

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Neighbors Opposing Pit Expansion, Inc.)
3151 Pond Run Rd.)
New Richmond, Ohio 45157)

PLAINTIFF)

v.)

New Richmond Development Corp., LLC)
2275 Cassens Drive, Suite 118)
Fenton, MO 63026)
Statutory Agent:)
Joseph E. Budde, Esq.)
259 West Schrock Rd.)
Westerville, Ohio 43081)

CASE NO. 1:21-cv-00792

Judge _____

and)

Commercial Liability Partners, LLC)
2275 Cassens Drive, Suite 118)
Fenton, MO 63026)
Statutory Agent:)
Registered Agents Inc.)
7901 4th St. N., Suite 300)
St. Petersburg, FL 33702)

DEFENDANTS)

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
AND FOR CIVIL PENALTIES WITH DEMAND FOR JURY TRIAL**

INTRODUCTION

1. This action concerns ongoing, dangerous disposal of toxic waste that threatens human health and the environment in an Ohio River community. Plaintiff Neighbors Opposing Pit Expansion, Inc. (“NOPE”), an Ohio non-profit comprised of over 100 Clermont County, Ohio residents dedicated to protection of their homes, health, and environment from toxic waste, brings

this civil suit under the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.* (“RCRA”), and specifically under Section 7002 of RCRA, 42 U.S.C. § 6972, as amended, against New Richmond Development Corporation, LLC (“NRD”) and Commercial Liability Partners, LLC (“CLP”) (collectively, “CLP Defendants”) for CLP Defendants’ ongoing violations of RCRA Section 4005 (42 U.S.C. § 6945) (the “Open Dumping” provision). The violations arise from CLP Defendants’ handling, management, and disposal of “coal combustion residuals” (also known as “CCR” or, colloquially, “coal ash”) at the site of the former Beckjord power station and on related properties in Clermont County, Ohio (the “Beckjord Property” or “facility”), which CLP and NRD acquired from Duke Energy in 2018.

2. The former Beckjord power station operated for six decades (1952–2014) as a coal-fired power plant and over that time generated over six million cubic yards of coal ash that continue to be disposed of in unlined pits (also known as “ponds” or “impoundments”), unlined piles, and landfills at the Beckjord Property. The Beckjord coal ash pond disposal areas are adjacent to and in the floodplain of the Ohio River (a drinking water source for over five million people) and are directly upgradient of Clermont County public drinking water wells that are the drinking water source for 130,000 people.

3. Since acquiring the Beckjord Property from Duke Energy in February 2018, CLP Defendants have engaged in and continue to engage in unlawful ongoing disposal of coal ash at the facility, and have also engaged and are continuing to engage in unlawful new acts of disposal and disposal practices at the facility. These activities violate RCRA’s Open Dumping prohibition and federal regulations designed to protect human health and the environment from any reasonable probability of adverse effects from waste disposal.

4. CLP Defendants' Open Dumping violations are ongoing and are likely to continue into the foreseeable future. CLP Defendants' past and continuing Open Dumping has contaminated groundwater in the vicinity of the Beckjord Property and drinking water sources; threatens to harm surface water, the environment, and nearby residential properties, including NOPE members' properties; has impacted and harmed, and will continue to impact and harm, air quality, wildlife, and human health through multiple pathways for contaminant migration; and has harmed, and will continue to harm, Plaintiff NOPE and its members. Plaintiff NOPE seeks declaratory relief, injunctive relief, civil penalties, and other relief to correct the unlawful and ongoing Open Dumping by CLP Defendants.

5. The CLP Defendants have acted and will continue to act to release wastes, including coal ash, in violation of statutory and regulatory standards and to otherwise conduct such waste disposal operations and practices in a manner that constitutes a common-law nuisance. Such nuisance-causing conditions threaten, unreasonably interfere with, and otherwise harm rights common to the public, including resulting in special injury to NOPE and its members. NOPE seeks an order requiring the abatement of said nuisance and an award to NOPE of damages, including investigative costs, that have proximately resulted from said nuisance.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to the RCRA citizen suit provision, 42 U.S.C. § 6972(a)(1)(A), and the federal question jurisdiction statute, 28 U.S.C. § 1331. RCRA authorizes citizen suits against any person, including a corporation, "who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective" pursuant to RCRA. 42 U.S.C. § 6972(a)(1)(A). The RCRA citizen suit provision authorizes district courts to order enforcement of

these requirements against violators, including imposition of civil penalties where appropriate. *Id.* § 6972(a). This Court may award Plaintiff NOPE declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02.

7. The Court possesses subject matter jurisdiction over the state law claims pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship and the amount in controversy is in excess of \$75,000, exclusive of interest and costs. NOPE is an Ohio non-profit corporation, and therefore an Ohio citizen. CLP is a Puerto Rican citizen because its two members are limited liability companies whose members are domiciled in Puerto Rico. NRD is a wholly owned subsidiary of CLP and is also a Puerto Rican citizen. The Court also possesses supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367 because the transactions and occurrences giving rise to the federal and state law claims arise from a common nucleus of operative fact, such that the state law claims are so related to claims in the action within original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

8. The Court has personal jurisdiction over CLP Defendants. NRD owns property and has assets in in the State of Ohio, in particular in Clermont County. CLP has regularly transacted business in, owns property in, and derives a benefit from the State of Ohio, including from Clermont County, Ohio. In addition, upon information and belief, CLP has exercised and continues to exercise total control over NRD. Further, CLP Defendants' acts, violations, and omissions that are the subject of this Complaint have occurred in Ohio, specifically in Clermont County.

9. Venue is proper in the Southern District of Ohio Western Division under 28 U.S.C. § 1391(b)(2), 42 U.S.C. § 6972(a), and S.D. Ohio Civ. R. 82.1. The RCRA violations alleged

herein have occurred in this District, specifically in Clermont County. Further, the Beckjord Property that is the subject of this Complaint is located in Clermont County, a county located in this District.

10. On May 26, 2021, Plaintiff NOPE gave written notice of the violations alleged herein and its intent to sue by letter (“Notice Letter”) sent via Registered Mail to CLP Defendants and all other persons required to be notified pursuant to 42 U.S.C. § 6972(b) and 40 C.F.R. §§ 254.2–254.3. Over 60 days before filing this action, CLP Defendants and all required persons and entities were served the Notice Letter pursuant to 42 U.S.C. § 6972(b) and 40 C.F.R. § 254.2.

11. The RCRA Open Dumping violations alleged herein are ongoing. CLP Defendants remain in violation of RCRA as of the filing of this Complaint.

12. Neither the United States Environmental Protection Agency (“U.S. EPA”) nor a State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to redress the RCRA Open Dumping violations asserted in this citizen enforcement action.

PARTIES AND STANDING

13. Plaintiff NOPE is an Ohio non-profit corporation located in Pierce Township in Clermont County, Ohio that has a principal corporate address at 3151 Pond Run Road, New Richmond, Ohio 45157. NOPE has a volunteer board of directors and its membership is comprised of over 100 Clermont County residents who reside and own property near the Beckjord facility.

14. NOPE was formed in 1985 when Pierce Township residents learned about plans by the then-utility owner and operator of Beckjord Power Station, Cincinnati Gas & Electric Co. (CG&E), to purchase real property in Pierce Township for expanded coal ash disposal operations. Local residents founded NOPE to protect their land and homes, and the environment in their

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