

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY,
ATTORNEY GENERAL OF OHIO,

Plaintiff,

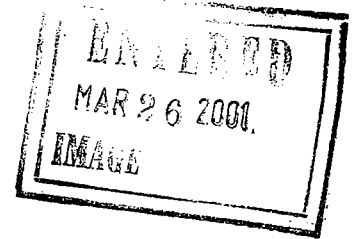
JOSEPH DABBELT,

Defendant.

Case No. A0002312

Judge David P. Davis

ENTRY & ORDER



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ATTORNEY GENERAL OFFICE
ENVIRONMENTAL ENFORCEMENT

This matter is before the Court on Plaintiff State of Ohio's Motion for Summary Judgment as to Liability Only. There is no dispute that Plaintiff State of Ohio ("the State" or "Plaintiff"), on or about November 24, 2000, served now former counsel for Defendant Joseph Dabbelt with the State's first set of requests for admissions, and that Defendant has failed to either answer or object to the requests in a timely manner, as required by Civ. R. 36(A). Pursuant to Civ. R. 36(A) and the cases cited by the State in its motion, the failure to provide either an answer or an objection to a properly served request for admission results in the matter being conclusively established for purposes of the pending matter. The pleadings and written admissions show that there is no genuine issue of material fact on both counts (Counts One and Two) of Plaintiff's Complaint and that Plaintiff is entitled to judgment as a matter of law pursuant to Civ. R. 56.

Accordingly, Plaintiff's motion for summary judgment as to liability only is well-taken and hereby **SUSTAINED**.

It was represented to this Court in a conference call with the parties' respective counsel on February 8, 2001, that Defendant is no longer operating the gasoline dispensing facility that is


the subject of this action. The Court hereby orders that prior to resuming operation at the subject gasoline dispensing facility, Defendant shall:

1. Obtain from the Ohio Environmental Protection Agency all necessary permits to install and operate, per Ohio Adm. Code 3745-21-02 and Ohio Adm. Code 3745-35-02(A);
2. Install a stage II vapor control system per Ohio Adm. Code 3745-21-09(DDD); and
3. Otherwise comply with R.C. Chapter 3704 and the rules and regulations adopted thereunder.

The Court hereby schedules this matter for a damages hearing, to determine an appropriate civil penalty per R.C. 3704.06(C), on April 11, 2001, at 1:00 (a.m./p.m.), in the court room of Judge David P. Davis, Room CH530, Hamilton County Court of Common Pleas, 1000 Main Street, Cincinnati, Ohio, 45202.

SO ORDERED

DATE



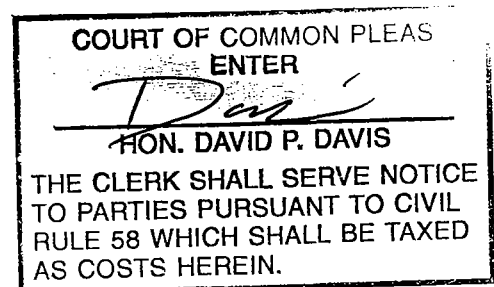
**DAVID P. DAVIS, JUDGE
COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

Copies to:

Douglas A. Curran and David G. Cox, *Attorneys for the Plaintiff State of Ohio*

Joseph Dabbelt, *Defendant*, last known address: 830 Carrington Place, Loveland, Ohio, 45140

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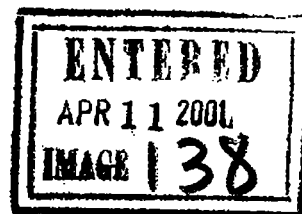
v.

JOSEPH DABELT,

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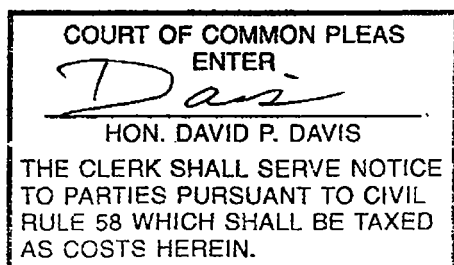
JOURNAL ENTRY & ORDER
FOR PAYMENT OF CIVIL
PENALTY

Pursuant to the Court's journal entry and order of March 26, 2001, which sustained Plaintiff's motion for summary judgment, a hearing on civil penalty was held on April 11, 2001. At the hearing, Plaintiff presented, through sworn testimony and exhibits, credible evidence as to an appropriate civil penalty, under R.C. 3704.06, for the air pollution violations committed by Defendant. Defendant did not appear at the hearing. The Court hereby orders that Defendant Joesph Dabbelt pay Plaintiff State of Ohio (via a certified check payable to "Treasurer, State of Ohio") a civil penalty in the amount of Fifty-Eight Thousand and Seven Hundred Dollars (\$58,700).

This is a final judgment and the clerk of courts shall serve notice on the parties pursuant to Civ. R. 58.

4-11-01
DATE

Das
DAVID P. DAVIS, JUDGE
HAMILTON COUNTY
COURT OF COMMON PLEAS



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