

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO, ex. rel.
RICHARD CORDRAY
OHIO ATTORNEY GENERAL

Plaintiff,

v.

TINKLER CONSTRUCTION, CO.
c/o Daniel C. Tinkler (statutory agent)
3430 Niles Road SE
Warren, Ohio 44484,

and

DANIEL C. TINKLER (individually)
12175 Blott Road
North Jackson, Ohio 44451

Defendants.

CASE NO.

JUDGE

2009 CV 632

STWARD

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CLEAN...
TRUMBULL COUNTY

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES

NATURE OF THE ACTION

In their demolition activities at 3100 Valley Dale Drive NW, Warren, Ohio 44485 ("3100 Valley Dale"), the Defendants failed to provide notice of demolition operations prior to commencing such operations; and failed to obtain a thorough asbestos inspection of the facility prior to performing the demolition operations. In doing so, Defendants did not provide Ohio EPA with an opportunity to inspect the facility prior to demolition and did not provide Ohio EPA with information on the amount of asbestos-containing material in the facility to determine if the work practice requirements of the Asbestos Emission Control Standards applied. Consequently, Plaintiff State of Ohio, by and through the Ohio Attorney General, Richard Cordray, at the written request

of the Director of Environmental Protection ("Director"), brings this action to enforce Chapter 3704 of the Ohio Revised Code and the rules adopted thereunder seeking injunctive relief and civil penalties. The Plaintiff alleges as follows:

GENERAL ALLEGATIONS

1. Defendant Tinkler Construction, Co. ("Tinkler Construction") is an Ohio Corporation with a business address of 3430 Niles Road SE, Warren, Trumbull County, Ohio 44484.

2. Defendant Daniel C. Tinkler ("Tinkler") is the President of Tinkler Construction.

3. Each Defendant is a "person" as defined by R.C. §1.59 and §3704.01.

4. Beginning sometime before March 10, 2004 and continuing until at least March 22, 2004, Defendants demolished the former Jamestown Village Community Center located at 3100 Valley Dale Drive NW, Warren, Trumbull County, Ohio 44485 ("3100 Valley Dale").

5. Defendants are "owners" or "operators" of the demolition operation which occurred at 3100 Valley Dale as defined by Ohio Adm.Code §3745-20-01.

6. Defendant Daniel Tinkler, by virtue of his position with Tinkler Construction, 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 Tinkler knew about or should have known about these violations, and by himself or in conjunction with others, had the authority to prevent or stop these violations, but failed to exercise his authority to do so. Defendant Tinkler is personally liable for these violations.

7. Beginning sometime before March 10, 2004 and continuing until at least March 22, 2004, Defendants' actions at 3100 Valley Dale constituted a "demolition" as defined by Ohio Adm.Code 3745-20-01.

8. 3100 Valley Dale, where Defendants conducted the demolition, constituted a "facility" as defined by Ohio Adm.Code 3745-20-01 and 3745-15-01.

9. 3100 Valley Dale contained "regulated asbestos-containing material," as defined in Ohio Adm.Code 3745-20-01, in an amount yet unknown to Plaintiff.

10. The ceilings, walls, pipes and surface areas inside of 3100 Valley Dale from which Defendants removed asbestos constituted "facility components" as defined in Ohio Adm.Code 3745-20-01.

11. The demolition operation at 3100 Valley Dale constituted a "source" of "air contaminants" as those terms are defined in R.C. §3704.01 and Ohio Adm.Code 3745-15-01.

12. Pursuant to Ohio Adm.Code 3745-20-02(B)(2), specified notification requirements of Ohio Adm.Code §3745-20-03 apply to each owner or operator of a demolition operation when the combined amount of regulated asbestos-containing material is less than two hundred sixty (260) linear feet on pipes and less than one hundred sixty (160) square feet on other facility components, and less than thirty-five (35) cubic feet of facility components where the length or area could not be measured previously, or if there is no asbestos-containing material in a facility being demolished.

13. Pursuant to Ohio Adm.Code 3745-20-02(B)(1), the requirements of Ohio Adm.Code 3745-20-03, Ohio Adm.Code 3745-20-04, and Ohio Adm.Code 3745-20-05 apply to each owner or operator of a demolition operation when the combined amount of regulated asbestos-containing material is at least two hundred sixty (260) linear feet on pipes or at least one hundred sixty (160) square feet on other facility components, or at least thirty five (35) cubic feet of facility components where the length or area could not be measured previously in a facility being demolished

14. 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.

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

16. Pursuant to Civ.R. 8(A), the State informs the Court that the civil penalty sought is in excess of Twenty-Five Thousand Dollars (\$25,000).

COUNT ONE
FAILURE TO PROVIDE PRIOR NOTICE OF DEMOLITION OPERATIONS

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

18. Ohio Administrative Code 3745-20-03(A) provides, in part, that each owner or operator of a demolition operation shall provide the Director of Ohio EPA with a written notification of intention to demolish at least ten (10) days before beginning any demolition operation and setting forth a start date and end date for the demolition operation.

19. Defendants failed to provide the Director with notice of their intention to conduct demolition operations at 3100 Valley Dale, which occurred sometime before March 10, 2004 and continued until at least March 22, 2004.

20. The acts alleged in this count constitute violations of Ohio Adm.Code 3745-20-03(A) and R.C. §3704.05(G), for which Defendants are subject to injunctive relief pursuant to R.C. §3704.06(B), and for which each 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 OBTAIN A THOROUGH ASBESTOS INSPECTION
OF A FACILITY PRIOR TO COMMENCING A DEMOLITION OPERATION

21. The allegations of paragraphs one through twenty are incorporated as if fully restated herein.

22. Ohio Administrative Code 3745-20-02(A) provides that each owner and operator of a demolition operation shall have the affected facility thoroughly inspected for the presence of asbestos prior to the commencement of the demolition.

23. Defendants failed to have the affected facility at 3100 Valley Dale thoroughly inspected for asbestos prior to the commencement of demolition.

24. The acts alleged in this count constitute violations of Ohio Adm. Code 3745-20-02(A) and R.C. §3704.05(G), for which Defendants are subject to injunctive relief pursuant to R.C. §3704.06(B), and for which each 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

THEREFORE, Plaintiff respectfully requests that this Court:

A. Permanently enjoin Defendants to comply with R.C. Chapter 3704 and rules adopted thereunder, and specifically,

- 1) Permanently enjoin Defendants to obtain a thorough asbestos inspection prior to any subsequent demolition operations, and
- 2) Permanently enjoin Defendants to provide adequate prior notice of any demolition operations to Ohio EPA;

B. Order each 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 day of each violation;

C. Order the Defendants to pay all costs and fees for this action, including attorney fees assessed by the Office of the Ohio Attorney General;

D. 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

E. Grant such other relief as may be just.

Respectfully submitted,

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

Wednesday M. Szollosi

WEDNESDAY M. SZOLLOSI (0075655)

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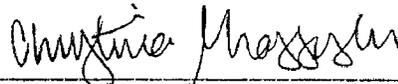
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO ex rel.	:	CASE NO. 2009 CV 632
RICHARD CORDRAY	:	
OHIO ATTORNEY GENERAL	:	JUDGE STUARD
	:	
Plaintiff	:	
	:	
v.	:	
	:	STATE'S NOTICE OF DISMISSAL
TINKLER CONSTRUCTION CO., et al.	:	OF DEFENDANT DANIEL C. TINKLER
	:	
Defendants.	:	

Pursuant to Ohio Civil Rule of Procedure A(1)(a), the Plaintiff, State of Ohio, hereby files its Notice of Dismissal voluntarily dismissing the deceased Defendant, Daniel C. Tinkler, from the above-captioned action.

Respectfully submitted,



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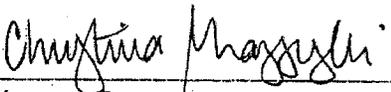
Counsel for Plaintiff, State of Ohio

CERTIFICATE OF SERVICE

I hereby certify that the State's Notice of Dismissal of Defendant Daniel C. Tinkler was sent via first class mail, postage prepaid, on November 23, 2009 to:

Andrea M. Salimbene
McMahon DeGulis LLP
1335 Dublin Rd., Ste. 216A
Columbus, Ohio 43215

Counsel for Defendants



Christina Grasseschi
Assistant Attorney General

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO, ex. rel. : CASE NO. 2009 CV 632
RICHARD CORDRAY, :
OHIO ATTORNEY GENERAL, : JUDGE STUARD
:
Plaintiff, :
:
v. :
:
TINKLER CONSTRUCTION, CO. :
3430 Niles Road SE :
Warren, Ohio 44484, :
:
Defendant. :

OHIO ATTORNEY
GENERAL'S OFFICE

JAN 04 2010

TOLEDO

CONSENT ORDER AND FINAL JUDGMENT ENTRY

Plaintiff, State of Ohio, ex rel Richard Cordray, Attorney General of Ohio ("Plaintiff"), having filed the Complaint in this action against Tinkler Construction, Co. ("Defendant") to enforce Ohio's air pollution control laws found in R.C. Chapter 3704 and rules adopted thereunder; and Plaintiff and Defendant having consented to the entry of this Consent Order and Final Judgment Entry;

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 and Ohio Adm.Code 3745-15-01.

- b. "Consent Order" or "Order" means this Consent Order and Final Judgment Entry.
- c. "Director" means the Director of the Ohio Environmental Protection Agency.
- d. "Facility" means the location of Defendant's demolition and all related operations located at 3100 Valley Dale Drive NW, Warren, Ohio 44485.
- 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. The provisions of this Consent Order shall apply to and be binding upon Plaintiff and Defendant, and Defendant's agents, officers, employees, assigns, successors-in-interest, and any person acting in concert, privity or participation with it and any purchaser of the Facility who receives actual notice of this Consent Order whether by personal service or otherwise. Should Defendant sell or transfer the Facility, either individually or as part of a larger transaction, Defendant agrees to provide the purchaser or transferee a copy of this Consent Order.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

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

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

V. INJUNCTIVE RELIEF

6. Defendant is ordered and enjoined to fully comply with Ohio Adm. Code Chapter 3745-20 as promulgated under R.C. Chapter 3704 with respect to all air contaminant sources at any present and future demolition operations.

VI. CIVIL PENALTY

7. Pursuant to and in accordance with R.C. 3704.06, Defendant is enjoined and ordered to pay a total civil penalty of FOURTEEN THOUSAND, FIVE HUNDRED DOLLARS (\$14,500.00). This amount shall be paid by two cashier's or certified checks payable to the Order of "Treasurer, State of Ohio" and delivered within 30 days of entry of this Consent Order to Karen Pierson, Paralegal, or her successor, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor,

Columbus, Ohio 43215-3400. Eighty percent (80%) of the total civil penalty, or ELEVEN THOUSAND, SIX HUNDRED DOLLARS (\$11,600.00) shall be contained in the first check and the memo portion of the check, or some other prominent location on the transmittal letter or documentation, shall include reference to "A.G. EAGO No. 321150." The remaining twenty percent (20%) of the total civil penalty, or TWO THOUSAND, NINE HUNDRED DOLLARS (\$2,900.00), shall be contained in the second check and the memo portion of the check, or some other prominent location on the transmittal letter or documentation, shall include reference to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5C0) as a Supplemental Environmental Project. The balance shall be deposited in accordance with R.C. 3704.06.

VII. STIPULATED PENALTIES

8. In the event that Defendant violates any requirement contained in Ohio Adm. Code Chapter 3745-20, the stipulated penalties contained herein shall apply for the purpose of coercing compliance and Defendant is liable for and shall immediately pay stipulated penalties in accordance with the following schedule for each failure to comply:

- a. The first time Defendant violates any requirement in Ohio Adm. Code Chapter 3745-20, Defendant shall be liable for One Thousand Dollars (\$1,000.00).
- b. The next time Defendant violates any requirement in Ohio Adm. Code Chapter 3745-20, Defendant shall be liable for One Thousand Five Hundred Dollars (\$1,500.00).
- c. If Defendant violates any requirement in Ohio Adm. Code Chapter 3745-20 following the second violation, Defendant shall be liable for

Two Thousand Dollars (\$2,000.00) for each day of each violation thereafter.

9. Any payment required to be made under the provisions of this Section of the Consent Order shall be made by delivering to Plaintiff, c/o Karen Pierson, Paralegal, or her successor, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, a cashier's or certified check made payable to the order of "Treasurer, State of Ohio," for the appropriate amount within thirty (30) days from the date of the violation of Ohio Admin. Code Chapter 3745-20. 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 occurred. The memo portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 321150."

10. The requirement to pay any stipulated penalty as set forth herein is self-executing upon the failure of Defendant to meet any requirement of Ohio Adm. Code Chapter 3745-20. No further demand need be made by Plaintiff.

11. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff pursuant to this Section shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to R.C. Chapter 3704, including civil penalties under R.C. 3734.06, or to otherwise seek judicial enforcement of this Consent Order, for the same violation for which a stipulated penalty was paid or for other violations.

VIII. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS

12. All activities undertaken by Defendant pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state and local laws,

rules, regulations and permits. Defendant 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 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

13. After payment in full of civil and stipulated penalties required by this Consent Order, so long as there are no ongoing violations of the injunction set forth in Section V of this Consent Order, and upon the voluntary dissolution of Defendant, which shall occur on the date that Defendant files a Certificate of Dissolution with the Ohio Secretary of State, or on a later date specified in the certificate that is not more than ninety days after the filing, pursuant to R.C. 1702.86, this Consent Order shall automatically terminate.

X. RETENTION OF JURISDICTION

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

XI. COSTS

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

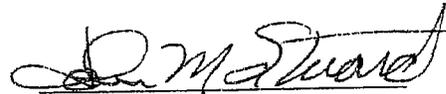
XII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

16. 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.

XIII. AUTHORITY TO ENTER INTO THE CONSENT ORDER

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

IT IS SO ORDERED:



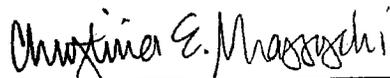
JUDGE
TRUMBULL COUNTY
COURT OF COMMON PLEAS

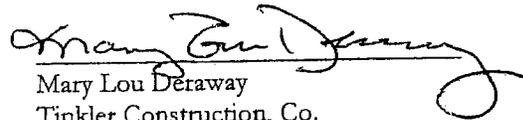
Tinkler Construction,

By: Mary Lou Deraway, Trustee

Richard Cordray
Ohio Attorney General

By:


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Assistant Attorney General
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12-30-09
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A. Salimbera

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CLERK OF COURTS
TRUMBULL COUNTY

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