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COMMON PLEAS COURT

2011 JUN -8 PM 3: 31

MIKE PATTERSON
CLERK OF COURTS
LAWRENCE COUNTY

IN THE COURT OF COMMON PLEAS
LAWRENCE COUNTY, OHIO

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

PLAINTIFF,

-VS-

DONALD J. ASHWORTH, ET AL.,

DEFENDANTS.

JUDGMENT ENTRY
(FINAL APPEALABLE ORDER)

CASE NO. 06-OC-853

This matter came on for trial before the Court's Magistrate. Portions of six days were consumed in the trial of these issues and the matter was fully completed before the Magistrate. However, before the Magistrate issued a Magistrate's Decision, he elected to retire from this position. Accordingly, pursuant to Ohio Civil Rule 60(B), this Court will perform the duties as Trial Judge on this particular case. In order to accomplish the same, the Court has familiarized itself with all evidence presented in the case by all parties.

Accordingly, the Court would make the following JUDGMENT:

The Plaintiff's complaint alleged that three sites in Lawrence County (referred to as "Site 0", "Site 1", and "Site 2") had been the subject of unlawful dumping by the Defendants, Donald Ashworth and Grandview Buildings & Supply, Inc. The allegations are brought under Ohio's Solid Waste and Construction and Demolition Debris (C & D D) Statutes and Rules found in Chapters 3734 and 3714, and Ohio Administrative Admin. Code, Chapters 3745-27, and 3745 - 400. The complaint went on to allege open dumping of solid waste; illegal disposal of C and

DD; operating a solid waste facility without a license; and operating a C & DD facility without a license.

As to Site 0, the Court finds that Donald Ashworth and his wife, Dreama Ashworth, jointly owned Site 0, which is located at 1840 County Road 1, South Point, Lawrence County, Ohio. The Court further finds that Grandview Buildings & Supply, Inc.'s principal place of business is located at Site 0. Site 0 is located in a flood plain, adjacent to Solida Creek, and approximately one thousand (1,000) feet from the Ohio River. From the late 1980's until a period in time in 1993, Donald Ashworth operated an open dump at Site 0. Mr. Ashworth allowed individuals to dispose of solid waste at Site 0, including allowing communities in Lawrence County to dispose of trash collected during community cleanup days. Mr. Ashworth paid his Grandview Buildings & Supply employees to monitor the solid waste being disposed of at Site 0. Grandview Buildings & Supply employees collected a fee of approximately \$150.00 per day, or \$5.00 to \$10.00 per truckload. The money collected from dumping operations was deposited with Grandview Buildings & Supply and constituted a significant portion of Mr. Ashworth's income. Donald Ashworth used the money, collected from solid waste disposal at Site 0 to pay for expenses associated with Grandview Buildings & Supply. On multiple occasions, EPA Special Investigator, Daniel Imhoff observed solid waste, including bicycles, mattresses, plastic bags, pails, cans and around seventy (70) boxes of solid waste stacked at Site 0. Mr. Ashworth indicated that the purpose of accepting waste at Site 0 was to fill in a low lying area behind Grandview Buildings & Supply's building. Mr. Imhoff testified as to multiple days of investigation at Site 0, including the use of a search warrant.

Mr. Imhoff also observed trucks disposing of co-mingled solid waste and C & DD at Site 0. Mr. Imhoff testified that at no time did he observe an individual separating the solid waste from the C and DD, or of any attempts by Grandview Buildings & Supply employees to stop

these trucks. Mr. Ashworth indicated that he and his employees frequently covered Site 0 with soil every twenty-one to thirty days. Mr. Ashworth ordered Ed Hegley to keep Site 0 covered with soil to make room to dump more solid waste there. Clint Shuff inspected Site 0 because houses had been built on top of the waste at that site. Mr. Shuff explained to Mr. Ashworth that houses could not be built on top of solid waste unless it was the subject of a permit. Mr. Ashworth removed the houses from Site 0.

Mr. Shuff made four follow-up inspections at Site 0 and did not detect that any of the waste had been removed from the site. Mr. Ashworth admitted that he did not pay anyone, including his employees, to remove any waste from Site 0, other than the houses that were built on the site in 1998. Mr. Ashworth testified that he hoped his employees would separate solid waste from the C and DD, but never actually saw anyone removing anything. The Defendant, Grandview Buildings & Supply provided an employee operator for the bulldozer, located at Site 0. This individual was Bobby Dorton, who stated he was on Site 0 sixty to seventy percent of the time, and could not testify to what anyone else had done to encourage removal at the site.

Mr. Ashworth is found to have benefitted from filling Site 0 with solid waste because it leveled the ground that was once a low lying area, sloping towards Solida Creek. It would also create flat land for the construction of houses. Neither Defendant was found to have a permit or license to operate a solid waste facility at Site 0. Plaintiff Representative, Craig Cox, estimated that Site 0 contains 691,000 cubic feet of waste.

Site 1 is the second site, the subject of this litigation. Site 1 is adjacent and to the west of Site 0 and Grandview Buildings & Supply, Inc. Donald Ashworth and his wife, Dreama Ashworth also own Site 1, located at 1750 County Road 1, South Point, Lawrence County, Ohio. Mr. & Mrs. Ashworth's principal residence is located at Site 1. Site 1 is located in a one hundred year flood plain, adjacent to Solida Creek, and is approximately one thousand feet away from the

Ohio River.

From the middle of 1994 to September, 1997, Donald Ashworth and Grandview Buildings & Supply operated an illegal open dump at Site 1. Mr. Ashworth allowed individuals to dispose of solid waste and C and DD at Site 1. Mr. Ashworth ordered his employees of Grandview Buildings & Supply, including Bobby Dorton, to monitor the solid waste and construction and demolition debris being disposed of at Site 1. Mr. Ashworth is President of Grandview Buildings & Supply; and opened Site 1 to the public for the purpose of disposing of solid waste and C and DD. Grandview Buildings & Supply's employees collected a fee of approximately \$150.00 per day, or \$5.00 to \$10.00 per load of solid waste and C and DD, disposed of at Site 1. The money collected from dumping operations was deposited in Grandview Buildings & Supply accounts.

The Defendant, Donald Ashworth, used the money collected from solid waste and C and DD disposal at Site 1 to pay for expenses associated with Grandview Buildings & Supply. An inspector for Ohio EPA, Clint Shuff, and Kenneth Mettler, Ohio EPA Special Investigator, observed an increased amount of solid waste and C and DD at Site 1. They further observed C and DD disposed at Site 1 after September 30, 1996. Mr. Shuff indicated he first received a complaint of open dumping at Site 1 on June 19, 1995. Mr. Shuff inspected the site on July 11, 1995, and observed a truck drive between Grandview Buildings & Supply buildings at Site 1, and back along Solida Creek, and unload co-mingled solid waste and C and DD.

Based on Shuff's observations, he sent a notice of violation to Grandview Buildings & Supply, Inc. on July 20, 1996. On August 16, 1995, Mr. Shuff conducted a follow-up inspection of Site 1. He observed additional solid waste and C and DD at Site 1, including an increased amount of co-mingled solid waste and C and DD. He could not observe that any solid waste had been removed since his last visit and further, could not detect operational procedures in place to

prescreen and separate incoming debris from waste. On August 21, 1995, Mr. Shuff sent a notice of violation to Grandview Buildings & Supply, Inc., informing Mr. Ashworth of the open dumping violations occurring at Site 1 and the requirement to remove the solid waste disposed at the site.

On February 27, 1996, Mr. Shuff again inspected Site 1. At that time, he found additional co-mingled solid waste and C and DD. He could not detect that any solid waste had been removed since his last visit or that any operational procedures were in place to prescreen incoming debris and waste.

On February 29, 1996, Mr. Shuff sent a notice of violation to Grandview Buildings & Supply, informing Mr. Ashworth of the open dumping violations occurring on Site 1. On September 30, 1996, new C and DD rules came into effect. Those rules required the owner or operator of a C and DD facility to apply for an operating license before December 30, 1996, to close the C and DD facility in accordance with Ohio Adm. Code Section 3745-400.

On October 2, 1996, Mr. Shuff came back to the follow-up investigation of Site 1 and observed additional co-mingled solid waste and C and DD at the site. Another notice of violation was sent to Grandview Buildings & Supply. In September of 1997, Ohio EPA Special Investigators and Ohio Bureau of Criminal Investigation officers interviewed Mr. Ashworth and conducted a consensual search of Sites 1 and 2. Mr. Ashworth admitted that there was solid waste and C and DD at Site 1. Mr. Ashworth provided the Ohio EPA with a written statement, indicating that Site 1 had ceased accepting waste on September 19, 1997, and that he was now burying the waste with two feet of soil. Mr. Ashworth admitted that materials deposited on Site 1 were deposited by Grandview Buildings & Supply employees. Investigations continued through 1998 by the same agencies who continued to find that proper removal had not occurred as to waste and additional citations of violations were issued, with follow-up inspections.

The Court finds that Mr. Ashworth benefitted from the filling going on Site 1, with solid waste and C and DD, which had the effect of leveling this low lying area and building up its elevation. The Court finds that no individual or corporation had a permit or license to operate a solid waste facility at Site 1. The Court finds that no individual or corporation had a permit or license to operate a C and DD facility at Site 1. Craig Cox estimated that Site 1 contained 826,500 cubic feet of waste.

Site 2 was located in the one hundred year flood plain approximately one thousand feet away from the Ohio River, and one hundred to two hundred yards away from Solida Creek. D. J. Ashworth, Inc. was found to be the owner of Site 2, which is actually located at County Road 1, South Point, Lawrence County, Ohio. D. J. Ashworth, Inc. is a corporation owned by Donald Ashworth, who is its President and sole officer. D. J. Ashworth, Inc. and Grandview Buildings & Supply share employees. They also share bank accounts and transfer money between the two companies and Mr. Ashworth without promissory notes or written agreements. During the investigative phase of this litigation, Mr. Ashworth held out to the Ohio EPA that he owned Site 2.

From September, 1996 to 1998, Donald Ashworth and Grandview Buildings & Supply operated an illegal open dump at Site 2. Shuff and Mettler observed C and DD disposed at Site 2 after September 30, 1996, the effective date of Ohio's C and DD rules. Mr. Ashworth told Mettler that he had accepted C and DD and solid waste after September 30, 1996. Further, Grandview Buildings and Supply employees had disposed of material at Site 2, after the C and DD rules went into effect.

Mr. Ashworth indicated that he was President of Grandview Buildings & Supply and had opened Site 2 to Grandview Buildings & Supply employees for the purpose of depositing solid waste and C and DD generated by Grandview Buildings & Supply, Inc. Mr. Ashworth stated that

in his capacity as President of Grandview and of D. J. Ashworth, Inc., he gave permission to Ed Hegley to operate Site 2 by allowing Grandview Buildings & Supply employees to dump solid waste and C and DD there while Mr. Hegley covered the waste and debris with soil.

Shuff and Mettler observed an increase in the amount of co-mingled solid waste and C and DD disposed of at Site 2 from 1996 to 1998. In April and June of 1997, the Ohio EPA received two complaints, alleging that Donald Ashworth was disposing of solid waste and C and DD at a new site approximately one half mile west of Site 1, which has been identified as Site 2. Ohio EPA Inspectors first observed solid waste and C and DD at Site 2 in May of 1997. This included tires, fifty-five gallon drums, plywood, two by fours, plastics, shelving units, boxes and signs. In September of 1997, Mr. Mettler observed large amounts of co-mingled solid waste and C and DD at Site 2. On the same date, Mettler and Ms. Angelopoulos interviewed Mr. Ashworth at his office at Grandview Buildings & Supply. Mr. Ashworth admitted that there was solid waste and C and DD at Site 2. Mr. Ashworth further admitted that material deposited at Site 2 was deposited by Grandview Buildings & Supply employees. In December of 1997, a notice of violation was sent to Grandview Buildings & Supply, informing Mr. Ashworth of the violations of Site 2 and ordering him to remove the solid waste and C and DD from the site. No verification has been given to the Ohio EPA, regarding the removal of any solid waste or C and DD at Site 2 by the Defendants. Mr. Ashworth did testify that he hoped his employees would separate the solid waste from the C and DD, but never actually saw anyone remove anything.

The Court finds that no individual or corporation has a permit or license to operate a solid waste facility at Site 2. The Court further finds that no individual or corporation has a permit or license to operate a C and DD facility at Site 2. Craig Cox estimates that Site 2 contains 63,000 cubic feet of waste.

Accordingly, it is the finding of the Court that the Defendants permitted unlawful open

dumping at Sites 0, 1 and 2. The Court further finds that Defendants operated a solid waste facility without a license at Sites 0, 1 and 2. The Court further finds Defendants operated a construction and demolition debris facility without a license at Site 1. The Court further finds the Defendant, Ashworth, operated a construction and demolition debris facility without a license at Site 2. The Court further finds that both Defendants permitted illegal disposal of construction and demolition debris at Sites 1 and 2. The Court further finds that the Defendant, Ashworth, by virtue of his position as President and/or Chief Executive Officer of the Defendant, Grandview Buildings & Supply, Inc., has personal liability for the actions of the corporation, Grandview Buildings & Supply, Inc., as it applies to this litigation.

The Court, therefore, grants the following relief and damages:

Defendants are ORDERED AND ENJOINED from open dumping of solid waste or illegally disposing of C and DD materials at Sites 0, 1 or 2.

Defendants are ORDERED to remove all the solid waste from Site 0 on a continual basis until all waste is removed from the Site within three (3) years of the date of this ORDER, and remove at least one third (1/3rd) of the estimated 691,500 cubic feet per year.

Defendants must send all solid waste to a licensed solid waste facility and submit all disposal receipts to the Ohio EPA at Ohio Environmental Protection Agency, Southeast District Office, Clint Shuff, or his Successor, 2195 Front Street, Logan, OH, 43138.

Defendants must collect leachate, generated at the site at Site 0 during removal, and send it to a licensed waste water treatment facility. Defendants must submit all leachate removal receipts to the Ohio Environmental Protection Agency, Southeast District Office, at the aforementioned address.

An individual, who has been trained under 29 CFR 1910.120, also known as OSHA, 40-Hour Trained, must be present at all times that waste is being excavated and removed from the

site.

Defendants are ORDERED to pay a civil penalty for violations at Site 0, that is a deterrent, large enough to punish the offender, and being more than one percent (1%) of the statutory maximum for seven thousand five hundred fifty-one (7,551) days in violation. Accordingly, the Court ORDERS a civil penalty against the Defendants for \$755,101.00.

As to Site 1, the Defendants are ORDERED to remove all the solid waste and C and DD material from Site 1 on a continual basis until all waste is removed from the site, within three (3) years of the date of this ORDER, and to remove at least one-third (1/3rd) of the estimated 826,500 cubic feet per year during each of those three (3) years.

Defendant must send all solid waste and C and DD to a licensed solid waste facility and submit all disposal receipts to Ohio Environmental Protection Agency, Southeast District Office, Clint Shuff, or his Successor, 2195 Front Street, Logan, OH, 43138.

Defendants must collect any leachate, generated at the site during removal, and send it to a licensed waste water treatment facility. Defendants must submit all leachate removal receipts to the Ohio Environmental Protection Agency at the aforementioned Logan, Ohio address.

An individual, who has been trained under 29 CFR 1910.120, also known as OSHA, 40-Hour Trained, must be present at all times that waste is being excavated or being removed from the site.

Defendants are ORDERED to pay a civil penalty for the violations at Site 1, that is a deterrent, large enough to punish the offender, and more than one percent (1%) of the statutory maximum for the five thousand six hundred sixty (5,660) days in violation. Accordingly, Court ORDERS a civil penalty against the Defendants for \$566,001.00.

At Site 2, the Defendants are ORDERED to remove all the solid waste and C and DD material from Site 2 on a continual basis until all waste is removed from the site, within three (3)

years of the date of this ORDER and remove at least one-third (1/3rd) of the estimated 63,000 cubic feet per year during said three year term.

Defendants must send all solid waste and C and DD to a licensed solid waste facility and submit all disposal receipts to the Ohio EPA office, previously indicated at Logan, Ohio.

Defendants must collect any leachate, generated at the site during removal, and send it to a licensed waste water treatment facility. Defendants must submit all leachate removal receipts to the Ohio EPA offices, aforementioned at Logan, Ohio.

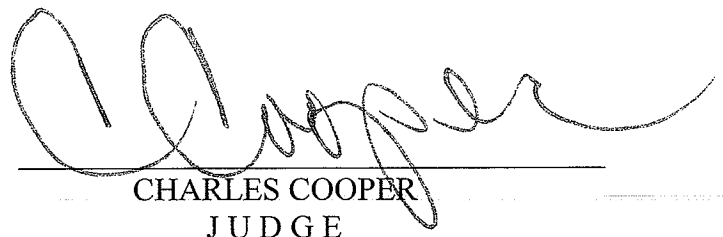
An individual, who has been trained under 29 CFR 1910.120, also known as OSHA, 40-Hour Trained, must be present at all times that waste is being excavated and removed from the site.

Defendants are ORDERED to pay a civil penalty for violations at Site 2 that is large enough to punish the offender and more than one percent (1%) of the statutory maximum for the four thousand three hundred eighty-three (4,383) days in violation. Accordingly, the Court ORDERS a civil penalty against Defendants for \$438,301.00.

Defendants are ORDERED to pay the costs of the said action.

SO ORDERED.

In making this Judgment, the Court finds no reasonable cause for delay and indicates that this is a Final Appealable Order to the parties.



CHARLES COOPER
JUDGE

PROOF OF SERVICE


This is to certify that a copy of the foregoing Judgment Entry was sent to the following ,
this 8th day of June, 2011:

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