
NEW JERSEY DEPARTMENT OF SUPERIOR COURT OF NEW JERSEY
 ENVIRONMENTAL PROTECTION, and : LAW DIVISION: CAMDEN COUNTY
 SHAWN LATOURETTE, COMMISSIONER DOCKET NO. CAM-L-01367-21
 OF THE NEW JERSEY DEPARTMENT OF :
 ENVIRONMENTAL PROTECTION,

Plaintiffs,
 v. : Civil Action

S. YAFFA & SONS, INC.; WILLIAM :
 YOCCO, individually and o/b/o :
 S. YAFFA & SONS, INC.; CHARLES :
 YAFFA, individually; WEYHILL :
 REALTY HOLDINGS, LLC, d/b/a :
 WRH I, LLC; "XYZ CORPORATIONS" :
 1-10; and "JOHN AND/OR JANE :
 DOES" 1-10,

Defendants.

PLAINTIFFS NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND
 SHAWN LATOURETTE, COMMISSIONER OF THE NEW JERSEY DEPARTMENT OF
 ENVIRONMENTAL PROTECTION'S BRIEF IN SUPPORT OF THE ORDER TO SHOW
 CAUSE REQUESTING PRELIMINARY INJUNCTION AGAINST WEYHILL REALTY
 HOLDINGS, LLC

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PRELIMINARY STATEMENT

Plaintiffs request entry of a preliminary injunction to require immediate mitigation of ongoing threats to public health and safety stemming from a massive pile of contaminated soil at a site in Camden. That soil is now spilling onto a neighboring residential property and nearby sidewalks and roadways. Plaintiffs are entitled to preliminary relief pursuant to the Solid Waste Management Act and Water Pollution Control Act, but also under equitable standards: A preliminary injunction is warranted to address the ongoing and irreparable harms emanating from the site, Plaintiffs have a settled legal right to such relief, and the equities could not more clearly warrant immediate action to protect local residents in this environmental justice community.



The pictures illustrate the problem: a huge pile of contaminated soil containing construction and demolition debris

towers over the house at 620 Chestnut Street. That pile, located at 619-635 Chestnut Street, Camden ("the Property" or "the Site"), is made up of broken pieces of brick, block, and rock mixed with soil, and has been tested and shown to be contaminated with various hazardous substances, including polycyclic aromatic hydrocarbons ("PAHs") and metals, which are known carcinogens.

While the current owner of the Property, Weyhill Realty Holdings, LLC d/b/a WRH I, LLC ("Weyhill") has apparently ceased operations at the Site following a Cease Operations Order issued by the City of Camden for municipal code violations, the contaminated soil from historic operations at the Property continues to pose a danger. Now, with each summer storm, debris, sediment, and dust slide off the contaminated pile and into the roadway, the sidewalk, and the backyard of the house at 620 Chestnut Street. Portions of the fence between the Site and 620 Chestnut have collapsed, allowing debris and fill to spill into the residential backyard. The backyard is currently unusable.

Just days ago, investigators from the Department of Environmental Protection ("DEP") observed significant amounts of accumulated dirt and dust attributable to the Site on the roadways and sidewalks of Chestnut, Sycamore, and 7th Streets, which border the Site. Every time a car drives over the accumulated dirt, dust from the Site is kicked up.

The Property is located in the City of Camden, which has a significant low-income and minority population. Historically, across New Jersey, such communities have been disproportionately exposed to unpermitted solid waste facilities and to the resultant threats of high levels of air, water, and soil pollution, and accompanying potential for increased public health impacts. Weyhill's Property is a particularly egregious example of such unpermitted solid waste facilities and its unlawful, unabated stockpiles of solid waste pose these types of significant threats to the local community.

Residents of all communities deserve fair and equitable treatment in matters affecting their environment, community, homes, and health without regards to that community's socioeconomic condition. See, e.g., Exec. Order No. 23 (April 20, 2018), 50 N.J.R. 1241(b) (May 21, 2018); Environmental Justice Law, N.J.S.A. 13:1D-157 to -161. And no community should have to endure the threats the Site poses in this case.

For these reasons, most significantly the recently identified and deteriorating conditions at the Site, Plaintiffs request entry of a preliminary injunction: (1) ordering Weyhill to immediately remove solid waste, dust and debris that has migrated from the Site to the neighboring residential property at 620 Chestnut Street, and to repair and restore the fencing between the Site and 620 Chestnut Street; (2) ordering Weyhill to immediately remove

the solid waste, dust, sediment, and debris that has accumulated in the sidewalks, roadways, and other public rights of way near the Site; (3) ordering Weyhill to immediately stabilize the solid waste pile located at the Site; (4) ordering Weyhill to prepare and submit to the Department, within 5 days, a plan to properly remove all solid waste located at the Site and dispose of solid waste at a DEP-approved solid waste facility (the "Removal Plan"); (5) directing Weyhill to comply with the Removal Plan within 10 days of the Department's approval of the plan; (6) requiring Weyhill to prepare and submit to the Department, within 10 days, a comprehensive dust management plan preventing further air contamination during the removal of solid waste from the Site and surrounding areas; and (7) requiring Weyhill to develop and submit to the Department, within 10 days, a Stormwater Pollution Prevention Plan ("SWMPP") designed to eliminate the exposure of source materials and/or industrial activity to stormwater discharges to the waters of the State of New Jersey.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The Site at 619-635 Chestnut Street¹ has been a dumping ground for solid and unknown waste for many years. Until July 2019, the property was owned by Yaffa & Sons, Inc. ("Yaffa & Sons"). From

¹The address corresponds with Block 331, Lots 41, 46, 48, 49, 50, 52, 54, 55-65, 67, 75, 80, and 114; and Block 324, Lots 27, 28, 29, 30, 30, 31, 32, and 33 on the Tax Map of the City of Camden.

2016 through 2019, during Yaffa & Son's ownership, DEP inspectors visited the Site at least 3 times. See Petrauskas Cert., ¶¶ 8-9. They concluded that the materials observed on the site constituted solid waste, as defined by the Solid Waste Management Act Rules, N.J.A.C. 7:26-1.6 ("SW Rules"). See Petrauskas Cert., ¶ 7. They also determined that Yaffa & Sons was operating a solid waste facility ("SWF") without a permit in violation of the SW Rules, N.J.A.C. 7:26-2.8(f). Ibid.

As detailed below, not only have the conditions on the Property not improved, but DEP's most recent inspections reveal dangerous and unstable conditions that have caused solid waste and other materials to spill into an adjacent residential property and also onto public sidewalks and roadways, posing a continuing risk to the community if left unabated.

In October 2016, DEP issued a Field Notice of Violation ("NOV") to Yaffa & Sons for failure to obtain a solid waste facility permit prior to constructing or operating a solid waste facility, in violation of N.J.A.C. 7:26-2.8(f). Petrauskas Cert., Ex. C. Additional inspections in May 2017 and May 2018 revealed that Yaffa & Sons did not resolve the violations identified in the October 2016 NOV. Petrauskas Cert. at ¶¶ 8, 9. Accordingly, on March 6, 2019, DEP issued an Administrative Order and Notice of Civil Administrative Penalty Assessment ("AONOCAPA") against Yaffa & Sons and William Yocco, individually, for "stockpiling

Construction and Demolition waste and tires" at the Site in violation of N.J.A.C. 7:26-2.8(f). Petrauskas Cert. at ¶ 10.

On July 19, 2019, Yaffa & Sons conveyed the Site to Weyhill. See Petrauskas Cert., ¶ 11. On October 17, 2019, a DEP inspector observed that not only that the previously observed stockpiles of construction and demolition debris - including broken pieces of brick, block, and rock mixed with soil - and waste tires remained on the Site, but that the new owner of the Site, Weyhill, was actively importing and commingling the construction and demolition debris with what appeared to be uniform soil, and separating larger chunks of brick, block, and rock out of the commingled material on the Site. Id. at ¶ 12. DEP inspectors determined that the stockpiles of construction and demolition debris, the newly imported construction and demolition debris, the processed (i.e. commingled and soil-separated) soil, and waste tires are all solid waste as defined by N.J.A.C. 7:26-1.6(a). Ibid., Ex. G.

A May 29, 2020 inspection showed that Weyhill had failed to abate the previously observed violations and was continuing to accept, commingle, and process solid waste at the Site. Petrauskas Cert., ¶ 12. On June 10, 2020, DEP issued a Notice of Violation ("NOV") for the ongoing violations observed at the Site. Ibid.

On November 2, 2020, DEP Bureau of Solid Waste Compliance and Enforcement investigators, Eric McDermott, Dave Ongaro and Connor Petrauskas, inspected the Site. Id. at ¶ 13. They collected

samples from the soil material stockpiles brought to the Site by Weyhill. There are three different stockpiles: one pile consists of soil, mixed with C&D debris, brought to the site by WRH or an agent of WRH. WRH then runs the material in the mixed pile through a crusher and screener, resulting in a second, smaller pile of fine, processed soil. The third pile contains large C&D debris. Ibid. The mixed stockpile and large C&D pile are located on the Block 331 lots, and the processed soil stockpile is located at the Block 324 lots. Ibid.

A total of ten (10) samples were collected: six (6) from two (2) stockpiles (3 from each stockpile) at the Block 331 lots where the majority of the soil storage and processing takes place. Four (4) samples were taken from the processed soil stockpile located at the Block 324 lots. See Petrauskas Cert., ¶ 14. The sampling results from the November 2, 2020 site inspection confirmed that each of the 10 soil samples contained at least one hazardous substance at a concentration that exceeds New Jersey's Non-Residential and Residential Direct Contact Soil Remediation Standards, including standards for polycyclic aromatic hydrocarbons ("PAHs") and metals, which are known carcinogens. Id. at ¶ 15, Ex. J.

Investigator Petrauskas conducted follow-up site inspections on December 15, 2020, January 28, 2021, February 12, 2021 and March 12, 2021. During each inspection, he confirmed that Weyhill

continued to stockpile solid waste at the Site. He further observed that the unprocessed stockpile had begun to spill onto the neighboring residential property at 620 Chestnut Street. Id. at ¶¶ 16-25. Petrauskas issued NOVs to Weyhill following both the February and March 2021 inspections, finding that Weyhill was operating a solid waste facility without a permit. Id.

On April 9, 2021, the City of Camden ("City") Department of Code Enforcement issued Cease Operation Orders for the Site. According to the Orders, the Site was deemed an Immediate Threat to Public Safety. See, e.g., Petrauskas Cert., ¶ 26 and Ex. R.

Investigator Petrauskas conducted additional site visits on May 4, 2021, June 1, 2021, July 1, 2021, and July 7, 2021. He did not observe any noticeable change to the size of the stockpiles on those dates but was unable to access the Site. Id. at ¶ 27.

On July 1, 2021, Investigator Petrauskas had the opportunity to inspect the neighboring residential property at 620 Chestnut, and speak with the owner of that property. Petrauskas Cert., ¶ 28. Upon entering the rear of the residential property, Petrauskas observed that construction and demolition debris from the large contaminated stockpile on the Site had fallen and damaged the fence separating the properties, and was spilling in to the rear of the residential property:



Id. at ¶¶ 29-30, Ex. U. Investigator Petrauskas also noted that the fence on the southern portion of the backyard is retaining soil from the stockpiles and is on the verge of collapse. Id. at ¶ 30. This area of the fence is very close to the house at 620 Chestnut. Investigator Petrauskas also observed that finer soil particulates and sediment were flowing into and filling the backyard of the neighboring property during periods of heavy rain. Id. at ¶ 31.

Based upon his observations and experience, Petrauskas concluded that erosion of the stockpile caused by heavy rain events could cause a landslide of larger pieces of brick and mortar or concrete from the top of the stockpile onto the neighboring residential property, or into the sidewalks or streets near the Site. Id. at ¶¶ 32-33.



Id. at Ex. U. The area surrounding the Site is busy, with heavy pedestrian and vehicle traffic. Id. at ¶ 33.

Ram Shah, an engineer with DEP's Bureau of Solid Waste Permitting also participated in the July 7, 2021 inspection. He, like Investigator Petrauskas, observed that the fence separating the Property from the backyard of 620 Chestnut Street is completely collapsed along the eastern border between the properties, and is allowing soil and larger rocks to enter the backyard. Shah Cert., ¶ 13. The collapsed chain link fence along the eastern border is located approximately 2- to 3- feet from the residence at 620 Chestnut. Id. at ¶ 15.

Additionally, the fence along the southern portion of the backyard appears to be on the verge of collapse. Id. at ¶ 13. Mr. Shah observed several large pieces of concrete debris on top of the stockpile that were located directly adjacent to the residence.

Mr. Shah is very concerned that the remaining chain link fence separating the stockpile from the residence will become strained to the point where it may collapse. Id. at ¶ 16.

Perhaps most alarming, Shah observed that there are deep rills along the pile:



Id. at Ex. 13. In his training and experience, this indicates that the pile is not stable. Id. at ¶ 17. Based on his visual observations, Shah was able to determine that the stockpile's slope was unstable and steeper than the maximum allowable slope steepness of 3:1 (horizontal to vertical) for a solid waste facility. This is the industry standard, and a 3:1 slope is consistent with what

Mr. Shah would look for in an engineering design during the permit application process. Id. at ¶¶ 17-24.

According to Mr. Shah, if the stockpile's stability is not addressed promptly it could collapse onto the adjacent sidewalks and streets bordering the subject Property.

Inspectors from DEP's Bureau of Air Compliance & Enforcement ("C&E") and Bureau of Solid Waste Permitting have also visited the Site. On July 6, 2021, Inspector Santilli from the Bureau of Air C&E visited the Property. While he did not observe visible air pollution, he did observe a large pile of solid waste on the neighboring property at 620 Chestnut Street, as well as several inches of dried mud from runoff. Santilli Cert., ¶ 7. He also noted significant amounts of accumulated dirt and dust attributable to the Property on the roadways and sidewalks of Chestnut, Sycamore, and 7th Streets, which border the Property. Id. at ¶ 8. At the corner of 7th Street and Sycamore Street, he observed multiple cars stir up dust, causing it to become airborne, as they drove through the accumulated dust and dirt from the Site. Ibid. Santilli also visited the backyard of 620 Chestnut Street, where he also observed the collapsed fence and several inches of mud and dirt from runoff from the Property. Id. at ¶ 9.

Inspector Santilli also photographed screening and crushing equipment installed at the Property without approved air permits in violation of N.J.A.C. 7:27-8.3(a). Id. at ¶ 11. DEP requires

approved air permits for screening and crushing equipment because the operation of this equipment typically releases air pollutants including particulate matter. Id. at ¶ 12.

Sandra Cawley of DEP's Bureau of Water Compliance and Enforcement ("Water C&E") also visited the Site on July 7, 2021. There, she observed that the stormwater inlets located on Chestnut Street are filled with sediment run off from the contaminated pile following recent storms:



See Cawley Cert. at ¶¶ 7-8, Ex. 7.

DEP filed this lawsuit on May 7, 2021, seeking to enforce the final agency order (against Yaffa & Sons and William Yocco), and for penalties and injunctive relief. The Complaint asserted claims under both the Solid Waste Management Act ("SWMA"), N.J.S.A. 13:1E-1 to -48, the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 to -35 ("UST Act"), and their implementing regulations. Weyhill was served through its registered agent on May 19, 2021. Weyhill has not yet answered the Complaint. The

Department's Amended Verified Complaint, filed herewith, asserts an additional cause of action under the Water Pollution Control Act ("WPCA"), N.J.S.A. 58:10A-1 to -65, includes additional factual allegations detailing the deteriorating conditions on the Site, and seeks preliminary injunctive relief to abate the Site's dangerous conditions.

LEGAL ARGUMENT

The circumstances revealed in recent inspections are compelling, and require immediate action to protect public health and safety. The Department is entitled to preliminary injunctive relief against Weyhill because the SWMA and WPCA provide a statutory basis for entry of an injunction, and the Department can demonstrate that Weyhill has violated those statutes. In the alternative, the four equitable factors required for injunctive relief, outlined in Crowe v. DeGioia, 90 N.J. 126, 132 (1982), are clearly present.

POINT I

WEHYILL'S UNLAWFUL STOCKPILING OF SOLID WASTE REQUIRES ENTRY OF PRELIMINARY INJUNCTIVE RELIEF UNDER THE SWMA AND WPCA REQUIRING WEYHILL TO IMMEDIATELY STABILIZE THE PILE AND PROPERLY DISPOSE OF THE WASTE

Plaintiffs are entitled to the preliminary relief they request under two separate state laws which Defendant is violating: the SWMA and the WPCA. And Plaintiffs are entitled to such relief

under these statutes regardless of whether Plaintiffs could otherwise satisfy the standard for injunctive relief articulated in Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982). Although Plaintiffs are indeed entitled to relief under Crowe - as demonstrated in Point II below - the court may also grant injunctive relief where, as is the case here, a statute specifically provides a right to enjoin noncompliance with the statute's provisions. "In such circumstances, no showing of irreparable harm need be made by the party seeking the injunction, nor must the court consider whether the injunction is in the public interest." 42 Am. Jur. 2d Injunctions See, e.g., State, DEP v. Interstate Recycling, 267 N.J. Super. 574, 577-78 (App. Div. 1993) (holding DEP need not show actual environmental damage for the court to enjoin repeated violation of environmental statutes), citing Hoffman v. Garden State Farms, Inc., 76 N.J. Super. 189, 201 (Ch. Div. 1962).

The SWMA, which was promulgated with a goal of protecting the public's health and safety and the environment, empowers the Department to obtain preliminary injunctive relief:

[The Department] may institute an action or proceeding in the Superior Court for injunctive and other relief . . . for any violation of this act, or of any code, rule or regulation adopted . . . and said court may proceed in the action in a summary manner. In any such proceeding the court may grant temporary or interlocutory relief

Such relief may include, singly or in combination:

(1) A temporary or permanent injunction

[N.J.S.A. 13:1E-9(d).]

The WPCA also authorizes the Department to seek preliminary injunctive relief: "The commissioner is authorized to commence a civil action in Superior Court for appropriate relief for any violation of this act or of a permit issued hereunder. Such relief may include . . . : (1) A temporary or permanent injunction" N.J.S.A. 58:10A-10(c).

Further, the Department may seek such relief in a summary proceeding. See, e.g., New Jersey Department of Environmental Protection v. Boro Auto Wrecking Company, Inc., 2006 WL 3007394 at *4 (App. Div., Oct. 24, 2006). "Actual harm or direct injury to the public health or environment need not be shown to enjoin a violation of our environmental laws. Rather, the Legislature has fashioned an injunctive remedy designed to be 'preventive' and intended to 'restrain acts which tend to produce public injury.'" Id., quoting State v. Wheeler, 44 N.J.L. 88, 96 (Sup. Ct. 1882).

Thus, to obtain the preliminary injunctive relief under the SWMA or WPCA, all the Department needs to establish is that Weyhill has violated, and continues to violate, the SWMA or WPCA.

Weyhill has been, and is currently, in violation of the SWMA and the regulations promulgated thereunder. The SWMA regulates a broad host of different wastes, including "garbage, refuse, and other discarded materials resulting from industrial, commercial and agricultural operations, and from domestic and community activities" N.J.S.A. 13:1E-3 (defining "solid waste"). The SWMA specifically applies to the storage of both solid and hazardous waste. Ibid. (defining "disposal").

The SWMA and its regulations prohibit any person from storing solid waste received from a generator unless the person first applies for and receives a permit from the Department. N.J.S.A. 13:1E-5(a); N.J.A.C. 7:26-2.8(f).

Here, the evidence is clear. Weyhill has continued to accumulate solid waste at the Site and has never applied for a permit from the Department. See Petrauskas Cert., ¶¶ 22, 24.

Even if Weyhill had obtained a SWF permit, Weyhill's operations are not in compliance with the SWMA's permit requirements set forth in N.J.A.C. 7:26-2.11 ("General Operating Requirements"). For example, the General Operational Requirements provide that the "facility property surrounding the actual disposal area shall be maintained free of litter, debris, and accumulations of unprocessed waste, process residues and effluents. Methods of effectively controlling wind-blown papers and other materials such as fencing shall be implemented at all

facilities.” Id. On the Property, runoff streams down the contaminated pile following rain events, and effluent has been observed settling and depositing sediment on the sidewalks and alleyways near the facility, as well as on the neighboring property at 620 Chestnut Street. See Shah Cert., ¶¶ 8, 19. Moreover, the fence separating the Property from 620 Chestnut Street has been breached. Petrauskas Cert., ¶ 30.

The General Operational Requirements also dictate that a SWF must implement “methods of effectively controlling dust . . . in order to prevent offsite migration.” N.J.A.C. 7:26-2.11. Here, DEP officials have observed dust, dirt, sediment and mud attributable to the Site located in neighboring roadways and sidewalks. See Santilli Cert., ¶¶ 9, 15.

Similarly, the Requirements forbid the operator from exceeding the facility’s designed “handling, storage, processing or disposal capacity as identified in that facility’s SWF permit or other permit certificate.” N.J.A.C. 7:26-11(b)(10). While Weyhill does not have a permit, and never prepared an engineering design for this “facility”, the evidence shows that the Site most certainly exceeds any capacity limits that would be devised for a similarly sized site.

Indeed, Weyhill is in violation of a whole host of requirements designed to address these operating issues before they arise. For example, in order to obtain a SWF Permit, a

property owner must prepare both an engineering design and an Environmental and Health Impact Statement. See, e.g., N.J.A.C. 7:26-2.9 and 2.10. Weyhill prepared neither document. These documents would have required Weyhill to implement procedures that would have addressed the impact to local utilities and the surrounding community before they occurred.

Similarly, Weyhill has not obtained a NJPDES permit, as required by the WPCA when stormwater runoff from a facility reaches local stormwater inlets. A DEP inspector observed that the stormwater inlets on Chestnut Streets have been filled by sediment run off from the pile following recent storms. See Cawley Cert., ¶ 7. This is a violation of the WPCA.

This Site is a posterchild for why these statutes and their regulations exist. The pile towers over a family home, and debris from the pile is literally feet away from their back door. One look at the pictures attached to the compliance reports makes clear that this Site is exactly what the legislature intended to prevent when it promulgated the SWMA, and that DEP strove to regulate when it adopted the current SW Rules. Accordingly, the Court should grant injunctive relief due to Defendant's egregious failure to comply with the SWMA and WPCA.

POINT II

**THE CROWE FACTORS WEIGH STRONGLY IN FAVOR OF
THE ENTRY OF PRELIMINARY INJUNCTIVE RELIEF**

While Weyhill's violations of the SWMA and WPCA are themselves sufficient to warrant the entry of preliminary injunctive relief, the Department can also meet the traditional four-part test for equitable injunctive relief. See Crowe, 90 N.J. at 132-34. New Jersey has long recognized the power of courts to grant injunctive relief to "prevent some threatening, irreparable mischief, which should be averted until opportunity is afforded for a full and deliberate investigation of the case" (internal citations omitted). , 198 N.J. Super. 370, 379 (App. Div. 1985). This power "must be administered with sound discretion and always upon considerations of justice, equity, and morality in a given case." Zoning Bd. Of Adjustment of Sparta Tp. V. Service Elec. Cable Television of New Jersey, Inc., 198 N.J. Super. 370, 379 (App. Div. 1985). In this case, justice, equity, and morality all demand immediate action to redress ongoing environmental harms affecting residents of Camden.

To demonstrate its entitlement to injunctive relief, the moving party must establish: (a) irreparable harm will result if the requested relief is not granted; (b) the claim asserted is based on a settled legal right; (c) the material facts are largely uncontroverted and there is a reasonable probability of prevailing

on the merits; and (d) the balance of the equities are in the moving party's favor (i.e., that the moving party will suffer greater hardship if the injunctive relief is denied than the opponent will if it is granted). Crowe, 90 N.J. at 132-34.

In light of the conditions described in the accompanying certifications of DEP personnel, it is beyond legitimate dispute that Plaintiffs (and the Camden community) are suffering and will continue to suffer irreparable harm if a preliminary injunction is not granted. Furthermore, Plaintiffs are likely to prevail on the merits of the underlying claims because the SWMA and WPCA and their regulations prohibit Defendant's conduct. Finally, the equities weigh overwhelmingly in favor of injunctive relief.

A. Plaintiffs Will Suffer Irreparable Harm Without an Injunction.

The Department and the local community will suffer irreparable harm if the requested relief is not granted.

Harm is generally considered irreparable if it cannot be redressed adequately by monetary damages. Id. at 132-133. Weyhill has been accumulating and storing solid waste at the facility since acquiring the Property in July 2019. It is undisputed that Weyhill does not hold a SWF permit. The permit application process would help ensure that a solid waste facility, such as the one located at the Property, implements measures to protect public safety and environment. For example, a solid waste facility permit requires

the implementation of procedures, structures, or equipment to prevent runoff from waste handling areas, prevent contamination of water supplies, mitigate effects of equipment failure and power outages, prevent undue exposure of personnel to waste, and prevent releases to the atmosphere. N.J.A.C. 7:26-2.11. Additionally, an applicant for a solid waste facility permit must assess the public health and environmental impacts of the facility. N.J.A.C. 7:26-2.9(b).

These regulations are not merely "check the box" exercises: failure to obtain proper permits and comply with the Department's regulations has real and serious consequences. Weyhill's abdication of responsibility and statutory noncompliance threaten the safety and health of the community. The collapse of contaminated soil into the backyard at 620 Chestnut Street is an existing release of contaminants that exposes the public to harm. A hard rain or severe storm could trigger a landslide off the pile. The fencing between the Property and 620 Chestnut Street has already been breached in several places, and is dangerously close to collapse in others. This presents a significant risk to nearby homeowners and residents. This is also a busy residential neighborhood, with heavy pedestrian and vehicle traffic. Further, debris washed off the contaminated soil pile and into the stormwater inlets at the corner of 7th and Chestnut Streets may ultimately reach the Delaware River.

None of these harms could possibly be remedied through monetary relief alone. Therefore, preliminary injunctive relief is warranted.

B. The Department's Claim for Injunctive Relief is Based on a Settled Legal Right

The Department meets Crowe's second factor because the Department's claim for injunctive relief is based on a settled legal right. As discussed in Point I, the Department is entitled to injunctive relief to restrain Weyhill's violations of the SWMA and the WPCA, as well as the statutes' regulations. See N.J.S.A. 13:1E-9(d); R. 4:67-6(a).

Weyhill has been accumulating and storing solid waste without a permit in violation of the SWMA and its regulations. Petrauskas Cert., ¶¶ 22, 24. The SWMA not only prohibits Weyhill's misconduct, but it also authorizes injunctive relief to restrain such violations. N.J.S.A. 13:1E-9(d).

Weyhill's conduct also violates the WPCA. Despite the discharge of effluent from the property, Weyhill has failed to even seek, let alone obtain, a NJPDES permit for the Property. Similar to the SWMA, the Department's statutory right under the WPCA to obtain a court order enjoining any violation of the act or the terms of permit issued under the act is clear. See N.J.S.A. 58:10A-10(c)(2).

C. Plaintiffs Are Likely to Succeed on the Merits of Their Claims

The Department meets Crowe's third factor because the material facts are largely uncontroverted and there is a more than reasonable probability that it will prevail on the merits of its SWMA and WPCA claims. As discussed in Point I, the Department's repeated inspections and photographs show that Weyhill has stored waste at 619-635 Chestnut Street since acquiring the Property in 2019. Weyhill does not have a permit from the Department to store waste on the Property. And even if it did, the conditions on the Site would be in violation of any permit. Thus, Weyhill has been storing waste in violation of the SWMA and the regulations promulgated thereunder. Similarly, Weyhill does not hold a NJPDES permit, and its operations have caused effluent, sediment, dirt and debris to flow from the Site to neighboring properties, sidewalks, roads, and stormwater drains in violation of the WPCA. Based on the observations of DEP personnel and additional evidence assembled by the Department to date, it is highly likely that the Department will ultimately prevail in this matter.

D. The Balance of the Equities Favors Issuance of the Preliminary Restraints Sought by Plaintiff

A balancing of the relative hardships to the parties overwhelmingly favors granting an injunction. New Jersey courts have recognized the need, upon a proper showing, to grant an

injunction when to do otherwise would frustrate justice. See Sheppard v. Township of Frankford, 261 N.J. Super. 5 (App. Div. 1992); J. H. Renarde, Inc. v. Sims, 312 N.J. Super. 195, 206 (Ch. Div. 1998). When analyzing this element, courts generally weigh the injury which the defendant would suffer, assuming the defendant is enjoined and then prevail at a final hearing, against the injury plaintiff would suffer if no injunction issues and plaintiff prevails. Crowe, 90 N.J. at 132-34; see also, Morrison v. Morrison, 93 N.J. Super. 96, 102 (Ch. Div. 1966) (explaining that temporary restraints are often warranted when the opposing party cannot demonstrate an "exceptional hardship.").

Here, injunctive relief is strongly in the public interest. The requested injunction would prevent irreparable harm to the public health and the environment from the discharge of pollutants or the potential collapse of the pile. In contrast, Weyhill does not have a valid interest in continuing to operate at the Property outside of the law. N.J.S.A. 13:1E-5(a). The contrasting equities could hardly be more stark.

Accordingly, the Department meets the traditional test for injunctive relief.

CONCLUSION

For the reasons stated above, the Court should issue a preliminary injunction: (1) ordering Weyhill to immediately remove

solid waste, dust and debris that has migrated from the Site to the neighboring residential property at 620 Chestnut Street, and to repair and restore the fencing between the Site and 620 Chestnut Street; (2) ordering Weyhill to immediately remove the solid waste, dust and debris that has accumulated in the sidewalks, roadways, and other public rights of way near the Site; (3) ordering Weyhill to immediately stabilize the solid waste pile located at the Site; (4) ordering Weyhill to prepare and submit to the Department, within 5 days, a plan to properly remove all solid waste located at the Site and dispose of solid waste at a DEP-approved solid waste facility (the "Removal Plan"); (5) directing Weyhill to comply with the Removal Plan within 10 days of the Department's approval of the plan; (6) requiring Weyhill to prepare and submit to the Department, within 10 days, a comprehensive dust management plan preventing further air contamination during the removal of solid waste from the Site and surrounding areas; and (7) requiring Weyhill to develop and submit to the Department, within 10 days, a SWMPP designed to eliminate the exposure of source materials and/or industrial activity to stormwater discharges to the waters of the State of New Jersey.

Respectfully submitted,
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