

**IN THE COURT OF COMMON PLEAS  
TRUMBULL COUNTY, OHIO**

<b>State of Ohio, ex rel. Richard Cordray,</b>	:	
<b>Ohio Attorney General,</b>	:	
	:	<b>Case No. 2007CV3345</b>
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	<b>Judge Peter J. Kontos</b>
<b>Mark A. Mirich, d.b.a.</b>	:	
<b>All Demolition,</b>	:	
	:	
<b>Defendant.</b>	:	



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**CONSENT ORDER AND FINAL JUDGMENT ENTRY**

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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);



- 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, 25<sup>th</sup> 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, 25<sup>th</sup> 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

  
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JUDGE PETER J. KONTOS

**FILED**  
COURT OF COMMON PLEAS  
DEC 28 2009  
TRUMBULL COUNTY, OH  
KAREN INFANTE ALLEN, CLERK

B-28-09

Copies to:

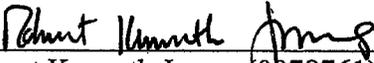
M. Giannini

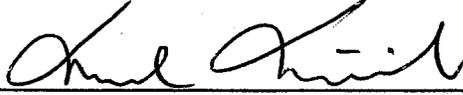
R. Hussey

R. James

**APPROVED:**

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