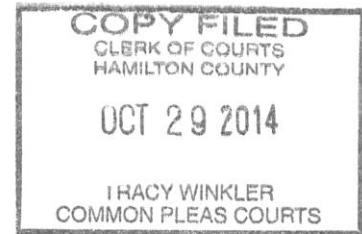


IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO



STATE OF OHIO, ex rel.
MICHAEL DEWINE
OHIO ATTORNEY GENERAL,

Plaintiff,

v.

ST. BERNARD, VILLAGE OF
110 WASHINGTON AVENUE
ST. BERNARD, OHIO 45217,

Defendant.

CASE NO. A 1406408

JUDGE

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTY

The Village of St. Bernard ("Defendant") has endangered the environment by violating Ohio's solid waste laws and rules at a location in Hamilton County, Ohio. These violations include open dumping of solid waste and failure to comply with Director's Final Findings and Orders. Ohio EPA representatives have conducted several inspections at this site and notified Defendant of the violations; nevertheless, the violations persist and remain uncorrected.

Plaintiff, the State of Ohio ("Plaintiff" or "State of Ohio"), by and through its counsel, Attorney General Michael DeWine, and at the written request of Craig Butler, Director of Ohio EPA ("Director"), hereby institutes this action against Defendant to enforce Ohio's solid waste laws, R.C. Chapter 3734 and the rules promulgated thereunder.

Pursuant to Rule 8(A) of the Ohio Rules of Civil Procedure, Plaintiff states that this Complaint seeks civil penalties in excess of the amount of Twenty-Five Thousand Dollars (\$25,000.00).

GENERAL ALLEGATIONS

1. Defendant, the Village of St. Bernard, is a political subdivision with its principal address as 100 Washington Ave., St. Bernard, Ohio 45217.
2. Defendant is the “owner” or “property owner,” as those terms are defined in Ohio Adm.Code 3745-27-01(O)(7), and/or “operator” or “facility operator,” as those terms are defined in Ohio Adm.Code 3745-27-01(O)(5).
3. Defendant is a “person,” as that term is defined in R.C. 1.59, 3734.01(G), and Ohio Adm.Code 3745-27-01(P)(3).
4. Revised Code 3734.01(E) defines “solid wastes” to include such unwanted residual, solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations, and includes, but is not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt, and debris.
5. Revised Code 3734.01(F) defines “disposal” as the depositing, dumping, or placing of any solid wastes on any land or ground.
6. Revised Code 3734.11 (A) provides that no person shall violate any order issued under R.C. 3734 or any rule adopted thereunder.
7. Defendant owned and operated the Bank Avenue Landfill, a.k.a. the St. Bernard Landfill, located at east of I-75 and south of Bank Ave in St. Bernard, Hamilton County Ohio, (referred to as the “Site” or “Facility”) at all times relevant to this Complaint.
8. Beginning on a date unknown to Plaintiff and continuing through 1977, Defendant used the Site as a landfill for domestic, commercial, industrial, and demolition waste.

9. In the late 1970's and early 1980's, Defendant acquired various properties in the surrounding area outside the known limits of the landfill with the intent of converting the area to a residential development.

10. Defendant created a subdivision adjoining the landfill known as the Bank Ave. Subdivision, which contains approximately fifty homes. Defendant sold each of the parcels on its own, profiting from creation of the subdivision.

11. Defendant began routine gas monitoring at the presumed boundary of the landfill Site in 2000.

12. During this routine gas monitoring at the Site boundary, along the perimeter of the Bank Ave. Subdivision, methane levels were found above the lower explosive limit and volatile organic compounds were found in the landfill gas.

13. The allegations in Paragraphs one (1) through twelve (12) of this Complaint are incorporated by reference into each count of the Complaint as if fully restated therein.

COUNT ONE

Failure to Comply with Director's Orders

14. On September 16, 2009, the Director issued consensual Final Findings and Orders ("Orders") to Defendant. These Orders are attached as "Exhibit A" and incorporated by reference as if fully rewritten herein.

15. The Orders required Defendant to, among other actions; take numerous steps to comply with the Orders in accordance with the requirements of all applicable federal, state, and local laws and regulations.

16. Order 1 required Defendant to attain eight consecutive quarters of sequential

explosive gas monitoring events in which none of the explosive gas monitoring probes exceeds the lower explosive limit.

17. Beginning on a date as yet unknown to Plaintiff but at least by January 1, 2011, and continuing through the present, Defendant has not attained eight consecutive quarters of sequential explosive gas monitoring events in which none of the explosive gas monitoring probes exceeds the lower explosive limit.

18. Order 13 required Defendant to submit an approved remediation plan for conditions and violations at the Site on or about November 1, 2009.

19. On or about June 10, 2010, Defendant submitted a new remediation plan for the Site, 221 days late.

20. On or about September 9, 2010, Ohio EPA approved Defendant's remediation plan per Order 13 of the Orders.

21. Order 16 required Defendant to submit a report to Ohio EPA detailing the results of the remediation plan on or about November 30, 2010.

22. On or about February 7, 2011, Defendant submitted to Ohio EPA a report detailing the results of the remediation plan, 69 days late.

23. Order 18 required Defendant to submit a revised remediation plan to address ongoing explosive gas migration issues at the Site by June 18, 2010 and to submit and receive approval for re-location of explosive gas monitoring probes.

24. On January 17, 2012, Defendant submitted to Ohio EPA a revised remediation plan, 578 days late.

25. On or about May 16, 2012, Ohio EPA approved Defendant's revised remediation plan

per Order 18 of the Orders.

26. Order 21 required Defendant to submit a revised Explosive Gas Monitoring Plan within 60 days of the issuance of the Orders; by November 16, 2009.

27. On or about March 31, 2011, Defendant submitted a revised Explosive Gas Monitoring Plan for the Site, 500 days late.

28. Order 28 required Defendant to perform annual re-calibration of the explosive gas alarms placed by Defendant in the resident's homes.

29. Beginning on a date as yet unknown to Plaintiff but at least by February 1, 2012, and continuing through the present, Defendant has not performed adequate annual re-calibration of the explosive gas alarms placed by Defendant in the resident's homes.

30. The conduct of Defendant, as described in this Count, violates the Orders, and R.C. 3734.11(A), for which Plaintiff is entitled to injunctive relief pursuant to R.C. 3734.10 and 3734.13(C) and for which Defendants are liable for a civil penalty of up to ten thousand dollars (\$10,000.00) per day per each violation, including each day subsequent to the filing of this Complaint, pursuant to R.C. 3734.13(C).

COUNT TWO

Failure to Submit Explosive Gas Monitoring Results

31. Ohio Adm.Code 3745-27-12(E)(4) provides that when explosive gas monitoring results are taken at a Site, the results must be submitted to Ohio EPA within 15 days of the sampling.

32. Beginning on a date as yet unknown to Plaintiff but sometime prior to June 1, 2012, Defendant conducted numerous sampling events of its explosive gas monitoring system at the Site.

33. Beginning on a date as yet unknown to Plaintiff and continuing until on or around

June 2, 2012, Defendant has failed to timely submit the explosive gas monitoring results taken at the Site to Ohio EPA.

34. The conduct of Defendant, as described in this Count, violates Ohio Adm.Code 3745-27-12(E)(4), for which Plaintiff is entitled to injunctive relief pursuant to R.C. 3734.10 and 3734.13(C) and for which Defendant is liable for a civil penalty of up to ten thousand dollars (\$10,000.00) per day per each violation, including each day subsequent to the filing of this Complaint, pursuant to R.C. 3734.13(C).

COUNT THREE

Open Dumping

35. Revised Code 3734.01(I) defines “open dumping” as the depositing of solid waste onto the surface of the ground at a site that is not a licensed solid waste landfill pursuant to R.C. 3734.05.

36. Ohio Adm.Code 3745-27-05(A)(1) states that disposal of solid waste under R.C. Chapter 3734 shall only occur at a facility licensed as a solid waste landfill pursuant to R.C. 3734.05.

37. The Bank Ave. Subdivision, which is located adjacent to Defendant’s landfill, has never been licensed as a solid waste landfill pursuant to R.C. 3734.05.

38. Beginning at a date as yet unknown to Plaintiff but sometime around January 1, 1985, Defendant used solid waste to bring the Bank Ave. Subdivision up to grade for the purpose of selling off the lots and building the current subdivision.

39. Beginning on a date as yet unknown to Plaintiff but sometime prior to March 30, 2012 when Plaintiff became aware of the placement of solid waste to bring the Bank Ave.

Subdivision up to grade, and continuing through the present, Defendant has open dumped solid waste.

40. The conduct of Defendant, as described in this Count, violates R.C. 3734.01(I) and Ohio Adm.Code 3745-27-05(A)(1), for which Plaintiff is entitled to injunctive relief pursuant to R.C. 3734.10 and 3734.13(C) and for which Defendant is liable for a civil penalty of up to ten thousand dollars (\$10,000.00) per day per each violation, including each day subsequent to the filing of this Complaint, pursuant to R.C. 3734.13(C).

COUNT FOUR

Illegal Drilling Without Prior Authorization

41. Ohio Adm.Code 3745-27-13(A) states that no person shall, without authorization from the director, engage in drilling on land where a solid waste facility was operated.

42. Beginning on a date as yet unknown to Plaintiff but sometime prior to April 15, 2012, Defendant conducted drilling at its site without prior authorization from the director in violation of Ohio Adm.Code 3745-27-13(A).

43. The conduct of Defendant, as described in this Count, violates Ohio Adm.Code 3745-27-13(A), for which Plaintiff is entitled to injunctive relief pursuant to R.C. 3734.10 and 3734.13(C) and for which Defendant is liable for a civil penalty of up to ten thousand dollars (\$10,000.00) per day per each violation, including each day subsequent to the filing of this Complaint, pursuant to R.C. 3734.13(C).

PRAYER FOR RELIEF

Wherefore, Plaintiff State of Ohio respectfully requests that this Court order the following relief:

- A. Pursuant to R.C. 3734.10, permanently order and enjoin Defendant to comply with the requirements of R.C. Chapter 3734 and the rules promulgated thereunder;
- B. Permanently order and enjoin Defendant to immediately comply with the agreed upon September 16, 2009 Final Findings and Orders referenced herein;
- C. Permanently order and enjoin Defendant to provide explosive gas monitoring results are taken at a Site within 15 days of the sampling in accordance with Ohio Adm.Code 3745-27-12(E)(4);
- D. Permanently order and enjoin Defendant to cease all open dumping at the Site in accordance with Ohio Adm.Code 3745-27-05(A)(1);
- E. Permanently order and enjoin Defendant to cease any and all drilling on land at the Site without prior authorization from the director in accordance with Ohio Adm.Code 3745-27-13(A).
- F. Order Defendant to pay all costs and fees for this action, including extraordinary enforcement costs incurred and attorney fees assessed by the Office of the Ohio Attorney General;
- G. Pursuant to R.C. 3734.13(C), order Defendant to pay the State a civil penalty of up to ten thousand dollars (\$10,000.00) per day for the violations contained herein including any violations occurring after the filing of this Complaint;
- H. Retain jurisdiction of this case until all Orders issued by this Court are

complied with in all respects; and

- I. Grant such other relief as may be necessary and appropriate in law and equity.

Respectfully submitted

MICHAEL DEWINE
OHIO ATTORNEY GENERAL



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