

Friday, October 17, 2025 3:32:28 PM

2025CV0739 - Mary "Molly" L Mack

IN THE COURT OF COMMON PLEAS
WOOD COUNTY

DOUGLAS F. CUBBERLEY
CLERK OF COURTS WOOD COUNTY OHIO

STATE OF OHIO, ex rel.

DAVE YOST

ATTORNEY GENERAL OF OHIO

Environmental Enforcement Section

30 East Broad Street, 25th Floor

Columbus, Ohio 43215-3400

Plaintiff

v.

BATES RECYCLING INC.,

c/o John Filkins, Statutory Agent

101 W Sandusky St., Suite 204

Cygnnet, Ohio 43413

Defendant.

CASE NO.

JUDGE _____

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL
PENALTIES

NATURE OF THE ACTION

Defendant, Bates Recycling Inc., ("Bates") violated Ohio's air pollution control laws and rules designed to protect public health and the environment at its facility located at 12729 Jerry City Road, Cygnnet, Ohio (the "Facility"). Therefore, Plaintiff, the State of Ohio, on relation of the Ohio Attorney General Dave Yost ("State"), at the written request of the Director of Ohio Environmental Protection Agency ("Ohio EPA"), institutes this action against Defendant to enforce Ohio's air-pollution-control laws found in R.C. Chapter 3704 and the rules adopted thereunder.

GENERAL ALLEGATIONS

General Air Pollution Control Prohibitions and Relief Provisions

1. Revised Code 3704.05(A) states that "[n]o person shall cause, permit, or allow

emission of an air contaminant in violation of any rule” adopted by the Director of Ohio EPA under R.C. 3704.03(E).

2. R.C. 3704.05(G) states that “[n]o person shall violate any order, rule, or determination of the [D]irector issued, adopted, or made under” R.C. Ch. 3704.

3. Under R.C. 3704.06(B), the Attorney General has authority upon request of the Director to bring an action to enjoin conduct in violation of R.C. 3704.05, and, pursuant to R.C. 3704.06(C), to seek civil penalties of not more than \$25,000.00 for each day of each violation except for violations of R.C. Chapter 3704 regarding the prevention or abatement of odors.

The Defendant

4. Bates is an Ohio limited liability company, whose principal place of business is 12729 Jerry City Road, Cygnet, Wood County, Ohio.

5. Defendant is a person, as defined by R.C. 3704.01(P), Adm.Code 3745-15-01(W), and Adm.Code 3745-31-01(P)(13).

6. Defendant is an owner or operator of the Facility, as defined by Adm.Code 3745-15-01(O), in this case a torching operation.

7. Defendant owns, leases, controls, operates, or supervises the Facility.

Facility Description and History

8. Bates facility (Facility ID 0387002052) is a scrap recycling operation that utilizes torches to cut scrap metal.

9. The torches operate by using a fuel that generates high temperatures, which cut through metal by melting or oxidizing the material. This process produces air pollutants, including

particulate matter and other harmful emissions. Depending on the type of material being cut, the fumes released during this operation may contain toxic metals.

10. Since 2023, Ohio EPA has been receiving complaints about excessive smoke from the Facility and that is visible from several miles away.

11. In 2023, Ohio EPA received seven public complaints regarding excessive smoke emissions from the Bates Facility.

12. On March 1, 2023, Ohio EPA inspected the Facility and determined that the cause of the excessive emissions was Defendant cutting metal parts from the railroad industry, including railroad frogs and railroad tracks, which contained manganese.

13. Manganese is a hazardous air pollutant under Section 112(b)(1) of the Clean Air Act and an Ohio Air Toxic under Adm. Code 3745-114-01.

14. Because manganese is a hazardous air pollutant, the torching operations cannot generate more than one ton per year of manganese emissions to qualify for the de minimis exemption under Adm.Code 3745-15-05(C).

15. On March 17, 2023, as a result of a complaint investigation conducted on March 1, 2023, Ohio EPA issued Defendant a letter stating that in order to continue manganese torch cutting operations, Bates must provide emission calculations that demonstrate that emissions meet the de minimis exemption or apply for and receive a permit-to-install and operate ("PTIO").

16. On April 24, 2023, Ohio EPA notified Defendant again that in order to continue torching operations, Bates Recycling must either provide de minimis calculations that demonstrate compliance with the rule, or the facility must apply for a PTIO.

17. Thereafter, Defendant submitted documentation purporting to show that the Facility's emissions were de minimis.

18. Defendant's calculations on paper conflicted with continued public complaints and Ohio EPA's staff observations of excessive particulate matter emissions.

19. In a letter dated September 13, 2023, Ohio EPA informed Defendant that it may continue cutting scrap metals as long as Defendant complies with the de minimis exemption, except for the metal parts belonging to railroad industry. For those parts, Ohio EPA instructed Defendant to apply for a PTIO, which may establish emissions limits, capture and control parameters, visible emissions limitations and requirements to minimize fugitive dust emissions, etc.

20. As of the filing of this Complaint, Ohio EPA has not received any PTIO application from Defendant, despite Defendant's continued excessive emissions during its torching operations.

21. In 2024, Ohio EPA received an additional five complaints from the public concerning ongoing excessive smoke released into the air from the Bates Facility.

22. In January, February, and September of 2024, Ohio EPA conducted investigations in response to complaints and observed emissions originating from the Facility and extending off-site.

23. In 2025, the number of complaints increased dramatically, more than 40 complaints submitted to Ohio EPA from the beginning of the year through the date of this filing. Several of these complaints reported symptoms such as unpleasant smells, headaches and skin irritation, reflecting significant and escalating public concern over the Facility's emissions.

24. Even Ohio EPA's own staff experienced throat irritation during one of their investigations of Bates' operations in 2025.

25. On August 21, 2025, Ohio EPA attempted to conduct a complaint investigation at the Facility and was denied access by the Facility owner, in violation of R.C 3704.03.

26. On September 11 and 12, 2025, Ohio EPA once again observed excessive emissions emitting offsite from the Facility.

27. On September 17, 2025, Ohio EPA, working in conjunction with the Ohio Attorney General's office, obtained a warrant to inspect the property and review records. Defendant refused to provide the location of the records that were authorized to be viewed under Ohio law and Court order.

28. On October 1, 2025, Ohio EPA received additional complaints from community members regarding emissions from the Facility. Ohio EPA staff went to a nearby property and observed from that offsite location that Defendant constructed a scrap wall to block visibility of its property from the adjacent lot. Additionally, the Facility owner drove to the neighbor's property where the Ohio EPA inspectors were located and used his vehicle to deliberately and hostilely block the state vehicle as Ohio EPA inspectors attempted to exit the area.

29. A few days later, Ohio EPA received another complaint from a community member that the Facility was emitting large plumes of smoke every day of the week at 3:00 a.m. An Ohio EPA inspector went to a location nearby the site at approximately 3:00 a.m. on October 6th and was able to observe that Defendant was operating torching equipment that resulted in large amounts of emissions coming from the Facility for several hours.

30. On October 7th, 8th, 9th and 10th, an Ohio EPA inspector parked off site at 3:00 a.m. and observed torching operations with large amounts of metallic smelling, orange-tinged emissions coming from the Facility.

De Minimis Air Contaminant Source Exemption

31. Adm.Code 3745-31-02(A)(l)(b) prohibits any person from causing, permitting, or allowing the installation and subsequent operation of any new source unless a PTIO has been applied for and obtained, except as otherwise provided by rule or law.

32. A de minimis air contaminant source which meets Adm.Code 3745-15-05 and R.C.3704.011 are exempt from permit requirements.

33. Air contaminant means "particulate matter, dust, fumes, gas, mist, radionuclides, smoke, vapor, or odorous substances, or any combination thereof." Adm.Code 3745-31-01(A)(7) and Adm.Code 3745-15-05(A)(2).

34. Air contaminant source means "each separate operation, or activity that results or may result in the emission of . . . a toxic contaminant as listed in [Adm.Code 3745-114-01]." Adm.Code 3745-31-01(A)(8).

35. Pursuant to Adm.Code 3745-15-05, a de minimis air contaminant source is one that emits less than 10 pounds per day of air contaminants and less than one ton per year of hazardous air pollutants or combination of hazardous air pollutants.

36. Metal torching operations meet the definition of air contaminant source under Adm.Code 3745-31-01(A)(8).

37. "The owner or operator of such an exempt source . . . , upon the request of the director or the director's authorized representative concerning such source, shall provide information that is adequate to demonstrate that the source qualifies for the exemption." Adm.Code 3745-15-05 (G).

38. "If a source exempt under this rule should at any time exceed the exempt emission levels . . . [u]pon request by the director, the owner or operator of such source shall submit an

application for a permit to install if required by Chapter 3745-31 of the Administrative Code and an application for a permit to operate pursuant to Chapter 3745-77 of the Administrative Code, as applicable.” Adm.Code 3745-15-05 (I).

39. Unless metal torching operations qualify for a permit exemption, a PTIO is required for the operations.

Jurisdiction and Venue

40. Pursuant to R.C. 3704.06, this matter was referred by the Director of Ohio EPA to the Attorney General on October 8, 2025 for civil enforcement.

41. This Court has jurisdiction over the subject matter of this action, personal jurisdiction over the Defendant, and authority to grant the relief requested pursuant to R.C. Chapter 3704.06

42. Venue is proper in the Wood County Court of Common Pleas pursuant to Civ.R. 3(C).

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

44. All allegations set forth in each paragraph above are incorporated into each Count below as if restated.

COUNT ONE Operating Without a Permit

45. Revised Code 3704.05(G) provides that “[n]o person shall violate any rule of the director issued, adopted, or made under” R.C. Ch. 3704.

46. Adm.Code 3745-31-02(A)(l)(b) prohibits any person from causing, permitting, or allowing the installation and subsequent operation of any new source unless a Permit to Install and Operate has been applied for and obtained, except as otherwise provided by rule or law.

47. An air contaminant source that meets Adm.Code 3745-15-05 and R.C.3704.011 is exempt from permit requirements.

48. "If the potential to emit of an air contaminant source exceeds ten pounds per day of any type of air contaminant, the exemption provided in [R.C.3704.011] does not apply unless the owner or operator of the source maintains records that are adequate to demonstrate that actual emissions have not exceeded ten pounds per day." R.C.3704.011 (C).

49. On September 17, 2025, Defendant refused to provide records adequate to demonstrate that actual emissions have not exceeded ten pounds per day, despite a Court Order to do so, and to date has still not provided any records.

50. Because Defendant has failed to maintain records required by R.C. 3704.011, the exemption provided in that section does not apply; therefore, Defendant is required to and has failed to obtain a permit.

51. As of the filing of this Complaint, Ohio EPA has not received a PTIO application from Defendant, despite Defendant's continued emission of excessive emissions during its torching operations, which are clearly above de minimis levels.

52. The conduct alleged in this Count constitutes violations of Adm.Code 3745-31-02(A)(l)(b), R.C.3704.011 (C) and R.C. 3704.05 (G) for which Defendant is liable and subject to injunctive relief pursuant to R.C. 3704.06(B) and for a civil penalty of not more than \$25,000 per day for each day of violation pursuant to R.C. 3704.06(C), including each day of violation that occurs after the filing of this Complaint.

COUNT TWO
Creating and Maintaining a Public Nuisance
in Violation of Ohio Adm. Code 3745-15-07

53. Revised Code 3704.05(G) provides that “[n]o person shall violate any rule of the director issued, adopted, or made under” R.C. Ch. 3704.

54. Adm.Code 3745-15-07(A) defines public nuisance as “[t]he emission or escape into the open air from any source or sources whatsoever, of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, or any other substances or combinations of substances, in such manner or in such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property.”

55. Pursuant to Adm.Code 3745-15-07(B), the emission or escape into the open air from any source of odors regulated under Adm.Code Ch. 3745-17, 3745-18, 3745-21, or 3745-31, when operated in a manner that emits such amounts of odor as to endanger public health, safety, or welfare, or to cause unreasonable injury or damage to property, constitutes a public nuisance.

56. Adm.Code 3745-15-07(B) prohibits any person causing, permitting, or maintaining an air pollution nuisance.

57. On the following dates—and on additional dates yet to be identified—Defendant emitted miles of colored emissions or other substances from its torching operations which resulted in foul odors, headaches, skin irritation, and irritated throats among residents of Wood County, Ohio EPA inspectors, and passersby on interstate 75.

- a. 2023: August 1, August 2, August 3, August 16, October 13, November 14, December 15, December 18;
- b. 2024: January 4, January 23, February 13, February 20, September 17;

c. 2025: April 17, May 7, June 16, June 18, July 17, July 21, July 23, July 30, August 18, August 19, August 20, August 23, August 25, August 26, August 28, September 2, September 3, September 8, September 9, September 10, September 12, September 13, September 19, September 24, September 25, October 2, October 6, October 7, October 9, October 10.

58. Ohio EPA investigated the public's complaints at least seven times and based upon those investigations, the Director has determined that Defendant has been causing a nuisance at its Facility.

59. The conduct alleged in this Count constitutes violations of Adm.Code 3745-15- 07 (A) and (B) and R.C. 3704.05 (G) for which Defendant is liable and subject to injunctive relief pursuant to R.C. 3704.06(B) and for a civil penalty of not more than \$25,000 per day for each day of violation pursuant to R.C. 3704.06(C), including each day of violation that occurs after the filing of this Complaint.

COUNT THREE
Refusing Entry to Ohio EPA and
Hindering Investigation

60. Revised Code 3704.05(E) provides that "no person to whom a permit *or variance* has been issued shall refuse entry to an authorized representative of the Director or the environmental protection agency as provided in division (L) of section 3704.03 of the Revised Code or hinder or thwart the person making an investigation." (Emphasis added.)

61. R.C. 3704.03(L) authorizes Ohio EPA to enter upon "private or public property, including improvements thereon, *at any reasonable time*, to make inspections, take samples, conduct tests, and examine records or reports pertaining to any emission of air contaminants and

any monitoring equipment or methods and to determine if there are any actual or potential emissions from such premises and, if so, to determine the sources, amounts, contents, and extent of those emissions, or to ascertain whether there is compliance with this chapter, any orders issued or rules adopted thereunder, or any other determination of the director.” (Emphasis added.)

62. On September 13, 2023, Ohio EPA sent a letter agreeing Bates’ calculations, if accurate, demonstrated that for most of the metal cutting operations the calculations met the de minimis exemption, except for the metal parts associated with the railroad industry. But Defendant’s calculations on paper conflicted with continued public complaints and Ohio EPA’s staff observations of excessive dust.

63. On August 21, 2025, Ohio EPA attempted to conduct a complaint investigation at the facility because of dramatically increased complaints of excessive emissions but was denied access by the Facility owner, in violation of R.C 3704.03.

64. On September 17, 2025, Ohio EPA, working in conjunction with the Ohio Attorney General’s office, obtained a warrant to inspect the property and review records. Defendant refused to provide the location of the records that were authorized to be viewed under Ohio law and Court order.

65. On October 1, 2025, Ohio EPA received additional complaints from community members regarding emissions from the Facility. Ohio EPA staff went to a nearby property and observed from that offsite location that Defendant constructed a scrap wall to block visibility of its property from the adjacent lot. Additionally, the Facility owner drove to the neighbor’s property where the Ohio EPA inspectors were located and used his vehicle to deliberately and hostilely block the state vehicle as Ohio EPA inspectors attempted to exit the area.

66. The conduct alleged in this Count constitutes violations of R.C. 3704.03 (L) and R.C. 3704.05 (E) for which Defendant is liable and subject to injunctive relief pursuant to R.C. 3704.06(B) and for a civil penalty of not more than \$25,000 per day for each day of violation pursuant to R.C. 3704.06(C), including each day of violation that occurs after the filing of this Complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

A. Permanently order and enjoin Defendant from violating R.C. Chapter 3704 and the rules adopted thereunder;

B. Permanently order and enjoin Defendant from causing or maintaining a nuisance;

C. Order Defendant to cease all operations causing nuisance conditions;

D. Order Defendant to stop all torching of metal parts associated with the railroad industry (including but not limited to railroad frogs) until applying for and receiving a permit to install and operate for Bates Recycling authorizing such operations;

E. Order Defendant to stop cutting any metal parts by using large torch equipment until applying for and receiving a permit-to-install and operate for Bates Recycling authorizing such operations;

F. Order Defendant to allow Ohio EPA and its agents access to the facility and access to necessary records as required by Ohio R.C.3704.03(L);

G. Order Defendant to submit a compliance plan to Ohio EPA outlining how Defendant will address the nuisance emissions;

H. Order Defendant to submit the following documentation to Ohio EPA:

a. Torching:

- i. Number of torches used at the facility, with makes, models, operational manuals, fuel types, and amount of fuel(s) in CCF (hundred cubic feet of gas) or gallons consumed in an hour.
- ii. Hours of operation for each torch on site, in hours per day from January 1, 2024, to present.
- iii. CCF or gallons of fuel consumed by each torch used at the facility, in gallons per day from January 1, 2024, to present.
- iv. Maximum thickness of metal cut for each torch.
- v. Maximum width of metal cut for each torching operation.
- vi. Amount of material (in pounds or tons) torched per calendar month.
- vii. Detailed descriptions (including metals composition) of what materials have been torched from January 1, 2024, to present.
- viii. Identify in which metals are regulated under Ohio Air Toxics program in the Adm.Code 3745-114-01.

b. Clean Burn Waste Oil System

- i. Hours of operation every calendar month from January 1, 2024, to present.
- ii. CCF or gallons of fuel burned every calendar month from January 1, 2024, to present.
- iii. Maximum operating schedule in hours per day, and days per year.
- iv. Heat input capacity in MMBtu/hr.

- v. Results from any used oil analysis conducted by a third-party or in-house laboratory.

- c. Diesel Fuel Tank

- i. Gallon capacity of tank

I. Order Defendant to apply for a Permit-to-Install and Operate for the metal cutting operations at the Facility in accordance with Adm.Code 3745-31. The permit application shall at a minimum include:

- a. Section I form
- b. Section II forms for material handling, unpaved roadways, torching, and the waste oil burner
- c. Process flow diagrams for material handling, unpaved roadways, torching, and the waste oil burner
- d. Calculations for material handling, unpaved roadways, torching, and the waste oil burner.
- e. Emissions Activity Category (EAC) forms for material handling, unpaved roadways, torching, and the waste oil burner
- f. Permit-by-rule notifications for any applicable emissions units on site

J. Order Defendant to submit an Intent to Test (ITT) to Ohio EPA, Northwest District Office within 30 days of the test date, to conduct emissions testing for particulate matter less than 10 microns in size (PM₁₀), particulate matter less than 2.5 microns in size (PM_{2.5}), metals, volatile organic compounds (VOC) and hazardous air pollutants (HAPs) from the torch cutting operations on site.

a. The emissions testing shall be representative of the emissions observed by Ohio EPA inspectors and complaints received over 2025.

K. Order Defendant, pursuant to R.C. 3704.06(C), to pay to the state treasury a civil penalty of \$25,000 per day for each day of each violation alleged in the Complaint, including any violations occurring after the filing of the Complaint;

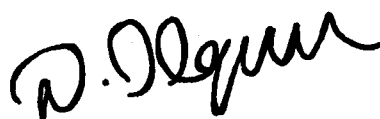
L. Order Defendant to pay all the costs of this action, including Plaintiff's attorney fees and other extraordinary enforcement costs;

M. 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 compliance with, and to carry out, this Court's judgment; and

N. Grant any other relief this Court deems to be just, equitable, and appropriate in this case.

Respectfully submitted,

DAVE YOST
OHIO ATTORNEY GENERAL



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