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Air Enforcement/Torch Cutting: Ohio Attorney General Judicial Action Addressing Wood County Scrap Recycling Operation

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The Ohio Attorney General (“AG”) filed a Complaint for Injunctive Relief and Civil Penalties (“Complaint”) in the Court of Common Pleas in Wood County, Ohio against Bates Recycling, Inc. (“Bates”) for alleged violations of Ohio air pollution laws and rules.

The Complaint describes the facility as a scrap recycling operation in Wood County, Ohio.

The facility is stated to use torches that:

...operate by using a fuel that generates high temperatures, which cut through metal by melting or oxidizing the material.

The process is alleged to produce air pollutants.

The Ohio Environmental Protection Agency (“OEPA”) is stated to have inspected the facility on March 1, 2023, and determined that excessive emissions were due to cutting metal parts from the railroad industry, which included:

- Railroad frogs
- Railroad tracks

The railroad materials are stated to contain manganese. Manganese is stated to be 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.

Bates is stated to have been required by OEPA to provide emission calculations that demonstrate that emissions meet the de minimis exemption or apply for and receive a permit-to-install and operate (“PTIO”) to continue manganese torch cutting. Documentation was submitted by Bates indicating that the emissions were de minimis.

OEPA is stated to have informed Bates that it may continue cutting scrap materials as long as it complies with the de minimis exemption except for the metal parts belonging to the railroad industry. Bates was instructed to apply for a PTIO to establish emission limits, capture and control parameters, visible emissions limitations and requirements to minimize fugitive dust emissions. OEPA is stated to have not received any PTIO application.

The Complaint alleges that complaints have been received from the community regarding emissions. It contains the following counts alleging violations:

- Operating Without a Permit.
- Creating and Maintaining a Public Nuisance in Violation of Ohio Adm. Code.
- Refusing Entry to Ohio EPA and Hindering Investigation.

The Complaint requests that the Court:

- Permanently order and enjoin Bates from violating R.C. Chapter 3704 and the rules adopted thereunder;
- Permanently order and enjoin Bates from causing or maintaining a nuisance;
- Order Bates to cease all operations causing nuisance conditions;
- 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;
- 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;
- 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);
- Order Defendant to submit a compliance plan to Ohio EPA outlining how Defendant will address the nuisance emissions;
- Order Defendant to submit the following documentation to Ohio EPA.
- 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.
- 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 (PM2.5), metals, volatile organic compounds (VOC) and hazardous air pollutants (HAPs) from the torch cutting operations on site.
- 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;
- Order Defendant to pay all the costs of this action, including Plaintiffs attorney fees and other extraordinary enforcement costs;

A copy of the Complaint can be downloaded [here](#).