IN THE COMMON PLEAS COURT OF JEFFERSON COUNTY, OHIO

STATE OF OHIO, EX REL MICHAEL DEWINE, ATTORNEY GENERAL	)	**FINDINGS OF FACT, CONCLUSIONS OF LAW & FINAL ORDER**
Plaintiffs	)	
-vs-	)	Case No: 12-CV-331 & 12-CV-332
C&D DISPOSAL TECHNOLOGIES, LLC, ET AL	)	**JOSEPH J. BRUZZESE, JR. JUDGE**
Defendants	)	

FILED
IN COMMON PLEAS COURT
JEFFERSON COUNTY OHIO
AUG 05 2014
CORRIGAN
CLERK

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FINDINGS OF FACT

1. The State of Ohio filed its Complaint against Defendants on July 10, 2011 alleging violations of Ohio Environmental Laws and Regulations with respect to Defendants' landfill operations. The Jefferson County Health Department filed its Complaint the same day relating to the same events. Both cases were consolidated for trial which was held to the Court on November 26, 2013.

2. The State of Ohio was represented by Assistant Attorney General Robert Eubanks and Summer Platz. The Jefferson County Health Department was represented by the Jefferson County Prosecutor Jane Hanlin, through Assistant Prosecuting Attorney Emanuela Agresta. Defendant Joseph Scugoza appeared in person and through Counsel Bryan Felmet. Defendant Crossridge, Inc. had no personal representative but was also represented by Attorney Bryan Felmet. Defendant C&D Disposal Inc. made no appearance and was not represented by counsel.

3. Defendant C&D Disposal Technologies, Inc. operates a licensed construction and demolition debris landfill as a tenant on property owned by Crossridge (Jefferson County Parcel Numbers 03-00467-000, 03-02585-000, 03002586-000, 03092587-000, 03-02889-000, 03-03928-000, 03-03929-000 & 03-03930-000.) Defendant Crossridge is the owner of the real estate, which it leases to C&D Disposal.

4. The property owned by Crossridge and occupied by C&D Disposal was previously licensed to Crossridge and later to C&D Disposal. It includes a large area, encompassing a rail unloading area, a "recycling" area, a haul road to the landfill site and an area containing scrap tires that were originally intended to be used as construction material.

5. Defendant Joseph Scugoza is ostensibly a co-managing member of C&D Holdings LLC. Scugoza owns fifty-one percent of C&D Holdings LLC which owns sixty-six percent of C&D Disposal LLC. Because of his fifty-one percent ownership of C&D Holdings LLC, Defendant Scugoza has one hundred percent control of that company, which has one hundred percent control over C&D Disposal LLC. While Scugoza testified about co-managers no documentation of anyone else with authority was provided. Even if such documentation had been provided, it would seem that Scugoza had the complete ability to outvote all owners and maintain one hundred percent control of both companies if he chose.

6. All EPA contacts testified to were with Scugoza personally. While Scugoza makes the point that it was never stated that he was the sole contact, the fact is no other contacts were testified to. To the contrary, Scugoza complained that his co-owners were not helping him and would not participate.

7. From November 18, 2009 through November 8, 2011, construction and demolition debris were scattered about in Cross Creek (a creek next to the rail spur) and on the haul roads up to the disposal landfill. While that situation was probably not intentional it was consistent due to reckless handling of construction debris at the least.

8. From late 2009 through the first quarter of 2010, C&D operated with an unloading zone that was deficient.

9. Some amount of impermissible solid waste will always be intermingled with construction debris. No one can stop a construction or demolition worker from throwing the remnants of his lunch into the heap. It is also likely that demolished buildings will have some amount of improper waste in them as they are being demolished. In anticipation of these problems, C&D Disposal hired several "pickers" to sort through the construction debris and remove inappropriate items. There were never enough "pickers" and the job never really got done and a significant amount of inappropriate solid waste reached the landfill site.

10. There was record keeping by C&D but it was not always adequate.

11. From at least October of 2009 the landfill operated without an approved leachate management system. There was a leachate management system but it relied upon manual pumps when automatic pumps were called for. As a result, leachate overwhelmed the system when the pumps weren't running and found its way into Cross Creek. While Scugoza claims that automatic pumps were ordered there is no evidence that they were ever installed.

12. Fire protection was inadequate and while Scugoza claims there was adequate fill for fire protection the fact is there were fires that should not have occurred in the demolition debris.

13. Slope of the landfill was a constant battle between EPA and C&D. C&D applied for variances which would have allowed C&D to fill to a steeper slope. Anticipating, or at least hoping for that variance, C&D filled higher and to a greater slope that allowed illegally increasing its capacity greatly. As a result, the landfill was filled nearly twelve feet higher than it should have been allowing for increased waste generating gross receipts of about four million dollars in excess of what was allowed. Neither party offered evidence from which net profit could have been calculated from the four million dollars of inappropriate gross receipts.

14. At some point C&D, through Scugoza's direction allowed 7,000 tons of scrap tires to be placed on Crossridge property for use in the construction of additional waste cells. Those tires have now become solid waste because there is no current beneficial use that can be attributed to them and because they have been there more than two years they must be removed.

15. In February of 2012 the C&D Disposal Landfill license through the Health District was denied. At that point C&D had no further authority to operate but continued to operate illegally while Scugoza negotiated for the sale of the facility. The sale never happened. While Schugoza's desire to keep the landfill operating while negotiating is understandable, the fact remains that it was illegal.

16. Storm water drainage abatement has been a problem. Storm water drainage can cause problems, the most notable of which is erosion and damage to streams through

sediment. Excessive sediment is extremely detrimental to streams and the wildlife living in the streams. On several occasions C&D applied for storm water management permits as necessary but began construction before the permit was issued or exceeded the area covered by the permit. As a result of C&D operations, excessive sediment was allowed to runoff into Cross Creek and ultimately to the Ohio River. This sediment was in addition to the damage done to the stream by solid waste that escaped C&D operations at the rail spur and the road leading from the rail spur. In addition, leachate was used to spray down the facility and pumps evacuated leachate into unprotected areas that were allowed to drain into Cross Creek.

17. C&D operates what it calls a "recycling area." Here demolition debris is brought in and the recyclables are separated out. The problem is that while the recyclables are separated and sold, the remaining solid waste remains and is not disposed of. It simply accumulates in a non-engineered facility which means that it is exposed to the elements, including rain and surface water, which then runs into Cross Creek. The recycling area produces leachate and odor and is also an attractant for rodents and vectors of all kinds and constitutes a fire hazard. The remaining solid waste is, in effect, permanently and illegally disposed of in the recycling area.

18. In October of 2007, Defendants received an NPDES Permit Number OH0076775 which required self-monitoring and record keeping of discharges. Records showed that most of the restricted parameters were exceeded most of the time which resulted in several notices of violation.

19. On November 30, 2012 the NPDES Permit expired and was never renewed even though it is still required until the facility is completely closed and capped.

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Construction and Demolition Debris under Ohio Law.

20. Revised Code 3714.13 prohibits any person from violating any section of R.C. Chapter 3714, any rule adopted pursuant to that Chapter, or any order issued pursuant to that Chapter.

21. Revised Code 3714.01(C) defines "construction and demolition debris" as "those materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any physical structure that is built by humans, including, without limitation, houses, buildings, industrial or commercial facilities, or roadways ... [and] includes particles and dust created during demolition activities ... [but] does not include materials identified or listed as solid wastes or hazardous waste pursuant to [R.C. Chapter 3734] and rules adopted under it; materials from mining operations, nontoxic fly ash, spent nontoxic foundry sand, and slag; or reinforced or non-reinforced concrete, asphalt, building or paving brick, or building or paving stone that is stored for a period of less than two years for recycling into a usable construction material."

22. Ohio Adm.Code 3745-400-01(F) defines "construction and demolition debris" or "debris" as "those materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any manmade physical structure, including, without limitation, houses, buildings, industrial or commercial facilities, or roadways ... [but] does not include materials identified or listed as solid wastes, infectious wastes, or hazardous wastes pursuant to [R.C. Chapter 3734] and rules adopted under it; or

materials from mining operations, nontoxic fly ash, spent nontoxic foundry sand, and slag; or reinforced or non-reinforced concrete, asphalt, building or paving brick, or building or paving stone that is stored for a period of less than two years for recycling into a usable construction material." This rule further provides that "'materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any manmade physical structure,' are those structural and functional materials comprising the structure and surrounding site improvements, such as brick, concrete and other masonry materials, stone, glass, wall coverings, plaster, drywall, framing and finishing lumber, roofing materials, plumbing fixtures, heating equipment, electrical wiring and components containing no hazardous fluids or refrigerants, insulation, wall-to-wall carpeting, asphaltic substances, metals incidental to any of the above, and weathered railroad ties and utility poles ... [and] do not include materials whose removal has been required prior to demolition (such as asbestos), and materials which are otherwise contained within or exist outside the structure such as solid wastes, yard wastes, furniture, and appliances. *Also excluded in all cases are liquids including containerized or bulk liquids, fuel tanks, drums and other closed or filled containers, tires, and batteries.*" Emphasis added.

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

24. Ohio Adm.Code 3745-400-01(N) defines "disposal" as "the discharge, deposit, injection, dumping, spilling, leaking, emitting or placing of any construction and demolition debris into or on any land or ground or surface water or into the air, except if

the deposition or placement constitutes storage, reuse, or recycling in a beneficial manner."

25. Ohio Adm.Code 3745-400-01(S) defines illegal disposal of C&DD as "the disposal of construction and demolition debris at any place other than a construction and demolition debris disposal facility operated in accordance with Chapter 3714 of the Revised Code and Chapter 3745-400 of the Administrative Code, and licensed in accordance with Chapter 3745-37 of the Administrative Code, or a solid waste disposal facility operated in accordance with Chapter 3745-27 of the Administrative Code, and licensed in accordance with Chapter 3745-37 of the Administrative Code, or as otherwise authorized by this chapter."

26. Ohio Adm.Code 3745-400-04(B) and R.C. 3734.03 prohibit the illegal disposal of construction and demolition debris waste.

27. Ohio Adm. Code 3745-400-11(F) prohibits the disposal of solid waste in a construction and demolition debris facility.

28. Ohio Adm.Code 3745-400-01(EE) defines "property owner" or "owner" as the person who holds title to the property on which the construction and demolition debris disposal facility is located."

29. Ohio Adm.Code 3745-400-01(I) defines "operator" as "the person responsible for the on-site supervision of technical operations and maintenance of a construction and demolition facility, or any parts thereof, which may affect the performance of the facility and its potential environmental impact and/or any person who has authority to make discretionary decisions concerning the daily operations of the construction and demolition debris disposal facility."

30. Revised Code 3714.021(B) and Ohio Adm.Code 3745-400-11(F)(3)(a) and (b) require for an owner and operator or a construction and demolition debris facility to have a designated unloading zone where solid waste can be removed from incoming construction and demolition debris before the waste is placed into the working face.

31. Ohio Adm. Code 3745-400-11(B)(10) requires owners and operators to keep records of the solid waste removed from the construction and demolition debris accepted by a construction and demolition debris landfill.

32. Ohio Adm.Code 3745-400-01(II) defines "recycling" as "processing a material using such methods, including but not limited to, screening, sorting, or shredding, for use in a beneficial manner that does not constitute disposal."

33. Ohio Adm.Code 3745-400-01(OO) defines "storage" as "the holding of debris for a temporary period in such a manner that it remains retrievable and substantially unchanged and, at the end of the period, is disposed, reused, or recycled in a beneficial manner."

34. Ohio Adm. Code 3745-400-11(B)(1), adopted pursuant to R.C. 3714.02, requires an owner or operator to operate the facility in strict compliance with the license, any orders, and other authorizing documents issued in accordance with R.C. Chapter 3714.

35. Ohio Adm. Code 3745-400-11(H), adopted pursuant to R.C. 3714.02, requires the owner or operator of a C&DD facility to prevent fires by "covering all disposed combustible debris on a weekly basis with soil, clean hard fill, or other material which is noncombustible .... For the purpose of this rule, covering means to apply noncombustible material in a manner such that combustible debris is not visible."

36. Ohio Adm.Code 3745-400-07 (G)(2)(h)(iv) states that for construction and demolition debris facilities, "the standard cap system shall have a minimum slope of three per cent and a maximum slope of twenty-five per cent and shall be graded to eliminate ponding, promote drainage, and minimize erosion."

37. Ohio Adm. Code 3745-400-11(B)(15), provides that "[t]he owner or operator [of a C&DD facility] shall not cause or allow operations to create a nuisance or health hazard from noise, dust, odors, and the attraction and/or breeding of birds, insects, rodents, and other vectors."

38. Ohio Adm.Code 3745-400-12 (B)(6) states that final closure of a facility is mandatory when "a facility license has expired and another license has been applied for and denied as a final action of the licensing authority."

39. Ohio Adm.Code 3745-400-12 (E)(8)(a) states that "within one year of ceasing to accept debris for disposal, the owner or operator shall complete construction of a cap system consistent with the details of the approved final cap design plan..."

40. The C&D Disposal landfill is a "facility" under Ohio Adm.Code 3745-400-01(G). Defendants Scugoza and C&D Disposal have disposed of construction and demolition debris at the site.

Regulation of Solid Waste under Ohio Law.

41. Revised Code 3734.01(E) and Ohio Adm.Code 3745-27-01(S)(23) define solid waste as "unwanted residual solid or semisolid material ...."

42. Revised Code 3734.01(F) defines disposal as "the depositing, dumping, or placing of any solid waste on any land or ground."

43. Ohio Adm.Code 3745-27-01(O)(7) defines "owner' or "property owner" as "the person who holds title to the property on which the solid waste facility, infectious waste treatment facility, or scrap tire transportation business is located."

44. Ohio Adm.Code 3745-27-01(O)(5) defines "operator" as "the person responsible for the on-site supervision of technical operations and maintenance of a solid or infectious waste facility, or any parts thereof, which may affect the performance of the facility and its potential environmental impact or any person who has authority to make discretionary decisions concerning the daily operations of the solid or infectious waste facility."

45. Revised Code 3734.01(I) and Ohio Adm.Code 3745-27-01(O)(4)(a) define open dumping as the depositing of solid wastes onto or into the ground at a site not licensed as a solid waste disposal facility under R.C. 3734.05.

46. Ohio Adm.Code 3745-27-05(C) and R.C. 3734.03 prohibit open dumping.

47. Revised Code 3734.11(A) provides that no person shall violate any section of R.C. 3734 or any rule adopted pursuant to that statute.

Ohio's Water Pollution Control Laws.

48. Revised Code 6111.07 provides that "no person shall violate or fail to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code or violate any order, rule, or term or condition of a permit issued or adopted by the director of environmental protection pursuant to those sections."

49. Revised Code 6111.01(A) defines "pollution" as "the placing of any sewage, sludge, sludge materials, industrial waste, or other wastes in any waters of the state."

50. Revised Code 6111.01(H) defines "waters of the state" as "all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and other bodies or accumulations of water, surface an underground, natural or artificial, regardless of the depth of the strata in which underground water is located that are situated wholly or partly withi8n, or border upon, this state, or are within its jurisdiction, except those private waters that do not combine or effect a junction with natural surface or underground waters.

51. Revised Code 6111.01(D) defines "other wastes" as "garbage, refuse, decayed wood, sawdust, shavings, bark, and other wood debris, lime, sand ashes, offal, night soil, oil, tar, coal dusts, dredged or fill material, or silt, other substances that are not sewage, sludge, sludge materials, or industrial waste, and any other 'pollutants' or 'toxic pollutants' as defined in the Federal Water Pollution Control Act that are not sewage, sludge, sludge materials, or industrial waste."

52. Ohio Adm.Code 3745-1-04 states that surface waters of the state shall be free from the following:

a. Suspended solids or other substances that enter the waters as a result of human activity and that will settle to form putrescent or otherwise objectionable sludge deposits, or that will adversely affect aquatic life;

b. Floating debris, oil, scum and other floating materials entering the waters as a result of human activity in amount sufficient to be unsightly or cause degradation;

c. Materials entering the wasters as a result of human activity producing color, odor or other conditions in such a degree as to create nuisance;

d. Substances entering waters as a result of human activity in concentrations that are toxic or harmful to human, animal or aquatic life and/or are rapidly lethal in the mixing zones;

e. Nutrients entering the waters as a result of human activity in concentrations that create nuisance growths of aquatic weeds and algae; and

f. Public health nuisances associated with raw or poorly treated sewage.

53. Ohio Adm.Code 3745-38-02 provides that no person may discharge any pollutant or cause, permit or allow a discharge of any pollutant from appoint source without either applying for and obtaining an Ohio NPDES individual permit, complying with the indirect discharge permit program or obtaining authorization to discharge under an Ohio NPDES General Permit.

54. Ohio Adm.Code 3745-38-01(H) defines "discharge" as the addition of any pollutant to waters of the state from a point source.

55. Ohio Adm.Code 3745-38-01(P) defines "point source" as any discernible confined, discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

56. Ohio Adm.Code 3745-38-02(E) and 3745-38-06 requires each person who submits a Notice of Intent for coverage to comply with the Ohio EPA NPDES General Permit in accordance with the deadlines specified in the permit.

57. Ohio Adm.Code 3745-38-02(E), 3745-38-06(F) and 3745-38-02(M)(4) provide that the failure to submit an application for an individual permit or notice of intent for a general permit may result in an unpermitted discharge subject to enforcement."

58. Ohio Adm.Code 3745-39-04(B)(15) defines "storm water discharge associated with industrial activity" as "the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas ... and includes, but is not limited to, storm water discharges from: ... immediate access roads and rail lines ...; [and] refuse sites ...." This rule further specifies that facilities involved in the recycling of materials are considered to be engaging in an "industrial activity".

59. Part I.B.1 of the Construction Storm Water General Permit provides that coverage under the Construction Strom Water General Permit is required for construction

activities disturbing one or more acres of land. The Construction Storm Water General Permit applies to all new and existing discharges composed entirely of storm water discharges associated with construction activity that enter surface waters of the state.

60. Part I.B.1 of the Construction Storm Water General Permit defines "construction activity" to include any clearing, grading, excavating, grubbing and/or filling activities that disturb one or more acres of total land.

61. Part II.A of the Construction Storm Water General Permit requires operators who obtain initial coverage under the Construction Storm Water General Permit to submit a complete and accurate Notice of Intent to commence construction at least twenty-one (21) days prior to the commencement of construction.

Imposes Strict Liability for Environmental Violations

62. Environmental protection statutes have long been recognized as strict liability laws designed to prohibit public welfare offenses. In *U.S. v. United States Steel Corp.*, 328 F.Supp. 345, 356 (N.D. Ind. 1970), that Court noted that "[t]he public is injured just as much by unintentional pollution as it is by deliberate pollution. In *U.S. v. Liviola*, 605 F.Supp. 96 (N.D. Ohio 1985), the District court for the Northern District of Ohio found that federal hazardous waste laws, like other environmental statutes dealing with water or air pollution, imposed strict liability, and that Congress had made intent irrelevant to the question of civil penalties.

63. Under Ohio law, environmental liability is also strict. *See, e.g., Prifessional Rental, Inc. v. Shelby Ins.*, 75 Ohio App.3d 365, 376 (1991); *State of Ohio v.*

Gastown, 49 Ohio Misc. 29 91975); *State of Ohio v. Mercomp, Inc.*, 167 Ohio App.3d 64, 2006-Ohio-2729, ¶¶39-43 (8th Dist.). More specifically, when a statute requires that "no person shall" take some action, without any reference to degree of culpability, that statute indicates clearly the legislature's intent to impose strict liability. *See State v. Cheraso*, 43 Ohio App.2d 221, 223 (1988); *State v. Grimsley*, 3 Ohio App.3d 265 (1982).

64. Imposing strict liability on both owners and operators is not an accident of *ad hoc* statutory interpretation. Rather, strict liability is intentionally imposed on both entities to buttress an important public policy—safeguarding the general public, neighboring residents and businesses, as well as owners and operators (including their workers), from the known health hazards.

65. Revised Code 3714.13 states that "no person shall violate any section of this chapter ... a rule adopted under this chapter ..." or any of the terms and conditions of a permit or license issued pursuant to this Chapter. Revised Code 3734.11 states that "no person shall violate any section of this chapter, any rule adopted under it ..." or the terms and conditions of a permit or license issued pursuant to that Chapter. Revised Code 6111.07 states that "no person shall violate or fail to perform any duty imposed by [R.C. 6111.01 to 6111.08] or violate any order, rule or term or condition of a permit issued ... pursuant to those sections."

66. Ohio's construction and demolition debris, solid waste and water pollution control rules were adopted pursuant to R.C. Chapters 3714, 3734 and 6111, respectively.

67. Thus, Ohio's construction and demolition debris, solid waste and water pollution control laws to not tolerate the concept of willful ignorance or shuffled-away liability. Rather, these laws require a construction and demolition debris landfill to be operated in strict accordance with the letter of the law.

Defendants Scugoza and C&D Disposal are Operators.

68. Defendants Scugoza and C&D Disposal are "operators" or "facility operators", as those terms are defined in Ohio Adm.Code 3745-400-01(I) and 3745-27-01(O)(5), for the C&D Disposal Landfill, the rail unloading area, the so-called "Recycling Area", the haul road related to the C&D Disposal Landfill, and the areas containing scrap tires (C&D Disposal waste activities). Particularly, Defendant Scugoza identified C&D Disposal, LLC as the company that ran the C&D Disposal waste activities. [Scugoza, TR. pp.10-11, 21.] Further, based on the testimony of Ohio EPA and Health District witnesses, Scugoza was the person with site authority directing C&D Disposal as it committed environmental violations. [Scugoza, TR pp. 10-11, 21; Warner, TR pp. 150-153, 163-164, 167; Wolf TR. pp. 205, 207; Pennington, TR. pp. 234-235; Gampolo, TR. pp. 256, 269-270.]

69. Scugoza's liability is not vicarious for being an owner or officer of C&D. Rather, his liability is direct for his personal involvement and action in the actual exercise of his authority[1]. It is not that he had authority but rather that he actually exercised it in directing the conduct that caused the violations. For example (without limitation) it was Scugoza who decided to remain open while in violation and to fill to greater than a 4-1

[1] A corporate officer who instructs his employees to rob a bank is a bank robber, not vicariously but because of his own actions.

slope and to operate with manual rather than automatic leachate pumps. His liability arises not from his ability to make these decisions but because he actually did so.

Defendant Crossridge is an Owner or Property Owner.

70. Crossridge is an "owner" or "property owner", as those terms are defined in Ohio Adm. Code 3745-400-01(EE) and 3745-27-01(O)(7), for the property encompassing the past licensed Crossridge Landfill, the unlicensed C&D Disposal Technologies Landfill ("C&D Disposal Landfill", "C&D Disposal Facility," "Facility"), the rail unloading area, the so-called "Recycling Area" and the haul road related to the C&D Disposal Landfill.

Defendants Violated Ohio's Construction and Demolition Debris and Solid Waste Laws.

71. Defendants illegally disposed of construction and demolition debris waste and solid waste onto haul roads, in the C&D Disposal rail area and in a local creek due to improper loading and transporting of waste from the rail area to the C&D Disposal Landfill in violation of Ohio Adm.Code 3745-400-04(B), Ohio Adm.Code 3745-27-05(C) and R.C. 3734.03.

72. From approximately October 8, 2009 to April 12, 2010, Defendants allowed the C&D Disposal Landfill to operate without having a designated unloading zone and disposed of waste directly into the working face without first removing solid waste from the construction and demolition debris, in violation of Ohio Adm.Code 3745-400-11(F)(3)(a) and (b) and Revised Code 3714.021(B). [Walkenspaw, TR p. 164; Warner, TR pp. 164-165, 179.]

73. Once Defendants began using an unloading zone, Defendants continued to allow solid waste to be buried into the working face of the C&D Disposal Landfill because the facility never had the number of pickers or the proper mechanical means to separate the solid waste from its incoming construction and demolition debris waste stream, in further violation of Revised Code 3714.021(B). [Walkenspaw, TR. p. 84-88, 120-122; Warner, TR. p. 155.]

74. From the start of the C&D Disposal Landfill in 2005 to approximately February of 2011, the C&D Disposal Landfill kept no records verifying the removal of the solid waste from the C&D Disposal Landfill working face, in violation of Ohio Adm. Code 3745-400-11(B)(10). [Scugoza, TR. p. 56; Warner, p. TR. 160-161.]

75. From approximately October of 2009 to the present, Defendants allowed the C&D Disposal Landfill to exist without a licensed approved leachate management system, in violation of Ohio Adm.Code 3745-400-11(B)(1).

From approximately October of 2009 to the present, Defendants have allowed C&D Disposal Landfill to exist with large areas that do not have adequate fire protection to cover the waste, in violations of Ohio Adm.Code 3745-400-11(H). [Warner, TR p. 165.]

76. Defendants filled the C&D Disposal Landfill above its licensed approved 4:1 grade, in violation of Ohio Adm.Code 3745-400-07 (G)(2)(h)(iv) and Ohio Adm. Code 3745-400-11(B)(1). [Exhibits B24, B25, B26, B27, B28; Walkenspaw, TR pp. 91-97.]

77. Since the denial of the C&D Disposal Landfill's license in February of 2012, Defendants have allowed 7000 tons of scrap tires that no longer have any beneficial used to remain open dumped on Crossridge property, in violation of Ohio Adm.Code 3745-27-05(C) and R.C. 3734.03. [Walkenspaw, TR. pp. 41, 75-77; Scugoza, TR. pp. 42-44, 286; Exhibit B17.] Those tires have been there more than two years making them "solid waste" by definition.

78. From January of 2011 to the present, the Defendants have illegally dumped and open dumped 7000 tons of intermingled solid waste and construction and demolition debris at the so called "Recycling Area" onto Crossridge property in violation of Ohio Adm.Code 3745-400-04(B), Ohio Adm.Code 3745-27-05(C) and R.C. 3734.03. Defendants removed and sold all marketable recyclables and left the rest to the elements.

79. From January of 2011 to the present, the Defendants have created a nuisance due to the illegal disposal and open dumping at the so called "Recycling Area, in violation of Ohio Adm. Code 3745-400-11(B)(15).

80. Defendant has failed to mandatorily close C&D Disposal Landfill in violation of Ohio Adm.Code 3745-400-12 (B) and Ohio Adm.Code 3745-400-12 (E)(8)(a). [Scugoza, TR p. 41.]

Defendants Violated Ohio's Water Pollution Control Laws.

81. Despite repeated Notices of Violation, Defendants failed to take steps to stabilize the C&D Disposal facility and install proper storm water controls. [Exhibits D5, D9, D10, D11, D13, D14, D15, D16 & D17,] During one inspection, Mr. Wolfe noted that "only 5% of the entire disturbed area [was] stabilized." [Exhibit D16.] Multiple

witnesses testified that, in the area of the rail-car offloading operation, waste materials and debris were observed in the stream.

82. While Defendants occasionally took some steps to address storm water, the overwhelming evidence demonstrates that Defendants did very little to stabilize the site. Defendants' lack of storm water controls at the facility resulted in the discharge of sediment and waste materials to waters of the state.

83. The Court finds that Defendants activities resulted in water pollution in violation of R.C. 3714.13 and the discharge of pollutants to waters of the state (Cross Creek, which flows into the Ohio River) in violation of R.C. 6111.04. Additionally, the Court finds that, by allowing debris, waste materials and sediment to enter waters of the state, Defendants have not kept waters of the state free from suspended solids or other substances in violation of Ohio Adm.Code 3745-1-04. Therefore, the Court finds Defendants in violation of R.C. 3714.13, 6111.04 and Ohio Adm.Code 3745-1-04.

84. Further, Defendants continued to construct and/or disturb new areas of the facility without proper storm water permit coverage. [Exhibits D5, D15, D16 & 17.] Defendants began construction of the rail spur prior to October 17, 2007 and did not obtain coverage under the Construction Storm Water General Permit until January 8, 2008. Defendants began construction of the Road to Grandad and a future water supply pond sometime prior to November 23, 2010 and have never obtained coverage under any storm water permit for these activities. Defendants began construction of the so-called "Recycling Area" in January 2011. Thus, the Court finds that the Defendants violated

Ohio Adm.Code 3745-39-04 for conducting construction activities at the facility without a permit.

85. Even when Defendants did obtain coverage under a General Storm Water Permit, Defendants failed to comply with that permit. As described above, Defendants failed to properly stabilize the construction and demolition debris facility, something that could have been easily accomplished by simply planting grass in the undisturbed areas of the landfill. [Wolfe, TR pp. 198, 222.] Additionally, Defendants failed to install proper storm water controls at the facility, which directly led to the discharge of sediment to waters of the state. Therefore, the Court finds that Defendants failed to comply with the requirements of the General Permit to (1) prevent sediment impacts to waters of the state, (2) stabilize undisturbed areas of the facility; and (3) have a properly sized sediment pond.

86. Given this Court's finding that the "Recycling Area" is an open dump, Defendants were required to obtain coverage under the Construction General Storm Water Permit prior to the creation of the "Recycling Area". The Court's determination of whether the "Recycling Area" is an open dump is relevant only to the *type* of General Storm Water Permit Defendants were required to obtain for this area. Had the Court found that Defendants properly established a recycling area, then Defendants would have been required to obtain coverage under the Industrial Storm Water General Permit, something they have not done. [Wolfe, TR p. 223.] The evidence presented at trial demonstrates that Defendants failed to apply for or obtain coverage under *any* Storm Water General Permit prior to the creation of the "Recycling Area." The evidence also

demonstrates that Defendants have never obtained coverage under a General Storm Water Permit for the "Recycling Area." Thus, the Court finds that Defendants have violated Ohio Adm.Code 3745- 39-04 by failing to obtain coverage under the Construction General Storm Water Permit for the "Recycling Area."

Defendant Scugoza is Personally Liable for the Violations at the C&D Disposal Landfill and the Crossridge Landfill.

87. Defendant Scugoza is personally liable under the personal participation theory. It is well established that, when dealing with public health and welfare laws, corporate officer can be held individually liable for the corporation's violations of public health legislation. *United States v. Park*, 421 U.S. 658, 95 S.Ct. 1903, 44 L.Ed.2d 489 (1975); *United States v. Dotterweich*, 320 U.S. 277, 64 S.Ct. 134, 88 L.Ed. 48 (1943). This line of cases holds that the personal participation of a corporate officer subjects that officer to liability for the/her corporation's illegal conduct. For example, in *United States v. Hodges X-Ray, Inc.*, 759 F.2d 557, 561 (6th Cir. 1985), a principal shareholder and president was found individually liable for his corporation's statutory violations.

88. Courts in Ohio have similarly determined that a corporate officer, under the personal participation theory, may be held personally liable for the corporation's violations of law. Under the personal participation theory, "[o]fficers of a corporation 'are not held liable for the negligence of the corporate merely because of their official relation to it, but because of some wrongful or negligent act by such officer amounting to a breach of duty which resulted in an injury .... To make an officer of a corporation liable for the negligence of the corporation there must have been upon his part such a

breach of duty as contributed to, or helped to bring out, the injury; that is to say, he must be a participant in the wrongful act." *Young v. Featherstone Motors*, 97 Ohio App. 158, 124 N.E.2d 158 (2nd Dist. 1954).

89. The evidence presented at trial establishes that the activities at the C&D Disposal Landfill occurred because of the direction and control of Defendant Scugoza. All of the Plaintiffs' witnesses testified that Defendant Scugoza was the person they met with and spoke to when inspecting the facility; he was the person to whom they directed all of their correspondence; and they witnessed him directing the employees at the Facility to perform certain functions. Moreover, Defendant Scugoza admitted that he had expended his own money to operate the landfill.

90. While Defendant Scugoza testified that he had no control over the day to day operations at the C&D Disposal Landfill, the rail unloading area and the so-called "Recycling Area" and the haul road related to the C&D Disposal Landfill, such testimony was unbelievable and not supported by any corporate notes, corporate contracts/agreements or any other tangible evidence. Scugoza did in fact actually control those activities. In fact, he complained that his partners would not help him.

91. Defendant Scugoza had a 66% control over Defendant C&D Disposal through his position with C&D Disposal Holdings, LLC. [Scugoza, TR. pp. 7, 31-32]. Defendant Scugoza produced no evidence that his apparent sixty-six percent control over monies and operations was in anyway diminished by incorporation agreements or otherwise. [Scugoza, TR. pp. 7-70, 276-309].

92. Defendant Scugoza's defense against the violation charge by the State of Ohio was a lack of personal involvement, a lack of personal control over the monies and

day-to-day operations, a lack of monies to correct the violations, and a lack of knowledge concerning the existence of violations. [Scugoza, TR. pp. 7-70, 276-309]. However, Defendant Scugoza was aware of the violations alleged by the State of Ohio because the inspectors kept him informed with written and verbal notices of violation. Furthermore, violations like overfilling the facility, accepting waste at a pace to fast to separate solid waste out of the construction and demolition debris, open dumping in the "Recycling Area" and improperly loading and transporting waste from the rail area were all violations that could have been prevented without the expenditure of money. It simply required Defendant Scugoza to instruct the workers to stop the violations.

93. Defendant Scugoza presented no business records to establish that the over 14 million dollars in revenue collected by the subject operations were not sufficient to address violations at the site. [Scugoza, TR. pp. 7-70, 276-309]. In some instances, Defendant Scugoza needed to only have C&D Disposal, LLC stop certain activities (illegal disposal at the Recycling Area and/or overfilling the C&D Disposal Landfill) and, thus, lack of money could not have been the cause of the violation.

94. Finally, Defendant Scugoza was aware of the violations through written and verbal reports of violations given to him by Ohio EPA and the Jefferson County Health Department, as is cited repeated above. It was Scugoza's decisions that kept the facility in operation while also in violation.

95. Defendant Scugoza testified that Deigo Tantillo was responsible for daily operations at the Facility and that Mr. Tantillo prevented him from getting the Facility into compliance with Ohio's environmental laws. [Scugoza, TR p. 39, 54-58.] However,

the overwhelming evidence demonstrates that Defendant Scugoza was the person responsible for daily operations at the Facility. Mr. Warner testified that on his numerous visits to the Facility, he had never heard of nor met Mr. Tantillo [Warner, TR pp. 149 – 150], and none of the State's inspectors were informed that someone other than Defendant Scugoza was the person they should be contacting with respect to the violations at the Facility. [*See, e.g.,* Pennington, TR p. 235]

96. Defendants' own witness, Mr. Doyle, the General Supervisor for the site, testified that he didn't have any interaction with Mr. Tantillo. [Testimony of Douglas Doyle, TR p. 311.]

INJUNCTIVE RELIEF AND PENALTY

97. When a Court determines that a violation of R.C. Chapters 3714, 3734 and/or 6111 has occurred, each of these statutes provides for imposition of injunctive relief and civil penalties. *See,* R.C. 3714.11, 3734.13, 6111.07 and 6111.09.

98. The maximum civil penalty for such violations is $10,000 per day for each day of violation. *Id.*

99. The setting of a civil penalty in a case is within the informed discretion of the trial court. *State ex rel. Brown v. Dayton Malleable, Inc.*, 2nd Dist. No. 6722, 1981 WL 2276 (Apr. 21, 1981), partially rev'd on other grounds, 1 Ohio St. 3d 151 (1982). The penalty should serve the purpose of deterring future violations and should not be so ordinary that it becomes an anticipated or accepted cost of doing business. *State ex rel. Brown v. Dayton* Malleable, 1 Ohio St.3d 151, 438 N.E.2d 120 (1982). In such cases,

courts have looked at the following factors in assessing a civil penalty in an environmental case:

a. The sum appropriate to redress the harm or risk to public health or the environment;

b. The sum appropriate to remove the economic benefit gained or to be gained from delayed compliance;

c. The sum appropriate as a penalty for the violator's degree of recalcitrance, defiance or indifference to the requirements of the law; and

d. The sum appropriate to recover unusually or extraordinary enforcement costs thrust upon the public.

State v. Tri-State Group, Inc., 7th Dist. No. 03 BE-61, 2004-Ohio-4441, citing *State v. Howard*, 3 Ohio App.3d 198, 444 N.E.2d 482 (3rd Dist. 2006); *Brown v. Dayton Malleable*, 1 Ohio St.3d at 157; and *Mentor v. Nozik*, 85 Ohio App.3d 490, 620 N.E.2d 137 (11th Dist. 1993). In addition to the above factors, courts may also consider the following mitigation factors when calculating a civil penalty:

a. The sum, if any, to reflect any part of the non-compliance attributable to the government itself; or

b. The sum appropriate to reflect any part of the non-compliance caused by factors completely beyond the violator's control.

Dayton Malleable, 1981 WL 2276 at *3.

100. With respect to Defendants violations of Ohio's construction and demolition debris laws, the Court finds that, as a result of the overfilling of the C&D Disposal Facility, Defendants received an economic benefit of $4 million in gross receipts[2]. Defendants C&D Disposal and Scugoza allowed the filling of the C&D Disposal Landfill in excess of amounts authorized by the Facility's construction and demolition debris license. This amount of material should not have been accepted at the C&D Disposal Landfill. It follows that Defendants C&D Disposal and Scugoza should, therefore, not have received moneys for the unlawful disposal of these wastes at the Facility.

101. Therefore, the Court finds that an appropriate civil penalty for the construction and demolition debris violations to be $4 million – the amount of economic benefit realized by the Defendants for their violation of Ohio law.

102. The evidence presented at trial demonstrates that Defendants were in violation of the various provisions of Ohio's water pollution control statute for over 14,000 days. [Reeder, TR pp. 248-249; Exhibit F1.] Revised Code 6111.09 provides for a civil penalty of up to $10,000 per day for each day of violation. Assessing the maximum of $10,000 per day for each day of violation in this case would result in a civil penalty of $140,000,000.

103. The State, however, has not requested the maximum statutory penalty in this case. Rather, the State, weighing the factors discussed above, requested the Court

[2] There was no evidence presented as to defendants' costs but they would be limited to wages and fuel because all other costs would have been incurred even without the excess filling.

impose a civil penalty of $50 per day for each day of violation, which totals $700,000. [Reeder, TR pp. 249-250.] Defendants presented no evidence to counter the State's request. In actual fact those violations continue, presumably to this day, even though calculation has stopped.

104. The Court finds that the State has shown environmental harm as a result of Defendants' actions. The lack of proper storm water controls at the C&D Disposal Facility resulted in sediment entering waters of the state, which can degrade habitat within the stream ecosystem. In addition, Defendants rail-car offloading operations resulted in debris and other waste materials being deposited in waters of the state.

105. The Court finds that Defendants recalcitrance and indifference to requirements of the law is high with respect to both the C&D Disposal Landfill and the Crossridge Landfill. The Defendants were unresponsive to the Notice of Violation letters, failed to provide adequate storm water control at the C&D Disposal Facility, repeatedly commenced construction activities without obtaining proper storm water permit cover, and failed to submit required monitoring date for the facility since April 2011. [Wolfe, TR pp. 212-214; Exhibits D15, D16 & D17; Pennington, TR p. 238-239.] Additionally, the Crossridge NPDES Permit expired and Defendants Scugoza and Crossridge failed to apply for a renewal permit. [Pennington, TR pp. 239-240.] Defendants made the conscious decision to fill to a 3-1 slope without the variance ever being granted.

106. The evidence presented also demonstrates that some compliance could have been achieved with little effort on the part of the Defendants. Mr. Wolfe testified that

stabilization of the site typically includes planting of grass seed over the disturbed areas. [Wolfe, TR p. 218.]

107. The risk of harm and the high degree of recalcitrance justify a penalty of $50 per day for each day of violation in this case.

108. The Court agrees with the State that assessment of the maximum statutory penalty in this case is not warranted. Further, the Court agrees with the State that $50 per day for each day of violation is appropriate and awards a civil penalty of $700,000.

109. The court may consider the financial status of the defendant when setting a civil penalty. *State ex rel. Petro v. Mauer Mobile Home Court, Inc.*, 6th Dist. No. WD-06-053, 2007-Ohio-2262, ¶ 62, citing *State es rel. Petro v. Tri-State Group,* 7th Dist. No. 03 BE61, 20014-Ohio-4441. However, Defendants presented no evidence of their financial status, other than Defendant Scugoza's statements that "he's broke". [Scugoza, TR p. 289.] The Court is persuaded by Defendant Scugoza's statements as to cash flow but has no idea of Defendant's net worth, nor what financial arrangements exist with Defendant's other investors. The Court is therefore reluctant to reduce the penalty. Further, the $4,000,000.00 portion is for money actually received by Defendants.

ORDER

110. For the foregoing reasons, this Court finds the Defendants jointly and severally liable on all counts as alleged in the State's Complaint. The Court adopts and orders the State's recommendation of a civil penalty of $4 million in economic benefit for

the violations of Ohio's construction and demolition debris and solid waste laws and $700,000 for the violations of Ohio's water pollution control laws.

111. The Court further orders the following injunctive relief to be done by Defendants:

A. Remove and properly dispose of all solid waste and other materials from the so called "Recycling Area," in accordance Revised Code Chapter 3734;

B. Remove and properly dispose of all tires on the Crossridge property, in accordance Revised Code Chapter 3734;

C. Remove and properly dispose of all solid waste at the Crossridge property, in accordance Revised Code Chapter 3734;

D. Pursuant to Ohio Adm.Code 3745-400-12, properly conduct closure of the C&D Disposal Landfill;

E. In alternative to the injunctive relief outlined in A-D, Defendants can perform the injunctive relief authorized by Ohio EPA entitled "Alternative Closures for C&D Disposal Technologies and Crossridge Landfills as attached as Exhibit A to Plaintiff's Proposed Findings of Fact and Conclusions of Law filed January 28, 2014."

F. Pursuant to Ohio Adm.Code 3745-400-16, perform post closure care after completing closure at the C&D Disposal Landfill and provide

post closure financial assurance in accordance with Ohio Adm.Code 3745-400-18.

G. In the event that Ohio EPA seeks to close the C&D Disposal Landfill, Ohio EPA is granted use of Crossridge Property soils and access to Crossridge property to perform such activities;

H. Ohio EPA is granted continuing access to the Crossridge Property for inspections;

I. Obtain coverage under the applicable Storm Water General Permits for all undisturbed areas of the Property;

J. Stabilize all undisturbed areas of the Property;

K. Install and maintain proper storm water controls at the Property until all closure activities have been completed;

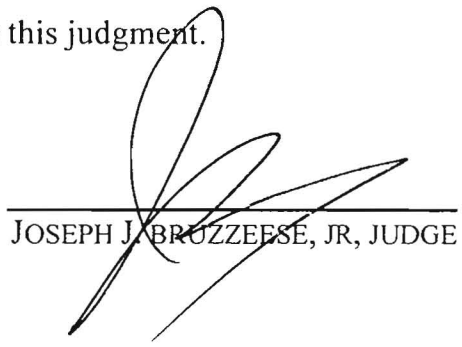
L. Update the Storm Water Pollution Prevention Plan in accordance with the applicable General Storm Water Permit;

M. Apply for and maintain a NPDES Permit for the Crossridge Landfill until such time as the Crossridge Landfill is properly closed; and

N. Comply with all terms and conditions of any permits and/or licenses issued to Defendants for the Property.

112. Finally, the Court orders the Defendants to pay all court costs associated with this action. The court retains jurisdiction to enforce this judgment.

IT IS SO ORDERED.



JOSEPH J. BRUZZESE, JR, JUDGE

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