

I. DEFINITIONS

1. As used in this Consent Order:
 - A. “**Consent Order**” means this Consent Order and Final Judgment Entry.
 - B. “**Defendants**” means Container Compliance Corporation and 5151 Dennison LLC. Any requirement, obligation or liability imposed in this Consent Order upon Defendants is imposed jointly and severally.
 - C. “**Director**” means Ohio’s Director of Environmental Protection.
 - D. “**Effective Date**” means the date the Cuyahoga County Court of Common Pleas enters this Consent Order.
 - E. “**Facility**” ” refers to the property located at 5151 Denison Avenue, Cleveland, Ohio, Cuyahoga County, Parcel ID 013-34-003.
 - 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 Defendants, their agents, officers, employees, assigns, successors in interest and any other person who would be bound pursuant to Rule 65(D) of the Ohio Rules of Civil Procedure, including any person acting in concert or participation with them.

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 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; or
- 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.

6. 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. The State also specifically reserves against any entity that is not a signatory to this Consent Order. Ohio EPA reserves its rights to exercise its lawful authority to require Defendants to perform corrective action at the Facility at some time in the future, pursuant to R. C. Chapter 3734 or any other applicable law.

7. Nothing herein shall restrict the right of Defendants to raise any administrative, legal or equitable claim or defense with respect to such further actions reserved by the State in this Section. However, Defendants shall not assert and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim splitting or other defenses based upon any contention that the claims raised by the State in the subsequent proceeding were, could, or should have been brought in the instant case.

V. INJUNCTIVE RELIEF

8. From the effective date of this Consent Order, Defendants are immediately ordered and permanently enjoined to comply with all applicable provisions of the Ohio hazardous waste laws and rules as set forth in R.C. Chapter 3734 and Ohio Adm. Code Chapters 3745-50 through 3745-69, and Ohio Adm. Code Chapters 3745-270 through 3745-279.

VI. CIVIL PENALTY

9. Defendants are ordered and enjoined to pay to the State of Ohio a total civil penalty in the amount of sixty thousand dollars (\$60,000) according to the following payment schedule:

- First payment of Seven Thousand, Five Hundred Dollars (\$7,500) due within thirty (30) days of the Effective Date.

- Quarterly payments of Seven Thousand, Five Hundred Dollars (\$7,500) due no later than the following dates: November 15, 2011; February 15, 2011; May 15, 2012; August 15, 2012; November 15, 2011; February 15, 2013; an May 15, 2011.

10. The civil penalty payments required to be paid under this Consent Order shall be paid by delivering to Plaintiff, c/o 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, a cashier's or certified check in that amount payable to the order of "Treasurer, State of Ohio." This civil penalty shall be deposited into the Hazardous Waste Clean-up Fund created by R.C. 3734.28.

VII. STIPULATED PENALTIES

11. In the event that Defendants fail to comply with any requirement or deadline contained in this Consent Order, or any requirement or deadline contained in any document approved in accordance with this Consent Order, the Defendants are liable for and shall pay stipulated penalties in accordance with the following schedule for each failure to comply:

- A. For each day of each failure to comply with a requirement or deadline of this Consent Order, up to and including thirty (30) days, one hundred dollars (\$100) per day for each requirement or deadline not met.
- B. For each failure to comply with a requirement or deadline of this Consent Order, from thirty-one (31) to sixty (60) days, two hundred and fifty dollars (\$250) per day for each requirement or deadline not met.
- C. For each day of each failure to comply with a requirement or deadline of this Consent Order, over sixty (60) days, five hundred dollars (\$500) per day for each requirement or deadline not met.

12. Any payment required to be made under the provisions of this Section of the Consent Order shall be made by delivering to Plaintiff, c/o 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, a cashier's or certified check or checks made payable to the order of "Treasurer, State of Ohio," for the appropriate amount within thirty (30) days from the date of the failure to meet the requirement or deadline of this Consent Order. A letter briefly describing the type of violation, deadline or requirement not met and the date upon which the violation of this Consent Order occurred shall accompany the payment of the stipulated penalty.

13. The payment of stipulated penalties and the acceptance of such stipulated penalties by Plaintiff pursuant to this Article shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to Ohio Revised Code Chapter 3734, including civil penalties under R.C. 3734.13, or to otherwise seek judicial enforcement of this Consent Order, for the same violation for which a stipulated penalty was paid or for other violations.

14. The parties to this Order agree that the stipulated penalties established in this Section are coercive in nature, and are designed to ensure Defendants' compliance with the terms of this Order. The parties further agree that the stipulated penalties in this Order are not punishment for past acts or omissions by Defendants regarding the specific terms of this Order.

VIII. POTENTIAL FORCE MAJEURE

15. If any event occurs which causes or may cause a delay in Defendants' compliance with any requirement of this Consent Order, Defendants shall notify the Ohio EPA in writing within ten (10) days from when Defendants knew, or by the exercise of due diligence should have known, of the event. The notification to Ohio EPA shall describe in detail the

anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendants to prevent or minimize the delay, and the timetable by which those measures will be implemented. Defendants shall adopt all reasonable measures to avoid or minimize any such delay.

16. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendants may raise a defense that their conduct was caused by force majeure events that were beyond Defendants' control including but not limited to acts of God, strikes, acts of war or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendants and the Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time, if ever, that a court proceeding to enforce this Consent Order is commenced by the Plaintiff. At that time, Defendants will bear the burden of proving that any delay was or will be caused by circumstances beyond the control of Defendants. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or a change in Defendants' financial circumstances, shall not constitute circumstances entirely beyond the control of Defendants or serve as a basis for an extension of time under this Consent Order. Failure by Defendants to timely comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendants' right to request an extension of its obligations under this Consent Order based on such incident. An extension of one date based on a particular incident does not mean that Defendants qualify for an extension of a subsequent date or dates. Defendants must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this

Consent Order without a Force Majeure Clause does not constitute a waiver by Defendants of any rights or defenses it may have under applicable law

IX. RETENTION OF JURISDICTION

17. This Court shall retain jurisdiction of this action for the purpose of enforcing this Consent Order or in resolving any conflicts concerning the interpretation of this Consent Order.

X. COSTS

18. Defendants shall pay the court costs of this action.

XI. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

19. 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.

XII. AUTHORITY TO ENTER INTO THE CONSENT ORDER

20. Each signatory for a party represents and warrants that he or she has been duly authorized to sign this document and so bind the party to all terms and conditions thereof.

IT IS SO ORDERED:

6/30/2011
DATE



JUDGE BRIAN J. CORRIGAN
CUYAHOGA COUNTY
COURT OF COMMON PLEAS

APPROVED:

MICHAEL DEWINE
OHIO ATTORNEY GENERAL

CONTAINER COMPLIANCE CORP.

By:



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5151 DENNISON LLC

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Attorney for Defendants

RECEIVED FOR FILING
JUN 30 2011

GERALD E. FUERST, CLERK
By  Deputy