

IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO

STATE OF OHIO, *ex rel.*  
MICHAEL DEWINE  
OHIO ATTORNEY GENERAL

Plaintiff,

v.

SERGIO DIPAOLO, *et al.*

Defendants.

: CASE NO. 10 CV 3497

: JUDGE DURKIN

: MAGISTRATE DELAURENTIS

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**CONSENT ORDER FOR PRELIMINARY INJUNCTIVE RELIEF**

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The State of Ohio, on relation of its Attorney General (“Plaintiff”/“the State”), has filed a Complaint against Defendants Sergio DiPaolo, Ohio One Contractors and Developers, LLC, and Source One Contractors, Inc. (“the DiPaolo Defendants”) to enforce Ohio's air pollution control laws found in R.C. Chapter 3704 and the rules adopted thereunder. Plaintiff and the DiPaolo Defendants have consented to the entry of this Consent Order. This Consent Order is intended to provide interim measures to ensure compliance with Ohio’s air pollution control laws and is not a final determination as to any issue or claim presented in the Complaint. Plaintiff reserves the right to seek additional remedies as necessary. This Order remains in effect while this case is pending and until the entry of a final order or final judgment.

**THEREFORE**, without trial or admission of any issue of law or of fact, and upon the consent of the parties hereto, the Court hereby enters this preliminary **ORDER**:

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## **I. DEFINITIONS**

1. As used in this Order, the terms are defined as follows:
  - a. "DiPaolo Defendants" means Defendants Sergio DiPaolo, Ohio One Contractors and Developers, LLC, and Source One Contractors, Inc.
  - b. "Order" refers to this Consent Order for Preliminary Injunctive Relief.

## **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.

## **III. PERSONS BOUND AND NOTICE PROVISIONS**

3. The provisions of this Order shall apply to and be binding upon Plaintiff and DiPaolo Defendants, their agents, officers, employees, contractors, assigns, successors in interest, any person acting in concert, privity, or participation with DiPaolo Defendants.

## **IV. INJUNCTIVE RELIEF**

### **General Injunctive Relief**

4. DiPaolo Defendants are preliminarily enjoined to fully comply with the terms of R.C. Chapter 3704, and the rules promulgated thereunder;
5. The Magistrate's Order granting the State's Motion for a Temporary Restraining Order from March 7, 2011, continues in effect;

### **Specific Injunctive Relief**

6. DiPaolo Defendants shall immediately take all measures necessary to comply with the Ohio Air Pollution Control laws under R.C. Chapter 3704 and the rules adopted thereunder;

7. DiPaolo Defendants shall, within 7 days of this Order, provide the Mahoning-Trumbull Air Pollution Control Agency ("M-TAPCA") with a written list of all facility components and the locations of the components that Defendants intend to remove;
8. DiPaolo Defendants shall notify M-TAPCA at least 10 days prior to the start of demolition or renovation activities or removal of any facility component. The notice should identify the component(s) that will be removed and who will be conducting the removal of the component(s);
9. DiPaolo Defendants shall conduct and submit an asbestos survey that meets the standards of Ohio Adm.Code 3745-20-02;
10. DiPaolo Defendants shall remove any regulated asbestos-containing material from the facility prior to disturbing those materials, pursuant to Ohio Adm.Code 3745-20-04;
11. DiPaolo Defendants shall not create a public nuisance in violation of Ohio Adm.Code 3745-15-07;
12. DiPaolo Defendants shall comply completely with all applicable state and local laws, regulations, and/or ordinances.

#### **V. SUBMITTAL OF DOCUMENTS**

13. All documents required to be submitted to Ohio EPA pursuant to this Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio Environmental Protection Agency  
Division of Air Pollution Control  
Attn: Tom Kalman  
Acting Assistant Chief, SIP Development & Enforcement  
Lazarus Government Center, Suite 700  
50 West Town Street  
Columbus, Ohio 43215

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Mahoning-Trumbull Air Pollution Control Agency  
Attn: Tara Cioffi, Interim Administrator  
345 Oak Hill Ave., Suite 200  
Youngstown, Ohio 44502

**VI. STIPULATED PENALTIES**

14. In the event that the DiPaolo Defendants fail to comply with any requirement or deadline contained in the Specific Injunctive Relief section of this Consent Order, or any requirement or deadline contained in any document approved in accordance with the Specific Injunctive Relief section of this Consent Order, the DiPaolo Defendants are 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, up to and including 30 days – <sup>500.00</sup> \$250.00 per day for each requirement or deadline not met;
- b. For each day of each failure to comply, from 31 to 60 days – <sup>100.00</sup> \$500.00 per day for each requirement or deadline not met; and
- c. For each day of each failure to comply, over 60 days – <sup>200.00</sup> \$750.00 per day for each requirement or deadline not met.

15. In the event that the DiPaolo Defendants fail to comply with any requirement or deadline contained in the Specific Injunctive Relief section, DiPaolo Defendants shall immediately be liable for payment of stipulated penalties imposed by this Consent Order without prior demand by the State of Ohio. Payment of all stipulated penalties shall be paid by DiPaolo Defendants by its delivery to Plaintiff, c/o Karen Pierson or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, a certified check in that amount, payable to the order of "Treasurer, State of Ohio," immediately upon the occurrence of the violation giving rise to the penalty.

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**VII. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS**

16. The payment of stipulated penalties by the DiPaolo Defendants and the acceptance of such stipulated penalties by Plaintiff pursuant to this Section shall not be construed to limit Plaintiff's authority without exception to seek additional relief pursuant to R.C. Chapter 3704, including civil penalties under R.C. 3704.06, or to otherwise seek judicial enforcement of this Order for the same violation for which a stipulated penalty was paid or for other violations.

17. All activities undertaken by the DiPaolo Defendants pursuant to this Order shall be undertaken in accordance with the requirements of all applicable federal, State, and local laws, rules, regulations, and permits or other orders. Where such laws appear to conflict with the other requirements of this Order, the DiPaolo Defendants are ordered and enjoined to immediately notify Ohio EPA of the potential conflict. This Order is not a permit issued pursuant to any federal, State, or local law or rule.

**VIII. RETENTION OF JURISDICTION**

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

**IX. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK**

19. Upon signing of this Order by the Court, the clerk is directed to enter it upon the journal. Within 3 days of entering the judgment upon the journal, the clerk is directed to serve notice of the judgment upon all parties, including its date of entry upon the journal in the manner prescribed by Civ.R. 5(B) and note the service in the appearance docket.

**X. AUTHORITY TO ENTER INTO THE ORDER**

20. 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.

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IT IS SO ORDERED.

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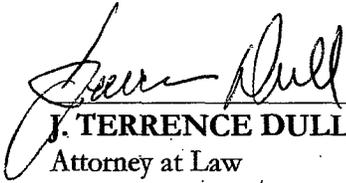
DATE

JUDGE DURKIN  
MAHONING COUNTY  
COURT OF COMMON PLEAS

APPROVED:

DIPAULO DEFENDANTS

MICHAEL DEWINE  
OHIO ATTORNEY GENERAL



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Sergio DiPaolo

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ENVIRONMENTAL ENFORCEMENT