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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO
Plaintiff

WASTETRAN LTD., ET AL.
Defendant

- Case No: CV-18-895077

Judge: JOSEPH D RUSSO

FILED
2020 DEC 29 P 2:25
CLERK OF COURTS
CUYAHOGA COUNTY

JOURNAL ENTRY

CONSENT ORDER BETWEEN PLTF STATE OF OHIO AND DEFT 7500 BESSEMER CORP. O.S.J.
AS ADMINISTRATIVE JUDGE
THIS ENTRY TAKEN BY JUDGE BRENDAN J SHEEHAN.

Judge Signature

Date

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

| | | |
|---------------------------------|---|--------------------------------|
| STATE OF OHIO ex rel. | : | CASE NO. 2018 CV 895077 |
| MICHAEL DEWINE | : | |
| OHIO ATTORNEY GENERAL, | : | JUDGE JOSEPH D. RUSSO |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| WASTETRAN, LTD., et al., | : | |
| | : | |
| Defendants. | : | |
| | : | |

**CONSENT ORDER BETWEEN PLAINTIFF STATE OF OHIO AND DEFENDANT 7500
BESSEMER CORP.**

The State of Ohio, by its Attorney General (“Plaintiff”/“the State”) and at the written request of the Director of the Ohio Environmental Protection Agency, has filed a Complaint seeking injunctive relief and civil penalties against Defendant 7500 Bessemer Corp. for violations of Ohio’s solid waste and construction and demolition debris laws under R.C. Chapters 3714 and 3734 and the rules adopted thereunder at the property located at 7415 Bessemer Avenue, Cleveland, Ohio 44127. The parties have consented to the entry of this Order.

Therefore, without trial, admission, or determination of any issue of fact or law and with the consent of the Parties hereto, it is ORDERED, ADJUDGED, AND DECREED:

I. DEFINITIONS

1. As used in this Order, the following terms are defined:
 - a. “Defendant” means 7500 Bessemer Corp.

- b. "Director" means the Director of the Ohio Environmental Protection Agency ("Ohio EPA") or her designee.
- c. "Parties" means Plaintiff, the State of Ohio, and Defendant 7500 Bessemer Corp.
- d. "Person" means an individual, public or private corporation, business trust, estate, trust, partnership, association, federal government or any agency thereof, municipal corporation or any agency thereof, political subdivision or any agency thereof, public agency, interstate body created by compact, any other entity, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.
- e. "Site" means Defendant's property located at 7415 Bessemer Avenue, Cleveland, Ohio 44127.
- f. "State" means Plaintiff, the State of Ohio, including, including the Director, Ohio Environmental Protection Agency, or the Ohio Attorney General on behalf of the State, or any State entity named in the Complaint.
- g. "Order" refers to this Order.
- h. "Written" means a paper copy or a saved or stored electronic copy.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the Parties and the subject matter of this action under R.C. Chapters 3714 and 3734. The Complaint states a claim upon which relief can be granted. Venue is proper in this Court. Defendant shall not challenge the Court's jurisdiction to enter or enforce this Order.

III. PARTIES BOUND

3. Defendant is an Ohio corporation, whose principal place of business is 7277 Bessemer Avenue, Cleveland, Cuyahoga County, Ohio 44127.

4. This Order shall apply to and be binding only upon Defendant, and, to the extent consistent with Civ. R. 65(D), on its agents, officers, employees, contractors, assigns, successors in interest, and those persons acting in concert, privity, or participation with Defendant who receives actual notice of this Order whether by personal service, by public record filed in the county land record, or otherwise. Defendant shall provide a copy of this Order to any successor in interest and to each key employee, consultant, or contractor employed to perform work referenced herein or to operate the Site, and prospective purchasers of the Site.

5. This Order is in settlement and compromise of disputed claims, and nothing in this Order is to be construed as an admission of any facts or liability.

6. If insolvency, bankruptcy, or other failure occurs, Defendant must complete the injunctive relief.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

7. The Plaintiff alleges that Defendant is responsible for violations of the solid waste and construction and demolition debris laws of the State of Ohio under R.C. Chapters 3714 and 3734. Defendant denies all such allegations. Compliance with this Order shall constitute full satisfaction of any civil liability of Defendant to Plaintiff for the claims alleged in Plaintiff's Complaint.

8. Nothing in this Order, including the imposition of stipulated civil penalties for violations of this Order, shall limit the authority of the State of Ohio to:

- a. Seek any legal or equitable relief or civil penalties from Defendant or any other appropriate person for any claims or violations not alleged in the Complaint;
 - b. Seek any legal or equitable relief or civil penalties from Defendant or any other appropriate person for claims, conditions, or violations that occur on or exist after the entry of this Order;
 - c. Enforce this Order through a contempt action or otherwise seek relief for violations of this Order; and/or
 - d. Take any future legal or equitable action against any appropriate person, including Defendant, to eliminate or mitigate conditions at the Site that may present a threat to public health or welfare or to the environment in derogation of applicable laws and rules, which the State of Ohio has the authority to enforce.
9. This Order does not waive, abridge, settle, compromise, or otherwise impact any other claims in law or equity that the State of Ohio or other persons may have against Defendant.
10. Except for the signatories to the Order, nothing in this Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged, against any person not a signatory to this Order for any liability such non-signatory may have arising out of matters alleged in the Complaint. The State of Ohio also specifically reserves its right to sue any person or entity that is not a signatory to this Order.
11. Nothing in this Order shall relieve Defendant of its obligation to comply with applicable federal, state, or local statutes, regulations, rules, or ordinances.
12. Nothing herein shall restrict the right of Defendant to raise any administrative, legal, or equitable defense with respect to such further actions reserved by the State in this Order. However, with respect to the actions reserved by the State in this Section, Defendant shall not assert and/or

maintain, any defense or claim of waiver, *res judicata*, collateral estoppel, issue preclusion, claim splitting, or other defenses based on any contention that Plaintiff's claims in any subsequent judicial or administrative proceeding could or should have been brought in this case.

V. PERMANENT INJUNCTIVE RELIEF

13. Defendant is ordered and permanently enjoined to comply with R.C. Chapters 3714 and 3734, and the applicable rules adopted thereunder.

14. Defendant shall not conduct, permit, or allow open dumping of solid wastes. If open dumping of solid wastes is occurring or has occurred at a property owned by Defendant, then Defendant shall promptly remove and lawfully dispose of the solid waste in accordance with Chapter 3734 of the Revised Code, and shall submit verification that the solid waste has been properly disposed. Defendant shall complete the removal and disposal of solid wastes within 30 days after learning that open dumping has occurred.

15. Defendant shall not conduct or allow illegal disposal of construction and demolition debris, in accordance with Ohio Adm. Code 3745-400-04(B). If construction and demolition and demolition debris is illegally disposed of on a property that is owned by Defendant, then Defendant shall lawfully dispose of the construction and demolition debris in accordance with Ohio Adm. Code 3745-400-04(A) within 90 days after learning of the illegal disposal.

16. On July 10, 2020, a consent order was filed in the above-captioned case between the State and defendants Wastetran LLC, Barton Carmichael, Lisa Carmichael, Haul-Away Containers Inc., and Bigdumpster.com LLC, collectively referred to as the Wastetran Defendants. The Wastetran Defendants are required to remove and lawfully dispose of all solid waste and construction debris from the Site by October 31, 2020. (July 10, 2020 Consent Order, Paragraphs 19-20.) The Parties agree that any solid waste and construction debris on Site after October 31, 2020, has been

disposed. If the Wastetran Defendants fail to remove all solid waste and construction debris from the Site by October 31, 2020, then Defendant shall ensure that all solid waste and construction and demolition debris at the Site is removed and lawfully disposed not later than April 28, 2021.

17. Defendant shall notify Ohio EPA and the Ohio Attorney General's Office immediately upon sale of the Site.

18. The State shall dismiss its case against defendant Ernest Fisco without prejudice within 14 days of the effective date of this order. The State may reinstate its case against Ernest Fisco if Defendant violates R.C. Chapter 3714 or 3734, or the applicable rules adopted thereunder, or otherwise fails to comply with this Order.

VI. CIVIL PENALTY

19. Pursuant to R.C. 3714.11 and 3734.13, Defendant is ordered and enjoined to pay a total civil penalty to the State in the amount of \$20,000, plus statutory interest and collection costs pursuant to R.C. 131.02.

20. Full payment of the civil penalty shall be made in accordance with the following schedule:

- a. Within 30 days of the entry date of this Order, Defendant shall pay the State of Ohio five thousand dollars (\$5,000).
- b. Within 180 days of the entry date of this Order, Defendant shall pay the State of Ohio an additional five thousand dollars (\$5,000).
- c. Within 270 days of the entry date of this Order, Defendant shall pay the State of Ohio an additional five thousand dollars (\$5,000).
- d. Within 360 days of the entry date of this Order, Defendant shall pay the State of Ohio an additional five thousand dollars (\$5,000).

21. Payment of the civil penalty shall be made by delivering to Sandra Finan, Paralegal, or her successor, Office of the Attorney General, 30 E. Broad St., 25th Floor, Columbus, Ohio 43215, a certified check or checks for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

22. If full payment of the civil penalty and any other amount due under this Consent Order is not received by the State in accordance with the terms of this Consent Order, the remaining unpaid balance of the total civil penalty and any other amount due, plus applicable interest under R.C. 131.02(D), shall become immediately due and owing. The remaining unpaid balance delinquent payments shall accrue interest at the rate per annum required by R.C. 5703.47 calculated from the Effective Date of this Order.

23. If any amount is not paid in accordance with the terms of this Consent Order, the Attorney General may collect that amount under R.C. 131.02. Pursuant to R.C. 109.081, in addition to the outstanding balance due under this Order, collection costs of ten percent shall be owing and fully recoverable from the Defendant to be paid into the State Treasury to the credit of the Attorney General Claims Fund.

24. The State reserves the right to file a certificate of judgment lien against Defendant for the remaining unpaid balance of the total civil penalty, plus applicable statutory interest and collection costs, if the full civil penalty payment is not paid according to the schedule in this Order. Defendant shall not be permitted to claim a force majeure as an excuse for any untimely payment or partial payment of an amount less than the full civil penalty as specified in this Order.

25. If Defendant files a petition for bankruptcy, the State of Ohio reserves the right to file a certificate of judgment lien against the Defendant, for the remaining unpaid balance of the total civil penalty, plus applicable statutory interest.

VII. STIPULATED PENALTIES

26. If Defendant fails to comply with any requirements of this Order, Defendant shall immediately and automatically be liable for and shall pay stipulated penalties under the following schedule for each failure to comply:

- i. Defendant shall pay three hundred dollars (\$300.00) per day for each day any requirement of this Order is violated up to the first thirty (30) days of violation;
- ii. For each day any requirement of this Order is violated between thirty-one (31) days and ninety (90) days of violation, Defendant shall pay six hundred dollars (\$600.00) per day;
- iii. For each day any requirement of this Order is violated greater than (90) days of violation, Defendant shall pay one thousand dollars (\$1,000.00) per day.

27. Stipulated penalties due under this Order shall be immediately due and owing without demand by the State and shall be paid by certified check, payable to "Treasurer, State of Ohio" and delivered to Sandra Finan, Paralegal, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

28. Defendant's payment and Plaintiff's acceptance of such stipulated penalties under this Section shall not be construed to limit Plaintiff's authority, without exception, to seek: 1) additional relief under R.C. Chapters 3714 and 3734, including civil penalties under R.C. 3714.11 and 3734.13; 2) judicial enforcement of this Order for the same violations for which a stipulated penalty was paid; or 3) sanctions for additional remedies, civil, criminal, or administrative, for violations of applicable laws. Further, payment of stipulated penalties by Defendant shall not be an admission of liability by Defendant.

VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

29. Performance of the terms of this Order by Defendant is not conditioned on the receipt of any private, Federal or State grants, loans, and/or funds. In addition, Defendant's performance is not excused by failing to obtain or any shortfall of any private, Federal or State grants, loans and/or funds or by the processing of any applications for the same.

IX. FACILITY ACCESS

30. As of the Effective Date of this Order, the Ohio EPA and its representatives and contractors shall have access at reasonable times to the Site, and shall have access to any other property controlled by or available to Defendant to which access is necessary to effectuate the actions required by this Order. Access shall be allowed for the purposes of conducting activities related to this Order including but not limited to:

- a. Assessing Defendant's compliance with this Order;
- b. Verifying any data or information submitted to Ohio EPA;
- c. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- d. Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Defendant or its agents, consistent with this Order and applicable law; or
- e. Monitoring the work or any other activities taking place at the Site.

31. Nothing in this Order shall be construed to limit the statutory authority of the Director or the Director's authorized representatives to enter at reasonable times upon the Site or any other private or public property, real or personal, to inspect or investigate, obtain samples and examine or copy any records to determine compliance with R.C. Chapters 3714 and 3734.

X. SUBMITTAL OF DOCUMENTS

32. All documents required to be submitted to Ohio EPA pursuant to this Order shall be submitted to the following address, or to such address as Ohio EPA may hereafter designate in writing:

Ohio EPA, Northeast District Office
Division of Materials and Waste Management
2110 East Aurora Road
Twinsburg, Ohio 44087

XI. EFFECT OF ORDER

33. This Order does not constitute authorization or approval of the construction, installation, modification, or operation of any solid waste or construction and demolition debris facility under R.C. Chapters 3714 and 3734 not previously approved by Ohio EPA or the approved health district. Approval for any such construction, installation, modification, or operation shall be by permit or license issued by Ohio EPA or the approved health district, as appropriate, or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

XII. MODIFICATION

34. No modification shall be made to this Order without the written agreement of the parties and the Court.

XIII. MISCELLANEOUS

35. Any acceptance by the State of Ohio of any payment, document, or other work due subsequent to the time that the obligation is due under this Order shall not relieve Defendant from the obligations created by this Order.

36. Defendant shall inform Ohio EPA of any change in the registered agent's address and business addresses or telephone numbers, or the cessation of the business that is the subject of this action.

XIV. RETENTION OF JURISDICTION

37. This Court shall retain jurisdiction for the purpose of administering and enforcing this Order.

XV. ENTRY OF ORDER AND FINAL JUDGMENT BY CLERK

38. Under Rule 58 of the Ohio Rules of Civil Procedure, upon signing this Order by the Court, the Clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the Clerk is directed to serve upon all Parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Civ.R. 5(B) and note the service in the appearance docket. The failure of the Clerk to serve notice does not affect the validity of this Order.

XVI. EFFECTIVE DATE

39. This Order shall be effective upon the date of its entry by the Court.

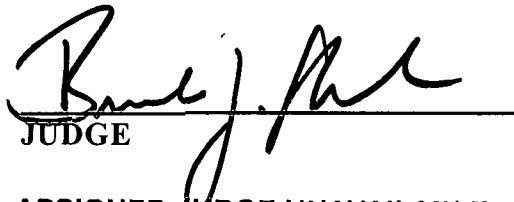
XVII. COURT COSTS

40. Defendant is ordered to pay court costs in this action.

XVIII. AUTHORITY TO ENTER INTO THE ORDER

41. Each signatory represents and warrants he has been duly authorized to sign this document and is fully authorized to agree to its terms and conditions, and, in the case of a person signing on behalf of a corporate entity, may so legally bind the corporate entity to all terms and conditions in this document. By signing this Order, each signatory waives all rights of service of process for the underlying Complaint.

IT IS SO ORDERED.



JUDGE

12/29/2020

DATE

ASSIGNED JUDGE UNAVAILABLE

Brendan J. Sheehan

APPROVED AND AGREED TO BY:

7500 BESSEMER CORP.

/s/ Erin M. McDevitt-Frantz

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/s/ Ernest Fisco

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