

THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO  
2011 JUL 15 AM 10:58

2011.07.3867

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

SUMMIT COUNTY :  
CLERK OF COURTS :

CASE NO. \_\_\_\_\_

JUDGE LYNNE S. CALLAHAN

Plaintiff,

v.

COMPLAINT FOR  
INJUNCTIVE RELIEF AND  
CIVIL PENALTIES

DAVID KLEIN :  
d.b.a. BELLE-AIRE CLEANERS :  
649 Storer Avenue :  
Akron, Ohio 44320, :

Defendant.

COPY

NATURE OF THE ACTION

Defendant David Klein, doing business as Belle-Aire Cleaners in the City of Akron, has operated dry cleaning equipment which emits perchloroethylene, a known carcinogen, without timely applying for and receiving mandatory permits from the Ohio Environmental Protection Agency ("Ohio EPA"). Therefore, Plaintiff State of Ohio, on relation of Ohio Attorney General Michael DeWine, and at the written request of the Director of Ohio Environmental Protection ("Director"), hereby institutes this action to enforce Ohio's Air Pollution Control laws as codified in Chapter 3704 of the Ohio Revised Code and the rules adopted thereunder. Plaintiff alleges as follows:

GENERAL ALLEGATIONS

1. Defendant David Klein ("Defendant") is an individual with a business address of 649 Storer Avenue, Akron, Summit County, Ohio, 44320.

2. Defendant owns and operates a dry cleaning facility, Belle-Aire Cleaners, located at 649 Storer Avenue, Akron, Summit County, Ohio 44320 (hereinafter the "Facility").
3. Belle-Aire Cleaners is a "Facility" as defined in Ohio Adm.Code 3745-15-01(Q) and 3745-31-01(OO) and has been assigned Ohio EPA facility identification number 1677010807. Prior to December 2007, Belle-Aire Cleaners was a "Facility" as defined in Ohio Adm.Code 3745-15-01(P) and 3745-31-01(NN).
4. Since a date currently unknown to Plaintiff, but since at least 1997, Defendant has been the "owner" and/or "operator," as defined in Ohio Adm.Code 3745-15-01(U) of the Facility. Prior to December 2007, Defendant was an "owner" and/or "operator" as defined in Ohio Adm.Code 3745-15-01(T).
5. A diligent search of the Ohio Secretary of State's business filings produced no results for Belle-Aire Cleaners. Belle-Aire Cleaners is not incorporated in the State of Ohio.
6. Defendant, by virtue of his position as owner and operator of Belle-Aire Cleaners, alone or in conjunction with others, caused, participated in, controlled, and/or ordered the violations of law alleged in this Complaint. Therefore, Defendant David Klein is personally liable for the acts alleged in this Complaint.
7. As part of his operations at the Facility, Defendant utilizes equipment and conducts 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 emit air contaminants, they constitute "air contaminant sources," as that term is defined by R.C. 3704.01(C), and Ohio Adm.Code 3745-31-01(I), and Ohio Adm.Code 3745-35-01(B), prior to December 2007.
8. Perchloroethylene is a chemical regulated as an air pollutant under U.S. EPA's National Emissions Standards for Hazardous Air Pollutants ("NESHAP") regulations.
9. Defendant uses perchloroethylene in his operation of the Facility.

10. The Facility is subject to regulations found in the Code of Federal Regulations (“CFR”), specifically, 40 CFR Part 63 Subpart M, which pertain to NESHAP regulations. These regulations ban the utilization of existing transfer machines emitting perchloroethylene effective July 28, 2008.
11. The Akron Regional Air Quality Management District (“ARAQMD”) acts as an agent of Ohio EPA for air pollution matters arising in Summit County.
12. Ohio Revised Code 3704.05(G) states that no person shall violate any order, rule, or determination of the Director that is issued, adopted or made under R.C. Chapter 3704.
13. All rules and orders referenced in this Complaint have been adopted by the Director under R.C. Chapter 3704.
14. 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).
15. The allegations in paragraphs one through fourteen are incorporated into the following Count as if fully rewritten therein.

**COUNT ONE**  
**FAILURE TO OBTAIN A PERMIT TO OPERATE/PERMIT TO INSTALL AND OPERATE**

16. Former Ohio Adm.Code 3745-35-02 stated, in part, that no person shall cause, permit, or allow the operation or other use of any air contaminant source without applying for and obtaining a PTO from the Director.
17. The requirement to obtain a PTO found in Ohio Adm.Code 3745-35-02 remained in effect until June 30, 2008. Thereafter it was superseded by the requirement to obtain a permit to install and operate (“PTIO”) found in the current version of Ohio Adm.Code 3745-31-02(A)(1).

18. On October 7, 2009, an inspector from ARAQMD visited the Facility and discovered a transfer machine system, consisting of a Midwest Model #4101 washer and a Hoyt Model #SF 130 dryer, in operation. The system is referenced as emissions unit D001.
19. Emissions unit D001 utilizes perchloroethylene and is a source of hazardous air pollutants.
20. Upon information and belief, emissions unit D001 has been in operation at the Facility since approximately 1971.
21. Ohio EPA issued Defendant PTO No. P0102768 for emissions unit D001 on December 17, 2001, which expired on December 17, 2006.
22. From December 17, 2006, the date Defendant's PTO expired, to June 30, 2008, Defendant continued to operate emissions unit D001 without a PTO, in violation of former Ohio Adm.Code 3745-35-02.
23. From June 30, 2008 to the present, Defendant operated emissions unit D001 without a PTIO, in violation of Ohio Adm.Code 3745-31-02(A)(1).
24. The acts and omissions alleged in this Count constitute violations of former Ohio Adm.Code 3745-35-02, current Ohio Adm.Code 3745-31-02(A)(1) and R.C. 3704.05(G), for which conduct Plaintiff is entitled to injunctive relief and for which Defendant is subject to civil penalty of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, including each day of violation subsequent to the filing of this Complaint, pursuant to R.C. 3704.06(C).

#### **PRAYER FOR RELIEF**

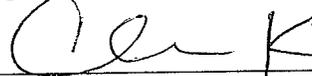
Therefore, Plaintiff respectfully requests that this Court:

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

- B. Order Defendant to immediately cease operating the transfer machine of emissions unit D001, which emits perchloroethylene. 40 CFR Part 63, Subpart M;
- C. Order Defendant to apply for and obtain a PTIO pursuant to Ohio Adm.Code 3745-31-02(A)(1)(c) for any other emissions unit at the facility that is subject to the permitting requirements;
- D. Order Defendant, pursuant to R.C. 3704.06, to pay civil penalties in the amount of twenty-five thousand dollars (\$25,000.00) per day for each day of each violation, including each day of violation subsequent to the filing of this Complaint;
- E. Order Defendant to pay all costs and fees for this action, including extraordinary enforcement costs incurred by the State and attorney 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 any such other relief as may be just.

Respectfully submitted,

**MICHAEL DEWINE**  
**OHIO ATTORNEY GENERAL**



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*Attorneys for Plaintiff State of Ohio*

Respectfully submitted,  
**MICHAEL DEWINE**  
**OHIO ATTORNEY GENERAL**



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