60894247

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO EX REL. MARC DANN
Plaintiff

HAVARD REFUSE INC.
Defendant

Case No: CV-07-614111

Judge: BRENDAN J SHEEHAN

JOURNAL ENTRY

CONSENT ORDER. O.S.J.

Judge Signature Date

IN THE CUYAHOGA COUNTY, OHIO
COURT OF COMMON PLEAS

STATE OF OHIO **RICHARD CORDRAY** **OHIO ATTORNEY GENERAL**	:	**CASE NO. 07- CV-614111**
	:	**JUDGE SHEEHAN**
Plaintiff,	:	
v.	:	
HARVARD REFUSE, INC. et al.,	:	
Defendants.	:	

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio, by its Attorney General, Richard Cordray ("State" or "Plaintiff"), and Defendants Harvard Refuse, Inc. ("Harvard"), and Stanley Lojek ("Defendant Lojek") (collectively "Defendants") having consented to the entry of this Order;

NOW THEREFORE, without trial of any issues of fact or law, without any admission of any issues of law, liability or fact, and upon the consent of the Parties hereto, it is **ADJUDGED, ORDERED,** and **DECREED** as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the parties and the subject matter of this action pursuant to R.C. Chapters 3734 and 6111. Venue is proper in this Court. Solely for purposes of this Consent Order and the underlying Complaint, Defendants do not contest that the Complaint states a claim upon which relief can be granted against Defendants.

II. PARTIES

2. The provisions of this Consent Order shall apply to and are binding upon the parties to this action, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of this Consent Order whether by personal service or otherwise to the extent provided by Rule 65(D) of the Ohio Rules of Civil Procedure. The undersigned representatives of each party to this Consent Order certifies that he or she is fully authorized by the Party or Parties whom he or she represents to enter into the terms and conditions of the Consent Order and to execute and legally bind that party or parties to it.

3. Prior to entry into the trust described in Paragraph 11, Defendants shall provide a copy of this Consent Order to any person that Defendants employ to operate, close, and/or conduct post-closure care at the entire landfill site located at 7720 Harvard Ave., Cleveland, Cuyahoga County, Ohio ("Site" or "Facility"). The Receiver appointed by the court and the Trustee selected by the State to oversee the assets of Defendants as provided in Paragraph 11, shall provide a copy of this Consent Order to any person that is employed to operate, close, and/or conduct post-closure care at the entire landfill site located at the Site. The Receiver and Trustee, as appropriate, shall ensure that any agreement made with any person employed to operate, close, conduct post-closure at the Facility or for other services or work related to this Consent Order, expressly provides that the services or work shall be performed in accordance with this Consent Order and applicable federal, state, or local statutes, regulations, or ordinances.

4. The obligations of Defendants to pay the civil penalty required by this Consent Order in Paragraph 17 are joint and several but subject to the ability to pay provisions of Paragraphs 18 to 21 herein.

III. SATISFACTION OF LAWSUIT AND EFFECT OF CONSENT ORDER

5. Plaintiffs have alleged that Defendants have violated R.C. Chapters 3734 and 6111 and the rules promulgated thereunder.

6. Except as otherwise provided in paragraph 7 of this Consent Order, compliance with the terms of this Consent Order shall constitute a full release and satisfaction of any civil and administrative liability of Defendants and its successors in interest and assigns for the claims alleged in the State's Complaint or known by Ohio EPA at the time that this Consent Order is entered by the Court.

7. Nothing in this Consent Order shall be construed to limit the authority of Plaintiffs to seek relief from Defendants for: (A) claims or violations not known by the State; (B) any violations arising out of acts or omissions first occurring after the effective date of this Consent Order; or (C) claims or violations under the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. §§9601 et. seq. or R.C. 3734.20 through 3734.27 for any emergency, removal, remedial, corrective actions, or natural resource damages. Defendants retain all rights, defenses, and/or claims they may legally raise to the extent that the State seeks further relief from them in the future, or in any action brought to enforce the terms of this Consent Order.

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

9. Nothing herein shall be construed to relieve Defendants of their obligation to comply with all applicable federal, state, or local statutes, regulations, or ordinances, including but not limited to applicable permit or plan approval requirements thereunder.

IV. PERMANENT INJUNCTION

10. Except as set forth in Section V, Defendants agree and are ordered and permanently enjoined to comply with R.C. Chapters 3734 and 6111 and the rules promulgated thereunder.

V. INJUNCTIVE RELIEF

11. Within five (5) days of the execution of this Consent Order, Defendants shall give control of all of their assets, which are not exempt from bankruptcy, to the Court appointed Receiver ("Receiver"). The Receiver shall use his/her best efforts to sell all of these assets at a reasonable cost and shall deposit the proceeds into the trust described in Paragraph 12 below. The Receiver shall not be responsible for any of the requirements set forth in Paragraph 13 below.

12. Simultaneously with the execution of this Consent Order, Defendants and/or the Receiver, as appropriate, shall execute the Trust Agreement, attached hereto as Exhibit A. The State, in its sole discretion, may appoint or replace the Trustee under the Trust Agreement (the "Trustee"). The Trustee shall have such powers as provided in the Trust Agreement.

13. If Defendants do not enter into the Trust Agreement referenced above in Paragraph 12, Defendants shall immediately do the following:

i. Within three hundred and sixty-five (365) days of the entry of this Consent Order, Defendants shall cut back the slopes of the Facility to at least a 4:1 ratio along Mill Creek and implement erosion controls required to permanently stabilize the new slopes. Erosion controls on any given portion of the slope must be implemented within two days of that portion being brought to final grade;

ii. Within thirty (30) days of entering into this Order, Defendants shall submit to Ohio EPA detailed plans for a perimeter leachate collection system to collect all leachate prior to its introduction to Mill Creek or other waters of

the State and send it to the local POTW. Defendants shall address all plan deficiency comments from Ohio EPA within 30 days. Within 60 days of receiving plan approval from the Ohio EPA, Defendants shall begin construction of the perimeter leachate collection system. Within 180 days of beginning installation of the perimeter leachate collection system, Defendants shall complete construction.

iii. Within two hundred and seventy (270) days of entry of this Consent Order, Defendants shall complete the required Site Investigation Report as agreed to in the 2001 Consensual Directors Final Findings and Orders.

iv. Within three hundred and sixty (360) days of entry of this Consent Order, Defendants shall install, update and maintain the newly installed gas extraction system at the Facility in accordance with the Explosive Gas Management Plan approved for the Facility; and

v. Within three hundred and sixty (360) days of entry of this Consent Order, Defendants shall repair and then maintain the integrity of the cap system at the facility in accordance with Ohio Adm. Code 3745-27-14(A)(2).

vi. Within sixty (60) days of entry of this Consent Order, Defendants shall submit an application for an individual NPDES permit for the Facility and comply with the terms of this permit once Ohio EPA issues it; and

vii. Within sixty (60) days of entry of this Consent Order, Defendants shall submit a Storm Water Pollution Prevention Plan for approval by Ohio EPA and, upon approval, comply with the terms therein.

14. The Receiver shall have control over all of the property assets, and, upon sale, shall deposit the proceeds into the Trust. The Trustee shall have control over all of the liquid assets deposited in the Trust.

15. The Trustee shall control the proceeds from the sale of the assets provided by Defendants and make all reasonable efforts to maximize their value for the benefit of the State.

16. The proceeds of the sale of the Defendants' assets contributed to the Trust by the Receiver shall be used by the State for the closure, post-closure care, clean up or remediation of the Facility.

17. Ohio EPA, the Cuyahoga County Health Department, the Cleveland Health Department, and any contractors hired by these entities to perform work at the Facility shall have complete and unfettered access to the Facility.

VI. CIVIL PENALTY

18. Pursuant to R.C. 3734.082 but subject to the ability to pay determinations set forth in Paragraphs 20 through 23, Defendants are ordered and enjoined to pay a total civil penalty to the State in the amount of Five Hundred Thirty-Five Thousand Forty-Nine Dollars ($535,049.00).

19. Payment of the civil penalty shall be made by delivering to Karen Pierson, Paralegal, or her successor, Office of the Attorney General, 30 E. Broad Street, 25th Floor, Columbus, Ohio 43215, certified checks or money orders for the appropriate amounts, payable to the order of "Treasurer, State of Ohio."

20. Beginning on each May 30 following the anniversary of the entry of this Consent Order, Defendant Harvard, unless dissolved pursuant to state law, shall through the Receiver submit to an ability to pay determination for any unpaid civil penalties assessed pursuant to Paragraph 18.

21. Beginning on each May 30 following the anniversary of the Consent Order and continuing for 5 consecutive years, Defendant Lojek shall submit (in accordance with Section VIII

herein) to an ability to pay determination for any unpaid civil penalties assessed pursuant to Paragraph 18. If Defendant Lojek's taxable income, as defined by Section 63 of the Internal Revenue Code, for the preceding tax year exceeds $60,000.00 (the "Taxable Income Threshold"), Defendant Lojek shall contribute the taxable income in excess of the Taxable Income Threshold towards payment of any unpaid civil penalties assessed pursuant to Paragraph 18. In determining the Taxable Income Threshold (i) there shall be no deduction for business expenses (or if a business expense deduction is taken by Defendant Lojek on his annual federal income tax return, such business deduction shall be disregarded for purposes of calculating the Taxable Income Threshold) and (ii) any charitable contribution deduction shall not exceed $6,700.00 (or if a charitable contribution deduction is taken by Defendant Lojek on his annual federal income tax return in excess of $6,700, the excess deduction over $6,700 shall be disregarded for purposes of calculating the Taxable Income Threshold).

22. In his annual ability to pay determinations, Defendant Lojek may claim a financial emergency, including but not limited to unexpected medical bills, and may request that a contribution to any unpaid civil penalties be waived by the State. The State shall evaluate Defendant Lojek's claim in good faith and shall make a determination whether there is a financial emergency and shall determine the amount of the excess income over the Taxable Income Threshold, if any, that will be waived. The determination by the State of whether a financial emergency exists and the amount that will be waived shall not be unreasonably withheld.

23. After the fifth consecutive ability to pay determination, Defendant Lojek is released from any further obligation to pay any unpaid civil penalties assessed pursuant to Paragraph 18.

VII. STIPULATED PENALTIES

24. In the event that Defendants fail to comply with any of the requirements of Sections IV, V and/or VI of this Consent Order, the Defendant violating the Consent Order shall

immediately and automatically be liable for and shall pay a stipulated penalty that is meant to be coercive in nature in accordance with the following schedule:

a. The violating Defendant shall pay three hundred fifty dollars ($350.00) per day for each day any requirement of this Consent Order is violated up to thirty (30) days;

b. From thirty-one (31) days through ninety (90) days, the violating Defendant shall pay six hundred dollars ($600.00) per day for each day any requirement of this Consent Order is violated;

c. After ninety (90) days, the violating Defendant shall pay one thousand dollars ($1,000.00) per day for each day any requirement of this Consent Order is violated.

25. The Plaintiff may waive any stipulated penalty for good cause shown. Stipulated penalties due under this Consent Order shall be paid by certified check payable to "Treasurer, State of Ohio" and mailed to Karen Pierson or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215 within fifteen (15) days from the date the failure to meet the requirement is cured.

VIII. NOTICES

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

As to Plaintiff:

Ohio Environmental Protection Agency
Northeast District Office
Division of Solid and Infectious Waste Management
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: Unit Supervisor, DSIWM

As to Defendants:

Michael A. Cyphert, Esq.
WALTER & HAVERFIELD LLP
The Tower at Erieview
1301 E. Ninth Street, Suite 3500
Cleveland, OH 44114-1821

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

X. EFFECTIVE DATE

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

XI. COSTS

29. Defendants are hereby ordered to pay the court costs of this action.

XII. RETENTION OF JURISDICTION

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

XIII. SIGNATORIES

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

IT IS SO ORDERED

JUDGE SHEEHAN
CUYAHOGA COUNTY
COURT OF COMMON PLEAS

12·17·09
DATE

APPROVED BY:

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

NICHOLAS J. BRYAN (0079570)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
Telephone: (614) 466-2766
Facsimile: (614) 466-1926

Attorney for Plaintiff State of Ohio

MICHAEL CYPHERT (0007086)
Walter& Haverfield LLP
The Tower at Erieview
1301 East Ninth Street
Suite 3500
Cleveland, OH 44114-1821

Attorney for Defendants

HARVARD REFUSE INC
By: Stanley Lojek
Print Name: Stanley Lojek
Title: President

Sign: _____

RECEIVED FOR FILING
DEC 17 2009
GERALDINE. FUERST, CLERK
By _____ Deputy

STANLEY LOJEK

Stanley Lojek
(In His Individual Capacity)

Exhibit A

TRUST AGREEMENT

Check One: ☐ Standby Trust ☐ Funded Trust

Trust Account Number: _____

"Trust agreement. The "agreement", entered into as of _____
Effective date

by and between Stanley Lojek & Harvard Refuse, Inc.
Name of owner or operator

a(n) Akron Individual and Cleveland Corporation, the "grantor",
State where business is located — Choose *one*: corporation, association, partnership, proprietorship

and _____
Name and address of financial institution acting as trustee

_____

_____ the "trustee".

Whereas, the Ohio EPA has established certain rules applicable to the Grantor, requiring that the owner or operator of a solid waste facility provide assurance that funds will be available when needed for final closure and/or post-closure care, and/or corrective measures of the facility,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the trustee who enters into this Agreement and any successor trustee.

(c) The term "Director" means the director of the Ohio EPA, or his designee.

Section 2. Identification of Facilities. This Agreement pertains to the facilities and/or noncontiguous unit(s) of a sanitary landfill facility identified on the attached **Schedule A**. Said Facilities specifically include what is commonly known as the

Harvard Refuse Landfill,
Facility Name

located at 7720 Harvard Ave. Cleveland, Cuyahoga County, Ohio
Facility Address, Township, County

("Harvard Refuse").
Facility Name

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Ohio EPA. The Grantor and the Trustee intend that no third party shall have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in **Schedule B** attached hereto. Such property shall be the Grantor's initial/sole payment into the Fund. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund will be held by the Trustee, in trust, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Ohio EPA.

Section 4. Payment for Closure and Post-Closure Care and Corrective Measures. The Director, at his non-reviewable discretion, may allow, or provide for, the disbursement of any proceeds from the trust fund for the payment of any closure, post-closure care or other costs associated with environmental remedial activities or corrective measures at

Harvard Refuse
Facility Name

The Trustee will reimburse the Director or other persons as specified by the Director from the Fund for closure, post-closure, environmental remedial activities or corrective measures expenditures in such amounts as the Director will direct, in writing. Upon refund, such funds will no longer constitute part of the Fund as defined herein.

Section 5. Remaining Monies. Any monies remaining in the trust fund after the completion of the post-closure care period shall be disbursed to the Ohio EPA for payment into the Environmental Remediation Fund established pursuant to O.R.C. Section 3734.281, or any successor fund identified by the Ohio EPA.

Section 6. Payment Comprising the Fund. Payments made to the Trustee for the Fund will consist of cash or securities acceptable to the Trustee.

Section 7. Trustee Management. The Trustee will invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Director may communicate in writing to the Trustee periodically, subject, however, to the

provision of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee will discharge its duties with respect to the Trust Fund solely in the interest of the Beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

(a) Securities or other obligations of the Grantor or any other owner or operator of the facilities or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. Section 80a-2(a), will not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 8. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer periodically any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. Sections 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 9. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee will be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates

representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentally thereof, with a Federal Reserve Bank, but the books and records of the Trustee will at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal of State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 10. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund will be paid from the Fund. All other expenses, proper charges, and disbursements, incurred by the Trustee in connection with the administration of this trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee will be paid from the Fund. Expenses, proper charges, and disbursements include fees for legal services, rendered to the Trustee and the compensation of the Trustee to the extent the Grantor fails to compensate the Trustee pursuant to section 13.

Section 11. Annual Valuation. The Trustee will annually, not later than thirty days prior to the anniversary date of the establishment of the Fund, furnish to the Grantor, the Director a statement confirming the value of the Trust. Any securities in the Fund will be valued at market value as of no more than sixty days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee not later than ninety days after the statement has been furnished to the Grantor and the Director will constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 12. Advice of counsel. The Trustee may periodically consult with counsel with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee will be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 13. Trustee Compensation. The Trustee will be entitled to reasonable and customary compensation from the Fund for the Trustee's services.

Section 14. Successor Trustee. The Trustee may resign or the Director may replace the Trustee, but such resignation or replacement shall not be effective until the Director has

appointed a successor Trustee and this successor accepts the appointment. The successor Trustee will have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment and the director's written approval, the Trustee will assign, transfer, and pay over to the successor Trustee the funds and properties then constituting the fund. If for any reason the Director cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor Trustee shall specify the date on which it assumes administration of the Trust in a writing sent to the Director, and the present Trustee by certified mail not later than ten days before such change becomes effective. The Director's written approval must be given prior to the 10 days notice provided by the successor trustee. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section will be paid as provided in section 10.

Section 15. Instructions to the Trustee. All orders, requests, and instructions by the Director to the Trustee will be in writing, signed by the Director and the Trustee will act and be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee will have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Director hereunder has occurred. The Trustee will have no duty to act in the absence of such orders, requests and instructions from the Director except as provided for herein.

Section 16. Amendment of Agreement. There shall not be any further modifications or amendments to this Trust Agreement for the trust fund without the Director's written approval. This Agreement may be amended by an instrument in writing executed by the Director and the Trustee, provided that no such amendment may require the Grantor to make additional payments to the Fund or to otherwise make payments in furtherance of the purposes of this Agreement.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this trust will be irrevocable and will continue until terminated at the written agreement of the Trustee and the Director. Upon termination of the Trust, all remaining Trust property, less final Trust administration expenses, will be delivered to the Environmental Remediation Fund established pursuant to O.R.C. Section 3734.281, or any successor fund identified by the Ohio EPA.

Section 18. Immunity and Indemnification. The Trustee will not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the Director issued in accordance with this agreement. The Trustee will be indemnified and saved harmless from the Trust Fund, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense.

Section 19. Choice of Law. This Agreement will be administered, construed, and enforced according to the laws of the State of Ohio.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement will not affect the interpretation or the legal efficacy of this Agreement.

Section 21. Compliance with Administrative Code. The parties below certify that the wording of this Agreement is identical to the wording specified in paragraph (A)(1) of Rule 3745-27-17 of the Administrative Code, as such rule was constituted on the date first above written, except as modified by a Consent Order entered on or about _____, in the
Date

Case captioned as State of Ohio, ex rel. Marc Dann v. Harvard Refuse Inc. & _____
Complete case title and Court of Jurisdiction.

Stanley Lojek; Case No. 07-CV-614111,

COPY
ENVIRONMENTAL PROTECTION AGENCY
OHIO
COPY

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written.

Grantor

_____
Signature(s) of grantor(s)

_____
Title(s) of grantor(s)

Attest:

_____
Signature of Witness

_____
Title of Witness

Grantor Seal (if available)

Trustee

_____
Signature(s) of Trustee(s)

_____
Title(s) of Trustee(s)

Attest:

_____
Signature of Witness

_____
Title of Witness

Trustee Seal (if available)

Certification of Acknowledgment

State of _____ County of _____

On this _____ before me personally came _____
Date Name of Owner or Operator (grantor)

to me known, who, being by me duly sworn, did depose and say that she/he resides at

_____
Address

_____
City, State, Zip

that she/he is _____ of _____,
Title of owner/operator Name of Business

and the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that she/he signed her/his name thereto by like order.

_____
Signature of Notary Public

Seal:

SCHEDULE A

Facility Name _____

Facility Address _____

City, State, Zip Code _____ _____ _____

Township _____

County _____, Ohio

ENVIRONMENTAL PROTECTION AGENCY
OHIO

SCHEDULE B

_____ $_____

Amount of Initial Deposit in words Amount in $$$$

ENVIRONMENTAL PROTECTION AGENCY
OHIO
PY COPY CO
COPY COPY

60894278

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO EX REL. MARC DANN
Plaintiff

HAVARD REFUSE INC.
Defendant

Case No: CV-07-614111

Judge: BRENDAN J SHEEHAN

JOURNAL ENTRY

ORDER APPOINTING RECEIVER. O.S.J.

Judge Signature Date

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, ex rel. RICHARD CORDRAY OHIO ATTORNEY GENERAL, Plaintiff, vs. HARVARD REFUSE, INC., et al., Defendants.	)))))))))))	CASE NO. 07-CV-6141111 JUDGE BRENDAN J. SHEEHAN

ORDER APPOINTING RECEIVER

Upon the Joint Motion of the parties for an Order Appointing Receiver regarding (i) the sale of all the personal and real property assets of Defendant Harvard Refuse, Inc. ("HRI") and the sale of certain assets of Defendant Stanley Lojek ("Lojek") not exempt from bankruptcy; (ii) authorization for the maintenance and rental of HRI's residential properties until sold; (iii) authorization for the maintenance of the HRI landfill properties prior to sale or until assumption of responsibility by the State of Ohio or authorized Health District; (iv) authorization for leasing and other operations of the receivership, both in and outside of the ordinary course of business; (v) the method for payment of the Receiver and professionals retained by him; and (vi) for such other and further purposes as are necessary to maintain the property safely and professionally, and the Court having considered the statements of the parties, and being duly advised in the premises, now finds as follows:

1. Plaintiff State of Ohio, ex rel. Richard Cordray, Ohio Attorney General ("Plaintiff" or "State") filed suit against Defendants HRI and Lojek (together the "Defendants")

on January 26, 2007 to remedy certain alleged violations of Ohio's Solid Waste Laws in R.C. Chapter 3734, Ohio's Water Pollution Control Laws in R.C. Chapter 6111, and the rules adopted pursuant to these two chapters.

2. On October 19, 2009, the parties informed the Court that a settlement had been reached in this matter whereby all of the assets of Defendant HRI and certain assets of Defendant Lojek are to be liquidated with the proceeds placed in a trust for the benefit of the State and used by the State for remediation of the HRI Site.

3. The assets of Defendant HRI consists of personal property (e.g. equipment), real property comprising the HRI site located at 7720 Harvard Avenue, Cleveland, Ohio (the "HRI Site") and fifteen (15) residential rental properties adjacent to the HRI Site. These residential rental properties are 100% occupied and rented. Defendant Lojek's assets that are not exempt from bankruptcy include an undivided 1/3 interest in a Richfield, Ohio property, permanent parcel No. 50-01569, and a 25% shareholder interest in GBBL, Inc., the parent company of Defendant HRI.

4. The HRI Site is comprised of a closed municipal solid waste ("MSW") landfill and a closed construction and demolition debris ("C&DD") landfill. The MSW landfill is subject to post-closure care and maintenance, including the operation and maintenance of an explosive gas collection and destruction system. The Receiver requires authorization to perform post-closure care and maintenance of the landfill units until such time as care and maintenance is assumed by the State or its authorized agent.

5. The Receiver must hire professionals to assist him in the conduct of the receivership.

6. It is in the best interest of all parties to the case that the Court appoint a Receiver including the terms of conduct of the Receivership, appointment and payment of the Receiver

and his professionals, and an injunction to prevent, among other things, (1) lawsuits filed against the assets of this receivership; and (2) the precipitous shutoff of utility services; and (3) interference in this receivership's affairs by extraneous or competing litigation in other courts.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED,

1. Pursuant to mutual agreement of the parties and their joint motion to appoint Mark Dottore as receiver in this action, Mark E. Dottore (the "Receiver") is hereby appointed the receiver for all of the real and personal property, any and all cash and cash deposits, equipment, furniture, fixtures and deposit accounts held by third parties, the general intangibles, and all other assets arising out of, or pertaining to Defendant HRI, of whatever kind or nature, and the current assets of Defendant Lojek as described above that are not exempt from bankruptcy. The Receiver shall have all authority and power of a receiver under Ohio law and as ordered further by this Court. (Hereinafter, all of the assets described in this paragraph shall be referred to as the "Property").

2. The Receiver shall take immediate possession, control, management, operation and charge of the Property. Pursuant to Ohio Revised Code Section 2735.04 and the Orders of this Court, and under the direction and control of this Court, the Receiver shall have the following powers and duties:

a. The receiver shall take immediate possession, control, management and charge of the Property's accounting books and records of whatever nature and wherever located, in the possession of Defendants or any other person or entity, including all information regarding the assets, liabilities, equity, income and expenses of the Property. The Receiver shall take immediate possession, control, management and charge of all of the Property's financial statements, (whether consolidated or by individual entity), ledgers and journals, balance sheets, trial balances, states of cash flows, income statements, statements of retained earnings, accounting journals

and books of original entry, including but not limited to (1) accounts receivable agings, rent rolls, and any other documentation which indicate the amounts owing from lessees and other debtors of the Property on accounts receivable and from whom such amounts are or were owing and when any amounts were collected and deposited; (2) fixed asset ledgers, schedules, records, documentation and/or appraisals of the Property's equipment, motor vehicles, boats and their engines, accessories, furniture inventory, furnishings and supplies; (3) inventory listings or other detail; (4) all information and documentation which relates or pertains to any checking, saving, banking and money management accounts of any kind or nature of the Property or into which any proceeds of the collection or sale of any asset of the Property have been deposited; (5) all accounts payable documentation and information and all correspondence or written documents regarding negotiations with current accounts or proposed accounts; (6) all information of whatever type or nature, regarding the payroll and benefits of the employees of the Property, including wage or salary information, medical insurance information, child support payments or other employee deductions withheld or to be withheld, and all information regarding the trust fund or withholding taxes whether federal, state, or local and any information regarding any and all of the employer matching obligations or the employer payroll tax obligations; (7) all information and documentation of any asset transfers by Defendants any time in the past; (8) all information and documentation regarding the federal, state and local tax liabilities of the Property, including any and all

federal, state and local tax returns filed or unfiled, and any documents generated during the preparation and filing of tax returns; (9) all contracts and leases pertaining to the Property and/or to which Defendants are a party; (10) all information and documentation of any other financial transaction or interest in and any asset of the Property which may be necessary or pertinent to the Receiver's operation and management of Defendants' assets; and (11) any documentation that relates or pertains to Defendants and is kept in the ordinary course of its business in connection with the record-keeping or accounting. The information described in this subparagraph shall hereinafter be referred to as the "Books and Records."

b. The Receiver shall take immediate possession, control, management and charge of the Property, including all assets and property appertaining thereto consisting of all personal property, real property (including leasehold interests), all cash or cash equivalents including, but not limited to, rights, title and interest in and to all bank accounts, all accounts and notes receivable, all inventory of any type or nature, all furniture, fixtures, equipment, computers (hardware and software), and all general intangibles, including, but not limited to, all licenses and liquor licenses owned or utilized by the Property, rights in leases, rights to proceeds from any insurance or sales of equipment or other asset, all choses in action and causes of action, including avoidance actions for transfers of any of the assets of the Property for less than equivalent value against the transferees of those assets, and any other asset or interest owned by Defendants or in which Defendants assert an interest which has any value which pertains to

the Property (collectively, "the Assets"), and the Books and Records and the Assets are hereby placed in *custodia legis* and are subject to the exclusive jurisdiction of this Court. Receiver shall not be charged with the responsibility to take possession of any real estate or other assets which had or have existing hazardous or toxic contamination nor shall the Receiver be required to take possession of any hazardous or toxic materials owned or used by the Defendants. Should the Receiver elect to take possession of, or exercise his dominion and control over, any real estate, hazardous or toxic materials, pollutants or contaminants, he shall do so in his capacity as Receiver for the Property.

c. The Receiver shall have the authority to operate and manage the Property as he deems prudent in his sole discretion, subject to further order of this Court. The Receiver shall preserve and care for any and all of the Property and utilize any and all of the Property to preserve and maximize the value of the Property.

d. The Receiver is authorized to collect all profits, rents, receivables and revenues of any nature whatsoever generated from the Property and/or the business operations of the Property and to pay all necessary expenses relating to said operations, including his fees and the fees of his attorneys, accountants and other professionals, as he deems prudent in his sole discretion, from funds in his possession, whether such funds are derived from the operation or the sale of the Property.

e. The Receiver shall have the authority to maintain or purchase insurance from any agent or carrier, of any type reasonably necessary or desirable,

on all the Property, subject to maintaining adequate coverage appropriately and naming appropriate loss payees as any properly perfected security interests provided within the corresponding security agreement.

f. The Receiver is authorized to establish or maintain one or more bank accounts in the Receiver's name for its operations as Receiver in this matter at any federally insured bank as reasonably needed to engage in business operations on behalf of the Property. The Receiver shall keep a true and accurate account of any and all receipts and disbursements which the Receiver shall receive or make as Receiver in the course of the operation of the Property.

g. The Receiver is hereby authorized to negotiate, enter into and execute leases of any portion or part of the premises of the HRI Site, without further order of this Court, at rental rates and for terms of years consistent with those that the market will bear, which he, in his business judgment concludes are in the best interest of the creditors of the receivership estate.

h. The Receiver is authorized to negotiate and effect an orderly sale, transfer, use or assignment of all or a portion of any of the Property in or outside of the ordinary course of business of Defendants and, from the proceeds thereof, to pay the secured and unsecured indebtedness which arises during the course of the Receiver's operation of the Property, which shall be paid first from the sale proceeds, together with the fees and expenses of the Receiver and his attorneys, accountants and other professionals. The Receiver is authorized to conduct such a sale of the Assets in any manner

which he, in his good faith and reasonable discretion, believes will maximize the proceeds received from the sale.

i. The Receiver is authorized to institute, prosecute, or intervene in any lawsuit or summary proceeding against any other person(s) or entity(ies) to preserve and/or maximize the value of the Property or to obtain possession of any of the Property unlawfully in the possession of third parties.

j. The Receiver is authorized but not required to defend actions against the Property or the Defendants and may incur expenses to defend such actions to the extent that he believes, in his sole discretion, it will protect and preserve the Property.

k. The Receiver is authorized to perform pursuant to the terms of any existing contracts executed by Defendants in connection with the Property to the extent that the Receiver determines, in his sole discretion, that such performance will preserve and maximize the value of the Property. The Receiver may reject contracts not deemed to be in the interest of creditors of the estate, and the holder of any contract so rejected shall be allowed a claim as an unsecured creditor of the Property, said claim to be calculated consistent with the law.

l. The Receiver is authorized to employ any assistants, servants, agents, counsel or other persons deemed necessary or desirable to assist the Receiver in diligently executing the duties imposed upon the Receiver by this Order and Ohio law.

m. The Receiver is authorized to repair the Property, and/or its fixtures and appurtenances as needed, or cause construction upon the property, without further order of this Court. Such repairs shall be made at the time and in the way that the Receiver, in his sole discretion, deems reasonable and necessary in the circumstances. If such repairs or construction are undertaken by the Receiver, consistent with Rule 26 of the Local Rules of the General Division of the Cuyahoga County Common Pleas Court, the Receiver may be permitted additional compensation upon Order of this Court.

3. Notwithstanding the foregoing, the Receiver and the Receivership estate shall not be liable for the payment of taxes, assessments or utility charges pre-dating the date of this Order. Any individual or entity receiving a copy of this Order is hereby enjoined and restrained from discontinuing service to the Receiver or the Receivership estate based upon the non-payment of such taxes or utilities prior to the date of this Order and from attempting to collect taxes and utility charges from the Receiver pre-dating the date of this Order.

4. Defendants and any persons, firms or entities acting under the direction of such defendants, and any third parties, persons, firms or entities, shall, upon presentation of a copy of this Order, identify the location of and deliver to the Receiver, any and all receivership property, both the Books and Records and the Assets, in the possession or under the control of such parties; and all persons are enjoined and restrained (a) from payment of any amounts owing to Defendants relating to the Property to anyone other than the Receiver, and (b) from in any way disturbing or interfering with the collection, management or sale of any of the Assets.

5. All creditors, claimants, bodies politic, parties in interest, and their respective attorneys, servants, agents, and employees, and all other persons, firms, and corporations be, they

hereby are, jointly and severally, enjoined and stayed from commencing or continuing any action at law or suit or proceeding in equity to foreclose any lien or enforce any claim against the Property, or its Books and Records or Assets, or against the Receiver, in any court. The parties are further stayed from executing or issuing or causing the execution or issuance out of any Court of any writ, process, summons, attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with, or enforcing any claim or lien upon the Property owned by or in the possession of Defendants, or the Receiver, and from doing any act or thing whatsoever to interfere with the Receiver in the discharge of his duties in this proceedings or with the exclusive jurisdiction of this Court over the Property, its Books and Records and Assets and the said Receiver.

6. Parties in this case and their respective attorneys, servants, agents and employees, and all other persons, firms, and corporations be, they hereby are, jointly and severally, enjoined and stayed from commencing any action at law or suit or proceeding in equity in any Court or to prosecute any claim, or to execute or issue or cause the execution or issuance out of any Court of any writ, process, summons, attachment or subpoena, against Mark E. Dottore, the individual, or any entity in which he holds an interest, without first obtaining permission of this appointing court. Such a lawsuit may be used to intimidate the Receiver and therefore interfere with the discharge of his duties in this proceeding. Upon a request to sue Mark E. Dottore, the individual, or an entity in which he holds an interest, by any party, the Court will undertake a review of the facts and circumstances, and upon notice and hearing, determine whether the suit is meritorious or interposed for the purpose of harassment of the Receiver.

7. Defendants and their agents and employees, and any other party, shall turn over to the Receiver, as soon as possible or within three (3) days from the date of this Order, any and all Books and Records.

8. Defendants and their agents and employees, and any other party, shall turn over to the Receiver, as soon as possible or within three (3) days from the date of this Order, all sums in existence on the date hereof that are related or pertain to, or derived from the Property, including, but not limited to (a) all cash on hand; (b) all cash equivalents and negotiable instruments (such as checks, notes, drafts or other related documents or instruments); and (c) all sums held in accounts in any financial institutions, including but not limited to, all sums of any kind relating to the use, enjoyment, possession, improvement or occupancy of all or any portion of the Property.

9. Except as directed by the Receiver, defendants, their affiliates, agents, officers, directors, shareholders, members, employees, representatives or creditors, and all other persons or entities, are hereby prohibited from taking any act for or on behalf of Defendants, interfering in any way with the acts of the Receiver, and from in any way, manner or means wasting, disposing of, transferring, selling, assigning, pledging, canceling, concealing, interfering with, or hypothecating any of the Books and Records or the Property. Upon the request of the Receiver, the foregoing persons and entities shall cooperate and affirmatively assist the Receiver in making available to the Receiver or his agents, the Books and Records and the Property. Nothing in this paragraph shall be construed to require a waiver of any attorney-client privilege.

10. The Receiver, and his agents, including his counsel and any accountants that are appointed by the Court, shall be entitled to reasonable compensation for services rendered and reimbursement for expenses incurred which are (a) related to the Receiver's duties, rights, and obligations under this order or any future orders of the Court and applicable law; (b) related to the administration, management, protection or liquidation of the Property; or (c) the defense or prosecution of any claim or suit brought by or against the Receiver or by the Receiver against any person or entity. Such compensation of the Receiver and his agents, his counsel and his

accountants shall be paid consistent with Paragraphs 11 through 14 of this Amended Order Appointing Receiver and awarded from the Receivership estate and/or pursuant to Ohio Revised Code Section 2333.27. If the Receivership does not have funds to pay the fees and expenses of the Receiver and his attorneys, accountants and other professionals, those fees will be assessed as costs of this case.

11. The Receiver shall be compensated based on his normal billing rate of $225.00 per hour and the Receiver shall be reimbursed for all reasonable and necessary out of pocket costs and expenses. From time to time, the Receiver utilizes the assistance and expertise of persons on the payroll of Dottore Companies. These individuals are billed at an hourly rate consistent with or below the rates charged by others in this community with similar skills and ability. Administrative personnel are charged at a rate of $80.00. Thomas Dottore bills at the rate of $175.00 per hour and Charles Dottore bills at the rate of $175.00 per hour. The Receiver will utilize the services of Mr. David Linscott, CPA, at the rate of $215.00 per hour. Mr. Linscott was formerly a partner with a well known regional accounting firm, and he now is CFO of Dottore Companies, LLC.

12. Routine accounting services are included in the normal hourly billing rates charged by the Receiver. Routine accounting services include bookkeeping, bank account review and reconciliation, and the filing of periodic reports required pursuant to Local Rule 26. The filing of tax returns, other governmental reporting requirements, assistance to any governmental law enforcement agency, and other non-bookkeeping accounting functions will be charged at ordinary, hourly rates.

13. The Receiver's counsel in this matter should have experience in receivership matters and will charge the Receivership at their ordinary and customary rates, and will work to promote efficiency in the proceedings wherever possible.

14. The Receiver and his attorneys, accountants, or other professionals hired by him, may, at the Receiver's option, file with this Court monthly applications (or less frequent, if he deems appropriate), for payment of fees and expenses incurred in the conduct of this receivership estate, and each such application shall be served via U.S. Mail upon the Plaintiff, the Defendants, and other interested parties who have requested that such applications be served upon them. The Receiver shall be authorized to pay the fees and expenses requested by the Receiver or his attorneys, accountants or other professionals in any such application after ten (10) days have expired after service has been effected, without further order of this Court. If any party or person shall file an objection to the fees and expenses of the Receiver, or of his attorneys, accountants or other professionals, the Court shall consider the objection in the ordinary course. Pending consideration of the objection, the Receiver shall be authorized to pay any portion of the fees and expenses not subject to the objection.

15. The Receiver shall have full and unrestricted access to all of the Assets, and Defendant and its officers, directors, shareholders, employees and agents, and any other party, are directed to take all steps necessary to give the Receiver access to the premises and to give the Receiver all keys to the facilities.

16. The Receiver may, from time to time, make payments to creditors or account of pre-receivership claims, especially secured creditors, according to their interests as they may appear. The Receiver, in his sole discretion, shall determine when or if it is appropriate to make payments to creditors, if any. All payments made prior to the conclusion of the Receivership shall be made after application to the Court and pursuant to Court Order.

17. The Receiver shall, under his authority to operate and manage the business of Defendant HRI, operate and manage such business in compliance with applicable statutes.

Nothing in this Order shall be read or interpreted, however, to abrogate the Receiver's immunities from personal liability for conduct related to his receivership duties.

18. The Bond of the Receiver is set at $100.00.

19. The terms of this Order shall continue in full force and effect unless and until further order of this Court.

IT IS SO ORDERED.

12-17-09
Date

JUDGE

RECEIVED FOR FILING

DEC 17 2009

GERALDINE FUERST, CLERK
By _____ Deputy