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

STATE OF OHIO, EX REL. MIKE DEWINE, ETC.
Plaintiff

Case No: CV-17-881301

Judge: SHANNON M GALLAGHER

FILED
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CLERK OF COURTS
CUYAHOGA COUNTY

ARCO RECYCLING, INC., ET AL.
Defendant

JOURNAL ENTRY

83 DISP.COURT TRIAL - FINAL

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT ENTRY. O.S.J.
COURT COST ASSESSED TO THE DEFENDANT(S).

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER
PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL
PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

Judge Signature

Date

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY**

STATE OF OHIO, *ex rel.*)
DAVE YOST)
ATTORNEY GENERAL OF OHIO,)

Plaintiff,)

v.)

ARCO RECYCLING, INC., *et al.*)

Defendants.)

CASE NO. CV-17-881301

JUDGE SHANNON GALLAGHER

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW
WITH JUDGMENT ENTRY**

Shannon M. Gallagher, J.:

This matter came before the court for a bench trial on May 3, 2021 to determine liability as to defendant George Michael Riley, a.k.a. Anthony Michael Castello (“Riley”), and to determine a civil penalty against defendants R.C.I Services, Inc. (“RCI”) and Riley. Plaintiff, the State of Ohio, and defendants RCI and Riley appeared through counsel. Plaintiff previously resolved its claims against defendants Christina Beynon, ARCO Recycling, Inc., and 1705 Noble Road Properties, LLC through a Supplemental Consent Order, filed on June 19, 2020.

On January 8, 2020, this court entered judgment by default against Defendant R.C.I Services, Inc. (“RCI”) as to liability. The court now enters judgment against defendant Riley as to liability. The court further finds that Riley and RCI are jointly and severally liable for the cost of the Site clean-up in the amount of \$9,143,860.47. The court further imposes a civil penalty of \$7,710,000 on Riley for Count One, and a civil penalty of \$13,680,000 on Riley and RCI for Count Two, to be paid jointly and severally.

I. PROCEDURAL HISTORY

In June 2017, the State filed its Original Complaint against Defendants ARCO Recycling, Inc. ("ARCO"), 1705 Noble Road Properties, LLC ("1705 Noble Road Properties"), Christina Beynon, and George Michael Riley, a.k.a. Anthony Michael Castello, for violations of Ohio's construction and demolition debris laws, as enacted in R.C. Chapter 3714 and the rules promulgated thereunder.

Defendants ARCO, 1705 Noble Road Properties, Beynon, and Riley owned and/or operated a construction and demolition debris facility at 1705 Noble Road, East Cleveland, Ohio, Cuyahoga County Parcel No. 673-01-011 ("Site").

In June 2017 defendants ARCO, 1705 Noble Road Properties, and Beynon entered into a preliminary consent order. The preliminary consent order required ARCO, Beynon, and 1705 Noble Road Properties to, among other things: comply with R.C. Chapter 3714 and the rules thereunder, relinquish their rights in all construction and demolition debris located at the Site, allow the Ohio EPA and the Cuyahoga County Board of Health full access to the Site for the purposes of debris removal, and repay the State for all funds expended for clean-up of the Site. Defendant Riley was not a party to the preliminary consent order.

In March 2019, the State filed its First Amended Complaint to add Defendant RCI and to include allegations for violations of Ohio's construction and demolition debris laws committed by Defendants RCI and Riley.

On May 6, 2019, Riley accepted service upon RCI's behalf. RCI failed to respond to the State's Amended Complaint. The State filed a Motion for Default Judgment against RCI in June 2019. On January 8, 2020, this court granted the State's Motion for Default on RCI's liability and reserved its ruling on RCI's civil penalty for trial.

Defendants Riley and RCI also failed to respond to the State's First Set of Discovery Requests. The State filed notice with this court that the State's Requests for Admissions are deemed admitted by operation of Civ.R. 36(A)(1) due to defendants' failure to respond within 28 days of service.

On January 7, 2020, this court granted the State's motion in limine and excluded defendants Riley and RCI from presenting any witnesses at trial, other than Riley, and from presenting evidence on their inability to pay a civil penalty because of their failure to provide the required witness disclosures and documentation during discovery.

On May 3, 2021, this case proceeded to a bench trial. The State called the following fact witnesses: Christina Beynon, formerly of ARCO Recycling, Inc.; Stephen Bopple, Environmental Specialist II with the Ohio EPA; Barry Grisez, Supervisor with the Cuyahoga County Board of Health; and Scott Hinkle, former employee of ARCO. The State also called as an expert witness Aaron Shear, Environmental Supervisor with the Division of Materials and Waste Management, Ohio EPA. Defendants did not call any witnesses.

II. FINDINGS OF FACT

A. The Origins of ARCO and 1705 Noble Road Properties

Christina Beynon testified as to her relationship with Riley and the formation of ARCO and 1705 Noble Road Properties. Sometime in 2013, Riley and Beynon met on a blind date and began a relationship. In April 2014, Riley and Beynon set up two companies, Defendants ARCO Recycling, Inc. and 1705 Nobel Road Properties, LLC. Beynon testified that it was Riley's idea to form the companies and that he also persuaded her to cash out a retirement account containing approximately \$90,000 to fund Riley's business plan.

Riley told Beynon that because of his pending or recent divorce, ARCO would need to be

set up in Beynon's name. Beynon was therefore listed as ARCO's President. ARCO's bank account designated Beynon as the account holder. Beynon also signed the paperwork securing a line of credit for ARCO for approximately \$500,000.000 from the credit union at which she was employed.

Defendants then proceeded to acquire real estate to establish a construction and demolition debris facility at 1705 Noble Road, East Cleveland, Ohio, Cuyahoga County Parcel No. 673-01-011 ("Site"). At that time, the City of East Cleveland actually owned the 9.89-acre parcel in question as part of its Land Revitalization program. (Exhibit 3). Residential homes border the Site's southern property line on Noble Road. Businesses border the Site's eastern property line on Euclid Avenue. (Exhibit 2); Stephen Bopple and Barry Grisez Testimony.

Riley signed a Statutory Mortgage as the Manager of 1705 Noble Road Properties. (Exhibit 6). The City transferred the parcel to defendant 1705 Noble Road Properties by quit-claim deed. (Exhibit 5). 1705 Noble Road Properties still holds title to the parcel on which the Site is located. (Exhibit 3).

According to the testimony of Beynon and former ARCO employee Scott Hinkle, Riley controlled and managed ARCO's onsite operations. Riley hired and fired employees and set employee wages. Riley negotiated with vendors for equipment purchases and purchased equipment for the Site using Beynon's name. Riley interacted with potential customers, decided which customers could dispose onsite, and determined the price each customer would pay to deposit waste onsite.

ARCO's Operations Plan for Construction & Demolition Debris Recycling Activities identifies Riley as the facility's Operations Manager and designates Riley as ARCO's emergency contact and as the person responsible for implementing ARCO's operating practices, dust-control

measures, and roadway-access protocol. (Exhibit 15).

According to the testimony of Stephen Bopple from the Ohio EPA, when EPA inspectors appeared at the Site, they spoke to Riley. Beynon testified that she did not have any knowledge of ARCO's disposal operations and would call Riley to meet with the inspectors when they arrived.

Riley never received a paycheck or salary from ARCO's bank account. Riley also did not sign any checks for ARCO's purchases. Riley drew on ARCO's account using the company's debit card and by cashing out ARCO checks made out to Riley's agent or assistant. Riley obtained a stamp with Beynon's signature to sign ARCO checks. Riley's agent would then cash out the checks and give some or all of the cash to Riley. Beynon and Hinkle Testimony.

Beynon testified that for tax year 2016, Beynon reported to the United States Internal Revenue Service that Riley and his agent received personal income from ARCO of approximately \$80,000 and \$60,000, respectively.

B. RCI's Disposal Activities at the Site

Defendant Riley was the sole owner and/or operator of defendant RCI. (Requests for Admission Nos. 3 and 4 deemed admitted). Riley had authority to enter into contracts on RCI's behalf. (Request for Admission No. 5 deemed admitted). RCI contracted with the Cuyahoga County Land Bank to provide demolition services and to haul away and dispose of the resulting construction and demolition debris. (Requests for Admission Nos. 7, 8 and 9 deemed admitted).

In the spring of 2014, RCI started depositing debris from its demolition jobs for the Land Bank at 1705 Noble Road, East Cleveland, Ohio. Beynon testified that RCI deposited its construction and demolition debris at the 1705 Noble Road Site on a daily basis. ARCO issued disposal tickets to RCI documenting how much debris RCI deposited at the Site. (Exhibit 25).

According to Beynon, ARCO did not send any invoices to RCI, because ARCO employees understood that billing RCI would be futile because Riley operated both companies. RCI stopped depositing debris at the Site sometime in late August 2015 after it was dissolved by the Commonwealth of Massachusetts. (Exhibit 9).

C. Accumulation of Debris at the Site

Stephen Bopple, from the Ohio EPA, testified that from June 2015 to the end of July 2016, the Ohio EPA and Cuyahoga County Board of Health made at least 24 unannounced onsite inspections of the Site. (Exhibit 17). Inspectors observed that massive piles of debris, about 30 feet high, towered over neighboring residential homes. Inspectors spoke to Riley on at least 20 of those visits and discussed with Riley their concerns about Riley's accumulation of debris.

The Ohio EPA consistently told Riley that he must begin to sort, separate, and recycle material. However, the Ohio EPA inspectors rarely saw material at ARCO being sorted for recycling.

Because of their concerns about the stockpiling of debris, starting around June 2015, the Ohio EPA requested that ARCO submit reports showing how much debris entered and exited ARCO on a monthly basis. (Exhibits 18 & 19).

The Ohio EPA also sent numerous letters to Riley documenting his failure to comply with the laws governing the disposal and recycling of construction debris. In a letter dated June 3, 2016, the Ohio EPA notified Riley that the agency's review of ARCO's records from June 2015 to April 2016 showed that ARCO accepted 220,466 cubic yards of construction and demolition debris. But only 24,511 cubic yards, or 11% of the material brought onsite, actually left the Site for recycling or transport to a licensed disposal facility. (Exhibit 20).

In a letter dated June 20, 2016, the Ohio EPA notified Riley that its inspectors observed

that some of the outgoing material reported to the Ohio EPA—in particular, wood and cardboard—had not actually left the Site. (Exhibit 21). After the issuance of these notices, inspectors noticed no discernible decrease of debris on the Site: Bopple Testimony.

Stephen Bopple testified that Riley eventually obtained a processing line, a machine used to sort recyclable materials from waste without a reusable purpose, but the machines were seldom in operation. Riley stated on multiple occasions that mechanical issues prevented operation of the sorting equipment.

Inspectors also observed that the debris on Site was compacted and piled to such a height that made any reusable materials on the bottom of the pile no longer unchanged or retrievable. Bopple and Grisez Testimony.

Riley did separate some clean hard fill from other debris, but instead of moving the clean hard fill off-site for an authorized recyclable use, Riley moved the clean hard fill back on top of the debris pile to create a roadway. Bopple and Grisez Testimony.

D. Testimony of Expert Witness Aaron Shear Regarding the Regulation of Construction and Demolition Debris

Aaron Shear, Environmental Supervisor of the Construction and Demolition Debris Unit in Ohio EPA's Division of Materials and Waste Management, is a qualified expert witness in the field of construction and demolition debris, based on his current position and the two decades of combined public and private sector experience in the solid waste and construction and demolition debris industry in Ohio.

Aaron Shear testified regarding the regulation of construction and demolition debris and solid waste. Construction and demolition debris and solid waste are regulated by the Ohio EPA. R.C. Chapters 3714 and 3734. Construction debris is material generated during the building of a physical structure. Demolition debris consists of material that was once a part of a physical

structure. Solid waste is ordinary trash.

Ohio law prohibits anyone from operating a construction and demolition debris facility without first obtaining a license from the Ohio EPA or the relevant board of health in the district where the facility operates. R.C. 3714.06(A)(1).

Facilities without a disposal license cannot hold construction and demolition debris indefinitely. A facility holding such debris without a license to dispose must either (1) recycle the material, (2) reuse the material, or (3) dispose of the material at a licensed facility. R.C. 3714.01.

Aaron Shear testified that accumulated construction and demolition debris can create a hazardous condition. Decomposing and compacted debris are at risk of catching on fire. There are also harmful toxins in these materials that may become airborne or leach into the soil and water supply, endangering human health and the environment. When decomposing construction and demolition debris is exposed to the elements, leachate seeps into the ground, which can contaminate ground and surface water, endangering human health and the environment. Non-decomposing construction and demolition debris, such as weathered shingles and roofing material, can also leach contaminants into ground and surface water.

Demolition debris from older houses in northeast Ohio, like the ones that Riley demolished for the Cuyahoga County Land Bank, are likely to contain years of accumulated industrial soot, lead paint, lumber treated with arsenic, asbestos, flame retardants, and carcinogenic agents found in insecticides and herbicides. Shear Testimony.

Riley did not obtain a construction and demolition debris or solid waste landfill license at any point during ARCO's operations. Shear, Bopple, and Grisez Testimony.

To obtain a construction and demolition debris landfill license, the owner or operator

must comply with various landfill design requirements and submit a detailed site characterization report that addresses, among other things, soil liner requirements, ground water monitoring, and supporting hydrological information. See Ohio Adm. Code 3745-400-07, 3745-400-09, 3745-400-10; Shear Testimony. According to Aaron Shear, the total initial costs for a small landfill, not exceeding five acres in size, range from \$320,000 to \$420,000, with the costs varying depending on local geological, hydrogeological, and soil conditions. The operator of a new landfill could spend as much as \$500,000 before it can accept its first load of construction and demolition debris for disposal.

Aaron Shear testified that construction and demolition debris was illegally disposed at 1705 Noble Road, East Cleveland, Ohio because it was placed somewhere other than a licensed disposal facility, its placement was not temporary, the debris was compacted and piled to the point that it was not retrievable, and the debris had decomposed and therefore had substantially changed.

According to the testimony of Stephen Bopple and Christina Beynon, Riley presented himself to the public and regulators as a recycler of construction and demolition debris. (Exhibit 15). To recycle construction and demolition debris, a facility must separate and sort the debris based on material type. Riley did not, however, sort or process most of the materials on Site for recycling. Shear Testimony; Bopple Testimony.

E. Riley's Removal from the Site

Beynon testified that in 2016 she sought a protective order against Riley because of an escalation in Riley's aggressive and threatening behavior towards her and her children. On August 2, 2016, the Summit County Domestic Relations Court issued a civil protection order prohibiting Riley from, among other things, coming within 500 feet of Beynon and her children.

and from entering or interfering with Beynon's residence or place of employment. (Exhibit 26). The order effectively banned Riley from the Site.

A few weeks after Riley was barred from the Site, Riley's attorney sent a letter to the attorneys representing ARCO, 1705 Noble Road Properties, and other related entities. (Exhibit 27). The letter stated that Riley claimed a 50% member/shareholder in six entities, including ARCO and 1705 Noble Road Properties, and that Riley opposed the sale or transfer of these entities to any third parties. *Id.*

Beynon testified that after she obtained the protective order she was responsible for the Site until its closure in January 2017. ARCO continued to accept debris after Riley left. The amount of debris that ARCO took in from August 2016 to December 2016 amounted to 74,924 cubic yards—only 22% of the 344,031 cubic yards of debris that ARCO accumulated from June 2015 to December 2016. Bopple Testimony; (Exhibit 19).

F. The EPA's Closure Order and Clean-up Efforts

By the end of December 2016, ARCO had accumulated approximately 344,031 cubic yards of debris. (Exhibit 19). On January 13, 2017 The Ohio EPA and the Cuyahoga County Board of Health conducted an onsite inspection and determined that the amount of debris had continued to increase. (Exhibit 22); Bopple Testimony.

On January 17, 2017, the Ohio EPA issued administrative orders, known as Director's Final Findings and Orders (or Director's Orders), against ARCO. (Exhibit 23); Bopple Testimony. The Director's Orders found that ARCO illegally disposed of construction debris and ordered that ARCO immediately cease acceptance of construction debris and dispose of all material onsite. *Id.* At the time of the Director's Orders, the debris pile reached a height of approximately 50 feet and measured about 600 feet long and 500 feet wide. *Id.* According to

Beynon's testimony, ARCO closed its doors without removing and lawfully disposing of the construction debris onsite.

In 2017, Cuyahoga County Board of Health held an evidentiary hearing and concluded that the failure to remove materials off-site for recycling or for disposal at a licensed disposal facility created a nuisance in violation of Ohio law.

On June 2, 2017, the Ohio EPA and the Board of Health entered into an agreement stating that the Board would administer clean-up of the Site while the State would fund it. (Exhibit 30); Grisez Testimony.

On June 27, 2017, the Ohio EPA and Defendants ARCO, Beynon, and 1705 Noble Road entered into a preliminary consent order, which gave the Ohio EPA and the Board of Health full access to the Site for the purposes of debris removal and air monitoring operations, and to repay the State for all funds expended for clean-up of the Site.

Barry Grisez, Supervisor with the Cuyahoga County Board of Health testified regarding the clean-up efforts. The clean-up occurred in multiple phases starting on or about July 21, 2017 and ending in March 2018. The first phase involved the removal, transport, and processing of approximately 82,000 cubic yards of hard fill material. The second phase of the clean-up involved the removal of the remaining 148,000 cubic yards of debris. (Exhibit 31).

Barry Grisez testified that sometime during the clean-up in mid-October 2017, onsite personnel from the Ohio EPA and the Board of Health observed smoldering flames in the debris pile and alerted the local fire department. Given their limited resources, the East Cleveland Fire Department could not watch or completely extinguish the fire but instead provided a hose to keep water flowing onto the smoldering pile at all times.

For several days, the Ohio EPA and the Board of Health deployed employees to watch

the Site at all hours and to keep the debris pile wet. On or about October 30, 2017, a large fire erupted on the north east corner of the Site. The flames reached a height of approximately six to eight feet and spread across a distance of approximately 20-30 feet. Grisez Testimony.

More than a dozen local fire departments were deployed to combat the fire. Euclid Avenue was closed to traffic because of the hazards resulting from smoke and became the emergency response center. The smoke was thick, smelled like burning plastic, and could be smelled miles away. Grisez Testimony.

Despite efforts to conserve resources, emergency personnel used approximately 13 million gallons of water over the course of a week. The fire burned for a week and was finally extinguished sometime in early November. Grisez Testimony.

Concurrent with these efforts to extinguish the fire, the contractors hired by the Board of Health continued to remove construction and demolition debris from the Site. Because the pile began to smolder again, to protect public health and the environment the Board had to expedite removal of material from the Site all day and night to prevent the further spread of fire. Grisez Testimony.

The cost of expedited removal of debris from the ARCO site skyrocketed from \$25.95 to \$37 per ton. (Exhibit 34). Because of the October 2017 fire, the final cost of removal increased to \$9,143,860.47. (Exhibit 35).

Barry Grisez further testified that the final cost of debris removal does not include other various costs to combat the fire, including but not limited to: the millions of gallons of water used to extinguish the fire or the hundreds of hours of labor expended by employees of the Ohio EPA, the Board of Health, and numerous local and federal agencies to mitigate the harms resulting from the fire.

Aaron Shear, the State's expert witness testified that the Ohio EPA's Division of Materials and Waste Management paid \$82,013.18 in payroll costs for the ARCO clean up for fiscal years 2017 and 2018. That amount did not include additional payroll costs incurred by the Ohio EPA's Divisions of Emergency Response and Air Pollution Control after November 2017.

III. CONCLUSIONS OF LAW

A. Liability for Violations of R.C. Chapter 3714

The Ohio General Assembly enacted R.C. Chapter 3714 as comprehensive legislation designed to regulate construction and demolition debris facilities. Revised Code 3714.13 prohibits any person from violating any section of R.C. Chapter 3714, or any rule or order adopted under R.C. Chapter 3714.

Ohio's environmental protection laws, including R.C. Chapter 3714, are strict liability offenses designed to protect public welfare. *State ex rel. Petro v. Mercomp, Inc.*, 167 Ohio App.3d 64, 2006-Ohio-2729, 853 N.E.2d 1193, ¶ 39-42 (8th Dist.). Regardless of intent, each defendant is liable for environmental law violations.

Joint and several liability may be imposed on co-owners of properties or facility co-operators for environmental violations. *State ex rel. DeWine v. C&D Disposal Techs., LLC*, 2016-Ohio-5573, 69 N.E.3d 1163 (7th Dist.).

B. Individual Liability for Environmental Violations

R.C. 3714.13 imposes liability on any "person," which includes "the state, any political subdivision of the state or other state or local body, the United States and any agency or instrumentality thereof, and any legal entity or organization defined as a person under section 1.59 of the Revised Code." R.C. 3714.01. A "person" includes "an individual * * *." R.C. 1.59(C).

An individual who “knew of the violation or proposed violation, was authorized to prevent it, but failed to prevent it” can be held personally liable for violations of Ohio’s environmental laws. *State ex rel. Cordray v. Evergreen Land Dev., Ltd.*, 7th Dist. Mahoning Nos. 15 MA 0115 & 15 MA 0116, 2016-Ohio-7038, ¶ 19, 25-33.

The personal participation theory of liability is distinct from piercing the corporate veil. *Evergreen*. at ¶ 17. Under the theory of piercing the corporate veil, corporate officers are generally not held personally liable for acts of the corporation merely by reason of their official relationship to the corporation. *Id.* at ¶ 15. This protection does not extend, however, to the personal acts and omissions of the corporate officer. *Id.*

“[P]ersonal liability may be imposed on [a] corporate officer, agent, or employee” through evidence of individual participation in violations of law, without regard to one’s status as a corporate officer. *State ex rel. DeWine v. Deer Lake Mobile Park, Inc.*, 2015-Ohio-1060, 29 N.E.3d 35, ¶ 57, 60 (11th Dist.).

C. Count One: Operating an Unlicensed Construction and Demolition Debris Facility

Ohio Revised Code Section 3714.06(A) prohibits a person from operating or maintaining a construction and demolition debris facility or processing facility without first obtaining a license from the Ohio EPA or the applicable board of health in which the facility is located.

“Facility” means “any site, location, tract of land, installation, or building used for the *disposal* of construction and demolition debris.” R.C. 3714.01 (emphasis added).

“Disposal” means “the discharge, deposit, injection, dumping, spilling, leaking, emitting, or placing of any construction and demolition debris into or on any land or ground or surface water or into the air, except if the disposition or placement constitutes storage.” R.C. 3714.01.

The evidence establishes that Defendant Riley established, operated, or maintained

ARCO as a construction and demolition debris facility in violation of R.C. 3714.06(A) for 771 days from June 24, 2014, as alleged in Count One of the Complaint, to August 2, 2016, the last date of Riley's operation of the facility.

Riley did not obtain a construction debris disposal facility license or a solid waste disposal facility license at any point during his operation of the Site at 1705 Noble Road.

D. Count Two: Illegal Disposal of Construction and Demolition Debris

Ohio Revised Code Sections 3714.13(A) and (B) prohibits the violation of any section of R.C. Chapter 3714 or any rule adopted under R.C. Chapter 3714. R.C. 3714.13(A) and (B).

Ohio Adm. Code 3745-400-04(B) states that no person shall conduct or allow the illegal disposal of construction and demolition debris. "Illegal disposal" means the disposal of construction and demolition debris at any place other than a construction and demolition debris landfill operated in accordance with Chapter 3714 of the Revised Code and Chapters 3745-400 and 3745-37 of the Administrative Code or a solid waste landfill licensed and operated in accordance with Chapters 3745-27 and 3745-37 of the Administrative Code. Ohio Adm. Code 3745-400-01(I)(1).

R.C. Chapter 3714 makes a distinction between the onsite "disposal" and "storage" of construction and demolition debris.

In order to fall under the definition for permissible "storage" of material, construction and demolition debris must meet all of three conditions: (1) its placement must be temporary, (2) the material must be retrievable, and (3) the material must be substantially unchanged. R.C. 3714.01. If construction and demolition debris is placed somewhere other than a licensed facility and does not meet these three conditions, it is considered illegal disposal. R.C. 3714.06(A)(1); Ohio Adm. Code 3745-400-01(I)(1).

The evidence establishes that Riley engaged in illegal disposal at the Site of construction and demolition debris, as defined in Ohio Adm. Code 3745-400-01(I)(1). Riley engaged in illegal disposal at the Site for 1,368 days from June 24, 2014, as alleged in Count Two of the Amended Complaint, until March 23, 2018, the date the Ohio EPA completed its removal of the debris on Site.

On January 8, 2020, this court granted the State's Motion for Default on RCI's liability for Count Two of the Amended Complaint. With respect to RCI, the only issue before the court is the imposition of a civil penalty resulting from its illegal disposal of construction and demolition debris.

E. Riley's Illegal Disposal of Debris at ARCO

Riley began operations at the 1705 Noble Road Site starting in the spring of 2014 when he began to deposit debris from the homes he demolished for the Cuyahoga County Land Bank through his company, RCI.

The evidence establishes that: (1) Riley's placement of the debris at the Site was not temporary, (2) the material on Site was not retrievable, and (3) the material on Site was not substantially unchanged.

The Ohio EPA's review of ARCO's records from June 2015 to April 2016 showed that ARCO accepted 220,466 cubic yards of construction and demolition debris. Only 24,511 cubic yards, or 11% of the material brought onsite, actually left the Site for recycling or transport to a licensed disposal facility. (Exhibit 20); Bopple Testimony.

Inspectors observed that some of the outgoing material reported to the Ohio EPA—in particular, wood and cardboard—had not actually left the Site. (Exhibit 21). Inspectors observed that the debris was compacted and piled to such a height that made any reusable

materials on the bottom of the pile no longer unchanged or retrievable. Bopple and Grisez Testimony.

Instead of moving the clean hard fill off-site for an authorized recyclable use, Riley moved the clean hard fill back on top of the debris pile to create a roadway. As trucks and heavy equipment drove on the clean hard fill, it became compacted and was no longer unchanged and retrievable for reuse or recycling. Bopple and Grisez Testimony.

By piling clean hard fill on the stationary and growing unprocessed debris pile, Riley was clearly not operating as a recycling facility and was engaging in the unlawful disposal of construction debris. Shear, Bopple, and Grisez Testimony.

By the end of December 2016, ARCO had accumulated approximately 344,031 cubic yards of debris. (Exhibit 19). After Riley left, the amount of debris that ARCO took in from August 2016 to December 2016 amounted to 74,924 cubic yards—only 22% of ARCO's total accumulation of debris from June 2015 December 2016. *Id.*; Bopple Testimony. During Riley's operation and management of ARCO until August 2, 2016, Riley directly participated in the disposal of 78% of the total 344,031 cubic yards of debris on site. *Id.*

F. Riley's Individual Liability as ARCO's Operator and Manager

Riley is individually liable for the violations alleged in the State's Amended Complaint for operating and maintaining an unlicensed construction debris and demolition facility (Count One) and for illegal disposal of construction and demolition debris (Count Two).

The evidence establishes that Riley held himself out as the person primarily responsible for ARCO's managerial and operational decisions. Although Beynon is designated on paper as the president of ARCO, Riley consistently acted as ARCO's operator and manager. Beynon, Bopple, and Hinkle Testimony. Riley therefore cannot disavow responsibility for ARCO's

operations after claiming and exercising an ownership interest in ARCO and the entity that owns the land on which ARCO operated.

Although Riley was removed from the Site as of August 2, 2016, he is liable for accumulating hundreds of thousands of cubic yards of construction and demolition debris while he operated the ARCO Site. *See Evergreen*, 2016-Ohio-7038, at ¶ 34-35 (imposing joint and several liability on supervisor for his participation in environmental violations before he was replaced).

Riley, as the manager and operator of ARCO, is individually liable for illegal disposal of construction debris at the Site because he “knew of the violation or proposed violation, was authorized to prevent it, but failed to prevent it.” *Evergreen*, at ¶ 19. The evidence establishes that Riley not only knew of these violations but actually deposited debris on the Site through RCI and his own operation of ARCO. The evidence also establishes that Riley “failed to correct known violations even though he possessed the authority to do so.” *Sugar*, 2016-Ohio-884, 60 N.E.3d 735 at ¶ 41.

G. Public Nuisance and Restitution of Clean-Up Costs (Count Four)

The evidence also establishes that Defendants Riley and RCI created the conditions that caused a public nuisance, as alleged in Count Four of the Amended Complaint.

While operating the ARCO facility, Riley accepted hundreds of thousands of cubic yards of construction and demolition debris. (Exhibit 19). RCI deposited its construction and demolition debris at the Site on a daily basis. An aerial survey provided by the Ohio Department of Transportation estimated the total volume of debris as 229,739 cubic yards. Stated another way, the amount of debris would fill up an entire football field, 10 stories high. (Exhibit 29); Grisez Testimony.

When standing on top of the pile, inspectors were so high up that they could look down on the two-story houses that surrounded the Site. Inspectors had stability and safety concerns with the sheer slopes on the sides of the debris pile. *Id.*

Residents living in homes near the Site were forced to endure loud noises, dust, odors, a large unsightly dump pile, and the constant threat of environmental hazards. Shear, Bopple, and Grisez Testimony.

Riley and RCI's illegal disposal and failure to remove the debris created the conditions that caused a fire to erupt at the Site in October 2017. The fire lasted for a week and required the response of more than a dozen local fire departments to extinguish.

The State spent \$9,143,860.47 to remove and dispose of over 300,000 cubic yards of construction and demolition debris at the Site. (Exhibit 35); Grisez Testimony.

Defendant Riley caused and controlled the environmental violations at the Site. Defendant RCI contributed to the environmental violations at the Site through its illegal dumping of construction and demolition debris. The evidence establishes that Defendants Riley and RCI operated as one entity. RCI and Riley are therefore jointly and severally liable for the \$9,143,860.47 cost of the Site clean-up.

H. Civil Penalty Against Defendants Riley and RCI

This Court may impose a penalty of not more than \$10,000 per day for each violation of R.C. Chapter 3714, a rule adopted under it, or an order issued under it. R.C. 3714.11(B).

Defendant Riley is liable for civil penalties resulting from his unlicensed operation of a construction and demolition debris facility in violation of R.C. 3714.06(A), as alleged in Count One of the Amended Complaint.

Defendant Riley is also liable for civil penalties resulting from his illegal disposal of

construction and demolition debris in violation of R.C. 3714.13(A) and (B) and Ohio Adm.Code 3745-400-04(B), as alleged in Count Two of the Amended Complaint.

Defendant RCI is liable for civil penalties resulting from its illegal disposal of construction and demolition debris in violation of R.C. 3714.13(A) and (B) and Ohio Adm.Code 3745-400-04(B), as alleged in Count Two of the Amended Complaint.

Because of the mandatory nature of civil penalties under R.C. Chapter 3714, a trial court's discretion lies in determining *how much* civil penalty is imposed and *not whether* to impose a civil penalty. *See State of Ohio v. Tri-State Group, Inc.*, 7th Dist. Belmont No. 03-BE-61, 2004-Ohio-4441 ¶ 103. A trial court has broad discretion to determine the amount of that penalty. *Id.*, citing *State ex rel. Brown v. Dayton Malleable*, 1 Ohio St. 3d 151, 157, 438 N.E. 2d 120 (1982).

Deterrence is the primary purpose of assessing a civil penalty against a violator of environmental laws. *State ex rel. Celebrezze v. Thermal-Tron*, 71 Ohio App.3d 11, 592 N.E.2d 912 (8th Dist. 1992). A civil penalty must be large enough to hurt the offender. *State of Ohio v. Meadowlake Corp.*, 5th Dist. Stark No. 2006 CA 00252, 2007-Ohio-6798, ¶ 51. The amount of the penalty must also "be *greater than* abatement or compliance costs." *Dayton Malleable, Inc.*, 1 Ohio St.3d 151, 157 (1982) (emphasis in original) (citation omitted).

In assessing civil penalties, courts may use their informed discretion to impose a civil penalty to: 1) redress the harm or risk of harm posed to public health or the environment by the violations at issue; 2) remove the economic benefit gained by the violations; 3) penalize the level of recalcitrance, defiance or indifference demonstrated by the violator of the law; and 4) address the extraordinary costs incurred by the State of Ohio. *State ex rel. Brown v. Dayton Malleable, Inc.*, 2d Dist. Montgomery No. 6722, 1981 Ohio App. LEXIS 12103, *8 (Apr. 21, 1981),

affirmed in part, reversed in part on other grounds, 1 Ohio St.3d 151, 158, 438 N.E.2d 120 (1982); upheld in *State ex rel. Ohio Attorney General v. Shelly Holding Co.*, 135 Ohio St.3d 65, 71, 2012-Ohio-5700, 984 N.E.2d 996.

a. Risk of harm to public health and the environment

With regard to the first civil penalty factor, the risk of harm to public health and the environment, it is clear that “[t]here is no requirement of proof of actual harm.” *Thermal-Tron* at 20. This makes sense, given that “oftentimes . . . the actual damage cannot be precisely ascertained or is incapable of measurement.” *Dayton Malleable*, 1981 Ohio App. LEXIS 12103, at 13-14.

The actions of Defendants Riley and RCI caused an extreme risk of harm, both severe and imminent, to the public and to the environment. Riley and RCI’s accumulation of construction and demolition debris created a severe and imminent risk of harmful toxins and carcinogenic agents – such as arsenic, lead, DDT and asbestos – leaching into the ground and surface water. Shear Testimony.

Riley and RCI’s illegal dumping and failure to remove the debris created the conditions that caused a fire to erupt at the Site in October 2017. The fire lasted for days and required the response of more than a dozen local fire departments to extinguish. Shear, Bopple, and Grisez Testimony.

All of this illegal disposal occurred in a residential neighborhood where the massive debris piles towered above the two-story homes in the East Cleveland neighborhood where the Site was located.

b. Economic benefit from violations of law

The evidence at trial established that Riley gained a substantial economic benefit by

avoiding the costs normally incurred by the operator or owner of a legitimate construction and demolition debris landfill. Riley gained an additional economic benefit by avoiding the costs of removing debris from the site, transporting the debris to a properly licensed landfill, and the fees for lawful disposal at a licensed landfill.

Riley, as RCI, also avoided costs by using the Site—located on a parcel of land that he controlled—to dispose of debris from RCI's demolition work for the Cuyahoga County Land Bank. Riley, as RCI, avoided the disposal fees that other law-abiding demolition companies would have paid to a properly licensed disposal facility.

c. Recalcitrance, indifference, and defiance

Riley's blatant recalcitrance warrants the imposition of the maximum statutory penalty. Despite multiple enforcement efforts from the Ohio EPA, Riley continued to defy Ohio law at every step of the way from his steady involvement with the local Board of Health to state-level regulators at Ohio EPA. He ignored the Ohio EPA's good-faith efforts to offer guidance and demonstrated no interest in operating a legitimate recycling facility. Riley's deliberate indifference to the law diminished the quality of life for his East Cleveland neighbors and jeopardized their health and well-being.

Riley knowingly and personally deposited well over 200,000 cubic yards of waste in residential East Cleveland neighborhood while profiting and thwarting all regulatory enforcement. Riley's open recalcitrance and callous disregard for the public health and the environment weigh in favor of imposing the maximum civil penalty.

d. Extraordinary enforcement costs

The State has incurred substantial extraordinary costs in its attempts to bring Riley into compliance with R.C. Chapter 3714. The Ohio EPA spent substantial time and resources

collecting, reviewing, and examining ARCO's monthly data for incoming and outgoing debris and issuing numerous notices documenting Riley's continued illegal disposal of debris. Shear and Bopple Testimony.

The final cost of debris removal—amounting to \$9,143,860.47—does not include other various costs to combat the fire, including but not limited to: the millions of gallons of water used to extinguish the fire, or the hundreds of hours of labor expended by employees of the Ohio EPA, the Board of Health, and numerous local and federal agencies to mitigate the resulting harms.

The State also expended significant resources through the litigation efforts of the Ohio Attorney General's Office, including but not limited to, initiating these civil proceedings for injunctive and any other necessary relief against Riley and the other Defendants, producing thousands of pages of discovery to Riley and the other Defendants, filing various motions in response to Riley's non-compliance with the State's discovery requests, and expending hundreds of hours for trial preparation. Altogether, the State's time and resources have been extraordinary.

I. Civil Penalty

When imposing a civil penalty for environmental violations, the proper starting point is the statutory maximum, and any downward adjustments made only based upon the evidence introduced at trial. *State of Ohio v. Midwest Paving and Materials Co.* (Cuyahoga Cty. 2012), No. CV 10 723796, Findings of Fact and Conclusions of Law of May 25, 2012, (citing *United States v. Midwest Suspension and Brake*, 824 Supp. 713, 735 (E.D. Mich. 1993), affirmed 49 F.3d 1197 (6th Cir. 1995)). Here, there are no mitigating factors to justify any such downward adjustment.

To determine the number of days a violation exists for calculating the amount of civil penalty to assess, a person continues to be in violation of an environmental law until he can demonstrate compliance. *Shelly Holding*, 135 Ohio St.3d 65, 2012-Ohio-5700, 984 N.E.2d 996, at ¶ 24, 33. Riley never demonstrated compliance.

a. Riley’s civil penalty for unlicensed operation of construction and demolition debris facility

Riley operated an unlicensed construction and demolition debris facility for 771 days from June 24, 2014, as alleged in Count One of the Complaint, to August 2, 2016, the last date of Riley’s operation of the facility.

For the violation alleged in Count One of the Complaint, Riley has incurred a maximum statutory penalty of \$7,710,000. See table below.

Count One	Statute or rule violated	Days of violation	Statutory max per day	Statutory max civil penalty
Riley - Operating unlicensed construction & demolition debris facility	R.C. 3714.06(A)	771 days	\$10,000	\$7,710,000

b. Riley & RCI’s civil penalty for illegal disposal construction and demolition debris

Riley and RCI continued to be in violation of the laws prohibiting illegal disposal of construction and demolition debris until they demonstrated compliance by removing the debris from the Site. *Shelly Holding* at ¶ 24, 33.

Construing Riley and RCI’s violations as ending the last date of their illegal disposal activities would “drain the incentive out of the civil-penalty scheme” by allowing violators to dispose of large quantities of debris for a short period of time and incur a minimal penalty as simply a cost of doing business. *State ex rel. Ohio Attorney General v. Shelly Holding Co.*, 191

Ohio App.3d 421, 2010-Ohio-6526, 946 N.E.2d 295, ¶ 66 (10th Dist.).

Riley and RCI illegally disposed of construction and demolition debris at the ARCO Site for 1,368 days from June 24, 2014, as alleged in Count Two of the Amended Complaint, until March 23, 2018, the date the Ohio EPA completed its removal of the debris on Site.

For the violation alleged in Count Two of the Amended Complaint, Riley and RCI has each incurred a maximum statutory penalty of \$13,680,000. See table below.

Count Two	Statute or rule violated	Days of violation	Statutory max per day	Statutory max civil penalty
Riley - Illegal disposal of construction debris	R.C. 3714.13(A) & (B); Ohio Adm. Code 3745-400-04(B)	1368 days	\$10,000	\$13,680,000
RCI - Illegal disposal of construction debris	R.C. 3714.13(A) & (B); Ohio Adm. Code 3745-400-04(B)	1368 days	\$10,000	\$13,680,000

The evidence established that Riley and RCI operated as one entity. For their illegal disposal of construction and demolition debris, the court imposes the statutory maximum civil penalty of \$13,680,000, imposed jointly and severally, on Riley and RCI.

The imposed civil penalties against Riley and RCI reflect the extreme risk of harm to public health and the environment, their blatant recalcitrance to the law, the enormous economic benefit they enjoyed from violating the law, and the State's substantial extraordinary enforcement costs in this case.

A party who has violated environmental laws bears the burden of showing a civil penalty would be ruinous or otherwise disabling. *State of Ohio v. Meadowlake Corp.*, 5th Dist. Stark No. 2006 CA 00252, 2007-Ohio-6798, ¶ 66. Here, the court excluded defendants Riley and RCI

from presenting any evidence on their inability to pay a civil penalty because of their failure to provide the requested documentation during discovery. Defendants therefore cannot present any evidence that the State's recommended civil penalty would be ruinous or otherwise disabling.

IV. JUDGMENT ENTRY

WHEREFORE, the Court **ORDERS** the following:

1. Defendants Riley and RCI are ordered and permanently enjoined to comply fully with R.C. Chapter 3714 and the rules promulgated thereunder, including, but not limited to, the provisions of Ohio Adm. Code Chapter 3745-400.

2. Defendants Riley and RCI are ordered immediately and perpetually to cease operating in the solid waste and construction and demolition debris industries regulated under R.C. Chapter 3714, R.C. Chapter 3734, Ohio Adm. Code Chapter 3745-27, and Ohio Adm. Code Chapter 3745-400. Prohibited operations include, but are not limited to: owning, establishing, operating, controlling, or managing a construction and demolition debris recycling facility, construction and demolition debris disposal facility, solid waste transfer facility, or solid waste disposal facility.

3. Defendants Riley and RCI are jointly and severally liable for the \$9,143,860.47 cost of the Site clean-up, due 30 days after date of this entry.

4. The Court orders Defendant Riley to pay a civil penalty of \$7,710,000 for Count One.

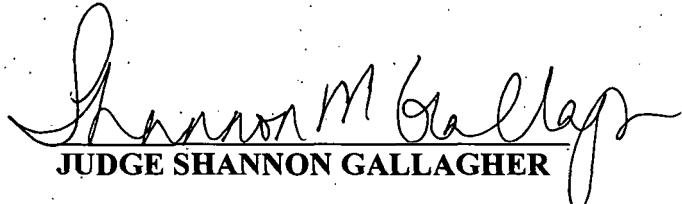
5. The Court orders Defendants Riley and RCI to pay a civil penalty of \$13,680,000 for Count Two, to be paid jointly and severally.

6. The Court orders Defendant Riley to pay \$21,390,000 and Defendant RCI to pay \$13,680,000 for their respective civil penalties, due 30 days after date of this entry.

7. Defendants Riley and RCI shall make payment by delivering to Sandra Finan, Paralegal, or her successor, Office of the Attorney General, 30 E. Broad St., 25th Floor, Columbus, Ohio 43215, a certified check or checks for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

IT IS SO ORDERED.

4/29/2021
DATE


JUDGE SHANNON GALLAGHER