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JIM VINCENT, CLERK
COMMON PLEAS COURT
CLARK COUNTY, OHIO

IN THE COURT OF COMMON PLEAS
CLARK COUNTY, OHIO

STATE OF OHIO, ex rel. RICHARD CORDRAY, OHIO ATTORNEY GENERAL:	:	**CASE NO. 07 CV 0898**
Plaintiff,	:	**JUDGE RICHARD J. O'NEILL**
v.	:	
TREMONT LANDFILL COMPANY, et al.,	:	
Defendants.	:	**Consent Order**

The Complaint in the above-captioned matter having been filed, and the Plaintiff State of Ohio by Attorney General Richard Cordray ("Plaintiff") and Defendants Tremont Landfill Company, Danis Environmental Services Company ("Danis Environmental") (now merged into Tremont Landfill Company) (collectively, Tremont Landfill Company and Danis Environmental shall be referred to therefore as "Tremont"), and Thomas Danis (collectively "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 under R.C. Chapter 3734. Venue is proper in this Court.

II. DEFINITIONS

2. Unless otherwise stated, all terms used in this Consent Order shall have the same meaning as used in Ohio Revised Code Chapter 3734 and Ohio Administrative Code rules adopted thereunder.

3. As used in this Consent Order, "Landfill" means the Tremont City Landfill, a sanitary landfill located at 3108 Snyder-Domer Road in Clark County, Ohio.

III. PERSONS BOUND

4. Paragraphs 26 and 28 and only Paragraphs 26 and 28 of this Consent Order shall apply to and be binding upon Defendant Thomas Danis. All the provisions of this Consent Order shall apply to and be binding upon all the other parties to this action, their agents, officers, employees, assigns, successors in interest and others to the extent provided by Civil Rule 65(d). The undersigned representatives of each party to this Consent Order certifies that he or she is fully authorized by the party or parties whom he or she represents to enter into the terms and conditions of the Consent Order and to execute and legally bind that party or parties to it.

5. Tremont shall provide a copy of this Consent Order, with Paragraphs 24 – 29 redacted, to each key employee, general contractor, subcontractor, laboratory, consultant, agent, and person hired by Tremont to provide work or services related to this Consent Order on behalf of Tremont. Tremont shall ask each general contractor to provide a similarly-redacted copy of this Consent Order to each of its subcontractors. Tremont shall provide a copy of the complete Consent Order without any redactions to any potential purchaser of the Landfill.

6. Other than as released herein, nothing in this Consent Order shall be construed to relieve Defendants of their obligation to comply with all applicable federal, state, or local statutes, regulations, or ordinances, including but not limited to, applicable permit requirements.

IV. SATISFACTION OF LAWSUIT

7. The State has stated numerous claims against Defendants in its Complaint, including that Defendants have violated R.C. Chapter 3734 and Ohio Adm. Code Chapter 3745-27, and has made the additional claims against Defendants that they did not properly perform and certify the Leachate Discharge Line Repair and the West Letdown Road Crossing Repair (the "Additional Claims").

8. The entering of this Consent Order shall constitute full satisfaction and release of any civil and administrative liability (including injunctive relief, civil penalties and investigative or other costs or expenses) of Defendants and their officers, shareholders, agents, employees and successors and assigns, for the time period up through the date of the entry of this Consent Order for the Additional Claims and for the claims alleged or which could have been alleged in the State's Complaint.

V. RESERVATION OF RIGHTS

9. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief from Tremont for claims or violations not referenced or released in this Consent Order, any violations arising out of acts or omissions first occurring after the entry date of this Consent Order, or claims under the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. § 9601 et. seq. or R.C. 3734.20 through 3734.27, for any emergency, removal, remedial, or corrective actions.

Notwithstanding any provision in this Consent Order to the contrary, Tremont retains all rights, defenses, and/or claims relating to any claims or alleged violations not referenced or released in this Consent Order, any alleged violations arising out of acts or omissions first occurring after the entry date of this Consent Order, or any claims under the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. §9601 et seq. or R.C. 3734.20 through 3734.27, for any emergency, removal, remedial, or corrective actions to the extent that the State seeks further relief from Tremont in the future, or in any action brought to enforce the terms of this Consent Order.

10. Nothing in this Consent Order, including the imposition of stipulated or civil penalties, shall limit the authority of the State to take any action authorized by law against any person, including Defendants to eliminate or mitigate conditions at the Landfill that may present an imminent threat to the public health or safety, or the environment.

VI. COMPLIANCE WITH APPLICABLE LAWS

11. Other than as released herein, nothing in this Consent Order shall affect Defendants' obligation to comply with all applicable federal, state or local laws, regulations, rules, or ordinances and Tremont shall obtain all federal, state, or local permits and licenses necessary to comply with this Consent Order.

VII. INJUNCTION

12. Tremont agrees to and is permanently enjoined and ordered to comply with the provisions of R.C. Chapters 3734 and 6111, and the rules promulgated thereunder.

13. Within one hundred twenty (120) days of entry of this Consent Order, and continuously thereafter until the end of post-closure care, Tremont agrees and is ordered and enjoined to operate and maintain the landfill gas monitoring and extraction system components at the Landfill as required by Ohio Administrative Code 3745-27-14(A)(1) and (5) and Ohio Administrative Code 3745-27-12.

14. Within two hundred seventy (270) days of entry of this Consent Order and continuously thereafter until the end of post-closure care, Tremont agrees and is ordered and enjoined to establish and maintain a dense vegetative cover on the entire cap of the Landfill as required by Ohio Adm. Code 3745-27-14(A)(2).

15. Within ninety (90) days of entry of this Consent Order and continuously thereafter until the end of post-closure care, Tremont agrees and is ordered and enjoined to maintain all surface water control structures including, but not limited to, letdowns, channels and sediment pond, as set out in the Landfill's Permit-to-Install, Final Closure and Post-Closure Care Plan, Storm Water Pollution Prevention Plan, and Ohio Adm. Code 3745-27-14.

16. Tremont has submitted to the State a Storm Water Pollution Prevention Plan for Construction Activity ("SWPPP") which is currently under review by the State. Tremont and the State agree that they shall both negotiate in good faith to finalize a plan for Tremont to implement.

17. Tremont shall perform onsite visual monitoring of the Landfill site through its employees or agents once every seven (7) calendar days and after any storm event greater than 0.5 inches of rain in a 24-hour period. Rainfall depths may be recorded on-site, or retrieved from any nearby climatic monitoring system recognized by

the National Oceanic and Atmospheric Administration (NOAA).

18. Tremont shall, within one hundred eighty (180) days of the entry of this Consent Order, establish an electronic leachate monitoring system, which shall monitor leachate levels at the tank farm and sump pump at the Landfill site at a minimum on a daily basis. Tremont shall maintain the west leachate seep such that it continues discharging into the leachate tank.

19. Defendants have not made, nor are they making, any representations or warranties that Tremont has or will have the financial ability to meet the obligations set forth herein, except to pay the civil penalty.

20. Within one hundred twenty (120) days of entry of this Consent Order, Tremont shall remove the PVC pipe that is protruding from the southeast portion of the Landfill, in accordance with the monitoring probe abandonment procedures as set out in Section 5.4 of the Landfill's currently approved Explosive Gas Monitoring Plan.

VIII. RIGHT OF ENTRY

21. Tremont hereby agrees to allow representatives of Ohio EPA to enter the Landfill at reasonable times to inspect, investigate, take samples and pictures, and examine or copy records to determine compliance with the terms of this Consent Order and R.C. Chapters 3734 and 6111 and rules promulgated thereunder. Nothing in this Consent Order limits Ohio EPA's authority under R.C. Chapters 3734 or 6111, or any other statutory authority, to determine Tremont's compliance with this Consent Order and R.C. Chapters 3734 and 6111 and rules promulgated thereunder.

22. Tremont agrees and consents that any and all contractors, subcontractors, consultants, or other persons working for or on behalf of Ohio Environmental Protection

Agency or United States Environmental Protection Agency shall have full access to the Landfill at all reasonable times, without the need for a warrant, as may be necessary to perform post-closure care, remediation and/or emergency response work at the Landfill. Nothing in this Paragraph shall be construed to eliminate or restrict any right Ohio Environmental Protection Agency may otherwise have under Federal or State law to seek access to the Landfill.

23. In the event Tremont fails to complete future post-closure care activities in accordance with Chapter 3745-27, Tremont shall make available to the Ohio EPA, or its representative, at no cost, soil from any and all properties owned by Tremont in Clark County, Ohio as of the date of this Consent Order that meets or exceeds the requirements set forth in OAC Rule 3745-27-14. Tremont shall execute and record a declaration to this effect for each parcel of property owned by Tremont in Clark County, Ohio.

IX. STIPULATED PENALTIES

24. If Tremont fails to meet any of the requirements of Section VII. (Injunction), Section X. (Civil Penalty), or Section XI (Attorney General Enforcement Costs) of this Consent Order, Tremont shall immediately and automatically 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, two hundred fifty dollars ($250) 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, five hundred dollars ($500) 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, six hundred dollars ($600) per day for each requirement not met.

d. For each day of failure to meet a requirement over ninety (90) days, one thousand dollars ($1,000) per day for each requirement not met.

25. Any payment required to be made under the provisions of Paragraph 24 of this Order shall be made by delivering to Karen Pierson 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 amounts, payable to the order of "Treasurer, State of Ohio" within fifteen (15) days from the date of the delivery of written notice to Tremont of the failure to meet the requirement of the Consent Order.

X. CIVIL PENALTY

26. Tremont is ordered and enjoined to pay one hundred seven thousand, five hundred dollars ($107,500) in installment payments as set forth below and contingent upon this Order becoming final and not subject to any further appeal.

a. Of the total civil penalty amount, Tremont shall pay to Plaintiff State of Ohio eighty-five thousand dollars ($85,000) in accordance with the following schedule. Payments shall be made in eight installments of ten thousand dollars ($10,000) each on or before the following dates:

Within 15 days of the entry of this Consent Order

October 1, 2010

January 1, 2011

April 1, 2011

July 1, 2011

October 1, 2011

January 1, 2012

April 1, 2012

b. The ninth installment payment of five thousand dollars ($5,000) shall be made on or before July 1, 2012.

c. Civil penalty payments made pursuant to Paragraphs 26.a. and b. above shall be made by delivering to Karen Pierson 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."

d. Of the total civil penalty amount, Tremont shall make payment of twenty-two thousand five hundred dollars ($22,500) to Plaintiff State of Ohio in the form of a Supplemental Environmental Project for the purpose of conducting environmental remediation activities within Clark County, in accordance with the following schedule. Payments shall be made in nine installments of $2,500 each, on or before the following dates:

Within 15 days of the entry of this Consent Order

October 1, 2010

January 1, 2011

April 1, 2011

July 1, 2011

October 1, 2011

January 1, 2012

April 1, 2012

July 1, 2012

e. Civil penalty payments made pursuant to Paragraph 26.d. above shall be made by delivering to the Clark County Combined Health District, 529 East Home Rd., Springfield, Ohio 45503, a certified check or checks for the appropriate amount, payable to the order of "Clark County Combined Health District." Tremont shall accompany payments made to the Clark County Combined Health District with written documentation indicating that the payments are to be deposited into the "Solid Waste Non-District Fund, Code #1238."

f. In the event that Tremont fails to make full payment of any of the civil penalty installment payments as set out herein within fifteen (15) days from the date of receipt of notice of the failure to make timely payment, any and all remaining civil penalty installment payments shall become immediately due and owing.

27. Tremont shall place an additional ten thousand dollars ($10,000.00) above the amount required for post-closure care for 2010 in the financial assurance trust fund. That $10,000, to the extent not otherwise used pursuant to the terms of the trust, shall remain in the trust undiminished through the end of the post-closure care period.

28. Defendant Thomas Danis agrees to personally guarantee each of the civil penalty payments set out in Paragraph 26 herein.

XI. ATTORNEY GENERAL ENFORCEMENT COSTS

29. Tremont is ordered and enjoined to pay the enforcement costs of the Ohio Attorney General in the amount of five thousand dollars ($5,000) within 15 days of the entry of this Consent Order. This payment shall be made by delivering to 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 43215-3400, a certified check for the appropriate amount, payable to the order of "Treasurer, State of Ohio" to be deposited into the Attorney General's General Reimbursement Account (also known as CAS Fund 106).

XII. SUBMITTAL OF DOCUMENTS

30. All plans or documents, other than any payments for penalties or stipulated penalties, required pursuant to this Consent Order shall be submitted to:

Unit Supervisor
Division of Solid and Infectious Waste Management
Southwest District Office
Ohio Environmental Protection Agency
401 East Fifth Street
Dayton, OH 45402

and

Anne Kaup-Fett (or her successor)
Clark County Combined Health District
529 Home Road
Springfield, OH 45503

31. All notices, review, written responses, or approvals issued by Ohio EPA to Tremont pursuant to this Consent Order shall be submitted to:

Tremont Landfill Company
c/o Diversified Environmental Management Company,
The Green, 70 Birch Alley, Suite 246,
Beavercreek, Ohio, 45440,

with a copy to:

Thomas T. Terp. Esq.
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, Ohio, 45202-3957.

XIII. RETENTION OF JURISDICTION

32. 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.

XIV. COSTS

33. Defendants shall pay court costs of this action insofar as they relate to the claims of Plaintiff State of Ohio. Any allocation of court costs relating to the claims between Tremont and Third-Party Defendants Springfield Gas, Inc., and Enterprise Gas, Inc., shall be determined by further order of the Court or agreement of those parties.

XV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT

34. The claims settled hereby are separate and distinct from the other parties' claims and there is no just cause for delay. Therefore, the Clerk is hereby ordered to enter this order as a final appealable order pursuant to Civil Rule 54(b). Pursuant to Civil 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:

Judge Richard J. O'Neill
Clark County Common Pleas Court

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

John F. Cayton (0072736)
Assistant Attorney General
1 Government Center, Suite 1340
Toledo, OH 43604
Attorney for Plaintiff State of Ohio

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CLARK COUNTY, OHIO

TREMONT LANDFILL COMPANY

BY: Diversified Environmental Management Company,
its sole shareholder

BY: _____

ITS: PRESIDENT

THOMAS J. DANIS

Earl K. Messer (0055280)
Attorney for Defendants Tremont Landfill Company and Thomas J. Danis

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