

10

COURT OF COMMON PLEAS

FILED

MORROW COUNTY, OHIO

2009 MAR 29 PM 10 49

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

CASE NO. 24,356

Plaintiff,

JUDGE LAWRENCE GREY

v.

MORROW SANITARY COMPANY
INC., et al.

Defendants.

Common Pleas Court Morrow County, Ohio
CERTIFIED COPY

OF ORIGINAL ON FILE
VANESSA K. MILLS, CLERK

[Signature] Deputy

FINAL JUDGMENT ENTRY

This matter came before the Court on February 3, 2009 and on September 8, 2009 for a hearing on the issue of injunctive relief and imposition of a civil penalty pursuant to R.C. 3745.11 against the Defendants.

I. Prior Proceedings

On January 20, 1999, the Attorney General, at the written request of the Director of Environmental Protection, filed a Complaint for Injunctive Relief and Civil Penalties against Defendants Morrow Sanitary Company, Inc., Ron Harper, and Jerry Rutledge. The Complaint alleged violations of Ohio's Solid Waste laws by Defendants for failing to legally operate and properly close the Morrow Sanitary Landfill facility located in Mount Gilead, Morrow County, Ohio.

The Defendants then filed a counterclaim against third party defendants Morrow County and Morrow County Commissioners Don Staley, Donald R. Weaver, and Olen

433 - 34²

Jackson; Gilead Township and Township Trustees P. Long, David Lewis, and John Bachelder; the Villages of Mount Gilead, Cardington, and Edison; Morrow County Health Department, and Patricia Rice Hardin.

Particularly, Count One of the State's Complaint alleged that Defendants failed to lawfully close its Solid Waste Disposal Facility in compliance with R.C. 3734.11 and O.A.C. 3745-27-10 and 3745-27-11. Count Two of the Complaint alleged that Defendants acts and omissions constitute Statutory Nuisance pursuant to R.C. 3767.02 for conducting and maintaining the facility as a nuisance by failing to lawfully close the site. Count Three of the Complaint alleged that Defendants acts and omissions constitute Common Law Public Nuisance Per Se.

On April 16, 2002, this Court, through Judge John Hunter by assignment, granted Plaintiff State of Ohio's Motion for Partial Summary Judgment with respect to Counts One and Two of Plaintiff's Complaint. This Court found that no genuine issues of material fact remain to be litigated and that reasonable minds can only conclude that Plaintiff is entitled to judgment as a matter of law on those Counts.

Defendants unsuccessfully appealed the Court's April 16, 2002 Order to the Fifth Appellate District Court of Appeals. On August 12, 2002, the Court of Appeals dismissed Defendants' appeal for lack of subject matter jurisdiction, as there was no final order of the trial court.

On or about June 4, 2003, the parties entered a Stipulated Dismissal of the remaining Count Three of Plaintiff's Complaint, thus resolving all remaining issues in Plaintiff's Complaint.

On February 3, 2009 and on September 8, 2009, the Parties appeared before this Court to determine the appropriate final injunctive relief and civil penalty for the Defendants. Defendants Jerry Rutledge and Morrow Sanitary Company failed to appear at either hearing. Defendant Ronald Harper was present at the September 8, 2009 hearing, and was not represented by counsel.

In an Order dated June 26, 2009, the Court unequivocally dismissed cross claims and counterclaims against Morrow County and Morrow County Commissioners Donald Staley, Donald R. Weaver, and Olen Jackson; Gilead Township and Township Trustees P. Long, David Lewis, and John Bachelder; the Villages of Mount Gilead, Cardington, and Edison; and Morrow County Health Department. The counterclaim and cross-claim against Patricia Rice Hardin remains before this Court.

In an Order dated September 28, 2009, the Court issued a permanent injunction against all Defendants that required the Defendants to complete the following:

1. Defendants are ordered and enjoined to immediately abate the pollution, contamination, and nuisances at the Morrow Sanitary Landfill pursuant to R.C. Chapter 3767;
2. Defendants are ordered and enjoined to submit a closure plan in accordance with Ohio Adm. Code 3745-27-11(A)(3)(c) (effective June 1, 1994) to the Ohio Environmental Protection Agency ("Ohio EPA"), Central District Office, for review and approval within thirty (30) days of the entry of this Order;
3. Defendants are ordered and enjoined to commence closure activities at the Morrow Sanitary Landfill within thirty (30) days of the approval of the closure plan;

4. Defendants are ordered and enjoined to place a cap system on the entire facility in accordance with Ohio Adm. Code 3745-27-08(C)(16) (effective June 1, 1994);

5. Defendants are ordered and enjoined to submit to Ohio EPA, Central District Office for review and approval an explosive gas monitoring plan in accordance with Ohio Adm. Code 3745-27-12 (effective June 1, 1994) within sixty (60) days of the entry of this Order.

6. Defendants are ordered and enjoined to install the explosive gas monitoring system and commence explosive gas monitoring semiannually in accordance with Ohio Adm. Code 3745-27-12(l)(c) (effective June 1, 1994) within ninety (90) days of approval of the explosive gas monitoring plan by Ohio EPA;

7. Defendants are ordered and enjoined to submit to Ohio EPA, Central District Office for review and approval a groundwater monitoring plan in accordance with Ohio Adm. Code 3745-27-10 (effective June 1, 1994, within sixty (60) days of this Order;

8. Defendants are ordered and enjoined to commence the implementation of the approved groundwater monitoring plan in accordance with Ohio Adm. Code 3745-27-10 (effective June 1, 1994) within ninety (90) days after Ohio EPA plan approval;

9. Defendants are ordered and enjoined to complete closure activities in accordance with Ohio Adm. Code 3745-27-11 (effective June 1, 1994) and submit to the director of Ohio EPA a written certification report in accordance with Ohio Adm. Code 3745-27-08 (effective June 1, 1994) that the landfill has been closed in accordance with the approved closure plan and Ohio Adm. Code 3745-27-11 (effective June 1, 1994) by September 30, 2010;

10. Defendants are ordered and enjoined to perform post-closure care of the landfill in accordance with Ohio Adm. Code 3745-27-14 (effective June 1, 1994); and

11. Defendants are ordered to file with the Morrow County Recorder a plat of the units of the sanitary landfill facility and information describing the acreage, exact location, depth, volume, and nature of the solid waste deposited in the facility, and record a notation on the facility's property deed that will in perpetuity notify any potential purchaser of the property that the land has been used as a landfill in accordance with Ohio Adm. Code 3745-27-11(H)(5) (effective June 1, 1994);

On September 28, 2009, the Court also Ordered Defendants Jerry Rutledge and Morrow Sanitary Company to each pay a civil penalty of 1,293,759.00 for violation of R.C. Chapter 3734.

Pursuant to the Court's Order of September 28, 2009 the State filed a Civil Penalty Memorandum on October 1, 2009, outlining Ohio's civil penalty statutes and case law. Ronald Harper filed a Response on October 22, 2009 and included tax returns and a financial statement with his Response. The State filed a Reply on November 3, 2009.

II. Final Order

The Court having considered the testimony presented and the evidence offered by the State of Ohio and Defendant Ronald Harper hereby **Orders:**

12. Defendants Ronald Harper, Jerry Rutledge, and Morrow Sanitary Company, Inc. are liable, jointly and severally, to comply with all applicable solid waste laws and rules including, but not limited to R.C. Chapter 3734 and Ohio Adm. Code

Chapter 3745-27. Specifically, Defendants must comply with the following statutory requirements and deadlines as set forth in the Court's September 28, 2009 Order and memorialized above.

13. Pursuant to the Civil Penalty Memorandum filed by the State on October 1, 2009, the Response filed by Defendant Ronald Harper on October 22, 2009, and the Reply filed by the State on November 3, 2009, the state recommends that Defendant Ronald Harper, pursuant to R.C. 3734.13, pay a civil penalty to the State of Ohio in the amount of \$1,293,759.00 for violation of R.C. Chapter 3734. This is the same amount imposed by the Court on the other Defendants and is the maximum amount. While a strong argument can be made for imposing the maximum amount against Ronald Harper, the court is aware of his conduct during these lengthy proceedings. He attended all hearings and meetings designed to achieve the remediation of the area. This Court is convinced that had Harper not suffered significant losses in his other ventures he would have become compliant with the guidelines. While this does not excuse his conduct, it does mitigate against the imposition of the maximum fine. It is a logical necessity that if everyone gets the maximum, then everyone gets the minimum.

The Court, pursuant to R.C. 3734.13, orders that Defendant Ronald Harper pay a civil penalty to the State of Ohio in the amount of nineteen thousand dollars, (\$ 19,000.00) for violation of R.C. Chapter 3734. Payments shall be made to Ohio EPA, Office of Fiscal Administration, 50 West Town Street, Suite 700 Columbus, Ohio 43215.

Case
Number 24356

14. Any money expended by Defendant Ronald Harper for the purpose of bringing the landfill into compliance with the regulations shall be credited and the amount of the civil penalty.

Defendants are each ordered to pay one third of the costs of this action.

This is a final appealable order and the Clerk of Courts shall serve copies of this

Decision upon all parties within three (3) business days, pursuant to Ohio R. Civ. Pro. 5.v

This is a final appealable order and the Clerk of Courts shall serve copies of this

Decision upon all parties within three (3) business days, pursuant to Ohio R. Civ. Pro. 5.v

SO ORDERED,

3-26-10
DATE

Lawrence Grey
JUDGE LAWRENCE GREY