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DANIEL M. HORRIGAN
2007 DEC 28 PM 12: 44
SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

State of Ohio, ex. rel. Marc Dann Attorney General of Ohio,	:	**Case No. CV 2005 12 7664**
	:	**Judge: Patricia A. Cosgrove**
Plaintiff,	:	
v.	:	
Spiker Environmental, Inc., et al.,	:	
Defendants.	:	

CONSENT ORDER AND FINAL JUDGMENT ENTRY

Plaintiff, State of Ohio, ex rel. Marc Dann, Attorney General of Ohio ("Plaintiff"), has filed the Complaint in this action against Defendants to enforce Ohio's air pollution control laws found in R.C. Chapter 3704 and rules adopted thereunder; and Plaintiff and Defendants have consented to the entry of this Order.

WHEREAS, Defendant, Spiker Environmental, Inc. has engaged in acts or omissions constituting violations of R.C. 3704 and applicable Ohio Administrative Code Sections from the period of May, 1999 and continuing through October, 2003, as relates to asbestos handling and disposal at the following locations in Ohio: Ohio Auto Supply, located at 1128 West Tuscarawas Street, Canton, Ohio 44702 ("Ohio Auto Supply"); Sapphire Housing Corporation apartments located at 1908 Third Street, NE, Canton, Ohio, 44704 ("Sapphire Housing"); Paradise United Church of Christ located at 619 East Main Street, Louisville, Ohio 44702 ("Paradise Church"); Orchard Hill Elementary School located at 450 Walnut Street, Leetonia, Ohio 44431 ("Orchard Elementary School"); and Fettman Property Management homes, located at 127, 129, 133, 137, and 139 Kensington Court NW, Canton, Ohio 44708 ("Fettman Homes").

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THEREFORE, without trial or admission of any issue of law or of fact, and upon the consent of the parties hereto, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

I. DEFINITIONS

1. As used in this Order, the following terms are defined as follows:

   a. "Air contaminant source" or "source" has the same meaning as set forth in R.C. 3704.01(C).

   b. "Consent Order" or "Order" means this Consent Order and Final Judgment Entry.

   c. "Director" means the Director of Ohio EPA.

   d. "Defendants" means Spiker Environmental, Inc., Samuel A. Keller, David J. Keller, Shirley Mendenhall, James Black, Gary Shoemaker, and Frank Towns.

   e. "Ohio EPA" means the Ohio Environmental Protection Agency.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapter 3704 and the rules adopted thereunder. This Court has jurisdiction over the parties. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted.

III. PERSONS BOUND

3. Pursuant to Civ. R. 65(D), the provisions of this Consent Order shall apply to and be binding upon Plaintiff and Defendants, and its past and present agents, officers, directors, employees, assigns, successors-in-interest, and any person acting in concert, privity or participation with them who receives actual notice of this Consent Order whether by personal service or otherwise.

4. It is understood and agreed that the individual Defendants, Samuel A. Keller, David J. Keller, Shirley Mendenhall, James Black, Gary Shoemaker, and Frank Towns, admit no liability

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for the violations set forth in this Consent Order, and this Final Judgment Entry and the payment of the Civil Penalty is not to be construed as an admission of liability of any sort. It is further understood and agreed that the Plaintiff does not concede the aforementioned individuals have no liability.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

5. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendants to the Plaintiff for the claims alleged in the Plaintiff's Complaint.

6. Nothing in this Consent Order shall be construed to relieve Defendants of their obligations to comply with applicable federal, state or local statutes, regulations, or ordinances.

V. INJUNCTIVE RELIEF

7. Defendant Spiker Environmental, Inc. is hereby ordered and enjoined to comply with R.C. Chapter 3704 and the regulations adopted thereunder, including but not limited to Ohio Adm.Code Chapter 3745-20.

8. Defendant Spiker Environmental, Inc. is hereby specifically ordered and enjoined to properly wet asbestos materials prior to handling or disposal, as outlined and consistent with Ohio Adm.Code Chapter 3745-20-04(A)(6)(a).

9. Defendant Spiker Environmental, Inc. is hereby specifically ordered and enjoined to comply with all notification requirements for conducting asbestos removal and handling activities set forth in Ohio Adm.Code Chapter 3745-20-03, including, but not limited to, giving proper prior notification to Ohio EPA prior to conducting asbestos removal or handling operations and giving immediate notice to Ohio EPA in the event of scheduling changes to asbestos removal or handling operations.

10. Defendant Spiker Environmental, Inc. is hereby specifically ordered and enjoined

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to comply with all requirements outlined in Ohio Adm.Code 3745-20-05(B) to ensure all asbestos-containing materials which have been damaged or made friable by demolition, renovation or adjacent stripping operations are repaired, encapsulated, or removed for disposal in accordance with Ohio Adm.Code 3745-20, prior to the removal of the emission controls.

VI. CIVIL PENALTY

11. Pursuant to and in accordance with R.C. 3704.06, Defendant Spiker Environmental, Inc. is enjoined and immediately ordered to pay a total civil penalty of Twenty-Nine Thousand, Four Hundred Dollars ($29,400.00). This amount shall be paid in cash by certified check payable to the Order of "Treasurer, State of Ohio" and delivered with this Consent Order signed by the authorized representative of Spiker Environmental, Inc. no later than November 30, 2007 to Martha Sexton or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

VII. STIPULATED PENALTIES

12. In the event that Defendant Spiker Environmental, Inc. fails to comply with any requirement or deadline contained in this Consent Order or any requirement or deadline contained in any document approved in accordance with this Consent Order, Defendant Spiker Environmental, Inc. shall be liable for and shall pay stipulated penalties in accordance with the following schedule for each failure to comply:

a. For each day of each failure to comply with a requirement or deadline of this Consent Order, up to and including thirty (30) days—Two Hundred Dollars ($200.00) per day for each requirement or deadline not met.

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b. For each day of each failure to comply with a requirement or deadline of this Consent Order, from thirty-one (31) to sixty (60) days—Three Hundred Dollars ($300.00) per day for each requirement or deadline not met.

c. For each day of each failure to comply with a requirement or deadline of this Consent Order, over sixty (60) days-- Four Hundred Dollars ($400.00.00) per day for each requirement or deadline not met.

VIII. COMPLIANCE WITH APPLICABLE LAWS, PERMITS, AND APPROVALS

13. All activities undertaken by Defendant Spiker Environmental, Inc. pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws, rules, regulations, permits, or ordinances. Defendant Spiker Environmental, Inc. shall submit timely applications and requests for any such permits and approvals. Where such laws appear to conflict with the other requirements of this Consent Order, Defendant Spiker Environmental, Inc. is ordered and enjoined to immediately notify Ohio EPA of the potential conflict. This Consent Order is not a permit issued pursuant to any federal, state or local law or rule.

IX. TERMINATION CLAUSE

14. No earlier than two (2) years after the entry of this Consent Order, and after Defendant Spiker Environmental, Inc. has paid all civil penalties that are or may be due, such Defendant may move the Court, pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure, to terminate this Consent Order. Plaintiff takes no position with regard to such motion at this time, and reserves its rights to oppose the motion. Termination of any or all of the provisions of this Consent Order may also be granted upon joint motion of the parties.

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X. RETENTION OF JURISDICTION

15. This Court shall retain jurisdiction of this action for the purpose of enforcing this Consent Order.

XI. COSTS

16. Defendant Spiker Environmental, Inc. shall pay the court costs of this action.

XII. EFFECTIVE DATE

17. This Consent Order shall be effective upon the date of its entry by the Court.

XIII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

18. Upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is directed to serve upon all parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

XIV. AUTHORITY TO ENTER INTO THE CONSENT ORDER

19. Each signatory for a corporation represents and warrants that he has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof.

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IT IS SO ORDERED.

12-28-07
DATE

JUDGE PATRICIA A. COSGROVE

APPROVED:

SPIKER ENVIRONMENTAL, INC.

Samuel A. Keller
Vice-President
Authorized representative of
Defendant Spiker Environmental, Inc.

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