

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO ex rel.	:	CASE NO. 11-0252
OHIO ATTORNEY GENERAL,	:	
	:	
Plaintiff-Appellee	:	On Appeal from the
	:	Court of Appeals of Ohio
	:	Tenth Appellate District
	:	
v.	:	
	:	Court of Appeals
	:	Case No. 09AP-938
THE SHELLY HOLDING CO., et al.,	:	
	:	
Defendants-Appellants.	:	

REPLY OF DEFENDANTS-APPELLANTS,
SHELLY MATERIALS, INC. AND ALLIED CORPORATION

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REPLY ARGUMENT

Contrary to the State's contentions, the proposed propositions of law before this Court are necessary and appropriate for Ohio's business community and the Shelly defendants, Shelly Materials, Inc and Allied Corporation ("Shelly"). While presented in the context of an environmental enforcement case, the propositions are more broadly based on the fundamental legal principles of due process and the appropriate burden of proof. The Tenth District's decision, if allowed to stand, will lower the State's burden of proof in environmental enforcement matters and give the State an unassailable advantage. The State would need to show only a single day of violation, with no other evidence, in order for it to seek and receive ongoing civil penalties against Ohio businesses because the Tenth District decision denies accused businesses the due process right to present any rebuttal to the State's inference of an ongoing violation. As such, a declaration from this Court as to the law of Ohio is paramount to Ohio's business community and Shelly.

FIRST PROPOSITION OF LAW: IN A CIVIL ENFORCEMENT ACTION, THE STATE HAS THE BURDEN OF PROOF TO DEMONSTRATE BY A PREPONDERANCE OF THE EVIDENCE EACH AND EVERY DAY OF VIOLATION.

In response to Shelly's first proposition of law, the State presents two arguments to this Court. First, the State argues, for the first time, that its burden of proof in a civil enforcement action should be the burden of proof set forth in the federal Clean Air Act ("CAA"). Second, the State claims that if the CAA burden of proof standard applies, the State can carry its prima facie burden based solely on a single failed stack test without any additional evidence. The State's arguments are legally incorrect and ignore the plain language of both Ohio and federal law. Moreover, the State's arguments ignore the plain language of the Tenth District's decision.

A. For The First Time, The State Argues That The Burden Of Proof Should Be Based On The Limited Incorporation By Reference Of A Provision Of The Federal Clean Air Act Into A State Regulation That Is Not At Issue In This Case.

For the first time, after more than four years of litigation, the State now claims that a federal standard should establish the applicable burden of proof in all air enforcement cases in Ohio. Specifically, the State now argues that the incorporation by reference of the enforcement provision of the federal CAA, 42 U.S.C. 7413 (“CAA Federal Enforcement Provision”), into a very specific rule within a specific chapter of Ohio regulation, Ohio Adm.Code Chapter 3745-31, should transcend long-standing Ohio law, the State’s own prior arguments, and the State’s decades long enforcement practice and become the law of Ohio regarding the applicable burden of proof. State’s Br. at 13. The State’s new argument is inconsistent with the State’s pleadings, filings and arguments to date and misrepresents the limited nature of the incorporation by reference in Ohio’s Administrative Code.

It is well established that this Court will not consider arguments and legal theories not raised in the courts below. *Gutierrez v. Trumbull Cty. Bd. of Elections* (1992), 65 Ohio St.3d 175, 177, 602 N.E.2d 622 (legal propositions or theories were not properly before the appellate court because they were not raised in the complaint or decided by the lower court); *Republic Steel Corp. v. Board of Revision of Cuyahoga County* (1963), 175 Ohio St. 179, 179, 184-185, 192 N.E.2d 47; *State v. Awan* (1986), 22 Ohio St.3d 120, 120-122, 489 N.E.2d 277; *Hungler v. City of Cincinnati* (1986), 25 Ohio St.3d 338, 342, 496 N.E.2d 912; *Bradley v. Sprenger Enterprises, Inc.*, 9th Dist. No. 07CA009238, 2008-Ohio-1988, at ¶¶10-12. Here, the State has asked this Court to adopt a federal law standard as the appropriate burden of proof in a state civil

enforcement action despite the fact that the State has spent more than four years arguing to the trial and appellate courts that an Ohio law standard applies.

While the State represents that “the Attorney General argued that the method set out in 42 U.S.C. 7413(e) applied,” the State has not identified a single reference in the record supporting this statement. State’s Br. at 9. In fact, in the State’s Complaint, in its extensive written arguments to the trial and appellate courts, at trial, and in oral argument before the Tenth District, the State did not claim or argue that Ohio law incorporates the CAA Federal Enforcement Provision’s burden of proof requirements. And, as shown in the following examples, the State argued just the opposite:

- In the State’s Proposed Findings of Fact and Conclusions of Law before the Trial Court, the State identified R.C. 3704.06(C) and Ohio case law as controlling. The State made no reference to the CAA Federal Enforcement Provision as the controlling standard. Shelly Supp. at 55-57 (State’s Proposed Findings of Fact and Conclusions of Law, 204-206).
- In the State’s Civil Penalty Brief before the Trial Court, the State asserted that the civil penalties issue was predicated on R.C. 3704.06(C) and Ohio case law. The State made no reference to the CAA Federal Enforcement Provision as the controlling standard. State’s Civil Penalty Br. at 4.
- In the State’s Tenth District Reply, the State cited R.C. 3704.05 and Ohio case law to discuss the civil penalties, including burdens of proof, and made no reference to the CAA Federal Enforcement Provision as the controlling standard. State’s 10th Dist. Reply at 10.
- In the State’s Supreme Court Memorandum in Opposition to Jurisdiction, the State claimed that R.C. 3704.06 “tracks” the CAA Federal Enforcement Provision but did not argue that federal law is controlling or that the federal provision is incorporated by reference into Ohio law on this specific issue. State’s Mem. in Opp. to Juris. at 7.

This Court should also be aware that the State’s arguments to the courts below, and even to this Court in its Memorandum in Opposition to Jurisdiction, are entirely consistent with the standard

approach the State has taken in air enforcement cases for decades that state law sets the applicable burden of proof.¹

Now, for the first time, the State argues that the CAA Federal Enforcement Provision is incorporated into state law and controls in all air enforcement cases. Fundamentally, this Court should not even entertain the State's new theory since it was not raised below. See *Gutierrez, Republic Steel, Awan, Hungler, and Bradley*.

The untimely identification of this new argument notwithstanding, the State's argument is also predicated on a misinterpretation of the actual, limited incorporation by reference of the CAA Federal Enforcement Provision. While the State packages the incorporation of the CAA Federal Enforcement Provision by reference into Ohio law as a broad-based incorporation into "state law and therefore applies to Ohio emitters," the actual incorporation is very limited in scope. State's Brief at 13-14.

Specifically, the chapter of the administrative code that the State relies on, Ohio Adm.Code Chapter 3745-31, very clearly and unambiguously limits the incorporation by reference of the CAA Federal Enforcement Provision to only a single rule, Ohio Adm.Code 3745-31-01(N)(3). Ohio Adm.Code 3745-31-01(AAAAAA) states:

Incorporation by reference. This chapter includes references to certain matter or materials. The text of the incorporated materials is not included in the regulations contained in this chapter. The materials are hereby made a part of the regulations in this chapter. For materials subject to change, only the specific version specified in the regulation are incorporated. Material is incorporated as it exists on the effective date of

¹ *State ex rel. Fisher v. Cleveland Trinidad Paving Co.* (August 25, 1994), 8th Dist. No. 65889; *State ex rel. Celebrezze v. Natl. Lime & Stone Co.* (1994), 68 Ohio St.3d 377, 627 N.E.2d 538; *State ex rel. Celebrezze, v. Thermal-Tron, Inc.* (1992), 71 Ohio App.3d 11, 592 N.E.2d 912; *State ex rel. Celebrezze v. Dearing* (Nov. 13, 1986), 8th Dist. Nos. 51209, 51220, 51221; *State ex rel. Brown v. Chase Foundry Mfg. Co.* (1982), 8 Ohio App.3d 96, 456 N.E.2d 528. In addition, none of the over 550 Consent Orders, Judgment Entries, and Director's Final Findings and Orders entered into pursuant to state air law between the State and regulated entities between 2003 and August 10, 2011 reference 42 U.S.C. 7413 as the authority for setting the burden of proof with respect to Ohio air enforcement cases. See Ohio EPA DAPC Air Enforcement Actions, *available at* <http://www.epa.state.oh.us/dapc/enforcement/enforcement.aspx> (last visited September 21, 2011).

this rule. Except for subsequent annual publication of existing (unmodified) Code of Federal Regulation compilations, any amendment or revision to a referenced document is not incorporated unless and until this rule has been amended to specify the new dates. (Emphasis added.) Ohio Adm.Code 3745-31-01(AAAAAA).

Within Ohio Adm.Code 3745-31-01(AAAAAA), subpart (2)(mmm) does identify the CAA Federal Enforcement Provision: “*Section 113 of the Clean Air Act; contained in 42 USC 7413; “Federal enforcement;” published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code*” as a referenced material. State’s Br. at 12-13; Ohio Adm.Code 3745-31-01(AAAAAA)(2)(mmm). However, contrary to the State’s claim, only one rule within Ohio Adm.Code Chapter 3745-31 references the CAA Federal Enforcement Provision: Ohio Adm.Code 3745-31-01(N)(3). There is no other mention of the CAA Federal Enforcement Provision anywhere within Ohio Adm.Code Chapter 3745-31. Ohio Adm.Code 3745-31-01(N)(3), which is a definition of “Available Information,” states in its entirety:

(N) “Available information” means, for purposes of identifying control technology options for a major MACT source, information contained in the following information sources as of the date of the MACT determination by the director: *** (3) Data and information available from the “Control Technology Center” developed pursuant to Section 113 of the Clean Air Act; **** (Emphasis added.) Ohio Adm.Code 3745-31-01(N)(3).

While the CAA Federal Enforcement Provision is incorporated by reference, the code expressly limits the incorporation by reference to only the specific rule within Chapter 3745-31, i.e. Ohio Adm.Code 3745-31-01(N)(3), where the reference to Section 113 of the Clean Air Act appears and not broadly to all “state law” or even all state environmental cases, as the State claims. State’s Br. at 13-14.

The State, as the Plaintiff, had the opportunity to plead this case any way it saw fit when it filed against Shelly in 2007. The State did not allege in the stack test claim, Claim Seven of the State’s Complaint, that Shelly violated Ohio Adm.Code 3745-31-01(N)(3). Rather, all of the

counts included in Claim Seven were brought by the State as violations of R.C. 3704.05(C) and, accordingly, its claims are subject to the burdens and standards found in R.C. 3704.06(B) and (C). Shelly Supp. at 3, 6 (State's Compl., 42, 45); State's Br. at 6, citing R.C. 3704.06(A), (B), (C). As such, the limited incorporation by reference of the CAA Federal Enforcement Provision into Ohio Adm.Code 3745-31-01(N)(3) has no relevance or application to the State's claims in this matter.

Nothing in the State's incorporation by reference argument changes the burden of proof required for a civil enforcement action brought under R.C. 3704.06, which is the statute pursuant to which the State brought its action against Shelly. State's Br. at 11 ("The Attorney General brought suit against Shelly by invoking its enforcement authority under Ohio's Air Pollution Control Act"). Ohio's air law, consistent with the traditional state law burden standard, requires that the plaintiff can only meet its burden of proof upon a showing by a preponderance of the evidence that a violation of an Ohio air permit occurred for each and every day that the violation is alleged. See Shelly Br. at 8.

B. If The Federal CAA's Burden Of Proof Is Broadly Incorporated Into State Law Civil Enforcement Claims Under R.C. Chapter 3704, The State Must Establish Both That A Violation Occurred And That The Violation Was Likely To Have Continued Or Recurred To Meet Its Prima Facie Burden.

The burden of proof in Ohio for an environmental civil enforcement case is rooted in Ohio law and requires that the State carry its burden of proof with a preponderance of the evidence showing. However, should this Court determine that the CAA Federal Enforcement Provision burden of proof is applicable to Ohio air law cases, this Court must make it clear that all of 42 U.S.C. 7413 must be considered, not just the language most favorable to the State.

The State's Merit Brief creatively packages the CAA Federal Enforcement Provision by paraphrasing its content. State's Br. at 13. However, in order to appropriately examine the State's burden of proof, the language of 42 U.S.C. 7413(e)(2) of the CAA Federal Enforcement Provision must be considered in total:

A penalty may be assessed for each day of violation. For purposes of determining the number of days of violation for which a penalty may be assessed under subsection (b) or (d)(1) of this section, or section 7604(a) of this title, or an assessment may be made under section 7420 of this title, where the Administrator or an air pollution control agency has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.
(Emphasis added.) 42 U.S.C. 7413(e)(2).

Thus, even under the CAA, the State, as plaintiff, must make a two-prong showing: (1) that a violation occurred and that the source has been notified of the violation and (2) that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice.

If the State wants to read federal law into state law, it must incorporate all of the CAA Federal Enforcement Provision into Ohio law, not just the sections most beneficial to the State's argument. For example, in the first prong of the two-prong showing, the plain language of the CAA Federal Enforcement Provision requires that the governmental authority bringing an action first provide the alleged violator with notice of the alleged violation, and federal courts have determined that such notice must be sufficient so that the business clearly knows what violation of law is being alleged. 42 U.S.C. 7413(a)(1); 42 U.S.C. 7413(b)(1)(B); *U.S. v. Pan American*

Grain Mfg. Co. (D. Puerto Rico 1998), 29 F.Supp. 2d 53, 56-57; *U.S. v. Brotech Corp.* (Sept. 19, 2000), E.D.Pa. No. Civ.A. 00-2428, 2000 WL 1368023 at *2.

The evidence at trial shows that no such “sufficient notice” was provided to Shelly because the State never placed Shelly on notice of any Ohio Adm.Code 3745-31-01(N)(3) violations (i.e. the only rule in Ohio Adm.Code Chapter 3745-31 that incorporates by reference the CAA Federal Enforcement Provision). State Ex. 571, 596 and 603. Thus, if the State wants this Court to believe that the CAA Federal Enforcement Provision has applied “all along” then the State has a proof problem: no notices of alleged stack test violations at Plants 63 and 73 were entered into evidence at all, and the notices provided for Plants 90, 91 and 95 failed to put Shelly on sufficient notice as to any violation of rule that could trigger the incorporation of the CAA burden of proof.

Prong two of the CAA Federal Enforcement Provision expressly puts the burden on the plaintiff to “show” that the violation was likely to have continued or recurred past the date of the initial notice of the violation before there is any presumption of a continued violation. In addition to failing to meet the notice provisions of prong one, the State has completely ignored the second prong of the two-part burden of proof test. For example, the State argues in its Merit Brief that the facilities’ failed emissions tests amounted to a prima facie showing that Shelly was in continuing violation of its permits. State’s Br. at 1, 10-11, 16-18 (“evidence of failed stack tests is enough for a prima facie case”). However, that is not enough. Under the CAA burden of proof, the State must also introduce evidence that the “conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice” in order to establish a prima facie case of a continuing violation. The State has completely disregarded the entire second prong of the statute’s requirements for establishing a prima facie case. *Id.*; see also

Stancourt v. Worthington City Schl. Dist. Bd. Of Educ., 10th Dist. No. 04AP-870, 2005-Ohio-6750, at ¶18 (noting it is a basic and well-accepted rule of statutory construction that each word in a regulation shall be given effect and no words should be ignored), citing *D.A.B.E., Inc. v. Toledo-Lucas Cty. Bd. of Health*, 96 Ohio St.3d 250, 2002-Ohio-4712, 773 N.E.2d 536, at ¶26; *Bernardini v. Board of Edn.* (1979), 58 Ohio St.2d 1, 4, 387 N.E.2d 1222 (it is the duty of the court to give effect to the words used, not to delete words used).

The State's argument also runs contrary to the holding of the federal case it cites in support of its argument. State's Br. at 16, citing *U.S. v. Hoge Lumber Co.* (N.D. Ohio, May 7, 1997), No. 3:95 CV 7044, 1997 U.S. Dist. LEXIS 22359 (finding a continuing violation under 7413(b) based in part on un rebutted evidence that a facility failed an emissions test and did not return to compliance until a subsequent test). In *Hoge*, the Department of Justice ("DOJ") did more than just show that a stack test violation occurred to meet its prima facie burden. In addition to showing the actual stack test exceedances (eight in all), the DOJ also offered the following evidence: (1) an affidavit from an expert engineer who testified that the permit holder performed eight stack tests on its boiler under various operational conditions, including operating conditions as low as 22% of capacity (i.e. not maximum operating capacity), and all eight stack tests showed emissions violations; (2) testimony by the company's designated Rule 30(b)(5) witness who testified that the boiler was not operating in compliance with its air permit limits and expressed doubt that the boiler could ever meet the emission limit required by the air permit; and (3) evidence of actual days on which the defendant operated its boiler in a manner exceeding emissions limits—2,700 days over a twelve year period. Shelly Br. App. at A186-A187 (*Hoge* at *14-17).

While the Tenth District did not rely on the CAA or conclude that the CAA Federal Enforcement Provision was incorporated into Ohio law, the appellate court parenthetically referenced Section 7413(e)(2)'s prima facie standard and seemed to recognize that Section 7413 does include a requirement that the plaintiff show that the conduct or events giving rise to the violation are likely to have continued or recurred. Shelly Br. App. at A34 (*State ex rel. Ohio Attorney General v. The Shelly Holding Co., et al.* (2010), 191 Ohio App.3d 421, 2010-Ohio-6526, 946 N.E.2d 295, at ¶65 (“*Shelly II*”). But instead of applying that standard, the Tenth District ordered the Trial Court to determine that a violation continued every day after a failed stack test until a subsequent stack test determined that the plant was no longer violating its permit limits, essentially lowering the burden of proof to a “mere inference” standard not found in either Ohio law or federal air law. The Tenth District did so despite the fact that the Trial Court specifically found that the State had not demonstrated that the violations were likely to have continued at Shelly’s plants. See Shelly Br. App. at A89-A90.

If this Court should rule that the CAA Federal Enforcement Provision is broadly incorporated by reference into Ohio law, it must also conclude that the entirety of that section is incorporated by reference not just the specific phrases hand-picked by the State. This Court must also make clear that, if the CAA Federal Enforcement Provision is the appropriate burden of proof, the State can only meet its prima facie burden upon a showing both that a violation occurred and that the source has been notified of the violation and the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice. Here, the State made no such showing.

SECOND PROPOSITION OF LAW: IF A CONTINUING VIOLATION OF PERMIT TERMS CAN BE INFERRED, A PERMIT HOLDER MUST BE GIVEN THE OPPORTUNITY TO REBUT THE INFERENCE.

With respect to the second proposition of law, both Shelly and the State apparently agree that due process requires that a permit holder have an opportunity to rebut any presumption of a continuing violation. Because the language of the Tenth District decision precludes such an opportunity, this Court must make clear that the Ohio Constitution mandates that defendants have such a due process right. While the State claims that the Tenth District decision does allow Shelly such an opportunity, the plain language of the Tenth District's decision clearly demonstrates otherwise.

A. The State Has Conceded That A Permit Holder Must Be Given The Opportunity To Rebut Any Inference Of A Continuing Violation.

In its opinion, the Tenth District set an unconstitutional legal standard that once there is a finding of a single one-day violation, here a stack test exceedance, the Trial Court must find a continuing violation until another stack test demonstrates compliance. Shelly Br. App. at A34 (*Shelly II* at ¶66). In doing so, the Tenth District removed the due process rights of defendants in an attempt to create unconstitutional black letter law in Ohio. At a minimum, even if this Court finds that a failed stack test alone can carry the State's initial burden of proof, this Court must declare that the Ohio Constitution requires that defendants be provided a meaningful opportunity to rebut presumptions or claims made by plaintiffs.

The State concedes that due process rights must be afforded to Shelly, stating in its proposition of law two that "once a plaintiff establishes a rebuttable presumption of a continuing emissions violation, the Due Process Clause requires only that the permit holder have an opportunity to rebut that presumption." State's Br. at 26. The Tenth District's decision ignored that due process right entirely.

B. The Tenth District's Decision Wholly Ignored Shelly's Constitutional Right To Present A Defense, And The State's Own Arguments Undercut The Tenth District's Holding.

While the State essentially agrees with Shelly's second proposition of law, the State claims that the Tenth District's opinion did, in fact, give Shelly the right to rebut a presumption of a continuing violation. State's Br. at 28-31 (claiming that the Tenth District rejected Shelly's evidence). However, there is nothing in the Tenth District's opinion that supports the State's argument. Quite the opposite, the Tenth District eliminated any ability for the Trial Court to consider Shelly's defense, stating "the state on appeal argues that *** after a failed stack test, a facility must demonstrate compliance by conducting another stack test that meets the emissions standards," before concluding that:

In determining the number of days each violation existed, the trial court should have concluded that the violation continued until the subsequent stack test determined that the plant no longer was violating the permit limit. We conclude that the trial court must calculate again, in accordance with this decision, the number of days Shelly violated the applicable PTI ***". Shelly Br. App. at A34 (Emphasis added.) (*Shelly II* at ¶66).

The Tenth District's decision unequivocally cuts off any and all meaningful ability to defend against an allegation of a continued violation absent another stack test; once a stack test is failed, the defendant is in automatic non-compliance until a subsequent stack test shows compliance. Id.

The State's own brief demonstrates why the Tenth District decision cannot be allowed to stand as the law of Ohio. As recognized by the State, a subsequent stack test is not the only way to establish that a violation does not continue. At various places in its Merit Brief, the State now tells this Court that the following options "stop" on-going non-compliance:

- Identifying days on which the facility did not operate. State's Br. at 11, 27, 29, 30.

- Demonstrating that the facility took steps (such as performing maintenance) that brought the facility back into compliance. State's Br. at 11.
- Evidence that a permit modification was sought to increase emission limits. State's Br. at 16.
- Showing that the facility "fixed" the problem. State's Br. at 17-18, 23.

Yet the Tenth District's decision unambiguously states that a subsequent stack test is the only way to establish that a violation does not continue. Shelly Br. App. at A34 (*Shelly II* at ¶66).

The State's own arguments underscore the weakness of the Tenth District's legal conclusion; the Tenth District's decision precluded any opportunity for a defendant to show that its violation was not on-going. The State, taking a middle ground, presents a defined list of evidence that could be used to rebut the presumption, but does not identify any law that supports its position that its list of evidence is exhaustive. Neither position is legally correct. Ohio's Constitution guarantees a defendant a right to present a defense rebutting an inference of an on-going violation, and it does so without limiting the evidence a defendant can use for this purpose.

Even if this Court determines that the CAA burden of proof applies, both the holding of the Tenth District and the arguments of the State contradict both the plain language of the CAA Federal Enforcement Provision and Congressional intent. On this point, the CAA Federal Enforcement Provision states that once a plaintiff makes a prima facie showing, days of violation will be presumed unless the defendant can prove "by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature." 42 U.S.C. 7413(e)(2). The plain language of the statute does place any limitation on the type of evidence that a defendant can use to prove that a violation did not continue.

In concert, one of the Congressional goals in adopting the CAA Federal Enforcement Provision as part of the 1990 CAA Amendments was to clarify “that courts may consider any evidence of violation or compliance admissible under the Federal Rules of Evidence, and that they are not limited to consideration of evidence that is based solely on the applicable test method [i.e. a stack test]***”. (Emphasis added.) S.Rep. 101-228, 101st Cong. S. Rep. No. 228, 1990 U.S.C.C.A.N. 3385, 3749, 1989 WL 236970. Put simply, a defendant must have a right to mount a defense against a claim of continuing violation, and no law or caselaw limits what evidence is and is not acceptable.

In this case, the Trial Court found that Shelly presented “compelling” evidence showing that the emissions exceedances did not continue. Shelly Br. App. at A90 (*State ex rel. Ohio Attorney General v. The Shelly Holding Co., et al.* (Sept. 2, 2009), Franklin Cty. C.P. No. 07CVH07-9702, at 46 (“*Shelly I*”). If the Tenth District had considered and rejected Shelly’s evidence and the Trial Court’s holding, it would have had to make a finding that the Trial Court’s factual findings with respect to this claim were against the manifest weight of the evidence; however, the Tenth District made no such finding. Shelly Br. App. at A29-A35 (*Shelly II* at ¶¶55-66); see also *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279, 279, 376 N.E.2d 578 (On appellate review, to the extent that the trial court’s determination rests upon findings of fact, those findings will not be overturned unless they are against the manifest weight of the evidence).

In an attempt to overcome the Tenth District’s error, the State creatively attempts to manipulate Shelly’s arguments and the evidence. For instance, the State argues that Shelly’s evidence that its plants did not run under the same conditions during stack tests was a novel “legal theory” rejected by the Tenth District. State’s Br. at 9, 29. And, the State claims that the

only evidence that should matter is whether or not the plants were actually operating on days subsequent to the stack tests. *Id.* The State's claims have no support in law and are contradictory to the State's own arguments regarding ways to disprove the existence of a continuing violation, as discussed herein.

Contrary to the State's representation to this Court that Shelly "failed to identify any evidence" that the violations did not continue, the Trial Court's decision makes it clear this is not the case. State's Br. at 9. Specifically, Shelly introduced the following uncontroverted evidence: (1) the Shelly stack tests were merely snapshots and not indicative of day-to-day operations; (2) Shelly did not run its plants using the same fuels, raw materials and operating conditions as it did during stack tests; (3) Shelly did not operate its plants in the winter months; and that (4) Shelly did not operate its plants seven days a week, even in the busy summer season. Shelly Supp. at 35-36 (Hodanbosi Tr. 1591-1592); Shelly Supp. at 38 (Shively Tr. 1653); Shelly Supp. at 39 (Mowrey Tr. 1813); Shelly Supp. at 15 (Prottengeier Tr. 161); Shelly Supp. at 40-41 (Mowrey Tr. 1862-1863).

Such uncontroverted factual evidence does not constitute a "legal theory" conjured up by Shelly as the State now claims. Rather, Shelly presented significant factual evidence, including testimony from Ohio EPA's own top ranking Air Division Chief, that the Trial Court found to be "compelling." Shelly Br. App. at A90 (*Shelly I* at 46). If the Tenth District had considered this evidence, as the State claims it did, the Tenth District would have been required to make a finding that the Trial Court's decision was against the manifest weight of the evidence in order to reach its conclusion; however, the Tenth District made no such finding.

The State further misconstrues Shelly's argument by claiming that Shelly has invented a "one-day-only penalty standard." State's Br. at 24. Shelly has never argued that the legal

standard should be a “one-day-only penalty standard.” Instead, Shelly has argued that the State, as plaintiff, must demonstrate that a permit holder has violated law by a preponderance of the evidence for each day the plaintiff seeks a penalty. Further, the cases cited by the State do not support the State’s own argument on this point. State’s Br. at 24.

For example, in *N.W. Env’t Def. Ctr. v. Owens Corning Corp.*, a federal action was brought by environmental groups using the CAA’s citizens’ suit provision against a manufacturer alleging that the defendant commenced construction of a facility without first obtaining the proper federal permit. *N.W. Env’t Def. Ctr. v. Owens Corning Corp.* (D.Ore. 2006), 434 F.Supp.2d 957, 972-973. There, as part of the plaintiff’s case, the plaintiff clearly could show with evidence that the same violation, construction of a project without a permit, occurred over and over again. This is because construction of the project continued even without the permit, making it easy for the plaintiffs to prove a continuing violation. *Id.*

Neither *U.S. v. Mac’s Muffler Shop, Inc.* nor *U.S. v. ITT Continental Banking Co.* have any even tangential relation or relevance to the issue of a continuing versus one-day violation and, in fact, *ITT* is not even an environmental case. *U.S. v. Mac’s Muffler Shop, Inc.* (Nov. 4, 1984), N.D. Ga. Civ. A. No. C85-138R, 1986 WL 15443; *US v. ITT Cont’l Banking Co.* (1975), 420 U.S. 223, 95 S.Ct. 926, 43 L.Ed.2d 148 (claims brought under the Clayton and Federal Trade Commission Acts).

The Due Process clause of Ohio’s Constitution gives defendants like Shelly the absolute right to put on a defense to rebut a plaintiff’s allegations. In environmental cases, there is nothing that limits what evidence a defendant can present. Here, the Tenth District’s decision took away these fundamental due process rights; as such, this decision cannot stand.

C. The State's Offers Of Reasonableness To This Court Are Irrelevant And Contradicted By Its Own Past Actions.

In an attempt to appear reasonable to this Court, the State now makes two superficial offers. First, the State offers to allow Shelly the right to make additional arguments on remand. Second, the State offers this Court a promise of reasonableness and judgment in Ohio EPA enforcement actions. Of course, the State also makes it clear that its promises of reasonableness will be replaced by maximum penalty demands and mandatory equipment installations if the State does not win this case.

Recognizing the clear constitutional problems stemming from the Tenth District's holding, the State attempts to ameliorate the Tenth District's decision ignoring Shelly's compelling defense by offering to "give Shelly an opportunity on remand to respond." State's Br. at 30. Shelly is not interested in recreating the record; in fact, Shelly stands behind the defense and evidence presented. Instead, Shelly seeks certainty from this Court that transcends the facts of this case to set the appropriate legal standard for all environmental civil enforcement cases that defendants must be afforded the opportunity to present a defense and that trial courts must consider that defense in determining the days of violation.

The State also asks this Court to "trust us" by stating that "the State considers all the circumstances when determining the size of penalty it will seek in court" and "the State will take the facility's efforts into account and will not seek penalties or penalty maximums for the days after the repair was made before the re-test occurred." State's Br. at 24-26. Such reassurances from the State are not binding or reliable. *State ex rel. Chevalier v. Brown* (1985), 17 Ohio St.3d 61, 63, 477 N.E.2d 623 (noting that a party is not entitled to rely on statements of governmental officials); *U.S. v. Huss* (C.A. 2, 1973), 482 F.2d 38, 50 (government's promise of good faith treatment cannot be relied upon).

Moreover, the “trust us” approach is meaningless in light of the State’s warning that if it loses this case, it “will have a greater incentive to seek the maximum amount of penalties” against regulated business in Ohio. State’s Br. at 26. The State’s representation as to its current reasonableness with penalties is, likewise, disingenuous since the State’s air enforcement complaints currently seek the statutory maximum civil penalties as routine course.²

In fact, one need only review the record below in this case to recognize how disingenuous the State’s “we are reasonable people with the requisite judgment” representations to this Court really are. For example, one of the claims brought by the State was that Shelly failed to obtain required permits before operating its plants. See Shelly Br. App. at A47-A48. Under Ohio law, after receiving a complete permit application, the State has 180 days to either issue or deny the permit. Ohio Adm.Code 3745-31-06(E). Many Shelly sources were not issued permits from Ohio EPA until years after the expiration of the 180 day period, if Ohio EPA issued permits at all. Shelly Br. App. at A48-A55 (*Shelly I* at 4-11). Despite its own failure to issue permits within the regulatory 180 day period, the State still sought maximum civil penalties from Shelly for days that these emission sources operated without permits after the 180 day limit. State’s Complaint at ¶¶191-202 and Prayer for Relief B. The Trial Court rejected the State’s demands, holding that “taking more than the amount of time allowed for by law clearly places the majority of the non-compliance on the government ... to expect one side to follow the law and not the other is simply not right.” Shelly Br. App. at A126 *Shelly I* at 83).

Similarly, the State sought the civil penalty maximum of \$25,000 against Shelly because Shelly posted a 20 MPH speed limit sign rather than a 15 MPH speed limit sign in a quarry. State’s Compl. at ¶¶291-292 and Prayer for Relief B. The State also sought maximum penalties

² See, e.g., State’s Complaints and Prayers for Relief, Shelly Reply App. at RA1-RA99.

from Shelly for allegedly failing to submit required reports to Ohio EPA, when in fact those reports had been submitted to Ohio EPA. See October 31, 2008 Trial Court Decision Granting in Part and Denying in Part Defendants' Motions to Dismiss at 10. If the State cannot be trusted to manage basic paperwork, it simply cannot be trusted with essentially carte blanche authority to levy what it considers to be a "reasonable" civil penalty.

The foregoing examples demonstrate that the State's proffer that it has the requisite judgment to determine when penalties are appropriate is irrelevant and hollow. Despite a finding from the Trial Court that Shelly showed a "sincere desire to identify and correct problems" and a demonstrated "openness that is to be commended," the State continues to paint Shelly as a bad-actor that deserves millions of dollars of civil penalty assessments. See Shelly Br. App. at A124 (*Shelly I* at 80). The State has already proven its goal is maximum penalty collection so its "trust us" approach is meaningless and in direct contradiction to the way the State actually treats defendants.

CONCLUSION

The Tenth District's decision cannot be allowed to stand. This Court must establish that the appropriate burden of proof in civil environmental enforcement actions is a preponderance of the evidence. In the alternative, this Court must declare that due process rights of defendants must not be taken away and that regulated businesses must be afforded a meaningful opportunity to rebut an inference of on-going violations.

For all the reasons set forth above, Shelly respectfully urges this Court to reverse the decision of the Tenth District and adopt Shelly's First Proposition of Law or, in the alternative, adopt Shelly's Second Proposition of Law in order to provide certainty and consistency to Ohio's regulated businesses and industries.

Respectfully submitted,



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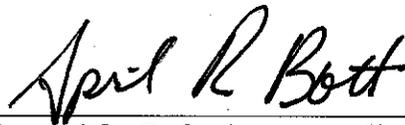
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PROOF OF SERVICE

I certify that a copy of this Reply Brief of Defendants-Appellants Shelly Materials, Inc. and Allied Corporation was sent by ordinary U.S. mail postage prepaid on October 3, 2011 to:

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IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

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

Plaintiff,

v.

HEARTLAND REFINERY GROUP, LLC,
% Acme Agent, Inc., Statutory Agent
41 South High Street, Suite 2800
Columbus, Ohio 43215

KENNETH E. GORNALL (individually),
786 Hudson Road
Delaware, Ohio 43015

and

WILLIAM C. SNEDEGAR (individually),
4608 Central College Road
Westerville, Ohio 43081

Defendants.

CASE NO. 13CVHC6 8953

JUDGE _____

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2015 JUN 15 PM 4:36
CLERK OF COURTS

At their oil re-refining facility in the City of Columbus, Defendants have caused and are continuing to cause the discharge of air pollutants such as sulfur dioxide and hydrogen chloride while circumventing legally required air pollution controls. Defendants' operations have, on more than one occasion, caused such extreme releases of air pollutants that neighboring businesses have had to evacuate employees or allow them to depart the area because they were overcome by the odors. Defendants have, among other violations, also exceeded sulfur dioxide emission limitations, have failed to conduct required emissions testing, and have illegally installed other sources of air pollutants. Defendants' unlawful operations have caused a public nuisance impacting the

surrounding public and private enterprises. In so doing, Defendants have created a threat to human health and welfare, and to the environment. Therefore, Plaintiff State of Ohio ("the State"), on relation of its Attorney General Richard Cordray, and at the written request of the Director of Environmental Protection ("Director"), hereby institutes this action pursuant to R.C. 3704.06(B) for preliminary and permanent injunctive relief and the assessment of civil penalties for violations of Ohio's air pollution control laws as contained in R.C. Chapter 3704 and the rules adopted thereunder.

The State alleges as follows:

DEFENDANTS

1. Defendant Heartland Refinery Group, LLC, Defendant Kenneth E. Gornall, and Defendant William C. Snedegar (collectively "Defendants") are each a "person" as defined by R.C. 3704.01(O) and Ohio Adm.Code 3745-15-01(V).
2. Defendant Heartland Refinery Group, LLC ("Heartland Refinery") is an Ohio company registered with the Secretary of State to do business in Ohio.
3. The Heartland Refinery property ("Facility") that gives rise to this Complaint is located at 4001 East Fifth Avenue, Columbus, Ohio 43219, in Franklin County.
4. Defendant Kenneth E. Gornall's ("Gornall") business address is 4001 East Fifth Avenue, Columbus, Ohio 43219, in Franklin County.
5. Defendant Gornall is an Ohio resident whose residential address is 786 Hudson Road, Delaware, Ohio 43015, in Delaware County.
6. Defendant Gornall is an officer of Defendant Heartland Refinery and exercised control and authority over the Facility during all times relevant to this Complaint.
7. Defendant William Snedegar's ("Snedegar") business address is 4001 East Fifth Avenue, Columbus, Ohio 43219, in Franklin County.

8. Defendant Snedegar is an Ohio resident whose residential address is 4608 Central College Road, Westerville, Ohio 43081, in Franklin County.

9. Defendant Snedegar is an officer of Defendant Heartland Refinery and exercised control and authority over the Facility during all times relevant to this Complaint.

GENERAL ALLEGATIONS

10. Defendants operate the Facility as an oil re-refinery. The Facility refines used oil into base lube oil, light ends fuel oil, and asphalt material, the latter of which is used to make roofing materials and paving asphalt.

11. At the Facility, Defendants utilize equipment, operations, and/or activities that emit or cause the emission of "air contaminants," as defined by R.C. 3704.01(B) and Ohio Adm.Code 3745-31-01(I-I).

12. The equipment, operations, and/or activities referenced in the preceding paragraph constitute "air contaminant source[s]" as defined by R.C. 3704.01(C) and Ohio Adm.Code 3745-31-01(I), and constitute "emissions unit[s]" as defined by Ohio Adm.Code 3745-31-01(MM).

13. The property at 4001 East Fifth Avenue, Columbus, Ohio 43219, Ohio EPA facility ID 0125043205, constitutes a "facility" as defined by Ohio Adm.Code 3745-15-01(Q).

14. Defendants have been "owner[s] and operator[s]" of the Facility at all times relevant to this Complaint, as that term is defined by Ohio Adm.Code 3745-15-01(U).

15. At the Facility, Defendants operate a front-end hot oil heater, identified by Ohio EPA as B001, which is an "air contaminant source," as defined by R.C. 3704.01(C) and Ohio Adm.Code 3745-31-01(I), and an "emissions unit," as defined by Ohio Adm.Code 3745-31-01(MM).

16. At the Facility, Defendants operate a front-end skid dehydration and light oil removal system, identified by Ohio EPA as P001, which is an "air contaminant source," as defined

by R.C. 3704.01(C) and Ohio Adm.Code 3745-31-01(I), and an "emissions unit," as defined by Ohio Adm.Code 3745-31-01(MM).

17. At the Facility, Defendants operate front-end wiped film short path evaporators, identified by Ohio EPA as P002, P003, and P004, which are "air contaminant source[s]," as defined by R.C. 3704.01(C) and Ohio Adm.Code 3745-31-01(I), and "emissions unit[s]," as defined by Ohio Adm.Code 3745-31-01(MM).

18. At the Facility, Defendants operate a back-end hydrofinishing and product stripping system, identified by Ohio EPA as P005, which is an "air contaminant source," as defined by R.C. 3704.01(C) and Ohio Adm.Code 3745-31-01(I), and an "emissions unit," as defined by Ohio Adm.Code 3745-31-01(MM).

19. Because emissions units B001, P001, P002, P003, P004, and P005 are "air contaminant source[s]" and "emissions unit[s]," Defendants are subject to the requirements of Ohio Adm.Code Chapter 3745-31.

20. On January 3, 2008, Ohio EPA issued Permit-to-Install ("PTI") No. 01-12184 to Defendants that governed emissions units B001, P001, P002, P003, and P004.

21. On July 16, 2008, Ohio EPA issued Permit-to-Install and Operate ("PTIO") No. 01-12184 to Defendants that governed emissions units B001, P001, P002, P003, P004, and P005.

22. On July 30, 2009, Ohio EPA issued PTIO No. P0105213 to Defendants that governed emissions units B001, P001, P002, P003, P004, and P005.

23. On August 11, 2009, Ohio EPA issued PTIO No. P0105187 to Defendants that governed emissions unit B001.

24. On October 1, 2009, Ohio EPA issued PTIO P0105498 ("the Permit"/ "Defendants' current permit") to Defendants that governed emissions units B001, P001, P002,

P003, P004, and P005, and that superseded PTI No. 01-12184 and PTIO Nos. 01-12184, P0105213, and P0105187.

25. Ohio EPA issued the PTI and PTIOs described in the preceding paragraphs (collectively, "Defendants' Permits") to Defendants pursuant to R.C. 3704(F) and/or (G).

26. Defendant Gornall, by virtue of his position as an officer of Heartland Refinery, alone or in conjunction with others, caused, participated in, controlled, and/or ordered the violations of law alleged in this Complaint. In addition, or in the alternative, Defendant Gornall knew about or should have known about the violations of law alleged in this Complaint; and by himself or in conjunction with others, had the authority to prevent or stop these violations, but failed to exercise his authority to do so. Defendant Gornall undertook the actions and/or omissions alleged in this Complaint with reckless disregard for the best interests of the corporation.

27. Defendant Snedegar, by virtue of his position as an officer of Heartland Refinery, alone or in conjunction with others, caused, participated in, controlled, and/or ordered the violations of law alleged in this Complaint. In addition, or in the alternative, Defendant Snedegar knew about or should have known about the violations of law alleged in this Complaint; and by himself or in conjunction with others, had the authority to prevent or stop these violations, but failed to exercise his authority to do so. Defendant Snedegar undertook the actions and/or omissions alleged in this Complaint with reckless disregard for the best interests of the corporation.

28. For the reasons stated in the preceding two paragraphs, Defendants Gornall and Snedegar are personally, jointly, and severally liable for every violation herein.

29. Ohio Revised Code 3704.05(A) provides, in part, that no person shall cause, permit, or allow the emission of an air contaminant in violation of any rule adopted by the Director.

30. Ohio Revised Code 3704.05(C) provides, in part, that no person who is the holder of a permit issued pursuant to R.C. 3704.03(F) or (G) shall violate any of the permit's terms or conditions.

31. Ohio Revised Code 3704.05(G) states that no person shall violate any order, rule, or determination that the Director issued, adopted, or made under R.C. Chapter 3704.

32. All rules referenced in this Complaint have been adopted by the Director pursuant to R.C. Chapter 3704.

33. The allegations in the preceding paragraphs of the Complaint are incorporated by reference into each count of the Complaint as if fully restated therein.

COUNT ONE
CREATION OF A PUBLIC NUISANCE

34. Ohio Administrative Code 3745-15-07(A) provides that it shall be unlawful for any person to cause, permit, or maintain a public nuisance

35. Ohio Administrative Code 3745-15-07(A) provides that the emission or escape into the open air from any source or sources whatsoever, of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, odors, or any other substances or combinations of substances, in such manner or in such amounts to endanger the health, safety, or welfare of the public, or cause unreasonable injury or damage to property, is hereby found and declared to be a public nuisance.

36. Since October 20, 2009, continuing to the present, and/or during other times not yet known to the State, Defendants engaged in the uncontrolled release of sulfur-containing compounds and/or other odorous compounds. This has resulted in numerous complaints from neighboring businesses and from the Columbus Fire Department. The emissions have caused the loss of comfortable enjoyment of property, impaired the conduct of business activities, and/or have endangered the public health and welfare in the vicinity of the Facility.

37. Since October 20, 2009, continuing to the present, and/or during other times not yet known to the State, Defendants have violated Ohio Adm.Code 3745-15-07(A) by causing, permitting, or maintaining the emission of sulfur-containing compounds and/or other odorous compounds that have created a public nuisance, as defined by Ohio Adm.Code 3745-15-07(A).

38. The acts or omissions alleged in this claim for relief each constitute separate violations of Ohio Adm.Code 3745-15-07(A) and R.C. 3704.05(A) and (G), for which the State is entitled to injunctive relief, and for which each Defendant is subject to a civil penalty of up to \$25,000.00 per day per violation, including each day of each violation occurring after the filing of this Complaint, pursuant to R.C. 3704.06(C).

COUNT TWO
CREATION OF A STATUTORY NUISANCE

39. Ohio Revised Code 3767.02 provides, in part, that any person who establishes a nuisance; the owner, agent or lessee of an interest in any such nuisance; and any person who is in control of that nuisance is guilty of maintaining a nuisance and shall be enjoined as provided in R.C. Chapter 3767.

40. Pursuant to R.C. 3767.03, the Attorney General may bring an action in equity in the name of the State to abate the nuisance and to perpetually enjoin persons from maintaining the nuisance.

41. Ohio Revised Code 3767.01(C) defines a nuisance, in part, as that which is defined and declared by statute to be a nuisance.

42. Since October 20, 2009, continuing to the present, and/or during other times not yet known to the State, Defendants have, used, occupied, established, and conducted a nuisance at the Facility because Defendants are operating the Facility in such a way as to create a menace to and injuriously affect the public health, welfare, and safety, is structurally unsafe, is dangerous to human life, and constitutes a hazard to the public health, welfare, or safety due to inadequate maintenance,

dilapidation, obsolescence, and works some substantial annoyance, inconvenience, or injury to the public.

43. Defendants established, have an interest in, and/or control the Facility and are thereby maintaining a nuisance, in violation of R.C. 3767.02.

44. The acts or omissions alleged in this claim for relief constitute violations of R.C. 3767.02, for which the State is entitled to perpetual injunctive relief against each Defendant, pursuant to R.C. 3767.03 and 3767.04.

COUNT THREE
OPERATING WITHOUT PROPER CONTROLS FOR EMISSIONS UNIT B001

45. Defendants' Permit requires that all process emissions from B001 be vented to the dry scrubber/baghouse specified in the Permit.

46. On or about April 28, 2010, and at other times yet unknown to the State, Defendants ceased utilizing the dry scrubber/baghouse at the Facility which they had installed to reduce pollutant emissions.

47. Since April 28, 2010, continuing to the present, and/or during other times not yet known to the State, Defendants have failed to control process emissions from emissions unit B001 utilizing the dry scrubber/baghouse to reduce pollutant emissions, thereby resulting in the uncontrolled releases of sulfur dioxide and hydrogen chloride emissions and thus violating the terms of the Permit and R.C. 3704.05(C).

48. The acts or omissions alleged in this claim for relief each constitute separate violations of the Permit and R.C. 3704.05(C), for which the State is entitled to injunctive relief, and for which each Defendant is subject to a civil penalty of up to \$25,000.00 per day per violation, including each day of each violation occurring after the filing of this Complaint, pursuant to R.C. 3704.06(C).

COUNT FOUR

OPERATING WITHOUT PROPER CONTROLS FOR EMISSIONS UNIT P005

49. Defendants' Permits require that all process emissions from emissions unit P005 be vented first to a hot oil heater and then to the dry scrubber/baghouse specified in the Permits.

50. From June 18, 2009 to October 19, 2009, Defendants failed to vent all emissions from emissions unit P005 first to the hot oil heater and then to the dry scrubber/baghouse, by venting emissions to either an open or enclosed flare, thereby resulting in the uncontrolled release of sulfur dioxide and hydrogen chloride emissions and thus violating the terms of Defendants' Permits and R.C. 3704.05(C).

51. From October 20, 2009 to April 27, 2010, except for a period of time from approximately December 14, 2009 to February 5, 2010, when the Facility was temporarily shut down, Defendants failed to vent all emissions from emissions unit P005 first to the hot oil heater and then to the dry scrubber/baghouse, by venting emissions to either an open or enclosed flare, thereby resulting in the uncontrolled release of sulfur dioxide and hydrogen chloride emissions and thus violating the terms of Defendants' current Permit and R.C. 3704.05(C).

52. On or about April 28, 2010, and at other times yet unknown to the State, Defendants ceased utilizing the dry scrubber/baghouse at the Facility which they had installed to reduce pollutant emissions.

53. Since April 28, 2010, continuing to the present, and/or during other times not yet known to the State, Defendants have failed to control all process emissions from emissions unit P005, by not operating the dry scrubber/baghouse to reduce pollutant emissions, thereby resulting in the uncontrolled release of sulfur dioxide and hydrogen chloride emissions and thus violating the terms of Defendants' current Permit and R.C. 3704.05(C).

54. The acts or omissions alleged in this claim for relief each constitute separate violations of Defendants' Permits and R.C. 3704.05(C), for which the State is entitled to injunctive

relief, and for which each Defendant is subject to a civil penalty of up to \$25,000.00 per day per violation, including each day of each violation occurring after the filing of this Complaint, pursuant to R.C. 3704.06(C).

COUNT FIVE
OPERATING WITHOUT MAINTAINING THE REQUIRED CONTROL
EFFICIENCY FOR HYDROGEN CHLORIDE EMISSIONS FROM EMISSIONS UNIT
P005

55. Defendants' Permit requires that emissions of hydrogen chloride from emissions unit P005 be vented to a dry scrubber/baghouse with a minimum 90% control efficiency for hydrogen chloride at all times that P005 is operating.

56. On or about April 28, 2010, and at other times yet unknown to the State, Defendants ceased utilizing the dry scrubber/baghouse at the Facility which they had installed to reduce pollutant emissions.

57. Since April 28, 2010, continuing to the present, and/or during other times not yet known to the State, Defendants have failed to operate the dry scrubber/baghouse to reduce pollutant emissions, thereby failing to reduce the emissions of hydrogen chloride from emissions unit P005 by 90% and causing the uncontrolled release of hydrogen chloride from emissions unit P005 at a rate of 0.55 lbs/hour, and thus violating the terms of Defendants' current Permit and R.C. 3704.05(C).

58. The acts or omissions alleged in this claim for relief each constitute separate violations of Defendants' Permit and R.C. 3704.05(C), for which the State is entitled to injunctive relief, and for which each Defendant is subject to a civil penalty of up to \$25,000.00 per day per violation, including each day of each violation occurring after the filing of this Complaint, pursuant to R.C. 3704.06(C).

COUNT SIX
FAILURE TO COMPLY WITH THE SULFUR DIOXIDE EMISSIONS LIMITATIONS
FOR EMISSIONS UNIT P005

59. Defendants' Permit limits sulfur dioxide emissions from emissions unit P005 to a rate of 1.7 pounds per hour and 6.9 tons per year.

60. According to the application for PTIO No. 01-12184, Defendants' uncontrolled rate of sulfur dioxide emissions from emissions unit P005 is 34.7 pounds per hour.

61. On or about April 28, 2010, and at other times yet unknown to the State, Defendants ceased utilizing the dry scrubber/baghouse at the Facility which they had installed to reduce pollutant emissions.

62. Since April 28, 2010, continuing to the present, and/or during other times not yet known to the State, Defendants have engaged in the uncontrolled release of sulfur dioxide emissions from emissions unit P005 at a rate in excess of 34.7 pounds per hour, thus violating the terms of the Permit and R.C. 3704.05(C).

63. The acts or omissions alleged in this claim for relief each constitute separate violations of the Permit and R.C. 3704.05(C), for which the State is entitled to injunctive relief, and for which each Defendant is subject to a civil penalty of up to \$25,000.00 per day per violation, including each day of each violation occurring after the filing of this Complaint, pursuant to R.C. 3704.06(C).

COUNT SEVEN
FAILURE TO CONDUCT EMISSIONS TESTING

64. Defendants' Permit requires initial emissions testing for emissions units B001, P001, P002, P003, P004, and P005 within 60 days of its issuance, i.e., by no later than November 30, 2009.

65. Defendants did not conduct the required initial emissions testing on or before November 30, 2009, and at the time of the filing of this Complaint, still have not conducted the required emissions testing, thus violating the terms of the Permit and R.C. 3704.05(C).

66. The acts or omissions alleged in this claim for relief each constitute separate violations of the Permit and R.C. 3704.05(C), for which the State is entitled to injunctive relief, and for which each Defendant is subject to a civil penalty of up to \$25,000.00 per day per violation, including each day of each violation occurring after the filing of this Complaint, pursuant to R.C. 3704.06(C).

COUNT EIGHT
FAILURE TO OBTAIN PERMIT-TO-INSTALL AND OPERATE

67. Ohio Administrative Code 3745-31-02(A)(1)(b) provides that no person shall cause, permit, or allow the installation or modification, and subsequent operation of any new air contaminant source, without first obtaining a PTIO from the Director.

68. The railcar loading operation constitutes an "air contaminant source" as defined by R.C. 3704.01(C) and Ohio Adm.Code 3745-31-01(I), and an "emissions unit" as defined by Ohio Adm.Code 3745-31-01(MM).

69. At some time prior to April 23, 2010, and/or on a date presently unknown to the State, Defendants installed and began to operate a system of loading railcars without first applying for and obtaining a PTIO from the Director.

70. The acts or omissions alleged in this claim for relief each constitute separate violations of Ohio Adm.Code 3745-31-02(A)(1)(b) and R.C. 3704.05(G), for which the State is entitled to injunctive relief, and for which each Defendant is subject to a civil penalty of up to \$25,000.00 per day per violation, including each day of each violation occurring after the filing of this Complaint, pursuant to R.C. 3704.06(C).

PRAYER FOR RELIEF

WHEREFORE, the State respectfully requests that this Court:

A. Preliminarily enjoin Defendants to comply with the Permit, R.C. Chapter 3704, and the rules adopted thereunder, which shall include, but is not limited to, the following requirements.

1. By no later than June 17, 2010, install new, acid-resistant bags and associated support cages in the dry scrubber/baghouse, resume operation of the dry scrubber/baghouse, and maintain all emissions units at the Facility in compliance with the terms and conditions of the Permit, R.C. Chapter 3704, and the rules adopted thereunder;
2. By no later than June 24, 2010, submit an Intent-to-Test notification for emissions units B001, P001, P002, P003, P004, and P005;
3. By no later than 30 days following the submittal of the above Intent-to-Test notification to Ohio EPA, conduct initial emissions tests for emissions units B001, P001, P002, P003, P004, and P005, as required by the terms and conditions of the Permit.
4. Within 30 days of conducting the emissions tests described in the preceding paragraph, submit the results of such tests to Ohio EPA, as required by the terms and conditions of the Permit;
5. Immediately operate and maintain effective nuisance odor control equipment for any railcar loading of any liquid product, by-product, or waste produced or handled by the Facility to minimize or eliminate emissions of nuisance odors, so long as the potential exists for nuisance odors resulting from rail car loading or materials storage in railcars at the Facility;
6. Immediately submit a complete application for a permit-to-install and operate for the railcar loading operation, which necessarily includes all

- assumptions, calculations, citations, and guidance used when completing the permit application and appropriate emissions activity category forms;
7. Within 90 days of the effective date of the preliminary injunction, install a bag leak detection system for the dry scrubber/baghouse exhaust gases, and operate and maintain such bag leak detection system according to the manufacturer's recommended specifications;
 8. Within 60 days of the initial operation of the bag leak detection system described in the preceding paragraph, submit an application to modify the Permit to incorporate appropriate monitoring, recordkeeping, and reporting requirements for the bag leak detection system;
 9. Within 90 days of the effective date of the preliminary injunction, submit a Preventive Maintenance and Malfunction Abatement Plan (PMMAP) pursuant to Ohio Adm.Code 3745-15-06(D), that includes, but is not limited to, an inspection and maintenance schedule for each air contaminant source and physical operation connected to emissions control systems at the Facility;
 10. Within 45 days of the effective date of the preliminary injunction, hire an independent, third-party consultant with experience in the field of air pollution control to perform an odor review and abatement study of the Facility;
 11. Within 165 days of the effective date of the preliminary injunction, complete the odor review and abatement study of the Facility and submit the study to Ohio EPA. The study shall include the following information:
 - a. An identification of each piece of equipment at the Facility that is a source of odors during normal operations, during routine

maintenance, and/or when the equipment is in need of routine maintenance;

- b. A description of the capture and control equipment, if any, for each source of odors and the estimated capture efficiency and control efficiency of such equipment;
- c. For each uncontrolled source of odors, the estimated uncontrolled emission rates for the source (in pounds per hour and tons per year) and an identification of all technically feasible control measures that could be employed to minimize or eliminate the emissions;
- d. For each controlled source of odors, the estimated emission rates for the source (in pounds per hour and tons per year) and an identification of all the additional or replacement technically feasible control measures that could be employed to further minimize or eliminate the emissions; and
- e. For each of the technically feasible control measures identified in the preceding two paragraphs, the estimated overall control efficiency, capital and annual operating costs, cost-effectiveness (in dollars per ton of emissions reduced), and time required to expeditiously install/implement the control measure.

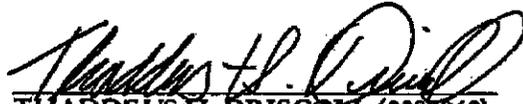
B. Permanently enjoin Defendants to comply with R.C. Chapter 3704 and the rules adopted thereunder, which shall include, but is not limited to, the following requirements:

1. Each requirement contained in paragraph (A) of this prayer for relief.

2. Implement, in accordance with a schedule approved by Ohio EPA, the most efficient control measure identified in the study for each source, and notify Ohio EPA of the control measures that will be installed or implemented;
- C. Order each Defendant, pursuant to R.C. 3704.06(C), to pay civil penalties for the violations set forth in the amount of \$25,000.00 per day for each day of each violation, including each day of each violation occurring after the filing of this Complaint;
- D. Order Defendants to pay all costs and fees for this action, including extraordinary enforcement costs incurred by the State of Ohio and attorneys' fees incurred by the Ohio Attorney General's Office;
- E. Retain jurisdiction of this suit for the purpose of making any order or decree that this Court may deem necessary at any time to carry out its judgment; and
- F. Award such other relief as this Court deems proper and just.

Respectfully submitted,

RICHARD CORDRAY
OHIO ATTORNEY GENERAL



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Attorneys for Plaintiff State of Ohio

FILED
COURT OF COMMON PLEAS

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LINDA K. FANKHAUSER, CLERK,
PORTAGE COUNTY, OHIO

IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

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

Plaintiff,

v.

PROCEX, LTD
c/o C&F One, Inc.
50 Public Square #1414
CIVIL
Cleveland, Ohio 44113

Defendant.

Case No:

Judge **2009CV01702**

JUDGE LAURIE J. PITTMAN

COMPLAINT FOR PRELIMINARY
AND PERMANENT INJUNCTIVE
RELIEF AND CIVIL PENALTIES

CIVIL DESIGNATION: H. OTHER

Defendant Procex, Ltd., operates a facility that de-bonds coatings from metal parts using inductive heating and salt bath treatment located at 880 Cherry Street in Kent, Ohio, which is adjacent to residential neighborhoods to the north, south, and east. Uncontrolled and/or improperly controlled emissions from the inductor stations and the salt bath are being discharged into the ambient air, including a horrible odor, causing a public nuisance with little or no regard for public health or the environment. Plaintiff, State of Ohio, by and through its Attorney General, Richard Cordray, ("Plaintiff" or "the State") at the written request of the Director of Environmental Protection ("Director"), institutes this civil action seeking injunctive relief and civil penalties against Procex, Ltd. for violations of Ohio's air pollution control laws, namely R.C. Chapter 3704 and the rules adopted thereunder. Plaintiff alleges as follows:

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GENERAL ALLEGATIONS

1. The Defendant, Procex, Ltd., is a limited liability company registered with the Ohio Secretary of State. Defendant owns and/or operates a Facility, as those terms are defined in Ohio Administrative Code ("Ohio Adm.Code") 3745-15-01(I), 3745-15-01 (P) and 3745-17-01(B)(3), located at 880 Cherry Street, Kent, Portage County, Ohio 44240 ("Facility"). At the Facility, Defendant conducts de-bonding operations designed to remove coatings from metal parts using inductive heating and salt bath treatment.
2. The Facility is a "source" of "air contaminants" as those terms are defined in Ohio Adm.Code 3745-15-01(W) and 3745-31-01(H), respectively.
3. The de-bonding process consists of two primary stages: (i) inductive heating; and (ii) salt bath treatment, both of which involve several emissions units ("EUs").
4. In the first stage, three inductors (EUs P003, P005, and P007) are used to heat metal parts coated with rubber and other materials in order to facilitate removal of the coatings.
5. All three inductor stations are hooded and are designed to capture emissions vented to a common wet scrubber, which is eventually vented to the ambient air through a stack. Emissions that escape the hoods and are not collected and vented to the scrubber are released uncontrolled to the ambient air through roof stacks. Uncontrolled emissions from the roof stacks contribute to odors emanating from the Facility.
6. Emissions from EUs P003, P005, and P007 are subject to Ohio Adm.Code 3745-17-07 which regulates the control of visible particulate emissions from stationary sources, as well as Ohio Adm.Code 3745-17-11 which provides restrictions on mass particulate emissions from industrial sources.
7. The second stage of the Defendant's operation involves the use of a salt bath (EU P006) designed to remove residual coating material left in place after treatment by the inductors.

Emissions from the salt bath are uncontrolled and exhausted to the ambient air through twin roof fan stacks located above the salt bath. Emissions Unit P006 is an "incinerator" as defined in Ohio Adm.Code 3745-17-01(B)(9).

8. Emissions Unit P006 is subject to Ohio Adm.Code 3745-17-07, which regulates the control of visible particulate emissions from stationary sources, and 3745-17-09, which specifies restrictions on particulate emissions and odors from incinerators.
9. The Akron Regional Air Quality Management District (ARAQMD) is the contractual agent for the Ohio Environmental Protection Agency (Ohio EPA) responsible for administering air pollution laws and rules in Portage County, Ohio.
10. Beginning on or about November 5, 2004 and continuing to the present, ARAQMD and/or Ohio EPA have received numerous complaints regarding smoke and/or odors emanating from the Facility. As a result of said complaints, ARAQMD has conducted numerous investigations and inspections of the Facility.
11. All rules and orders referenced in this Complaint have been adopted by the Director under R.C. Chapter 3704.
12. The allegations contained in the preceding paragraphs are incorporated into each claim for relief in this Complaint as if fully rewritten therein.
13. Pursuant to Civ. R. 8 (A), the State informs the Court that the amount sought is in excess of Twenty-Five Thousand Dollars (\$25,000.00).

FIRST CLAIM FOR RELIEF
FAILURE TO CONTROL VISIBLE PARTICULATE EMISSIONS FROM
STATIONARY SOURCES

14. Ohio Revised Code 3704.05(A) provides, in part, that no person shall cause, permit, or allow the emission of an air contaminant in violation of a rule adopted by the Director.

15. Ohio Revised Code 3704.05(G) provides, in part, that no person shall violate any rule of the Director issued, adopted, or made under R.C. Chapter 3704.
16. Ohio Administrative Code 3745-17-07 limits visible particulate emissions from a stationary source to twenty percent (20%) opacity from any stack, as a six-minute average for not more than six minutes in any sixty minutes, but shall not exceed sixty percent (60%) opacity as a six-minute average at any time.
17. In multiple occurrences on or about the following dates: June 6, 2007, June 21, 2007 and July 11, 2007, and others yet to be discovered, opacity from stacks at Defendant's Facility associated with EUs P003, P005, and P007 exceeded the opacity limits established in Ohio Adm.Code 3745-17-07, including at least one instance in which the opacity exceeded sixty percent (60%) as a six-minute average.
18. In multiple occurrences on or about the following dates: June 8, 2007, June 18, 2007 and June 21, 2007, and others yet to be discovered, emissions from P006 exceeded the opacity limits established in Ohio Adm.Code 3745-17-07, including at least one instance in which the opacity exceeded sixty percent (60%) as a six-minute average.
19. The acts or omissions alleged in this claim for relief constitute violations of Ohio Adm.Code 3745-17-07 and R.C. 3704.05(A) and 3745.05(G), for which Defendant is subject to injunctive relief pursuant to R.C. 3704.06(B), and for which Defendant is liable to pay a civil penalty of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation pursuant to R.C. 3704.06(C).

SECOND CLAIM FOR RELIEF
FAILURE TO OBTAIN PERMIT TO OPERATE

20. Ohio Revised Code 3704.05(A) provides, in part, that no person shall cause, permit, or allow the emission of an air contaminant in violation of a rule adopted by the Director.

21. Ohio Revised Code 3704.05(G) provides, in part, that no person shall violate any rule of the Director issued, adopted, or made under R.C. Chapter 3704.
22. Ohio Administrative Code 3745-31-01(H) defines "air contaminant" as particulate matter, dust, fumes, gas, mist, radionuclides, smoke, vapor or odorous substances, or any combination thereof.
23. Ohio Administrative Code 3745-35-01(B)(4) defines "air contaminant source" as each separate operation, or activity that results or may result in the emission of any air contaminant, including operations or activities that emit air contaminants, whether regulated under Ohio law or regulated under the Clean Air Act.
24. Emissions Unit P007 is an air contaminant source because it emits air contaminants as those terms are defined in the Ohio Administrative Code.
25. Ohio Administrative Code 3745-35-02 (effective until June 30, 2008, replaced by current Ohio Adm.Code Rule 3745-31-02) prohibited any person from causing, permitting, or allowing the operation or other use of any air contaminant source without applying for and obtaining a permit to operate ("PTO") from Ohio EPA, except as provided by rule.
26. From a date currently unknown to the State, but since at least the time Procex Ltd. came under current ownership in approximately April of 2000 and continuing to on or about February 13, 2006, Defendant failed to apply for a PTO for EU P007.
27. From a date currently unknown to the State, but since at least the time Procex Ltd. came under current ownership in approximately April of 2000 and continuing to the present, Defendant failed to obtain a PTO for EU P007.
28. Defendant has caused, permitted, and/or allowed the operation of P007 intermittently, if not continuously, since a date currently unknown to the State, but since at least the time Procex

Ltd. came under current ownership in approximately April of 2000 and continuing to the present.

29. The acts or omissions alleged in this claim for relief constitute violations of Ohio Adm.Code 3745-35-02 (prior to June 30, 2008) and 3745-31-02 (since June 30, 2008 and continuing to the present) and R.C. 3704.05(A) and 3745.05(G), for which Defendant is subject to injunctive relief pursuant to R.C.3704.06(B), and for which Defendant is liable to pay a civil penalty of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation pursuant to R.C. 3704.06(C).

THIRD CLAIM FOR RELIEF
FAILURE TO QUANTIFY PARTICULATE EMISSIONS AS REQUIRED
BY ORDER OF THE DIRECTOR

30. Ohio Revised Code 3704.05(G) provides, in part, that no person shall violate any rule of the Director issued, adopted, or made under R.C. Chapter 3704.
31. Ohio Administrative Code 3745-15-04 states that the Director may require any person responsible for emissions of air contaminants to make or have made tests to determine the emission of air contaminants from any source whenever the Director has reason to believe that an emission in excess of that allowed by these rules is occurring or has occurred.
32. On or about August 15, 2008, by issuance of a Notice of Violation ("NOV"), and in a December 5, 2008 letter replying to Defendant's response to the NOV, ARAQMD directed Defendant to perform stack testing at the Facility. Stack tests may be required by the Director, pursuant to Ohio Adm.Code 3745-15-04, in order for ARAQMD to determine Defendant's compliance with Ohio Adm.Code 3745-17-11 and 3745-17-09.
33. Defendant has not, as of the date of the filing of this Complaint, performed and/or ~~submitted to ARAQMD or Ohio EPA~~ the stack tests as directed in the August 15, 2008 NOV and the December 5, 2008 ARAQMD letter.

34. The acts or omissions alleged in this claim for relief constitute violations of Ohio Adm.Code 3745-15-04 and R.C. 3704.05(G), for which Defendant is subject to injunctive relief pursuant to R.C. 3704.06(B), and for which Defendant is liable to pay a civil penalty of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation pursuant to R.C. 3704.06(C).

FOURTH CLAIM FOR RELIEF
AIR POLLUTION NUISANCE

35. Ohio Revised Code 3704.05(A) provides, in part, that no person shall cause, permit, or allow the emission of an air contaminant in violation of a rule adopted by the Director.
36. Ohio Revised Code 3704.05(G) provides, in part, that no person shall violate any rule of the Director issued, adopted, or made under R.C. Chapter 3704.
37. Ohio Administrative Code 3745-15-07 states, in part, that it shall be unlawful for any person to cause, permit, or maintain a public nuisance. The rule declares the emission or escape into the open air from any source or sources whatsoever of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, odors, or any other substances or combinations of substances, in such manner or in such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property, a public nuisance.
38. Periodically, from at least November 5, 2004 and continuing to the present, Defendant's operations at the Facility have caused residents in the surrounding area of the Facility to lodge numerous complaints with ARAQMD. Both formal written complaints and informal verbal complaints frequently indicate that the operations at the Facility generate smoke and intense burnt rubber odors that cause breathing problems and stinging eyes for the residents that lived in the neighborhoods near the Facility. Inspectors who investigated such complaints have encountered similar problems.

39. Defendant's operations at the Facility have in the past and continue to create emissions in the form of smoke, odors and vapors that are being released to the ambient air in such amounts as to endanger the health, safety and/or welfare of the public, and/or are causing unreasonable injury or damage to residents and property located near the Facility. As a result, Defendant's operations are a public nuisance.

40. The acts or omissions alleged in this claim for relief constitute violations of Ohio Adm. Code 3745-15-07 and R.C. 3704.05(A) and 3704.05(G), for which Defendant is subject to injunctive relief pursuant to R.C. 3704.06(B), and for which Defendant is liable to pay a civil penalty of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation pursuant to § 3704.06(C).

FIFTH CLAIM FOR RELIEF
COMMON LAW NUISANCE

41. Periodically, from at least November 5, 2004 and continuing to the present, Defendant has engaged in the release of noxious odors from its Facility which interfere with the rights of the public, thereby constituting an unreasonable use of property to the detriment of the public.

42. By and through Defendant's conduct as described in this claim for relief, namely the improper release of noxious odors from the Defendant's Facility, Defendant has significantly interfered with the public health, the public peace, the public comfort, and/or the public convenience of neighboring businesses and residents. Such conduct constitutes a common law public nuisance.

43. Defendant knew or had reason to know that the acts alleged in this claim for relief of the Complaint have constituted such a threat and are a significant interference with the rights of the public. By reason of Defendant's continuing nuisance, Plaintiff has suffered and

continues to suffer damages that are irreparable and cannot be compensated by law. Defendant is responsible for abating this nuisance. The State is entitled to injunctive relief to abate and enjoin this nuisance.

44. As a result of Defendant's activities described in this claim for relief, Plaintiff, including ARAQMD, has incurred costs, including but not limited to, the costs of personnel time for investigating and inspecting Defendant's Facility and the costs of bringing this action.
45. Defendant is liable to the Plaintiff for compensatory damages, including but not limited to, the costs of personnel time for investigating and inspecting and the costs of bringing this action, including reasonable attorneys' fees.

PRAYER FOR RELIEF

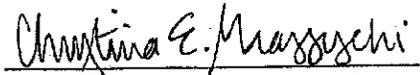
Therefore, the State respectfully requests that this Court preliminarily and permanently enjoin the Defendant Procex, Ltd., to comply with R.C. Chapter 3704 and the rules adopted thereunder, including but not limited to:

- A. Order Defendant to bring emissions units P003, P005 and P007 into compliance with Ohio Adm.Code 3745-17-07 and 3745-17-11 and to demonstrate compliance pursuant to the appropriate testing procedures. Defendant shall maintain compliance thereafter;
- B. Order Defendant to bring emissions unit P006 into compliance with Ohio Adm.Code 3745-17-07(A), and 3745-17-09(B) and demonstrate compliance pursuant to appropriate testing procedures. Defendant shall maintain compliance thereafter;
- C. Order Defendant to abate any nuisance by means as ordered by the Director, including but not limited to ceasing the operations of EUs P003, P005, P007 and P006, so as to demonstrate compliance with Ohio Adm.Code 3745-15-07;

- D. Order Defendant, pursuant to R.C. 3704.06, to pay civil penalties for the violations set forth in the amount of Twenty-Five Thousand Dollars (\$25,000.00) per day for each day of each violation, including each day of each violation occurring after the filing of this Complaint;
- E. Order Defendant to pay all costs and fees for this action, including attorneys' fees assessed by the Office of the Ohio Attorney General;
- F. Retain jurisdiction of this suit for the purpose of making any order or decree which it may deem necessary at any time to carry out its judgment; and
- G. Grant such other relief as may be just.

Respectfully Submitted

RICHARD CORDRAY
OHIO ATTORNEY GENERAL



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IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO, ex. rel.
RICHARD CORDRAY
OHIO ATTORNEY GENERAL

Plaintiff,

v.

TINKLER CONSTRUCTION, CO.
c/o Daniel C. Tinkler (statutory agent)
3430 Niles Road SE
Warren, Ohio 44484,

and

DANIEL C. TINKLER (individually)
12175 Blott Road
North Jackson, Ohio 44451

Defendants.

CASE NO. 2009 CV 632

JUDGE STUART

2009 MAR - 6 PM 2:11

KAREN J. ... ALLEN
CLERK OF COURTS
TRUMBULL COUNTY, OHIO

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES

NATURE OF THE ACTION

In their demolition activities at 3100 Valley Dale Drive NW, Warren, Ohio 44485 ("3100 Valley Dale"), the Defendants failed to provide notice of demolition operations prior to commencing such operations; and failed to obtain a thorough asbestos inspection of the facility prior to performing the demolition operations. In doing so, Defendants did not provide Ohio EPA with an opportunity to inspect the facility prior to demolition and did not provide Ohio EPA with information on the amount of asbestos-containing material in the facility to determine if the work practice requirements of the Asbestos Emission Control Standards applied. Consequently, Plaintiff State of Ohio, by and through the Ohio Attorney General, Richard Cordray, at the written request

of the Director of Environmental Protection ("Director"), brings this action to enforce Chapter 3704 of the Ohio Revised Code and the rules adopted thereunder seeking injunctive relief and civil penalties. The Plaintiff alleges as follows:

GENERAL ALLEGATIONS

1. Defendant Tinkler Construction, Co. ("Tinkler Construction") is an Ohio Corporation with a business address of 3430 Niles Road SE, Warren, Trumbull County, Ohio 44484.
2. Defendant Daniel C. Tinkler ("Tinkler") is the President of Tinkler Construction.
3. Each Defendant is a "person" as defined by R.C. §1.59 and §3704.01.
4. Beginning sometime before March 10, 2004 and continuing until at least March 22, 2004, Defendants demolished the former Jamestown Village Community Center located at 3100 Valley Dale Drive NW, Warren, Trumbull County, Ohio 44485 ("3100 Valley Dale").
5. Defendants are "owners" or "operators" of the demolition operation which occurred at 3100 Valley Dale as defined by Ohio Adm. Code §3745-20-01.
6. Defendant Daniel Tinkler, by virtue of his position with Tinkler Construction, alone or in conjunction with others, caused, participated in, controlled, and/or ordered the violations of law alleged in this Complaint. In addition, or in the alternative, Defendant Tinkler knew about or should have known about these violations, and by himself or in conjunction with others, had the authority to prevent or stop these violations, but failed to exercise his authority to do so. Defendant Tinkler is personally liable for these violations.
7. Beginning sometime before March 10, 2004 and continuing until at least March 22, 2004, Defendants' actions at 3100 Valley Dale constituted a "demolition" as defined by Ohio Adm. Code 3745-20-01.

8. 3100 Valley Dale, where Defendants conducted the demolition, constituted a "facility" as defined by Ohio Adm.Code 3745-20-01 and 3745-15-01.

9. 3100 Valley Dale contained "regulated asbestos-containing material," as defined in Ohio Adm.Code 3745-20-01, in an amount yet unknown to Plaintiff.

10. The ceilings, walls, pipes and surface areas inside of 3100 Valley Dale from which Defendants removed asbestos constituted "facility components" as defined in Ohio Adm.Code 3745-20-01.

11. The demolition operation at 3100 Valley Dale constituted a "source" of "air contaminants" as those terms are defined in R.C. §3704.01 and Ohio Adm.Code 3745-15-01.

12. Pursuant to Ohio Adm.Code 3745-20-02(B)(2), specified notification requirements of Ohio Adm.Code §3745-20-03 apply to each owner or operator of a demolition operation when the combined amount of regulated asbestos-containing material is less than two hundred sixty (260) linear feet on pipes and less than one hundred sixty (160) square feet on other facility components, and less than thirty-five (35) cubic feet of facility components where the length or area could not be measured previously, or if there is no asbestos-containing material in a facility being demolished.

13. Pursuant to Ohio Adm.Code 3745-20-02(B)(1), the requirements of Ohio Adm.Code 3745-20-03, Ohio Adm.Code 3745-20-04, and Ohio Adm.Code 3745-20-05 apply to each owner or operator of a demolition operation when the combined amount of regulated asbestos-containing material is at least two hundred sixty (260) linear feet on pipes or at least one hundred sixty (160) square feet on other facility components, or at least thirty five (35) cubic feet of facility components where the length or area could not be measured previously in a facility being demolished.

14. Revised Code §3704.05(G) states that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under R.C. Chapter §3704.

15. All rules referenced in this Complaint have been adopted by the Director under R.C. Chapter 3704.

16. Pursuant to Civ.R. 8(A), the State informs the Court that the civil penalty sought is in excess of Twenty-Five Thousand Dollars (\$25,000).

COUNT ONE
FAILURE TO PROVIDE PRIOR NOTICE OF DEMOLITION OPERATIONS

17. The allegations of paragraphs one through sixteen are incorporated as if fully restated herein.

18. Ohio Administrative Code 3745-20-03(A) provides, in part, that each owner or operator of a demolition operation shall provide the Director of Ohio EPA with a written notification of intention to demolish at least ten (10) days before beginning any demolition operation and setting forth a start date and end date for the demolition operation.

19. Defendants failed to provide the Director with notice of their intention to conduct demolition operations at 3100 Valley Dale, which occurred sometime before March 10, 2004 and continued until at least March 22, 2004.

20. The acts alleged in this count constitute violations of Ohio Adm.Code 3745-20-03(A) and R.C. §3704.05(G), for which Defendants are subject to injunctive relief pursuant to R.C. §3704.06(B), and for which each Defendant is liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. §3704.06(C).

COUNT TWO
FAILURE TO OBTAIN A THOROUGH ASBESTOS INSPECTION
OF A FACILITY PRIOR TO COMMENCING A DEMOLITION OPERATION

21. The allegations of paragraphs one through twenty are incorporated as if fully restated herein.

22. Ohio Administrative Code 3745-20-02(A) provides that each owner and operator of a demolition operation shall have the affected facility thoroughly inspected for the presence of asbestos prior to the commencement of the demolition.

23. Defendants failed to have the affected facility at 3100 Valley Dale thoroughly inspected for asbestos prior to the commencement of demolition.

24. The acts alleged in this count constitute violations of Ohio Adm. Code 3745-20-02(A) and R.C. §3704.05(G), for which Defendants are subject to injunctive relief pursuant to R.C. §3704.06(B), and for which each Defendant is liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. §3704.06(C).

PRAYER FOR RELIEF

THEREFORE, Plaintiff respectfully requests that this Court:

A. Permanently enjoin Defendants to comply with R.C. Chapter 3704 and rules adopted thereunder, and specifically,

- 1) Permanently enjoin Defendants to obtain a thorough asbestos inspection prior to any subsequent demolition operations, and
- 2) Permanently enjoin Defendants to provide adequate prior notice of any demolition operations to Ohio EPA;

B. Order each Defendant, pursuant to R.C. §3704.06, to pay civil penalties for the violations set forth in the amount of Twenty-Five Thousand Dollars (\$25,000.00) per day for each day of each violation;

C. Order the Defendants to pay all costs and fees for this action, including attorney fees assessed by the Office of the Ohio Attorney General;

D. Retain jurisdiction of this suit for the purpose of making any order or decree which it may deem necessary at any time to carry out its judgment; and

E. Grant such other relief as may be just.

Respectfully submitted,

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

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Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS
HOLMES COUNTY, OHIO

FILED

2010 JUN -1 AM 11:21

DALE J. MILLER, CLERK
COMMON PLEAS COURT
HOLMES COUNTY, OHIO

STATE OF OHIO, EX REL.
RICHARD CORDRAY,
OHIO ATTORNEY GENERAL
Environmental Enforcement Section
30 E. Broad St., 25th Floor
Columbus, Ohio 43215,

CASE NO.

JUDGE

10CV085

Plaintiff,

COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF

v.

WALNUT CREEK FURNITURE, INC.
d.b.a. Walnut Creek Finishing
c/o Dale J. Miller, Statutory Agent
P.O. Box 24
3213 State Route 39
Walnut Creek, Ohio 44687,

Defendant.

NATURE OF THE ACTION

Defendant Walnut Creek Furniture, Inc., d.b.a. Walnut Creek Finishing, operates a facility which stains, seals, topcoats, and paints wood furniture. Defendant's operated its wood furniture finishing business in violation of its permit by exceeding air pollutant emission limits for organic compounds and hazardous air pollutants. Defendant also failed to follow the recordkeeping and reporting requirements of its permit.

Therefore, Plaintiff State of Ohio, by and through its Attorney General, Richard Cordray ("the State"), at the written request of the Director of Environmental Protection ("the Director"), hereby institutes this action for injunctive relief and civil penalties for violations of Ohio's air pollution control laws codified in R.C. Chapter 3704 and the rules promulgated thereunder. The State alleges the following:

GENERAL ALLEGATIONS

1. Defendant Walnut Creek Furniture, Inc. ("Walnut Creek") is an Ohio Corporation with a business address of 3470B State Route 39, Walnut Creek, Holmes County, Ohio, 44687, and is presently licensed to transact business in the State of Ohio.
2. At all times relevant to this Complaint, and continuing to the present, Walnut Creek has been the "owner" and/or "operator," as that term is defined by Ohio Administrative Code ("Ohio Adm. Code") 3745-15-01, of the property and facility located at 3470B State Route 39, Walnut Creek, Ohio 44687 ("the Facility").
3. Walnut Creek is a "person" as defined by R.C. 3704.01 and Ohio Adm. Code 3745-15-01.
4. The finishing operation is a "facility" as defined by Ohio Adm. Code 3745-15-01 and Ohio Adm. Code 3745-31-01.
5. At its facility, Walnut Creek finishes wood by operating four wood finishing operations in spray booths equipped with dry filters. These finishing operations generate organic compounds ("OC") and hazardous air pollutants ("HAP") constituting "air contaminants" as that term is defined by R.C. 3704.01 and Ohio Adm. Code 3745-15-01 and 3745-31-01.
6. Because the operations emit air contaminants, the finishing operations are therefore "air contaminants sources" as defined in Ohio Adm. Code 3745-15-01(C).
7. Ohio Administrative Code 3745-31-02 requires any owner or operator of an air contaminant source installed or modified on or after January 1, 1974, to apply for and obtain a permit to install ("PTI") prior to the installation or modification of the emissions unit. The Director issued PTI #02-18386 to Walnut Creek on November 28, 2003, pursuant to R.C. 3704.03.
8. As a part of its finishing operation under PTI #02-18386, Walnut Creek installed and operates four wood finishing operations emissions units, identified as R001, R002, R003, and R004.

R001 is used for staining wood furniture. R002, R003, and R004 are used for sealing and painting wood furniture.

9. The terms and conditions of PTI #02-18386 establish the emissions limitations for the emissions units identified in the permit and list the record-keeping requirements and operational restrictions that must be met by Walnut Creek when employing these finishing operations at the Facility.

10. Revised Code 3704.05(A) states, in part, that no person shall cause, permit, or allow emission of an air contaminant in violation of any rule adopted by the Director.

11. Revised Code 3704.05(G) states that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under R.C. Chapter 3704.

12. The Director, pursuant to R.C. 3704.03, has adopted all rules referenced in this Complaint.

13. Pursuant to Civ.R. 8(A), the State informs this Court that the amount sought is in excess of twenty-five thousand dollars (\$25,000).

14. The general allegations contained in the preceding paragraphs are applicable to each claim for relief and are incorporated by reference into each of them as if fully restated therein.

FIRST CLAIM FOR RELIEF

Failure to Comply with Limitation for Photochemically Reactive Materials Emissions

15. Revised Code 3704.05(C) provides, in part, that no person who is the holder of a permit shall violate any of its terms or conditions.

16. PTI #02-18386 prohibits the use of photochemically reactive materials ("PRMs"), as that term is defined in Ohio Adm. Code 3745-21-01(C)(5), in emissions units R001, R002, R003, and R004.

17. On February 8, 2005, from March 1, 2005 through April 30, 2005, August 31, 2005, September 16, 2005, November 22, 2005, January 24, 2006, and January 27, 2006, and dates yet to be discovered, Walnut Creek violated the terms of PTI #02-18386 by using a PRM (stain) in emissions units R001, R002, R003, and R004.

18. The acts alleged in this claim for relief constitute violations of PTI #02-18386 and R.C. 3704.05(C), for which the State is entitled to injunctive relief and for which Walnut Creek is subject to civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

SECOND CLAIM FOR RELIEF

Failure to Comply with OC Emissions Limitation for Emissions Unit R001

19. Revised Code 3704.05(C) provides, in part, that no person who is the holder of a permit shall violate any of its terms or conditions.

20. PTI #02-18386 requires that OC emissions from coatings and cleanup materials employed in emissions unit R001 not exceed 6.8 pounds per hour.

21. Walnut Creek violated the terms of PTI #02-18386 by exceeding 6.8 pounds per hour of OC emissions for emissions unit R001 on the following days:

- April 4, 2005;
- May 2, 2005;
- May 9, 2005;
- May 10, 2005;
- May 23, 2005;
- May 26, 2005;
- May 30, 2005;
- June 1, 2005;
- June 7, 2005;
- June 9, 2005;
- June 15, 2005;
- June 24, 2005;
- July 8, 2005;
- July 15, 2005;
- July 22, 2005;

- and further dates yet to be discovered.

22. The acts alleged in this claim for relief constitute violations of PTI #02-18386 and R.C. 3704.05(C), for which the State is entitled to injunctive relief and for which Walnut Creek is subject to civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

THIRD CLAIM FOR RELIEF

Failure to Comply with OC Emissions Limitation for Emissions Units R003 and R004

23. Revised Code 3704.05(C) provides, in part, that no person who is the holder of a permit shall violate any of its terms or conditions.

24. PTI #02-18386 requires that OC emissions from coatings employed in emissions units R003 and R004 not exceed 13.0 pounds per hour.

25. On November 22, 2005, Walnut Creek violated the terms of PTI #02-18386 by exceeding 13.0 pounds per hour of OC emissions for emissions unit R004.

26. On December 29, 2005, Walnut Creek violated the terms of PTI #02-18386 by exceeding 13.0 pounds per hour of OC emissions for emissions unit R003.

27. The act alleged in this claim for relief constitutes a violation of PTI #02-18386 and R.C. 3704.05(C), for which the State is entitled to injunctive relief and for which Walnut Creek is subject to civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

FOURTH CLAIM FOR RELIEF

Failure to Comply with OC Emissions Limitation for Emissions Unit R004

28. Revised Code 3704.05(C) provides, in part, that no person who is the holder of a permit shall violate any of its terms or conditions.

29. Revised Code 3704.05(G) provides, in part, that no person shall violate any rule of the Director.

30. PTI #02-18386 requires compliance with the requirements of (former) Ohio Adm.Code 3745-21-07(G)(2).

31. In effect at the time of violation and until February 18, 2008, former Ohio Adm.Code 3745-21-07(G)(2) provided, in part, that a person shall not discharge more than 8.0 pounds of organic material in any one hour from equipment used for applying PRMs.

32. On November 22, 2005, Walnut Creek violated former Ohio Adm.Code 3745-21-07(G)(2) by exceeding 8.0 pounds per hour of organic material emissions while applying a PRM (stain) with emissions unit R004.

33. The act alleged in this claim for relief constitutes a violation of PTI #02-18386, R.C. 3704.05(G), and former Ohio Adm.Code 3745-21-07(G)(2), for which the State is entitled to injunctive relief and for which Walnut Creek is subject to civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

FIFTH CLAIM FOR RELIEF

Failure to Comply with OC Content Limitation for Emissions Units R002 and R003

34. Revised Code 3704.05(C) provides, in part, that no person who is the holder of a permit shall violate any of its terms or conditions.

35. PTI #02-18386 requires that the OC content of coatings employed in emissions units R002 and R003 not exceed 4.1 pounds per gallon of coating, as applied.

36. From on or about January 1, 2005 to on or about January 31, 2006, Walnut Creek violated the terms of PTI #02-18386 by employing coatings with an OC content exceeding 4.1 pounds per gallon of coating, as applied, for emissions units R002 and R003.

37. The acts alleged in this claim for relief constitute violations of PTI #02-18386 and R.C. 3704.05(C), for which the State is entitled to injunctive relief and for which Walnut Creek is subject to civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

SIXTH CLAIM FOR RELIEF

Failure to Meet Monthly and Rolling 12-Month Record-Keeping Requirements for Single and Combined HAP Emissions, OC Emissions, and Coating Usage

38. Revised Code 3704.05(C) provides, in part, that no person who is the holder of a permit shall violate any of its terms or conditions.

39. PTI #02-18386 requires Walnut Creek to keep monthly records and a rolling, 12-month calculation of single and combined HAP emissions, OC emissions, and coating usage for emissions units R001, R002, R003, and R004.

40. Walnut Creek failed to keep monthly HAP emissions records from beginning at least on November 28, 2003, and dates yet to be discovered.

41. Walnut Creek began keeping records and a rolling 12-month calculation of single and combined HAP emissions, OC emissions, and coating usage on August 8, 2005.

42. From at least November 28, 2003 to August 8, 2005, Walnut Creek violated the terms of PTI #02-18386 by failing to keep monthly records and a rolling, 12-month calculation of single and combined HAP emissions, OC emissions, and coating usage for emissions units R001, R002, R003, and R004.

43. The acts alleged in this claim for relief constitute violations of PTI #02-18386 and R.C. 3704.05(C), for which the State is entitled to injunctive relief and for which Walnut Creek is subject to civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

SEVENTH CLAIM FOR RELIEF

Failure to Comply with Reporting Requirements for Quarterly HAP Emissions Limitation Deviations

44. Revised Code 3704.05(C) provides, in part, that no person who is the holder of a permit shall violate any of its terms or conditions.

45. PTI #02-18386 requires Walnut Creek to submit quarterly HAP emission limitation deviation reports to Ohio EPA by January 31, April 30, July 31, and October 31 of each year for the previous calendar quarter.

46. Walnut Creek failed to submit quarterly HAP emissions limitation deviation reports for the fourth quarter of 2003, the first through the fourth quarters of 2004, and the first quarter of 2005, beginning on January 31, 2004, and dates yet to be discovered.

47. Walnut Creek did not submit the quarterly HAP emissions limitation deviation report for the second quarter of 2005 to Ohio EPA until August 8, 2005.

48. From at least January 31, 2004 to August 8, 2005, Walnut Creek violated the terms of PTI #02-18386 by failing to submit quarterly HAP emissions limitation deviation reports for the fourth quarter of 2003, the first through the fourth quarters of 2004, and the first quarter of 2005.

49. The acts alleged in this claim for relief constitute violations of PTI #02-18386 and R.C. 3704.05(C), for which the State is entitled to injunctive relief and for which Walnut Creek is subject to civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

EIGHTH CLAIM FOR RELIEF

Failure to Meet Daily Record-Keeping Requirements of Coating and Cleanup Material Usage and OC Emissions Information

50. Revised Code 3704.05(C) provides, in part, that no person who is the holder of a permit shall violate any of its terms or conditions.

51. PTT #02-18386 requires Walnut Creek to keep daily coating and cleanup material usage and OC emissions information for emissions units R001, R002, R003, and R004. The daily records must contain the company identification, number of gallons employed, OC content, total OC emission rate, total number of hours the emissions unit was in operation, and the average hourly OC emissions rate.

52. Walnut Creek failed to keep complete daily records of coating and cleanup material usage and OC emissions for any of the emissions units beginning at least on November 28, 2003, and dates yet to be discovered.

53. Walnut Creek submitted a revised record-keeping form to Ohio EPA on August 8, 2005.

54. From at least November 28, 2003 to August 8, 2005, Walnut Creek violated the terms of PTT #02-18386 by failing to keep complete daily records of coating and cleanup material usage and OC emissions for emissions units R001, R002, R003, and R004.

55. The acts alleged in this claim for relief constitute violations of PTT #02-18386 and R.C. 3704.05(C), for which the State is entitled to injunctive relief and for which Walnut Creek is subject to civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

NINTH CLAIM FOR RELIEF

Failure to Meet Rolling, 12-Month Record-Keeping Requirements of Coating and Cleanup Material Usage and OC Emissions Information

56. Revised Code 3704.05(C) provides, in part, that no person who is the holder of a permit shall violate any of its terms or conditions.

57. PTT #02-18386 requires Walnut Creek to keep rolling, 12-month coating and cleanup material usage and OC emissions information for emissions units R001, R002, R003, and R004.

58. Walnut Creek failed to keep rolling, 12-month coating and cleanup material usage and OC emissions information for any of the emissions units beginning at least on November 28, 2003, and dates yet to be discovered.

59. Walnut Creek did not submit rolling, 12-month coating and cleanup material usage and OC emissions information to Ohio EPA until August 8, 2005.

60. From at least November 28, 2003 to August 8, 2005, Walnut Creek violated the terms of PTI #02-18386 by failing to keep rolling, 12-month coating and cleanup material usage and OC emissions information for emissions units R001, R002, R003, and R004.

61. The acts alleged in this claim for relief constitute violations of PTI #02-18386 and R.C. 3704.05(C), for which the State is entitled to injunctive relief and for which Walnut Creek is subject to civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

TENTH CLAIM FOR RELIEF

Failure to Comply with Quarterly Deviation Reporting Requirements for the Rolling, 12-Month Coating and Cleanup Material Usage Restriction and OC Emission Limitations

62. Revised Code 3704.05(C) provides, in part, that no person who is the holder of a permit shall violate any of its terms or conditions.

63. PTI #02-18386 requires Walnut Creek to submit quarterly deviation reports for the rolling, 12-month coating and cleanup material usage restriction and OC emission limitations for emissions units R001, R002, R003, and R004 by January 31, April 30, July 31, and October 31 of each year for the previous calendar quarter.

64. Walnut Creek failed to submit the required quarterly deviation reports for the rolling, 12-month coating and cleanup material usage restriction and OC emission limitations for any of the emissions units from January 31, 2004, for the first quarter of 2003, through the first quarter of 2005, and dates yet to be discovered.

65. Walnut Creek did not submit the quarterly rolling, 12-month coating and cleanup material usage restriction and OC emission limitation deviation report for the second quarter of 2005 until August 8, 2005.

66. From at least January 31, 2004 to August 8, 2005, Walnut Creek violated the terms of PTI #02-18386 by failing to submit quarterly deviation reports for the rolling, 12-month coating and cleanup material usage restriction and OC emission limitations for emissions units R001, R002, R003, and R004.

67. The acts alleged in this claim for relief constitute violations of PTI #02-18386 and R.C. 3704.05(C), for which the State is entitled to injunctive relief and for which Walnut Creek is subject to civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

ELEVENTH CLAIM FOR RELIEF

Failure to Comply with Annual Reporting Requirements for OC Emissions and Total Coating and Cleanup Material Usages for Each Emissions Unit and Total Single HAP Emissions and Total Combined HAP Emissions.

68. Revised Code 3704.05(C) provides, in part, that no person who is the holder of a permit shall violate any of its terms or conditions:

69. PTI #02-18386 requires Walnut Creek to submit annual reports to Ohio EPA that summarize the OC emissions and total coating and cleanup material usages for each emissions unit and the total single HAP emissions and the total combined HAP emissions from all emissions units.

70. Walnut Creek failed to timely submit the required 2003 and 2004 annual reports on January 31, 2004 and January 31, 2005 respectively.

71. Walnut Creek submitted all past due annual reports on August 8, 2005.

72. From at least January 31, 2004 to August 8, 2005, Walnut Creek violated the terms of PTI #02-18386 by failing to submit the annual reports for 2003 and 2004 to Ohio EPA that

summarize the OC emissions and total coating and cleanup material usages for each emissions unit and the total single HAP emissions and the total combined HAP emissions from all emissions units.

73. The acts alleged in this claim for relief constitute violations of PTI #02-18386 and R.C. 3704.05(C), for which the State is entitled to injunctive relief and for which Walnut Creek is subject to civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

TWELFTH CLAIM FOR RELIEF

Failure to Comply with Monthly Record-Keeping Requirements for PRMs

74. Revised Code 3704.05(C) provides, in part, that no person who is the holder of a permit shall violate any of its terms or conditions.

75. PTI #02-18386 requires Walnut Creek to keep monthly PRM usage information for emissions units R001, R002, R003, and R004.

76. Walnut Creek failed to keep monthly PRM usage records for February, March, and April of 2005 and dates yet to be discovered for all emissions units.

77. Walnut Creek submitted all monthly PRM usage records on August 8, 2005.

78. From at least March 1, 2005 to August 8, 2005, Walnut Creek violated the terms of PTI #02-18386 by failing to keep monthly PRM usage information for emissions units R001, R002, R003, and R004.

79. The acts alleged in this claim for relief constitute violations of PTI #02-18386 and R.C. 3704.05(C), for which the State is entitled to injunctive relief and for which Walnut Creek is subject to civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

THIRTEENTH CLAIM FOR RELIEF

Failure to Comply with Reporting Requirements for PRMs

80. Revised Code 3704.05(C) provides, in part, that no person who is the holder of a permit shall violate any of its terms or conditions.

81. PTL #02-18386 requires Walnut Creek to report the use of PRMs within 30 days of use.

82. Walnut Creek failed to timely submit the required reports after it used PRMs on February 8, 2005, from March 1, 2005 through April 29, 2005, August 31, 2005, and September 16, 2005, and dates yet to be discovered.

83. Walnut Creek subsequently did not submit the reports for the PRM usage in February, March, and April of 2005 until August 8, 2005, and did not submit the reports for the PRM usage in August and September of 2005 until November 21, 2005.

84. From at least March 10, 2005 to November 21, 2005, Walnut Creek violated the terms of PTL #02-18386 by failing to submit the PRM usage reports.

85. The acts alleged in this claim for relief constitute violations of PTL #02-18386 and R.C. 3704.05(C), for which the State is entitled to injunctive relief and for which Walnut Creek is subject to civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

PRAYER FOR RELIEF

WHEREFORE, the State respectfully requests that this Court:

A. Preliminarily and permanently enjoin Walnut Creek to comply with R.C. Chapter 3704 and the rules adopted thereunder;

B. Order Walnut Creek, pursuant to R.C. 3704.06, to pay civil penalties for the violations set forth in the amount of twenty-five thousand dollars (\$25,000.00) per day for each day of each violation;

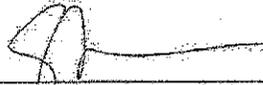
C. Order Walnut Creek to pay all costs and fees for this action, including attorneys' fees and enforcement related expenses assessed by the Office of the Ohio Attorney General;

D. Retain jurisdiction of this suit for the purpose of making any order or decree which it may deem necessary at any time to carry out its judgment; and

E. Grant such other relief as may be just.

Respectfully submitted,

RICHARD CORDRAY
OHIO ATTORNEY GENERAL



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*Attorneys for Plaintiff State of Ohio, ex rel. Richard Cordray,
Ohio Attorney General*

COPY

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

DANIEL M. HOFFMAN

2007 JUL 20 PM 2:30

CLERK OF COURTS

STATE OF OHIO ex rel. MARC DANN, :
ATTORNEY GENERAL OF OHIO :
Environmental Enforcement Section :
30 East Broad Street, 25th Floor :
Columbus, Ohio 43215-3400 :

Plaintiff, :

v. :

ESLICH ENVIRONMENTAL, INC., :
c/o Richard M. Eslich :
Statutory Agent :
5715 Paris Avenue N.E. :
Louisville, Ohio 44641 :

and :

RICHARD M. ESLICH :
5715 Paris Avenue N.E. :
Louisville, Ohio 44641 :

CASE NO.

2007-07-5118

JUDGE ASSIGNED TO JUDGE STORMER

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

Defendants' aggregate crushing operation has failed to meet air pollutant emission limits for particulate matter as established by an undisputed permit. Defendants also failed to procure the necessary permit for modifying its air emissions source and failed to follow the reporting requirements of their air permit. The State of Ohio, by and through Attorney General Marc Dann ("State of Ohio"), at the written request of the Director of the Ohio Environmental Protection Agency ("Ohio EPA"), hereby institutes this action. The State of Ohio brings this action to remedy violations of Ohio's Air Pollution Control laws in Ohio Revised Code Chapter 3704, and

the rules promulgated thereunder, and to pursue other legal and equitable relief to prevent and remedy the harm to the State and its residents, and to public health and the environment.

GENERAL ALLEGATIONS

1. Defendant Eslich Environmental Inc. and Defendant Richard M. Eslich, (collectively "Defendants"), are each a "person" as that term is defined in the R.C. 3704.01(O) and Ohio Adm.Code 3745-15-01(U).

2. Eslich Environmental, Inc. is incorporated under the laws of the State of Ohio with its principal place of business at 5715 Paris Avenue, N.E., Louisville, Ohio, 44641 in Stark County, Ohio.

3. Richard M. Eslich is an Ohio resident whose address is 5715 Paris Avenue NE, Louisville, Stark County, Ohio, 44641.

4. Upon information and belief, Richard M. Eslich is an officer and shareholder of Eslich Environmental, Inc.

5. Defendants own and operate a portable aggregate processing plant involved in concrete/brick recycling. As part of the concrete/brick recycling process, Defendants utilize a portable primary impact crusher, vibrating grizzly screener, and belt conveyors and maintain associated storage piles, and other material handling operations.

6. Eslich Environmental, Inc. applied to the Ohio EPA for a permit to install for the portable aggregate processing plant. In the application, the company indicated that the plant was a portable source and would temporarily be located at 725 Baltimore Avenue, Akron, Ohio.

7. On June 7, 2000, Ohio EPA issued permit to install no.16-02028 ("permit to install 16-02028") to Eslich Environmental, Inc. for the portable aggregate processing plant and operations. In the permit, Ohio EPA indicated that the portable primary impact crusher,

vibrating grizzly screener, belt conveyors and their associated soil materials storage piles, soils materials handling operations, and roadways would be collectively identified as emissions unit F001.

8. Permit to install 16-02028 also specified that Eslich Environmental, Inc. may relocate this portable emissions unit within the State of Ohio without first obtaining a new permit to install provided: (1) Eslich Environmental, Inc. already possesses a permit to install and a permit to operate; (2) emissions unit F001 is equipped with Best Available Technology; (3) Ohio EPA determines emissions unit F001, at the proposed site, will have an acceptable environmental impact; and (4) any site approval issued by Ohio EPA shall be valid for no longer than three years and is subject to renewal.

9. Permit to install 16-02028 additionally required that there be no visible emissions of fugitive dust longer than three minutes during any sixty-minute period from unpaved roadways, and no longer than one minute in any sixty-minute period for wind erosion from storage piles and load-in or load-out operations for storage piles.

10. The terms and conditions of permit to install 16-02028 required Defendants to implement the following monitoring, record-keeping, and reporting requirements:

a. submit quarterly deviation reports that identify each day during which an inspection was not performed by the required frequency and each instance when a control measure that was to be performed as a result of an inspection was not implemented; and

b. submit semi-annual reports that identify all days during which any visible particulate emissions were observed from the crushing and screening operations and describe any corrective actions taken to eliminate the visible particulate

emissions.

11. On or about June 27, 2000, Eslich Environmental, Inc. submitted to Ohio EPA through its contractual agent, Akron Regional Air Quality Management District, notice of intent to relocate the portable aggregate processing plant to 1 General Street, Akron, Summit County.

12. On various dates from January 23, 2001 through August 12, 2003, Akron Regional Air Quality Management District received eighteen (18) citizen complaints concerning dust emissions coming from Eslich Environmental, Inc.'s portable aggregate processing plant located at 1 General Street, Akron, Summit County.

13. The citizen complaints alleged that fugitive dust emissions from the crusher and storage piles settled on the citizens' properties and prevented them from opening their windows.

14. On at least April 23, 2001, August 26, 2003, and April 12, 2005, inspectors from Akron Regional Air Quality Management District inspected Defendants' portable aggregate processing plant and found that Defendants had failed to follow the terms and conditions of the permit to install that required the suppression of fugitive dust emissions.

15. Defendants' portable aggregate processing plant is a "facility" as that term is defined in Ohio Adm.Code 3745-31-01.

16. Defendants are the "owners or operators" of the facility as defined in Ohio Adm.Code 3745-15-01(T).

17. Emissions unit F001 is an "air contaminant source" as defined by R.C. 3704.01 and Ohio Adm.Code 3745-31-01 and 3745-35-01.

18. Ohio Administrative Code 3745-31-02(A)(1), in part, prohibits any person from causing, permitting, or allowing the installation of a new source of air pollutants without first applying for and obtaining a permit to install from the Director of Ohio EPA, unless otherwise

provided by rule or law.

19. Revised Code 3704.05(C) provides, in part, that no person who is the holder of a permit shall violate any of its terms or conditions.

20. Revised Code 3704.05(G) prohibits any person from violating any order, rule, or determination of the Director of Ohio EPA that was issued, adopted, or made under R.C. Chapter 3704.

21. The Director has adopted all rules referenced in this Complaint under R.C. Chapter 3704.

22. Richard M. Eslich, by virtue of his position as an officer in Eslich Environmental, Inc., in his personal capacity alone or in conjunction with others yet unknown to the State, caused, controlled, participated in, and/or ordered the violations of law alleged in this Complaint. In addition to or in the alternative, Richard M. Eslich knew or should have known about these violations, and by himself or in conjunction with others, had the authority to prevent or stop these violations but failed to exercise this authority to do so. Therefore, Richard M. Eslich is personally liable for every violation herein.

23. The allegations in Paragraphs one (1) through twenty-two (22) of this Complaint are incorporated by reference into each count of the Complaint as if fully restated therein.

Count One
Failure to Suppress Fugitive Dust Emissions

24. Revised Code 3704.05(C) provides, in part, that no person who is the holder of a permit shall violate any of its terms or conditions.

25. Permit to install 16-02028 required Defendants to employ Best Available Technology pursuant to Ohio Adm.Code 3745-31-05 to suppress the fugitive dust emissions from emissions unit F001.

26. On April 23, 2001, August 26, 2003, April 12, 2005, and other dates yet unknown to Plaintiff, Defendants failed to suppress fugitive dust emissions and thus violated the terms and conditions of the permit to install 16-02028 and R.C. 3704.05(C).

27. The acts alleged in this count constitute violations of permit to install 16-02028 and R.C. 3704.05(C) for which each Defendant is subject to injunctive relief and civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

Count Two

Failure to Comply with the Requirement to Report Visible Emissions

28. Revised Code 3704.05(C) provides, in part, that no person who is the holder of a permit shall violate any of its terms or conditions.

29. Permit to install 16-02028 required Defendants to record any visible emissions incident and any corrective actions taken to minimize or eliminate the visible emissions in semi-annual reports. In addition, permit to install 16-02028 required Defendants to identify, in a quarterly deviation report, each instance when Defendants failed to implement a control measure that was determined to be necessary after conducting an inspection of the facility.

30. On April 23, 2001, visible emissions in excess of the permit's limit occurred at Defendants' facility. Defendants failed to report the visible emissions and any control or corrective measures taken to minimize or eliminate the visible emissions in their second quarter 2001 deviation report and their first 2001 semi-annual report for emissions unit F001 and therefore, violated permit to install 16-02028 and R.C. 3704.05(C).

31. On August 26, 2003, visible emissions in excess of the permit's limit occurred at Defendants' facility. Defendants failed to report the visible emissions and any control or corrective measures taken to minimize or eliminate the visible emissions in their third quarter

2003 deviation report and their second 2003 semi-annual report for emissions unit F001 and therefore, violated permit to install 16-02028 and R.C. 3704.05(C).

32. On April 12, 2005, visible emissions in excess of the permit's limit occurred at Defendants' facility. Defendants failed to report the visible emissions and any control or corrective measures taken to minimize or eliminate the visible emissions in their second quarter 2005 deviation report and their first 2005 semi-annual report for emissions unit F001 and therefore, violated permit to install 16-02028 and R.C. 3704.05(C).

33. The acts alleged in this count constitute violations of 3704.05(C) for which each Defendant is subject to injunctive relief and civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

Count Three
Failure to Timely Submit Quarterly Deviation Reports

34. Revised Code 3704.05(C) provides, in part, that no person who is the holder of a permit shall violate any of its terms or conditions.

35. Permit to install 16-02028 required Defendants to submit quarterly deviation reports that identify each day during which an inspection was not performed at the required frequency and each instance when a control measure, that was to be performed as a result of an inspection, was not implemented.

36. These quarterly deviation reports were to be submitted to the Akron Regional Air Quality Management District by January 31, April 30, July 31, and October 31 of each year and cover the previous calendar quarters.

37. If no deviations occurred during a calendar quarter, the Defendants were still required to submit a quarterly report that stated that no deviations occurred during that quarter.

38. Defendants did not timely submit their quarterly deviation reports for the fourth

quarter of 2000, all four quarters of 2001, all four quarters of 2002, and the first three quarters of 2003.

39. Defendants finally submitted the above referenced quarterly deviations reports on December 5, 2003. Therefore, these reports were late and thus constitute violations of permit to install 16-02028 and R.C. 3704.05(C).

40. The acts alleged in this count constitute violations of R.C. 3704.05(C) for which each Defendant is subject to injunctive relief and civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

Count Four
Failure to Timely Submit Semi-Annual Reports

41. Revised Code 3704.05(C) provides, in part, that no person who is the holder of a permit shall violate any of its terms or conditions.

42. Permit to install 16-02028 required Defendants to submit semi-annual reports that identified all days during which any visible emissions were observed from the crushing and screening operations and describe any corrective actions taken to eliminate the visible emissions.

43. Defendants did not timely submit their semi annual report for the first half of 2001 until December 5, 2003, and therefore, the report was late and thus constitutes violations of permit to install 16-02028 and R.C. 3704.05(C).

44. The act alleged in this count constitutes a violation of R.C. 3704.05(C) for which each Defendant is subject to injunctive relief and civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

Count Five
Failure to Obtain a Permit to Install for Operations Not Included in the Original Permit to Install

45. Revised Code 3704.05(G) prohibits any person from violating any order, rule, or

any determination of the Director of Ohio EPA that was issued, adopted, or made under R.C. Chapter 3704.

46. Ohio Administrative Code 3745-31-02(A)(1) provides, in part, that no person shall cause, permit, or allow the installation of a new source of air pollutants or cause, permit, or allow the modification of an air contaminant source without first obtaining a permit to install from the director.

47. A "modification," as that term is defined in Ohio Adm.Code 3745-31-01(PPP), occurs when any physical change in any air contaminant source results in an increase in the allowable emissions.

48. On August 26, 2003, an Akron Regional Air Quality Management District representative conducted an inspection of the facility and discovered Defendants created a large soil storage pile. This soil storage pile was not included in permit to install 16-02028.

49. Defendants' creation of the large soil storage pile constitutes a modification of their permit to install 16-02028.

50. A modification to an original permit to install requires a new permit to install per Ohio Adm.Code 3745-31-02(A)(1).

51. Defendants did not apply for, or obtain, a new permit to install.

52. Defendants' failure to secure a new permit to install constitutes a violation of Ohio Adm.Code 3745-31-02(A)(1) and R.C. 3704.05(G).

53. The act alleged in this count constitutes a violation of Ohio Adm.Code 3745-31-02(A)(1) and R.C. 3704.05(G), for which each Defendant is subject to injunctive relief and civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

Count Six
Failure to Renew the Site Approval

54. R.C. 3704.05(C) provides, in part, that no person who is the holder of a permit shall violate any of its terms or conditions.

55. Permit to install 16-02028 requires, in part, any site approval issued by Ohio EPA shall be valid for no longer than three years and is subject to renewal.

56. At the end of June 2000, Defendants received site approval from Ohio EPA to relocate emissions unit F001 to 1 General Tire Street, in Akron, Ohio.

57. This site approval was valid from June 2000 until June 2003.

58. Defendants operated emissions unit F001 from July, 2003 until, at least, July 16, 2007 without obtaining a renewed site approval from Ohio EPA.

59. The act alleged in this count constitutes a violation of permit to install 16-02028 and R.C. 3704.05(C), for which each Defendant is subject to injunctive relief and civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Preliminarily and permanently enjoin Defendants to comply with R.C. Chapter 3704 and rules adopted thereunder;

B. Order Defendants to obtain a new permit to install from the Director of Ohio EPA to reflect all modifications to the facility made since June 7, 2000.

C. Order Defendants to seek renewed site approval from the Director of Ohio EPA for emissions unit F001 currently located 1 General Tire Street, in Akron, Ohio.

D. Order Defendants to comply with all visible emissions requirements in permit to install 16-02028 and any future permits to install issued to Defendants including any successor companies.

E. Order Defendants, pursuant to R.C. 3704.06, to pay civil penalties for the violations in the amount of Twenty-Five Thousand Dollars (\$25,000.00) per day for each day of each violation, including each day of each violation occurring after the filing of this Complaint. Pursuant to Civ. R. 8(A), the Plaintiff informs the Court that the amount sought is in excess of Twenty Five Thousand Dollars (\$25,000.00);

F. Order Defendants to pay all costs and fees for this action, including attorneys fees assessed by the Office of the Ohio Attorney General;

G. Retain jurisdiction of this suit for the purpose of making any order or decree which it may deem necessary at any time to carry out its judgment; and

H. Grant such other relief as may be just.

Respectfully submitted

MARC DANN
ATTORNEY GENERAL OF OHIO



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Attorneys for Plaintiff State of Ohio

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

FILE
COURT OF COMMON PLEAS
DEC 26 2007

TRUMBULL COUNTY, OH
KAREN STE ALLEN, CLERK

State of Ohio, ex rel. Marc Dann,
Attorney General of Ohio,
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3414,

Plaintiff,

v.

Mark A. Mirich, d.b.a.
All Demolition,
444 Eighth Street
Struthers, Ohio 44471-1006,

Defendant.

Judge

Kontos

Case No.

2007 CV 3345

Other Civil

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

Defendant Mark A. Mirich, without obtaining authorization from the Ohio Environmental Protection Agency ("Ohio EPA"), engaged in the open burning of the remnants of a demolished commercial building. In addition, the Defendant failed to inspect the facility or give notice to the Ohio EPA that a demolition was to occur. By engaging in opening burning, failing to inspect the facility, and failing to give notice to the Ohio EPA, Defendant has increased the risk to public health and the environment by thwarting the ability of the Ohio EPA to ensure that the quality of the air in northeast Ohio is protected.

Therefore, Plaintiff State of Ohio, by and through its Attorney General, Marc Dann, and at the written request of the Director of Environmental Protection ("Director"), hereby institutes this action to enforce Ohio's air pollution control laws codified in Chapter 3704 of the Ohio Revised Code and the rules adopted thereunder. Plaintiff alleges as follows:

General Allegations

1. Defendant Mark A. Mirich ("Defendant") is an individual residing at 444 Eighth Street, Stuthers, Mahoning County, Ohio. Defendant is in the business of asbestos demolition.

2. Prior to February 13, 2003 and at all times alleged in this Complaint, Defendant conducted business in an individual capacity as All Demolition. Subsequent to February 13, 2003, Defendant incorporated his business in Ohio as All Demolition, Inc.

3. Defendant, by virtue of his position as owner of All Demolition, alone or in conjunction with others, caused, participated in, controlled, and/or ordered the violations of law alleged in this Complaint. In addition, or in the alternative, Defendant knew about or should have known about these violations, and by himself, or in conjunction with others yet to be discovered, had the authority to prevent or stop these violations, but failed to exercise his authority to do so. Defendant is personally liable for these violations.

4. Defendant is a "person" as defined by R.C. § 1.59 and 3704.01.

5. Beginning sometime before January 8, 2003 and continuing until at least January 9, 2003, Defendant conducted demolition operations at 400 Hunter Avenue, Niles, Tumbull County, Ohio ("Hunter Avenue site").

6. Defendant's actions at the Hunter Avenue site constituted a "demolition," as defined by Ohio Adm. Code 3745-20-01(B)(13).

7. The Hunter Avenue site, where Defendant conducted the demolition, constituted a "facility," as defined by Ohio Adm. Code 3745-20-01(B)(18) and 3745-15-01(P).

8. Defendant is an "owner" or "operator" of demolition operations at the Hunter Avenue site, as defined by Ohio Adm. Code 3745-20-01(B)(38).

9. The ceilings, walls, pipes and/or surface areas of the Hunter Avenue site constituted "facility components," as defined in Ohio Adm.Code 3745-20-01(B)(19).

10. The demolition operations at the Hunter Avenue site constituted a "source" as defined in Ohio Adm.Code 3745-15-01(W) of "air contaminants," as defined in R.C. § 3704.01(B) and Ohio Adm.Code 3745-15-01(C).

11. "Open burning" means the burning of any materials wherein air contaminants are emitted directly into the ambient air without passing through a stack or chimney, as defined by Ohio Adm.Code 3745-19-01(G).

12. On or about January 8, 2003, Defendant openly set fire to the facility components acquired from the demolition operation at the Hunter Avenue site, which emitted air contaminants directly into the ambient air.

13. The amount of regulated asbestos-containing material that was stripped or removed from pipes or other facility components at the Hunter Avenue site could not be determined since Defendant failed to perform the asbestos survey required by Ohio Adm.Code 3745-20-02(A) prior to beginning demolition activities.

14. Pursuant to Ohio Adm.Code 3745-20-02(B)(2), the requirements of Ohio Adm.Code 3745-20-03(A)(1), (A)(2), and (A)(3)(a) apply to each owner or operator of a renovation or demolition operation when the combined amount of regulated asbestos-containing material is less than two hundred sixty linear feet on pipes and less than one hundred sixty square feet on other facility components or if there is no asbestos-containing material in a facility being demolished.

15. Revised Code § 3704.05(G) states that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under R.C. Chapter 3704.

16. All rules cited in this Complaint have been adopted by the Director under R.C. Chapter 3704.

Count One – Unlawful Open Burning in a Restricted Area

17. The allegations of paragraphs one through sixteen are incorporated as if fully restated herein.

18. Ohio Administrative Code 3745-19-03(A) prohibits any person or property owner from causing or allowing any "open burning," as defined in Ohio Adm.Code 3745-19-01(G), in a "restricted area" except as otherwise specified by rule or law.

19. The Hunter Avenue site is located in a "restricted area," as that term is defined in Ohio Adm.Code 3745-19-01(I)(1).

20. On or about January 8, 2003, and other dates not yet known to Plaintiff, Defendant caused or allowed open burning in a restricted area in violation of the requirements of Ohio Adm.Code 3745-19-03(A).

21. Upon information and belief, Defendant burned the facility components of the Hunter Avenue site, including but not limited to, building framing, wooden beams, wire, roofing material, and other building debris and waste.

22. The open burning done or caused by Defendant at the facility occurred approximately 125 to 150 feet from Hunter Avenue.

23. The acts alleged in this count constitute violations of Ohio Adm.Code 3745-19-03(A) and R.C. § 3704.05(G), for which Defendant is subject to injunctive relief pursuant to R.C. § 3704.06(B), and for which Defendant is liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

Count Two – Failure to Inspect Facility Prior to Demolition

24. The allegations of paragraphs one through twenty-three are incorporated as if fully restated herein.

25. Ohio Administrative Code 3745-20-02(A) provides, in part, that each owner or operator of any demolition operation shall have the affected facility or part of the facility where a demolition operation will occur thoroughly inspected prior to the commencement of the demolition for the presence of asbestos.

26. On January 8, 2003, or some other date not yet known to the Plaintiff, Defendant began demolition activities at the Hunter Avenue site.

27. Defendant failed to have the Hunter Avenue site inspected for the presence of asbestos prior to the commencement of demolition activities.

28. The acts alleged in this count constitute violations of Ohio Adm. Code 3745-20-02(A) and R.C. § 3704.05(G) for which Defendant is subject to injunctive relief pursuant to R.C. § 3704.06(B), and for which Defendant is liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. § 3704.06(C).

Count Three – Failure to Provide Notice of Demolition Operations

29. The allegations of paragraphs one through twenty-eight are incorporated as if fully restated herein.

30. Ohio Administrative Code 3745-20-03(A)(3)(a) provides, in part, that each owner or operator, as described in Ohio Adm. Code 3745-20-01(B)(38), shall provide the Director of Ohio EPA with at least ten (10) days prior written notice of the intention to demolish before the beginning of any demolition operation.

31. On January 8, 2003, or some other date not yet known to the Plaintiff, Defendant began demolition activities at the Hunter Avenue site.

32. Defendant failed to provide the Director of Ohio EPA with at least ten (10) days prior written notice of the intention to demolish the Hunter Avenue site.

33. The acts alleged in this count constitute violations of Ohio Adm. Code 3745-20-03(A)(3)(a) and R.C. § 3704.05(G) for which Defendant is subject to injunctive relief pursuant to R.C. § 3704.06(B), and for which Defendant is liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. § 3704.06(C).

Prayer for Relief

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Preliminarily and permanently enjoin Defendant to comply with R.C. Chapter 3704 and rules adopted thereunder;

B. Permanently enjoin Defendant to comply with the requirements Ohio Adm. Code Chapter 3745-19 by refraining from open burning in restricted areas without notification and authorization by the Ohio EPA;

C. Permanently enjoin Defendant to comply with the requirements of Ohio Adm. Code Chapter 3745-20 by thoroughly inspecting a facility for the presence of asbestos prior to the commencement of demolition operations;

D. Permanently enjoin Defendant to provide the Director of Ohio EPA with at least ten (10) days prior written notice of the intention to demolish before the beginning of any demolition operation;

E. Order Defendant, pursuant to R.C. § 3704.06, to pay civil penalties for the violations set forth in the amount of twenty-five thousand dollars (\$25,000.00) per day for each violation, including each day of each violation occurring after the filing of this Complaint; pursuant to Rule 8(A) of the Ohio Rules of Civil Procedure, the Plaintiff informs the Court that the amount sought is in excess of twenty-five thousand dollars (\$25,000.00);

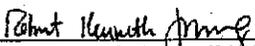
F. Order the Defendant to pay all costs and fees for this action, including attorneys' fees assessed by the Office of the Attorney General of Ohio;

G. Retain jurisdiction of this suit for the purpose of making any order or decree which it may deem necessary at any time to carry out its judgment; and,

H. Grant such other relief as may be just.

Respectfully submitted,

MARC DANN
ATTORNEY GENERAL OF OHIO


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Associate Attorney General
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OCT 15 2007

LINDA K. FANKHAUSER, CLERK
PORTAGE COUNTY, OHIO

IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

STATE OF OHIO, ex. rel.
MARC DANN
ATTORNEY GENERAL OF OHIO,

: CASE NO.

: JUDGE

Plaintiff,

v.

2007 CV 01413

JUDGE JOHN A. ENLOW

W.S. HOMES, INC.
13714 Cleveland Avenue, NW
Uniontown, Ohio 44685

and

DPS PROPERTIES, L.L.C.
7236 Infirmery Road
Ravenna, Ohio 44266

Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

Defendants W.S. Homes, Inc. and DPS Properties, LLC ("Defendants," collectively) conducted demolition operations without obtaining a pre-demolition asbestos inspection of the affected property and without providing notice to the Ohio Environmental Protection Agency ("Ohio EPA"). The Defendants failure to observe Ohio's asbestos laws created a threat of harm to human health and the environment. Plaintiff State of Ohio, by and through the Attorney General Marc Dann, at the written request of the Director of Environmental Protection ("Director"), hereby institutes this action to enforce Chapter 3704 of the Ohio Revised Code and the rules adopted thereunder.

The Plaintiff specifically alleges as follows:



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GENERAL ALLEGATIONS

1. Defendant DPS Properties, LLC ("DPS Properties") is an Ohio Limited Liability Company with a business address of 7236 Infirmary Road, Ravenna, Ohio 44266.
2. DPS Properties is, or was at the time of the described violations, the owner of the property located at 786 North Freedom Street, Ravenna, Ohio.
3. Defendant W.S. Homes, Inc. ("W.S. Homes") is an Ohio Corporation with a business address of 13714 Cleveland Avenue, NW, Uniontown, Ohio 44685.
4. Each Defendant is a "person" as defined by R.C. 1.59, R.C. 3704.01, and Ohio Adm.Code 3745-15-01(U).
5. W.S. Homes was contracted by DPS Properties to demolish the structure at 786 North Freedom Street, Ravenna, Ohio.
6. Defendants are "owners" or "operators" of the demolition operation which occurred at 786 North Freedom Street, Ravenna, Ohio, as defined by Ohio Adm.Code 3745-15-01(T), and Ohio Adm.Code 3745-20-01(B)(38).
7. Beginning sometime before November 4, 2002 and continuing until at least November 5, 2002, Defendants removed, authorized, or otherwise controlled the removal of materials from the ceilings, walls, surface areas, and pipes of a commercial garage at 786 North Freedom Street, Ravenna, Ohio.
8. Defendants actions at the commercial garage constituted a "demolition" as defined by Ohio Adm.Code 3745-20-01(B)(13). Furthermore, these actions resulted in the complete demolition, destruction, and removal of the commercial garage.

9. The commercial garage, where Defendant conducted the demolition, constituted a "facility" as defined by Ohio Adm.Code 3745-20-01(B)(18) and Ohio Adm.Code 3745-15-01(P).

10. The demolition operation at the garage constituted a "source", as defined in Ohio Adm.Code 3745-15-01(W), of "air contaminants", as defined in R.C. 3704.01 and Ohio Adm.Code 3745-15-01(C).

11. Ohio Revised Code 3704.05(G) states that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under R.C. Chapter 3704.

12. All rules referenced in this Complaint have been adopted by the Director under R.C. Chapter 3704.

13. Pursuant to Civ. R. 8(A), the State informs the Court that the amount sought is in excess of Twenty-Five Thousand Dollars (\$25,000.00);

14. The general allegations contained in preceding paragraphs are applicable to each count of the Complaint and are incorporated by reference into each as if fully restated in each count.

COUNT ONE
FAILURE TO PROVIDE NOTICE OF DEMOLITION OPERATIONS

15. Ohio Administrative Code 3745-20-03(A)(1) provides, in part, that each owner or operator of a demolition operation shall provide the Director of Ohio EPA with a written notification of intention to demolish at least ten (10) days before beginning any demolition operation and setting forth a start date and end date for the demolition operation.

16. Defendants failed to provide to the Director with any notice of their intention to conduct demolition operations at the commercial garage, which occurred between November 4, 2002 and December 2, 2002.

17. The acts alleged in this count constitute violations of Ohio Adm.Code 3745-20-03(A)(1) and R.C. 3704.05(G), for which each Defendant is subject to injunctive relief pursuant to R.C. 3704.06(B), and for which each Defendant is liable to pay the State of Ohio civil penalties of up to Twenty-Five Thousand Dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

COUNT TWO
FAILURE TO OBTAIN A THOROUGH ASBESTOS INSPECTION
OF A FACILITY WHERE A DEMOLITION OPERATION WILL OCCUR

18. Ohio Administrative Code 3745-20-02(A) provides that each owner and operator of a demolition operation shall have the affected facility where a demolition operation will occur thoroughly inspected for the presence of asbestos prior to the commencement of the demolition.

19. Defendants failed to obtain a thorough asbestos inspection prior to demolition which occurred between November 4, 2002 and December 2, 2002.

20. Defendants also failed to comply with a November 5, 2002 request by Akron Regional Air Quality Management District, Ohio EPA's local affiliate, to obtain an inspection of the heater/boiler area of the commercial garage prior to further demolition of the structure.

21. The acts alleged in this count constitute violations of Ohio Adm.Code 3745-20-02(A) and R.C. 3704.05(G), for which each Defendant is subject to injunctive relief pursuant to R.C. 3704.06(B), and for which each Defendant is liable to pay the State of Ohio civil penalties of up to Twenty-Five Thousand Dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

PRAYER FOR RELIEF

THEREFORE, Plaintiff respectfully requests that this Court:

A. Preliminarily and permanently enjoin Defendants to comply with R.C. Chapter 3704 and rules adopted thereunder, and specifically:

1. Order each Defendant to fully comply with the provisions of Ohio Adm.Code Chapter 3745-20.
2. Order each Defendant to conduct a full and complete asbestos inspection of any facility where a demolition or renovation operation will occur, prior to demolition or renovation activities commencing, pursuant to Ohio Adm.Code 3745-20-02.
3. Order each Defendant to provide Ohio EPA with written notice at least ten (10) days prior to any intended demolition or renovation operation, pursuant to Ohio Adm.Code 3745-20-03.

B. Order each Defendant, pursuant to R.C. 3704.06, to pay civil penalties for the violations set forth in the amount of Twenty-Five Thousand Dollars (\$25,000.00) per day for each day of each violation, including each day of each violation occurring after the filing of this Complaint.

C. Order each Defendant to pay all costs and fees for this action, including attorneys fees assessed by the Office of the Ohio Attorney General;

D. Retain jurisdiction of this suit for the purpose of making any order or decree which it may deem necessary at any time to carry out its judgment; and

E. Grant such other relief as may be just.

Respectfully submitted,

MARC DANN
ATTORNEY GENERAL OF OHIO



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FILED

CV

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CINDY CARPENTER
BUTLER COUNTY
CLERK OF COURTS

CINDY CARPENTER
BUTLER COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO ex rel. JIM PETRO, :
ATTORNEY GENERAL OF OHIO :
Environmental Enforcement Section :
30 East Broad Street, 25th Floor :
Columbus, Ohio 43215-3400 :

CASE NO.

Plaintiff,

v.

MID-OHIO PETROLEUM COMPANY :
c/o Robert J. Meyers (Statutory Agent) :
105 East Fourth Street, Ste 1405 :
Cincinnati, Ohio 45202 :

JUDGE

Defendant.

COMPLAINT - OTHER CIVIL

Plaintiff State of Ohio, by and through its Attorney General, Jim Petro, at the written request of the Director of Environmental Protection ("Director"), hereby institutes this action to enforce Chapter 3704 of the Ohio Revised Code ("R.C.") and the rules adopted thereunder. Plaintiff alleges as follows:

GENERAL ALLEGATIONS

1. Mid-Ohio Petroleum Company ("Defendant"), with its principal place of business at 1376 State Route 28, suite #H, Loveland, Ohio 45140-8789, is licensed to do business in the State of Ohio.

2. The Defendant did and/or does business in Ohio as Mid-Ohio Petroleum Company, as well as Mid-Ohio Petroleum Company d.b.a. Pipeline Oil.
3. Defendant is a "person" as defined by R.C. 1.54 and 3704.01(O) and Ohio Adm. Code rule 3745-15-01(U).
4. The Defendant stated that it is an independent small business marketer ("ISBM"), as defined in OAC Rule 3745-21-01(H)(9).
5. Since at least October 19, 1994, until the present or at some time close thereto, Defendant Mid-Ohio Petroleum Company has been the "owner" and/or "operator" of a gasoline dispensing facility ("GDF") as defined in Ohio Adm. Code 3745-15-01(T), located at 435 North Verity Parkway, Middletown, Butler County.
6. The GDF is a "facility," as defined in Ohio Adm. Code 3745-15-01(P).
7. The emission unit of the facility is 1409010370 (emissions unit G001).
8. Emission unit G001 is an "air contaminant source," as defined by State law at Revised Code 3704.01(C). The operation of such source causes or caused the release of "volatile organic compounds," as defined in Ohio Adm. Code 3745-21-01(B)(6).
9. As part of its operations, Defendant utilizes equipment, operations and/or activities that emit or cause the emission of "air contaminants" as that term is defined by R.C. 3704.01(B). Because this equipment and these operations and activities emit air contaminants, they constitute "air contaminant sources" as that term is defined by R.C. 3704.01(C), and Ohio Adm. Code rules 3745-35-01(B)(1) and 3745-31-01(D).
10. R.C. 3704.05 (G) provides, in part, that no person shall violate any rule of the Director adopted under Chapter 3704 of the Revised Code. The rules cited in this

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CINDY CARPENTER
Mid-Ohio Adm.
CLERK OF COURTS

Complaint were adopted pursuant to R.C. Chapter 3704.

11. R.C. 3704.05(C) provides, in part, that no person to whom a permit has been issued shall violate any terms or conditions.

2004-08-22-80
CINDY CARPENTER
BUTLER COUNTY
CLERK OF COURTS

COUNT ONE

**ILLEGALLY OPERATING A FACILITY WITHOUT
A PERMIT TO OPERATE**

12. Ohio Adm.Code 3745-35-02 and R.C. § 3704.05(G) require that an operator obtain a permit to operate (PTO) before operating a facility that is an air contaminant source.
13. Defendant's PTO expired on August 6, 1995.
14. The Defendant failed to renew the permit.
15. Defendant operated the facility without a permit to operate from August 6, 1995 until the present or at some time close thereto.
16. There is currently no permit for the facility.
17. The Defendant's failure to apply for and obtain a PTO is a violation of Ohio Adm. Code 3745-35-02 and R.C. 3704.05(G).
18. Defendant's actions constitute violations of R.C. Chapter 3704, for which Defendant is subject to injunctive relief and civil penalties in the amount of up to twenty-five thousand dollars (\$25,000.00) per day per violation pursuant to R.C. 3704.06.

COUNT TWO

FAILURE TO INSTALL AND OPERATE A GASOLINE DISPENSING FACILITY WITHOUT A REQUIRED STAGE II VAPOR CONTROL

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COUNTY CLERK
BUTLER COUNTY
CLERK OF COURTS
19. Pursuant to Ohio Adm. Code 3745-21-09(A)(4) and Ohio Adm. Code 3754-21-09(DDD), a gasoline dispensing facility in Butler County must install and operate stage II vapor control systems unless it maintains throughput of less than 50,000 gallons per calendar month.
20. Defendant's monthly gasoline throughput exceeded 50,000 gallons beginning on or about May, 2001. On or about May, 2001 the facility had no exemption from the requirements to install and operate the stage II vapor recovery equipment.
20. The Defendant failed to bring the facility into compliance with the stage II vapor recovery equipment installation and operation requirements and therefore is in violation of Ohio Adm. Code rule 3745-21-09(DDD) and R.C. §§ 3704.05(A) and (G).
21. Defendant's actions constitute violations of R.C. Chapter 3704, for which Defendant is subject to injunctive relief and civil penalties in the amount of up to twenty-five thousand dollars (\$25,000.00) per day per violation pursuant to R.C. 3704.06.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests that this Court:

- A. Preliminary and permanently enjoin Defendant to comply with R.C. Chapter 3704 and the regulations adopted thereunder in the course of any operation of its Facility and its air contaminant sources;

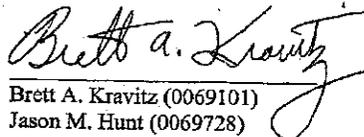
B. Order Defendant to pay a civil penalty of twenty-five thousand dollars (\$25,000) for each day of each violation alleged in this Complaint, including each day of each violation subsequent to the filing of this action, pursuant to R.C. 3731.07 Pursuant to Civ.R. 8(A), this Complaint seeks relief in excess of twenty-five thousand dollars (\$25,000);

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CINDY CARPENTER
CLERK OF COURTS

- C. Order Defendant to pay costs, including attorney fees, of this action;
- D. Retain jurisdiction of this suit for the purpose of making any order or decree which it may deem necessary at any time to carry out its judgment; and
- E. Grant such other relief as this Court may deem necessary and appropriate.

Respectfully submitted,

JIM PETRO
ATTORNEY GENERAL OF OHIO



Brett A. Kravitz (0069101)
Jason M. Hunt (0069728)
Assistant Attorneys General
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Telephone (614) 466-2766
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bkravitz@ag.state.oh.us
jhunt@ag.state.oh.us



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IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

STATE OF OHIO, ex rel.
JIM PETRO,
ATTORNEY GENERAL OF OHIO
Environmental Enforcement Section
30 East Broad Street
Columbus, Ohio 43215,

CASE NO. 05-7113

JUDGE

Plaintiff,

v.

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

R.L.R. INVESTMENTS, LLC
c/o Donald R. DeLuca (statutory agent)
600 Gillam Road,
Wilmington, Ohio 45177,

Defendant.

Plaintiff State of Ohio, by and through the Attorney General, Jim Petro, at the written request of the Director of Environmental Protection ("Director"), hereby brings this action to enforce Chapter 3704 of the Ohio Revised Code and the rules adopted thereunder. The Plaintiff alleges as follows:

GENERAL ALLEGATIONS

1. R.L.R. Investments, LCC ("Defendant") is an Ohio limited liability company with its principal place of business located at 600 Gillam Road, Wilmington, Ohio 45177.
2. Defendant is a "person" as defined by R.C. 1.59 and 3704.01(O).
3. Between approximately April 1, 2003 and December 15, 2003, Defendant conducted demolitions and/or renovations at 330 West First Street, Dayton, Montgomery County, Ohio ("the Urban Resort Site" or "Facility").

4. The Urban Resort Site identified constitutes a "facility" as that term is defined by Ohio Adm.Code 3745-20-01(B)(18).

5. The Urban Resort Site contained "asbestos" and/or "friable asbestos material" as these terms are defined in Ohio Adm.Code 3745-20-01(B)(3) and 3745-20-01(B)(20).

6. The demolition of any of the structures of the Facility identified in paragraph 3 above constitutes a "demolition" as that term is defined by Ohio Adm.Code 3745-20-01(B)(13). The renovation of any of the structures of the Facility identified in paragraph 3 above constitutes a "renovation" as that term is defined by Ohio Adm.Code 3745-20-01(B)(43).

7. Defendant was the "owner" and/or "operator" of each demolition and/or renovation operation conducted at the Urban Resort Site, as those terms are defined by Ohio Adm.Code 3745-20-01(B)(38).

8. On or about the following dates Defendant's demolition, renovation, or dismantling activities caused friable asbestos containing materials to be stripped from the Facility at various locations and to fall to the floor(s) at several locations within the Facility:

DATES

April 1, 2003

June 6, 2003

June 9, 2003

June 11, 2003

June 24, 2003

July 8, 2003

August 6, 2003

August 11, 2003

December 10, 2003

December 15, 2003

9. At the Facility identified in paragraph 3 of this complaint, the amount of friable asbestos materials that was stripped or removed from pipes was at least two hundred sixty linear feet, or at least one hundred sixty square feet of friable asbestos material on other facility components.

10. R.C. 3704.05(G) provides, in part, that no person shall violate any rule promulgated by the Director under R.C. Chapter 3704.

11. The general allegations contained in paragraphs 1 through 10 are applicable to each count of the Complaint and are incorporated by reference into each as if fully restated in each count.

COUNT ONE
FAILURE TO PROVIDE REQUIRED NOTICE OF DEMOLITION
OR RENOVATION IN A TIMELY MANNER

12. Ohio Adm.Code 3745-20-03(A) provides, in part, that each owner or operator of a demolition or renovation operation shall provide the Director of Ohio EPA with written notice of intention to demolish or renovate by postmarking or delivering the notice to the Ohio EPA field office having jurisdiction in the county where the demolition and/or renovation is to occur at least ten days before any demolition and/or renovation operation begins. The notice must include the starting date of asbestos removal work in the demolition and/or renovation.

13. On April 1, 2003 or sometime earlier not yet known to the Plaintiff, Defendant began demolition and/or renovation activities at the Facility.

14. On or about April 7, 2003, Defendant's consultant, Interdyne Corp., submitted an Ohio EPA Notification of Demolition or Renovation for the Urban Resort Site indicating a start date of April 8, 2003 and a completion date of May 1, 2003. The end date of the demolition or renovation project at the Facility had a revised completion date extended to July 31, 2004.

15. Defendant failed to submit a Notification of Demolition or Renovation for the Urban Resort Site until after demolition and/or renovation operations began at the Facility.

16. The acts alleged in this count constitute violations of Ohio Adm.Code 3745-20-03(A) and R.C. 3704.05(G), for which Defendant is subject to injunctive relief pursuant to R.C. 3704.06(B), and for which Defendant is liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

COUNT TWO
FAILURE TO REMOVE FRIABLE ASBESTOS MATERIALS
BEFORE ENGAGING IN ACTIVITY BREAKING UP, DISLODGING, OR SIMILARLY
DISTURBING THE MATERIALS

17. Ohio Adm.Code 3745-20-04(A)(1) provides, in part, that each owner or operator of a demolition or renovation operation shall remove friable asbestos materials from the facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the materials or preclude access to the materials for subsequent removal.

18. On or about at least the following dates at the Urban Resort Site, Defendant failed to remove friable asbestos materials from the facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the materials or preclude access to the materials for subsequent removal:

DATES

April 1, 2003

June 6, 2003

June 9, 2003

June 11, 2003

June 24, 2003

July 8, 2003

August 6, 2003

August 11, 2003

December 10, 2003

December 15, 2003

19. The acts alleged in this count constitute violations of Ohio Adm.Code 3745-20-04(A)(1) and R.C. 3704.05(G), for which Defendant is subject to injunctive relief pursuant to R.C. 3704.06(B), and for which Defendant is liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

COUNT THREE
FAILURE TO ADEQUATELY WET FRIABLE ASBESTOS MATERIALS
WHILE THEY ARE BEING REMOVED OR STRIPPED

20. Ohio Adm.Code 3745-20-04(A)(3) provides, in part, that each owner or operator of a demolition or renovation operation shall adequately wet friable asbestos materials when they are being stripped from facility components.

21. On or about at least the following dates at the Urban Resort Site, Defendant failed to adequately wet friable asbestos materials when being removed or stripped:

DATES

April 1, 2003

June 6, 2003

June 9, 2003

June 11, 2003

June 24, 2003

July 8, 2003

August 6, 2003

August 11, 2003

December 10, 2003

December 15, 2003

22. The acts alleged in this count constitute violations of Ohio Adm.Code 3745-20-04(A)(3) and R.C. 3704.05(G), for which Defendant is subject to injunctive relief pursuant to R.C. 3704.06(B), and for which Defendant is liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

COUNT FOUR

FAILURE TO KEEP FRIABLE ASBESTOS MATERIALS ADEQUATELY WET AFTER
THEY HAVE BEEN REMOVED OR STRIPPED UNTIL COLLECTED FOR DISPOSAL

23. Ohio Adm.Code 3745-20-04(A)(6)(a) provides, in part, that an owner or operator of a demolition or renovation operation shall adequately wet friable asbestos materials that have been removed or stripped to ensure that the materials remain adequately wet until they are collected for disposal in accordance with rule 3745-20-05.

24. On or about at least the following dates, at the Urban Resort Site, Defendant failed to adequately wet friable asbestos materials that had been removed or stripped to ensure that the materials remained adequately wet until collected for disposal in accordance with Ohio Adm.Code 3745-20-05:

DATES

April 1, 2003

June 6, 2003

June 9, 2003

June 11, 2003

June 24, 2003

July 8, 2003

August 6, 2003

August 11, 2003

December 10, 2003

December 15, 2003

25. The acts alleged in this count constitute violations of Ohio Adm.Code 3745-20-04(A)(6)(a) and R.C. 3704.05(G), for which Defendant is subject to injunctive relief pursuant to R.C. 3704.06(B), and for which Defendant is liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

COUNT FIVE
FAILURE TO REPAIR, ENCAPSULATE OR REMOVE ALL FRIABLE ASBESTOS
MATERIALS BEFORE REMOVING ASBESTOS EMISSION CONTROLS

26. Ohio Adm.Code 3745-20-04(C) provides, in part, that each owner or operator of a demolition or renovation operation shall ensure that all asbestos-containing materials which have been damaged or made friable by demolition, renovation or adjacent stripping operations are repaired, encapsulated, or removed for disposal in accordance with Ohio Adm.Code 3745-20-05 prior to the removal of emission controls.

27. On or about at least the following dates at the Urban Resort Site, Defendant failed to ensure all asbestos-containing materials that were damaged or made friable were repaired, encapsulated, or removed for disposal in accordance with Ohio Adm.Code 3745-20-05 prior to the removal of emission controls:

DATES

April 1, 2003

June 6, 2003

June 9, 2003

June 11, 2003

June 24, 2003

July 8, 2003

August 6, 2003

August 11, 2003

December 10, 2003

December 15, 2003

28. The acts alleged in this count constitute violations of Ohio Adm.Code 3745-20-04(C) and R.C. 3704.05(G), for which Defendant is subject to injunctive relief pursuant to R.C. 3704.06(B), and for which Defendant is liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

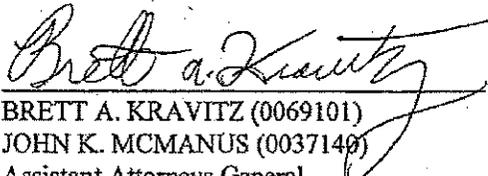
PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Enjoin Defendant to comply with R.C. Chapter 3704 and Ohio Adm.Code Chapter 3745-20 before conducting any demolition or renovation activities in this state;
- B. Order the Defendant, pursuant to R.C. 3704.06, to pay civil penalties for the violations set forth in the amount of twenty-five thousand dollars per day (\$25,000.00) for each violation; plus twenty-five thousand dollars a day (\$25,000.00) per day for each violation after the filing of this Complaint;
- C. Order Defendant to pay for the costs of this action including attorneys' fees assessed by the Office of the Ohio Attorney General;
- D. Retain jurisdiction of this suit for the purpose of making any order or decree which it may deem necessary at any time to carry out its judgment; and
- E. Grant such other relief as may be just.
- F. Pursuant to Civ.R. 8(A), this Complaint seeks relief in excess of twenty-five thousand dollars (\$25,000).

Respectfully submitted,

JIM PETRO
ATTORNEY GENERAL OF OHIO



BRETT A. KRAVITZ (0069101)
JOHN K. MCMANUS (0037140)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
Telephone: (614) 466-2766
Facsimile: (614) 644-1926

COPY

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

2005-12-7664

State of Ohio, ex. rel.
Jim Petro
Attorney General of Ohio
30 East Broad Street,
Columbus, Ohio 43215

Case No. _____

ASSIGNED TO JUDGE COSGROVE

Judge: _____

Plaintiff,

Complaint for Injunctive
Relief and Civil Penalties

v.

Spiker Environmental, Inc.
1247 Eastwood Avenue
Tallmadge, Ohio 44278

Samuel A. Keller, individually and personally:
712 Roanoke Ave
Cuyahoga Falls, Ohio 44221-1244,

David J. Keller, individually and personally :
10063 Southwyck Ave NW :
Canton, Ohio 44720-8268, :

Shirley Mendenhall, individually and :
personally :
167 Ridgewood Rd :
Wadsworth, Ohio 44281-9765, :

James Black, individually and personally :
1247 Eastwood Ave. :
Tallmadge, Ohio 44278-2645, :

Gary Shoemaker, individually and personally :
1247 Eastwood Ave. :
Tallmadge, Ohio 44278-2645, :

Frank Towns, individually and personally :
1247 Eastwood Ave. :
Tallmadge, Ohio 44278-2645, :

Defendants.

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CLERK OF COURT
SUMMIT COUNTY, OHIO

Plaintiff State of Ohio, by and through the Attorney General Jim Petro, at the written request of the Director of Environmental Protection ("Director"), hereby institutes this action to enforce Chapter 3704 of the Ohio Revised Code and the rules adopted thereunder. The Plaintiff alleges as follows:

GENERAL ALLEGATIONS

1. Defendant Spiker Environmental, Inc. ("Spiker Environmental") is an Ohio Corporation with a business address of 1247 Eastwood Ave., Tallmadge, Ohio 44278, located in Summit County, Ohio.

2. Defendants Samuel A. Keller, David J. Keller, and Shirley Mendenhall, as former and current officers, directors and employees of Spiker Environmental, Inc. are personally liable for the actions of Spiker Environmental due to their exclusive control of the operations of Spiker Environmental.

3. Defendants Samuel A. Keller, David J. Keller, and Shirley Mendenhall by virtue of their positions with Spiker Environmental, alone or in conjunction with others, caused, participated in, controlled, and/or ordered the violations of law alleged in this Complaint. In addition, or in the alternative, Defendants Samuel A. Keller, David J. Keller, Shirley Mendenhall, knew about or should have known about these violations, and by themselves or in conjunction with others, had the authority to prevent or stop these violations, but failed to exercise his or her authority to do so. Defendants Samuel A. Keller, David J. Keller, and Shirley Mendenhall are personally liable for these violations.

4. Defendants James Black, Gary Shoemaker, and Frank Towns, as former and current shareholders, directors, and employees of Spiker Environmental, Inc., along with Defendants

Samuel A. Keller, David J. Keller, Shirley Mendenhall, are personally liable under a theory of piercing the corporate veil in light of their intentional actions to underfund the corporation so that it would not have the ability to do the work and/or pay the civil penalties sought in this Complaint. These actions by Defendants Samuel A. Keller, David J. Keller, Shirley Mendenhall, James Black, Gary Shoemaker, and Frank Towns have resulted in actual injury to the State of Ohio.

5. Defendants Samuel A. Keller, David J. Keller, Shirley Mendenhall, James Black, Gary Shoemaker, Frank Towns, and Spiker Environmental, collectively known as "Defendants," are "persons" as defined by R.C. 1.59 and 3704.01(O).

6. On the dates indicated in the individual counts below, Defendant Spiker Environmental removed asbestos-containing materials from the ceilings, walls, surface areas, and/or pipes at five separate locations in the State of Ohio. These locations included: Orchard Hill Elementary School located at 450 Walnut Street, Leetonia, Ohio 44431 ("Orchard Elementary School"), Paradise United Church of Christ located at 619 East Main Street, Louisville, Ohio 44702 ("Paradise Church"), Ohio Auto Supply, located at 1128 West Tuscarawas Street, Canton, Ohio 44702 ("Ohio Auto Supply"), Sapphire Housing Corporation apartments located at 1908 Third Street, NE, Canton, Ohio, 44704 ("Sapphire Housing"), Fettman Property Management homes, located at 127, 129, 133, 137, and 139 Kensington Court NW, Canton, Ohio 44708 ("Fettman Homes").

7. The actions of the Defendants at Orchard Elementary School, Paradise Church, Ohio Auto Supply, Sapphire Housing, and Fettman Homes each constituted a "demolition" or "renovation" as those terms are defined by Ohio Adm.Code 3745-20-01(B).

8. Orchard Elementary School, Paradise Church, Ohio Auto Supply, Sapphire Housing, and Fettman Homes, where Defendant Spiker Environmental conducted demolitions or renovations, each constituted a "facility" as defined by Ohio Adm.Code 3745-20-01(B) and 3745-15-01(P).

9. Defendants are "owners" or "operators" of the demolition and/or renovation operations at Orchard Elementary School, Paradise Church, Ohio Auto Supply, Sapphire Housing, and Fettman Homes as defined by Ohio Adm.Code 3745-20-01(B).

10. The property at Orchard Elementary School, Paradise Church, Ohio Auto Supply, Sapphire Housing, and Fettman Homes each contained "friable asbestos material" as defined by Ohio Adm.Code 3745-20-01(B).

11. The ceilings, walls, pipes and surface areas inside of Orchard Elementary School, Paradise Church, Ohio Auto Supply, Sapphire Housing, and Fettman Homes each constituted "facility components" as defined in Ohio Adm.Code 3745-20-01(B).

12. Orchard Elementary School, Paradise Church, Ohio Auto Supply, Sapphire Housing, and Fettman Homes each constituted a "source" as defined in Ohio Adm.Code 3745-15-01(W) of "air contaminants" as defined in R.C. 3704.01(B) and Ohio Adm.Code 3745-15-01(C).

13. R.C. 3704.05(G) states that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under R.C. Chapter 3704. The rules cited herein are adopted under R.C. Chapter 3704.

14. The general allegations contained in preceding paragraphs are applicable to each count of the Complaint and are incorporated by reference into each as if fully restated in each count.

Count One
Orchard Elementary School
Failure to Prevent the Discharge of Visible Emissions
During Collection of Asbestos-Containing Material by Failing to Wet

15. Ohio Adm.Code 3745-20-05(B) provides, in part, that each owner or operator of a demolition or renovation operation shall ensure that no visible emissions be discharged during the collection of any asbestos-containing waste material. Specifically, Ohio Adm.Code 3745-20-05(B)(1) requires that asbestos materials be adequately wetted.

16. On May 29, 2002 and other dates to be discovered, Defendants failed to ensure that no visible emissions were discharged during the collection of asbestos-containing waste material from Orchard Elementary School.

17. The acts alleged in this count constitute violations of Ohio Adm.Code 3745-20-05(B) and R.C. 3704.05(G), for which Defendants are subject to injunctive relief pursuant to R.C. 3704.06(B), and for which each Defendant is liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

Count Two
Paradise Church
Failure to Notify and/or Complete Abatement Activities
In Accordance With Notification Dates

18. Ohio Adm.Code 3745-20-03(A)(3)(d)¹ requires a party to immediately notify the Ohio EPA of changes in the start date of demolition or renovation operations.

¹ Prior to November, 2002 this requirement was codified at Ohio Adm.Code 2745-20-03(D)(2).

19. Prior to beginning any demolition or renovation at Paradise Church, Defendants notified Ohio EPA that they would begin demolition or renovation activities at Paradise Church on September 6, 1999.

20. On August 19, 23, and 25, 1999, and other dates to be discovered, Defendants began demolition or renovation activities at Paradise Church, but failed to immediately inform the appropriate Ohio EPA field office concerning deviations to their start date for their demolition or renovation schedule.

21. The acts alleged in this count constitute violations of Ohio Adm.Code 3745-20-03(A)(3)(d) and R.C. 3704.05(G), for which Defendants are subject to injunctive relief pursuant to R.C. 3704.06(B), and for which each Defendant is liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

Count Three
Ohio Auto Supply
Failure to Ensure Removed Friable Asbestos Materials
Remain Wet until Collected for Disposal

22. Ohio Adm.Code 3745-20-04(A)(6)(a) provides, in part, that each owner or operator of a demolition or renovation operation shall ensure that friable asbestos materials that have been removed or stripped from facility components remain adequately wet until such materials are collected for disposal in accordance with Ohio Adm.Code 3745-20-05.

23. "Adequately wet," as defined in Ohio Adm.Code 3745-20-01(B), means sufficiently mixed or penetrated with liquid to prevent the release of particulates.

24. On May 20 and 21, 1999, and other dates to be discovered, Defendants failed to ensure that friable asbestos materials removed or stripped from facility components at Ohio Auto Supply remained adequately wet until the materials could be collected for disposal.

25. The acts alleged in this count constitute violations of Ohio Adm.Code 3745-20-04(A)(6)(a) and R.C. 3704.05(G), for which Defendants are subject to injunctive relief pursuant to R.C. 3704.06(B), and for which each Defendant is liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

Count Four
Ohio Auto Supply
Failure to Ensure Damaged or Friable Asbestos Materials
Are Repaired, Encapsulated, or Removed Prior to Removal of Emission Controls

26. Ohio Adm.Code 3745-20-04(C) provides, in part, that each owner or operator of any demolition or renovation project shall ensure all asbestos-containing materials, which have been damaged or made friable by demolition, renovation or adjacent stripping operations, are repaired, encapsulated, or removed for disposal in accordance with Ohio Adm.Code 3745-20-05, prior to the removal of the emission controls.²

27. On May 20 and 21, 1999, and other dates to be discovered, Defendants failed to ensure all asbestos-containing materials at Ohio Auto Supply that had been damaged or made friable by Defendants were repaired, encapsulated, or removed for disposal in accordance with Ohio Adm.Code 3745-20-05, prior to the removal of the emission controls.

28. The acts alleged in this count constitute violations of Ohio Adm.Code 3745-20-04(C) (1999) and R.C. 3704.05(G), for which Defendants are subject to injunctive relief

pursuant to R.C. 3704.06(B), and for which each Defendant is liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

Count Five
Ohio Auto Supply
Failure to Notify and/or Complete Abatement Activities
In Accordance With Notification Dates

29. Ohio Adm.Code 3745-20-03(D)(2) in effect in 1999³ required notification to the Ohio EPA of “[a]ny deviation in the demolition or renovation schedule[.]”

30. Prior to beginning any demolition or renovation at Ohio Auto Supply, Defendants notified Ohio EPA that they would complete all demolition or renovation activities at Ohio Auto Supply by May 18, 1999.

31. On May 20 and 21, 1999, and other dates to be discovered, Defendants had not yet completed demolition or renovation for Ohio Auto Supply, but failed to immediately inform the appropriate Ohio EPA field office concerning deviations to their demolition or renovation schedule.

32. The acts alleged in this count constitute violations of Ohio Adm.Code 3745-20-03(D)(2) in effect in 1999, and R.C. 3704.05(G), for which Defendants are subject to injunctive relief pursuant to R.C. 3704.06(B), and for which each Defendant is liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

² Prior to November, 2002 this requirement was codified at Ohio Adm.Code 3745-20-04(B).

³ Ohio Adm.Code 3745-20-03 as modified in 2002 only requires notification of changes to the start date.

Count Six
Sapphire Housing
Failure to Notify and/or Complete Abatement Activities
In Accordance With Notification Dates

33. Ohio Adm.Code 3745-20-03(D)(2) in effect in 1999⁴ required notification to the Ohio EPA of “[a]ny deviation in the demolition or renovation schedule[.]”

34. Prior to beginning any demolition or renovation at Sapphire Housing, Defendants notified Ohio EPA that they would complete all demolition or renovation activities at Sapphire Housing by September 17, 1999.

35. On September 21, 1999, and other dates to be discovered, Defendants had not yet completed all demolition or renovation activities at Sapphire Housing, but failed to immediately inform the appropriate Ohio EPA field office concerning deviations to their demolition or renovation schedule.

36. The acts alleged in this count constitute violations of Ohio Adm.Code 3745-20-03(D)(2) in effect in 1999, and R.C. 3704.05(G), for which Defendants are subject to injunctive relief pursuant to R.C. 3704.06(B), and for which each Defendant is liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

Count Seven
Sapphire Housing
Failure to Ensure Removed Friable Asbestos Materials
Remain Wet Until Collected for Disposal

37. Ohio Adm.Code 3745-20-04(A)(6)(a) provides, in part, that each owner or operator of a demolition or renovation operation shall ensure that friable asbestos materials that

⁴ Ohio Adm.Code 3745-20-03 as modified in 2002 only requires notification of changes to the start date.

have been removed or stripped from facility components remain adequately wet until such materials are collected for disposal in accordance with Ohio Adm.Code 3745-20-05.

38. "Adequately wet," as defined in Ohio Adm.Code 3745-20-01, means sufficiently mixed or penetrated with liquid to prevent the release of particulates.

39. On September 21, 1999, and other dates to be discovered, Defendants failed to ensure that friable asbestos materials removed or stripped from facility components at Sapphire Housing remained adequately wet until the materials could be collected for disposal.

40. The acts alleged in this count constitute violations of Ohio Adm.Code 3745-20-04(A)(6)(a) and R.C. 3704.05(G), for which Defendants are subject to injunctive relief pursuant to R.C. 3704.06(B), and for which each Defendant is liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

Count Eight
Sapphire Housing
Failure to Ensure Damaged or Friable Asbestos Materials
Are Repaired, Encapsulated, or Removed Prior to Removal of Emission Controls

41. Ohio Adm.Code 3745-20-04(C) provided, in part, that each owner or operator of any demolition or renovation project shall ensure all asbestos-containing materials which have been damaged or made friable by demolition, renovation or adjacent stripping operations are repaired, encapsulated, or removed for disposal in accordance with Ohio Adm.Code 3745-20-05, prior to the removal of the emission controls.

42. On September 21, 1999, and other dates to be discovered, Defendants failed to ensure all asbestos-containing materials at Sapphire Housing that had been damaged or made

friable by Defendant were repaired, encapsulated, or removed for disposal in accordance with Ohio Adm. Code 3745-20-05 (1999), prior to the removal of the emission controls.

43. The acts alleged in this count constitute violations of Ohio Adm.Code 3745-20-04(C) and R.C. 3704.05(G), for which Defendants are subject to injunctive relief pursuant to R.C. 3704.06(B), and for which each Defendant is liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

Count Nine
Fettman Homes
**Failure to Ensure Removed Friable Asbestos Materials
Remain Wet Until Collected for Disposal**

44. Ohio Adm.Code 3745-20-04(A)(6)(a) provides, in part, that for all regulated asbestos-containing material including material that has been removed or stripped, all materials be adequately wetted to ensure the materials remain adequately wet until collected and contained or treated in preparation for disposal.

45. "Adequately wet," as defined in Ohio Adm.Code 3745-20-01, means sufficiently mixed or penetrated with liquid to prevent the release of particulates.

46. On October 16, 2003, and other dates to be discovered, Defendants failed to ensure that friable asbestos materials removed or stripped from facility components remained adequately wet until the materials could be collected for disposal at five separate properties, comprising Fettman Homes, located at 127, 129, 133, 137, and 139 Kensington Court NW, Canton, Ohio 44708.

47. The acts alleged in this count constitute violations of Ohio Adm.Code 3745-20-04(A)(6)(a) and R.C. 3704.05(G), for which Defendants are subject to injunctive relief

pursuant to R.C. 3704.06(B), and for which each Defendant is liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

Count X
Fraudulent Transfer

48. Defendant Spiker Environmental is no longer in operation and no longer has sufficient assets to pay the civil penalty sought herein.

49. Defendant Spiker Environmental is still incorporated and listed as active by the Ohio Secretary of State as of the date of this Complaint.

50. Defendants Samuel A. Keller, David J. Keller, Shirley Mendenhall, James Black, Gary Shoemaker, and Frank Towns, themselves and by and through their officers and employees, through underfunding, co-mingling funds and/or transferring funds to and from Spiker Environmental, have attempted to conceal or deplete the assets of Spiker Environmental from the State of Ohio intentionally in order to thwart the collection of judgment.

51. These acts constitute violations of R.C. 1336.04 since they were intentionally made to "hinder, delay, or defraud" the State of Ohio, or were made without adequate consideration.

52. These acts constitute violations of R.C. 1336.05 since they were made after knowledge by Defendants Samuel A. Keller, David J. Keller, Shirley Mendenhall, James Black, Gary Shoemaker, and Frank Towns, of the potential of a civil penalty as to the violations.

53. The practices and acts set forth in this Count constitute fraudulent transfers under R.C. 1336.07 that render Defendants Samuel A. Keller, David J. Keller, Shirley Mendenhall, James Black, Gary Shoemaker, and Frank Towns jointly and severally liable for any judgment to

the extent of any assets or consideration transferred to the Defendants from Spiker Environmental, or, in the alternative, allow for the fraudulent transfer to be undone and funds restored.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Issue an injunction enjoining each Defendant to comply with R.C. Chapter 3704 and Ohio Adm. Code Chapter 3745-20 before conducting any demolition or renovation activities in this state;

B. Order each Defendant, pursuant to R.C. 3704.06, to pay civil penalties for the violations set forth in the amount of twenty-five thousand dollars per day (\$25,000.00) for each violation; plus twenty-five thousand dollars a day (\$25,000.00) per day for each violation after the filing of this Complaint, all in amount in excess of \$25,000;

C. Undo or set aside any fraudulent transfers made by Spiker Environmental to Defendants Samuel A. Keller, David J. Keller, Shirley Mendenhall, James Black, Gary Shoemaker, and Frank Towns, or, in the alternative, order Defendants Samuel A. Keller, David J. Keller, Shirley Mendenhall, James Black, Gary Shoemaker, and Frank Towns to pay to the State of Ohio any amounts fraudulently transferred to those Defendants, in an amount equal to the lesser of the amount transferred, or the civil penalty assessed pursuant to R.C. 3704.06(C);

D. Hold Defendants Samuel A. Keller, David J. Keller, and Shirley Mendenhall personally liable due to their personal participation in the acts complained of herein and/or pierce the corporate veil as to the civil penalty, pursuant to R.C. 3704.06(C), in the amount of twenty-

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five thousand dollars (\$25,000) for each day of each violation alleged herein and enjoin them from committing further violations;

E. Hold Defendants Samuel A. Keller, David J. Keller, Shirley Mendenhall, James Black, Gary Shoemaker, and Frank Towns, personally liable by piercing the corporate veil as to the civil penalty, pursuant to R.C. 3704.06(C), in the amount of twenty-five thousand dollars (\$25,000) for each day of each violation alleged herein and enjoin them from committing further violations;

F. Order Defendant to pay for the costs of this action, including applicable attorney fees associated with the enforcement of this action;

G. Retain jurisdiction of this suit for the purpose of making any order or decree which it may deem necessary at any time to carry out its judgment; and

H. Grant such other relief as may be just and proper.

Respectfully submitted,

JIM PETRO
ATTORNEY GENERAL OF OHIO



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