NANCY S. REINBOLD
CLERK OF COURTS
STARK COUNTY, OHIO

2009 SEP 30 AM 10:59

COMMON PLEAS
NTY, OHIO

STATE OF OHIO
RICHARD CORDI
OHIO ATTORNEY

CASE NO. 2007 CV 4762

JUDGE FORCHIONE

v.

REPUBLIC SERVICES OF
OHIO II, LLC

CONSENT ORDER

Defendant.

The Complaint in the above-captioned matter having been filed and the Plaintiff State of Ohio, by its Attorney General, Richard Cordray ("Plaintiff" or "State of Ohio") and Defendant Republic Services of Ohio II, LLC ("Republic II"), d/b/a Countywide Recycling & Disposal Facility ("CWRDF" or "Defendant"), have consented to entry of this Consent Order.

NOW, THEREFORE, without hearing 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 Chapters 3704 and 3734 or the Ohio Revised Code. Venue is proper in this Court.

A TRUE COPY TESTE:
NANCY S. REINBOLD, CLERK
By [illegible] Deputy
Date 9-30-09

II. PARTIES

2. Republic II is an Ohio limited liability company engaged in the business of non-hazardous solid waste disposal and owns and operates a solid waste landfill d/b/a CWRDF. CWRDF is located at 3619 Gracemont Avenue, East Sparta, Stark County, Ohio (the "Facility").

3. The provisions of this Consent Order and Final Judgment Entry ("Consent Order") shall apply to, and are binding upon Republic II and the State of Ohio (hereinafter the "Parties"), and their successors in interest.

III. PURPOSE OF THE CONSENT ORDER AND FINAL JUDGMENT ENTRY

4. The State of Ohio has alleged that Republic II has violated various provisions of Ohio law, including but not limited to R.C. Chapters 3704 and 3734 and Ohio Administrative Code Chapters 3745-31, 3745-35 and 3745-27, related to its ownership and operation of CWRDF. Republic II denies all such allegations. In the interest of avoiding protracted litigation, the Parties have agreed to fully and finally resolve all issues or allegations of non-compliance at CWRDF without adjudication of any issues of law, liability or fact.

5. The September 30, 2009, Director's Final Findings and Orders, as modified by the Director ("September 30, 2009 DFFO's"), shall remain in full force and effect. Pursuant to the September 30, 2009 DFFO's the Director may issue additional final actions to address conditions arising from or related to the Remediation Unit. Republic II has waived its right to appeal the September 30, 2009 DFFO's and subsequent DFFOs arising from or related to the Remediation Unit at the CWRDF.

6. Except as provided in Paragraphs 5 and 7 of this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil and administrative liability of Defendants and their successors in interest and assigns for the claims alleged in the

State's Complaint, any claims known to the State and any violations or alleged violations of Ohio law which are being addressed or otherwise corrected through implementation of procedures contained in the operation and maintenance plan approved by U.S. EPA and issued as an interim remedy by the Director pursuant to the September 30, 2009 DFFO's.

7. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief from Defendants for: (A) claims or violations not referenced in the Complaint that were not known to the State; (B) any violations arising out of acts or omissions first occurring after the effective date of this Order; (C) claims or violations under the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. §§9601 et. seq., R.C. 3734.20 through 3734.27 for any emergency, removal, remedial, natural resource damages or corrective actions, (D) claims or violations related to the release of pollution or wastes derived constituents from the Facility to waters of the state; (E) preliminary relief to address conditions arising from or related to the 88 acre Remediation Unit at the CWRDF; or (F) criminal liability. The State reserves the right to seek contempt sanctions from this Court if Defendant fails to comply with any provision of this Consent Order. Except as specifically provided in this Consent Order, or in Director's Final Findings and Orders, Defendant has entered into with the State of Ohio including the Ohio EPA, Defendant retains all rights, defenses and/or claims it may legally raise to the extent that the State seeks further relief from Defendant in the future, or in any action brought to enforce the terms of this Consent Order.

8. Except as provided in Paragraphs 5 and 7 of this Consent Order, and in consideration of the injunctive relief set forth in Section IV, for the payment set forth in Section VI, and for other good and valuable consideration, the sufficiency of which the State of Ohio hereby acknowledges, the State of Ohio does hereby fully remise, release, acquit, and forever

discharge Republic II, its parents, subsidiaries, affiliates, employees, successors in interest and assigns, from all actions and claims alleged in the State's Complaint filed on the same date, any claims known to the State, and any violations or alleged violations of Ohio law raised in the State's Complaint which are intended to be addressed or otherwise corrected through implementation of procedures contained in the operation and maintenance plan to be approved by U.S. EPA and issued as an interim remedy by the Director pursuant to the September 30, 2009 DFFO's.

9. The parties further agree that the entry of this Consent Order and compliance with its terms shall resolve the alleged violations referenced above, and that, as of the date of the entry of this Order and with respect to the 88 acre Remediation Unit at the CWRDF, Republic II shall be considered to be in substantial compliance or on a legally enforceable schedule to attain compliance with applicable environmental law for purposes of the review and issuance of future licenses and permits for CWRDF. The issues resolved by this Consent Order and Final Judgment Entry pertaining to Defendant's alleged lack of substantial compliance with law at the 88-acre Remediation Unit shall not impact licensing or permitting decisions at other solid waste facilities owned or to be acquired by Republic II, its parents, subsidiaries, affiliates, employees, successors in interest and assigns. The foregoing shall not preclude consideration of violations occurring in the future operation or management of the 88-acre Remediation Unit in licensing or permitting decisions so long as the violation is not being addressed through the implementation of the operation and maintenance plan issued as an interim remedy by the Director on September 30, 2009.

10. Entering into or participating in this Consent Order and Final Judgment Entry does not constitute an admission of liability, wrongdoing or misconduct on the part of Republic

II, its parents, subsidiaries, affiliates, employees, successors in interest and assigns. This Consent Order and Final Judgment Entry is designed to delineate the agreement of the Parties and avoid the need to adjudicate matters of law and fact, and therefore, it shall not be admissible in evidence in any proceeding against Republic II, its parents, subsidiaries, affiliates, employees, successors in interest and assigns for the purpose of making any inference of liability, wrongdoing, misconduct or for any other purpose on the part of Republic II, its parents, subsidiaries, affiliates, employees, successors in interest and assigns except that this Consent Order can be used by the State of Ohio in any matter to enforce or compel compliance with the terms of this Consent Order or Final Findings and Orders issued by the Director of Ohio EPA, and in any other proceeding in which the State of Ohio is attempting to show or otherwise prove compliance with the terms of the Consent Order or Final Findings and Orders issued by the Director of Ohio EPA.

IV. INJUNCTIVE RELIEF AND AGREEMENT TO BIFURCATE

11. Republic II shall, within 90 days of the effective date of this Consent Order and Final Judgment Entry, submit engineering detail plans, specifications, and information to Ohio EPA to bifurcate the CWRDF by submitting a request to modify permit #02-14796 to:

a. Reflect the installation of the USEPA approved physical separation (the "isolation break") that was successfully constructed and completed between cells 1 through 6 (the "Remediation Unit") and cells 7 through 16 (the "Operational Unit") as determined by U.S. EPA in June 19, 2009 correspondence;

b. Prohibit the recirculation of leachate at CWRDF;

c. Prohibit the disposal of solid waste and other waste materials in cells 7 and 8A unless CWRDF demonstrates that it meets one of the following criteria for a minimum of

one year, subject to correction or adjustment pursuant to new source performance standard ("NSPS") requirements, prior to any request for approval to fill in cell 7 or cell 8A. The Director of Ohio EPA shall approve a request for filling in cell 7 or cell 8A upon demonstration that the following conditions are met:

(1) All gas extraction wellhead temps are below 131 degrees Fahrenheit ("F."); or

(2) If a gas extraction well is operating above 131 degrees F., but not greater than 150 degrees F., and that gas extraction well is operating in accordance with the following levels:

a. oxygen does not exceed 1.5 % of landfill gas by volume;
b. methane is at least 45% of landfill gas by volume;
c. carbon monoxide no greater than 100 ppmv;
d. methane/carbon dioxide ratio of at least 1 to 1; or

to the extent that the conditions in paragraph 10(c)(1) or (2) above are not met:

(3) the values for the gas extraction wells in cell 7 and 8A are in accordance with the following:

a. The maximum temperature for wells is 150 degrees F.;
b. oxygen does not exceed 1.5% by volume on average;
c. methane is at least 45% of landfill gas by volume on average;
d. carbon monoxide is no greater than 100 ppmv;
e. methane/carbon dioxide ratio of at least 1 to 1;
f. hydrogen production does not exceed 5% by volume
g. no observation of rapid settlement; and
h. there is no physical signs or manifestations of a subsurface oxidation event, fire, pyrolysis, or aluminum processing waste reaction; or

(4) an alternative demonstration that filling can proceed safely in cells 7 and 8A.

An initial reading outside the ranges referenced in paragraphs 10(c)(1), (2) and (3) (a) through (h) above shall not disqualify Republic II from seeking approval to fill in

cells 7 and 8A so long as the reading returns to the ranges referenced in paragraphs 10(c)(1), (2) and (3) (a) through (h) above within 15 days from the initial reading. No filling may occur in cell 7 and cell 8A unless CWRDF demonstrates that the one of the applicable criteria in section (IV)(10)(c)(1-4) have been satisfied and the Director of Ohio EPA provides prior written approval. Republic II waives its right to appeal any Director's disapproval to fill in cell 7 and cell 8A but may make another request for approval no sooner than one year from the date it initiated its previous request.

d. Prohibit the disposal of solid waste and other waste materials in the isolation break; and

e. Submit updated financial assurance documentation for the closure and post closure care plans for the Remediation Unit and the Operational Unit, which are approvable according to Ohio Adm. Code 3745-27-11.

12. The Parties agree to participate in a pre-application meeting within 30 days after the effective date of this Consent Order and Final Judgment Entry to discuss the above-referenced permit modification. Upon receipt of the engineering detail plans, specifications, and information, the Ohio EPA may provide Republic II with a written Notice of Deficiency. Republic II shall fully address and resolve all deficiencies identified by Ohio EPA and shall submit to Ohio EPA revised engineering detail plans, specifications, and information within 30 days of receipt of Ohio EPA's Notice of Deficiency unless an extension is granted by Ohio EPA in writing. An extension request must be made by Republic II no later than 10 days from receipt of Ohio EPA's Notice of Deficiency.

13. After the Director of Ohio EPA is satisfied with the engineering detail plans, specifications, and information submitted by Republic II, the Director of Ohio EPA shall, pursuant to this Court's Order, modify permit #02-14796 to incorporate the engineering detail plans, specifications and information required by this Consent Order.

14. Defendant shall comply with the September 30, 2009 DFFO's and any additional final actions issued by the Director of Ohio EPA to address conditions arising from or related to the Remediation Unit all other applicable and effective Final Findings and Orders issued by the Director of Ohio EPA, all orders issued by the Administrator of U.S. EPA, and all permit terms and conditions related to both the Operational Unit and the Remediation Unit at the Facility, and this Consent Order. However, with the exception of the September 30, 2009 DFFO's and any additional final actions issued by the Director of Ohio EPA to address conditions arising from or related to the Remediation Unit, compliance with the foregoing shall not be necessary and Defendant shall not be in contempt or violation of this Consent Order if a court or administrative body of competent jurisdiction finds that any Final Findings and Orders issued by the Director of Ohio EPA, any orders issued by the Administrator of US EPA, and any permit terms and conditions related to both the Operational Unit and the Remediation Unit at the Facility are inapplicable or otherwise not required.

15. If Republic II fails to comply with any Final Findings and Orders issued by the Director of Ohio EPA, including the September 30, 2009 DFFO's and any additional final actions issued by the Director of Ohio EPA to address conditions arising from or related to the Remediation Unit, orders issued by the Administrator of US EPA, or permit terms and conditions which are effective and related to the Remediation Unit at the Facility, or this Consent Order, Republic II may be deemed to be out of substantial compliance with environmental laws in this

State. If Republic II complies with R.C. Chapters 3704, 3734, 6111 and the rules adopted thereunder, this Consent Order, all Final Findings and Orders issued by the Director of Ohio EPA, including the September 30, 2009 DFFO's and any additional final actions issued by the Director of Ohio EPA to address conditions arising from or related to the Remediation Unit, all orders issued by the Administrator of US EPA, and all permit terms and conditions which are effective and related to both the Remediation Unit and the Operational Unit at the Facility, then with respect to the Remediation Unit of the CWRDF, Republic II shall be deemed to be in substantial compliance with, or on a legally enforceable schedule that will result in compliance with, environmental laws in this state.

Republic II shall maintain substantial compliance at the Facility with applicable environmental laws; demonstrate a history of compliance at the Facility; and demonstrate sufficient reliability, expertise, and competency at the Facility; as determined by the Director of Ohio EPA and/or the Stark County Board of Health ("Health Department"), for at least a period of five (5) years (the "probationary period") from the effective date of this Consent Order. During this period the Director of Ohio EPA and/or the Health Department may deny, based on Republic II's failure to meet the criteria set forth in R.C. 3734.44 at the Facility, or Republic II's compliance status at the Facility, all applications for permits, licenses, registrations, and changes in ownership pending before him regarding Republic II's owned and/or operated facilities for facilities at which any Republic II employee constitutes a "key employee" as defined in R.C. 3734.41(F). Notwithstanding R.C. 3734.09, to the extent that the Director of Ohio EPA intends to issue any denial of a permit or license, he may, but is not required to, first issue a proposed action. To the extent that the Director of Ohio EPA does not issue a proposed action, Republic II

shall have the right to proceed immediately with an appeal and an evidentiary hearing before the Environmental Review Appeals Commission.

16. The Director of Ohio EPA and the Stark County Board of Health may enter into a Memorandum of Understanding ("MOU") setting forth roles and responsibilities for regulatory oversight at the CWRDF. At a minimum, the MOU shall provide that the Director of Ohio EPA shall be responsible for regulatory oversight related to the Remediation Unit until the Remediation Unit completes the required post-closure care period, or another time period agreed upon by both parties. During the period of time the MOU is in effect, the Director of Ohio EPA shall not find the Stark County Board of Health to be out of substantial compliance for purposes of R.C. 3734.08 on the basis of the Stark County Board of Health's failure to inspect or take enforcement action to address violations of law related to the Remediation Unit. The Court finds that the actions taken by both the Director of Ohio EPA and the Stark County Board of Health with respect to the Remediation Unit have been lawful, reasonable, appropriate and in accordance with their regulatory obligations as of the date of this Consent Order, and that the MOU required by this Consent Order is appropriate and in accordance with law.

V. SOUTH SLOPE

16. Within 60 days of the effective date of this Consent Order, a minimum of one additional groundwater monitoring well shall be installed at locations approved by the Director of Ohio EPA around the waste that is outside the limits of waste placement as a result of the failure of the south slope.

17. Republic II shall within 30 days of the effective date of this Consent Order submit, for approval by Ohio EPA, a Leachate Migration Assessment Plan ("LMA Plan") as

described in comment number 4 of the August 19, 2008 correspondence from Josh Adams to Tim Vandersall.

The LMA Plan should consist of but not limited to:

a. South slope base map with well, boring and vibrating piezometer ID's;

b. Liquid elevation, pressure and temperature measurement techniques;

c. Frequency of measurement;

d. Reporting frequency and format; and

e. Provisions for additional activities should it be determined that leachate has migrated beyond the previously delineated extent.

18. All waste that is outside the limits of waste placement as a result of the failure of the south slope shall be moved in accordance with the operation and maintenance plan approved by the U.S. EPA for the Remediation Unit and issued as an interim remedy by the Director pursuant to the September 30, 2009 DFFO's.

VI. SETTLEMENT PAYMENT

19. In order to settle the various claims referenced in Section III above and to avoid protracted litigation, and the transactional costs associated with protracted litigation, and in consideration for the State of Ohio's obligations identified herein, Republic II agrees to resolve claims for civil penalties for alleged violations by paying the State of Ohio in the amount of Ten Million Dollars ($10,000,000). Payment shall be made in accordance with the following terms:

(1) Three Million Dollars ($3,000,000) will be transferred into the Community Benefit Fund established under the September 30, 2009 Director's Final Findings & Orders within 20 days of entry into this Consent Order and otherwise payable in accordance with the terms of the September 30, 2009 DFFO's;

(2) The remaining Seven Million Dollars ($7,000,000) will be paid into the account established by R.C. § 3734.28.1 under the designation "restricted court-ordered funds" and shall be used only for the purpose of remediating conditions at solid waste facilities, construction and demolition debris facilities, or another location at which the Director of Ohio EPA has reason to believe there is a substantial threat to public health or safety or the environment;

20. Payment of the Seven Million Dollars ($7,000,000) shall be made pursuant to the following schedule: (a) Four Million Dollars ($4,000,000) within 20 days after the effective date of this Consent Order; and (b) Three Million Dollars ($3,000,000) within 90 days after the effective date of this Consent Order All payments shall be by certified check made payable to "Treasurer, State of Ohio." The certified check shall be submitted to Karen Pierson or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. The memorandum portion of the checks, or some other prominent location on the transmittal letters or documentation, shall include a reference to "Countywide Consent Order."

Notwithstanding the terms of Section VII below, Defendant's failure to comply with the payment schedule set forth in Section VI shall also subject Defendant to payment of interest pursuant to R.C. 3743.03.

VII. STIPULATED PENALTIES

21. In the event that Defendant fails to comply with any of the requirements of Sections IV(11), (12), V, or VI of this Consent Order, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty in accordance with the following schedule:

a. Defendant shall pay five hundred dollars ($500.00) per day for each day that any requirement of this Consent Order is violated up to thirty (30) days;

b. From thirty-one (31) days through ninety (90) days, Defendant shall pay seven hundred and fifty dollars ($750.00) per day for each day that any requirement of this Consent Order is violated; and

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

22. For five years after the effective date of this Consent Order solely with respect to the Remediation Unit, in the event that Defendant fails to comply with R.C. Chapter 3734, R.C. Chapter 3704, R.C. Chapter 6111, and/or Ohio EPA Director's Final Findings and Orders for the Remediation Unit at CWRDF, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty of five thousand dollars ($5,000.00) per day for each day that R.C. Chapter 3734, R.C. Chapter 3704, R.C. Chapter 6111, and/or Ohio EPA Director's Final Findings and Orders for the Remediation Unit are violated, provided however, that the stipulated penalties contemplated by this paragraph shall not apply to any violations or alleged violations of the sections listed above which are intended to be addressed or otherwise corrected through implementation of procedures contained in the operation and maintenance plan to be approved by U.S. EPA and issued as an interim remedy by the Director pursuant to the September 30, 2009 DFFO's.

23. Stipulated penalties due under this Entry shall be paid by certified check or money order, 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 43215-3400 and shall be deposited in the account set forth in R.C. 3734.28.1 or another fund designated by the Director consistent with applicable law.

VIII. GOVERNING LAW

24. In the event that any law or rule referenced herein is superseded by a new law or rule, Republic II shall comply with the newly enacted law or rule.

IX. NOTICES

25. All documents or notices required to be submitted to Ohio EPA or Republic II under this Consent Order and Final Judgment Entry shall be submitted to the following:

As to Plaintiff:

Nicholas Bryan
Assistant Attorney General
Environmental Enforcement Section
30 E. Broad Street, 25th Floor
Columbus, Ohio 43215-3400

With a copy to:

Pamela Allen
Chief of the Division of Solid and Infectious Waste Management
Ohio EPA
50 West Town Street
Columbus, OH 43215

As to Defendant Republic II:

Michael Darnell
CWRDF
3619 Gracemont Street, S.W.
East Sparta, Ohio, 44626

With a copy to:

Jason Perdion
Baker Hostetler LLP
3200 National City Center
1900 E. 9th Street
Cleveland, Ohio 44114

26. Any party may change the name and address of its contacts by sending written notice to the other parties.

X. FORCE MAJEURE

27. If any event occurs which causes or may cause Republic II a delay in compliance or inability to comply with any of the requirements of this Consent Order and Final Judgment Entry, Republic II shall notify Ohio EPA in writing within fourteen (14) days from when Republic II knew, or by the exercise of reasonable diligence should have known, of an event that could delay or prevent performance of an obligation required herein. Any notice shall describe in detail the cause or causes for the delay or inability to comply, and in the case of delay, the anticipated length of the delay, and the measures taken or anticipated to be taken by Republic II to reduce or minimize the delay.

28. In any action by Plaintiff to enforce any provision of this Consent Order and Final Judgment Entry, Republic II may raise, at that time, a defense that its failure or inability to comply was caused by circumstances beyond its control which may, by way of example only, include strikes, acts of war, acts of God, acts of third parties, and/or civil disturbances. The Parties agree that it is premature to determine the legality of any such defense and that the appropriate time to determine the legality of any such defense would arise if Plaintiff initiates an action to enforce the provisions of this Consent Order and Final Judgment Entry.

XI. EFFECTIVE DATE

29. This Consent Order and Final Judgment Entry shall become effective upon the date of its entry by the Court.

30. This Court shall retain jurisdiction over this action for the purposes of making any order or decree, which it deems necessary and appropriate to carry out this Consent Order and Final Judgment Entry.

XIII. SIGNATORIES

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

IT IS SO ORDERED.

FRANK G. FORCHIONE
JUDGE, STARK COUNTY
COURT OF COMMON PLEAS

9/30/09
DATE

APPROVED BY:

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

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Attorney for Republic Services II of Ohio