall be made no later than thirty (30) days after entry of this Consent Decree by delivering to Plaintiff's counsel or his successor in the office of the Attorney General a check in such amount made payable to "Treasurer, State of Ohio." Such payment shall be credited to the Hazardous Waste Clean-Up Account created by Ohio Rev. Code Ann. Section 3734.28.

9. This Consent Decree shall terminate upon the occurrence of all of the following events: compliance with paragraph 8 above, the issuance to Ross of Ross' State Part B permit for its Grafton facility pursuant to R.C. 3734.05(C) by the Director of the OEPA, and the OEPA's approval of Ross' closure/post-closure plan pursuant to R.C. 3734.12(D)(8) and OAC 3745-66-12.

10. If within one year after the effective date of this Consent Decree, Well No. SI-8 no longer meets the requirements of OAC 3745-65-91(A) because of such factors as deterioration of the well casing, contamination, or change in direction of groundwater flow, the OEPA shall notify Ross, in writing. Within twenty days after receiving written notification that well SI-8 designated as upgradient is no longer acceptable, Ross shall designate a new upgradient well at the facility meeting the requirements of this rule.

11. All parties hereto expressly waive any and all appeals from this entry.

12. In accordance herewith, final judgment in this matter is hereby entered and all issues raised in the Complaint and Counterclaim not specifically resolved herein are dismissed with prejudice.

10-12-88  
DATE

Lloyd D. Harris  
JUDGE

APPROVED:

ANTHONY J. CELEBREZZE, JR.  
ATTORNEY GENERAL OF OHIO

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FOR AND ON BEHALF OF THE  
OHIO ENVIRONMENTAL  
PROTECTION AGENCY AND THE  
STATE OF OHIO

FOR AND ON BEHALF OF THE ROSS  
INCINERATION SERVICES, INC.

WICKENS, HERZER  
& PANZA  
LEGAL PROFESSIONAL ASSOCIATION  
LORAIN, OHIO

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