

II. PARTIES

2. Defendant James Bros., Inc. owns the James Bros. C&DD landfill located at 3935 Boggs Road, Zanesville, Muskingum County (the "Site"). Glen James & Sons, Inc. operates the Site.

3. Defendant Daniel James is an Ohio resident whose address is 3805 Millers Lane, Duncan Falls, Ohio 43734. He is the sole owner/operator/controller of Defendant James Bros., Inc. and Defendant Glen James & Sons, Inc.

4. Defendants are each a "person" as that term is defined in R.C. Section 3734.01(G), R.C. 3714.01(H) and Ohio Administrative Code ("OAC") 3745-27-01(P)(3).

5. The provisions of this Consent Order shall apply to, and are binding upon, the Parties to this action, and, in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure, their officers, agents, servants, employees, successors in interest, and those persons in active concert or participation with them who receive actual notice of this Consent Order whether by personal service or otherwise.

III. SATISFACTION OF LAWSUIT

6. The State alleges in its Complaint that the Defendants have violated R. C. Chapters 3734 and 3714 and OAC Chapters 3745-27 and 3745-400. Defendants deny such allegations. The parties have agreed to resolve the disputed issues in this matter without adjudication of any issues of fact or law. Entry into this Consent Order shall constitute full satisfaction of any civil liability for matters addressed in Plaintiff's Complaint.

7. Except as otherwise provided in Paragraph 8 of this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil and

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administrative liability of Defendants and their successors in interest and assigns for the claims alleged in the State's Complaint.

8. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief from any of the Defendants for: (A) claims or violations not referenced in the Complaint; (B) any violations arising out of acts or omissions first occurring after the effective date of this Consent Order; or (C) claims or violations 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, or for natural resource damages. Defendants retain all rights, defenses, and/or claims each may legally raise to the extent that the State seeks further relief from any Defendant in the future, or in any action brought to enforce the terms of this Consent Order, except that no Defendant shall assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim splitting, laches or other defenses based upon any contention that the claims raised by the State in subsequent proceedings were or should have been brought in the instant case.

9. Entering into this Consent Order, the Consent Order itself, or the taking of any action in accordance with the Consent Order and/or any work performed at the Site does not constitute an admission of any liability, wrongdoing, or misconduct on part of the Defendants, their officers, employees, or agents.

10. Nothing herein 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, the applicable permit requirements.

11. Nothing in this Consent Order shall constitute or be construed as a covenant not to sue regarding any claim alleged in the Complaint, or any other claim or cause of action, against any person, firm, trust, joint venture, partnership, corporation, association, or other entity not a signatory to this Consent Order for any liability they may have arising out of, or relating to, the Site including, but not limited to, those identified in the Complaint.

IV. PERMANENT INJUNCTION

12. Defendants each agree and are ordered and enjoined to comply with R. C. Chapters 3734 and 3714 and the rules promulgated thereunder, including, but not limited to, the applicable provisions of OAC Chapters 3745-27 and 3745-400 at the Site.

13. Subject to the provisions set forth below in Paragraphs 15, 16 and 17 below, beginning on the date that this Consent Order is entered, Defendants shall lawfully remove all solid wastes, provide disposal receipts within 10 days of said removal in accordance with Section VIII herein, and begin closure at the Site in accordance with R.C. 3734 and 3714 and the rules promulgated thereunder and shall continue closure activities, providing monthly updates of the work completed each month toward closure, at the Site until closure is certified complete by Ohio EPA. Defendants have one year to complete closure activities. If Defendants fail to complete final closure within 1 year, access to the site as well as access to soils is granted to Ohio EPA and its contractors as set forth in Paragraph 20 below. Notwithstanding the foregoing, Defendants shall conduct no work at the Site unless it is determined that Defendants have the ability to pay for injunctive relief at the site and Ohio EPA instructs Defendants to conduct work activities at the Site.

V. CIVIL PENALTY

14. Within thirty (30) days of entry of this Consent Order, Defendants are jointly and

severally ordered and enjoined to pay a civil penalty of one million dollars (\$1,000,000), subject to the provisions set forth in Paragraphs 15, 16 and 17 below. Such payment shall be made by delivering to Martha Sexton, Paralegal, 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."

15. The State of Ohio has reviewed each Defendant's ability to pay information and, upon information and belief, agrees that each Defendant does not have a current ability to pay the civil penalty prescribed in Paragraph 14 or the ability to pay for injunctive relief at the site prescribed in Paragraph 13.

16. Each Defendant shall, for ten years after entry of this Consent Order, submit its/his Federal and State tax returns to Ohio EPA at the address below by October 18th of each year. If any of the Defendant's adjusted gross income (AGI) exceeds \$41,000 for any one year in the ten years following the date of this Consent Order, any and all income in excess of the \$41,000 shall be paid toward the civil penalty agreed upon in Paragraph 14 above until paid in full. In the event the civil penalty set forth in Paragraph 14 has not been paid within ten years of the entry of this Consent Order, the civil penalty set forth in Paragraph 14 shall be deemed satisfied and paid in full so long as any Defendant has not otherwise violated this Order and each Defendant has paid and all income in excess of \$41,000 in each year toward the civil penalty.

17. In the event that any Defendant violates this Consent Order in any manner, the entire civil penalty shall immediately become due and owing without further demand by the State.

VI. STIPULATED PENALTIES

18. In the event that any Defendant fails to comply with any of the requirements of Sections IV or V herein, each Defendant shall immediately and automatically be jointly and severally liable for and shall pay a stipulated penalty in accordance with the following schedule:

- a. Defendants shall pay three hundred dollars (\$300.00) per day for each day any requirement of this Consent Order is violated up to the first thirty (30) days of violation;
- b. For each day any requirement of this Consent Order is violated, between thirty (30) days and ninety (90) days of violation, Defendants shall pay six hundred dollars (\$600.00) per day;
- c. For each day any requirement of this Consent Order is violated, greater then (90) days of violation, Defendants shall pay one thousand dollars (\$1,000.00) per day.

19. Stipulated penalties due under this Consent Order shall be due and owing without further demand by the State and shall be paid by check or money order, payable to "Treasurer, State of Ohio" and mailed to Martha Sexton or her successor, Paralegal, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

VII. SITE ACCESS

20. Defendants agree and consent that the Ohio Environmental Protection Agency, and its employees and agents shall have full access to the Site and any appurtenant property within Defendants control at all reasonable times, without the need for a warrant, as may be necessary for the implementation of this Consent Order, implementation of any other work that it deems necessary and/or to monitor compliance with this Consent Order and/or Ohio environmental laws. Defendants further agree and consent that any and all contractors, subcontractors, consultants, or other persons working for or on behalf of the Ohio Environmental

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Protection Agency shall have full access to the Site and any appurtenant property within Defendant's control at all reasonable times, without the need for a warrant, as may be necessary to perform inspections, assessments, final closure activities, post-closure care, sampling, monitoring, surveying, remediation and/or emergency response work, and/or to remove materials, waste and/or debris. Defendants further agree and consent that the Ohio EPA and their employees and agents shall have complete access to any on site soils to complete any work needed at the site.

21. Paragraph 20 of this Consent Order shall not be construed to eliminate or restrict any right Ohio Environmental Protection Agency may otherwise have under Federal, State or local law to seek access to the Site.

VIII. NOTICES

22. All documents required to be submitted under this Consent Order shall be submitted to the following, or their successor:

As to Plaintiff:

Ohio Environmental Protection Agency
Division of Materials and Waste Management
P.O. BOX 1049
Columbus, Ohio 43216-1049
Attn: Enforcement Unit Supervisor, DMWM

As to Defendants:

Daniel James
3000 Dillion School Road
Zanesville, Ohio 43701

23. Either Party may change the name or address of its contact person(s) by serving written notice to the other party.

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IX. RETENTION OF JURISDICTION AND WAIVER OF SERVICE

24. The Court will retain jurisdiction of this action for purposes of enforcing this Consent Order during the effective term thereof. Defendants waive service of the Complaint and summons in this action.

X. EFFECTIVE DATE

25. This Consent Order shall be effective upon the date of its entry by the Court.

XI. COURT COST

26. Defendants are hereby ordered to pay all court costs of this action.

XII. SIGNATORIES

27. Each of the undersigned representatives of the Parties represents that he/she is fully authorized to enter into the terms and conditions of this Consent Order and legally bind the respective party to this document.

XIII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

28. 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 (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 current docket.

IT IS SO ORDERED.



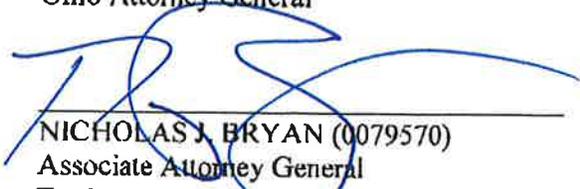
Judge Pleegle
Muskingum County Court of Common Pleas

Date

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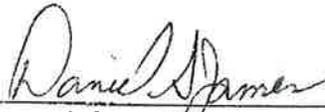
APPROVED BY:

MICHAEL DEWINE
Ohio Attorney General



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Environmental Enforcement Section
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*Attorney for Plaintiff
State of Ohio*



Glen James & Sons, Inc.
By: Daniel James, President

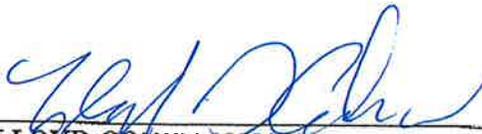


DANIEL JAMES
3000 Dillion School Road
Zanesville, Ohio 43701

In his individual capacity



James Bros., Inc.
By: Daniel James, President



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Attorney for Defendant

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