

DISTRICT COURT, MONTEZUMA COUNTY,
COLORADO

865 North Park Street, Suite 100
Cortez, Colorado 81321

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COLORADO DEPARTMENT OF PUBLIC HEALTH
AND ENVIRONMENT, HAZARDOUS MATERIALS
AND WASTE MANAGEMENT DIVISION; and THE
MONTEZUMA COUNTY BOARD OF COUNTY
COMMISSIONERS,

Plaintiffs,

v.

IRONWOOD GROUP, LLC; MARK A. HARTMAN; and
KENNETH WADE BENTLEY,

Defendants.

▲ COURT USE ONLY ▲

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Case No.

Div:

Ctrm:

COMPLAINT

The Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division (“Division”), by and through the Office of the Colorado Attorney General and the Montezuma County Board of County Commissioners (“Montezuma County BoCC”), by and through Montezuma County Attorney Ian MacLaren (collectively, “Plaintiffs”) file this Complaint under section 30-20-113(2) and (3), C.R.S. and state the following:

INTRODUCTION

1. Plaintiffs seek to compel IronWood Group, LLC (“IronWood Group”), Mark Hartman and Kenneth Wade Bentley (“Wade Bentley”) (collectively, “Defendants”) to comply with Compliance Order on Consent Number 22-07-29-01 (“Consent Order”), issued by the Division under the Colorado Solid Waste Disposal Sites and Facilities Act, sections 30-20-100.5 to 123, C.R.S. (“Solid Waste Act”) and the Colorado Solid Waste Regulations, 6 CCR 1007-2, Part 1 (“Regulations”). The Consent Order and accompanying cover letter are attached as **Exhibit 1**. Plaintiffs also seek civil penalties for violation of the Consent Order.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the claims set forth herein under Colo. Const. art. VI, section 9 and section 30-20-113(2), C.R.S.

3. Venue is proper in the 22nd Judicial District Court under C.R.C.P. 98(b)(1) and (c) and section 30-20-113(2)(b), C.R.S. because the IronWood Mill (“Facility”) is in Montezuma County.

PARTIES

4. The Division, located at 4300 Cherry Creek Drive South, Denver, Colorado, 80246, is the Colorado state agency vested with responsibility for enforcing the Solid Waste Act and Regulations under section 30-20-101.5, C.R.S.

5. The Montezuma County BoCC is a body corporate and politic, organized and existing under Article XIV of the Colorado Constitution and Title 30, Article 5 and 11 of the Colorado Revised Statutes, and the Board of County Commissioners is the County’s governing body.

6. As established in the Consent Order, Defendant IronWood Group is a Colorado limited liability company in good standing. The Colorado Secretary of State Business Center records list the formation date of IronWood Group as March 6, 2019. The principal address for IronWood Group is listed as 27930 Road T, Dolores, CO 81323.

7. IronWood Group is also an “owner” and “operator” of the Facility as defined in the Regulations, 6 CCR 1007-2, section 1.2, and the Consent Order. Ex. 1, ¶6.

8. Defendant Wade Bentley is the current manager of the Facility and is responsible for day-to-day operations.

9. Defendant Wade Bentley makes decisions regarding the Facility's compliance with the Solid Waste Act and Regulations.

10. Defendant Wade Bentley is an "operator" of the Facility as defined in section 1.2 of the Regulations.

11. Defendant Mark Hartman is a majority shareholder of IronWood Group and has had an ownership interest since the inception of the corporation.

12. Defendant Mark Hartman directs operations at the Facility.

13. Defendant Mark Hartman makes decisions regarding the Facility's compliance with the Solid Waste Act and Regulations.

14. Defendant Mark Hartman makes financial decisions on behalf of IronWood Group.

15. Defendant Mark Hartman is an "operator" of the Facility under section 1.2 of the Regulations.

16. Defendants are "persons," under section 30-20-101(3), C.R.S. and section 1.2 of the Regulations and are therefore subject to the requirements of the Solid Waste Act and Regulations.

GENERAL ALLEGATIONS

A. Defendants have violated the Consent Order lawfully entered into by IronWood Group and the Division.

17. As set forth in the Consent Order, IronWood Group owns and operated a veneer manufacturing mill at the Facility. Ex. 1, ¶ 5. IronWood Group purchased the Facility in 2019 and commenced operations at the Facility in the spring of 2020. *Id.* Milling operations have ceased at the Facility, and the majority of the Facility's workforce was laid off in October of 2021. *Id.*

18. IronWood Group does not have and has never had a certificate of designation ("CD") issued by Montezuma County, Colorado for the disposal of solid wastes at the Facility. *Id.* ¶ 8.

19. IronWood Group does not have an engineering design and operations plan ("EDOP") reviewed and approved by the Division to qualify for an exemption from the CD requirement. *Id.* ¶ 9.

20. On October 8, 2019, the Montezuma BoCC approved the issuance of a High Impact Permit (Permit No. 675) and Special Use Permit (Permit No. 07-2019) to IronWood Group to reinstate a veneer manufacturing business facility at the former Montezuma Plywood Company plant. *Id.* ¶ 10.

21. IronWood Group's operation resulted in the creation of a large chip/log/slash pile at the Facility. *Id.* ¶ 11. Montezuma County estimates that the chip/log/slash pile is approximately 360 feet wide by 507 feet long. *Id.* The pile height was estimated to be approximately 25 feet on the north end and 61 feet on the south end. *Id.*

22. From March 2021 through December 2021, Montezuma County worked with IronWood Group to encourage mitigation of the pile to alleviate the fire hazard. *Id.* ¶ 12.

23. Mark Hartman and Wade Bentley make decisions regarding solid waste disposal at the Facility and, as "operators" of the Facility under section 1.2 of the Regulations, have the responsibility to bring the Facility back into compliance.

24. On January 11, 2022, the Montezuma BoCC held a public hearing to decide the status of IronWood Group's High Impact Permit and Special Use Permit.

25. Mark Hartman and Wade Bentley appeared before the Montezuma County BoCC regarding conditions at the IronWood Group Facility.

26. The Montezuma County BoCC revoked IronWood Group's High Impact Permit and Special Use Permit on the grounds that IronWood Group failed to adequately mitigate the pile or alleviate the fire hazard. *Id.* ¶ 13.

27. The IronWood Group Facility has become inactive. Mark Hartman and Wade Bentley have operated the Facility in violation of Part 1 of the Solid Waste Act and Regulations adopted pursuant to Part 1, and thus the IronWood Group Facility has become a public nuisance.

28. On February 1, 2022, the Division inspected the Facility to investigate a complaint regarding excess sawmill waste disposal at the Facility, and to determine the Facility's compliance with the Solid Waste Act and Regulations. *Id.* ¶ 14.

29. On March 10, 2022, the Division issued a Compliance Advisory to IronWood Group for potential deficiencies of the Solid Waste Act and Regulations observed at the February 1, 2022, inspection. *Id.* ¶ 15.

30. On May 31, 2022, the Division held a Compliance Hearing to discuss the February 1, 2022, inspection and the March 10, 2022, Compliance Advisory. *Id.* ¶ 16. Wade Bentley appeared to represent IronWood Group.

31. On July 29, 2022, the Division issued the Consent Order, pursuant to its authority under the Solid Waste Act and Regulations. The Consent Order was issued after negotiations with and with the express consent of Defendants by signature of Wade Bentley.

32. The Consent Order became effective on July 29, 2022.

33. The Consent Order constitutes final agency action. *Id.* ¶ 31.

34. The Consent Order requires Defendants to reduce and remove the pile and alleviate the associated fire hazard according to a set schedule. Chronologically, the first four requirements are:

- a. To check and record temperatures of the pile on a specific document and according to a specific schedule. *Id.* ¶ 21-22; Ex. A to Consent Order.
- b. On the fifteenth day of each month submit a progress report in writing to the Division including: a summary of clean up activities; copies of receipts for removal of solid waste; a summary of activities scheduled for upcoming month; and a log of the temperatures recorded. Ex. 1, ¶ 28.
- c. By August 16, 2022, establish a fire barrier of 90 feet around the pile. *Id.* ¶ 23.
- d. By September 5, 2022, divide the pile into two separate piles with a minimum spacing of 30-feet between each pile. *Id.* ¶ 24.

35. The Division inspected the Facility on August 24, 2022. This inspection revealed that Defendants have made no progress toward dividing the pile into two separate piles.

36. IronWood Group did not submit a progress report on August 15, 2022 as required by the Consent Order.

37. The Division requested the progress report on August 17, 2022 , and it was subsequently provided.

38. Defendants' failure to provide a timely progress report was a violation of the Consent Order. *Id.* ¶ 28.

39. Montezuma County inspected the Facility on August 31, 2022 and found that no progress had been made toward dividing the pile into two separate piles. A single, inactive bulldozer was present at the Facility.

40. Inspectors from the Division and from Montezuma County returned to the Facility on September 13, 2022 and found that the Defendants had not divided the pile into two separate piles, with a 30-foot break in between them.

41. Defendant's failure to divide the pile into two separate piles with 30-foot spacing between each pile is a violation of the Consent Order. *Id.* ¶ 24.

B. Defendants waived their right to challenge the Division's findings of facts and conclusions of law.

42. By entering into the Consent Order, Defendants agreed not to "challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division to enforce this Consent Order or by IronWood Group against the Division: a. the issuance of this Consent Order; b. the factual and legal determinations made by the Division herein; and c. the Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act." *Id.* ¶ 19.

43. The Consent Order established that any reservation of Defendants' rights or defenses does not apply to actions enforcing the Consent Order. (*Id.* ¶ 38.)

44. Defendants Mark Hartman and Wade Bentley have confessed their personal liability for compliance with Consent Order requirements pursuant to ¶ 59 of the Consent Order.

FIRST CLAIM FOR RELIEF

(For Preliminary and Permanent Injunction Requiring Defendants to Comply with the Consent Order)

45. The allegations of the preceding paragraphs are incorporated herein by reference.

46. The Division had authority to issue the Consent Order under the Solid Waste Act and Regulations.

47. The Consent Order was issued with express consent and signed by Defendant IronWood Group.

48. Defendants' failure to comply with the Consent Order establishes that the Facility remains in violation of the Solid Waste Act and Regulations.

49. As operators of the Facility, Defendants are also in violation of the Solid Waste Act and Regulations.

50. Plaintiffs need not meet the common law criteria for an injunction because this action is authorized by special statute. *Lloyd A. Fry Roofing Co. v. Dep't of Health*, 191 Colo. 463, 553 P.2d 800, 808 (1976). Any violation of a regulatory scheme constitutes sufficient injury for injunctive relief. *Fry Roofing*, 553 P.2d at 808.

51. The Plaintiffs seek preliminary and permanent injunctions pursuant to § 30-20-113(2)(a),(3) and (4) C.R.S., requiring Defendants to comply with the Consent Order, specifically, those actions listed in ¶¶ 21-30.

52. The Solid Waste Act also provides specific authority to the Division and the Montezuma BOCC to request injunctive relief upon a finding that any solid wastes and disposal facility violates Part 1 of the Solid Waste Act. § 30-20-113(3), C.R.S.

SECOND CLAIM FOR RELIEF

(For Penalties for Failure to Comply with the Solid Waste Act and Regulations)

53. The allegations of the preceding paragraphs are incorporated herein by reference.

54. The Consent Order provides for penalties of up to ten thousand dollars (\$10,000) per day per violation and authorizes the Plaintiffs to bring actions in District Court for such penalties. (*Id.* ¶ 38; *see also* §§ 30-20-113(2)(a), 113(4), and 113(5.5), C.R.S.) Plaintiffs seek penalties to be determined by hearing at a later date.

55. Plaintiffs seek such additional relief as may be made by motion to remedy violations of the Consent Order and protect human health and the environment.

56. Plaintiffs will calculate and submit a recommended penalty amount to the Court by subsequent motion.

THEREFORE, THE PLAINTIFFS REQUEST THIS COURT:

1. Compel Defendant's compliance with the Consent Order. Ex. 1, ¶¶ 21-30.
2. Assess civil penalties against Defendants pursuant to the Consent Order. Ex. 1, ¶
3. Provide such other relief as the Court determines is appropriate.

Dated September 14, 2022.

PHILIP J. WEISER
Attorney General

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