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Court of Common Pleas

ANSWER OF...
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By: ROBERT B. CASARONA 0036715

Confirmation Nbr. 1116671

STATE OF OHIO, EX REL. MIKE DEWINE, ETC.

CV 17 881301

vs.

ARCO RECYCLING, INC., ET AL.

Judge: SHANNON M. GALLAGHER

Pages Filed: 11

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, EX REL. MICHAEL
DEWINE OHIO ATTORNEY GENERAL

Plaintiff,

v.

ARCO RECYCLING, INC. et. al.,

Defendants

CASE NO. CV 17 881301

JUDGE SHARRON M. GALLAGHER

**ANSWER OF GEORGE MICHAEL
RILEY TO COMPLAINT FOR
INJUNCTIVE RELIEF AND CIVIL
PENALTIES**

Defendant George Michael Riley (“Riley or Defendant”) for its answer to the Complaint of State of Ohio, ex. rel. Michael DeWine (“State or Plaintiff”), states as follows:

PLAINTIFF’S NARRATIVE

In response to the Plaintiff’s narrative in the Complaint, the defendant is not required to respond to a narrative. Further answering, defendant denies the allegations set forth as they pertain to Riley. Any activity referred to in the narrative as a collective activity is ambiguous and to the extent they include allegations of wrongdoing, they are denied as to Riley. Further, to the extent that the allegations set forth involved Riley, such activity was not done in concert with the other defendants, was fully authorized by the Ohio Environmental Protection Agency (“OEPA”),

was done with full knowledge and acquiesce of regulatory authorities and, was within the scope of his assignment at the direction of Arco Recycling, Inc. Moreover, to the extent that the materials located at the site in question became unauthorized disposal under Ohio law, this occurred after Riley was no longer working at the site or otherwise involved at the site. The OEPA changed the regulatory nature of the material and of the Arco site months after Riley was no longer involved as an employee of Arco and after, upon information and belief, the Arco business failed, which occurred months after Riley was no longer worked at the site or otherwise was involved in any fashion with the site.

GENERAL ALLEGATIONS

1. In response to paragraph 1 of the Complaint, Riley denies the allegations as stated. Riley has never owned or operated the facility nor has he owned or operated the other defendant corporations. Further answering, the defendant denies the remainder of the allegations for want of knowledge or information sufficient to form the truth of the allegations.

2. In response to paragraph 2 of the Complaint, no response is required because the paragraph is making a legal conclusion and therefore denies the allegations.

3. In response to paragraph 3 of the Complaint, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted.

4. In response to paragraph 4 of the Complaint, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted.

5. In response to paragraph 5 of the Complaint, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted.

6. In response to paragraph 6 of the Complaint, Riley denies the allegations set forth.

7. In response to paragraph 7 of the Complaint, Riley denies the allegations as stated and further responding, states that no response is required to a legal conclusion and therefore denies them.

8. In response to paragraph 8 of the Complaint, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted.

9. In response to paragraph 9 of the Complaint, Riley denies that he “allowed” C&DD to be disposed of at the Arco site. Further answering, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted.

10. In response to paragraph 10 of the Complaint, Riley denies the allegation as stated as it pertains to him while working at Arco. Further answering, Riley denies allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted. Riley is not required to respond to any legal conclusions made in this paragraph and is therefore denying them.

11. In response to paragraph 11 of the Complaint, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted.

12. In response to paragraph 12 of the Complaint, Riley states that the cited document speaks for itself and further answering denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted.

13. In response to paragraph 13 of the Complaint, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted.

14. In response to paragraph 14 of the Complaint, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted. Further answering, Riley states that he ceased working at Arco on or about August 3, 2016.

15. In response to paragraph 15 of the Complaint, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted.

16. In response to paragraph 16 of the Complaint, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted. Further answering, Riley ceased working at Arco approximately 10 months prior to the hearing date identified in the complaint.

17. In response to paragraph 17 of the Complaint, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted. Further answering, Riley ceased working at Arco approximately 10 months prior to the hearing date identified in the complaint.

18. In response to paragraph 18 of the Complaint, no response is required because the paragraph is making a legal conclusion for which no answer is required and is therefore denied.

19. In response to paragraph 19 of the Complaint, no response is required because the paragraph is making a legal conclusion for which no answer is required and is therefore denied.

20. In response to paragraph 20 of the Complaint, no response is required because the paragraph is making a legal conclusion for which no answer is required and is therefore denied.

21. In response to paragraph 21 of the Complaint, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted.

22. In response to paragraph 22 of the Complaint, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted.

23. In response to paragraph 23 of the Complaint, no response is required because the paragraph is making a legal conclusion for which no answer is required and is therefore denied.

24. In response to paragraph 24 of the Complaint, Riley states that the complaint speaks for itself and that no response is required because the paragraph is making a legal conclusion for which no answer is required and is therefore denied.

COUNT ONE OPERATING AND MAINTAINING AN UNLICENSED C&DD FACILITY

25. In response to paragraph 25 of the Complaint, Riley fully incorporates by reference all the statements, averments, and denials set forth in paragraphs 1-24.

26. In response to paragraph 26 of the Complaint, no response is required because the paragraph is making a legal conclusion for which no answer is required and is therefore denied.

27. In response to paragraph 27 of the Complaint, no response is required because the paragraph is making a legal conclusion for which no answer is required and is therefore denied.

28. In response to paragraph 28 of the Complaint, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted. Further answering, Riley admits that he personally did not obtain such a license and he was not required to obtain the same, further answering, the Board of Health and Ohio EPA were fully aware of the activities and legal authority that the site was operating under at all relevant times in the complaint.

29. In response to paragraph 29 of the Complaint, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted. Further answering, to the extent the Complaint is referring to Riley, he denies every allegation set forth.

30. In response to paragraph 30 of the Complaint, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted.

31. In response to paragraph 31 of the Complaint, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted. Further answering, Riley denies the allegations as stated as they pertain to him.

32. In response to paragraph 32 of the Complaint, no response is required because the paragraph is making a legal conclusion for which no answer is required and is therefore denied.

COUNT TWO ILLEGAL DISPOSAL OF CONSTRUCTION AND DEMOLITION DEBRIS

33. In response to paragraph 33 of the Complaint, Riley fully incorporates by reference all the statements, averments, and denials set forth in paragraphs 1-32.

34. In response to paragraph 34 of the Complaint, no response is required because the paragraph is making a legal a legal conclusion for which no answer is required and is therefore denied.

35. In response to paragraph 35 of the Complaint, no response is required because the paragraph is making a legal conclusion for which no answer is required and is therefore denied.

36. In response to paragraph 36 of the Complaint, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted. Further answering, Riley denies the allegations as stated as they pertain to him.

37. In response to paragraph 37 of the Complaint, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted. Further answering, Riley denies the allegations as stated as they pertain to him.

38. In response to paragraph 38 of the Complaint, no response is required because the paragraph states a legal conclusion for which no answer is required and is therefore denied.

**COUNT THREE FAILURE TO COMPLY WITH DIRECTOR'S FINAL
FINDINGS AND ORDERS**

39. In response to paragraph 39 of the Complaint, Riley fully incorporates by reference all the statements, averments, and denials set forth in paragraphs 1-38.

40. In response to paragraph 40 of the Complaint, no response is required because the paragraph is making a legal conclusion for which no answer is required and is therefore denied.

41. In response to paragraph 41 of the Complaint, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted.

42. In response to paragraph 42 of the Complaint, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted.

43. In response to paragraph 43 of the Complaint, no response is required because the paragraph is making a legal conclusion for which no answer is required and is therefore denied.

COUNT FOUR COMMON LAW PUBLIC NUISANCE

44. In response to paragraph 44 of the Complaint, Riley fully incorporates by reference all the statements, averments, and denials set forth in paragraphs 1-43.

45. In response to paragraph 45 of the Complaint, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted. Further answering, Riley denies the allegations as stated as they pertain to him.

46. In response to paragraph 46 of the Complaint, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted. Further answering, Riley denies the allegations as stated as they pertain to him.

47. In response to paragraph 47 of the Complaint, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted. Further answering, Riley denies the allegations as stated as they pertain to him.

48. In response to paragraph 48 of the Complaint, Riley denies the allegations as set forth for want of knowledge or information sufficient to form the truth of the allegations asserted. Further answering, Riley denies the allegations as stated as they pertain to him.

49. In response to paragraph 43 of the Complaint, no response is required because the paragraph is making a legal conclusion for which no answer is required and is therefore denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

50. The complaint, in whole or in part, should be dismissed for failure to state a claim upon which relief can be granted.

Second Affirmative Defense

51. The plaintiff is estopped from making its claims by the doctrines of laches, waiver and unclean hands.

Third Affirmative Defense

52. The plaintiff's damages, if any, are offset by damages and costs it caused and/or failed to mitigate.

Fourth Affirmative Defense

53. Riley is not personally liable for the plaintiff's allegations.

Fifth Affirmative Defense

54. The regulations are vague and ambiguous as being applied to this facility and Riley.

Sixth Affirmative Defense

55. All material at the site, while Riley was involved with the site, was being stored for beneficial reuse and/or stored for recycling with the full knowledge and authority of the OEPA.

Seventh Affirmative Defense

56. The defendants did not act in concert and any harm alleged is divisible thus joint and several liabilities are not appropriate for this property.

Eighth Affirmative Defense

57. The materials at the site were not regulated as alleged in the complaint until “disposed of” and such disposal, if it occurred, did not occur until after Riley was no longer involved with the site.

WHEREFORE, Riley, in response to the Complaint, respectfully requests that this court dismiss the plaintiff’s claims, with prejudice, and award Riley all costs and fees.

Respectfully submitted,

/s/ Robert B. Casarona

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PROOF OF SERVICE

The foregoing document was served this 12th day of July 2017, by the courts electronic filing system and to the following, by electronic mail at Molly.Cory@OhioAttorneyGeneral.gov Christopher.Ramdeen@Ohioattorneygeneral.gov wednesday.szoltsi@ohioattorneygeneral.gov

/s/ Robert B Casarona

Robert B. Casarona