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Court of Common Pleas

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Confirmation Nbr. 1085783

STATE OF OHIO, EX REL. MICHAEL DEWINE

CV 17 881301

vs.

ARCO RECYCLING, INC., ET AL.

Judge: SHANNON M. GALLAGHER

Pages Filed: 12

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

STATE OF OHIO, ex rel.
MICHAEL DEWINE
OHIO ATTORNEY GENERAL,
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215,

Plaintiff,

v.

ARCO RECYCLING, INC.
Terri Brunsdon, Statutory Agent
2251 Front Street, Suite 206
Cuyahoga Falls, Ohio 44221

ARCO RECYCLING, INC.
P.O. Box 13171
Fairlawn, Ohio 44314

and

1705 NOBLE ROAD PROPERTIES, LLC
Terri Brunsdon, Statutory Agent
2251 Front Street, Suite 206
Cuyahoga Falls, Ohio 44221

1705 NOBLE ROAD PROPERTIES, LLC
P.O. Box 13171
Fairlawn, Ohio 44314

and

CHRISTINA BEYNON
Summit County, Ohio

and

CASE NO. _____

JUDGE _____

GEORGE MICHAEL RILEY :
51651 Riley Road :
Barton, Ohio 43905 :

Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

Defendants, Arco Recycling, Inc., 1705 Noble Road Properties, LLC, Christina Beynon, and George Michael Riley (collectively referred to as “Defendants”) have endangered the environment and the community of East Cleveland by allowing over 200,000 cubic yards of construction and demolition debris (“C&DD”) to be unlawfully disposed on real property located at 1705 Noble Road in East Cleveland, Ohio (the “Arco Site”). Defendants’ actions have resulted in a pile of C&DD rising over the homes that are merely yards away from the piles. Without the protections afforded by obtaining a license to dispose of C&DD, there is no way to ensure that this pile of debris has not caused, and is not currently causing, environmental harm.

Plaintiff, the State of Ohio, on relation of the Attorney General, Michael DeWine, and at the written request of the Director of Environmental Protection (“Director”), hereby institutes this action to enforce Ohio’s C&DD laws, codified in R.C. Chapter 3714 and the rules promulgated thereunder. Plaintiff alleges as follows:

GENERAL ALLEGATIONS

1. Defendants Arco Recycling, Inc., 1705 Noble Road Properties, LLC, Christina Beynon, and George Michael Riley own and/or operate an unlicensed C&DD facility located at 1705 Noble Road, East Cleveland, Cuyahoga County, Ohio.

2. Defendants are the proper parties to be named in this Complaint. At all times relevant to this Complaint, each Defendant is, and has been, a “person” as that term is defined by R.C. 1.59(C), 3714.01(H), and Ohio Adm.Code 3745-400-01(P)(1).

3. Defendant Arco Recycling, Inc. (“Arco Recycling”) is an Ohio corporation with a business address of P.O. Box 13171, Fairlawn, Ohio 44314.

4. Defendant 1705 Noble Road Properties, LLC is an Ohio limited liability company with a business address of P.O. Box 13171, Fairlawn, Ohio 44314.

5. Defendant Christina Beynon is an Ohio resident who lives in Summit County, Ohio.

6. Defendant George Michael Riley is an Ohio resident whose last known address is 51651 Riley Road, Barton, Ohio 43905.

7. At all times relevant to this Complaint, the Arco Site has been an unlicensed “construction and demolition debris facility” as that term is defined in Ohio Adm.Code 3745-400-01(C)(3).

8. The Arco Site was formerly owned by the City of East Cleveland (“City”) pursuant to its Land Reutilization Program under R.C. Chapter 5722. On March 4, 2014, the City passed Resolution No. 11-14 as an emergency resolution, which authorized the sale of the Arco Site (Parcel No. 673-01-011) to Ohio Rock, LLC, for the purchase price of \$125,000. However, according to the records filed with the Cuyahoga County Recorder, the City transferred the

property to “1705 Noble Road Properties, LLC” – not Ohio Rock, LLC – on May 1, 2014. 1705 Noble Road Properties, LLC remains the owner of the Arco Site as of the date of this Complaint.

9. Upon information and belief, beginning on or about June 24, 2014 and continuing through January of 2017, Defendants Arco Recycling, 1705 Noble Road Properties, LLC, Beynon, and Riley allowed C&DD to be disposed of at the Arco Site.

10. Defendants Arco Recycling, Beynon, and Riley represented that they were “recycling” the C&DD at the Arco Site. In order to qualify as C&DD recycling, the C&DD must be processed and “returned to commerce as a commodity for use or exchange in a legitimate market or for use in a beneficial manner that does not constitute disposal.” Ohio Adm.Code 3745-400-01(R)(1).

11. Records from the period between June 24, 2014 and January of 2017 show that little, if any, of the C&DD that was brought onto the Arco Site was ever removed to be returned to commerce or to be properly disposed of.

12. On January 17, 2017, the Director of Ohio EPA (“Director”) issued Final Findings and Orders (“DFFOs”) to Defendant Arco Recycling. The DFFOs required Defendant Arco Recycling to cease acceptance and disposal of C&DD at the Arco Site immediately, remove all processed and unprocessed C&DD from the Arco Site in compliance with R.C. Chapter 3714 immediately, and to submit documentation of the removal to Ohio EPA within fourteen days of the effective date of the DFFOs.

13. Defendant Arco Recycling appealed the DFFOs to the Ohio Environmental Review Appeals Commission on January 30, 2017.

14. Defendants Arco Recycling, 1705 Noble Road Properties, LLC, and Beynon ceased accepting waste at the Arco Site after the DFFOs were issued to Defendant Arco Recycling. As of January 17, 2017, and continuing to this date, the State estimates that over 200,000 cubic yards of C&DD have been illegally disposed of at the Arco Site.

15. On May 24, 2017, the Cuyahoga County Board of Health (“CCBH”) held an evidentiary hearing regarding the Site and made findings of fact and conclusions of law.

16. The CCBH found that the Site forced neighboring residents to endure “loud construction noises, dust, odors [and] a large unsightly dump pile [...],” that the residents of East Cleveland had have continually complained about the “blight created by the ARCO operation” and that the Defendants’ use of the property had generated a large public outcry.

17. As a consequence of these findings, the CCBH legally declared the Site to be a public nuisance.

18. R.C. 3714.13(A) through (C) provides that no person shall violate any section of R.C. Chapter 3714, any rule adopted thereunder, or any order issued pursuant to that chapter.

19. “Disposal” of C&DD is defined, in pertinent part, as the “discharge, deposit, injection, dumping, spilling, leaking, emitting, or placing of any construction and demolition debris into or on any land or ground or surface water or into the air * * * .” R.C. 3714.01(D); Ohio Adm.Code 3745-400-01(D)(3).

20. Ohio Adm.Code 3745-400-01(I)(2) defines “illegal disposal” of C&DD as the disposal of C&DD at any location other than a C&DD disposal facility operated in accordance with R.C. Chapter 3714 and Ohio Adm.Code 3745-400 and 3745-37; a solid waste disposal facility

operated in accordance with Ohio Adm.Code 3745-27 and licensed in accordance with Ohio Adm.Code 3745-37; or as otherwise authorized by Ohio Adm.Code 3745.

21. At all times relevant to this Complaint, Defendants Arco Recycling and Beynon established, operated, and maintained an unlicensed C&DD facility at the Arco Site.

22. All rules cited in this Complaint were properly adopted pursuant to R.C. 3714.02 and R.C. Chapter 119.

23. Defendants' activities that gave rise to this Complaint were conducted in Cuyahoga County. Pursuant to Civ.R. 3(B), venue is proper in this Court.

24. Pursuant to Civ.R. 8(A), Plaintiff states that it is seeking civil penalties in excess of twenty-five thousand dollars (\$25,000).

COUNT ONE
OPERATING AND MAINTAINING AN UNLICENSED C&DD FACILITY

25. The allegations in Paragraphs One (1) through Twenty-Four (24) of the Complaint are incorporated by reference in this Count as if fully rewritten herein.

26. Revised Code 3714.06(A), Ohio Adm.Code 3745-37-01(C), and Ohio Adm.Code 3745-400-11(C)(1) provide that no person shall establish, operate, or maintain a C&DD facility without first receiving a license issued by either the board of health or the Director of Ohio EPA.

27. Ohio Adm.Code 3745-400-01(C)(3) defines "construction and demolition debris facility" or "facility" as "any site, location, tract of land, installation, or building used for the disposal of construction and demolition debris."

28. At no time prior to the filing of this Complaint have Defendants applied for, or been issued, a license to establish, operate, or maintain a C&DD disposal facility at the Arco Site from either the board of health or the Ohio EPA.

29. Beginning, based upon information and belief, on or about June 24, 2014, Defendants routinely disposed of, or allowed disposal of, C&DD at the Arco Site, resulting in the current pile containing over 200,000 cubic yards of material. As of the date of this Complaint, Defendants have not removed any of the C&DD unlawfully disposed at the unlicensed C&DD facility located at the Arco Site.

30. The Arco Site is not now, nor has it ever been, a licensed C&DD disposal facility.

31. Defendants violated R.C. 3714.06(A) by operating an unlicensed C&DD facility at the Arco Site beginning, upon information and belief, on or around June 24, 2014 and continuing to the present.

32. The acts and omissions alleged in this Count constitute violations of R.C. 3714.13(A) and (B), R.C. 3714.06(A), Ohio Adm.Code 3745-37-01(C), and Ohio Adm.Code 3745-400-11(C)(1) for which each Defendant, pursuant to R.C. 3714.11, is subject to an injunction and is jointly and severally liable for a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each violation, including each day of violation after the filing of this Complaint.

COUNT TWO
ILLEGAL DISPOSAL OF CONSTRUCTION AND DEMOLITION DEBRIS

33. The allegations in Paragraphs One (1) through Thirty-Two (32) of the Complaint are incorporated by reference in this Count as if fully rewritten herein.

34. Ohio Adm.Code 3745-400-04(A), in pertinent part, sets forth the methods by which C&DD shall be disposed of.

35. Ohio Adm.Code 3745-400-04(B) provides that no person shall conduct or allow the illegal disposal of C&DD, as defined in Ohio Adm.Code 3745-400-01.

36. Beginning, upon information and belief, on or about June 24, 2014 and continuing to the present, Defendants conducted or allowed the illegal disposed of C&DD on the Arco Site.

37. Beginning, upon information and belief, on or about June 24, 2014 and continuing to the present, Defendants violated, and continue to violate, Ohio Adm.Code 3745-400-04(B) by failing to lawfully dispose of the C&DD illegally disposed on the Arco Site.

38. The acts and omissions alleged in this Count constitute violations of R.C. 3714.13(A) and (B) and Ohio Adm.Code 3745-400-04(B), for which each Defendant, pursuant to R.C. 3714.11, is subject to an injunction and is jointly and severally liable for a civil penalty of up to ten thousand (\$10,000.00) for each day of each violation, including each day of violation after the filing of this Complaint.

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

39. The allegations in Paragraphs One (1) through Thirty-Eight (38) of the Complaint are incorporated by reference in this Count as if fully rewritten herein.

40. Revised Code 3714.13(C) provides that "no person shall violate an order issued under this chapter."

41. On January 17, 2017, the Director issued DFFOs to Defendant Arco Recycling. Pursuant to the DFFOs, Defendant Arco Recycling was required to do the following, in compliance with R.C. Chapter 3714 and the rules promulgated thereunder: (1) cease acceptance of C&DD immediately; (2) cease disposal of C&DD immediately; (3) complete the removal of all processed and unprocessed C&DD from the Arco Site immediately; and (4) submit documentation of compliance with Order Number 3 within fourteen (14) days of the date of the DFFOs.

42. Defendant Arco Recycling has not accepted any C&DD at the Arco Site since January 17, 2017, in compliance with Order No. 1 of the DFFOs. However, Defendant Arco Recycling has not removed any of the C&DD from the Arco Site since January 17, 2017, and therefore continues to illegally dispose of the C&DD in violation of Order No. 2. Defendant Arco Recycling also remains in violation of Order Nos. 3 and 4 by its failure to remove C&DD from the Arco Site.

43. The acts and omissions described in this Count constitute violations of R.C. 3714.13(C) for which Defendant Arco Recycling, pursuant to R.C. 3714.11 is subject to injunctive relief and liable for a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each violation, including each day of violation after the filing of this Complaint.

COUNT FOUR COMMON LAW PUBLIC NUISANCE

44. The allegations in Paragraphs One (1) through Forty-Three (43) of the Complaint are incorporated by reference in this Count as if fully rewritten herein.

45. Since, upon information and belief, on or about June 24, 2014, Defendants' illegal disposal of C&DD and operation of a C&DD facility without a license has created a condition

that is offensive to the senses of the surrounding community and interferes with the rights, general health, and welfare of the public; thereby, constituting an unreasonable use of property to the detriment of the public.

46. By and through the Defendants conduct as described in this Complaint, these Defendants have significantly interfered with the public health, the public peace, the public comfort, and/or the public convenience of neighboring businesses and residents.

47. The Defendants knew or had reason to know that the acts alleged in this claim for relief of the Complaint have constituted a threat to or a significant interference with the rights of the public.

48. By reason of Defendants' continuing nuisance, the public has suffered and continues to suffer damages that are irreparable and cannot be fully compensated by law. These Defendants are responsible for abating this nuisance and are liable to the Plaintiff for compensatory damages including, but not limited to, the costs of personnel time for investigating, inspecting, preparing and bringing this action and other costs in addressing the public nuisance caused by the Defendants.

49. The State, through its Attorney General, is entitled to injunctive relief to abate and enjoin this nuisance.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the State of Ohio, respectfully requests that this Court award Plaintiff the following relief from Defendants:

- A. Permanently enjoin Defendants from violating R.C. Chapter 3714 and the rules adopted thereunder.


- B. Permanently enjoin Defendants and their agents, representatives, employees, successors, or assigns, under the names that they presently use or any other names they use through any corporate or other device, and those acting in concert and participation with Defendants directly or indirectly, from engaging in the acts or practices of which the State complains.
- C. Order Defendants to begin removing, or cause the removal of, and lawfully dispose of all C&DD from the Arco Site within twelve (12) months of the effective date of this Court's Order, and to provide copies of disposal receipts to Ohio EPA within 30 days after each disposal event. Defendants are required to continue removal activities until all C&DD has been removed from the Arco Site and lawfully disposed of.
- D. Grant to Ohio EPA, its contractors, employees, agents, and assigns access to the Arco Site and use of soils on the property belonging to Defendants for the purpose of disposal and/or closure of the site in the event that Defendants fail to perform removal and disposal of all C&DD and solid waste located at the property.
- E. Order Defendants to pay all the costs and fees of this action, including the State of Ohio's attorney fees and other extraordinary litigation and enforcement costs.
- F. Order Defendants, pursuant to R.C. 3714.13(F), to pay into the state treasury to the credit of the environmental remediation fund created pursuant to R.C. 3734.281, a civil penalty of \$10,000 per day for each day of each violation alleged in the Complaint, including any violations occurring after the filing of the Complaint. Preliminarily and permanently order and enjoin Defendants to provide Ohio EPA, its contractors, agents, and assigns access to the Arco Site for the purpose of inspecting Defendants' compliance with R.C.

Chapter 3714, the rules adopted thereunder, and any Order or Decree issued by this Court in this suit.

- G. Retain jurisdiction of this suit for the purpose of making any Order or Decree the Court may deem necessary at any time to enforce and administer Defendant's compliance with, and to carry out, this Court's judgment.
- H. Grant such other relief as may be necessary and appropriate in law or equity.

Respectfully submitted,

MICHAEL DEWINE
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