

board of health to operate or maintain a solid waste disposal facility, and likewise they did not obtain a license from the Director of Ohio EPA or the local board of health to establish, operate, or maintain a C&DD facility.

CONCLUSIONS OF LAW

3. The Court has jurisdiction over the State and Defendants and the subject matter of this action under R.C. Chapters 3734 (solid waste laws) and 3714 (C&DD laws). The State's Complaint states claims upon which relief can be granted, and venue is proper in this Court.
4. The Revised Code imposes strict liability for the solid waste violations alleged in the State's Complaint. Revised Code 3734.11(A) provides that no person shall violate any section of R.C. Chapter 3734 or any rule adopted thereunder. Defendants are "persons" under R.C. 3734.01(G) and are "owners" and "property owners" under Ohio's solid waste rules, Ohio Adm.Code 3745-27-01(O)(7).
5. Ohio law has permitting and licensing requirements for those who establish solid waste disposal facilities.
6. Defendants' property located at 2090 Riceford Road Southwest, East Sparta, Stark County, Ohio, under the facts of this case, is a solid waste disposal facility. Under R.C. 3734.02(C), Defendants were required to obtain a permit from the Director of Ohio EPA to establish their solid waste disposal facility. They violated R.C. 3734.02(C) by not applying for or obtaining a permit to establish a solid waste disposal facility at the Site.
7. Revised Code 3734.05(A)(1) and Ohio Adm.Code 3745-37-01(A) provide that no person shall operate or maintain a solid waste facility without receiving a yearly

license issued by either the board of health or the Director of Ohio EPA. Beginning sometime prior to May 8, 2007 and continuing to the present, Defendants have not applied for, or been issued, a license to operate or maintain a solid waste facility at the Site in violation of R.C. 3734.05(A)(1) and Ohio Adm.Code 3745-37-01(A).

8. Revised Code 3734.03 and Ohio Adm.Code 3745-27-05(C) provide that no person shall dispose of solid waste by open dumping. Revised Code 3734.01(I) and Ohio Adm.Code 3745-27-01(O)(4)(a) define “open dumping” as the depositing of solid waste into waters of the state and/or onto the surface of the ground at a site that is not a licensed solid waste facility. Beginning sometime prior to May 8, 2007 and continuing to the present, Defendants opened dumped or allowed open dumping of solid waste in violation of R.C. 3734.03.
9. The Revised Code also imposes strict liability for the construction and demolition debris violations alleged in the State’s Complaint. Revised Code 3714.13(A) provides that no person shall violate any section of R.C. Chapter 3714 or any rule adopted thereunder. Defendants are “persons” under R.C. 3714.01 and property owners under Ohio Adm.Code 3745-400-01(P)(2).
10. Like the solid waste laws, any person who establishes, operates, or maintains a C&DD facility must first obtain a license issued by either the board of health or the Director of Ohio EPA. R.C. 3714.06(A) and Ohio Adm.Code 3745-37-01(C). A C&DD facility is any site, location, tract of land, installation, or building used for the disposal of construction and demolition debris. Ohio Adm.Code 3745-400-01(C)(3). Beginning sometime prior to May 8, 2007 and continuing to the

present, Defendants operated or maintained a C&DD disposal facility at the Site without a license from the board of health or the Director of Ohio EPA in violation of R.C. 3714.06(A).

11. Ohio Adm.Code 3745-400-04(B) provides that no person shall conduct or allow the illegal disposal of C&DD, as defined in Ohio Adm.Code 3745-400-01. Revised Code 3714.01 defines “disposal” of C&DD as the discharge, deposit, injection, dumping, spilling, leaking, emitting, or placing of C&DD into or on any land, ground, or surface water, or into the air. Illegal disposal of C&DD is the disposal of C&DD at any place other than a licensed C&DD disposal facility operated in accordance with R.C. Chapter 3714 and the rules adopted thereunder. Ohio Adm.Code 3745-400-01(I)(2). Beginning sometime prior to May 8, 2007 and continuing to the present, Defendants illegally disposed of C&DD at the Site in violation of Ohio Adm.Code 3745-400-04(B).
12. The State alleges in Count One of the Complaint that Defendants operated and maintained an unlicensed and unpermitted solid waste disposal facility in violation of R.C. 3734.11(A), R.C. 3734.02(C), R.C. 3734.05(A)(1), and Ohio Adm.Code 3745-37-01(A). The Court finds Defendants liable for these violations as alleged by the State. For these violations of law, each Defendant, pursuant to R.C. 3734.10 and 3734.13(C), is subject to injunctive relief. Each Defendant is also jointly and severally liable for a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each violation, including each day of violation after the filing of this Complaint. 3734.13(C).

13. The State alleges in Count Two of the Complaint that Defendants open dumped solid waste in violation of R.C. 3734.03, R.C. 3734.11(A), and Ohio Adm.Code 3745-27-05(C). The Court finds Defendants liable for these violations as alleged by the State. For these violations of law, each Defendant, pursuant to R.C. 3734.10 and 3734.13(C), is subject to injunctive relief. Each Defendant is also jointly and severally liable for a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each violation, including each day of violation after the filing of this Complaint. 3734.13(C).
14. The State alleges in Count Three of the Complaint that Defendants operated and maintained an unlicensed C&DD disposal facility in violation of R.C. 3714.13(A), R.C. 3714.06(A), and Ohio Adm.Code 3745-37-01(C). The Court finds Defendants liable for these violations as alleged by the State. For these violations of law, each Defendant, pursuant to R.C. 3734.10 and 3734.13(C), is subject to injunctive relief. Each Defendant is also jointly and severally liable for a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each violation, including each day of violation after the filing of this Complaint. 3734.13(C).
15. The State alleges in Count Four of the Complaint that Defendants illegally disposed of C&DD in violation of R.C. 3714.13(A) and (B) and Ohio Adm.Code 3745-400-04(B). The Court finds Defendants liable for these violations as alleged by the State. For these violations of law, each Defendant, pursuant to R.C. 3734.10 and 3734.13(C), is subject to injunctive relief. Each Defendant is also jointly and severally liable for a civil penalty of up to ten thousand dollars

(\$10,000.00) per day for each violation, including each day of violation after the filing of this Complaint. 3734.13(C).

ORDER

16. Pursuant to Ohio's Solid Waste and C&DD statutory injunction provisions R.C. 3734.10 and 3714.11 respectively, the injunctive relief sought by the State is appropriate given Defendants' stipulations to the violations alleged by the State. *See Ackerman v. Tri-City Geriatric & Health Care, Inc.*, 55 Ohio St.2d 51, 55-58, 378 N.E.2d 145 (1978) (an injunction authorized by statute shall be issued to allow the State to enforce public policy), *State of Ohio v. Tri-State Group, Inc.*, 7th Dist. No. 03 BE 61, 2004-Ohio-4441, at ¶¶ 41-42 (when the State proves the statutory violations, the injunction shall be issued, and the State need not prove irreparable harm).
17. Defendants are therefore ordered and permanently enjoined to comply fully with R.C. Chapters 3734 and 3714 and the rules adopted thereunder.
18. Specifically, Defendants are ordered and enjoined to do the following:
 - a. Not later than February 1, 2018, Defendants shall provide written notice to Ohio EPA setting forth Defendants' decision to either cap in place or remove the solid waste and C&DD from the Property and dispose of it at a licensed solid waste disposal facility.
 - b. Not later than April 1, 2018, Defendants shall submit to Ohio EPA for concurrence a written Compliance Plan. The Compliance Plan shall include the following:

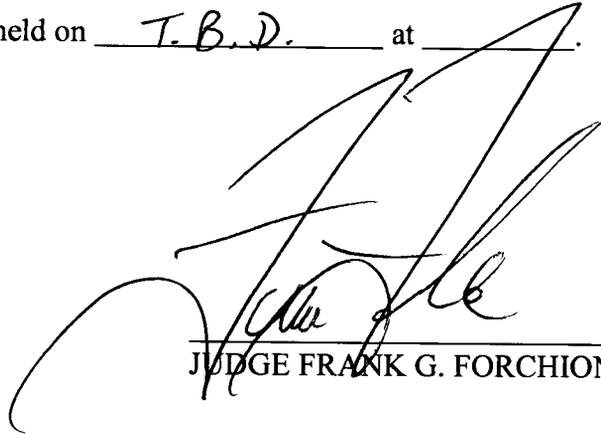
- i. The name, address, and telephone number of the person or office to contact regarding implementation of the Compliance Plan;
 - ii. A drawing depicting the horizontal limits of solid waste and C&DD placement at the Property, together with an estimate of the total volume of solid waste and C&DD at the Property;
 - iii. A description of the compliance mechanism selected by Defendants, including a schedule for completion. The schedule shall ensure the capping or removal is completed by not later than December 31, 2018;
 - iv. If Defendants elect to cap in place, the Compliance Plan shall satisfy all of the requirements set forth in Exhibit A. If Defendants elect to remove and dispose of the solid waste and C&DD, the Compliance Plan shall satisfy the requirements set forth in Exhibit B.
- c. If Ohio EPA provides comments to Defendants regarding the Compliance Plan, Defendants shall address the comments and submit to Ohio EPA an amended Compliance Plan within thirty (30) days. Not later than seven (7) days after Ohio EPA's concurrence with the Compliance Plan, Defendants shall implement the plan.
 - d. Not later than seven (7) days after completion of implementation of the Compliance Plan, Defendants shall notify Ohio EPA of the completion of the capping or removal.
 - e. Not later than sixty (60) days after the completion of implementation of the Compliance Plan, Defendants shall submit to Ohio EPA for concurrence a written certification that complies with Exhibit A or Exhibit B, as appropriate. If

Defendants elected to cap in place, then not later than sixty (60) days after concurrence by Ohio EPA, Defendants shall file a notation on the deed for the Property that complies with Ohio Adm.Code 3745-27-11(H)(5).

19. Defendants are ordered to file a written update with the Court of the progress made towards compliance every sixty (60) days. Defendants must serve a copy upon the Plaintiff, the State of Ohio.
20. This Court shall retain jurisdiction of this case for the purposes of administering and enforcing its Order.
21. To determine the appropriate civil penalty to be assessed against each of the Defendants a hearing will be held on T.B.D. at _____.

IT IS SO ORDERED.

12/6/2017
DATE



JUDGE FRANK G. FORCHIONE