

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, ex rel.	:	
MICHAEL DEWINE	:	Case No. CV 09 688050
OHIO ATTORNEY GENERAL	:	
	:	Judge Ronald Suster
Plaintiff,	:	
	:	
v.	:	
	:	
NOVACOTE, INC., et al.	:	
	:	
Defendants.	:	

CONSENT ORDER AND FINAL JUDGMENT ENTRY

Plaintiff, State of Ohio, on relation of its Attorney General (“Plaintiff”), having filed the Complaint in this action against Defendants to enforce Ohio's hazardous waste laws found in Chapter 3734 of the Revised Code and rules adopted thereunder; and Plaintiff and Defendants having consented to the entry of this Order;

THEREFORE, without trial or admission of any issue of law or of fact, and upon the consent of the parties hereto, 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.
 - b. “**Defendants**” means Novacote, Inc. and John Lydon. The injunctive relief liability, civil penalty payments, and all other requirements imposed in this Consent Order upon Defendants are 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 location where the alleged violations of Ohio's hazardous waste laws occurred: 3807 West 150th Street, Cleveland, Cuyahoga County, Ohio.

f. “**Ohio EPA**” means the Ohio Environmental Protection Agency.

g. “**Plaintiff**” means the State 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. Defendants shall not challenge the Court's jurisdiction to enter or enforce this Consent Order.

III. PERSONS BOUND

3. The provisions of this Consent Order shall apply to and be binding upon Plaintiff and Defendants, and Defendants' 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, privity or participation with Defendants who receives actual notice of this Consent Order whether by personal service or otherwise.

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 Effective Date 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 or 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 safety, or to 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.

7. Nothing in this Consent Order shall be construed to relieve Defendants of their obligations to comply with applicable federal, state, or local statutes, regulations, or ordinances.

8. Nothing herein shall restrict the right of the 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

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

VI. CIVIL PENALTY

10. Defendants are ordered and enjoined to pay to the State of Ohio a civil penalty in the amount of Ten Thousand Dollars (\$10,000) according to the following payment schedule:

- a. First payment of One Thousand, Two Hundred Fifty Dollars (\$1,250) due within thirty (30) days of the Effective Date.
- b. Quarterly payments of One Thousand, Two Hundred Fifty Dollars (\$1,250) due no later than the following dates: December 15, 2011; March 15, 2012; June 15, 2012; September 15, 2012; December 15, 2012; March 15, 2013; and July 15, 2013.

11. These civil penalty payments shall be made by delivering to Plaintiff, c/o Karen M. 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, 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

12. In the event that Defendants fail to comply with any of the requirements of Sections V

or VI of this Consent Order, the stipulated penalties contained herein shall apply for the purpose of coercing compliance and Defendants are liable for and shall immediately pay stipulated penalties in accordance with the following schedule for each failure to comply:

- a. The first time Defendants violate the terms or conditions of this Consent Order, Defendant shall be liable for One Thousand, Five Hundred Dollars (\$1,500.00).
- b. The next time Defendants violate the terms or conditions of this Consent Order, Defendants shall be liable for Two Thousand, Seven Hundred and Fifty Dollars (\$2,750.00).
- c. For every occurrence that Defendants violate the terms or conditions of this Consent Order following the second violation, Defendants shall be liable for Five Thousand Dollars (\$5,000.00) for each day of each violation.

13. 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, Paralegal, or her successor, 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 made payable to the order of "Treasurer, State of Ohio," for the appropriate amount within thirty (30) days from the date of the violation of the terms and conditions of this Consent Order. The payment of the stipulated penalty shall be accompanied by a letter briefly describing the type of violation, deadline or requirement not met and the date upon which the violation occurred. The memo portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 337935."

14. The requirement to pay any stipulated penalty as set forth herein is self-executing upon any violation of the terms and conditions of this Consent Order by Defendants. No further demand

need be made by Plaintiff.

15. The payment of stipulated penalties by Defendants and the acceptance of such stipulated penalties by Plaintiff pursuant to this Section shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to R.C. 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.

VIII. RETENTION OF JURISDICTION

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

IX. COSTS

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


X. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

18. 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.

XI. AUTHORITY TO ENTER INTO THE CONSENT ORDER

19. Each signatory for a corporate entity represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof, and that he/she submits with this Consent Order an authenticated and certified resolution from that entity establishing that he/she is so empowered.

IT IS SO ORDERED:



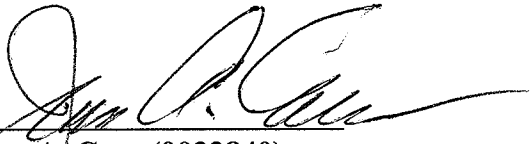
JUDGE RONALD SUSTER
CUYAHOGA COUNTY COURT OF
COMMON PLEAS

APPROVED:

MICHAEL DEWINE
OHIO ATTORNEY GENERAL

NOVACOTE, INC.

By:



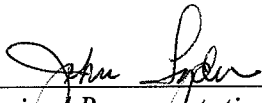
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Attorneys for Plaintiff
State of Ohio

By:




Authorized Representative of Novacote, Inc.

Print name: John Lydon


Title: President

By:



John Lydon, In His Individual Capacity

By:



Drew A. Carson (0037641)
Miller Goler Faeges LLP
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Cleveland, Ohio 44114-1835

Attorney for Defendants

RECEIVED FOR FILING

AUG 19 2011

GERALD E. FUERST, CLERK
By  Deputy