

IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

STATE OF OHIO, <i>ex rel.</i>	:	CASE NO. 2021 CV 00013
DAVE YOST	:	
OHIO ATTORNEY GENERAL,	:	JUDGE D'APOLITO
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
GEORGE KURIATNYK, <i>et al.</i> ,	:	
	:	
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	:	
	:	

CONSENT ORDER BETWEEN PLAINTIFF STATE OF OHIO AND DEFENDANT
McKINLEY INDUSTRIES, LLC

The State of Ohio, by its Attorney General (“Plaintiff,” or “the State”) and at the written request of Director of the Ohio Environmental Protection Agency, has filed a Complaint against Defendant McKinley Industries, LLC for a civil penalty and injunctive relief. The Complaint was filed for alleged violations of R.C. Chapters 3714 and 3734 and the rules adopted thereunder, which are Ohio’s solid waste and construction and demolition debris (“C&DD”) laws. The alleged violations occurred at the property located at 4136 East Dennick Avenue,

Youngstown, Mahoning County, Ohio. (“The Property”). The Parties have consented to the entry of this Order.

Therefore, without trial, admission, or determination of any issue of fact or law and with the consent of the Parties hereto, it is ORDERED, ADJUDGED, AND DECREED:

I. Definitions

1. As used in this Order, the following terms are defined:
 - a. “Defendant” means McKinley Industries, LLC. It does not include the other defendants, George Kuriatnyk or George Kuriatnyk dba K& M Shingle Recycling.
 - b. “The Director” means the Director of the Ohio Environmental Protection Agency (“Ohio EPA”) or any of her designees.
 - c. “Parties” means Plaintiff, the State of Ohio, and Defendant, McKinley Industries, LLC. It does not include the other parties, George Kuriatnyk or George Kuriatnyk dba K& M Shingle Recycling.
 - d. “Person” means an individual, public or private corporation, business trust, estate, trust, partnership, association, federal government or any agency thereof, municipal corporation or any agency thereof, political subdivision or any agency thereof, public agency, interstate body created by compact, any other entity, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.
 - e. “Property” means the property located at 4136 East Dennick Avenue, Youngstown, Ohio.

- f. “State” means Plaintiff, the State of Ohio, including the Director, Ohio Environmental Protection Agency, or the Ohio Attorney General on behalf of the State, or any State entity named in the Complaint.
- g. “Order” refers to this Order.
- h. “Written” means a paper copy or a saved or stored electronic copy.
- i. “Day” means calendar day, and does not exclude weekends or holidays.

II. Jurisdiction and Venue

2. The Court has jurisdiction over the Parties and the subject matter of this action under R.C. Chapters 3714 and 3734. The Complaint states a claim upon which relief can be granted. Venue is proper in this Court. Defendant shall not challenge the Court’s jurisdiction to enter or enforce this Order.

III. Parties Bound

3. Defendant McKinley Industries, LLC is an Ohio limited liability company with its principal place of business at 1300 Oak Hill Ave, Youngstown, OH 44507.

4. This Order shall apply to and be binding only upon Defendant, and, to the extent consistent with Civ. R. 65(D), on their agents, officers, employees, contractors, assigns, successors in interest, and those persons acting in concert, privity, or participation with Defendants who receive actual notice of this Order whether by personal service, by public record filed in the county land record, or otherwise. Defendant shall provide a copy of this Order to any successor in interest and to each key employee, consultant, or contractor employed to perform work referenced herein or to operate the Property.

5. This Order is in settlement and compromise of disputed claims, and nothing in this Order is to be construed as an admission of any facts or liability.

6. If insolvency, bankruptcy, or other failure occurs, Defendant must pay the remaining unpaid balance of the total civil penalty.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

7. The Plaintiff alleges that Defendant is responsible for violations of the C&DD and solid waste laws of the State of Ohio under R.C. Chapters 3714 and 3734. Compliance with this Order shall constitute full satisfaction of any civil liability of Defendant to Plaintiff for the claims alleged in Plaintiff's Complaint.

8. Nothing in this Order, including the imposition of stipulated penalties for violations of this Order, shall limit the authority of the State of Ohio to:

- a. Seek any legal or equitable relief or civil penalties from Defendant or any other appropriate person for any claims or violations not alleged in the Complaint;
- b. Seek any legal or equitable relief or civil penalties from Defendant or any other appropriate person for claims, conditions, or violations that occur on or exist after the entry of this Order;
- c. Enforce this Order through a contempt action or otherwise seek relief for violations of this Order; and/or
- d. Take any future legal or equitable action against any appropriate person, including Defendant, to eliminate or mitigate conditions at the Property that may present a threat to public health or welfare or to environment in derogation of applicable laws and rules, which State of Ohio has the authority to enforce.

9. This Order does not waive, abridge, settle, compromise, or otherwise impact any other claims in law or equity that the State of Ohio or other persons may have against Defendant.

10. Except for the signatories to the Order, nothing in this Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged, against any person not a signatory to this Order for any liability such non-signatory may have arising out of matters alleged in the Complaint. The State of Ohio also specifically reserves its right to sue any entity that is not a signatory to this Order.

11. Nothing in this Order shall relieve Defendant of its obligations to comply with applicable federal, state, or local statutes, regulations, rules, or ordinances.

12. Nothing herein shall restrict the right of Defendant to raise any administrative, legal, or equitable defense with respect to such further actions reserved by the State in this Order, or obligations imposed hereon to the defendant. However, with respect to the actions reserved by the State in this Section, Defendant shall not assert and/or maintain, any defense or claim of waiver, *res judicata*, collateral estoppel, issue preclusion, claim splitting, or other defenses based on any contention that Plaintiff's claims in any subsequent judicial or administrative proceeding could or should have been brought in this case.

V. PERMANENT INJUNCTION

13. Defendant is ordered and permanently enjoined to comply fully with R.C. Chapters 3714 and 3734 and the rules thereunder.

14. Defendant is ordered and enjoined to conduct the following:

- a. Effective immediately, Defendant shall not accept C&DD or solid waste at the Property unless authorized in advance by Ohio EPA in writing.
- b. Defendant will remove all shingles and miscellaneous C&DD and solid waste and arrange transportation of these materials to a licensed C&DD disposal facility or a licensed solid waste facility for disposal. Alternatively, if Defendant receives

written approval from Ohio EPA, Defendant may arrange for transportation of these materials to a legitimate C&DD recycling or processing facility where the materials will be recycled into a commodity for use or exchange in a legitimate market or for use in a beneficial manner.

c. Defendant shall remove a minimum of 1,400 cubic yards of C&DD from the Property every 180 days, calculated from the effective date of this Order. Accordingly, the C&DD shall be removed in accordance with the following schedule:

- i. Within 180 days of the effective date of this Order, a minimum of 1,400 cubic yards of C&DD will be removed.
- ii. Within 360 days of the effective date of this Order, a minimum of an additional 1,400 cubic yards of C&DD will be removed.
- iii. Within 540 days of the effective date of this Order, a minimum of an additional 1,400 cubic yards of C&DD will be removed.
- iv. Within 720 days of the effective date of this Order, a minimum of an additional 1,400 cubic yards of C&DD will be removed.
- v. Within 900 days of the effective date of this Order, a minimum of an additional 1,400 cubic yards of C&DD will be removed.
- vi. Within 1080 days of the effective date of this Order, a minimum of an additional 1,400 cubic yards of C&DD will be removed.
- vii. Within 1260 days of the effective date of this Order, a minimum of an additional 1,400 cubic yards of C&DD will be removed.

viii. Within 1440 days of the effective date of this Order, all remaining C&DD and any solid waste on the Property will be removed.

- d. Defendant shall keep a monthly log documenting all loads of waste/debris removed from the Property, using the form provided by Ohio EPA as Attachment A to this Order. This log shall include, at a minimum, a summary of the waste removed, the volume and weight of the waste removed, and the receiving facility. This log shall be available to Ohio EPA during inspections and upon requests.
- e. The log mentioned in Paragraph 14(d.) shall include an accurate diagram or picture with a visual indication of where debris was removed, using the map provided as Attachment B to this Order.
- f. Defendant shall obtain receipts from all disposal (or legitimate recycling facilities if approved in writing by Ohio EPA) that receive C&DD from the Property as specified in section (c.) of this Paragraph. These receipts shall indicate weight or volume of C&DD received by the facility. Defendant shall forward the receipts to Ohio EPA Northeast District Office at 2110 East Aurora Road, Twinsburg, Ohio 44087, Attn: Jerry Parker, within fourteen (14) days after each deadline imposed in section (c.) of this Paragraph.

VI. CIVIL PENALTY

15. Under R.C. 3714.11(B), Defendant McKinley Industries is ordered to pay a civil penalty of \$7,500. The penalty shall be held in abeyance until Defendant completes the removal of C&DD as specified in Paragraph, 14(c), unless Defendant fails to comply with any section of this Order. If Defendant fails to comply with this Order, then the civil penalty will be due immediately. If Defendant completes the removal of C&DD in compliance with the schedule as

specified in Paragraph 14(c), then the civil penalty shall be reduced to \$2,000, and shall be due upon the completion of removal of C&DD. Such payment shall be made by delivering to Sandra Finan, Paralegal, or his successor, Office of the Attorney General, 30 E. Broad St., 25th Floor, Columbus, Ohio 43215, a certified check or checks for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

16. If full payment of the civil penalty and any other amount due under this Consent Order is not received by the State in accordance with the terms of this Consent Order, the remaining unpaid balance of the total civil penalty and any other amount due, plus applicable interest under R.C. 131.02(D), shall become immediately due and owing. The remaining unpaid balance. Delinquent payments shall accrue interest at the rate per annum required by R.C. 5703.47 calculated from the Effective Date of this Order.

17. If any amount is not paid in accordance with the terms of this Consent Order, the Attorney General may collect that amount under R.C. 131.02. Pursuant to R.C. 109.081, in addition to the outstanding balance due under this Consent Order, collection costs of ten percent shall be owing and fully recoverable from the Defendant to be paid into the State Treasury to the credit of the Attorney General Claims Fund.

18. The State reserves the right to file a certificate of judgment lien against Defendant for the remaining unpaid balance of the total civil penalty, plus applicable statutory interest and collection costs, if the full civil penalty payment is not paid according to the schedule in this Order. Defendant shall not be permitted to claim a force majeure as an excuse for any untimely payment or partial payment of an amount less than the full civil penalty as specified in this Order.

VII. STIPULATED PENALTIES

19. If Defendant fails to comply with any of the injunctive relief in Paragraph 14 of this Order, Defendant shall immediately and automatically be liable for and shall pay stipulated penalties under the following schedule for each failure to comply:

- i. Defendant shall pay two hundred dollars (\$200.00) per day for each day any requirement of this Order is violated up to the first thirty (30) days of violation;
- ii. For each day any requirement of this Order is violated between thirty (30) days and ninety (90) days of violation, Defendant shall pay three hundred dollars (\$300.00) per day;
- iii. For each day any requirement of this Order is violated greater than (90) days of violation, Defendant shall pay nine hundred dollars (\$900.00) per day.

20. Stipulated penalties due under this Order shall be immediately due and owing without demand by the State and shall be paid by check or money order, payable to “Treasurer, State of Ohio” and delivered to Sandra Finan, Paralegal, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

21. Defendant’s payment and Plaintiff’s acceptance of such stipulated penalties under this Section shall not be construed to limit Plaintiff’s authority, without exception, to seek: 1) additional relief under R.C. Chapters 3714 and 3734; 2) judicial enforcement of this Order for the same violations for which a stipulated penalty was paid; or 3) sanctions for additional remedies, civil, criminal, or administrative, for violations of applicable laws. Further, payment of stipulated penalties by Defendant shall not be an admission of liability by Defendant.

VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

22. Performance of the terms of this Order by Defendant is not conditioned on the receipt of any private, Federal or State grants, loans, and/or funds. In addition, Defendant’s performance is

not excused by failing to obtain or any shortfall of any private, Federal or State grants, loans and/or funds or by the processing of any applications for the same.

IX. FACILITY ACCESS

23. As of the Effective Date, Ohio EPA and their representatives and contractors shall have access at reasonable times to the Property, and shall have access to any other property controlled by or available to Defendant to which access is necessary to effectuate the actions required by this Order. Access shall be allowed for the purposes of conducting activities related to this Order including but not limited to:

- a. Monitoring work or other activities taking place at the Property that relates to compliance with Chapters 3714 and 3734 of the Ohio Revised Code under this Order;
- b. Verifying any data or information submitted to Ohio EPA as part of this order;
- c. Conducting investigations relating to contamination at or near the Property that relate to compliance with Chapters 3714 and 3734 of the Ohio Revised Code under this Order;
- d. Obtaining samples;
- e. Assessing the need for planning or implementing additional response actions at or near the Property based on the obligations imposed in this Order;
- f. Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Defendant or its agents, relating to this Order; or

g. Assessing Defendant's compliance with this Order.

24. Defendant hereby agrees to hold the Director; Ohio EPA; and Ohio EPA's employees, authorized representatives, and contractors harmless for actions taken in accordance with these orders, and for any action not taken at the Property.

25. Defendant hereby agrees to relinquish any claim of ownership interest in any scrap tires, solid waste, or C&DD that may be removed from the Property by Ohio EPA if Defendant fails to comply with these orders.

26. Should Ohio EPA utilize public funds for any remediation or closure activity at the property, Defendant agrees that the Director may recover costs or may record those costs incurred while performing those activities, including costs for labor, materials, and contract services, at the office of the Mahoning County Recorder with the property's deed. Defendant agrees that the costs so recorded shall constitute a lien against the Property until discharged. Respondent agrees not to dispute the validity of any lien filed in accordance with these orders, either in law or equity.

X. SUBMITTAL OF DOCUMENTS

27. All documents required to be submitted to Ohio EPA pursuant to this Order shall be submitted to the following addresses, or to such addresses or to such address as Ohio EPA may hereafter designate in writing:

Ohio EPA
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: Jerry Parker

XI. EFFECT OF ORDER

28. This Order does not constitute authorization or approval of the construction, installation, modification, or operation of any waste and material management facility under R.C. Chapters 3714 or 3734 not previously approved by Ohio EPA. Approval for any such construction, installation, modification, or operation shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

29. Once it is effective, this Order supersedes and replaces the Ohio EPA's Director's Final Findings and Orders, issued August 20, 2018.

XII. MODIFICATION

30. No modification shall be made to this Order without the written agreement of the Parties and the Court.

XIII. MISCELLANEOUS

31. Nothing in this Order shall affect Defendant's obligation to comply with all applicable federal, state or local laws, regulations, rules, ordinances, or orders.

32. Any acceptance by the State of Ohio of any payment, document, or other work due subsequent to the time that the obligation is due under this Order shall not relieve Defendant from the obligations created by this Order.

33. Defendant shall inform the Ohio EPA of any change in Registered Agents' address and business addresses or telephone numbers, or the cessation of the business that is the subject of this action.

XIV. RETENTION OF JURISDICTION

34. This Court shall retain jurisdiction for the purpose of administering and enforcing this Order.

XV. ENTRY OF ORDER AND FINAL JUDGMENT BY CLERK

35. Under Rule 58 of the Ohio Rules of Civil Procedure, upon signing this Order by the Court, the Clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the Clerk is directed to serve upon all Parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Civ.R. 5(B) and note the service in the appearance docket. The failure of the Clerk to serve notice does not affect the validity of this Order.

XVI. EFFECTIVE DATE

36. This Order shall be effective upon the date of its entry by the Court.

XVII. COURT COSTS

37. Defendant is ordered to pay all court costs of this action.

XVIII. AUTHORITY TO ENTER INTO THE ORDER

38. Each signatory represents and warrants he has been duly authorized to sign this document and is fully authorized to agree to its terms and conditions, and, in the case of a person signing on behalf of a corporate entity, may so legally bind the corporate entity to all terms and conditions in this document. By signing this Order, each signatory waives all rights of service of process for the underlying Complaint.

IT IS SO ORDERED.

JUDGE

DATE

APPROVED AND AGREED TO BY:*

MCKINLEY INDUSTRIES, LLC

**DAVE YOST
OHIO ATTORNEY GENERAL**

Counsel for Defendant

/s/ Allen Vender

/s/ John McNally

ALLEN VENDER

JOHN A. MCNALLY IV

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0067328

EMILY E. HUDSON

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100 E. Federal St., 6th Floor

Assistant Attorneys General

Youngstown, OH 44503

Environmental Enforcement Section

30 East Broad Street, 25th Floor

*Counsel for Defendant, McKinley Industries
LLC,*

Columbus, Ohio 43215

Telephone: (614) 466-2766

Facsimile: (614)-644-1926

/s/ William McKinley

Allen.Vender@ohioattorneygeneral.gov

MCKINLEY INDUSTRIES

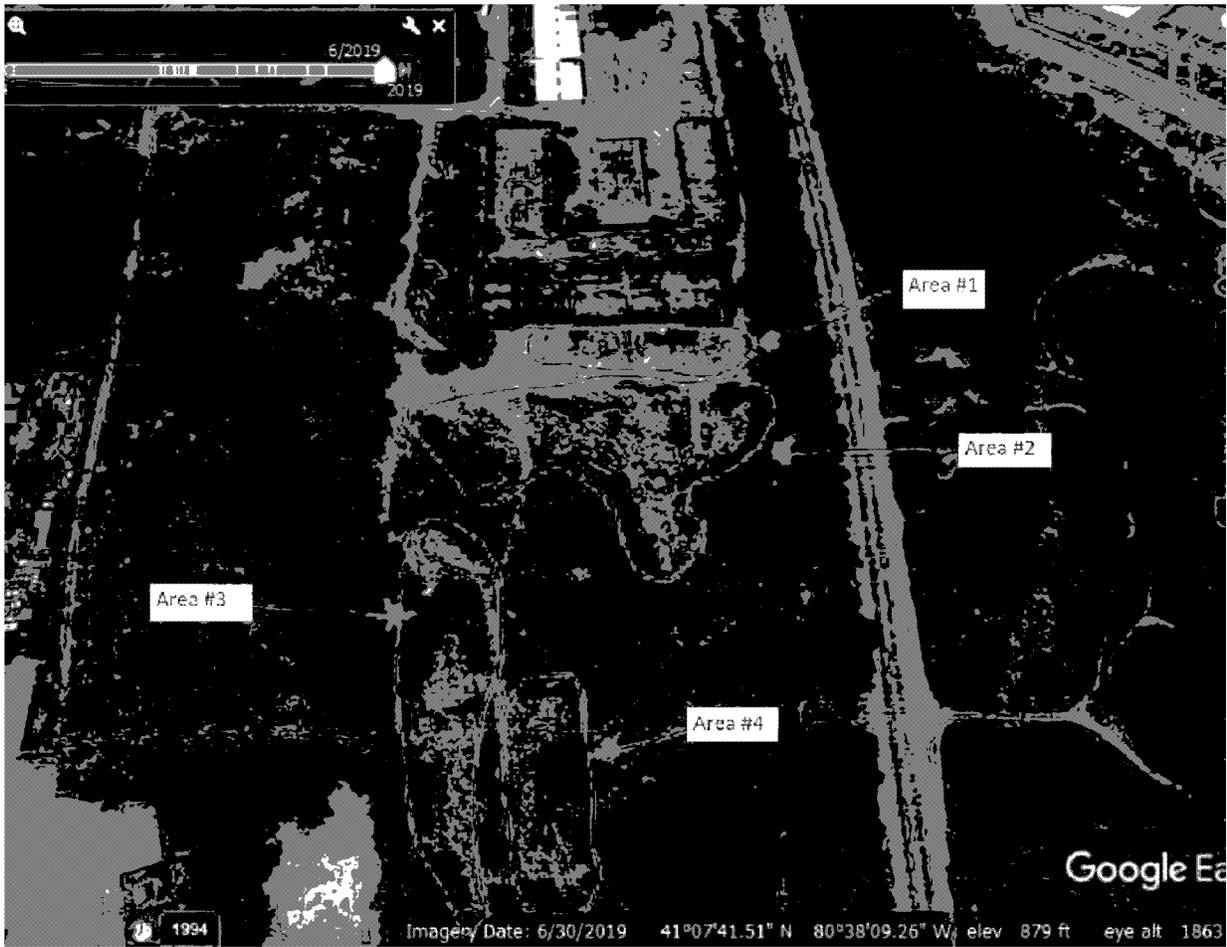
Emily.Hudson@ohioattorneygeneral.gov

William McKinley, President

Counsel for Plaintiff, the State of Ohio

*Original signatures on pdf maintained by plaintiff

ATTACHMENT B





Type: JE> SEE ATTACHED IMAGE

Case Number: 2021 CV 00013

Case Title: STATE OF OHIO EX REL DAVE YOST OHIO ATTY GENERAL -
vs- KURIATNYK, GEORGE et al AMD

So Ordered

A handwritten signature in black ink, appearing to be a stylized name.

Electronically signed on 2021-01-14 10:05:53 page 17 of 17