

Crossridge  
Jeff Co.  
Compliance

IN THE COURT OF COMMON PLEAS  
JEFFERSON COUTY, OHIO

FILED  
IN COMMON PLEAS COURT  
JEFFERSON COUNTY OHIO  
  
OCT 8 2003  
  
JOHN A CORRIGAN  
CLERK

STATE OF OHIO, ex rel.  
JIM PETRO  
ATTORNEY GENERAL OF OHIO  
  
Plaintiff,

CASE NO. 99-CV-137  
  
JUDGE DAVID E. HENDERSON

CROSSRIDGE, INC.  
  
and

CONSENT ORDER AND FINAL  
JUDGMENT

C&D DISPOSAL TECHNOLOGIES LLC  
  
Defendants.

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Jim Petro ("Plaintiff") and Defendant Crossridge, Inc. ("Crossridge") and guarantor C&D Disposal Technologies LLC ("C&D Disposal") (together "Defendants") having consented to the entry of this Order,

NOW THEREFORE, without trial of any issue of fact or law and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

**I. JURISDICTION AND VENUE**

1. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Defendant Crossridge under Chapter 3734 of the Ohio Revised Code ("R.C."). Venue is proper in this Court.

## **II. PERSONS BOUND AND GUARANTEE**

2. The provisions of this Order shall apply to and be binding upon the parties to this action, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them, who receive actual notice of the Consent Order whether by personal service or otherwise. Defendants shall provide a copy of this Consent Order to any key employee, consultant, contractor employed to perform work pursuant to this Consent Order, or any potential purchaser for the Facility. In consideration of the Plaintiff's dismissal of the Estate of Joseph N. Scugoza, and C&D Disposal's agreement with Crossridge to establish a construction and demolition debris landfill at the Facility, C&D Disposal has consented to be a party defendant to this action and agrees to guarantee Crossridge's compliance with the injunctive provisions set forth in Paragraphs 7 through 16 and the payment of the civil penalty required by Paragraph 18 of this Order. Any agreement between C&D Disposal and Crossridge to establish a construction and demolition debris landfill at the Facility does not eliminate the requirement for C&D Disposal to obtain a license for the operation and installation of a construction and demolition debris landfill in accordance with R.C. Chapter 3714 and rules adopted thereunder. The entry of this Consent Order does not guarantee or imply that the Director of Ohio EPA or an appropriate Board of Health shall issue a construction and demolition debris landfill license to C&D Disposal, Crossridge, or any applicant. Any application for a construction and demolition debris landfill license at the Facility shall be adjudged in accordance with the criteria established in R.C. Chapter 3714 and the regulations adopted thereunder, and to extent applicable, R.C. Chapter 3734 and the regulations adopted thereunder.

### **III. SATISFACTION OF LAWSUIT**

3. The Plaintiff alleges, *inter alia*, in its Complaint that Defendant Crossridge and its principal shareholder, Joseph N. Scugoza (now deceased), failed to close the Facility in accordance with R.C. Chapter 3734 and O.A.C. Chapter 3745-27. Defendant Crossridge denies such allegations. The parties have agreed to resolve the disputed issues in this matter without adjudication of any issues of fact or law. Compliance with the injunction set forth in Paragraphs 7 through 16 and the payment of the civil penalty set forth in Paragraph 18 of this Order shall constitute full satisfaction of and release for any civil liability of the Defendants and their shareholders, officers, employees, agents and affiliates for all violations alleged in Plaintiff's Complaint and the violations alleged in the Ohio EPA, Division of Solid and Infectious Waste documents identifying noncompliance through the date of entry of this Consent Order.

### **IV. RESERVATION OF RIGHTS**

4. Nothing in this Consent Order, including the imposition of stipulated or civil penalties, shall limit the authority of the State of Ohio to:
- a. Seek any relief for claims or conditions not alleged in the Complaint or in the Ohio EPA, Division of Solid and Infectious Waste Management documents identifying noncompliance through the date of entry of this Consent Order;
  - b. Seek any relief for claims or conditions alleged in the Complaint which occur after the entry of this Consent Order except for currently known violations that will be specifically remedied pursuant to the compliance schedule in Section VII of this Consent Order so long as Defendants remain in compliance with said Section;
  - 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., R.C. 3734.20 through 3734.27, or Chapter 6111 to: (1) recover natural resource damages, or (2)

to order the performance of, or recover costs for any removal, remedial or corrective activities not conducted pursuant to the terms of this Consent Order, or both.

- 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.

#### **V. COMPLIANCE WITH APPLICABLE LAWS**

5. Nothing in this Consent Order shall affect Defendants' obligation to comply with all applicable federal, state or local laws, regulations, rules, or ordinances. Defendants shall obtain all federal, state, or local permits and licenses necessary to comply with this Consent Order.

#### **VI. DEFINITIONS**

6. Unless otherwise stated, all terms used in this Order shall have the same meaning as used in R.C. Chapter 3734 and the regulations adopted thereunder. In addition, the following terms are defined as follows:

- a. "Director" means the Director of the Ohio Environmental Protection Agency.
- b. "Facility" means the Crossridge, Inc. Solid Waste Landfill located on Fenwood Road in Cross Creek Township, Jefferson County, Ohio.
- c. "Ohio EPA" means the Ohio Environmental Protection Agency, and its agents.
- d. "R.C." means the Ohio Revised Code.
- e. "O.A.C." means the Ohio Administrative Code.
- f. "Start Date" means the later of January 2, 2004 or the date C&D Disposal or any affiliate company obtains a financing commitment or funding for, at least, 90% of the estimated cost of complying with Paragraphs 7 through 16 of this Order, but in no event later than January 2, 2005.

## VII. INJUNCTION

7. a. Defendants agree to and are permanently enjoined and ordered to comply with the applicable provisions of R.C. Chapter 3734 and the regulations promulgated thereunder.

b. Defendant C&D Disposal agrees and is enjoined to use its best efforts to obtain financing or other funding to accomplish the closure of the Facility in accordance with Paragraphs 7 through 16 of this Consent Order. Beginning 30 days after the Entry of this Consent Order by the Court and continuing until the Start Date, Defendant C&D Disposal shall provide Ohio EPA with written monthly reports describing its efforts to obtain financing or other funding for the obligations required under Paragraphs 7 through 16 of this Order. The initial report shall contain an itemized estimate of the cost of complying with Paragraphs 7 through 16 of this Order. Defendant C&D Disposal shall notify Ohio EPA promptly, in writing, when it obtains a financing commitment or funding for, at least, 90% of the estimated cost of complying with Paragraphs 7 through 16 of this Order.

8. Defendants are enjoined and ordered to complete closure of the Facility in accordance with O.A.C. Rule 3745-27-11, pursuant to the following schedule:

✓ a. Within ninety (90) days of the Start Date, Defendants are enjoined and ordered to submit to Ohio EPA a final closure/post-closure care plan, which shall include all of the information specified in O.A.C. Rule 3745-27-11(B).

4/18/06  
b. Within seven (7) months and three (3) days of the date of Ohio EPA's written review and notice to proceed with construction or approval with modifications and/or conditions regarding Defendants' final closure/post-closure plan, Defendants shall complete excavating, screening, and stockpiling of the final cap system soil materials in the amount and of the quality identified in the final closure system plan if a notice to proceed with construction is issued or, if an approval is issued, in the final approved final closure plan or approval with modifications and/or conditions.

notice to proceed  
on 6/22/05

complete closure  
by 12/25/06

- c. Within 18 months and 3 days of the date of Ohio EPA's written review and notice to proceed with construction or approval with modifications and/or conditions regarding Defendants' final closure/post-closure care plan, Defendants are enjoined and ordered to complete closure of the Facility in accordance with O.A.C. Rule 3745-27-11(G) and (H), including but not limited to the construction of a cap in accordance with the specifications outlined in O.A.C. Rule 3745-27-08(C)(16), as effective June 1, 1994, through August 14, 2003.
- d. Not later than sixty (60) days after the completion of final closure activities Defendants are enjoined and ordered to submit a written certification report to the Ohio EPA in accordance with O.A.C. Rule 3745-27-11(J).

9. Defendants are enjoined and ordered to comply with the applicable provisions of O.A.C. Rules 3745-27-19, as directed in 3745-27-11(H)(1) until all closure certifications are submitted and the post-closure care period begins. Upon submittal of the written certification report in accordance with Paragraph 8.d., above, Defendants are enjoined and ordered immediately to comply with the applicable provisions of O.A.C. Rule 3745-27-14.

10. Defendants are enjoined and ordered to comply with the applicable provisions of O.A.C. Rule 3745-27-10. Defendants are enjoined and ordered to submit and implement a ground water detection monitoring plan in accordance with the following schedule:

- a. Within 90 days of the Start Date, Defendants are enjoined and ordered to submit to Ohio EPA a ground water detection monitoring plan as defined in O.A.C. Rule 3745-27-10(A)(1)(a).
- b. Within 93 days of the date of Ohio EPA's review and written notice to proceed with implementation, or approval with modification and/or conditions, Defendants are enjoined and ordered to implement the groundwater monitoring plan. For purposes of this Consent Order, the ground water detection monitoring plan is implemented upon the commencement of sampling of the ground water monitoring wells in accordance with O.A.C. Rule 3745-27-10.
- c. Nothing herein shall be construed to be an exemption from the applicable requirements of O.A.C. Rule 3745-27-10(E) and (F).

notice to proceed  
on 12/30/05

done by  
4/2/05

11. Within ninety (90) days of the Start Date, Defendants are enjoined and ordered to submit an explosive gas monitoring plan that complies with O.A.C. Rule 3745-27-12 as part of the final closure/post-closure care plan required to be submitted pursuant to Paragraph 8.a., above.

12. Defendants are enjoined and ordered to establish and fund financial assurance for final closure and post-closure care for the Facility in accordance with the applicable provisions of O.A.C. Rules 3745-27-15 and 3745-27-16, pursuant to the following schedule:

- a. Within 60 days of the Start Date, Defendants are enjoined and ordered to submit to the Ohio EPA a final closure cost estimate that complies with O.A.C. Rule 3745-27-15(C)(1)(a), a post-closure care cost estimate that complies with O.A.C. Rule 3745-27-16(C), and a draft copy of the final closure and post-closure care financial assurance instrument(s) in accordance with OAC. Rules 3745-27-15(A)(2) and 3745-27-16(A)(2), and O.A.C. Rule 3745-27-17, respectively.
- b. Within 120 days of the Start Date, Defendants are enjoined and ordered to execute and fund the final closure and post-closure care financial assurance instrument(s) submitted to Ohio EPA in accordance with Paragraph 12a.

13. Defendants are enjoined and ordered to operate and maintain the leachate management system at the Facility in accordance with O.A.C. Rules 3745-27-19(E)(1)(c) and 3745-27-08(C)(3), pursuant to the following schedule:

- a. Within 30 days of the Start Date, Defendants are enjoined and ordered to inspect the leachate collection system, excluding the leachate collection bladders, for any leaks or obstructions.
- b. Within 75 days of the Start Date, Defendants are enjoined and ordered to perform any necessary repairs on the leachate collection system, excluding the leachate collection bladders, to prevent leaks or obstructions.
- c. Within 60 days of the Start Date, Defendants are enjoined and ordered to submit to Ohio EPA design plans to replace the existing leachate collection bladders with a leachate storage tank system that meets the requirements of O.A.C. Rule 3745-27-08(D)(17).

- d. Within 93 days of the date of Ohio EPA's review and written notice to proceed with installation or approval with modifications and/or conditions, Defendants are enjoined and ordered to install the leachate storage tank system.
- e. Within 30 days of completion of replacement of the leachate collection bladders, Defendants are enjoined and ordered to submit to the Ohio EPA a construction certification report, which meets the requirements of O.A.C. Rule 3745-27-08(H)(1),(3),(7) and (9), and an "as-built" plan for the installation of the leachate storage tank system.
- f. Defendants are enjoined and ordered to remove leachate from the collection system and treat and dispose of it at an approved, wastewater treatment plant. Upon Entry of this Consent Order by the Court, Defendants shall keep a copy of all receipts on-site for the previous 12 months from the approved, wastewater treatment plant and shall make such receipts available for Ohio EPA review upon request

14. Defendants are enjoined and ordered to implement necessary surface water and sediment controls at the Facility in accordance with O.A.C. Rule 3745-27-19(J), until all closure certifications are submitted and the post-closure care period begins, pursuant to the following schedule:

- a. Within 180 days of the Start Date, Defendants are enjoined and ordered to implement surface water and sediment controls in accordance with O.A.C. Rule 3745-27-19(J)
- b. Within 210 days of the Start Date, Defendants are enjoined and ordered to submit to the Ohio EPA a certification report, which meets the requirements of O.A.C. Rule 3745-27-08(H)(1),(3),(7) and (9), and an "as-built" plan for the surface water and sediment controls implemented at the Facility in accordance with Paragraph 14.a., above.
- c. After vegetative cover is established at the Facility, the Defendants may make a request to Ohio EPA for the decommissioning of any sediment ponds.

15. Defendants are enjoined and ordered to conduct post-closure care activities at the Facility for a period of no less than thirty (30) years, in accordance with O.A.C- Rule 3745-27-14(A).



16. In the event that Ohio EPA notifies the Defendant of deficiencies in any of the documents which Defendants are required to submit under the terms of this Consent Order, Defendants shall revise such document(s) to address Ohio EPA comments within 60 days of receipt of Ohio EPA's notice of deficiency, unless the parties agree in writing to an alternative schedule. Ohio EPA may approve of any plan or submittal with necessary modifications and/or conditions, to the extent it is authorized within its rules. The approval(s) with modification and/or conditions shall be implemented within the time period(s) specified in this Consent Order, unless the parties agree in writing to an alternative schedule.

#### **VIII. RIGHT OF ENTRY**

17. Defendants hereby agree to allow representatives of Ohio EPA and the Jefferson County District Board of Health to enter the Facility at reasonable times to inspect, investigate, take samples and pictures, and examine or copy records in order to determine compliance with the terms of this Consent Order and R.C. Chapter 3734 and rules promulgated thereunder. Nothing in this Consent Order limits Ohio EPA authority under R.C. Chapter 3734 or any other statutory authority to determine compliance at the Facility with this Consent Order and R.C. Chapter 3734 and rules promulgated thereunder.

#### **IX. CIVIL PENALTY**

18. Defendants are hereby ordered and enjoined to pay to the State of Ohio a civil penalty in the amount of Five Hundred Twenty One Thousand Four Hundred Forty Dollars (\$521,440). Defendants shall pay this civil penalty in eight equal installments by delivering to Plaintiff c/o Jena Suhadolnik, Administrative Assistant, or her successor, Office of the Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25 Floor, Columbus, Ohio,

43215-3428, a certified check in the installment amount, payable to the order of "Treasurer, State of Ohio" in accordance with the following schedule:

- 1/2/06 a. The first equal installment of Sixty Five Thousand One Hundred Eighty Dollars (\$65,180) shall be due not later than 365 days after the Start Date.
- 4/3/06 b. The second equal installment of Sixty Five Thousand One Hundred Eighty Dollars (\$65,180) shall be due not later than 456 days after the Start Date.
- 7/3/06 c. The third equal installment of Sixty Five Thousand One Hundred Eighty Dollars (\$65,180) shall be due not later than 547 days after the Start Date.
- 10/2/06 d. The fourth equal installment of Sixty Five Thousand One Hundred Eighty Dollars (\$65,180) shall be due not later than 638 days after the Start Date.
- 1/27/07 e. The fifth equal installment of Sixty Five Thousand One Hundred Eighty Dollars (\$65,180) shall be due not later than 730 days after the Start Date.
- 4/3/07 f. The sixth equal installment of Sixty Five Thousand One Hundred Eighty Dollars (\$65,180) shall be due not later than 821 days after the Start Date.
- 7/2/07 g. The seventh equal installment of Sixty Five Thousand One Hundred Eighty Dollars (\$65,180) shall be due not later than 912 days after the Start Date.
- 10/2/07 h. The eighth equal installment of Sixty Five Thousand One Hundred Eighty Dollars (\$65,180) shall be due not later than 1,003 days after the Start Date.

19. One-half of each civil penalty installment required to be submitted pursuant to Paragraphs 18. a.-h., above, shall be deposited into the hazardous waste clean-up fund created in R.C. 3734.28, and one-half of each civil penalty installment required to be submitted pursuant to Paragraphs 18. a.-h., above, shall be deposited into the environmental remediation clean-up fund created in R.C. 3734.281.

#### **X. POTENTIAL FORCE MAJEURE**

20. In any action by the State of Ohio to enforce any of the provisions of this Consent Order, Defendants may raise at the time the question of whether they are entitled to a defense

that their conduct was caused by circumstances beyond their control such as, by way of example and not limitation, acts of God, strikes, acts of war, civil disturbances. While the State of Ohio does not agree that such a defense exists, it is, however hereby agreed by Defendants and the State of Ohio 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 proceeding to enforce this Consent Order is commenced by the State. At that time, the burden of proving that any delay was or will be caused by circumstances beyond the control of Defendants shall rest with Defendants. Changes in Defendants' financial circumstances after the Start Date shall not in any event constitute circumstances beyond the control of Defendants. Acceptance of this Consent Order without a Force Majeure clause does not constitute a waiver of any rights or defenses that the Defendants may have under applicable law.

#### **XI. STIPULATED PENALTIES**

21. If Defendants fail to meet any of the requirements of this Consent Order set forth in Paragraphs 7 through 16, then Defendants shall, upon notice from the Plaintiff, be liable for and shall pay a stipulated penalty according to the following payment schedule.

- a. For each day of failure to meet a requirement up to thirty (30) days, Three Hundred Fifty Dollars (\$350.00) per day for each requirement not met.
- b. For each day of failure to meet a requirement from thirty-one (31) to sixty (60) days, Seven Hundred Dollars (\$700.00) per day for each requirement not met.
- c. For each day of failure to meet a requirement from sixty-one (61) to ninety (90) days, One Thousand Four Hundred Dollars (\$1,400.00) per day for each requirement not met.
- d. For each day of failure to meet a requirement over ninety (90) days, Two Thousand Dollars (\$2,000.00) per day for each requirement not met.

22. Any payment required to be made under the provisions of paragraph 20 of this Order shall be made by delivering to Jena Suhadolnik, Administrative Assistant, or her successor, a certified check or checks for the appropriate amounts, payable to the order of "Treasurer, State of Ohio" within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order.

## **XII. GENERAL PROVISIONS**

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

24. Nothing in this Consent Order is intended to create any rights or causes of action in or for any party other than the State of Ohio. This Consent Order is entered into by the Defendants without admission of fact, law, violation, or liability (which Defendants deny) and Defendants reserve the right to deny and challenge in any other proceeding or action any finding of fact or conclusion of law alleged in the Complaint and in the Ohio EPA, Division of Solid and Infectious Waste Management documents identifying noncompliance through the date of entry of this Consent Order.

25. All certified checks to be submitted to the Ohio EPA pursuant to this Consent Order shall be submitted to:

Jena Suhadolnik, or her successor  
Administrative Assistant  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215-3428

26. All other plans or documents submitted pursuant to this Consent Order shall be submitted to:

Unit Supervisor  
Division of Solid and Infectious Waste Management  
Southeast District Office  
Ohio Environmental Protection Agency

2195 Front Street  
Logan, Ohio 43138

27. All notices, review and written responses, or approvals issued by Ohio EPA to the Defendants pursuant to this Consent Order shall be submitted to:

Charles Thompson  
Crossridge, Inc.  
1202 LaBelle Avenue  
Steubenville, Ohio 43952

C&D Disposal Technologies LLC  
c/o Joseph G. Scugoza  
263 Bryden Road  
Steubenville, Ohio 43952

And

Michael A. Cyphert, Esq.  
Walter & Haverfield LLP  
1300 Terminal Tower  
50 Public Square  
Cleveland, OH 44113-2253

Each party reserves the right to change the recipient of plans, notice, etc. by written notice directed to the other parties.

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

### **XIII. AUTHORITY TO ENTER INTO THE CONSENT ORDER**

29. The signatory for Defendant Crossridge, Inc, and the signatory for Defendant C&D Disposal Technologies LLC represent and warrant that he or she has been duly authorized to sign this document and so bind Defendant Crossridge, Inc. and the Defendant C&D Disposal Technologies LLC to all terms and conditions thereof

**XIV. RETENTION OF JURISDICTION**

30. The Court will retain jurisdiction of this action for the purpose of making any order or decree which it deems necessary to enforce this Consent Order or providing other appropriate relief in this action.

**XV. COSTS**

31. Defendant Crossridge, Inc. shall pay all court costs of this action.

**XVI. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK**

32. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three days of entering the Order upon the journal, the clerk is directed to serve upon all parties notice of the Order and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and to note the service in the appearance docket.

IT IS SO ORDERED.

\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
JUDGE, COURT OF COMMON PLEAS  
JEFFERSON COUNTY

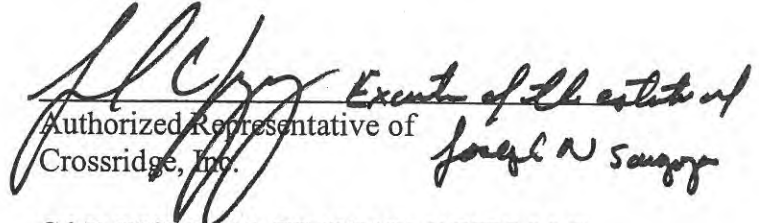
APPROVED:

JIM PETRO  
ATTORNEY GENERAL OF OHIO



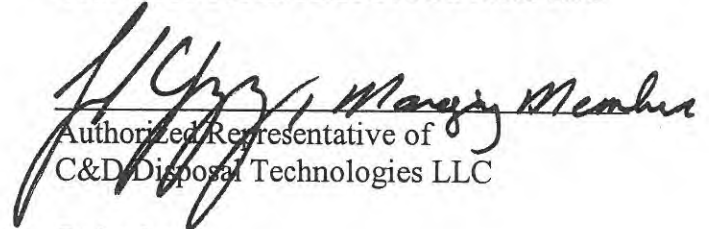
SHAUN K. PETERSEN (0072444)  
SUMMER J. KOLADIN PLANTZ (0072072)  
Assistant Attorneys General  
Environmental Enforcement Section  
30 E. Broad Street, 25<sup>th</sup> Floor  
Columbus, Ohio 43215-3428  
(614) 466-2766  
Fax: (614) 644-1926  
spetersen@ag.state.oh.us  
*Attorneys for Plaintiff*

CROSSRIDGE, INC.



Authorized Representative of  
Crossridge, Inc.

C&D DISPOSAL TECHNOLOGIES LLC



Authorized Representative of  
C&D Disposal Technologies LLC

*Defendants*

ATTORNEYS FOR DEFENDANTS  
CROSSRIDGE, INC. AND C&D  
DISPOSAL TECHNOLOGIES LLC



MICHAEL A. CYPHERT (0007086)  
WALTER & HAVERFIELD LLP  
1300 Terminal Tower  
50 Public Square  
Cleveland, Ohio 44113  
(216) 781-1212  
Fax: (216) 575-0911  
mcyphert@walterhav.com