

IN THE COURT OF COMMON PLEAS, JEFFERSON COUNTY, OHIO

STATE OF OHIO, *ex rel*
MICHAEL DeWINE,
OHIO ATTORNEY GENERAL

Plaintiff,

VS

ARTHUR DAVID SUGAR, SR. *et.al*

Defendants.

FILED
COMMON PLEAS COURT

2011 MAR 27 P 3:29

JOHN A. CORRIGAN
CLERK OF COURT
JEFFERSON COUNTY, OHIO

CASE NO. 10-CV-149

**ORDER FINDING VIOLATIONS
AND IMPOSING SANCTIONS
AGAINST "SUGAR" DEFENDANTS**

JUDGE JOSEPH J. BRUZZESE, JR.

**FINAL APPEALABLE
ORDER**

This is an action brought by the office of the Ohio Attorney General alleging environmental violations against David Sugar Excavating, LLC ("Sugar Excavating"), Honey Creek Contracting Co., Inc. ("Honey Creek"), Excavation Technologies Inc. ("Ex Tech") ADS Leasing and Arthur David Sugar, Sr., personally along with other Defendants not relevant to this Order.

Prior to trial several of the "Sugar" entities confessed judgment were found in violation for certain time periods under a motion for partial Summary Judgment. On May 16 and 17, 2012 a bench trial was conducted as to the remaining issues. At the conclusion of trial the Court ordered the parties to file Proposed Findings of Fact and Conclusions of Law which have now been reviewed by the Court.

From the evidence adduced the Court finds as follows:

1. David Sugar is the sole shareholder and the sole person in charge of

Honey Creek, Sugar Excavating and ADS Leasing. While there has been some effort to maintain separate corporate entities it is David Sugar personally who is in absolute control of all of the Sugar entities and who makes all decisions.

The various Sugar entities routinely share equipment and employees.

The site involved is the old Weirton Steel plant in Steubenville, Ohio. That plant lies within the city limits of Steubenville, Ohio and is sandwiched between State Route 7, a four-lane highway to the West, and the Ohio River, a navigable waterway, to the East. There is a great amount of traffic on both Route 7 and on the Ohio River. Air from the site greatly affects travelers on both the road and the river. This site is anything but remote.

Honey Creek purchased the facility for the purpose of scrapping it. Prior to Honey Creek's purchase of the facility David Sugar and Harry Manganaro performed a walk-through of the facility and determined that a great amount of asbestos was present. Other investigations were done which simply confirmed that assessment.

After Honey Creek purchased the facility, it, or David Sugar, hired Harry Manganaro to oversee the demolition. Absolutely everyone concerned was fully aware of the massive amounts of asbestos present and there was no one involved who did not know.

Asbestos, especially in a friable condition, is an extreme health hazard with no known safe level. It can readily cause lung cancer, asbestosis and mesothelioma which is most often fatal to it's victims. It is a long and lingering death. The amount of time between the exposure to the asbestos and the onset of illness can and usually is years. While the cause and effect are usually separated by years the cause and effect relationship is not in doubt.

Demolition work began sometime in 2004 and was conducted in a cavalier disregard of the asbestos present. Workers did not have protective gear and asbestos from pipes and other installations was scattered everywhere. While Sugar claims that the initial phase simply involved the removal of equipment the fact is that vast amounts of asbestos were disturbed.

Despite the danger of the work being performed both David Sugar and Manganaro visited the site only very rarely. Each apparently trying to maintain some degree of plausible deniability for the massive violations occurring there.

Only after Ohio EPA came down on the Defendants did the Defendants hire Environmental Protection Systems, Phase I and the Howland Company to conduct asbestos removal. Despite the engagement of asbestos removal companies the actual asbestos removal went very poorly. During March of 2005 disgruntled employee Kevin Chesalo blew the whistle on asbestos violations at the plant.

While the State of Ohio and the Sugar companies dispute the reason why Chesalo was disgruntled, the fact remains that his allegations were true. Massive amounts of asbestos were being disturbed and allowed to float in the air. Some was dumped in pits but all or most all was mishandled. Friable asbestos was strewn everywhere. At one point it was described as if a snow storm had occurred.

At one point on March 14, 2005 the employees of an adjoining facility complained to the Steubenville City Health Department about clouds of white/gray material emanating from the demolition site. Those employees were obviously worried about inhaling asbestos fibers from the Sugar site and their fears appeared to be well-founded.

During the time of the demolition numerous EPA inspections occurred. Every inspection found violations on a grand scale. These are not paperwork violations or picky little details for which the Federal EPA and some State EPA's have become famous. These were serious and meaningful violations that were continuous in nature causing serious health hazards to motorists, boaters, employees of the adjoining facility, general members of the public and Sugar's own employees.

So intense and widespread were the numerous violations that Ohio EPA declared an asbestos public emergency on several occasions. The cause of these

emergencies was not paperwork or deminuous, ridiculous or little violations but serious departures from asbestos regulating requirements causing great risk of harm and death to many people..

Asbestos removal is supposed to be done by employees wearing protective gear which was not often the case here. Removed asbestos is supposed to be kept wet so that it will not blow away in the breeze. At this facility it was often times dry and strewn everywhere. Asbestos is supposed to be bagged and fully contained at all times but at this facility the bags were often ripped or otherwise opened.¹

Throughout the ordeal David Sugar himself was contacted by the EPA officials on numerous occasions. While he tried to stay away from the facility in order to maintain plausible deniability of the violations occurring there, the fact is that he was informed of the violations over and over as the sole man in charge of all Sugar entities. Whatever was done was on his order, whatever was not done was on his failure to order. He alone had authority to control activity on the site.

On one occasion asbestos removal was being conducted in a building. Regulations required that the building be enclosed with tarps and that negative

¹The bags containing the asbestos are required to show “generator labels” showing the source and dates on which and from where the asbestos came. Rarely, if ever, were generator labels shown. A violation of this particular requirement pales in seriousness to the wholesale disregard of asbestos abatement procedures that were continuous at the site.

pressure be maintained at all times. Negative pressure means that air from within the building is continuously pumped out through filters that trap asbestos fibers. The continuous outflow of air causes outside air to be sucked in rather than letting inside air flow out. Due to numerous problems including the failure to seal up the building, negative air pressure was rarely, if ever, maintained.

At times Defendants were required to notify the EPA of the beginning and ending dates of asbestos removal. While a violation of these regulations may be less serious in other situations they became very serious here because they tended to protect the operators from inspection.

Plaintiff seeks to pierce the corporate veil and hold David Sugar personally liable. It is the Court's view that Defendant Arthur David Sugar is personally liable not because he owns the companies (piercing the corporate veil) but because of his own personal conduct. Sugar was the sole decision-maker for all of his companies. When action was taken it was because he ordered that it be taken and when it was not taken it was because he failed to order it. He is liable not because he owned the company but because he made the decisions and gave the orders.²

For this reason an inspection by the Court of the corporate books, minutes and meetings is unnecessary as, despite his denials, Arthur David Sugar was in

²If a Corporate officer orders his employees to rob a bank the officer becomes a bank robber not because of his position in the corporation but because he gave the order.

complete control of the operation at all times with full knowledge of the conduct occurring there.

Mr. Sugar pleads an inability to pay much of a fine due to in large part his gambling which appears on a scale almost as grand as his asbestos violations. Gambling is a great way to cleanse dirty money, disappear clean money or just have fun depending upon the approach taken by the gambler. This Court has heard and dismisses as not credible all of Mr. Sugar's claims that he lacks funds with which to pay a substantial fine.

The Court adopts Plaintiff's Proposed Conclusions of Law paragraphs 1 through 71 filed on July 9, 2012 and holds the Sugar entities and Arthur David Sugar personally, jointly and severally liable for the civil penalties set forth below.

The Court further adopts the Proposed Civil Penalty Findings 1 through 47 as filed by Plaintiff on July 19, 2012.

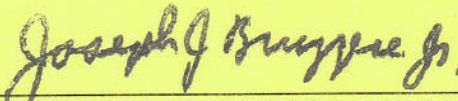
ORDER

For the foregoing reasons the Court holds David Sugar Excavating, LLC. ("Sugar Excavating"), Honey Creek Contracting Inc. ("Honey Creek"), Excavating Technologies Inc. ("Ex Tech"), ADS Leasing and Arthur David Sugar, Sr., jointly and severally liable for a civil penalty in the amount of Eight Hundred Fifty Thousand dollars (\$850,000.00).

The Court believes that demolition may now be complete and that Plaintiff's request for injunctive relief may now be moot. Hearing on the continued need for injunctive relief, if any, shall be conducted on Friday, April 12, 2013 at 10:00 a.m.

Defendants, David Sugar Excavating, LLC ("Sugar Excavating"), Honey Creek Contracting Inc. ("Honey Creek"), Excavating Technologies, Inc. ("Ex Tech") ADS Leasing and Arthur David Sugar, Sr., shall also pay the costs and the attorneys fees assessed by the office of the Ohio Attorney General. Hearing on that amount shall also be conducted on Friday, April 12, 2013 at 10:00 a.m.

The Court shall retain jurisdiction to supplement, modify or enforce this Order.



HONORABLE JOSEPH J. BRUZZESE, JR.

Copies:
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