

FILED
HENRY COUNTY
COMMON PLEAS COURT

2012 AUG 21 A 10: 51

CONNIE L. SCHMITKEY
CLERK OF COURTS

COPY

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

OHIO ATTORNEY
GENERAL'S OFFICE
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STATE OF OHIO, *ex rel.* MICHAEL DEWINE, :
OHIO ATTORNEY GENERAL :

CASE NO. 07-CV-166

AUG 22 2012

Plaintiff, :

Judge John S. Collier

TOLEDO, OHIO

-v- :

TRI-STATE GARDEN SUPPLY, INC., et al. :

Defendants. :

Consent Order for Permanent Injunctive Relief and Civil Penalty

On October 15, 2007, Plaintiff State of Ohio, at the written request of the Director of the Ohio Environmental Protection Agency and the Henry County Health Department initiated this action against Defendants Tri-State Garden Supply, Inc. ("Tri-State") and Gardenscape, Inc. ("Gardenscape"), Timothy R. Kasmoch, and David Kasmoch, Jr., alleging eleven Counts of violations of Ohio's solid waste laws and rules.

On June 8, 2011, this Court entered judgment dismissing Counts 1-10 of Plaintiff State of Ohio's Complaint for lack of subject matter jurisdiction.

Plaintiff and Defendants consent to the entry of this Consent Order without trial of any issue of fact or law, and upon consent of the Parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the parties and the subject matter of this action pursuant to Chapter 3734 of the Ohio Revised Code. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted against Defendants.

II. DEFINITIONS

2. Unless otherwise stated, all terms used in this Consent Order shall have the same meaning as used in Ohio Revised Code Chapter 3734 and the Ohio Administrative Code rules adopted thereunder.

3. As used in this Consent Order, "Property" means the property owned by Defendant Tri-State Garden Supply, Inc and located at U-856, State Route 66, Archbold, Ridgeville Township, Henry County, Ohio, 43502.

4. As used in this Consent Order, "Facility" means the registered Class 3 composting facility located at the Property.

5. "Ohio EPA" means the Ohio Environmental Protection Agency.

III. PARTIES BOUND

6. The provisions of this Consent Order shall apply to and be binding upon Plaintiff, Defendants, their successors in interest, heirs, devisees and assigns, and others to the extent provided by Civil Rule 65(D).

7. Nothing herein shall be construed to relieve Defendants of their obligation to comply with all applicable federal, state, or local statutes, regulations, or ordinances including but not limited to applicable permit requirements.

IV. SITE ACCESS

8. Defendants agree and consent that Ohio Environmental Protection Agency, the Henry County Board of Health and their employees and agents shall have full access to the Property at all reasonable times without the need for a warrant, as may be necessary to implement this Consent Order and/or to monitor compliance with this Consent Order and/or Ohio environmental laws.

9. Paragraph 8 of this Consent Order shall not be construed to eliminate or restrict any right Ohio Environmental Protection Agency or the Henry County Board of Health may otherwise have under federal, state or local law to seek access to the Property; nor does Paragraph 8 impose any obligation on the Ohio Environmental Protection Agency to perform inspections, assessments, closure, post-closure care, sampling, monitoring, surveying, mitigation, remediation and/or emergency response work.

V. SATISFACTION OF LAWSUIT AND EFFECT OF CONSENT ORDER

10. The Court's June 8, 2011 Judgment Entry is hereby vacated.

11. The parties agree to resolve the disputed issues in this matter without adjudication of any issues of fact or law. Except as otherwise specifically provided in this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil and administrative liability of Defendants and their successors in interest and assigns for the claims alleged in the State's Complaint as originally filed. Nothing herein shall be construed as an admission of liability or noncompliance by any Defendant.

12. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief from Defendants for: (A) claims or violations not referenced in the Complaint; (B) any violations arising out of acts, or omissions first occurring after the effective date of this

Consent Order; or (C) claims or violations under the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. §§9601 et seq. or R.C. 3734.20 through 3734.27 for any emergency, removal, remedial, corrective actions, or natural resource damages. Defendants retain all rights, defenses, and/or claims they may legally raise to the extent that the State seeks further relief from Defendants in the future for claims not alleged in this action, or in any action brought to enforce the terms of this Consent Order.

13. Nothing in this Consent Order shall constitute or be construed as a satisfaction of lawsuit, release, or a covenant not to sue regarding any claim alleged in the Complaint, or any other claim or cause of action, against any person, firm, trust, joint venture, partnership, corporation, association, or other entity not a signatory to this Consent Order for any liability they may have arising out of, or relating to, the Facility including, but not limited to, those identified in the Complaint.

14. Except as expressly provided otherwise in this Consent Order, Defendants are ordered and enjoined to immediately comply with the requirements of Ohio Revised Code Chapter 3734 and the rules adopted thereunder. Nothing herein shall be construed to relieve Defendants of their obligation to comply with all other applicable federal, state, or local statutes, regulations, or ordinances.

15. Defendant Tri-State agrees to voluntarily dismiss its appeal of the December 8, 2008 Director's Final Findings and Orders issued to Tri-State Garden Supply, Inc. Plaintiff State of Ohio agrees that Defendant Tri-State's voluntary dismissal of its appeal of the December 8, 2008 Director's Final Findings and Orders is done without adjudication of any issues of fact or law and cannot be construed as an admission by Defendant Tri-State of any noncompliance or wrongdoing.

VI. INJUNCTION

16. Defendants may place the contents of Pile "C", located on the Property outside the Facility boundaries and as identified on Tracking Map 1 dated September 21, 2011 (Attached as Exhibit 1), into distribution immediately.

17. Within forty-five (45) days of entry of this Consent Order, Defendants are ordered and enjoined to test Pile "H", located on the Property outside the Facility boundaries as identified on Tracking Map 2 dated September 21, 2011 (Attached as Exhibit 2), for compliance with compost quality standards pursuant to Ohio Adm. Code 3745-27-46(C), and to submit analytical testing results for Pile "H" to Plaintiff State of Ohio. If analytical testing results demonstrate that Pile "H" meets compost quality standards, Defendants may immediately place the contents of Pile "H" into distribution. If Defendants fail to submit analytical testing results for Pile "H" within forty-five (45) days of entry of this Consent Order, or if analytical testing results for Pile "H" demonstrate that Pile "H" does not meet compost quality standards, Defendants are ordered and enjoined to properly transport the contents of Pile "H" to a solid waste facility that is licensed or registered to accept such waste within ninety (90) days of entry of this Consent Order.

18. No later than August 31, 2012, Defendants are ordered and enjoined to remove all N-Viro Soil and Sauder sawdust contained in Pile "G", located on the Property and/or outside the boundaries of the Facility and as identified on Tracking Map 1 dated September 21, 2011 (Attached as Exhibit 1), and properly transport the solid waste to a solid waste facility that is licensed or registered to accept such waste.

VII. CIVIL PENALTY

19. Defendants are ordered and enjoined to pay to Plaintiff State of Ohio a civil penalty of thirty-five thousand dollars (\$35,000). Such payment shall be made as follows:

- a. Within thirty (30) days after entry of this Consent Order, Defendants are ordered and enjoined to pay Plaintiff State of Ohio fourteen thousand dollars (\$14,000).
- b. Within ninety (90) days after entry of this Consent Order, Defendants are ordered and enjoined to pay Plaintiff State of Ohio an additional thirteen thousand dollars (\$13,000).
- c. Within one hundred eighty (180) days after entry of this Consent Order, Defendants are ordered and enjoined to pay Plaintiff State of Ohio an additional eight thousand dollars (\$8,000).

20. All payments as set out in Paragraph 19 herein shall be made by delivering a certified check for the appropriate amount, payable to the order of "Treasurer, State of Ohio," delivered to Martha Sexton, Paralegal, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

21. In the event Defendants fail to make any payment as set out in Paragraph 19 herein by its due date, any and all remaining payments as set out in Paragraphs 19 and 22 herein become immediately due and owing, plus any interest accrued pursuant to R.C. 131.02(D) from the date of the entry of this Consent Order.

VIII. ENFORCEMENT COSTS

22. Within one hundred eighty (180) days after entry of this Consent Order. Defendants are ordered and enjoined to pay enforcement costs of the Ohio Attorney General in the amount of five thousand dollars (\$5,000). This payment shall be made by delivering to

Martha Sexton, Paralegal, or her successor, at the Office of the Attorney General of Ohio, Environmental Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, a certified check for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

IX. STIPULATED PENALTIES

23. If Defendants Tri-State and/or Gardenscape fail to meet any of the requirements of Section VI of this Consent Order, Defendants Tri-State and/or Gardenscape shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

- a. For each day of failure to meet a requirement up to thirty (30) days, one hundred dollars (\$100) per day for each requirement not met.
- b. For each day of failure to meet a requirement from thirty-one (31) to sixty (60) days, two hundred dollars (\$200) per day for each requirement not met.
- c. For each day of failure to meet a requirement from sixty-one (61) to ninety (90) days, three hundred dollars (\$300) per day for each requirement not met.
- d. For each day of failure to meet a requirement over ninety (90) days, five hundred (\$500) per day for each requirement not met.

Such payment(s) shall be made by delivering to Martha Sexton, Paralegal, or her successor, Office of the Attorney General, Environmental Section, 30 E. Broad St., 25th Floor, Columbus, Ohio 43215-3400, a certified check for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

X. NOTICES

24. All documents required to be submitted under this Consent Order shall be submitted to the following, or their successors:

As to Plaintiff State of Ohio:
Ohio Environmental Protection Agency
Northwest District Office
Solid Waste Supervisor
347 North Dunbridge Road
Bowling Green, OH 43402
Ohio Environmental Protection Agency
Manager, Compliance Monitoring and Enforcement Unit
Division of Waste and Materials Management
50 W. Town St., Suite 700
P.O. Box 1049
Columbus, OH 43216-1049

As to Defendants:

David Kasmoch, Jr.
Gardenscape, Inc.
P.O. Box 184
Route 38 and Sandy Point Road
Eau Claire, PA 16030

XI. COURT COSTS

25. Defendants are hereby ordered to pay the court costs in this action.

XII. RETENTION OF JURISDICTION

26. This Court shall retain jurisdiction of this action for the purposes of making any order or decree which it deems appropriate to carry out this Consent Order.

XII. SIGNATORIES

27. Each of the undersigned representatives for the Parties represents that he/she is fully authorized to enter into the terms and conditions of this Consent Order and legally bind the respective Party to this document.

XIII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

28. Upon the signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the

clerk is hereby directed to serve notice of judgment upon all parties and the Order's date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

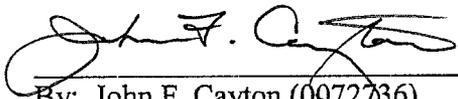
IT IS SO ORDERED.



Judge John S. Collier
Henry County Court of Common Pleas

Date

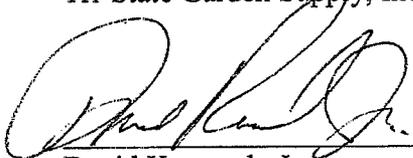
MICHAEL DEWINE (0009181)
ATTORNEY GENERAL OF OHIO



By: John F. Cayton (0072236)
Assistant Attorney General

By: 

Tri-State Garden Supply, Inc. and Gardenscape, Inc.



David Kasmoch, Jr.



Timothy Kasmoch