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IN THE
COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, *ex rel.*
LEE FISHER
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

SANFORD P. BRODY (FORMERLY DBA SPB
CARBURETOR COMPANY, INC.), *et al.*,

Defendants.

Case No. 240240

Judge Ralph A. McAllister

FINAL ORDER AS TO DEFENDANT
PAVEL SPERK, AKA PAUL SPERK

The instant matter was set for hearing before the Court on August 6, 1993 to determine the appropriate injunctive relief and civil penalty to assess Defendant Pavel Sperk, aka Paul Sperk ("Sperk") for his violations of Chapter 3734. of the Ohio Revised Code ("RC") and the rules adopted thereunder.¹ The State of Ohio ("State") was present and represented by counsel. Although duly notified by the Court, Defendant Sperk was not present. *See*, August 6, 1993 Sperk Hearing Transcript at 20.² *Whereon*, the Court being duly informed finds as follows:

I. **Findings of Fact**

1. On October 10, 1989, the attorney for Mrs. Lillian Greenberg ("Greenberg")³ filed a complaint with the Ohio Environmental Protection Agency ("Ohio EPA") regarding the possible illegal disposal of hazardous waste at 6504 Carnegie Avenue, Cleveland, Cuyahoga County, Ohio (hereinafter referred to as the "Carnegie Avenue facility" or the "Carnegie Avenue property"). *Hear. Trans.* at 27.
2. Mrs. Greenberg leased the Carnegie Avenue property to SPB Carburetor Company, Inc. ("SPB"). *Hear. Trans.* at 83; State Exhibit No. 11. The president of SPB was Defendant Sanford P. Brody ("Brody"). *Hear. Trans.* at 28.

¹On June 25, 1993, this Court granted Plaintiff State of Ohio's ("State") Motion for Partial Summary Judgment as to the Issue of Defendant Sperk's liability. *See*, June 25, 1993 Order Granting the State's Motion for Partial Summary Judgment as to the Issue of Defendant Sperk's Liability. As such, said Defendant is jointly and severally strictly liable for the violations of law alleged in the State's Complaint. *Id.* at 2.

²All references to the August 6, 1993 hearing transcript shall be known hereinafter as "Hear. Trans."

³Mrs. Lillian was the owner of the Carnegie Avenue property prior to September 23, 1991. *Hear. Trans.* at 27 and 28.

3. As a result of the October 10, 1989 complaint, the Ohio EPA conducted a complaint inspection at the Carnegie Avenue property. Hear. Trans. at 28 and 29; State Exhibit No. 1 at 1. The date of the Ohio EPA's inspection was October 11, 1989. Hear. Trans. at 29; State Exhibit No. 1 at 1.

a. Robert Goldrick ("Goldrick"), manager of SPB, accompanied the Ohio EPA during the October 11, 1989 inspection. Hear. Trans. at 29; State Exhibit No. 1 at 1.

b. During the October 11, 1989 inspection, Mr. Goldrick outlined SPB's manufacturing processes to the Ohio EPA. Hear. Trans. at 29 and 30; State Exhibit No. 1 at 1. Specifically, Mr. Goldrick explained that SPB rebuilt carburetors, alternators and generators for automobiles. Hear. Trans. at 29; State Exhibit No. 1 at 1. In addition, a chrome plating line was operated in the basement for the purpose of applying a finish to the carburetors. Hear. Trans. at 30; State Exhibit No. 1 at 1.

c. As part of his explanation of SPB's manufacturing processes, Mr. Goldrick identified the chemicals used in said processes. Hear. Trans. at 30; State Exhibit No. 1 at 1. Specifically, the carburetors were cleaned in a 100 gallon degreasing tank on the second floor of the SPB building. Hear. Trans. at 30; State Exhibit No. 1 at 1. In addition, parts were cleaned on the second floor using steel and glass shot. State Exhibit No. 1 at 1. Toluene was used to thin the paint for the parts paint spray booth. Hear. Trans. at 30; State Exhibit No. 1 at 1.

d. During the October 11, 1989 inspection, Mr. Goldrick identified for the Ohio EPA chemicals, which were hazardous. Hear. Trans. at 55.

e. At the conclusion of the October 11, 1989 inspection, Mr. Goldrick, on behalf of SPB, committed to properly dispose of the identified hazardous waste at the Carnegie Avenue property. Hear. Trans. at 30 and 31; State Exhibit No. 1 at 2.

4. On December 8, 1989, the Ohio EPA was informed that SPB moved its principle place of business from the Carnegie Avenue property to a new location at 1324 Brookpark Road, Cleveland, Cuyahoga County, Ohio. Hear. Trans. at 31 and 32; State Exhibit No. 1 at 2. As a result of its relocation, the Ohio EPA was informed that SPB abandoned the previously identified hazardous waste on-site at the Carnegie Avenue facility. Hear. Trans. at 32. Mr. Goldrick, on behalf of SPB, re-committed to properly dispose of wastes abandoned at the Carnegie Avenue facility. Hear. Trans. at 32.

5. On January 22, 1990, the Ohio EPA informed Defendant Brody of his responsibilities under Ohio's hazardous waste laws, *i.e.*, RC Chapter 3734, and the rules adopted thereunder.⁴ State Exhibit No. 1 at 3. Said responsibilities included complying with the requirements of Chapters 3745-50, 3745-54 through 3745-58, and 3745-65 through 3745-69 of the Ohio Administrative Code ("OAC"). State Exhibit No. 1 at 3.

⁴Defendant Brody was also informed of his responsibilities pursuant to RC Chapter 3734, and the rules adopted thereunder on several other occasions. State Exhibit Nos. 2 and 5.

6. On April 18, 1990, the Ohio EPA conducted a second inspection of the Carnegie Avenue facility. Hear. Trans. at 39 and 40. The purpose of this inspection was to re-inventory the previously identified hazardous waste and to determine the current status of the Carnegie Avenue facility. Hear. Trans. at 39, 40 and 41; State Exhibit Nos. 3a through 3i.

a. Mr. Goldrick, on behalf of SPB, accompanied the Ohio EPA during April 18, 1990 inspection. Hear. Trans. at 40 and 41.

b. The hazardous wastes identified during the April 18, 1990 were, *inter alia*, 55-gallon drums containing glass and steel shot dust on the first floor, 55-gallon drums containing F006 hazardous waste sludge in the basement, a 55-gallon drum of sulfuric acid, a 55-gallon drum of ferric chloride, waste paint solvent, hydrochloric acid, and caustic soda mixed with 1,1,1-trichloroethane. Hear. Trans. at 43 through 45; State Exhibit Nos. 3a through 3i.

c. During the April 18, 1990 inspection, it was noted that the walls of the Carnegie Avenue facility were stained as a result of SPB's former manufacturing process. Hear. Trans. at 45 and 46; State Exhibit Nos. 3d, 3e, 3f and 3g.

7. On June 20, 1990, the Ohio EPA conducted a third inspection of the Carnegie Avenue property. Hear. Trans. at 52. The purpose of his inspection was to re-inventory the previously identified hazardous waste and to determine the current status of the Carnegie Avenue facility. Hear. Trans. at 52 and 53; State Exhibit Nos. 6 and 7a through 7j.

a. The hazardous wastes identified during the June 20, 1990 inspection were, *inter alia*, acetone, cadmium; methylene chloride; 1,1-dichloroethene; 1,2-dichloroethane; 1,1,1-trichloroethane; toluene, trichloroethene, tetrachloroethene. Hear. Trans. at 62 through 65; State Exhibit No. 6.

b. The hazardous wastes identified during the June 20, 1990 inspection were both liquid and solid in nature. State Exhibit No. 6. In addition, such wastes were both characteristic and listed hazardous wastes. Hear. Trans. at 73.

8. On August 21, 1991, the City of Cleveland Fire Department (hereinafter referred to as the "Fire Department") responded to the scene of a 2-2-2 alarm fire. State Exhibit No. 9 at 1. The scene of said fire was the Carnegie Avenue facility. Hear. Trans. at 77; State Exhibit No. 9 at 1. The Fire Department, as a result of its fire fighting efforts at the site, found several 55-gallon drums of, what it termed, unknown chemicals. Hear. Trans. at 77; State Exhibit No. 9 at 1. In addition, as a result of its subsequent investigation relating to the fire, the Fire Department informed the Ohio EPA that homeless people used the Carnegie Avenue property for shelter. Hear. Trans. at 79.

9. On September 23, 1991, Mrs. Greenberg sold the Carnegie Avenue property to Defendant Sperk. Hear. Trans. at 86 through 88; State Exhibit No. 11. Mrs. Greenberg originally purchased the property for \$89,000.00. Hear. Trans. at 90. However, she sold it to Defendant Sperk for \$15,000.00 because he promised to clean-up the environmental problem associated with the site. Hear. Trans. at 90 and 91; State Exhibit No. 11 at 1 and

3 through 6.⁵

10. On October 1, 1991, the Ohio EPA met with Defendant Sperk. Hear. Trans. at 91 and 92. The purpose of this meeting was to explain to Defendant Sperk the history of the Carnegie Avenue property, the nature of the environmental problem at the site, the, then, pending civil enforcement action, and his responsibility as the owner of said property for the environmental problems associated therewith. Hear. Trans. at 93.

11. The current status of the Carnegie Avenue facility is as follows:

a. The previously identified hazardous waste has not been properly disposed of at a licensed hazardous waste disposal, storage and treatment facility by Defendant Sperk, or anyone on his behalf, pursuant to RC §3734.02(F). Hear. Trans. at 107.

b. Neither Defendant Sperk nor anyone on his behalf has submitted a written closure plan for the Carnegie Avenue facility as required by OAC Rules 3745-55-12(A) and 3745-66-12(A). Hear. Trans. at 107.

c. Neither Defendant Sperk nor anyone on his behalf has submitted a written closure cost estimate for the disposal of the previously identified hazardous waste as required by OAC Rules 3745-55-42 and 3745-66-42. Hear. Trans. at 107.

d. Neither Defendant Sperk nor anyone on his behalf has submitted financial assurance for the closure of the Carnegie Avenue facility as required by OAC Rules 3745-55-43 and 3745-66-43. Hear. Trans. at 108.

e. Neither Defendant Sperk nor anyone on his behalf has obtained a detailed chemical and physical analysis of a representative sample of the previously identified hazardous waste as required by OAC Rules 3745-54-13(A)(1) and 3745-65-13(A)(1). Hear. Trans. at 108.

f. Neither Defendant Sperk nor anyone on his behalf has developed a written waste analysis plan for storing, treating and/or disposing of the previously identified hazardous waste as required by OAC Rules 3745-54-13(B) and 3745-65-13(B). Hear. Trans. at 108.

g. Neither Defendant Sperk nor anyone on his behalf has maintained twenty-four hour security at the Carnegie Avenue facility as required by OAC Rules 3745-54-14(B) and 3745-65-14(B). Hear. Trans. at 108 and 109.

h. Neither Defendant Sperk nor anyone on his behalf has maintained the appropriate signs for a hazardous waste facility at the Carnegie Avenue facility as required by OAC Rules 3745-54-14(C) and 3745-65-14(C). Hear. Trans. at 110.

i. Neither Defendant Sperk nor anyone on his behalf has developed a schedule

⁵Had Defendant Sperk not promised to clean-up the environmental problems associated with the Carnegie Avenue property, Mrs. Greenberg would not have sold Defendant Sperk the property at a reduced price, *i.e.*, \$15,000.00.

of inspection for the Carnegie Avenue facility as required by OAC Rules 3745-54-15(B) and 3745-65-15(B). Hear. Trans. at 110.

j. Neither Defendant Sperk nor anyone on his behalf has maintained an inspection log or summary for the Carnegie Avenue facility as required by OAC Rules 3745-54-15(D) and 3745-65-15(D). Hear. Trans. at 110.

k. Neither Defendant Sperk nor anyone on his behalf has developed a contingency plan for the Carnegie Avenue facility as required by OAC Rules 3745-54-52 and 3745-65-52. Hear. Trans. at 110.

12. The previously identified hazardous waste at the Carnegie Avenue property remains on-site and has not been properly disposed of by Defendant Sperk, as required by law and as promised by said Defendant. Hear. Trans. at 111.

13. Defendant Sperk's violations of RC Chapter 3734. and the rules adopted thereunder are viewed by the Ohio EPA as Class One violations, which are the most serious violations. Hear. Trans. at 121. In addition, Defendant Sperk has failed to respond to the repeated requests and demands of the Ohio EPA and the Attorney General. Hear. Trans. at 98, 99 and 121; State Exhibit Nos. 13, 14, 16 and 17.

14. On June 4, 1993, the State and Defendant Brody reached an agreement-in-principle as to the proper disposal and removal of the previously identified hazardous waste from the Carnegie Avenue facility and any subsequent remedial or corrective action that may be required at the site. See, June 4, 1993 Brody Trial Transcript at 23 through 28.

15. To address the environmental problems associated with the Carnegie Avenue property, the Ohio EPA has requested the following injunctive relief:

a. Order Defendant Sperk to grant the Ohio EPA, or its designee(s), and Defendant Brody, or his designee(s) access to the Carnegie Avenue property for the purpose of addressing the environmental problems associated with the site. Hear. Trans. at 122.

b. In light of the agreement reached with Defendant Brody June 4, 1993, order Defendant Sperk to pay one half (1/2) the cost of sampling and analyzing the hazardous waste at the Carnegie Avenue property, and removing the waste from the site. Hear. Trans. at 122.

c. In light of the agreement reached with Defendant Brody June 4, 1993, order Defendant Sperk to pay one half (1/2) the cost of any remedial action that may be deemed necessary to address any contamination at the Carnegie Avenue property. Hear. Trans. at 122 and 123.

16. To address Defendant Sperk's violations of RC Chapter 3734. and the rules adopted there under, the Ohio EPA calculated a civil penalty, pursuant to RC §3734.13(C), of \$32,000.00. Hear. Trans. at 124. This penalty is comprised of only two (2) of the factors set forth in *State of Ohio, ex rel. Brown v. Dayton Malleable, Inc.* (1982), 1 Ohio St. 3d 151. Hear. Trans. at 124 through 126. The factors are the potential for environmental

harm and the recalcitrance of the violator. Hear. Trans. at 124 through 126. A dollar amount of \$24,000.00 was assigned the potential for environmental harm. Hear. Trans. at 124 and 125. A figure of \$8,000.00 was allocated to Defendant Sperk's recalcitrance. Hear. Trans. at 125 through 128. Each figure was derived consistently with *State of Ohio, ex rel. Brown v. Dayton Malleable, Inc., supra*. Hear. Trans. 122 through 128. In light of the Defendant Sperk's conduct set forth herein, the civil penalty proffered by the State is appropriate and reasonable under the circumstances.

17. None of the facts set forth herein are disputed by Defendant Sperk. *See*, June 25, 1993 Order Granting the State's Motion for Partial Summary Judgment as to the Issue of Defendant Sperk's Liability. *See also*, Hear. Trans. at 20. In addition, Defendants Brody and Sperk are jointly and severally liable for the violations of law set forth in the Complaint.⁶ *See*, June 25, 1993 Order Granting the State's Motion for Partial Summary Judgment as to the Issue of Defendant Brody's Liability; June 25, 1993 Order Granting the State's Motion for Partial Summary Judgment as to the Issue of Defendant Sperk's Liability.

II. Conclusions of Law

1. The Carnegie Avenue property is a "facility" as that term is defined in RC §3734.01(N) and OAC Rule 3745-50-10(A)(32). *See*, June 25, 1993 Order Granting the State's Motion for Partial Summary Judgment as to the Issue of Defendant Sperk's Liability.

2. Defendant Sperk is an "owner" as that term is defined in OAC Rule 3745-50-10(A)(79). *See*, June 25, 1993 Order Granting the State's Motion for Partial Summary Judgment as to the Issue of Defendant Sperk's Liability.

3. The State has the right to seek a civil penalty for Defendant Sperk's violations of RC Chapter 3734. and the rules adopted thereunder, pursuant to RC §3734.13(C).

4. Ohio courts utilize four (4) factors when calculating the amount of an appropriate civil penalty. *State of Ohio, ex rel. Brown v. Dayton Malleable, Inc.* (1982), 1 Ohio St. 3d 151. These four (4) factors include: 1) the actual harm or risk of harm caused by the violation; 2) the economic benefit to the violator that was derived from said violation; 3) the degree of recalcitrance or indifference to the law displayed by the violator; and 4) any extraordinary cost incurred by the Ohio EPA and the Ohio Attorney General in seeking to obtain the violator's compliance. *State of Ohio, ex rel. Brown v. Dayton Malleable, Inc., supra*; *State of Ohio, ex rel. Brown v. J. Texas Howard* (Franklin Cty. 1981), 3 Ohio App. 3d 189.

5. The State has the right to request that injunctive relief be imposed against Defendant Sperk's for his violations of RC Chapter 3734. and the rules adopted thereunder, pursuant to RC §§3734.10 and 3734.13(C).

⁶Nothing in this Order shall be construed to impose any duty upon the State to undertake the work required by this Order or the Consent Journal Entry Between the State and Defendant Brody, or to obligate the State financially for the payment of such work. All work is to be performed by Defendants Brody and Sperk, and the costs thereof are to be born by said Defendants, jointly and severally.

6. Under Ohio law, the State is not required to show the traditional equitable grounds for the imposition of an injunction, *e.g.*, irreparable injury and inadequate remedy at law. *Ackerman v. Tri-City Geriatric Health Care, Inc.* (1978), 55 Ohio St. 2d 51. Proof of a violation or threatened violation of RC Chapter 3734. or the rules adopted thereunder is sufficient to invoke the Court's injunctive powers. *Id.* See also, *Conn v. Jones* (1926), 115 Ohio St. 186; *Brown v. Bob Kay, Inc.* (Cuyahoga Cty. 1979), 14 Ohio Ops. 3d 329.

III. Orders

In light of the Findings of Fact and Conclusions of Law set forth above, the Court being duly informed, finds that the State's request for civil penalty and injunctive relief against Defendant Sperk are well taken. As such, the Court orders the following:

1. Defendant Sperk is hereby permanently enjoined and ordered to comply with the requirements of RC Chapter 3734. and the rules adopted thereunder at the Carnegie Avenue facility.
2. Defendant Sperk is enjoined and ordered to immediately, *i.e.*, upon the Court's entry of this Order, grant the State and its designee(s) full and unrestricted access to the Carnegie Avenue property for the purpose of observing the work to be performed at the site, which is required by this Order and the companion Consent Journal Entry Between the State and Defendant Brody.
3. Defendant Sperk is enjoined and ordered to immediately, *i.e.*, upon the Court's entry of this Order, grant Defendant Brody and his designee(s) full and unrestricted access to the Carnegie Avenue property for the purpose of performing the work required by this Order and the companion Consent Journal Entry Between the State and Defendant Brody.
4. Within ninety (90) days from the Court's entry of this Order, Defendant Sperk is enjoined and ordered to properly remove and dispose of the hazardous waste that is currently stored on the Carnegie Avenue property, in accordance with RC §3734.02(F), regardless of the cost of such removal and disposal.
5. In the event any releases of hazardous constituents and/or wastes are discovered at the Carnegie Avenue property during the removal and disposal activities set forth in Order No. 4, Defendant Sperk is enjoined and ordered to initiate a corrective and/or remedial action to clean-up such releases, pursuant to RC Chapter 3734, regardless of the cost of such removal and disposal.
6. As the City of Cleveland, Ohio may require the demolition of the building located on the Carnegie Avenue property, the State will not require the submission of a formal closure by Defendant Sperk, pursuant to OAC Rule 3745-66-10. However, in the event the Ohio EPA determines that a plan delineating the procedure for performing the clean-up set forth in Order Nos. 4 and 5 is necessary, Defendant Sperk is enjoined and ordered to submit the required plan to the Ohio EPA within sixty (60) days of receipt of written notification from the Ohio EPA that such a plan is required.
7. Defendant Sperk is ordered to pay to the State, pursuant to RC §3734.13(C), a civil penalty of \$32,000.00. The civil penalty shall be paid by delivering to the State's attorney, and/or his successor, a certified check for the above-stated amount, payable to the order of

"Treasurer, State of Ohio", to be deposited into the hazardous waste clean-up fund, within thirty (30) days of the Court's entry of this Order.

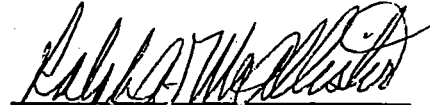
8. Defendant Sperk is ordered to pay one half (1/2) of the Court's costs associated with the case *sub judice* through the entry of this Order.

It Is Hereby Ordered that the Court will retain jurisdiction of this action for the purpose of enforcing the terms and provisions of this Order.

It Is Hereby Ordered that this Order is a final appealable order, pursuant to RC §2505.02 and Rule 54(B) of the Ohio Rules of Civil Procedure, as there is no just reason for delay of the final judgment as to Defendant Sperk until judgment is entered with respect to Defendant Brody.

No further entry is required. Entered this 30th day of September, 1993.

COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO



Judge Ralph A. McAllister