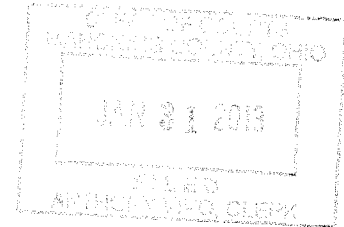


IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO



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

Plaintiff,

v.

SERGIO DIPAOLO, *et al.*

Defendants.

CASE NO. 10 CV 3497

JUDGE JOHN M. DURKIN

MAGISTRATE D. DELAURENTIS

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CONSENT ORDER AND JUDGMENT ENTRY BETWEEN PLAINTIFF STATE OF  
OHIO AND DEFENDANTS SERGIO DIPAOLO AND OHIO ONE CONTRATORS AND  
DEVELOPERS, LLC

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Plaintiff, the State of Ohio, ex rel. Michael DeWine, Attorney General of Ohio ("Plaintiff"), has filed the Complaint in this action against Defendants Sergio DiPaolo ("DiPaolo"), Source One Contractors and Developers, Inc. ("Source One"), Ohio One Contractors and Developers, LLC ("Ohio One"), Boardman Supply Company, James Pipoly, and Direct International, Inc. to enforce Ohio's air pollution control laws found in R.C. Chapter 3704 and rules adopted thereunder. The Court has previously found liability against Defendants Boardman Supply Company and James Pipoly. Plaintiff and Direct International have previously entered into a consent order.

Plaintiff and Defendants Sergio DiPaolo and Ohio One have consented to the entry of this Consent Order and Judgment Entry.

NOW THEREFORE, upon the consent of Plaintiff and Defendants Sergio DiPaolo and Ohio One it is hereby ORDERED, ADJUDGED, and DECREED as follows:

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JUDENT

## **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 any Judgment Entry filed to accomplish the terms in this Consent Order.
- b. "Defendants" means Defendants Sergio DiPaolo and Ohio One unless otherwise noted.
- c. "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. Defendants do not contest that the Complaint states a claim upon which relief can be granted against Defendants.

## **III. PERSONS BOUND**

3. The provisions of this Consent Order shall apply to and be binding upon Plaintiff and Defendants Sergio DiPaolo and Ohio One and, in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure Defendants, their agents, officers, employees, assigns, successors-in-interest, and those persons in active concert or participation with them who receive actual notice of the Consent Order whether by personal service or otherwise. Defendants Sergio DiPaolo and Ohio One are ordered and enjoined to provide a copy of this Consent Order to each contractor employed, engaged, or contracted to perform any demolition, abatement, or other work regulated by OAC 3745-20 with or on behalf of Defendants.

#### IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

4. The Plaintiff alleges in its Amended Complaint that Defendants Ohio One and Sergio DiPaolo have violated R.C. Chapter 3704 and Ohio Administrative Code ("Ohio Adm.Code") Chapter 3745-20. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil and administrative liability of Defendants Sergio DiPaolo and Ohio One to the Plaintiff for the claims alleged in Plaintiff's Complaint up to the date of the Court's entry of this Consent Order.

5. Defendants Sergio DiPaolo and Ohio One admit to liability for the claims alleged in Counts One and Two of the Amended Complaint.

6. Nothing in this Consent Order shall be construed as an admission of liability of Ohio One or Sergio DiPaolo for the claims alleged in Counts Three, Four, and Five of the Amended Complaint.

7. The Plaintiff hereby dismisses all claims alleged against Source One in Plaintiff's Amended Complaint.

8. Defendant Sergio DiPaolo acknowledges that Ohio's asbestos rules pertaining to notification, survey, work practice, and disposal requirements as set forth in Ohio Adm.Code Chapter 3745-20 require specific actions be taken, as defined therein, by owners and operators on property where demolition and/or renovations occur. Defendant Sergio DiPaolo further recognizes his legal obligation to comply with those rules on all future projects.

9. Payment in full of the \$30,000 civil penalty in accordance with the terms of paragraph fourteen of this Consent Order shall also constitute full satisfaction of any civil and administrative liability of Sergio DiPaolo, Ohio One, Source One, and DiPaolo Industrial Development Company, their agents, officers, employees, assigns, successors-in-interest, and

those persons in active concert or participation with them for all existing Notices of Violation issued by Mahoning-Trumbull Air Pollution Control Agency, including but not limited to the following: March 16, 2010 Notice of Violation re Complaint 10-026; April 8, 2010 Notice of Violation re Complaint 10-026; June 11, 2010 Notice of Violation re Complaint 10-026; March 11, 2011 Notice of Violation re Delphi Packard Building; and the June 30, 2011 Notice of Violation re Delphi Packard Building.

10. This Consent Order shall not be construed to limit the authority of the Plaintiff to seek relief for violations not alleged in the Amended Complaint or otherwise identified in this Consent Order. Nor shall this Consent Order bar the Plaintiff 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 obligations to comply with applicable federal, state or local statutes, regulations, rules, or ordinances.

11. Except with regard to the signatories to the Consent Order, nothing in this Consent Order shall constitute or be construed as a satisfaction of a lawsuit, release, or a covenant not to sue regarding any claim alleged in the Amended Complaint, or any other claim or cause of action, against any person, firm, trust, joint venture, partnership, corporation, association, or other entity not a signatory to this Consent Order for any liability such non-signatory(ies) may have arising out of matters alleged in the Amended Complaint.

#### **V. INJUNCTIVE RELIEF**

12. Defendants Sergio DiPaolo and Ohio One are hereby permanently enjoined and ordered to comply with R.C. Chapter 3704 and the rules promulgated thereunder.

13. Defendants Sergio DiPaolo and Ohio One are further permanently enjoined and ordered to comply with Ohio Adm.Code Chapter 3745-20.

## **VI. CIVIL PENALTY**

14. Pursuant to and in accordance with R.C. 3704.06, Defendant Sergio DiPaolo is enjoined and ordered to pay a total civil penalty of Thirty Thousand Dollars (\$30,000) to the State of Ohio. Five Thousand Dollars (\$5,000) of this amount shall be paid on or before February 12, 2013. The remaining balance shall be paid on or before April 30, 2014. Payments shall be made by cashier's or certified check payable to the order of "Treasurer, State of Ohio" to Martha Sexton, Paralegal, or her successor, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. 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. 355772."

15. If the initial payment of \$5,000 is not paid on or before Feb. 12, 2013, the remaining unpaid balance of the civil penalty shall become immediately due and owing. Any delinquent payments shall accrue interest at the maximum statutory rate.

## **VII. STIPULATED PENALTIES**

16. In the event that Defendants Sergio DiPaolo, Ohio One, or any other business entity in which Sergio DiPaolo is an officer, member, shareholder, partner, employee, or director, or any entity that violates Section V of this Consent Order at the direction of Sergio DiPaolo, fails to comply with any of the requirements of Section V of this Consent Order, as determined by a court of competent jurisdiction, Defendant Sergio DiPaolo shall immediately and automatically be liable for and shall pay a stipulated penalty in accordance with the following.

- a. For any failure to conduct an asbestos survey in accordance with Ohio Adm. Code 3745-20-02, pay a penalty of \$10,000 per violation;

- b. For any violations of Ohio Adm. Code 3745-20-03 regarding notification requirements for demolition or renovation activities, pay a penalty of \$10,000 per violation;
- c. For any violations of Ohio Adm. Code 3745-20-04 regarding work practice requirements for demolition or renovation activities, pay a penalty of \$5,000 per violation;
- d. For any violations of Ohio Adm. Code 3745-20-05 regarding waste handling requirements for demolition or renovation activities, pay a penalty of \$10,000 per violation.

17. Stipulated penalties due under this Consent Order shall be paid by check or money order, payable to "Treasurer, State of Ohio" and mailed to Martha Sexton, Paralegal, or her successor, Office of the Ohio Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215. 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. 355772."

18. 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. RETENTION OF JURISDICTION**

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

## **IX. COSTS**

20. Defendants Sergio DiPaolo and Ohio One shall pay the court costs of this action.

## **X. EFFECTIVE DATE**

21. This Consent Order shall be effective upon the date of its entry by the Court.

## **XI. AUTHORITY TO ENTER INTO THE CONSENT ORDER**

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

## **XII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK**

23. Pursuant to Civ.R. 58, upon signing of this Consent Order by the Court, the Clerk is directed to enter it upon the journal. Within three days of entering the judgment upon the journal, the Clerk is directed to serve notice upon all parties of the judgment and its date of entry upon the journal in the manner prescribed by Civ.R. 5(B) and note the service in the current docket.

IT IS SO ORDERED:

DATE: January 31, 2013

*Thomas J. Durkin*  
for JUDGE DURKIN

APPROVED:

MICHAEL DEWINE  
OHIO ATTORNEY GENERAL

*Cameron F. Simmons*

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*Attorneys for Plaintiff State of Ohio*

*Sergio DiPaolo*  
SERGIO DIPAOLO, Individually

By: *Sergio DiPaolo*  
Sergio DiPaolo

*Authorized Representative of Defendant  
Ohio One Contractors and Developers, LLC*

CLERK, SUPPLEMENTAL COUNSEL  
ON INTERESTED PARTY

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