

**IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO**

STATE OF OHIO <i>ex rel.</i>	:	
MICHAEL DeWINE,	:	
ATTORNEY GENERAL OF OHIO	:	CASE NO.
30 East Broad Street, 25th Floor	:	
Columbus, Ohio, 43215	:	JUDGE
	:	
Plaintiff,	:	COMPLAINT FOR
	:	INJUNCTIVE RELIEF
	:	AND CIVIL PENALTIES
v.	:	
	:	
WARREN STEEL HOLDINGS, LLC	:	
c/o Corporate Creations Network, Inc.,	:	
Statutory Agent	:	
119 E. Court Street	:	
Cincinnati, Ohio 45202	:	
	:	
Defendant.	:	

Defendant Warren Steel Holdings, LLC (“Defendant” or “Warren Steel”) owns and operates a steel production facility at 4000 Mahoning Avenue, Warren, Trumbull County, Ohio. As a result of the steel production, Warren Steel generates solid and hazardous wastes that are illegally stored and disposed at the Site without a license or permit in violation of R.C. Chapter 3734 and rules promulgated thereunder. In addition, Warren Steel has or will fail to comply with R.C. Chapter 3752, Ohio’s cessation of regulated operations laws (CRO), and the rules promulgated thereunder; and has failed to comply with water pollution laws, R.C. Chapter 6111 and the National Pollutant Discharge Elimination System (NPDES) permit issued to it under that Chapter. These violations are an immediate threat to human health and the environment.

Therefore, Plaintiff State of Ohio, by and through its Attorney General, Michael DeWine (hereinafter “Plaintiff”), at the written request of the Director of Environmental Protection, institutes this action to enforce Ohio’s solid and hazardous waste laws, Ohio’s cessation of regulated operations laws, and Ohio’s water pollution laws, R.C. Chapter 6111. Plaintiff State of Ohio alleges as follows:

Defendant

1. Warren Steel is a limited liability company incorporated in the State of Delaware and registered with the Secretary of State to do business in Ohio.
2. Warren Steel is the owner and operator of the steel production facility at 4000 Mahoning Avenue, Warren, Trumbull County, Ohio (“Site”).

Activity of Defendant Which Gives Rise to This Complaint

3. On August 21, 2015, August 26, 2015, and November 20, 2015, Ohio EPA conducted hazardous waste inspections at the Site.
4. During Ohio EPA’s August 21, 2015, August 26, 2015,, November 20, 2015, and Janaury 13, 2016 inspections, Defendant Warren Steel was not operating its steel production facility at the Site. On December 4, 2015, Warren Steel submitted a temporary cessation of regulated operations notification to Ohio EPA.
5. During the inspections, Ohio EPA observed electric furnace dust, a listed hazardous waste (K061) described in Ohio Adm.Code 3745-51-32, illegally disposed at the Site. In addition, Ohio EPA observed other piles of wastes disposed throughout the Site that had not been evaluated to determine if the wastes were hazardous wastes in violation of Ohio Adm. Code 3745-52-11.
6. Warren Steel’s operation produces wastewater which is managed through a

series of treatment lagoons and a wastewater treatment facility that discharges wastewater to the Mahoning River pursuant to a National Pollution Discharge Elimination System Permit (NPDES) issued by the Director of Ohio EPA.

7. On or about January 12, 2016, Ohio EPA became aware that Warren Steel was permanently ceasing operations at the Site. On or about January 14, 2016, Warren Steel had terminated the remaining employees, and had abandoned the Site. The terminated employees included the operators of the on-Site waste water treatment facility.

8. Warren Steel abandoned the Site unsecured and, in particular, abandoned its wastewater treatment facility without security and without any personnel capable or authorized to operate the wastewater treatment facility. In addition, Warren Steel failed to make its electric utility payments and the electric utility provider was in the process of terminating electric service to the Site. Termination of electric service would render pumps which are part of the wastewater treatment facility inoperable.

9. The NPDES` permit for the Site includes, but is not limited to, the requirement to maintain twelve inches of freeboard in primary Lagoon D (as measured by a gauge in the recycle basin). One of the former operators of the wastewater treatment facility informed Ohio EPA that Warren Steel's practice was to activate the on-Site wastewater treatment facility when the freeboard in Primary Lagoon D reached eighteen inches, and it's operational practice was to maintain an "ideal" freeboard of twenty-eight inches to prevent overflow in the event of a heavy rainfall.

10. Ohio EPA conducted an inspection of the Site on Saturday, January 16, 2015, and observed that the freeboard in Primary Lagoon D was at seven and one-half

inches and that said freeboard was continuing to decrease, causing an imminent risk of overflowing. An overflow would allow untreated waste waters containing, but not limited to, lead, silver, zinc, and copper, to the adjacent Mahoning River. Estimates were that primary Lagoon D would overflow and discharge untreated waste waters to the Mahoning River in three to five days. Ohio EPA contacted the electric utility provider and made arrangements for electrical service to be temporarily restored so that the pumps in the lagoons would be operational. Ohio EPA also contacted one of the former employees of Warren Steel, who was also a former operator of the on-Site wastewater treatment plant, who agreed to temporarily operate the on-Site wastewater treatment facility, with Ohio EPA oversight, in an effort to prevent the overflow of untreated waste waters to the adjacent Mahoning River.

11. As a direct result of the efforts of Ohio EPA, as of Sunday, January 17, 2016, the freeboard in Primary Lagoon D was at fifteen inches. However, without Warren Steel fulfilling its legal obligation to operate the on-Site wastewater treatment plant, the State will have to continue to expend its own resources to prevent untreated waste waters from overflowing and being discharged to the Mahoning River.

12. Since hazardous waste is illegally stored and disposed at the Site, Warren Steel needs to maintain security at the Site as required by Ohio Adm. Code 3745-54-14 and perform a hazardous waste closure of the Site, as required by Ohio Adm. Code 3745-55-10 through 3745-55-20, which will require an investigation of the extent of hazardous waste contamination and then cleanup of contamination pursuant to an Ohio EPA-approved closure plan.

13. On or about January 14, 2016, Warren Steel permanently ceased operations

at the Site, and counsel for Defendant affirmatively advised Ohio EPA that Warren Steel would not comply further with any hazardous waste laws or with the cessation of regulated operations laws and rules set forth in R.C. Chapter 3752 and the rules adopted thereunder.

14. As required by R.C. 3752.07 and Ohio Adm. Code 3745-352-20(A)(1)(b) and Ohio Adm.Code 3745-352-30, within 30 days after cessation of regulated operations, Warren Steel is required to secure all areas of the Site where regulated operations were conducted and that contain regulated substances and all debris, equipment, furnishings, containers, motor vehicles, and roiling stock contaminated with regulated substances to prevent unauthorized access.

15. As required by R.C. 3752.06 and Ohio Adm.Code 3745-352-20(A)(2)(a) through (g), within 90 days after cessation of regulated operations, Warren Steel is then required to remove all regulated substances and all debris, electrical transformers, equipment, furnishings, containers, motor vehicles, and roiling stock contaminated with regulated substances.

Status of Defendant and Their Activities under Ohio's Solid and Hazardous Waste Laws, Construction and Demolition Debris Laws, and Cessation of Regulated Operations Laws

16. Defendant has engaged in the “storage” and “disposal” of hazardous waste, as that term is defined by R.C. 3734.01(F) and Ohio Adm.Code 3745-50-10(A)(31) and Ohio Adm. Code 3745-50-10(A)(112).

17. The “hazardous wastes” stored and/or disposed of by Defendant are defined as “hazardous wastes” as set forth in R.C. 3734.01(J) and Ohio Adm.Code 3745-51-03 and 3745-51-32.

18. Defendant is an “operator” and “owner” of a hazardous waste facility as those terms are defined by Ohio Adm.Code 3745-50-10(A)(90) and Ohio Adm. Code 3745-50-10(A)(91).

19. Defendant engages in the “management” or “hazardous waste management,” as that term is defined in Ohio Adm.Code 3745-50-10(A)(77).

20. Defendant is a “generator” of hazardous waste as that term is defined in Ohio Adm.Code 3745-50-10(A)(51).

21. The Site is a “facility” or “hazardous waste facility” as those terms are defined in Ohio Adm.Code 3745-50-10(A)(44). The facility is not operating under a hazardous waste permit issued in accordance with R.C. Chapter 3734.

22. The Site is a “reporting facility” as that term is defined by R.C. 3752.01(V) and Ohio Adm.Code 3745-352-05(EE).

23. The Site contains “regulated substances” as that term is defined by R.C. 3752.01(V) and Ohio Adm.Code 3745-352-05(DD).

24. Defendant is an “operator” and “owner” of a reporting facility as those terms are defined by R.C. 3752.01(O) and R.C. 3752.01(Q) and Ohio Adm.Code 3745-352-05(X) and Ohio Adm.Code 3745-352-05(Z).

25. Defendant has engaged in the “disposal” of solid waste as that term is defined by R.C. 3734.01(F).

26. The “solid wastes” disposed of by Defendant are defined as “solid wastes” as defined in R.C. 3734.01(E) and Ohio Adm.Code 3745-27-01(S)(23)

27. Defendant is a “person” as defined by R.C. 3734.01(G), R.C. 3752.01(R),

R.C. 3714.01(H), Ohio Adm.Code 3745-50-10(A)(95), Ohio Adm.Code 3745-352-05(AA), Ohio Adm.Code 3745-27-01(P)(3), and Ohio Adm.Code 3745-400-01(DD).

28. The Site is a “solid waste disposal facility” as that term is defined in R.C. 3734.01(N) and Ohio Adm.Code 3745-27-01(S)(24).

29. The Site is not licensed or permitted as a solid waste disposal facility.

30. Defendant has engaged in “open dumping” of solid wastes as that term is defined by R.C. 3734.01(I) and Ohio Adm.Code 3745-27-01(O)(4).

31. Revised Code 3734.11(A) states that no person shall violate any section of R.C. Chapter 3734 or any rule adopted under R.C. Chapter 3734.

32. Defendant has engaged in the “disposal” of construction and demolition debris as that term is defined by R.C. 3734.01(F).

33. The “construction and demolition debris” disposed of by Defendant are defined as “construction and demolition debris” as defined in R.C. 3714.01(C) and Ohio Adm.Code 3745-400-01(F)

34. The Site is a construction and demolition debris “facility” as that term is defined by R.C. 3714.01(E).

35. The Site is not licensed as a construction and demolition facility

36. All rules cited in Counts One through Thirteen in this Complaint were adopted by the Director pursuant to R.C. Chapter 3714, R.C. Chapter 3734 or R.C. Chapter 3752, unless otherwise stated.

Additional General Allegations

37. Pursuant to Civ. R. 8(A), the State informs the Court that the amount sought is in excess of Twenty Five Thousand Dollars (\$25,000).

38. The allegations in the preceding paragraphs of the Complaint are incorporated by reference into each count of the Complaint as if fully restated therein.

COUNT ONE

Operation of a Hazardous Waste Facility without a Permit

39. Revised Code 3734.02(E) prohibits a person from establishing or operating a hazardous waste facility without a hazardous waste permit issued in accordance with R.C. 3734.05.

40. From a date not yet known to Plaintiff but since at least August 21, 2015 and continuing until the present, Defendant has established and/or operated a hazardous waste facility without a hazardous waste permit issued in accordance with R.C. 3734.02(E).

41. The conduct of the Defendant as described in this Count violates R.C. 3734.02(E) and R.C. 3734.11, for which Plaintiff is entitled to injunctive relief pursuant to R.C. 3734.10 and R.C. 3734.13(C), and for which Defendant is liable for a civil penalty of up to ten thousand dollars, (\$10,000.00) per day for each day of violation, including each day subsequent to the filing of this Complaint, pursuant to R.C. 3734.13(C).

COUNT TWO

Illegal Storage and Disposal of Hazardous Waste

42. Revised Code 3734.02(F) provides that no person shall store, treat or dispose of hazardous waste, on any premises other than: (1) a hazardous waste facility operating under a hazardous waste permit issued in accordance with R.C. Chapter 3734, (2) a facility in another state operating under a license or permit issued in accordance with the “Resource Conservation and Recovery Act of 1976”(“RCRA”), 90 Stat. 2806,

42 U.S.C.A. 6921 as amended, (3) a facility in another nation operating in accordance with the laws of that nation, (4) a facility holding a permit issued pursuant to Title I of the “Marine Protection, Research, and Sanctuaries Act of 1972,” 86 Stat. 1052, 33 U.S.C.A. 1401, as amended, or (5) a hazardous waste facility that is operating under a permit by rule under rules adopted by the director of environmental protection or that is not subject to permit requirements under rules adopted by the director.

43. The Site is not one of the types of facilities authorized under R.C. 3734.02(F) for the storage or disposal of hazardous waste.

44. From a date not yet known to Plaintiff but since at least August 21, 2015 and continuing to the present, Defendant has stored or disposed hazardous wastes at the Site.

45. The conduct of the Defendant as described in this Count violates R.C. 3734.02(F) and R.C. 3734.11, for which Plaintiff is entitled to injunctive relief pursuant to R.C. 3734.10 and R.C. 3734.13(C), and for which Defendant is liable for a civil penalty of up to ten thousand dollars, (\$10,000.00) per day for each day of violation, including each day subsequent to the filing of this Complaint, pursuant to R.C. 3734.13(C).

COUNT THREE
Failure to Develop and Implement a Closure Plan

46. Ohio Adm.Code 3734-55-11 requires that the owner or operator of a hazardous waste facility must close the facility in a manner that minimizes the need for further maintenance and controls, minimizes or eliminates, to the extent necessary to prevent threats to human health and the environment, post-closure escapes of hazardous waste, hazardous constituents, leachate, contaminated runoff, or hazardous waste

decomposition products to the ground or surface waters or to the atmosphere.

47. Ohio Adm.Code 3734-55-12 provides that the owner or operator of a hazardous waste facility must have a written closure plan approved by the Director of Ohio EPA.

48. From a date not yet known to Plaintiff but since at least August 21, 2015 and continuing to the present, Defendant failed to have a written closure plan approved by the Director of Ohio EPA

49. The conduct or omissions of Defendant as described in this Count violates Ohio Adm.Code 3734-55-11 and Ohio Adm.Code 3745-55-12 and R.C. 3734.11, for which Plaintiff is entitled to injunctive relief pursuant to R.C. 3734.10 and R.C. 3734.13(C), and for which Defendant is liable for a civil penalty of up to ten thousand dollars, (\$10,000.00) per day for each day of violation, including each day subsequent to the filing of this Complaint, pursuant to R.C. 3734.13(C).

COUNT FOUR

Failure to Maintain Written Estimate of Closure Cost, Adequate Financial Assurance, and Liability Coverage

50. Ohio Adm.Code 3745-55-42 requires the owner or operator of a hazardous waste facility to maintain a written estimate of the cost of closing a facility and to annually update the estimate to account for inflation.

51. From a date not yet known to Plaintiff but since at least August 21, 2015 and continuing to the present, Defendant established and operated a hazardous waste facility.

52. Defendant has failed to maintain a written estimate of the cost of closing the hazardous waste management units at the Site and have failed to annually update such

estimate to account for inflation.

53. Ohio Adm.Code 3745-55-43 requires the owner or operator of a hazardous waste facility to maintain financial assurance for closure of a facility and adjust the amount of financial assurance as necessary to account for inflation and other changes in the cost estimate for closure.

54. Defendant has failed to adjust financial assurance as necessary to account for inflation and other changes in the cost estimate for closure.

55. Ohio Adm.Code 3745-55-47 provides that the owner or operator of a hazardous waste facility establish liability coverage, including but not limited to coverage for sudden accidental occurrences arising from the operations of the facility in the amount of at least one million dollars per occurrence with an annual aggregate of at least two million dollars, exclusive of legal defense costs.

56. Defendant has failed to establish liability coverage for the hazardous waste management units at the Site.

57. The conduct or omissions of Defendant as described in this Count violates Ohio Adm.Code 3745-55-42, 3745-55-43, and 3745-55-47, and R.C. 3734.11, for which Plaintiff is entitled to injunctive relief pursuant to R.C. 3734.10 and 3734.13(C), and for which Defendant is liable for a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each day of violation, including each day subsequent to the filing of this Complaint, pursuant to R.C. 3734.13(C).

COUNT FIVE
Failure to Conduct Waste Evaluation

58. Ohio Adm.Code 3745-52-11 states that any person who generates a waste as defined in Ohio Adm. Code 3745-51-02, must determine if that waste is a hazardous

waste.

59. From a date not yet known to Plaintiff, but since at least August 21, 2015 and continuing to the present, Defendant failed to fully characterize several piles of wastes disposed at the Site to determine if the wastes were hazardous wastes.

60. The conduct or omissions of Defendant as described in this count violates Ohio Adm.Code 3745-52-11 and R.C. 3734.11, for which Plaintiff is entitled to injunctive relief pursuant to R.C. 3734.10 and 3734.13(C), and for which Defendant is liable for a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each day of each violation, including each day subsequent to the filing of this Complaint, pursuant to R.C. 3734.13(C).

COUNT SIX
Failure to Conduct and Record Personnel Training

61. Ohio Adm.Code 3745-52-54(A)(4) requires a generator to comply with the personnel training requirements set forth in Ohio Adm.Code 3745-65-16.

62. Ohio Adm.Code 3745-65-16(A) requires all facility personnel to successfully complete a program of classroom instruction or on the job training that teaches them to perform their duties in a way that ensures the facility's compliance with hazardous waste facility standards and/or hazardous waste interim facility standards.

63. Ohio Adm.Code 3745-65-16(D) requires the owner or operator of a facility to maintain at the facility, for each person handling hazardous waste at the facility, documents indicating the person's job title, position description, a description of the amount of training to be given for that position in satisfaction of those rules, and the amount of training actually received by that person in accordance with those rules.

64. From a date not yet known to Plaintiff but since at least August 21, 2015

until on or about January 14, 2016, Defendant failed to conduct training at the Site and failed to maintain training and personnel records at the Site.

65. The conduct or omissions of Defendant as described in this Count violates Ohio Adm.Code 3745-54-16 and R.C. 3734.11, for which Plaintiff is entitled to injunctive relief pursuant to R.C. 3734.10 and 3734.13(C), and for which Defendant is liable for a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each day of each violation, pursuant to R.C. 3734.13(C).

COUNT SEVEN
Failure to Have a Contingency Plan

66. Ohio Adm.Code 3745-52-54(A)(4) requires a generator to comply with the contingency plan requirements set forth in Ohio Adm.Code 3745-65-52.

67. Ohio Adm.Code 3745-54-52(A), (C), (D), and (E) requires the contingency plan to describe the steps facility personnel will take in the event of a fire, explosion, or unplanned release of hazardous waste or hazardous waste constituents into the air, soil, or surface water; to describe arrangements with emergency personnel; to list the names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator; and to list all emergency equipment.

68. From a date not yet known to Plaintiff but since at least August 21, 2015 and continuing until the present, Defendant failed to have a contingency plan in compliance with the requirements of Ohio Adm.Code 3745-54-52(A), (C), (D), and (E).

69. The conduct or omissions of Defendant as described in this Count for relief violates Ohio Adm.Code 3745-54-52(A) (C) (D) and (E) and R.C. 3734.11, for which Plaintiff is entitled to injunctive relief pursuant to R.C. 3734.10 and 3734.13(C), and for

which Defendant is liable for a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each day of each violation, including each day subsequent to the filing of this Complaint, pursuant to R.C. 3734.13(C).

COUNT EIGHT
Failure to Manage Hazardous Waste Containers Properly

70. Ohio Adm.Code 3745-52-54(A)(1) requires a generator to comply with the container requirements set forth in Ohio Adm.Code 3745-66-74.

71. Ohio Adm.Code 3745-66-74 requires owners and operators, at least once during each period from Sunday to Saturday, to inspect areas where containers stored, looking for leaks and for deterioration caused by corrosion or other factors and the inspections must be recorded in an inspection log or summary.

72. From a date not yet known to Plaintiff but since at least August 21, 2015 and continuing until the present, Defendant has failed to conduct weekly inspections of areas containing hazardous waste containers or record such inspections in a log or summary.

73. The conduct or omissions of Defendant as described in this Count violates Ohio Adm.Code 3745-55-74 and R.C. 3734.11 for which Plaintiff is entitled to injunctive relief pursuant to R.C. 3734.10 and R.C. 3734.13(C), and for which Defendant is liable for a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each day of violation, including each day subsequent to the filing of this Complaint pursuant to R.C. 3734.13(C).

COUNT NINE
Failure to Maintain Security

74. Ohio Adm.Code 3745-54-14 requires the owner or operator of a hazardous

waste facility must prevent the unknown entry and minimize the unauthorized entry of persons onto the Site.

75. From a date not yet known to Plaintiff but since at least August 21, 2015 and continuing to the present, Defendant established and operated a hazardous waste facility without a permit.

76. From on or about January 14, 2016, Defendant has failed to maintain security at the Site, which would allow for unknown and unauthorized entry onto the Site.

77. The conduct or omissions of Defendant as described in this Count violates Ohio Adm. Code 3745-54-14 and R.C. 3734.11, for which Plaintiff is entitled to injunctive relief pursuant to R.C. 3734.10 and 3734.13(C), and for which Defendant is liable for a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each day of each violation, including each day subsequent to the filing of this Complaint, pursuant to R.C. 3734.13(C).

COUNT TEN

Failure to Comply with Cessation of Regulated Operations

78. Revised Code 3752.07 and Ohio Adm.Code 3745-352-20(A)(1)(b) and Ohio Adm.Code 3745-352-30 requires owners and operators of a reporting facility to provide security for all areas of a facility that contain regulated substances and all debris, equipment, furnishings, containers, motor vehicles, and roiling stock contaminated with regulated substances to prevent unauthorized access.

79. Revised Code 3752.06 and Ohio Adm.Code 3745-352-20(A)(2)(a) through (g) requires owners and operators of a facility to remove all regulated substances and all

debris, equipment, furnishings, containers, motor vehicles, and rolling stock contaminated with regulated substances and then certify to the Director that the removal has been completed in compliance with the statute and rule.

80. The Site is a reporting facility that ceased operations on or before January 15, 2016.

81. On January 15, 2016, a representative of the Defendant with apparent authority advised Ohio EPA that it would not comply with the cessation of regulated operations laws.

82. The conduct or omissions of Defendant as described in this Count violates R.C. 3752.06, R.C. 3752.07 and Ohio Adm.Code 3745-352-20 and Ohio Adm.Code 3745-352-30 for which Plaintiff is entitled to injunctive relief pursuant to R.C. 3752.17(A), and for which Defendant is liable for a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each violation of R.C. 3752.06 and Ohio Adm.Code 3745-352-20(A)(2)(a) through (g), including each day subsequent to the filing of this Complaint, pursuant to R.C. 3752.17(C), and for which Defendant is liable for a civil penalty of up to five thousand dollars (\$5,000.00) per day for each violation of R.C. 3752.07, Ohio Adm.Code 3745-352-20(A)(1)(b), and Ohio Adm.Code 3745-352-30, including each day subsequent to the filing of this Complaint, pursuant to R.C. 3752.17(C).

COUNT ELEVEN
Open Dumping of Solid Waste

83. Revised Code 3734.03 provides that no person shall dispose of solid wastes by open burning or open dumping.

84. Ohio Adm.Code 3745-27-05(C), states, in relevant part, “No person shall

conduct, permit, or allow open dumping. In the event that open dumping is occurring or has occurred at a property, the person(s) responsible for the open dumping, the owner of the property, or the person(s) who allow or allowed open dumping to occur, shall promptly remove and dispose or otherwise manage the solid waste in accordance with Chapter 3734 of the Revised Code, and shall submit verification that the solid waste has been properly managed.”

85. From a date as yet unknown, but at least since January 15, 2016, Defendant has openly dumped solid wastes at the Site.

86. The conduct or omissions of Defendant as described in this Count violates Ohio Adm.Code 3745-27-05(C), R.C. 3734.03, and R.C. 3734.11 for which Plaintiff is entitled to injunctive relief pursuant to R.C. 3734.10 and R.C. 3734.13(C), and for which Defendant is liable for a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each day of violation, including each day subsequent to the filing of this Complaint pursuant to R.C. 3734.13(C).

COUNT TWELVE
Operating and Maintaining an Unlicensed Solid Waste Facility

87. Revised Code 3734.05(A)(1) states, in relevant part, that “no person shall operate or maintain a solid waste facility without a license issued under this division by the board of health of the health district in which the facility is located or by the director of environmental protection when the health district in which the facility is located is not on the approved list.”

88. The Site is not a licensed solid waste facility.

89. January 15, 2016, Defendant has owned, operated and/or maintained a solid

waste facility without a license at the Site.

90. The conduct or omissions of Defendant as described in this Count violates Ohio Adm.Code 3745-27-05(C), R.C. 3734.03 and R.C. 3734.11 for which Plaintiff is entitled to injunctive relief pursuant to R.C. 3734.10 and R.C. 3734.13(C), and for which Defendant is liable for a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each day of violation, including each day subsequent to the filing of this Complaint pursuant to R.C. 3734.13(C).

COUNT THIRTEEN
Operating and Maintaining an Unlicensed Construction and Demolition Debris Facility

91. Revised Code 3714.06 provides that no person shall operate or maintain a construction and demolition debris facility without an annual construction debris facility operation license.

92. Ohio Adm.Code 3745-37-01(C) provides that no person shall establish, modify, operate or maintain a construction and demolition debris facility without a construction and demolition debris facility license.

93. The Site is not a licensed construction and demolition debris facility facility.

94. From a date as yet unknown, but at least since January 15, 2016, Defendant has disposed construction and demolition debris at the Site.

95. The conduct or omissions of Defendant as described in this Count violates Ohio Adm.Code 3714.06, Ohio Adm.Code 3745-37-01(C), R.C. 3714.13(A), and R.C. 3714.13(B) for which Plaintiff is entitled to injunctive relief pursuant to R.C. 3714.11(A), and for which Defendant is liable for a civil penalty of up to ten thousand

dollars (\$10,000.00) per day for each day of violation, including each day subsequent to the filing of this Complaint pursuant to R.C. 3714.11(B).

Status of Defendant and Their Activities under Ohio's Water Pollution Laws

96. Process wastewater at Defendant's wastewater treatment facility consists of contact cooling water from the melt shop (caster spray cooling and machine cooling, vacuum degassing, and sand filter backwash); noncontact cooling water from the melt shop and the caster shop melt shop; boiler house blow down; and mold treatment blow down.

97. Defendant's wastewater treatment works (treatment works) consists of a primary lagoon (Lagoon A), which then flows into then a series of three secondary lagoons (Lagoons, B, C, and D), which then flows to a recycle basin prior to being routed through a wastewater treatment plant before discharging to the Mahoning River through Outfall 005. The treatment process following storage in the lagoons includes caustic adjustment in a flash mixer, flocculation, clarification, and a 3-cell polishing filter. Caustic is added to adjust pH, and polymer is added to aid in settling.

98. Defendant's wastewater treatment works included an emergency overflow from Lagoon D, and physically located in the recycle basin, that is designed to discharge directly to the Mahoning River through Outfall 008.

99. The Mahoning River is "waters of the state" as defined by R.C. 6111.01(H) and Ohio Adm.Code 3745-33-01(Y).

100. The effluent discharged from the Defendant's treatment works, whether after treatment or by overflow, is "pollution," "industrial waste" and/or "other wastes" as those terms are defined in R.C. 6111.01(A), (C), and (D), respectively.

101. On February 11, 2013, the Ohio EPA issued a wastewater or NPDES Permit, No. 3ID00050*KD, (“the NPDES permit”) to Defendant, authorizing Defendant to discharge from the facility to the Mahoning River in accordance with its terms and conditions. The effective date of the NPDES permit was March 1, 2013, and the expiration date is January 31, 2017. The NPDES permit is attached at Exhibit 1 and is hereby incorporated by reference as if fully rewritten within.

102. Revised Code 6111.04 prohibits any person to whom a permit is issued from causing pollution or placing or causing to be placed any sewage, industrial waste or other wastes in a location where they cause pollution of any “waters of the state” in excess of the permissive discharge limits of a valid NPDES permit.

103. Revised Code 6111.07(A) provides that no person shall violate or fail to perform any duty imposed by R.C. 6111.01 through 6111.08 or violate any rule, or term or condition of a permit issued or adopted by the Director pursuant to R.C. Chapter 6111. Each day of each violation is a separate offense.

104. All rules referenced in Counts Fourteen through Sixteen of this Complaint were adopted by the Director pursuant to R.C. 6111.03.

105. The allegations contained in all of the preceding paragraphs are applicable to each Count of the Complaint and are incorporated by reference into each as if fully restated therein.

COUNT FOURTEEN
Failure To Maintain Minimum Freeboard

106. Part IA, Table 008, Final Outfall of the NPDES permit requires Defendant maintain one foot of freeboard in Lagoon D, to ensure that untreated or partially treated wastewater is not discharged from the Lagoon D.

107. On December 28, 2015, Defendant reported a bypass from Outfall 008 from Lagoon D

108. Upon information and belief, from on or about December 27, 2015 and other days yet unknown leading up to December , 2015, Defendant failed to maintain one foot of freeboard in Lagoon A in violation of its NPDES permit. Each day in which proper freeboard is not maintained is a separate violation of the NPDES permit.

109. Upon information and belief, from on or about January 14, 2016 through January 17, 2016, Defendant failed to maintain one foot of freeboard in Lagoon D in violation of its NPDES permit. Each day in which proper freeboard is not maintained is a separate violation of the NPDES permit.

110. The conduct or omissions of Defendant as described in this Count violates R.C. 6111.07(A), for which Defendant is subject to an injunction pursuant to R.C. 6111.07(B), and for which Defendant is liable to pay to the State a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each day of violation, including each day subsequent to the filing of this Complaint, pursuant to R.C. 6111.09(A).

COUNT FIFTEEN
Failure To Monitor Freeboard Levels

111. Part IA, Table 008, Final Outfall of the NPDES permit requires Defendant to conduct daily monitoring of the freeboard in Lagoon D.

112. Upon information and belief, upon Defendant's abandonment of its facility on or about January 14, 2016 and continuing through the present, Defendant has failed and continues to fail to monitor the freeboard in Lagoon D in violation of its NPDES permit.

113. The conduct or omissions of Defendant as described in this Count violates

R.C. 6111.07(A), for which Defendant is subject to an injunction pursuant to R.C. 6111.07(B), and for which Defendant is liable to pay to the State a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each day of violation, including each day subsequent to the filing of this Complaint, pursuant to R.C. 6111.09(A).

COUNT SIXTEEN
Failure To Conduct Facility Operation and Quality Control

114. Part III, 3 of Defendant's NPDES permit requires Defendant to operate all wastewater treatment works consistent with the following:

- A. At all times, the permittee shall maintain in good working order and operate as efficiently as possible all treatment or control facilities or systems installed or used by the permittee necessary to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with condition of the permit.
- B. The permittee shall effectively monitor the operation and efficiency of treatment and control facilities and the quantity and quality of the treated effluent.

115. On or about January 14, 2016 and continuing through the present, Defendant has effectively abandoned its wastewater treatment facilities with no provision or plan to ensure the proper operation and working order of these facilities. Failure to operate the wastewater treatment facilities creates an ongoing risk of violation of the NPDES permit, including the overflowing of untreated wastewater from the facility.

116. Defendant's improper abandonment of its wastewater treatment facility violates Part III, 3 of its NPDES permit. Upon information and belief, this violation continues on a daily basis.

117. The conduct or omissions of Defendant as described in this Count violates R.C. 6111.07(A), for which Defendant is subject to an injunction pursuant to R.C. 6111.07(B) and for which Defendant is liable to pay a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each day of violation, including each day subsequent to the filing of this Complaint, pursuant to R.C. 6111.09(A).

COUNT SEVENTEEN

Cost Recovery

118. Revised Code 3745.12(A)(1) creates an account which may be used by the Director of Ohio EPA to pay cost incurred by the Ohio EPA in “investigating, mitigating, minimizing, removing or abating any unauthorized spill, release, or discharge of material into or upon the environment that requires emergency action to protect the public health or safety or the environment.”

119. Revised Code 3745.12(B) requires that any person responsible for causing or allowing an unauthorized spill, release or discharge is liable to the Director for the costs, regardless of whether such costs were paid out of the fund created by Division (A) of R.C. 3745.12 or any other fund of Ohio EPA, incurred by the Ohio EPA in response to such a spill, release or discharge.

120. In investigating, mitigating, minimizing, or abating the unauthorized spill, release or discharge to the Mahoning River from the Site, Ohio EPA has expended and will expend costs for which the Defendant is liable to the Director of Ohio EPA pursuant to R.C. 3745.12.

PRAYER FOR RELIEF

Therefore, the Plaintiff respectfully requests that this Court:

- A. Preliminarily and permanently enjoin Defendant to comply with R.C. Chapter 3734 and the rules adopted thereunder, including but not limited to:
- i. Order Defendant to submit to Ohio EPA an approvable closure plan for the Site and to implement the closure plan for the Site as approved by Ohio EPA in accordance with Ohio Adm. Code 3745-55-10 through 3745-55-16;
 - ii. Order Defendant to establish liability coverage in accordance with Ohio Adm.Code 3745-55-47;
 - iii. Order Defendant to comply with the closure cost estimate and financial assurance requirements in accordance with Ohio Adm.Code 3745-55-41 through 3745-55-43.
- B. Order Defendant to evaluate all area of unknown waste at the Site to determine if the wastes are hazardous wastes as required by Ohio Adm.Code 3745-52-11.
- C. Order Defendant to have a contingency plan as required by Ohio Adm.Code 3745-52-54(A)(4) and Ohio Adm.Code 3745-54-52(A), (C), (D), and (E).
- D. Order Defendant to comply with the hazardous waste container requirements required by Ohio Adm.Code 3745-52-54(A)(1) and Adm.Code 3745-66-74.
- E. Order Defendant to maintain security at the Site as required by Ohio Adm.Code 3745-54-14.
- F. Order Defendant to remove all illegally dumped solid wastes at the Site and transfer the solid wastes to a permitted and licensed solid waste disposal facility for proper disposal.

- G. Order Defendant to remove all illegally disposed construction and demolition debris at the Site and transfer the construction and demolition debris to and licensed construction and demolition debris facility for proper disposal.
- H. Order Defendant to pay to the Director the costs of investigating, mitigating, minimizing, or abating from the Site the unauthorized spill, release or discharge to the Mahoning River as required by R.C. 3745.12.
- I. Order Defendant pursuant to R.C. 3734.13(C) to pay into the state treasury to the credit of the hazardous waste clean-up fund, a civil penalty of ten thousand dollars (\$10,000.00) per day for each day of each violation alleged Counts One through Nine, Eleven, and Twelve of the Complaint, including any violations occurring after the filing of this Complaint.
- J. Preliminarily and permanently enjoin Defendant to comply with R.C. Chapter 3752 and R.C. Chapter 3714 and the rules adopted thereunder.
- K. Order Defendant to provide security for all areas of the Site that contain regulated substances and all debris, equipment, furnishings, containers, motor vehicles, and roiling stock contaminated with regulated substances as R.C 3752.07, Ohio Adm.Code 3745-352-20(A)(1)(b), and Ohio Adm.Code 3745-352-30.
- L. Order Defendant to remove all regulated substances and all debris, equipment, furnishings, containers, motor vehicles, and rolling stock contaminated with regulated substances from the Site and certify to the director that the removal has been completed as required by R.C. 3752.06 and Ohio Adm.Code 3745-352-20(A)(2)(a) through (g).
- M. Order Defendant pursuant to R.C. 3752.17(C) to pay into the state treasury to the

credit of the immediate removal fund, a civil penalty of ten thousand dollars (\$10,000.00) per day for each day of each violation of R.C. 3752.06 and Ohio Adm.Code 3745-352-20(A)(2)(a) through (g), alleged in Count Ten including any violations occurring after the filing of this Complaint.

- N. Order Defendant pursuant to R.C. 3752.17(C) to pay into the state treasury to the credit of the immediate removal fund, a civil penalty of five thousand dollars (\$5,000.00) per day for each day of each violation of R.C. 3752.07, Ohio Adm.Code 3745-352-20(A)(1)(b), and Ohio Adm.Code 3745-352-30, alleged in Count Ten including any violations occurring after the filing of this Complaint.
- O. Order Defendant pursuant to R.C. 3714.11(B) to pay into the state treasury to the credit of the hazardous waste clean-up fund, a civil penalty of ten thousand dollars (\$10,000.00) per day for each day of each violation alleged Count Thirteen of the Complaint, including any violations occurring after the filing of this Complaint.
- P. Preliminarily and permanently enjoin Defendant to comply with R.C. Chapter 6111 and the rules adopted thereunder.
- Q. Order Defendant to operate the wastewater treatment facility in full compliance with the NPDES permit.
- R. Order Defendant to maintain proper freeboard in all Lagoons in its wastewater treatment facility.
- S. Order Defendant pursuant to R.C. 6111.09(A) to pay into the state treasury, a civil penalty of ten thousand dollars (\$10,000.00) per day for each day of each violation of R.C. Chapter 6111 and any permit issued thereunder alleged in Count Fourteen through Sixteen including any violations occurring after the filing of this Complaint.

- T. Order Defendant to pay all costs and fees for this action, including costs expended by the State of Ohio to secure Defendant's facility or operate its wastewater treatment plant on an emergency basis.
- U. Order Defendant to pay any expert witness fees and attorney fees incurred by the State of Ohio.
- V. Retain jurisdiction of this suit for the purpose of making any Order or Decree the Court may deem necessary at any time to enforce and administer Defendant's or Defendant's employees or agents' compliance with, and to carry out, this Court's judgment.
- W. Award such other relief as this court deems just and proper.

Respectfully submitted,

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ATTORNEY GENERAL OF OHIO

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