THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

STATE OF OHIO ex rel. RICHARD CORDRAY, ATTORNEY GENERAL OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2008-T-0102**
- vs -	:	
FRANK J. NAYPAVER, et al.,	:	
Defendants,	:	
FRANK RONALD NAYPAVER,	:	
Defendant-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2007 CV 01796.

Judgment: Affirmed.

Richard Cordray, Attorney General, and *Robert Eubanks*, Assistant Attorney General, State Office Tower, 25th Floor, 30 East Broad Street, Columbus, OH 43215-3400 (For Plaintiff-Appellee).

Frank Ronald Naypaver, pro se, 351 Florine Avenue, Leavittsburg, OH 44430 (Appellant Frank Ronald Naypaver).

MARY JANE TRAPP, P.J.

{¶1} Mr. Frank R. Naypaver appeals from the Trumbull County Court of Common Pleas order granting the Ohio EPA a preliminary and then a permanent injunction to remediate the unauthorized and hazardous accumulation of scrap tires on the Naypaver property. The action was originally filed against Mr. Frank J. Naypaver

("Frank Naypaver"), Mrs. Naypaver, and Mr. Frank R. Naypaver ("Ronald Naypaver"). All three Naypavers defended the action in the lower court, but only Ronald Naypaver is appealing.

{¶2} Although we are presented with an incomplete record in this case, there is evidence of proper service and timely notice of the injunction hearings, as well as consideration of the Naypavers' motions for continuances. The trial court denied the Naypavers' motions for continuances of both of the preliminary injunction hearings because they failed to support their motions with any affidavits or evidence attesting to Frank Naypaver's medical condition. Frank Naypaver did appear, however, for the final hearing, in which he had the opportunity to present his arguments that the tires did not pose an imminent danger, and that removal of the tires would result in greater harm, destroying the fragile ecological system the tire embankment supports. At the conclusion of the hearing, the court ordered the EPA to commence remediation in accordance with the competitively bid contract the EPA entered into with the Environmental Quality Management Company. It is from this judgment and the denial of the continuances that Ronald Naypaver timely appeals.

{¶3} We affirm the trial court's denial of the Naypavers' motions. The trial court did not abuse its discretion as neither motion complied with local practice, or set forth good reason as to why not one of the three members of the Naypaver family, who have been issued numerous violations and orders over the past 13 years, could not be present even though they had notice of all the hearing dates. Finally, Ronald Naypaver did not exhaust the statutory administrative appeals process, indeed failing to appeal any of the director's orders to the Environmental Review Appeals Commission

("ERAC"), which has exclusive jurisdiction over such appeals. Thus, he is precluded from arguing now, at the injunction hearing and on appeal, that there is no factual basis for the order.

{¶4} **Substantive and Procedural History**

{¶5} In the early 1990s, Mr. Frank Naypaver gave his son, Ronald, permission to build a shallow water ski lake on their property in Trumbull County. Without submitting a beneficial use plan or seeking approval from the Ohio EPA, Ronald used scrap tires to build the embankment. In addition to the scrap tire embankment, there were numerous scrap tires laying about the property.

{¶6} The battle to clean up the Naypaver site began shortly after the embankment was constructed. The tires were deemed a health and safety risk to the public and the environment as they constituted a nuisance, fire hazard, and encouraged the breeding of mosquitoes. In 1993, the EPA notified the Naypavers that the use of such scrap tires constituted disposal of unwanted material, in effect, "dumping," and that the tires needed to be stored properly and mosquito controls implemented. The West Nile Virus had been confirmed in Trumbull County, and the tires posed a severe fire risk. Once a scrap tire fire starts, it is not easily extinguished and continues to burn even though the tires are buried beneath the ground and covered in dirt. Typically, tire fires can be extinguished only with the use of fire pyrolytics, which are known toxins, hazardous to humans and the environment.

{¶7} The following year, in 1994, the Trumbull County Health Department (the "health department") reinspected the property and discovered no action had been taken

to remove the scrap tires. The health department issued an order to remove all the uncovered tires and those that were not used as part of the embankment.

{¶8} Despite additional inspections and citizen complaints in the ensuing years, the scrap tires remained uncovered and strewn about the property. In 1997, the health department again issued notices that the Naypavers continued to be in violation of open dumping regulations. In addition, they failed to register and obtain a license as a tire storage facility and failed to obtain beneficial use approval.

{¶9} After the Naypavers' repeated failure to appeal the findings of the director or the health department, or to cure the violations, a suit was filed in 2003. The trial court found that the site was a statutory and common law nuisance, a fire hazard, and posed an environmental danger to Trumbull County residents. The Naypavers agreed to a Consent Order Permanent Injunction ("COPI") in which the court allowed the Naypavers to keep the constructed tire embankment. In turn, the Naypavers were required to remove the additional tires on the property at a rate of no fewer than 500 tires per month, and to report the removal process status to the health department every three months. Only one such report was received for the removal of 311 tires in July of 2003.

{¶10} Notices of noncompliance and the continued violations, and orders to cleanup the site were again issued by the EPA in 2005 and 2006.

{¶11} The safety concerns became a reality with a scrap tire fire on the property in January of 2007. Four different fire crews from several townships tried to extinguish the fire using 75,000 gallons of water. The fire was successfully extinguished only after the crews dumped approximately 200 gallons of Triple F Foam, a known environmental

contaminant. When the EPA Emergency Response Inspector arrived on the property two days after the fire was extinguished, he observed approximately 1,500 - 2,000 tires were uncovered in the blaze. He also observed Ronald Naypaver attempting to bury the burned tires with a bulldozer in violation of statutory and administrative regulations.

{¶12} The following month, in February of 2007, a notice of violations and order for cleanup was again issued. Frank and Mrs. Naypaver then quitclaimed the property to Ronald Naypaver on May 23, 2007.

{¶13} After no action was taken, at the written request of the EPA director, the Attorney General filed a request for immediate entry and preliminary injunction on July 17, 2007 in the trial court. A summons was issued to all three Naypavers. The summons and complaint were returned unclaimed with the exception of the summons and complaint that was sent to Frank Naypaver at his Florida address. Several days later, on July 20, the trial court mailed a notice of an August 3, 2007 preliminary hearing. Although the motion for continuance of this hearing is not in the record, the court did address it at the hearing, noting that Frank Naypaver faxed an uncorroborated motion for a continuance, in which he claimed that he was scheduled for surgery on August 14 in Florida, and because of that, none of the Naypavers would be able to attend.

{¶14} The court denied the motion at the beginning of the hearing, and heard evidence from the EPA Division of Emergency and Remedial Response, as well as the supervisor of the EPA Division of Solid and Infectious Waste. The court granted the EPA access to the property to conduct a visual site inspection and assessment. The court ensured there was ample time and opportunity after the completion of the site assessment and before the next hearing for the Naypavers to review the site

assessment and obtain counsel if necessary. Accordingly, the court sent notice of a second hearing scheduled for September 28, 2007, indicating in the record that more time would be granted if necessary.

{¶15} The Attorney General filed an amended complaint several days after the initial hearing, on August 17, 2007, and ten days later, on August 27, a summons was issued to all the Naypavers. The record reflects that all the Naypavers were served in Ohio on August 28, 2007, and that Frank and Mrs. Naypaver were also served at their Florida address on September 5, 2007.

{¶16} The Naypavers filed their answer to the initial complaint on August 28, 2007. All three signed the answer. They then filed an answer to the amended complaint on September 24, 2007, although it was only signed by Mrs. Naypaver.

{¶17} On October 4, 2007, the court sent notices of the second preliminary injunction of October 12, 2007. Three days before the scheduled hearing, another uncorroborated motion for a continuance, signed by all three Naypavers, was faxed to the court, once again requesting additional time citing their inability to attend due to Frank Naypaver's rehabilitation from his surgery. The court filed a judgment entry following the hearing, denying the motion, and noting that the motion was inadvertently placed in another case file when it was filed on October 9.

{¶18} During the October 12, 2007 hearing, the court considered the EPA director's findings and orders, testimony from the health department and EPA personnel, the 13-year history of ignored violation notices and orders to remediate, as well as the testimony and assessment of a licensed professional engineer, Mr. Rick Buffalini.

{¶19} Mr. Buffalini conducted the site assessment and observed approximately 100 - 200 visibly exposed tires on the property, an eroding embankment, as well as eroding sandy soils that were originally used to cover the tires. In his research, he uncovered only one other example, in the southwestern U.S., where scrap tires were used to construct a dam embankment. In that case, the tires were used to enable swale to fill up the tires and dewater accordingly, as opposed to the permanent impilement that served as the embankment on the Naypaver property. Notably absent in this case were any hallmarks of an engineered designed embankment. Mr. Buffalini opined that tires are, quite simply, not the proper material for a dam, and recommended draining the lake and removing the tires.

{¶20} The court issued a lengthy judgment entry, finding the Naypavers have continually maintained an unlawful scrap tire site on their property, which posed a nuisance, a health and safety threat, and a fire hazard to the public and the environment. The court found the Naypavers in violation of laws prohibiting open dumping and that they repeatedly failed to obtain approval of a beneficial use permit and comply with tire storage requirements. The court also found the site was not licensed or managed as a scrap tire facility, and that the tires were illegally disposed, in violation of numerous scrap tire and solid waste regulations, as well as the 2003 COPI order. The court further found that the Naypavers failed to control for mosquitoes, failed to remediate subsequent to or after the fire despite the orders by the EPA director, and then tried to actively bury the burnt tires and contaminants.[1]

1. Specifically, the court found the Naypavers were in violation of: (1) operating a scrap tire facility without registration, license, or permit pursuant to R.C. 3734.76(C), 3734.05(A), and 3734.81(A); (2) open dumping in violation of Ohio Adm.Code 3745-27-05(C); (3) illegal burning of tires in violation of R.C. 3734.74, Ohio Adm.Code 3745-19-01 and 3745-27-01(O)(2); (4) unlawfully storing scrap tires in violation

{¶21} The court imposed a civil penalty of $10,000 a day for operating a scrap tire facility without registration, license, or permit; open dumping; the illegal burning of tires, in addition to a civil penalty of $5,000 a day for unlawfully storing the scrap tires, failing to perform required mosquito control, remediate the property, and unlawfully burying the tires.

{¶22} Pursuant to R.C. 3734.10 and 3734.13, the court granted the EPA preliminary and permanent injunctive relief, ordered the Naypavers to immediately cease accepting any solid waste, and to permit the EPA cleanup access. The court clarified that the remediation involved removing all the tires on property, including the lake, embankment, post-fire area of the property, the fire residuals of the partially burnt tires, the tire fire residuals, as well as the contaminated soil. The court retained jurisdiction over the matter to determine and assess costs, fines, and civil penalties, as well as the costs of the excavation and cleanup, setting the matter for a future hearing.

{¶23} After granting the Naypavers several continuances, the hearing was held on August 8, 2008, at which Mr. Robert Large, the supervisor of the EPA scrap tire management unit, testified that cleanup of the site could begin as early as the following Monday. The cleanup necessarily required draining the lake. Frank Naypaver, the only Naypaver in attendance, attempted to appeal the EPA and health departments' initial findings of fact. He cross-examined Mr. Large on the detriment to the wildlife draining the embankment posed, and proffered a petition signed by the owners of neighboring

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of Ohio Adm.Code 3745-27-60(B); (5) failing to perform required mosquito control in violation of Ohio Adm.Code 3745-27-60(B)(8); (6) failing to perform, characterize, and remediate areas of contamination after the occurrence of a fire in violation of Ohio Adm.Code 3745-27-79(A) and (C); (7) failure to characterize and remediate after the occurrence of a fire in violation of Ohio Adm.Code 3745-27-79(B); and (8) the unlawful burying of tires in violation of Ohio Adm.Code 3745-27-60(B).

properties in support of the Naypavers' position. The court ordered the cleanup to begin in accordance with the EPA contract.

{¶24} Ronald Naypaver now appeals, raising two assignments of error:

{¶25} "[1.] The trial court erred to the prejudice of the defendant-appellant in misplacing his request for a continuance and abused its discretion in denying the continuance. As a result, the defendant-appellant was not present at his trial and so was ruled against.

{¶26} "[2.] The trial court erred to the prejudice of the defendant-appellant in that the Director of the Ohio EPA and the Attorney General, who [sic] were acting against the law in issuing the original cleanup orders, and taking action in court against the defendant-appellant."

{¶27} **Motions for Continuances**

{¶28} In his first assignment of error, Ronald Naypaver challenges the trial court's denial of the Naypavers' motions for continuances of the injunction hearings. He argues the trial court misplaced the second motion, and that because Frank Naypaver was undergoing follow-up care and rehabilitation following his hip replacement in Florida, it was impossible for any of the Naypavers to attend the hearing. Frank Naypaver also alleged in the motion that it was impossible for him to procure proof from his attending physicians of his inability to travel in time for the hearing.

{¶29} "The grant or denial of a continuance is a matter that is entrusted to the broad, sound discretion of the trial judge." *Welch v. Ziccarelli,* 11th Dist. No. 2006-L-229, 2007-Ohio-4374, ¶20, quoting *DiPizzo v. Stabile,* 11th Dist. No. 2006-T-0027, 2006-Ohio-6102, ¶7; citing *State v. Unger* (1981), 67 Ohio St.2d 65, paragraph one of

the syllabus; *State ex rel. Buck v. McCabe* (1942), 140 Ohio St. 535, paragraph one of the syllabus. "[A]n appellate court will not interfere with the exercise of this discretion unless the action of the court is plainly erroneous and constitutes a clear abuse of discretion." Id., citing *DiPizzo,* citing *Buck* at 538. (Citation omitted.) "In many situations a court will have acted within its discretion whether it granted or denied the continuance. 'When applying the abuse of discretion standard [in these situations], a reviewing court is not free to merely substitute its judgment for that of the trial court.'" Id., citing *DiPizzo*, citing *Fontanella v. Ambrosio,* 11th Dist. No. 2001-T-0033, 2002-Ohio-3144, ¶17. (Citation omitted.)

{¶30} "There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied. Id. at ¶21, citing *DiPizzo* at ¶8, citing *Unger* at 67, citing *Ungar v. Sarafite* (1964), 376 U.S. 575, 589.

{¶31} We find no abuse of discretion in the court's denial of Frank Naypaver's uncorroborated motions for a continuance. First, his allegations that he was not served with notice of the second hearing are baseless as there is documentation in the record that good service was made, and moreover, actual notice is evident from the Naypavers' responding with a faxed motion for a continuance. Second, the court proceeded carefully in the first preliminary hearing, limiting relief to only a visual inspection after hearing all of the evidence presented to allow the Naypavers an opportunity to respond to the initial assessment. At this hearing, the court scheduled the second hearing well in advance to give the Naypavers ample time to respond to the

site assessment report. Instead, the Naypavers faxed an uncorroborated motion for a continuance three days before the October hearing and not a single family member attended.

{¶32} **The First Preliminary Injunction Hearing**

{¶33} Although the first motion for a continuance is not included in the record, the court discussed the motion before proceeding with the hearing: "All right, and also the individuals that were involved as Defendants were Frank J. Naypaver, Lorell A. Naypaver from Leavittsburg, and Frank Ronald Naypaver from Leavittsburg. I was in receipt of a file for a continuance. It was captioned as a continuance, it was sent via fax indicating that one of the Defendant's was having hip surgery on the 14th for a broken hip and they were the caregivers and they would not be in a position to be here for the hearing. It's signed by, I assume, the Defendants in this case, however, the fact they choose to represent themselves as opposed to having an attorney does not remove them from the responsibility of submitting some corroboration of the fact that somebody is having an operation and, therefore, would not be available. I have cases daily, criminal and civil, where somebody requests a continuance for some medical reason. Each and every one of those cases, I require documentation from the medical provider to confirm that that is, in fact, the case. I have not received anything from the Naypavers in that regard. Therefore, since they have received notice, I am going forward with the preliminary injunction in this particular matter, ***."

{¶34} The EPA then presented evidence of the improper use of the tires, the tire fire and its hazardous environmental effects, pictures of Ronald Naypaver's attempted

burial of the burned tires several days after, as well as the danger the exposed tires posed to the public and the environment.

{¶35} The court granted the EPA's request for access to the property to conduct a visual site assessment, and then carefully scheduled the next preliminary injunction hearing, stating: "*** It doesn't surprise me that it is a matter of weeks because of what needs to be done. But what I am interested in is then setting up a second hearing on this to provide additional documentation and witnesses at a time period when the Naypavers would be in a position to be here, since I have no documentation one way or the other, you know, what the medical prognosis for any or all to be here available, but my preference is that they be available and also have some kind of method by which we can get a hold of them. And it would also be my preference that once a report is available that they receive a copy of it in the event that they determine it might be wise to hire an attorney to represent their position. ***."

{¶36} The court then worked a timetable of eight weeks, specifying that if a longer time was needed, the hearing would be extended to "the neighborhood of September 28th."

{¶37} **The Second Injunction Hearing**

{¶38} The second uncorroborated motion for a continuance was faxed to the court on October 9, 2007, three days before the next hearing. The court issued a judgment entry denying the motion following the hearing and ruled on the motion at that time because the motion had been inadvertently placed in another file.

{¶39} At the hearing, evidence was presented of the site assessment, and the court then noted on the record: "All right, first, let me add a couple of items for the

record. Because this came before the Court not only as a complaint but a preliminary and permanent injunction, that the court is merging the evidence that was presented in the initial hearing and also the exhibits with the testimony that were produced today for purposes of making a ruling for today's hearing.

{¶40} "Secondly, it's noted for the record, again, that the Defendants are not here. Once again, the Defendants were properly noticed on this matter but were not present for purposes of either cross examination or presenting evidence on their own behalf. ***."

{¶41} The court concluded by granting the injunction for a proper removal of the tires, instructed the state to submit a proposed entry, and took into further consideration the Naypavers' absence by setting a status conference six months in advance, at which time the date of the final hearing would be decided.

{¶42} After granting the Naypavers several continuances, the final hearing was held nearly a year later, on August 8, 2008. Frank Naypaver was the only family member in attendance. Although the sole purpose of the hearing was for the court to approve the bidding contract, Frank Naypaver was given the opportunity to cross-examine EPA officials, and proffered a petition from neighboring properties to prohibit the excavation of the lake.

{¶43} Thus, Frank Naypaver had the opportunity to be heard in court, albeit in a limited fashion. The violations, notices, and orders that had been ongoing for 13 years were not new issues. Indeed, the family was well aware of the state's claims as to the dispute. The Naypavers had the opportunity, as will be addressed more fully in Ronald

Naypaver's second assignment of error, to appeal any of the multiple orders to the ERAC board, but continually failed to do so.

{¶44} As the Naypavers were properly served, notified, and more than aware of the issues that have been raised for over 13 years, the trial court did not abuse its discretion in denying their uncorroborated motions for continuances.

{¶45} Ronald Naypaver's first assignment of error is without merit.

{¶46} **Procedure for Appeal of the EPA Director's Findings**

{¶47} In his second assignment of error, Ronald Naypaver argues the EPA director and the Attorney General issued and attempted to enforce orders when no danger or violations were present. Specifically, he alleges that under Ohio law, the EPA director can issue tire storage violations only for tires in use in roadways and embankments if the tires pose a "danger." Thus, he contends the EPA director and the Attorney General acted prematurely since there was no "imminent danger to the public health or safety to the environment." As evidence of his argument, he offers one of the EPA's written orders directing removal, which states that the only "danger" was that the tires on the property "could obscure, adversely impact, have potential or could be a danger." Notwithstanding the recent fire and resultant toxins and contaminants, he contends the director's findings are simply a "possibility," which cannot be the basis for an order of removal.

{¶48} **Standard of Review for Injunctions**

{¶49} The relief sought in the trial court was injunctive relief. Thus, "[t]he relevant standard to be applied in the instant action is whether the trial court abused its discretion in [granting] the injunction." *River Bend Farm Develop. Co., v. Cellular One*

(March 8, 1996), 11th Dist. No. 95-P-0076, 1996 Ohio App. LEXIS 889, 6-7, citing *Garono v. State* (1988), 37 Ohio St.3d 171, 173; *Perkins v. Quaker City* (1956), 165 Ohio St.120, 125. "To obtain such a resolution, this court must conclude that the court's action was unreasonable, arbitrary or unconscionable or that there was no sound reasoning process that would support the decision of the trial court." Id. at 7, citing *AAAA Enterprises Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161. Because Ronald Naypaver appeals the findings of the director and the health department, an explanation of the proper appeals procedure is in order.

{¶50} **Procedure to Appeal the EPA's Director's Findings**

{¶51} First, the director is authorized by statute to take action to remedy violations pursuant to R.C. 3734.85. R.C. 3734.85(A) states the director "*** shall take actions as the director considers reasonable and necessary to remove and properly manage the scrap tires located on the land named in the order."

{¶52} Second, the Naypavers had the opportunity to challenge these findings by appealing to ERAC, which statutorily has original jurisdiction over such matters. Thus, these findings are not a proper subject matter for this appeal.[2]

{¶53} Appeals to ERAC from proceedings before the director are governed by R.C. 3745.04(B), which states in pertinent part: "[a]ny person who was a party to a proceeding before the director of environmental protection may participate in an appeal to the environmental review appeals commission for an order vacating or modifying the action of the director a local board of health, or ordering the director or board of health

2. As an aside, we note that Ronald Naypaver challenges the director's findings, arguing they are not an "imminent threat," but "Ohio's environmental statues are clear that *even a threat of danger* is an actionable offense." (Emphasis added.) *State ex rel. Petro v. Mercomp, Inc.*, 167 Ohio App.3d 64, 2006-Ohio-2729, ¶32.

to perform an act. The environmental review appeals commission has *exclusive original jurisdiction over any matter that may, under this section, be brought before it.* ***." (Emphasis added.)

{¶54} Thus, the Naypavers had 30 days to file an appeal to ERAC after the receipt of any of the orders they received over the past 13 years. See R.C. 3745.04(D). And, because they failed to appeal any of the director's orders, they have failed to exhaust their administrative remedies and cannot challenge those findings in the instant injunctive action.

{¶55} We explained the exclusive jurisdiction of ERAC in *Haverlack v. City of Aurora* (Sept. 8, 1981), 11th Dist. No. 1070, 1981 Ohio App. LEXIS 14178, reviewing that "'[t]he legislature created the environmental protection agency consisting of a staff of experts to investigate complaints, to conduct hearings on these complaints and to make determinations as to whether the laws in regard to air and water pollution and sewage disposal are being violated. *A complainant must first [take his complaint to the director of] the EPA for processing before any court action may be initiated.* It is obvious that the legislature provided this administrative procedure in lieu of permitting a complainant to immediately file an action in court alleging either a violation of one of the environmental laws or that a person is causing a nuisance. The legislature did not desire the courts to hear these cases ab initio. To permit the courts to entertain this litigation in the first instance would place them under a tremendous burden and further would not serve the best interests of all concerned. It is better to have all of the technical environmental matters heard and resolved at the administrative level before court action is initiated by way of appeal by a dissatisfied complainant or by an action

initiated by the attorney general.' *** *State, ex rel. Brown v. Rockside Reclamation* (1975), 48 Ohio App.2d 175, 179-180, aff'd (1976), 47 Ohio St.2d 176, see, also, *Warren Molded Plastics, Inc. v. Williams* (1978), 56 Ohio St.2d 352; *State, ex rel. Williams v. Bozarth* (1978), 55 Ohio St.2d 32." (Emphasis added.) Id. at 5-6. See, also, *Burket v. City of North Olmsted* (June 19, 1980), 8th Dist. Nos. 40605 and 40902, 1980 Ohio App. LEXIS 12070.

{¶56} **Procedure of Appeal from the Determinations of the ERAC**

{¶57} Once ERAC has issued its decision, "R.C. 3745.06 provides for an appeal to [the] court from a decision of ERAC, and sets forth a standard of review. Under that standard, we must affirm the order complained of if, upon consideration of the entire record and such additional evidence as this court has at its discretion admitted, the order is supported by reliable, probative, and substantial evidence and is in accordance with the law. ***." *FDS Coke Plant, LLC v. Jones*, 166 Ohio App.3d 224, 2006-Ohio-1642, ¶5.

{¶58} The Supreme Court of Ohio explained in *Warren Molded Plastics, Inc.* that the exclusivity of the statutory process outlined in R.C. 3745.04 and 3745.06 provides adequate access to judicial review and therefore due process and equal protection are afforded the applicant under this scheme. Id. at 353-354.

{¶59} The factual issues Ronald Naypaver raises in his second assignment of error are clearly within the province of ERAC, and as he clearly failed to exhaust the administrative remedies as set forth in R.C. Chapter 3745, he cannot now challenge the factual findings of the director in this appeal.

{¶60} Moreover, the Attorney General is empowered to file an action in the court of common pleas for injunctive relief to enforce the director's orders. Thus, R.C. 3734.10 states: "[t]he attorney general *** where a violation has occurred, is occurring, or may occur, upon request of the *** director of environmental protection, shall criminally prosecute to termination or bring an action for injunction against any person who has violated, is violating, or is threatening to violate ***."

{¶61} R.C. 3734.10 further states: "*** The court of common pleas in which an action for injunction is filed has the jurisdiction to and shall grant preliminary and permanent injunctive relief upon a showing that the person against whom the action is brought has violated, is violating, or is threatening to violate any section of this chapter, rules adopted thereunder, or terms or conditions of permits, licenses, variances, or orders issued under this chapter. ***"

{¶62} When the EPA director apprised the Attorney General of the numerous unresolved violations, he complied with the request for prosecution and enforcement of the director's orders, and accordingly, filed a complaint for preliminary and permanent injunctive relief in the court of common pleas. The trial court properly heard the action, and in the face of overwhelming evidence, granted the relief sought. This was certainly not the first time the Naypavers were sent notices of violations and orders to remediate in the past 13 years. They were familiar with the process as they had appeared before the court for management of the scrap tires in 2003 and entered into a consent clause.

{¶63} As there is ample evidence to support the relief sought, we determine the trial court correctly granted the injunction in this case after affording the Naypavers with notice and an opportunity to be heard.

{¶64} Ronald Naypaver's second assignment of error is without merit.

{¶65} The judgment of the Trumbull County Court of Common Pleas is affirmed.

CYNTHIA WESTCOTT RICE, J.,

TIMOTHY P. CANNON, J.,

concur.

STATE OF OHIO	)	**IN THE COURT OF APPEALS**
	)SS.	
COUNTY OF TRUMBULL	)	**ELEVENTH DISTRICT**

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

Plaintiff-Appellee,

- vs -

FRANK J. NAYPAVER, et al.,

Defendants,

FRANK RONALD NAYPAVER,

Defendant-Appellant.

JUDGMENT ENTRY

CASE NO. 2008-T-0102

For the reasons stated in the opinion of this court, appellant's assignments of error are without merit. It is the judgment and order of this court that the judgment of the Trumbull County Court of Common Pleas is affirmed.

Costs to be taxed against appellant.

PRESIDING JUDGE MARY JANE TRAPP

FOR THE COURT