



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

I. PERSONS BOUND

1. The provisions of this Consent Order shall apply to and be binding upon Defendant R.L. Drake Company and its agents, officers, employees, assigns, successors, and predecessors in interest. Defendant shall provide a copy of this Consent Order to each consultant or contractor employed to perform the work referenced herein.

II. SATISFACTION OF LAWSUIT

2. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant R.L. Drake Company for all claims against the Defendant alleged in the Complaint. Nothing in this Consent Order, including the requirement that Defendant pay stipulated penalties for violations of the Consent Order, shall be construed so as to limit the authority of the State of Ohio to seek relief or civil penalties for claims or conditions not alleged in the Complaint, including violations or conditions which occur after the filing of the Complaint. Furthermore, nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to undertake any action against any person, including the Defendant, to eliminate or mitigate conditions arising after the date of this Consent Order which may present a threat to the public health, welfare or the environment. Nothing herein shall be construed so as to

limit the authority of the State of Ohio to undertake any action, pursuant to Ohio Revised Code ("ORC") Section 3734.20, against any person, including Defendant, for remedial or corrective action or additional monitoring or testing that must be conducted at R.L. Drake's 230 Industrial Drive, Franklin, Ohio facility as a result of the Defendant's waste handling practices at the facility, or to seek costs to reimburse the State of Ohio for expenses incurred by the Ohio EPA under ORC Sections 3734.20 through 3734.27.

### III. JURISDICTION AND VENUE

3. The Court has jurisdiction over both the parties to and the subject matter of this civil action. The Complaint states a claim upon which relief can be granted against the Defendant under Chapter 3734. of the Ohio Revised Code and the rules promulgated thereunder. Venue is proper in this Court.

### IV. PERMANENT INJUNCTION

4. Defendant is hereby permanently enjoined and ordered to comply with all applicable provisions contained in Chapter 3734. of the Ohio Revised Code and the rules promulgated thereunder including, but not limited to, the generator requirements contained in OAC Chapter 3745-52, with respect to all future waste handling activities at the facility. Defendant is also permanently enjoined and ordered to refrain from engaging in any future storage, treatment or disposal of hazardous waste for which a hazardous waste facility installation and operation permit is necessary without first obtaining such a permit from the Hazardous Waste Facility Board. Defendant shall not transport, store, treat, dispose,

or cause to be transported, any hazardous waste at and/or to any premises other than those which meet the criteria listed in ORC Section 3734.02(F). Further, until such time as Defendant certifies to the Ohio EPA, pursuant to OAC Rule 3745-66-15, that the facility has been closed in accordance with the specifications in the approved closure plan and OAC Rules 3745-66-10 through 3745-66-20, Defendant is hereby enjoined and ordered to perform the following tasks:

- A. Defendant shall submit to the Ohio EPA, within thirty (30) days of the entry of this Consent Order and as part of the approvable closure plan that must be submitted in accordance with Section V of this Consent Order, a detailed written estimate of the cost of closing the facility pursuant to Chapter 3734. of the Ohio Revised Code and the rules promulgated thereunder, as required by OAC Rule 3745-66-42.
- B. Defendant shall submit to the Ohio EPA, within thirty (30) days of the entry of this Consent Order, documentation demonstrating that Defendant has established financial assurance for the closure of the facility, as required by OAC Rule 3745-66-43.
- C. Defendant shall develop an approvable written general inspection plan and checklists for the facility which meet the requirements of OAC Rules 3745-65-15, 3745-66-74 and 3745-66-95 and shall submit to Ohio EPA, for approval, the general inspection plan and checklists within thirty (30) days of the entry of this Consent Order. The plan and checklists shall address, but not be limited to, all waste generation points, aisle space, loading and unloading areas, and proper container management, including containers at all satellite accumulation areas. If Ohio EPA determines that the plan and checklists are not sufficient to achieve compliance with OAC Rules 3745-65-15, 3745-66-74, and 3745-66-95, Ohio EPA will notify Defendant, in writing, of the deficiencies in the plan and checklists. Defendant shall resubmit the plan and checklists addressing the noted deficiencies within twenty (20) days of receipt of Ohio EPA's written notification of the deficiencies. Defendant shall implement the use of said plan and checklists and the schedules contained therein within ten (10) days of written notification of approval by the Ohio EPA and shall otherwise maintain compliance, as applicable, with OAC Rules 3745-65-15, 3745-66-74, and 3745-66-95 until Defendant has submitted the closure certification required by OAC Rule 3745-66-15.

- D. Defendant shall submit to the Ohio EPA, within thirty (30) days of the entry of this Consent Order, documentation showing that all personnel at the R.L. Drake Company have received training in accordance with the personnel training plan for the facility, as required by OAC Rule 3745-65-16, for the calendar years 1989 and 1990. The documentation shall indicate that the training was received and shall be signed by all participants, including the training director.

V. CLOSURE PLAN

5. Defendant R.L. Drake is ordered to submit, within thirty (30) days after the entry by this Court of this Consent Order, an approvable closure plan for the R.L. Drake facility which meets the applicable requirements of OAC Rules 3745-66-10 through 3745-66-20. The closure plan shall be submitted to the Director of the Ohio EPA and the Ohio EPA's Southwest District Office and shall initially comply only with the applicable requirements of OAC Rules 3745-66-11 through 3745-66-14. As specified in these Sections, the closure plan shall provide for the investigation and remediation of any waste contamination at all locations at the R.L. Drake facility where hazardous wastes were stored, disposed of, and/or treated. If the Director of the Ohio EPA does not approve part or all of the closure plan, the above-referenced Defendant shall resubmit an approvable closure plan that addresses all noted deficiencies to the Ohio EPA, pursuant to OAC Rule 3745-66-12, within thirty (30) days of Ohio EPA's notification of disapproval or deficiency of the plan. Said Defendant is enjoined and ordered, to fully implement the closure plan, as approved by the Ohio EPA, in accordance with OAC Rules 3745-66-11 through 3745-66-14. If, upon implementing the approved closure plan, Defendant R.L. Drake is able to achieve the closure performance standards

established pursuant to OAC Rule 3745-66-11 and the approved closure plan, Defendant R.L. Drake shall certify completion of closure in accordance with the requirements of OAC Rule 3745-66-15. If after said Defendant has implemented the approved closure plan Defendant encounters an unexpected event which requires a modification of said closure plan, as discussed in OAC Rule 3745-66-12, or determines that the requirements of OAC Rule 3745-66-11 and the approved closure plan cannot be achieved, the Defendant shall submit, within thirty (30) days thereafter, to the Director and to the Ohio EPA's Southwest District Office, an amended closure plan which shall address the necessity to close as a landfill in accordance with OAC Rules 3745-66-16 through 3745-66-20 and OAC Rule 3745-68-10. If the Director of the Ohio EPA does not approve part or all of the amended closure plan, Defendant R.L. Drake shall resubmit an approvable amended closure plan that addresses all noted deficiencies within thirty (30) days of Ohio EPA's notification of disapproval or deficiency of the amended plan. Said Defendant is enjoined and ordered to fully implement any amended closure plan approved by the Ohio EPA. If upon implementation of the approved, amended closure plan Defendant R.L. Drake is able to achieve the closure performance standards established pursuant to OAC Rule 3745-66-11 and the approved amended closure plan, Defendant R.L. Drake shall certify the completion of closure in accordance with the requirements of OAC Rule 3745-66-15.

## **VI. CIVIL PENALTY**

6. It is hereby ordered that Defendant R.L. Drake shall pay a civil penalty of forty-five thousand dollars (\$45,000.00). This civil penalty shall be paid by certified check made payable to "Treasurer, State of Ohio," which check shall be delivered by mail, or otherwise, to Shane A. Farolino, or his successor, at his office at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, within thirty (30) days of the Court's Entry of this Consent Order. This penalty shall be paid into the hazardous waste clean-up fund created by ORC 3734.28.

## **VII. STIPULATED PENALTIES**

7. In the event that Defendant violates any of the terms of this Consent Order, including any milestone requirement in the closure plan schedule, Defendant shall immediately and automatically be liable for and shall pay stipulated penalties according to the following schedule. For each day of violation or failure to meet a requirement, up to sixty (60) days - one thousand dollars (\$1000.00) per day per violation or failure. For each day of violation or failure to meet a requirement, from sixty-one (61) to one hundred twenty (120) days - two thousand five hundred dollars (\$2,500.00) per day per violation or failure. For each day of violation or failure to meet a requirement, over one hundred twenty (120) days - five thousand dollars (\$5,000.00) per day per violation or failure. Any payment required to be made pursuant to Section VII of this Consent Order shall be paid by certified check made payable to

"Treasurer, State of Ohio", which check shall be delivered by mail, or otherwise, to Shane A. Farolino, or his successor, at his office at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, within fourteen (14) days of such stipulated penalties becoming choate. The fact that the State of Ohio obtains stipulated penalties under the section for violations of requirements of this Consent Order does not limit the State's ability to seek enforcement of this Consent Order through contempt or otherwise nor does it limit the State's ability to seek other civil, administrative or criminal relief for future violations of law or of this Consent Order.

#### VIII. RIGHT OF ENTRY

8. The Director or his authorized representatives, upon proper identification, may enter the facility at any reasonable time in order to inspect, investigate, take samples and pictures, examine or copy records, or to observe work being performed under this Consent Order. Entry into Defendant's facility for these purposes shall not be denied. This section in no way circumscribes or limits any legal right of access which the Director now possesses.

#### IX. RETENTION OF JURISDICTION

9. The court shall retain jurisdiction of this action for the purpose of overseeing the Defendant's compliance with the terms of this Consent Order.

#### X. COSTS

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



## XI. NOTICE

11. Any submission to the Ohio EPA required by this Consent Order, unless otherwise indicated, shall be delivered to:

- a. Ohio Environmental Protection Agency  
Southwest District Office  
40 South Main Street  
Dayton, Ohio 45402-2086  
Attn: RCRA Group Leader
- b. Ohio Environmental Protection Agency  
Central Office  
P.O. Box 1049  
1800 WaterMark Drive  
Columbus, Ohio 43266-0149  
Attn: Manager, Hazardous Waste Enforcement Section

## XII. POTENTIAL FORCE MAJEURE

12. If any event occurs which causes or may cause a delay of any requirement of Sections IV and/or V of this Consent Order, Defendant R.L. Drake shall notify the Ohio EPA, Division of Solid and Hazardous Waste Management, Attn: Manager, Hazardous Waste Enforcement Section, 1800 WaterMark Drive, Columbus, Ohio 43266-0149, in writing within ten (10) days 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 Defendant R.L. Drake to prevent or minimize the delay and the timetable by which measures will be implemented. The ten (10) days shall start to run when any of Defendant R.L. Drake's officers, agents, employees, assigns, contractors, consultants, or any person acting in concert or privity with any of the above-referenced entities, either become aware of the event or should have become aware of the event through the exercise of job duties, contractual

responsibilities or otherwise. Defendant R.L. Drake will adopt all reasonable measures to avoid or minimize any such delay.

Upon receipt of the notice referenced in the preceding paragraph, Plaintiff may agree to waive or defer one or more milestone deadlines herein or the enforcement thereof. Plaintiff, within sixty (60) days thereafter, will inform Defendant R.L. Drake of its decision in writing. Plaintiff is not bound by oral representations of Ohio EPA personnel concerning the validity of Defendant R.L. Drake's reason for delay. A decision by Plaintiff to waive or defer any milestone deadline of this Consent Order shall not be a bar to any enforcement action for Defendant R.L. Drake's failure to meet the date of the milestone as deferred. Such deferred milestone date shall be considered enforceable in place of the date specified in the milestone and shall be subject to the same stipulated penalty provisions as the original milestone date. A decision by Plaintiff to defer enforcement of any milestone deadline or stipulated penalty set forth in this Consent Order shall not constitute a waiver of enforcement action with regard to the terms of this Consent Order, unless the Plaintiff expressly so agrees.

In any action by the State of Ohio to enforce any of the provisions of this Consent Order, Defendant R.L. Drake 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, strikes, acts of war, civil disturbances and orders or actions of any court or regulatory agency. While the State of Ohio does not agree that

such a defense exists, it is, however, hereby agreed upon by Defendant R.L. Drake and the State of Ohio 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 of this Consent Order is commenced by Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances beyond the control of Defendant R.L. Drake shall rest with said Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order shall not constitute circumstances entirely beyond the control of Defendant R.L. Drake or serve as a basis for an extension of time under this Consent Order. Failure by Defendant R.L. Drake to comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved. Acceptance of this Consent Order with this Potential Force Majeure clause does not constitute a waiver by Defendant R.L. Drake of any rights or defenses it may have under applicable law.

### **XIII. TERMINATION OF STIPULATED PENALTIES**

13. The stipulated penalty provisions of Section VII shall terminate on a date not earlier than twelve (12) months from the date of certification of closure as required by Section V of this Consent Order, provided that the facility is able to demonstrate to the satisfaction of the State that it has been in total compliance with all terms of this Consent Order during the aforementioned twelve (12) month period. Should the

facility not demonstrate that it has been in total compliance with the Consent Order for this twelve (12) month period, it must demonstrate to the State that it is in total compliance with all terms of this Consent Order and all civil penalties and stipulated penalties are paid in full for some other consecutive twelve (12) month period after closure has been certified, as required by Section V of this Consent Order, in order to terminate the stipulated penalty provisions of this Consent Order. Once Defendant feels that total compliance with all terms of this Consent Order has been maintained for a twelve (12) month period after closure has been certified, Defendant may notify the Ohio EPA of its alleged total compliance over such twelve (12) month period and request that the Ohio EPA evaluate and respond within sixty (60) days of said notice to Defendant's assertion of total compliance. If within sixty (60) days of said notice the Ohio EPA fails to respond to or disagrees with Defendant's assertion of total compliance, Defendant may move the Court, pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure, to terminate the stipulated penalty provisions of Section VII of this Consent Order, provided the Court finds that Defendant has maintained total compliance with all terms of this Consent Order for a twelve (12) month period after closure has been certified. The Plaintiff takes no position as to such motion and reserves any rights it may have to oppose the motion including the basis

that twelve (12) months is, in actuality, not an appropriate time period.

ENTERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 1991

/S/ P DANIEL FEDDERS  
JUDGE, WARREN COUNTY COURT OF  
COMMON PLEAS

APPROVED:

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CERTIFIED COPY  
PAUL E. HARRISON, CLERK  
WARREN COUNTY, OHIO  
COMMON PLEAS COURT

BY Cathy Stephenson  
DEPUTY