

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

FILE
COURT OF COMMON PLEAS

DEC 26 2007

TRUMBULL COUNTY, OH
KAREN IRVING ALLEN, CLERK

State of Ohio, ex rel. Marc Dann, :
Attorney General of Ohio, :
Environmental Enforcement Section :
30 East Broad Street, 25th Floor :
Columbus, Ohio 43215-3414, :

Plaintiff, :

v. :

Mark A. Mirich, d.b.a. :
All Demolition, :
444 Eighth Street :
Struthers, Ohio 44471-1006, :

Defendant. :

Judge

Kontos

Case No.

2007 CV 3345

Other Civil

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

Defendant Mark A. Mirich, without obtaining authorization from the Ohio Environmental Protection Agency ("Ohio EPA"), engaged in the open burning of the remnants of a demolished commercial building. In addition, the Defendant failed to inspect the facility or give notice to the Ohio EPA that a demolition was to occur. By engaging in opening burning, failing to inspect the facility, and failing to give notice to the Ohio EPA, Defendant has increased the risk to public health and the environment by thwarting the ability of the Ohio EPA to ensure that the quality of the air in northeast Ohio is protected.

Therefore, Plaintiff State of Ohio, by and through its Attorney General, Marc Dann, and at the written request of the Director of Environmental Protection ("Director"), hereby institutes this action to enforce Ohio's air pollution control laws codified in Chapter 3704 of the Ohio Revised Code and the rules adopted thereunder. Plaintiff alleges as follows:

General Allegations

1. Defendant Mark A. Mirich ("Defendant") is an individual residing at 444 Eighth Street, Stuthers, Mahoning County, Ohio. Defendant is in the business of asbestos demolition.
2. Prior to February 13, 2003 and at all times alleged in this Complaint, Defendant conducted business in an individual capacity as All Demolition. Subsequent to February 13, 2003, Defendant incorporated his business in Ohio as All Demolition, Inc.
3. Defendant, by virtue of his position as owner of All Demolition, alone or in conjunction with others, caused, participated in, controlled, and/or ordered the violations of law alleged in this Complaint. In addition, or in the alternative, Defendant knew about or should have known about these violations, and by himself, or in conjunction with others yet to be discovered, had the authority to prevent or stop these violations, but failed to exercise his authority to do so. Defendant is personally liable for these violations.
4. Defendant is a "person" as defined by R.C. § 1.59 and 3704.01.
5. Beginning sometime before January 8, 2003 and continuing until at least January 9, 2003, Defendant conducted demolition operations at 400 Hunter Avenue, Niles, Tumbull County, Ohio ("Hunter Avenue site").
6. Defendant's actions at the Hunter Avenue site constituted a "demolition," as defined by Ohio Adm. Code 3745-20-01(B)(13).
7. The Hunter Avenue site, where Defendant conducted the demolition, constituted a "facility," as defined by Ohio Adm. Code 3745-20-01(B)(18) and 3745-15-01(P).
8. Defendant is an "owner" or "operator" of demolition operations at the Hunter Avenue site, as defined by Ohio Adm. Code 3745-20-01(B)(38).

9. The ceilings, walls, pipes and/or surface areas of the Hunter Avenue site constituted "facility components," as defined in Ohio Adm.Code 3745-20-01(B)(19).

10. The demolition operations at the Hunter Avenue site constituted a "source" as defined in Ohio Adm.Code 3745-15-01(W) of "air contaminants," as defined in R.C. § 3704.01(B) and Ohio Adm.Code 3745-15-01(C).

11. "Open burning" means the burning of any materials wherein air contaminants are emitted directly into the ambient air without passing through a stack or chimney, as defined by Ohio Adm.Code 3745-19-01(G).

12. On or about January 8, 2003, Defendant openly set fire to the facility components acquired from the demolition operation at the Hunter Avenue site, which emitted air contaminants directly into the ambient air.

13. The amount of regulated asbestos-containing material that was stripped or removed from pipes or other facility components at the Hunter Avenue site could not be determined since Defendant failed to perform the asbestos survey required by Ohio Adm.Code 3745-20-02(A) prior to beginning demolition activities.

14. Pursuant to Ohio Adm.Code 3745-20-02(B)(2), the requirements of Ohio Adm.Code 3745-20-03(A)(1), (A)(2), and (A)(3)(a) apply to each owner or operator of a renovation or demolition operation when the combined amount of regulated asbestos-containing material is less than two hundred sixty linear feet on pipes and less than one hundred sixty square feet on other facility components or if there is no asbestos-containing material in a facility being demolished.

15. Revised Code § 3704.05(G) states that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under R.C. Chapter 3704.

16. All rules cited in this Complaint have been adopted by the Director under R.C. Chapter 3704.

Count One – Unlawful Open Burning in a Restricted Area

17. The allegations of paragraphs one through sixteen are incorporated as if fully restated herein.

18. Ohio Administrative Code 3745-19-03(A) prohibits any person or property owner from causing or allowing any “open burning,” as defined in Ohio Adm.Code 3745-19-01(G), in a “restricted area” except as otherwise specified by rule or law.

19. The Hunter Avenue site is located in a “restricted area,” as that term is defined in Ohio Adm.Code 3745-19-01(I)(1).

20. On or about January 8, 2003, and other dates not yet known to Plaintiff, Defendant caused or allowed open burning in a restricted area in violation of the requirements of Ohio Adm.Code 3745-19-03(A).

21. Upon information and belief, Defendant burned the facility components of the Hunter Avenue site, including but not limited to, building framing, wooden beams, wire, roofing material, and other building debris and waste.

22. The open burning done or caused by Defendant at the facility occurred approximately 125 to 150 feet from Hunter Avenue.

23. The acts alleged in this count constitute violations of Ohio Adm.Code 3745-19-03(A) and R.C. § 3704.05(G), for which Defendant is subject to injunctive relief pursuant to R.C. § 3704.06(B), and for which Defendant is liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. 3704.06(C).

Count Two – Failure to Inspect Facility Prior to Demolition

24. The allegations of paragraphs one through twenty-three are incorporated as if fully restated herein.

25. Ohio Administrative Code 3745-20-02(A) provides, in part, that each owner or operator of any demolition operation shall have the affected facility or part of the facility where a demolition operation will occur thoroughly inspected prior to the commencement of the demolition for the presence of asbestos.

26. On January 8, 2003, or some other date not yet known to the Plaintiff, Defendant began demolition activities at the Hunter Avenue site.

27. Defendant failed to have the Hunter Avenue site inspected for the presence of asbestos prior to the commencement of demolition activities.

28. The acts alleged in this count constitute violations of Ohio Adm.Code 3745-20-02(A) and R.C. § 3704.05(G) for which Defendant is subject to injunctive relief pursuant to R.C. § 3704.06(B), and for which Defendant is liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. § 3704.06(C).

Count Three – Failure to Provide Notice of Demolition Operations

29. The allegations of paragraphs one through twenty-eight are incorporated as if fully restated herein.

30. Ohio Administrative Code 3745-20-03(A)(3)(a) provides, in part, that each owner or operator, as described in Ohio Adm.Code 3745-20-01(B)(38), shall provide the Director of Ohio EPA with at least ten (10) days prior written notice of the intention to demolish before the beginning of any demolition operation.

31. On January 8, 2003, or some other date not yet known to the Plaintiff, Defendant began demolition activities at the Hunter Avenue site.

32. Defendant failed to provide the Director of Ohio EPA with at least ten (10) days prior written notice of the intention to demolish the Hunter Avenue site.

33. The acts alleged in this count constitute violations of Ohio Adm. Code 3745-20-03(A)(3)(a) and R.C. § 3704.05(G) for which Defendant is subject to injunctive relief pursuant to R.C. § 3704.06(B), and for which Defendant is liable to pay the State of Ohio civil penalties of up to twenty-five thousand dollars (\$25,000.00) for each day of each violation, pursuant to R.C. § 3704.06(C).

Prayer for Relief

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Preliminarily and permanently enjoin Defendant to comply with R.C. Chapter 3704 and rules adopted thereunder;

B. Permanently enjoin Defendant to comply with the requirements Ohio Adm. Code Chapter 3745-19 by refraining from open burning in restricted areas without notification and authorization by the Ohio EPA;

C. Permanently enjoin Defendant to comply with the requirements of Ohio Adm. Code Chapter 3745-20 by thoroughly inspecting a facility for the presence of asbestos prior to the commencement of demolition operations;

D. Permanently enjoin Defendant to provide the Director of Ohio EPA with at least ten (10) days prior written notice of the intention to demolish before the beginning of any demolition operation;

E. Order Defendant, pursuant to R.C. § 3704.06, to pay civil penalties for the violations set forth in the amount of twenty-five thousand dollars (\$25,000.00) per day for each violation, including each day of each violation occurring after the filing of this Complaint; pursuant to Rule 8(A) of the Ohio Rules of Civil Procedure, the Plaintiff informs the Court that the amount sought is in excess of twenty-five thousand dollars (\$25,000.00);

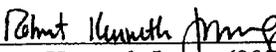
F. Order the Defendant to pay all costs and fees for this action, including attorneys' fees assessed by the Office of the Attorney General of Ohio;

G. Retain jurisdiction of this suit for the purpose of making any order or decree which it may deem necessary at any time to carry out its judgment; and,

H. Grant such other relief as may be just.

Respectfully submitted,

MARC DANN
ATTORNEY GENERAL OF OHIO


Robert Kenneth James (0078761)
Assistant Attorney General
Wednesday M. Szollosi (0075655)
Associate Attorney General
Environmental Enforcement Section
Public Protection Division
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3414
Telephone: (614) 466-2766
Facsimile: (614) 644-1926

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

State of Ohio, ex rel. Richard Cordray, :
Ohio Attorney General, :

Plaintiff, :

v. :

Mark A. Mirich, d.b.a. :
All Demolition, :

Defendant. :

Case No. 2007CV3345

Judge Peter J. Kontos

CONSENT ORDER AND FINAL JUDGMENT ENTRY

Plaintiff State of Ohio, on relation of its Attorney General, Richard Cordray ("Plaintiff"), at the written request of the Director of Ohio Environmental Protection Agency, having filed a Complaint seeking injunctive relief and civil penalties from Defendant Mark A. Mirich, d.b.a. All Demolition ("Defendant"), for violations of R.C. Chapter 3704 and the rules promulgated thereunder, and the parties having consented to the entry of this Order,

NOW, THEREFORE, without trial, admission, or determination of any issue of fact or law, 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. "Consent Order" or "Order" means this Consent Order and Final Judgment Entry;
 - b. "Demolition" has the same meaning as set forth in Ohio Adm.Code 3745-20-01(B)(13);



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- c. "Director" means the Director of the Ohio Environmental Protection Agency;
- d. "Facility" has the same meaning as set forth in Ohio Adm.Code 3745-20-01(B)(18);
- e. "Open burning" has the same meaning as set forth in Ohio Adm.Code 3745-19-01(H); and,
- f. "Restricted area" has the same meaning as set forth in Ohio Adm.Code 3745-19-01(J).

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. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and, in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure, their officers, agents, servants, employees, attorneys, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Consent Order whether by personal service or otherwise.

4. Defendant shall give actual notice of this Consent Order to his agents, servants, employees, attorneys, successors, and assigns, and those persons in active concert or participation with him within seven (7) days of the entry of this Consent Order.

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 Defendant to Plaintiff for the claims alleged in the Complaint, which

concerns violations of Ohio air pollution control law pursuant to R.C. 3704.05 and the rules adopted thereunder, to wit: engaging in open burning in a restricted area under Ohio Adm.Code 3745-19-03; failing to inspect a commercial facility prior to demolition under Ohio Adm.Code 3745-20-02; and failing to provide notice of demolition operations under Ohio Adm.Code 3745-20-03.

6. This Consent Order shall not be construed to limit the authority of Plaintiff to seek relief for violations not alleged in the Complaint, nor shall this Consent Order bar the Plaintiff from bringing any action against Defendant for any violations that occur after the entry of this Consent Order. Nothing in this Consent Order shall be construed to relieve Defendant of his obligations to comply with all applicable federal, state, or local statutes, regulations, rules, or ordinances.

V. Injunctive Relief

7. Defendant is ordered and permanently enjoined to comply with R.C. Chapter 3704 and the rules promulgated thereunder.

8. Defendant is further ordered and enjoined as follows:

- a. From engaging in any open burning in a restricted area in violation of Ohio Adm.Code 3745-19-03;
- b. To have any facility or part of a facility where Defendant is about to perform a demolition operation thoroughly inspected by a certified asbestos hazard evaluation specialist prior to the commencement of the demolition as required by Ohio Adm.Code 3745-20-02; and,

c. To provide the Director of Ohio EPA with at least ten (10) days prior written notice of the intention to demolish before the beginning of any demolition operation as required by Ohio Adm.Code 3745-20-03.

9. Defendant is further ordered and enjoined to attend and satisfactorily complete a Building Inspector and Management Planner training course offered by an Ohio Department of Health-approved course provider within one-hundred eighty (180) days of the entry of this Consent Order. Defendant shall provide evidence of satisfactorily completing the course within seven (7) days of completion to the following:

Misty Koletich, or her successor
Administrator
Mahoning-Trumbull Air Pollution Control Agency
Youngstown City Health District
345 Oak Hill Avenue, Suite 200
Youngstown, Ohio 44502

Tom Kalman, or his successor
Enforcement Manager
Division of Air Pollution Control
Ohio EPA
50 West Town Street, Suite 700
Columbus, Ohio 43215

VI. Civil Penalty

10. Pursuant to and in accordance with R.C. 3704.06, Defendant is enjoined and ordered to pay a total civil penalty of twenty-five dollars (\$25,000.00). Of this amount, Defendant shall pay twenty thousand dollars (\$20,000.00) by delivering a certified check, cashier's check, or money order for eight hundred (\$800.00) dollars to the Plaintiff, % Karen M. Pierson or her successor, Paralegal, Office of the Ohio Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, payable to the order of "Treasurer, State of Ohio" on or before the fifteenth day of each month for twenty-five

(25) months beginning sixty (60) days after the entry of this Consent Order. Defendant shall indicate in the memorandum portion of the check or money order, or some other prominent location on the transmittal letter or documentation, a reference to "A.G. EAGO No. 298396."

11. If any portion of the civil penalty due to the Plaintiff pursuant to this Section or Section VII is not paid when due, Defendant shall pay interest on the amount past due, accruing from the date of entry of this Consent Order, at the rate and manner specified by R.C. 1343.03(B).

12. If Defendant fails to make any one of the civil penalty payments on or before the date specified by Paragraph 10 or 15 of this Consent Order, the total civil penalty of twenty-five thousand dollars (\$25,000.00) shall become immediately due and payable to the Plaintiff. The Defendant shall immediately pay the twenty-five thousand dollars (\$25,000.00) civil penalty less any amount of civil penalty that has already been paid to the Plaintiff pursuant to Paragraph 10 and 14 of this Consent Order, plus any interest on the remaining amount calculated in accordance with Paragraph 11 of this Consent Order.

13. Defendant shall not deduct any penalties paid to the Plaintiff, pursuant to this section, Section VII, or Section VIII, in calculating his federal, state, or local income taxes.

VII. Supplemental Environmental Project

14. Defendant shall pay the remaining five thousand dollars (\$5,000.00) of the civil penalty, as set forth in Section VI, as a supplemental environmental project to the Clean Diesel School Bus Program (Fund 5CD0). Such program has been established by the Director for the purpose of installing, in accordance with Ohio Environmental Protection Agency guidelines, diesel particulate filters for school buses operated by school districts in the State of Ohio. Money

in the fund shall be made available to school districts in accordance with a grant established by the Director.

15. The sum set forth in Paragraph 14 shall be paid by delivering a certified check, cashier's check, or money order for two hundred (\$200.00) dollars to the Plaintiff, % Karen M. Pierson or her successor, Paralegal, Office of the Ohio Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, payable to the order of "Treasurer, State of Ohio" on or before the fifteenth day of each month for twenty-five (25) months beginning sixty (60) days after the entry of this Consent Order. Defendant shall indicate in the memorandum portion of the check or money order, or some other prominent location on the transmittal letter or documentation, a reference to "A.G. EAGO No. 298396."

VIII. Stipulated Penalties

16. Notwithstanding and in addition to the provision in paragraphs 10, 11, 14, and 15 above, in the event that Defendant fails to comply with any requirement or deadline contained in this Consent Order, the stipulated penalties contained herein shall apply for the purpose of coercing compliance. Defendant shall be liable for 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: one hundred dollars (\$100.00) per day for each requirement or deadline not met;
- 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: two-hundred fifty dollars (\$250.00) per day for each requirement or deadline not met; and,

- c. for each day of each failure to comply with a requirement or deadline of this Consent Order, over sixty (60) days: five hundred dollars (\$500.00) per day for each requirement or deadline not met.

17. Any payment required to be made under the provisions of this section of the Consent Order shall be made by delivering to Plaintiff, % Karen M. Pierson or her successor, Paralegal, Office of the Ohio Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, a certified check, cashier's check, or money order made payable to the order of "Treasurer, State of Ohio," for the appropriate amount within thirty (30) days from date of each failure to comply with a requirement or deadline of this Consent Order. The payment of the stipulated penalty shall be accompanied by a letter briefly describing the type of violation, deadline, or requirement not met and the date upon which the violation of this Consent Order occurred. The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 298396."

IX. Retention of Jurisdiction

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

X. Court Costs

19. Defendant shall pay the court costs of this action.

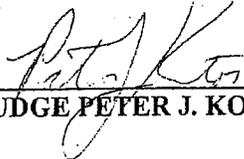
XI. Entry of the Consent Order and Judgment by the Clerk

20. 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.

IT IS SO ORDERED.

Date: 12/28/09



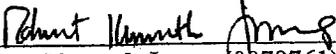
JUDGE PETER J. KONTOS

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KAREN INFANTE ALLEN, CLERK

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