

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO

2007 MAY 22 PM 3: 13

CLERK OF COURTS
IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

07 CVH 05 06722

STATE OF OHIO, ex. rel.
MARC DANN
ATTORNEY GENERAL OF OHIO

CASE NO.

JUDGE

Plaintiff,

v.

ACN-COLUMBUS, LLC,

And

AMERICAN CONTAINER NET, INC.

Defendants.

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FRANKLIN CO. OHIO
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CLERK OF COURTS-CV

CONSENT ORDER AND FINAL JUDGMENT ENTRY

WHEREAS, Plaintiff, State of Ohio, ex rel. Marc Dann, Attorney General of Ohio ("Plaintiff"), having filed the Complaint in this action against Defendants ACN-Columbus, LLC and American Container Net, Inc. ("Defendants") to enforce Ohio's hazardous waste laws found in Chapter 3734 of the Revised Code and the rules adopted thereunder; and Plaintiff and Defendants having consented to the entry of this Order; and

WHEREAS, the objectives of this Consent Order include the protection of human health and the environment by requiring Defendants to comply with the provisions of R.C. Chapters 3734 and 6111 and the rules adopted thereunder and to take certain other actions.

WHEREAS, the State has brought this action as a result of alleged storage of hazardous waste in violation of Ohio law which was removed from the Defendants' facility and subsequently disposed of by the original generator in a lawful manner, and the State, after inspection and review by Ohio EPA, does not contend that any hazardous waste was unlawfully disposed of or released as a result of the alleged violations pled in the Complaint.

THEREFORE, without trial or admission of any issue of law or of fact, or admission of wrongdoing, and upon the consent of the parties hereto who desire to compromise and settle the State's claims, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

I. DEFINITIONS

1. As used in this Consent Order:

- A. **"Consent Order"** means this Consent Order and Final Judgment Entry and all appendices attached hereto. In the event of conflict between this Consent Order and any appendix, the Consent Order shall control.
- B. **"Defendants"** means ACN-Columbus, LLC and American Container Net, Inc.
- C. **"Director"** means Ohio's Director of Environmental Protection.
- D. **"Effective Date"** means the date the Franklin County Court of Common Pleas enters this Consent Order.

- E. **“Facility”** refers to the area where the alleged storage of hazardous waste was conducted by Defendant, which is located at the following addresses: 5115 Krieger Court, Columbus, Ohio.
- F. **“Ohio EPA”** means the Ohio Environmental Protection Agency.
- G. **“Plaintiff”** means the State of Ohio by and through the Attorney General of Ohio.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapter 3734 and the rules adopted thereunder. This Court has jurisdiction over the parties. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted.

III. PERSONS BOUND

3. The provisions of this Consent Order shall apply to and be binding upon Plaintiff and Defendants, their agents, officers, employees, assigns, successors in interest and any person acting in concert or participation with it.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

4. Except as otherwise provided in this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendants to Plaintiff for all claims alleged in the Complaint.

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

- A. Seek relief for claims or conditions not alleged in the Complaint;

- B. Seek relief for claims or conditions alleged in the Complaint that occur after the entry of this Consent Order;
- C. Enforce the terms of this Consent Order through a contempt action or otherwise for violations of this Consent Order;
- D. Bring any action against Defendants or against any other person, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. §9601, et seq. and/or R.C. 3734.20 through 3734.27 to: (1) recover natural resource damages, and/or (2) order the performance of, and/or recover costs for any removal, remedial or corrective activities not conducted pursuant to the terms of this Consent Order.
- E. Take any action authorized by law against any person, including Defendants, to eliminate or mitigate conditions at the Facility that may present an imminent threat to the public health or welfare, or the environment.
- F. Nothing in this Consent Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged in the Complaint, against any person, firm, trust, joint venture, partnership, corporation, association, or other entity not a signatory to this Consent Order except agents officers, employees, assigns, or successors of the Defendants as set forth in paragraph 3 above. The State also specifically reserves against any

entity that is not a signatory to this Consent Order, the claims set forth in Paragraph 5, above.

- G. Plaintiff acknowledges that after inspection and review of the facility, Ohio EPA is unaware of any release of hazardous waste at the facility associated with the specific allegations set forth in Plaintiff's Complaint. Further, after inspection and review of the facility, Ohio EPA, at the time of the filing of this order, is unaware of any damage to natural resources or any remedial or corrective action necessitated by the specific allegations made in the Complaint.

V. CIVIL PENALTY

6. Defendants are ordered and enjoined to pay to the State of Ohio a total civil penalty in the amount of Twelve Thousand Dollars (\$12,000.00). The civil penalty required to be paid under this Consent Order shall be paid by delivering to Plaintiff, c/o J. Mark Lemmon, or his successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, a cashier's or certified check in that amount payable to the order of "Treasurer, State of Ohio" within thirty (30) days of the effective date of this Consent Order. This civil penalty shall be deposited into the Hazardous Waste Clean-up Fund created by R.C. 3734.28.

VI. RETENTION OF JURISDICTION

36. This Court shall retain jurisdiction of this action for the purpose of enforcing this Consent Order.

VII. COSTS

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

VIII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

38. Upon signing of this Consent 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 Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

IX. AUTHORITY TO ENTER INTO THE CONSENT ORDER

39. Each signatory for a corporation or limited liability company represents and warrants that he or she has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof.

IT IS SO ORDERED:

**JUDGE
FRANKLIN COUNTY COURT
OF COMMON PLEAS**

DATE

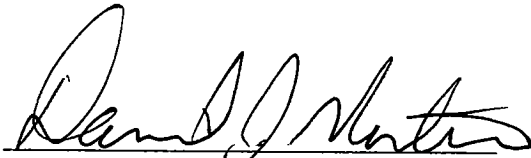
[SIGNATURES ON FOLLOWING PAGE]

Approved:

**MARC DANN
OHIO ATTORNEY GENERAL**

By:

By:

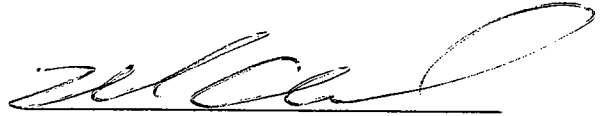


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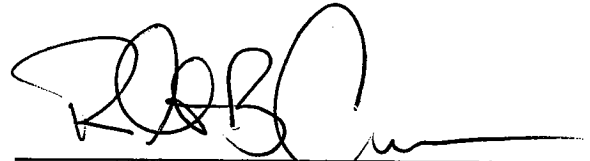


Authorized Representative
ACN-Columbus, LLC



Authorized Representaive
American Container Net, Inc.

By: *Melvin Chafost*



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