

COPY

FILED

2012 FEB 29 12:32

CAROL A. MEAD  
CLERK OF COURTS  
COMMON PLEAS COURT  
ASHTABULA CO. OH

IN THE COURT OF COMMON PLEAS  
ASHTABULA COUNTY, OHIO

STATE OF OHIO, ex rel.  
MICHAEL DEWINE  
ATTORNEY GENERAL

CASE NO. 2010 CV 00202

JUDGE RONALD W. VETTEL

Plaintiff,

v.

LAKESIDE INDUSTRIAL PARK &  
RAIL YARD, INC., et al.

Defendants.

---

**Consent Order for Permanent Injunctive Relief and Civil Penalty**

---

Plaintiff State of Ohio, on relation of Michael DeWine, Ohio Attorney General, at the written request of the Director of the Ohio Environmental Protection Agency ("Ohio EPA"), filed a Complaint initiating this action against Defendants at the written request of the Director of the Ohio Environmental Protection Agency ("Director", "Ohio EPA"), to remedy violations of Ohio's solid waste laws set forth in R.C. Chapters 3734 and 3714, and the rules adopted thereunder, against Defendants Lakeside Industrial Park & Rail Yard, Inc., ("Defendant Lakeside"), Hubet Properties, LLC ("Defendant Hubet"), SunCoast Properties of Ashtabula, Inc. ("Defendant SunCoast"), Darsko Land, LLC ("Defendant Darsko"), and Furgo, LLC ("Defendant Furgo"), (collectively "Defendants"), and to pursue other legal and equitable relief. Plaintiff filed an Amended Complaint to add Defendant Hubert Dietrich. Plaintiff State of Ohio subsequently voluntarily dismissed its case against Defendants Furgo and Hubet.

Plaintiff and Defendant Darsko hereby consent to the entry of this Consent Order without trial of any issue of fact or law, and upon consent of the Parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the parties and the subject matter of this action pursuant to Chapters 3714 and 3734 of the Ohio Revised Code. Venue is proper in this Court. The Complaint and Amended Complaint state a claim upon which relief can be granted against Defendants.

**II. DEFINITIONS**

2. Unless otherwise stated, all terms used in this Consent Order shall have the same meaning as used in Ohio Revised Code Chapters 3714 and 3734, and the Ohio Administrative Code rules adopted thereunder.

3. "Ohio EPA" means the Ohio Environmental Protection Agency.

**III. PARTIES BOUND**

4. The provisions of this Consent Order shall apply to and be binding upon Plaintiff, Defendant Darsko, their successors in interest, heirs, devisees and assigns, and others to the extent provided by Civil Rule 65(D).

5. Nothing herein shall be construed to relieve Defendant Darsko of its obligation to comply with all applicable federal, state, or local statutes, regulations, or ordinances including but not limited to applicable permit requirements.

**IV. SITE ACCESS**

6. Defendant Darsko agrees and consents that Ohio Environmental Protection Agency and its employees and agents shall have full access to its property at all reasonable times without

the need for a warrant, as may be necessary to monitor compliance with Ohio environmental laws. This paragraph shall not be construed to eliminate or restrict any right Ohio Environmental Protection Agency may otherwise have under federal, state or local law to seek access to the Property.

**V. SATISFACTION OF LAWSUIT AND EFFECT OF CONSENT ORDER**

7. The parties have agreed to resolve the disputed issues in this matter without adjudication of any issues of fact or law. Except as otherwise provided in this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil and administrative liability of Defendant Darsko and its successors in interest and assigns for the claims alleged in the State's Amended Complaint, and comprises all terms agreed to by the parties to this Consent Order.

8. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief from Defendant Darsko for: (A) claims or violations not referenced in the Complaint; (B) any violations arising out of acts or omissions first occurring after the effective date of this Consent Order; or (C) claims or violations under the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. §§9601 et. seq. or R.C. §§3734.20 through 3734.27 for any emergency, removal, remedial, corrective actions, or natural resource damages. Defendant Darsko retains all rights, defenses, and/or claims they it legally raise to the extent that the State seeks further relief from Defendant Darsko in the future, or in any action brought to enforce the terms of this Consent Order, except that Defendant Darsko shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim splitting, or other defenses based upon any contention that the claims raised by the State in subsequent proceedings were or should have been

brought in the instant case.

9. Nothing herein shall be construed to relieve Defendant Darsko of its obligation to comply with all applicable federal, state, or local statutes, regulations, or ordinances.

10. Nothing in this Consent Order shall constitute or be construed as a satisfaction of 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 they may have arising out of, or relating to, Defendant Darsko's property in Ashtabula Township, Ashtabula County, Ohio including, but not limited to, those identified in the Amended Complaint.

#### **VI. CIVIL PENALTY**

11. Within thirty (30) days after entry of this Consent Order, Defendants shall pay to Plaintiff State of Ohio a civil penalty of one thousand dollars (\$1,000). Such payment shall be made by delivering to Martha Sexton, Paralegal, or her successor, Office of the Attorney General, Environmental Section, 30 E. Broad St., 25<sup>th</sup> Floor, Columbus, Ohio 43215-3400, a certified check or checks for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

#### **VII. COSTS**

12. Defendant Darsko is hereby ordered to pay the court costs of this action as to Defendant Darsko.

#### **VIII. RETENTION OF JURISDICTION**

13. This Court shall retain jurisdiction of this action for the purposes of making any order or decree which it deems appropriate to carry out this Consent Order.

#### **IX. SIGNATORIES**

14. Each of the undersigned representatives for the Parties represents that he/she is fully

authorized to enter into the terms and conditions of this Consent Order and legally bind the respective Party to this document.

**X. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK**

15. Upon the signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve notice of judgment upon all parties and the Order's 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.**

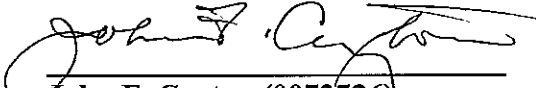
JUDGE RONALD W. VETTEL

\_\_\_\_\_  
Judge Ronald W. Vettel  
Ashtabula County Court of Common Pleas

\_\_\_\_\_  
Date

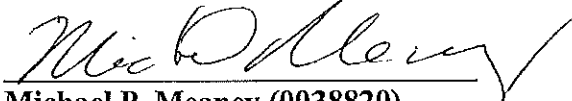
**APPROVED BY:**

**MICHAEL DEWINE,  
OHIO ATTORNEY GENERAL**

  
\_\_\_\_\_  
John F. Cayton (0072736)  
Assistant Attorney General  
Counsel for Plaintiff

**DARSKO LAND, LLC**

  
By: Martha L. Demshar, President

  
\_\_\_\_\_  
Michael P. Meaney (0038820)  
Counsel for Darsko Land, LLC