

FILED
COURT OF COMMON PLEAS

SEP 17 2007

LINDA K. FANKHAUSER, CLERK
PORTAGE COUNTY, OHIO

IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

STATE OF OHIO, ex. rel.
MARC DANN
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

W. S. HOMES, INC.
13714 Cleveland Avenue, NW
Uniontown, Ohio 44685

and

DPS PROPERTIES, L. L. C.
7236 Infirmary Road
Ravenna, Ohio 44266

Defendants.

CASE NO.

JUDGE

2007 CV 01413

JUDGE JOHN A. ENLOW

CONSENT ORDER AND FINAL JUDGMENT ENTRY

Plaintiff, State of Ohio, ex rel. Marc Dann, Attorney General of Ohio ("Plaintiff"), having filed the Complaint in this action against Defendants DPS Properties, L. L. C. and W. S. Homes, Inc. ("Defendants") to enforce Ohio's air pollution control laws found in R.C. Chapter 3704 and rules adopted thereunder; and Plaintiff and Defendants 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

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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(C).
 - b. "Consent Order" or "Order" means this Consent Order and Final Judgment Entry.
 - c. "Demolition" has the same meaning as set forth in Ohio Adm.Code 3745-20-01(B)(13).
 - d. "Director" means the Director of Ohio EPA.
 - e. "Defendants" means DPS Properties, L. L. C. and W. S. Homes, Inc.
 - f. "Facility" has the same meaning as set forth in Ohio Adm.Code 3745-20-01(B)(18).
 - g. "Ohio EPA" means the Ohio Environmental Protection Agency.
 - h. "Renovation" has the same meaning as set forth in Ohio Adm.Code 3745-20-01(B)(43).

II. JURISDICTION AND VENUE

2. For the purposes of this Consent Order and the underlying Complaint, the Complaint states a claim upon which relief can be granted and 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. Further, the Defendants specifically reserve any and all of their defenses thereto, including any defense for failure to state a claim for relief as if the Consent Order were not entered.

III. PERSONS BOUND

3. The provisions of this Consent Order shall apply to and be binding upon Plaintiff and Defendants, and Defendants' agents, officers, employees, assigns,

successors-in-interest, any person acting in concert, privity or participation with them as consistent with Civ.R. 65(D). The obligations of Defendants to perform the requirements and to pay the amounts owed to the State under this Consent Order are joint and several. In the event of the insolvency, bankruptcy, or other failure of any Defendants to implement the requirements of this Consent Order, the remaining Defendants shall complete all such requirements.

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 Defendants 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 unrelated to the subject matter of this action, nor shall this Consent Order bar the State from bringing any action against the Defendants for any violations that occur after the entry of this Order. Nothing in this Consent Order shall be construed to relieve Defendants of their obligation to comply with applicable federal, state or local statutes, regulations, or ordinances.

V. INJUNCTIVE RELIEF

6. Defendants are ordered and enjoined to fully comply with R.C. Chapter 3704 and the regulations promulgated thereunder, including but not limited to Ohio Adm.Code Chapter 3745-20, with respect to all air contaminant sources at any present and future demolition or renovation operations at any facility.

7. Defendants are ordered and enjoined to provide the Director of Ohio EPA with written notification of the intention to demolish or renovate any facility, pursuant to Ohio Adm.Code 3745-20-03.

8. Defendants are ordered and enjoined to have any facility where a demolition or renovation operation will occur thoroughly inspected for the presence of asbestos prior to the commencement of any demolition or renovation activities, pursuant to Ohio Adm.Code 3745-20-02.

VI. CIVIL PENALTY

9. Pursuant to and in accordance with R.C. 3704.06, Defendants are enjoined and ordered to pay a total civil penalty of Eight Thousand Dollars (\$8,000.00) (the "Civil Penalty"). Of this amount, Six Thousand Four Hundred Dollars (\$6,400.00) shall be paid by cashier's or certified check payable to the Order of "Treasurer, State of Ohio" and delivered within thirty (30) days of entry and service of this Consent Order to Martha A. Sexton, Paralegal, or her successor, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. 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. 305830."

10. In addition, in furtherance of the mutual objects of the State of Ohio and Defendants in improving the environment, Defendants shall pay the remaining amount of the Civil Penalty, namely One Thousand Six Hundred Dollars (\$1,600) within thirty (30) days of entry and service of the Consent Order to the Clean Diesel School Bus Program established by the Director of Ohio EPA. Defendant shall make payment by an official check made payable to "Treasurer, State of Ohio" and shall be submitted to Martha A. Sexton, Paralegal, or her successor, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215-3400. The official check or transmittal letter or documentation shall specify that

such monies are to be deposited into the fund established by Ohio EPA for the Clean Diesel School Bus Program.

VII. STIPULATED PENALTIES

11. In the event that any Defendant violates the provisions of paragraphs 7 and 8 above, the stipulated penalties contained herein shall apply for the purpose of coercing compliance. Defendants are liable for and shall immediately pay stipulated penalties for each failure to comply as follows: Defendants shall be jointly and severally liable for Ten Thousand Dollars (\$10,000) for a violation of either Ohio Adm.Code 3745-20-02 or 3745-20-03.

12. 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 Martha A. Sexton, 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 failure to meet the 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 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. 305830."

13. The requirement to pay any stipulated penalty as set forth herein is self-executing upon the failure of Defendants to meet any requirement of this Consent Order. No further demand need be made by Plaintiff.

14. The payment of stipulated penalties by Defendants 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 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

15. All activities undertaken by Defendants 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. Defendants 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, Defendants are 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. RETENTION OF JURISDICTION

16. This Court shall retain jurisdiction of this action for purposes of enforcing this Consent Order, and ruling on issues and/or motions related to Paragraph 18 hereof.

X. COSTS

17. Defendants shall pay the court costs of this action.

XI. TERMINATION

18. No earlier than three (3) years after the entry of this Consent Order, and after Defendants paid all civil and/or stipulated penalties that are or may be due, Defendants 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. Termination of any or all of the provisions of this Consent Order may also be granted upon joint motion of the parties.

XII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

19. 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

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.

IT IS SO ORDERED:



JUDGE

PORTAGE COUNTY
COURT OF COMMON PLEAS

Respectfully submitted,

MARC DANN
ATTORNEY GENERAL OF OHIO

By:

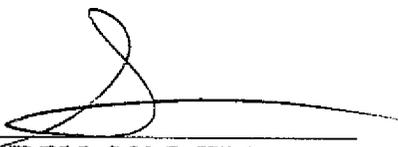


GARY L. PASHEILICH (0079162)
ROBERT B. FRANZ (0080693)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400
Telephone: (614) 466-2766
Facsimile: (614) 644-1926

*Attorneys for Plaintiff,
State of Ohio*

W. S. HOMES, INC.

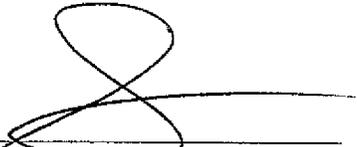
By:



WENDELL SOMMERS
President
13714 Cleveland Avenue N.W.
Uniontown, Ohio 44685

DPS PROPERTIES, L. L. C.

By:

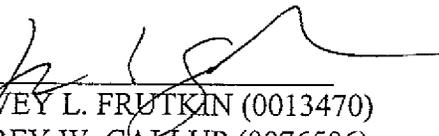


WENDELL SOMMERS
Managing Member
7236 Infirmary Road
Ravenna, Ohio 44266

ATTORNEYS FOR DEFENDANTS

CAVITCH, FAMILO, DURKIN &
FRUTKIN CO., L.P.A.

By:



HARVEY L. FRUTKIN (0013470)
JEFFREY W. GALLUP (0076506)
1717 East Ninth Street, 14th Floor
Cleveland, Ohio 44114
Telephone: (216) 621-7860
Facsimile: (216) 621-3415