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**IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO**

<b>STATE OF OHIO, <i>ex rel.</i></b>	:	<b>CASE NO. A2100907</b>
<b>DAVE YOST</b>	:	
<b>OHIO ATTORNEY GENERAL,</b>	:	
	:	<b>JUDGE JODY M. LUEBBERS</b>
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>EVANS LANDSCAPING, INC., et al.,</b>	:	<b>CONSENT ORDER</b>
	:	
<b>Defendants.</b>	:	

**ENTERED**  
SEP 29 2022

The State of Ohio, by its Attorney General (“Plaintiff”/“the State”) and at the written request of the Hamilton County General Health District and the Ohio Environmental Protection Agency (“Ohio EPA”), has filed a Complaint seeking injunctive relief and civil penalties against Defendants Evans Landscaping, Inc., B E E Holdings Limited Partnership, Evans Gravel, Inc., 8361 Broadwell Road, LLC, and Douglas L. Evans, alleging violations of Ohio’s solid waste and construction and demolition debris laws under R.C. Chapters 3714 and 3734, and the rules adopted thereunder, concerning the Defendants’ operation of landscaping, recycling, composting, and clean hard fill facilities, located on 4229 Round Bottom Road, 4455 Mt. Carmel Road, and 8361 Broadwell Road, each located in Anderson Township, Hamilton County, Ohio 45244. The Parties have consented to the entry of this Order.

Therefore, without trial, admission, or determination of any issue of fact or law and with the consent of the Parties hereto, it is ORDERED, ADJUDGED, AND DECREED:

**I. DEFINITIONS**

1. As used in this Order, the following terms are defined:



- A. "Defendants" means Evans Landscaping, Inc., B E E Holdings Limited Partnership, Evans Gravel, Inc., 8361 Broadwell Road, LLC, and Douglas L. Evans.
- B. "Parties" means Plaintiff, the State of Ohio, and Defendants, Evans Landscaping, Inc., B E E Holdings Limited Partnership, Evans Gravel, Inc., 8361 Broadwell Road, LLC, and Douglas L. Evans.
- C. "Person" means an individual, public or private corporation, business trust, estate, trust, partnership, association, federal government or any agency thereof, municipal corporation or any agency thereof, political subdivision or any agency thereof, public agency, interstate body created by compact, any other entity, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.
- D. "Round Bottom Site" means Defendant B E E Holdings Limited Partnership's property located at 4229 Round Bottom Road, Anderson Township, Hamilton County, Ohio 45244 (Parcel No. 500-0170-0016-00).
- E. "Mt. Carmel Road Fill Site" means Defendant Evans Gravel Inc's property located on Mount Carmel Road in Anderson Township, Hamilton County, Ohio (Parcel No. 500-0081-0032), otherwise known as 4455 Mt. Carmel Road, Anderson Township, Ohio 45244.
- F. "Broadwell Site" means Defendant 8361 Broadwell Road, LLC's property located at 8361 Broadwell Road in Anderson Township, Hamilton County, Ohio 45244. (Parcel No. 500-0081-0003).
- G. "Sites" means the Round Bottom Site, Broadwell Site, and Mt. Carmel Road Fill Site.

- H. "State" means Plaintiff, the State of Ohio, including the Hamilton County General Health District and Ohio EPA, or the Ohio Attorney General on behalf of the State, or any State entity named in the Complaint.
- I. "Order" refers to this Order.
- J. "Written" means a paper copy or a saved, stored, or transmitted electronic copy.
- K. "Recovered screen material" means fine or residual construction and demolition debris less than three quarters of an inch in size that is generated at a processing facility as a result of sorting or screening construction and demolition debris from which all prohibited materials have been removed.

## **II. JURISDICTION AND VENUE**

2. The Court has jurisdiction over the Parties and the subject matter of this action under R.C. Chapters 3714 and 3734. The Complaint states a claim upon which relief can be granted. Venue is proper in this Court. Defendants shall not challenge the Court's jurisdiction to enter or enforce this Order.

## **III. PARTIES BOUND**

3. Defendant Evans Landscaping, Inc. ("Evans Landscaping") is an Ohio corporation with its principal place of business at 3700 Round Bottom Road, Anderson Township, Hamilton County, Ohio 45244.

4. Defendant B E E Holdings Limited Partnership ("B E E Holdings") is a foreign limited partnership formed under the laws of the State of Georgia on April 8, 1998, and registered with the State of Ohio since April 22, 1998, with its principal place of business at 3700 Round Bottom Road, Anderson Township, Hamilton County, Ohio 45244.

5. Defendant Evans Gravel, Inc. (“Evans Gravel”) is an Ohio corporation with its principal place of business at 3700 or 4229 Round Bottom Road, Anderson Township, Hamilton County, Ohio 45244.

6. Defendant 8361 Broadwell Road, LLC (“8361 Broadwell”) is an Ohio limited liability company with its principal place of business at 3700 Round Bottom Road, Anderson Township, Hamilton County, Ohio 45244.

7. Defendant Douglas L. Evans (“Evans”) is an Ohio resident with a business address of 3700 Round Bottom Road, Anderson Township, Hamilton County, Ohio 45244.

8. This Order shall apply to and be binding only upon Defendants, and, to the extent consistent with Civ. R. 65(D), on their agents, officers, servants, employees, attorneys, successors in interest, and those persons in active concert, or participation with Defendants who receive actual notice of this Order whether by personal service, by public record filed in the county land record, or otherwise. Defendants shall provide a copy of this Order to any successor in interest and to each key employee, consultant, or contractor employed to perform work referenced herein or to operate the Sites.

9. This Order is in settlement and compromise of disputed claims, and nothing in this Order is to be construed as an admission of any facts or liability.

10. If insolvency, bankruptcy, or other failure occurs, Defendants must pay the remaining unpaid balance of the total civil penalty.

#### **IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS**

11. The Plaintiff alleges that Defendants are responsible for violations of the construction and demolition debris and solid waste laws of the State of Ohio under R.C. Chapters 3714 and 3734. Defendants deny all such allegations. Compliance with this Order shall constitute

full satisfaction of any civil liability of Defendants to Plaintiff for the claims alleged in Plaintiff's Complaint and for any alleged violations of R.C. Chapters 3714 and 3734 and the rules promulgated thereunder identified in Hamilton County General Health District Notices of Violation dated December 29, 2021 (Broadwell Site), April 12, 2022 (Broadwell Site), December 29, 2021 (Mt. Carmel Site), April 12, 2022 (Mt. Carmel Site), December 7, 2021 (Round Bottom Site), and December 29, 2021 (Round Bottom Site).

12. Except as provided in Paragraph 11, nothing in this Order, including the imposition of stipulated civil penalties for violations of this Order, shall limit the authority of the State of Ohio to:

- A. Seek any legal or equitable relief or civil penalties from Defendants or any other appropriate person for any claims or violations not alleged in the Complaint;
- B. Seek any legal or equitable relief or civil penalties from Defendants or any other appropriate person for claims, conditions, or violations that occur on or exist after the entry of this Order;
- C. Enforce this Order through a contempt action or otherwise seek relief for violations of this Order; and/or
- D. Take any future legal or equitable action against any appropriate person, including Defendants, to eliminate or mitigate conditions at the Sites that may present a threat to public health or welfare or to environment in derogation of applicable laws and rules, which State of Ohio has the authority to enforce.

13. This Order does not waive, abridge, settle, compromise, or otherwise impact any other claims in law or equity that the State of Ohio or other persons may have against Defendants.

14. Except for the signatories to the Order, nothing in this Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged, against any person not a signatory to this Order for any liability such non-signatory may have arising out of matters alleged in the Complaint. The State of Ohio also specifically reserves its right to sue any person that is not a signatory to this Order.

15. Nothing in this Order shall relieve Defendants of their obligations to comply with applicable federal, state, or local statutes, regulations, rules, or ordinances.

16. Nothing herein shall restrict the right of Defendants to raise any administrative, legal, or equitable defense with respect to such further actions reserved by the State in this Order. However, with respect to the actions reserved by the State in this Section, Defendants shall not assert and/or maintain, any defense or claim of waiver, *res judicata*, collateral estoppel, issue preclusion, claim splitting, or other defenses based on any contention that Plaintiff's claims in any subsequent judicial or administrative proceeding could or should have been brought in this case.

17. Defendants agree that each is jointly and severally liable for the obligations and requirements in this Order.

#### V. PERMANENT INJUNCTION

18. Defendants are ordered and permanently enjoined to comply fully with R.C. Chapters 3714 and 3734 and the rules promulgated thereunder.

19. Defendants are ordered and enjoined to:

A. Regarding the Round Bottom Site:

1. Not later than sixty (60) days after the Effective Date of this Order, Defendants shall, consistent with the 2013 Groundwater Quality Monitoring Report submitted to the Hamilton County General Health

District, decommission ground water monitoring well MW-4 in accordance with Ohio Adm.Code Chapter 3745-9; replace ground water monitoring well MW-4 with a new well, MW-4R; and repair ground water monitoring well MW-5. After completing the replacement of MW-4 and repair of MW-5, Defendants shall perform not less than one (1) year of semi-annual ground water monitoring of wells MW-2, MW-3, MW-4R, and MW-5 to determine the concentration or value of each parameter listed in Ohio Adm.Code 3745-400-21, consistent with the recommendation to conduct additional monitoring in Defendants' 2013 Groundwater Quality Monitoring Report. Defendants shall conduct the semi-annual ground water monitoring at least once during high water table conditions and once during low water table conditions and each monitoring event shall be conducted in compliance with Ohio Adm.Code 3745-400-10(C)(1).

2. Not later than forty-five (45) days after each ground water monitoring event set forth in Paragraph 19(A)(1), Defendants shall submit to the Hamilton County General Health District and Ohio EPA a written report signed by a qualified ground water scientist that provides the following for each event:
  - a. Ground water quality data using tables, tri-linear diagrams, stiff diagrams, time vs. concentration plots, or any other format deemed appropriate by the qualified ground water scientist;

- b. A description of any significant ground water quality changes over time and differences between up-gradient and down-gradient wells; and
  - c. The Information set forth in Ohio Adm.Code 3745-400-10(B)(2).
3. Not later than thirty (30) days after receiving the results of the second semi-annual ground water monitoring event described in Paragraph 19(A)(1) of this Order, Defendants shall compare current concentrations with historical data to identify parameters with a potential increasing trend as well as parameters that exceed the applicable use standards. Not later than forty-five (45) days after receiving the results of the second semi-annual groundwater monitoring event described in Paragraph 19(A)(1) of this Order, Defendants shall provide all information obtained in accordance with in Paragraphs 19(A)(1), 19(A)(2), and 19(A)(3) in a written report signed by a qualified ground water scientist, to the Hamilton County General Health District and Ohio EPA together with an analysis of whether current and historic ground water data indicate that the Round Bottom Site may be affecting ground water quality.
4. If the information obtained in accordance with Paragraphs 19(A)(1), 19(A)(2), and 19(A)(3) indicate that the Round Bottom Site may be affecting ground water quality, not later than forty-five (45) days after submitting the report required by Paragraph 19(A)(3) of this Order, Defendants shall submit to the Hamilton County General Health District



and Ohio EPA a ground water assessment plan that meets the criteria set forth in Ohio Adm.Code 3745-400-10(E) to delineate the concentration, rate, and extent of all contaminants with statistically significant increasing trends and those in excess of applicable use standards. Defendants shall implement the plan not later than thirty (30) days after notice of approval from Ohio EPA and Hamilton County General Health District. The groundwater assessment plan shall set forth how Defendants will identify the nearest ground water receptors down-gradient from the Round Bottom Site, together with their appropriate use standard, including but not limited to, drinking water standards or aquatic life standards.

5. Not later than forty-five (45) days after completing implementation of the ground water assessment plan and the receipt of all final sampling data, Defendants shall submit to the Hamilton County General Health District and Ohio EPA a written ground water assessment report that complies with Ohio Adm.Code 3745-400-10(E)(4) and includes the following:

a. Ground water flow maps for each of the two semi-annual sampling events delineating flow direction based on depth to water measurements from representative monitoring wells, including but not limited to replacement monitoring well MW-4R. The flow maps shall include the Little Miami River, measured or estimated river elevation, and the approximate location of the nearest

hydrogeological boundaries, including the Little Miami buried valley wall.

b. Identify the nearest ground water receptors down-gradient from the Round Bottom Site, together with their appropriate use standard, including but not limited to, drinking water standards or aquatic life standards.

c. A fence diagram or equivalent representation of the groundwater monitoring system for each of the sampling events pursuant to the approved groundwater assessment plan, depicting the nearest receptors, and displaying all of the following components:

- (1) Posted Monitoring well depth to water elevations;
- (2) Water table extent;
- (3) Arrows depicting flow direction;
- (4) Ground surface elevation;
- (5) Monitoring well screen interval;
- (6) Depth and extent of waste;
- (7) Depth and extent of hydrostratigraphic layers;
- (8) Little Miami River surface water elevation; and
- (9) Little Miami River channel elevation or estimate thereof based on published topographic information.

6. If the ground water assessment indicates that the Round Bottom Site is impacting ground water quality with constituents greater than applicable use standards or has statistically significant increasing trends, then the report shall include an evaluation of corrective measures that could be

employed and propose a final remedy for ground water impacts from the Round Bottom Site. Defendants shall implement a remedy that is acceptable to the Hamilton County General Health District and Ohio EPA.

B. Regarding the Mt. Carmel Road Fill Site, due to historic, uncontrolled filling on the approximately 14 acres of the northern portion of the 78 acres (“Cap Area”) and approximately 0.25 acres on the western portion of the site (“Waste Area”) as shown on Attachment A:

1. Beginning immediately upon the Effective Date of this Order:

a. Except as provided in Paragraph 19(B)(1)(b) of this Order, Defendants shall neither accept nor dispose of solid waste or construction and demolition debris at the site.

b. Defendants may accept only “clean hard fill” as defined in Ohio Adm.Code 3745-400-01(C)(3) and clean earthen material, and shall manage and use the clean hard fill in compliance with R.C. Chapter 3714 and the rules promulgated thereunder.

2. Defendants shall select one of the following options regarding the Waste Area:

a. Not later than sixty (60) days after the Effective Date of this Order, Defendants shall remove any solid waste or construction and demolition debris near the surface at this location and legally dispose of such materials. Defendants shall provide at least seventy-two (72) hours advance notice of commencement of the work to Ohio EPA and the Hamilton County General Health District.

Defendants shall continue to excavate at this location until earthen material or clean hard fill is encountered, which shall be deemed to occur if the solid waste or construction and demolition debris is not observable at the excavation surface of the Waste Area.

- b. At any time prior to the end of the sixty (60) day period in Paragraph (B)(2)(a) of this Order above, Defendants may elect to cap the Waste Area. If Defendants elect to cap the Waste Area then they shall do so pursuant to Paragraphs 19(B)(3) to 19(B)(5) of this Order.
3. If Defendants satisfy the requirements in Paragraph 19(B) using a standard cap or include a compacted soil liner in any alternative cap proposal, then not later than ninety (90) days after the Effective Date of this Order, Defendants shall submit soil prequalification data to Ohio EPA for review. Prequalification data shall include a minimum volume equal to at least that required for construction of a cap in compliance with this order plus ten percent, and soil testing that shall meet the requirements of Ohio Adm.Code 3745-400-07(G)(2)(a).
4. Following Ohio EPA and the Hamilton County General Health District approval of soil prequalification data, Defendants shall install a standard cap as described in Ohio Adm.Code 3745-400-07(G)(2)(a) on the northern 14 acres of the 78-acre site as indicated in Attachment A (parcel number 500-0081-0032-0) and submit a Construction Certification for the cap in strict accordance with Ohio Adm.Code 3745-400-08 and in accordance with the following schedule unless otherwise agreed to in writing by the parties:

- a. Commence installation of the standard cap not later than sixty (60) days after Ohio EPA approval of soil prequalification, providing at least seventy-two (72) hours advance notice of commencement to Ohio EPA and the Hamilton County General Health District;
  - b. Complete installation of the standard cap and vegetative layer not later than one hundred eighty (180) days after commencement of installation; and
  - c. Submit a Construction Certification for the standard cap not later than sixty (60) days after the completion of installation.
  - d. Defendants shall submit monthly reports of the construction progress to Ohio EPA and the Hamilton County General Health District that at a minimum include an updated projection of the cap completion date, a description of the work completed to date, and the names of the contractors performing work.
5. Defendants may satisfy the requirement to build a 14-acre standard cap on the Mt. Carmel Road Fill Site required by Paragraph 19(B)(4) of this Order by constructing an alternative cap if they obtain written concurrence from the Hamilton County General Health District and Ohio EPA prior to commencement of installation of the alternative cap in accordance with the following requirements:
  - a. Not later than ninety (90) days after the Effective Date of this Order, Defendants shall submit a design plan for the alternative cap, demonstrating that the proposed alternative cap is equivalent to the

standard cap and that utilization of the alternative cap is unlikely to adversely affect public health or safety or the environment, cause a nuisance, or create a fire hazard. The design plan must at a minimum include specifications for composition, location and vertical extent, thickness, stormwater controls, compaction, and any other necessary factors identified by Hamilton County General Health District and Ohio EPA.

- b. The Hamilton County General Health District and Ohio EPA reserve the right to issue a notice of deficiency of any deficiencies in the design plan, jointly and in writing, for the alternative cap design if it does not satisfy the requirements in Paragraph 19(B)(5)(a) of this Order. Not later than thirty (30) days after receipt of the written notice of deficiency, Defendants must either elect to install a standard cap in accordance with Paragraph 19(B)(4) of this Order or submit a corrected version of the alternative cap design plan to Hamilton County General Health District and Ohio EPA for concurrence. In the event that Defendants' corrected submission is found to be deficient in whole or part by Hamilton County General Health District and Ohio EPA, Defendants shall have thirty (30) days to correct the deficiencies from the date the Hamilton County General Health District and Ohio EPA provide written notice to Defendants of the deficiencies. If Hamilton County General Health District and Ohio EPA determine that Defendants are not making

good faith efforts to respond to the notices of deficiency, then Hamilton County General Health District and Ohio EPA may require Defendants to install a standard cap pursuant to Paragraph (B)(4) of this Order. If three notices of deficiency under this Paragraph are issued, then Defendants shall install a standard cap pursuant to Paragraph (B)(4) of this Order.

- c. Following Ohio EPA and Hamilton County General Health District concurrence with the alternative cap design, Defendants shall install an alternative cap as described in the alternative cap design plan on the northern 14 acres of the 78-acre site as indicated in Attachment A (parcel number 500-0081-0032-0) and submit a Construction Certification for the cap in strict accordance with the design plan that received concurrence from Ohio EPA and Hamilton County General Health District in accordance with the following schedule, unless otherwise agreed to in writing by the parties:

- (1) Commence installation of the alternative cap not later than sixty (60) days after Ohio EPA approval of the alternative cap design, providing at least seventy-two (72) hours advance notice of commencement to Ohio EPA and the Hamilton County General Health District;

- (2) Complete installation of the alternative cap not later than one hundred eighty (180) days after commencement of installation;

- (3) Submit a Construction Certification for the alternative cap not later than sixty (60) days after the completion of installation; and
  - (4) Defendants shall submit monthly reports of construction progress that at a minimum include an updated projection of the cap completion date, a description of the work completed to date, and the names of contractors performing work.
6. Not later than thirty (30) days after completing construction of the standard cap or alternative cap in accordance with Paragraph 19(B)(4) or (5) of this Order, Defendants shall file with the Hamilton County Recorder's Office an environmental covenant or similar restriction that runs with the land, in compliance with R.C. 5301.80 – R.C. 5301.92, that ensures the cap and ancillary structures will be maintained and preserved. Not later than fourteen (14) days after filing the environmental covenant or restriction, Defendants shall provide a complete copy of the filed document to both the Hamilton County General Health District and Ohio EPA. Defendants may not transfer ownership of the site until the environmental covenant or restriction is filed and a stamped copy of the document has been provided to both the Hamilton County General Health District and Ohio EPA.
7. Not later than thirty (30) days prior to beginning any filling, grading, excavating, building, drilling, or mining activities in the area to be covered by the standard cap or alternative cap on parcel number (500-0081-0032-00) pursuant to Paragraph 19(B)(6) of this Order, Defendants shall submit



to the Hamilton County General Health District and Ohio EPA, via certified mail, a letter including all information necessary to determine whether the activity will degrade or erode the cap, whether it will create a nuisance, and whether it is likely to adversely affect the public health or safety or the environment. The letter shall also include:

- a. A description of the proposed activities and the portion of the site upon which Defendants propose to conduct the activities.
  - b. A description of any institutional controls that apply to the site or that Defendants propose for the site.
  - c. A description of the manner and timeframes in which the control of air emissions, leachate, surface water run-on and runoff, gas migration including methane and hydrogen sulfide, and protection of ground water will be performed.
  - d. A description of the manner and timeframe in which disturbed areas of the cap will be restored to meet the requirements of this Order.
  - e. An affidavit from the property owner affirming that the assertions made in this letter are true.
  - f. The signature of the property owner, Defendant Doug Evans, and Defendant Evans Landscaping.
8. Hamilton County General Health District or Ohio EPA may issue a concurrence or a notice of deficiency related to any submission under Paragraph 19(B)(7) of this Order. Upon receipt of written concurrence from the Hamilton County General Health District or Ohio EPA, Defendants may

commence the filling, grading, excavating, building, drilling, or mining activities described in the concurrence. Defendants shall not proceed with the proposed filling, grading, excavating, building, drilling, or mining activities until written concurrence is received in accordance with this Order.

C. Regarding the Broadwell Site:

1. Beginning immediately on the Effective Date of this Order:
  - a. Except as provided in Paragraph 19(C)(1)(b) of this Order, Defendants shall neither accept nor dispose of solid waste or construction and demolition debris at the Site.
  - b. Defendants may accept only clean hard fill as defined in Ohio Adm.Code 3745-400-01(C)(1) and clean earthen material, and shall manage and use the clean hard fill in compliance with R.C. Chapter 3714 and the rules promulgated thereunder.
2. Not later than forty-five (45) days after the Effective Date of this Order, Defendants shall investigate a portion of the approximate five-acre area of parcel number 500-0081-0003-00 at 8361 Broadwell Road depicted in the map included as Attachment B, and classify the material. The investigation shall include:
  - a. Defendants shall initially dig sixteen (16) test pits at locations selected by the Hamilton County General Health District or Ohio EPA using a fully operating Komatsu PC 600 or equivalent excavator that is configured to allow for proper investigation of

construction and demolition debris and solid waste. Each test pit shall be at least 25-feet deep unless native soil or water is encountered, or if safety concerns, mutually agreed to by the parties, prohibit further digging.

- b. Defendants shall retain a third-party professional engineer who is licensed in Ohio and ensure that the third-party professional engineer consults with the Hamilton County General Health District and Ohio EPA to determine the volume of solid waste and construction and demolition debris that is excavated from each test pit discussed in Paragraph 19(C)(2)(a) of this Order. If the third-party professional engineer, the Hamilton County General Health District, and Ohio EPA do not concur about the volume of solid waste and construction and demolition debris excavated from a test pit, then Defendants may request review by an Assistant Chief of the Ohio EPA Division of Materials and Waste Management, or an Assistant Chief's designee, who shall make the final determination. An Assistant Chief may designate a supervisor or manager within the Division of Materials and Waste Management to review any request submitted pursuant to this Paragraph, in which case the decision of any such designee shall be the final determination.
- c. For each test pit required by Paragraph 19(C)(2)(a) of this Order for which the excavated material contains more than 2% combined solid waste and construction and demolition debris by volume,

Defendants shall dig an additional test pit that complies with Paragraph 19(C)(2)(a) of this Order at a location selected by Ohio EPA and the Hamilton County General Health District.

- d. Defendants shall provide 72-hour advance notice to the Hamilton County General Health District and Ohio EPA of any site delineation, investigation, or excavation activities.
- e. Defendants shall, utilizing a third-party professional engineer licensed in Ohio, not later than thirty (30) days after completing the test pits, submit to the Hamilton County General Health District a certification report. The report shall include the following:
  - i. Documentation of the final depth to which each test pit was excavated vertically.
  - ii. Test pit logs to describe material excavated from each test location including the depth of each major change in fill material character with special attention to the occurrence of construction and demolition debris in the form of recovered screen material.
  - iii. Documentation of depth and direction (north, east, south, west) of any solid waste or construction and demolition debris left in place in the sidewalls of each test pit.

- iv. Documentation of approximate percentage of the total volume excavated that was solid waste and construction and demolition debris from each test pit determined in Paragraph 19(C)(2)(d) above.
  - v. Photographs documenting of any encountered solid waste and construction and demolition debris from each test pit location.
3. If material other than “clean hard fill,” as defined in Ohio Adm.Code 3745-400-01(C)(3), clean earthen material, or native soil is encountered at any of the test pits excavated in accordance with Paragraph 19(C)(2) of this Order:
- a. Defendants shall immediately containerize any solid waste and construction and demolition debris in the excavated material;
  - b. Defendants shall remove and lawfully dispose of all solid waste and construction and demolition debris excavated from the test pits and submit receipts verifying the proper disposal of the solid waste and construction and demolition debris to the Hamilton County General Health District and Ohio EPA within fourteen (14) days of discovering the material, provided, however, Defendants may propose to Hamilton County General Health District and Ohio EPA that any of the following that are separated from excavated material by hand on the Broadwell site be legitimately recycled:
    - i. excavated scrap metal,
    - ii. dimensional lumber,

- iii. tree stumps, trunks and clean branches exceeding four inches in diameter;
- c. Defendants shall remove solid waste and construction and demolition debris encountered in accordance with either the option set forth in Paragraph 19(C)(3)(c)(i) of this Order or the option set forth in Paragraph 19(C)(3)(c)(ii) of this Order.
  - i. Defendants shall remove all solid waste and construction and demolition debris contemporaneously with the test pit excavation activities as follows:
    - 1. Defendants shall excavate each test pit vertically until native soils are encountered, or Plaintiff's representatives concur that no further excavation is necessary;
    - 2. Defendants shall excavate each test pit horizontally until native soils or clean hard fill are encountered or Plaintiff's representatives concur that no further excavation is necessary;
    - 3. Defendants shall determine the full vertical and horizontal extent of the presence of construction and demolition debris and solid waste; and
    - 4. Defendants shall immediately containerize all discovered solid waste and all discovered construction and demolition debris as provided in

Paragraph 19(C)(3)(a) and shall lawfully dispose (or if permitted by Hamilton County General Health District and Ohio EPA in their sole discretion, legitimately recycle) of the materials as specified in Paragraph 19(C)(3)(b) of this Order.

ii. In lieu of completing removal in accordance with Paragraph 19(C)(3)(c)(i) of this Order, not later than fourteen (14) days after completing the test pit excavation activities required by Paragraph 19(C)(2) of this Order, Defendants shall submit a removal plan to Ohio EPA and the Hamilton County General Health District for concurrence. At a minimum, the removal plan shall provide for the removal and lawful disposal (or if permitted by Hamilton County General Health District and Ohio EPA in their sole discretion, legitimately recycle) of the solid waste and construction and demolition debris discovered during the test pit excavation activities, including the methods to locate and chase the material, restore and grade any excavated area with non-waste material, and timeframes for completion.

1. The Hamilton County General Health District and Ohio EPA reserve the right to issue a notice of deficiency of any deficiencies in the removal plan, jointly and in writing. If the Hamilton County

General Health District or Ohio EPA identify a deficiency in the removal plan, Defendants shall submit a corrected removal plan within fourteen (14) days to correct any noted deficiencies. If the Hamilton County General Health District and Ohio EPA determine that Defendants are not making good faith efforts to respond to the notices of deficiency, then the Hamilton County General Health District and Ohio EPA may require Defendants to implement a removal plan as corrected by the Hamilton County General Health District and Ohio EPA.

2. Defendants shall implement the removal plan not later than fourteen (14) days after written concurrence from Ohio EPA and the Hamilton County General Health District.

d. Defendants shall restore and grade any excavated area with non-waste material.

D. Defendants shall complete the daily log agreed to by the Parties (Attachment C to this Order), including information related to all loads accepted by the construction and demolition debris processing facility at the Round Bottom Site and the disposition of all clean hard fill, including the name of each site accepting clean hard fill from Defendants.



- E. Defendants shall complete the construction and demolition debris activities form prescribed by the Hamilton County General Health District (Attachment D to this Order), describing the material flow from project to ultimate disposition, on a weekly basis.
- F. Defendants shall maintain the daily log and activities forms required by Paragraphs 19(D) and 19(E) of this Order for a minimum of five (5) years and shall make them available to the Hamilton County General Health District and Ohio EPA for inspection and/or copying upon request.
- G. All deadlines in Paragraph 19 of this Order can be extended for good cause by written approval of the Hamilton County General Health District and Ohio EPA.
- H. Defendants shall not impede or delay Site inspections by Plaintiff who, upon proper identification and upon stating the purpose and necessity of an inspection, may enter at reasonable times to inspect or investigate, obtain samples, and examine or copy any records to determine compliance with R.C. Chapters 3714 and 3734, the rules adopted under those Chapters, and this Order. Accompaniment by Defendants' staff is not required.
- I. Hamilton County General Health District and Ohio EPA reserve the right to perform inspections at all Sites at a frequency deemed necessary by the Hamilton County General Health District and/or Ohio EPA.

## **VI. CIVIL PENALTY**

20. Under R.C. 3714.11 and 3734.13, Defendants are ordered to jointly and severally pay a civil penalty of five hundred fifty thousand dollars (\$550,000), subject to the provisions in this

Order. Payment of the civil penalty shall be made according to the following schedule and conditions:

- A. Not later than thirty (30) days after the Effective Date of this Order, Defendants shall pay \$137,500 to the Supplemental Environmental Project. To make the payment to the Supplemental Environmental Project, Defendant shall deliver a cashier's or certified check in the amount of \$137,500 drawn on an account with sufficient funds made payable to an interest-bearing account owned and managed by the recipient, the Little Miami Conservancy, c/o Treasurer, solely for the purpose of improving public health and wellness in the Hamilton County, Ohio community and/or for protecting, conserving, preserving, and enhancing the air, water, public lands, and natural resources, in Hamilton County, Ohio. This payment to the Little Miami Conservancy shall be delivered to 209 Railroad Avenue, Loveland, OH 45140-2915. Any public statement, whether oral or written, in print, film, or other media, made by Defendants referring to the Supplemental Environmental Project under this Consent Order shall include the following language: "This Supplemental Environmental Project was undertaken in connection with the settlement of an enforcement action, *State of Ohio ex rel. Yost v. Evans Landscaping*, taken by the Ohio Attorney General on behalf of the Hamilton County General Health District and Ohio EPA under Ohio Revised Code Chapters 3714 and 3734." For tax purposes, Defendants agree that they will neither capitalize into inventory or basis nor deduct any costs or expenditures related to the Supplemental Environmental Project or the Supplemental Environmental Project deposit.

B. After making the payment described in Paragraph (20)(A), remaining payments shall be made according to the following schedule by delivering to Sandy Finan, Paralegal, or her successor, Office of the Attorney General, 30 E. Broad St., 25<sup>th</sup> Floor, Columbus, Ohio 43215, a certified check or checks for the appropriate amount, payable to the order of “Treasurer, State of Ohio.”:

1. On or before February 1, 2023, Defendants shall pay an additional \$112,500.
2. On or before August 1, 2023, Defendants shall pay an additional \$100,000.
3. On or before February 1, 2024, Defendants shall pay an additional \$100,000.
4. On or before August 1, 2024, Defendants shall pay an additional \$100,000.

21. If a full installment payment of the civil penalty and any other amount due under this Consent Order is not received by the State in accordance with the terms of this Consent Order, the remaining unpaid balance of the total civil penalty and any other amount due, plus applicable interest under R.C. 131.02(D), shall become immediately due and owing. The remaining unpaid balance or delinquent payments shall accrue interest at the rate per annum required by R.C. 5703.47 calculated from the Effective Date of this Order.

22. If any amount is not paid in accordance with the terms of this Order, the Attorney General may collect that amount under R.C. 131.02. Pursuant to R.C. 109.081, in addition to the outstanding balance due under this Consent Order, collection costs of ten percent shall be owing

and fully recoverable from the Defendants to be paid into the State Treasury to the credit of the Attorney General Claims Fund.

23. The State reserves the right to file a certificate of judgment lien against Defendants for the remaining unpaid balance of the total civil penalty, plus applicable statutory interest and collection costs, if the full civil penalty payment is not paid according to the schedule in this Order. Defendants shall not be permitted to claim a force majeure as an excuse for any untimely payment or partial payment of an amount less than the full civil penalty as specified in this Order.

24. If any Defendant files a petition for bankruptcy, the State of Ohio reserves the right to file a certificate of judgment lien against the other, non-filing Defendant, for the remaining unpaid balance of the total civil penalty, plus applicable statutory interest.

#### **VII. STIPULATED PENALTIES**

25. If Defendants fail to comply with any of the requirements of this Order, except in the circumstance of a force majeure claim that is raised by Defendants and is subsequently agreed to by the State, Defendants shall immediately and automatically be jointly and severally liable for and shall pay stipulated penalties under the following schedule for each failure to comply:

- A. Defendants shall pay three hundred dollars (\$300.00) per day for each day any requirement of this Order is violated up to the first thirty (30) days of violation;
- B. For each day any requirement of this 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 Order is violated greater than (90) days of violation, Defendants shall pay one thousand dollars (\$1,000.00) per day.

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

27. Defendants' payment and Plaintiff's acceptance of such stipulated penalties under this Section shall not be construed to limit Plaintiff's authority, without exception, to seek: 1) additional relief under R.C. Chapters 3714 and 3734, including civil penalties under R.C. 3714.11 and 3734.13; 2) judicial enforcement of this Order for the same violations for which a stipulated penalty was paid; or 3) sanctions for additional remedies, civil, criminal, or administrative, for violations of applicable laws. Further, payment of stipulated penalties by Defendants shall not be an admission of liability by Defendants.

#### **VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS**

28. Performance of the terms of this Order by Defendants is not conditioned on the receipt of any private, Federal, or State grants, loans, and/or funds. In addition, Defendants' performance is not excused by failing to obtain or any shortfall of any private, Federal, or State grants, loans and/or funds or by the processing of any applications for the same.

#### **IX. FACILITY ACCESS**

29. As of the Effective Date, the Hamilton County General Health District and Ohio EPA and their representatives and contractors shall have access at reasonable times to the Sites, and shall have access to any other property controlled by or available to Defendants to which access is necessary to effectuate the actions required by this Order. Access shall be allowed for the purposes of conducting activities related to this Order including, but not limited, to:

- A. Monitoring the work or any other activities taking place at the Sites;
- B. Verifying any data or information submitted to the Hamilton County General Health District or Ohio EPA;
- C. Conducting investigations relating to contamination at or near the Sites;
- D. Obtaining samples;
- E. Assessing the need for, planning, or implementing additional response actions at or near the Sites;
- F. Inspecting and copying records, logs, forms, contracts, or other documents maintained or generated by Defendants or their agents, consistent with this Order and applicable law; or
- G. Assessing Defendants' compliance with this Order.

30. Nothing in this Order shall be construed to limit the statutory authority of the Plaintiff or Plaintiff's authorized representatives to enter at reasonable times upon the Sites or any other private or public property, real or personal, to inspect or investigate, obtain samples and examine or copy any records to determine compliance with R.C. Chapters 3714 and 3734.

#### **X. SUBMITTAL OF DOCUMENTS**

31. All documents required to be submitted pursuant to this Order shall be submitted to the following addresses, or to such addresses as Plaintiff may hereafter designate in writing:

For the Hamilton County General Health District:

Director of Waste Management

Hamilton County General Health District

250 Williams Howard Taft Road, 2<sup>nd</sup> Floor

Cincinnati, OH 45219

For Ohio EPA:

Ohio EPA Southwest District Office

Attn: Manager, Division of Materials and Waste Management

401 East Fifth Street

Dayton, Ohio 45402

#### **XI. EFFECT OF ORDER**

32. This Order does not constitute authorization or approval of the construction, installation, modification, or operation of any waste and material management facility under R.C. Chapters 3714 and 3734 not previously approved by Hamilton County General Health District or Ohio EPA. Approval for any such construction, installation, modification, or operation must be obtained from Hamilton County General Health District and/or Ohio EPA and additional authorizations may be required by applicable federal, state, or local laws, rules or regulations.

#### **XII. MODIFICATION**

33. No modification shall be made to this Order without the written agreement of the Parties and the Court.

#### **XIII. MISCELLANEOUS**

34. Nothing in this Order shall affect Defendants' obligation to comply with all applicable federal, state, or local laws, regulations, rules, ordinances, or orders.

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

36. Defendant Douglas L. Evans shall inform the Ohio EPA and the Hamilton County General Health District of any change of his personal address during the pendency of this Order. Defendant Evans Landscaping, Inc., B E E Holdings Limited Partnership, 8361 Broadwell Road LLC, and Evans Gravel, Inc. shall inform Ohio EPA and the Hamilton County General Health District of any change in registered agents' addresses and business addresses or telephone numbers, or the cessation of the business that is the subject of this action during the pendency of this Order.

#### **XIV. RETENTION OF JURISDICTION**

37. This Court shall retain jurisdiction for the purpose of administering and enforcing this Order.

#### **XV. ENTRY OF ORDER AND FINAL JUDGMENT BY CLERK**

38. Under Rule 58 of the Ohio Rules of Civil Procedure, upon signing this 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 Civ.R. 5(B) and note the service in the appearance docket. The failure of the Clerk to serve notice does not affect the validity of this Order.

#### **XVI. EFFECTIVE DATE**

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

#### **XVII. COURT COSTS**

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



### **XVIII. TERMINATION**

41. Defendants may seek termination of this Order only if they have completed all of the following:

- A. Completed all injunctive relief in compliance with Section V of this Order;
- B. Paid all civil penalties required by Section VI of this Order;
- C. Paid all stipulated penalties required by Section VII of this Order;
- D. Three years of compliance with R.C. Chapters 3714 and 3734, and the rules promulgated thereunder, after completion of all injunctive relief required in Section V of this Order, except Paragraph 19(F), and full payment of civil penalty required under Section VI of this Order.

42. Defendants may, upon fulfilling all of the requirements under Paragraph 41 of this Order, request in writing that Plaintiff determine whether Defendants have complied with all of the requirements for termination of the Order. If Plaintiff agrees that the requirements have been met, the Parties may submit a Motion for Termination of Consent Order. If Plaintiff does not agree that the requirements have been met, Defendants may submit a Motion for Termination of Consent Order, and Plaintiff may file a response in opposition within 30 days.

43. Termination of any or all of the provisions of this Consent Order may also be granted upon joint motion of the Parties.

### **XIX. AUTHORITY TO ENTER INTO THE ORDER**

44. Each signatory represents and warrants they have been duly authorized to sign this document and is fully authorized to agree to its terms and conditions, and, in the case of a person signing on behalf of a corporate entity, may so legally bind the corporate entity to all terms and

conditions in this document. By signing this Order, each signatory waives all rights of service of process for the underlying Complaint.

COURT OF COMMON PLEAS  
IT IS SO ORDERED. ENTER  
HON. JODY M. LUEBBERS  
THE CLERK SHALL SERVE NOTICE  
JUDGE JODY M. LUEBBERS TO CIVIL  
RULE 58 WHICH SHALL BE TAXED  
AS COSTS HEREIN.  
APPROVED AND AGREED TO BY:

*[Handwritten Signature]*  
DATE *9/29/22*

EVANS LANDSCAPING, INC.  
B E E HOLDINGS LTD PARTNERSHIP  
8361 BROADWELL ROAD LLC  
EVANS GRAVEL, INC.  
DOUGLAS L. EVANS

*[Handwritten Signature]*

ANDREW KOLESAR  
BEN SANDLIN  
Thompson Hine, LLP  
312 Walnut Street, Suite 2000  
Cincinnati, Ohio 45202  
Telephone: (513) 352-6545  
*Counsel for Defendants*

*[Handwritten Signature]*

DOUGLAS L. EVANS  
*Authorized Representative of Evans  
Landscaping, Inc.*

*[Handwritten Signature]*

DOUGLAS L. EVANS  
*Authorized Representative of B E E Holdings  
Limited Partnership*

*[Handwritten Signature]*

DOUGLAS L. EVANS  
*Authorized Representative of 8361 Broadwell  
Road LLC*

*[Handwritten Signature]*

DOUGLAS L. EVANS  
*Authorized Representative of Evans Gravel,  
Inc.*

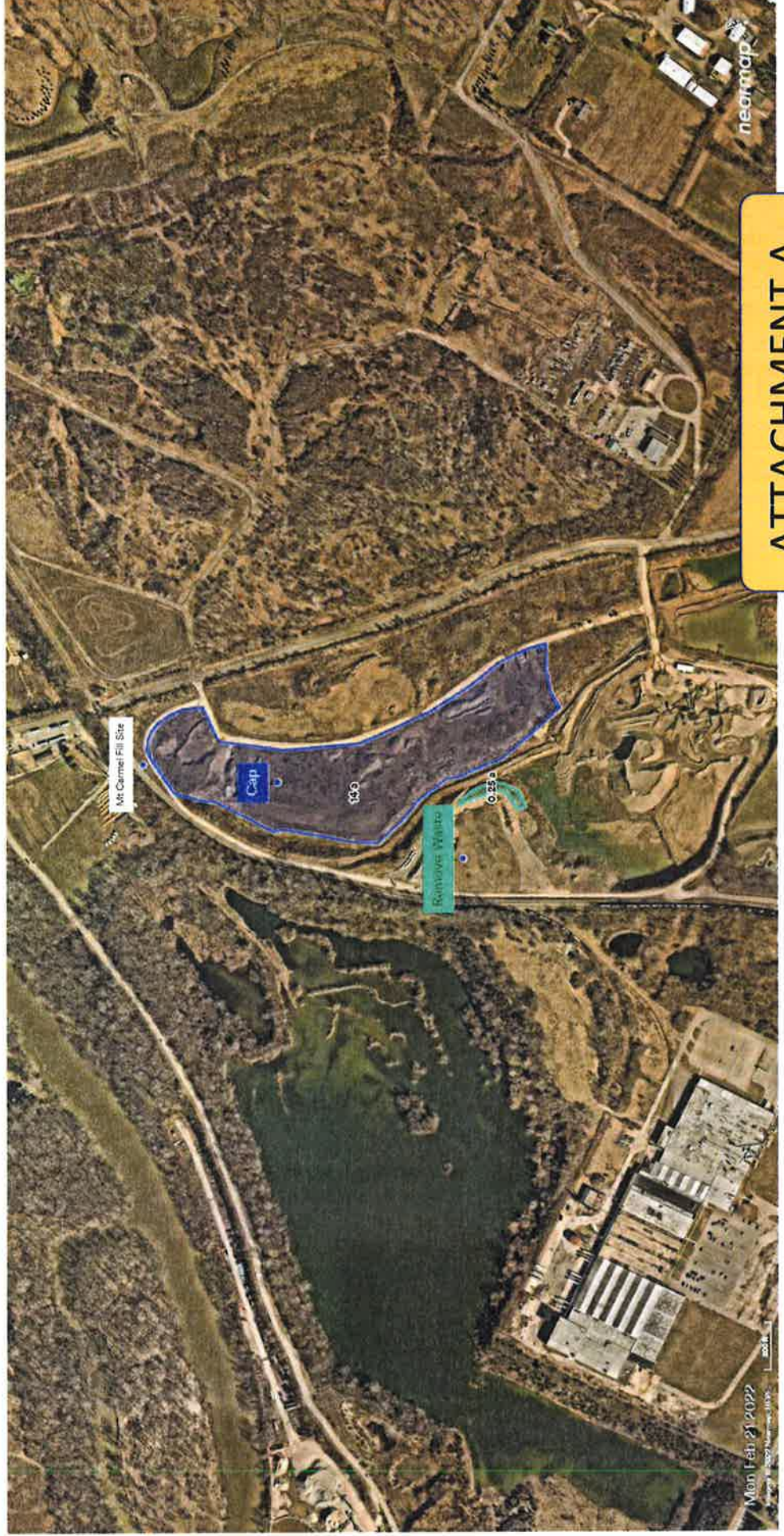
*[Handwritten Signature]*

DOUGLAS L. EVANS

*Allen Vender*

ALLEN M. VENDER (0082817)  
MADALYN FAIRBANKS (101689)  
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Michael.Idzkowski@OhioAGO.gov  
*Counsel for Plaintiff, the State of Ohio*

Attachment A – Mt Carmel Fill Site Approximate 14-acre area Cap,  
0.25-acre Remove Waste



Attachment B – Broadwell Site Approximate 5-acre area



ATTACHMENT B

# Daily Log of Operations Incoming Materials

Location:

Date:

Material (Including mixed C&DD, source separated C&DD, clean hard fill, etc.)	Quantity of Material		Origin (Name and Address)	Evans Demo Project (y/n)	Transporter (Business and truck number or license plate)	Receipt Number
	tons	yd <sup>3</sup>				

Signature of Person Completing Form  
Name of Person Completing Form



## Daily Log of Operations Outgoing Materials

Location:

Date:

Material <small>(Including clean hard fill, soil, solid waste, etc.)</small>	Quantity of Material		Destination <small>(Name and Address)</small>	Transporter <small>(Name and truck number/license plate)</small>	Receipt Number
	tons	yd <sup>3</sup>			

Signature of Person Completing Form

Name of Person Completing Form

Weekly Summary Report										
C&DD Processing 4229 Roundbottom Activities										
Date	Cubic Yards In	Type	Source - Job Name / Address	Cubic Yards Out	Type	Destination				
<b>Stock Piled On-site Materials</b>										
	Cubic Yards	Type	Ready for Sale y/n							
<b>Clean Hard Fill Operations</b>										
Site 1 - Mt Carmel Road										
Date	Cubic Yards In	Type	Source - Job Name / Address							
Site 2 - Stoneworks										
Date	Cubic Yards In	Type	Source - Job Name / Address							
<b>Current Demolition Projects</b>										
Job Name / Address	Cubic Yards Remaining	Destination	Anticipated Completion							
<b>Future Demolition Projects</b>										
Job Name / Address	Cubic Yard	Destination	Anticipated Start							

ATTACHMENT D