CASE NO. 723796

ASSIGNED JUDGE John E. Corrigan

State of Ohio, ex rel. Michael DeWine, Ohio Attorney General VS Midwest Paving & Materials Company

	DISPOSITION		
☐ 02 REASSIGNED		☐ 81 JURY TRIAL	☐ 81 DIS. W/PREJ
☐ 03 REINSTATED (C/A)		☐ 82 ARBITRATION DECREE	☐ 91 COGNOVITS
☐ 04 REINSTATED		☒ 83 COURT TRIAL	☐ 92 DEFAULT
☐ 20 MAGISTRATE		☐ 85 PRETRIAL	☐ 93 TRANS TO COURT
☐ 40 ARBITRATION		☐ 86 FOREIGN JUDGMENT	☐ 95 TRANS TO JUDGE
☐ 65 STAY		☐ 87 DIS. W/O PREJ	☐ 96 OTHER
☐ 69 SUBMITTED		☐ 88 BANKRUPTCY/APPEAL STAY	

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NO. JURORS ____

START DATE ___/___/___

END DATE ___/___/___

COURT REPORTER ____

START DATE ___/___/___

END DATE ___/___/___

☐ PARTIAL

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CV10723796 74003962

DATE 5/25/12 (NUNC PRO TUNC ENTRY AS OF & FOR ___/___/___)

CLERK OF COURT

JOURNAL

Opinion and journal entry signed and ordered recorded and sent to all attorneys of record. Judgment rendered in favor of plaintiff in the amount of $348,000.00 plus injunctive relief as provided in the prayer for relief. Court costs to be paid by defendant.

O.S.J

John E Corrigan

JUDGE

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MAY 30 2012

GERALD E. FUERST, CLERK

BY [signature] DEP.

08/15/2005 - 1051448.3

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

State of Ohio, ex rel. Michael DeWine, Ohio Attorney General	)	Case No. CV 10 723796
Plaintiff	)	Judge John E. Corrigan
vs.	)	**FINDINGS OF FACT AND CONCLUSIONS OF LAW**
Midwest Paving & Materials Company	)	
Defendant	)	

John E. Corrigan, J.:

The matter came before the Court for a bench trial between February 23, 2011 and February 28, 2011. Plaintiff, the Ohio Attorney General, on behalf of the State of Ohio ("State"), asks this Court to find defendant, Midwest Paving & Material Company ("Midwest"), in violation of Ohio's clear air laws, R.C. Chapter 3704, and seeks injunctive relief and the assessment of civil penalties. After hearing the evidence presented at trial, and considering the stipulations of law and fact, exhibits and briefs submitted by the parties, this Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Midwest is a corporation also known as Joseph J. Bibbo, Inc., that owns and operates an asphalt production facility at 3601 Trumbull Avenue, Cleveland, Ohio. (T. 294-295) Joseph Bibbo is the president and sole shareholder of the S corporation. (Id.)

At the facility, Midwest operates a portable hot-mix asphalt plant permitted by Ohio EPA as emissions unit P904 (Answer ¶ 1). As a source of air contaminants, emissions unit P904 is required to operate in compliance with the terms and conditions

contained within its Permit to Install ("PTI") No. 13-2272. (Pltf. Exh. 4) PTI No. 13-2272 was issued pursuant to R.C. 3704.03(F). Per R.C. 3704.05(C), no person who is a holder of a permit issued under division (F) of section R.C. 3704.03 may violate any of its terms or conditions. (Id.) PTI No. 13-2272 provides that compliance with the permit will fulfill the Best Available Technology ("BAT") requirements of Ohio Adm.Code 3745-31-05. In particular, PTI No. 13-2272 requires that Midwest shall comply with the provisions of Ohio Adm. Code 3745-17-07(A) and the specific BAT opacity requirement that visible emissions of particulate matter, i.e., smoke, shall not exceed five percent opacity, or density, as a six-minute average. Particulate matter is a regulated pollutant for a category of substances that consists of fine particles emitted from combustion sources and which can produce respiratory and cardiovascular health problems. (Pltf. Exh. 1, p. 8)

On August 25, 2006, as a result of an odor complaint from a former employee, employees from the Cleveland Division of Air Quality ("CDAQ"), the agent for the Ohio EPA in the Cleveland area, visited the Midwest facility and performed a "Method 9" visible emissions reading. (T. 28-31, 42, 101, 121-123, 153, 167-71, 338, Pltf. Exh. 31) CDAQ documented that Midwest's operations were producing a 97.9 percent opacity as a six-minute average, far in excess of its permitted five percent opacity limit. (T. 48)

CDAQ returned to the facility on six additional dates between September 1, 2006 and January 2, 2007 in response to numerous complaints and performed Method 9 readings that exceeded the five percent opacity limit. Specifically, CDAQ took the following readings: September 1, 2006 – 52.1%, September 21, 2006 – 91.7%, October

5, 2006 – 95.8%, November 21, 2006 – 100%, December 11, 2006 – 100%, and January 2, 2007 – 92.3%. (T. 53, 104-105, 124-25, 181, 188, Pltf. Exh. 17, 18, 19, 20, 21)

CDAQ issued Notices of Violation on September 20, 2006 and September 25, 2006 and requested a corrective plan within 14 days. The notices provided that if there were insufficient time to correct the violations within 14 days, a timeline for correction of the violation may be provided. (T. 50, 55-56, 286-289, Pltf. Exh. 17, 38) On January 3, 2007, Midwest's consultant responded to CDAQ and submitted a corrective plan that included making certain repairs (associated with their wet scrubber and a series of controls) to emissions unit P904. (T. 56-58, Pltf. Exh. 56-58) The letter stated the repairs would be made on or before January 17, 2007. (T. 56-58, Pltf. Exh. 22)

On April 23, 2007, CDAQ responded to another complaint. (Pltf. Exh. 35, T. 312-15) The plant was inspected and Method 9 readings recorded visible emissions of 98 percent opacity as a six-minute average. Id. Following the inspection, Midwest's consultant contacted CDAQ and stated that Midwest had halted operations until the problem with the scrubber system could be fixed. (Pltf. Exh. 35)

However, Midwest continued to operate and CDAQ received another complaint the very next day. (T. 157, Pltf. Exh. 36) A CDAQ inspector visited the facility and observed steam and low opacity but was unable to perform Method 9 readings due to the sun's location. Id. The inspector noted that Midwest ceased operations shortly after his arrival. Id. The inspector returned later in the day to conduct Method 9 readings but the plant was shut down. Id.

On April 30, 2007, CDAQ issued another Notice of Violation based on its observations from April 23, 2007. (T. 312-313, Pltf. Exh. 25) The letter noted the

reoccurring problems regarding visible emissions and asked Midwest to submit a detailed report of the repairs performed on the scrubber system and drum burner control. The letter also requested that Midwest perform emissions stack testing to verify compliance with its permit limitations. The letter requested a written response within 14 days. Id.

On May 18, 2007, Midwest responded and acknowledged its failure to make the repairs identified in its January 3, 2007 corrective action plan and admitted it had not initiated repairs until March 30, 2007 and communicated its intended schedule of repairs that would conclude on June 18, 2007. (T. 315-318, Pltf. Exh. 26)

Despite Midwest's assurances, CDAQ continued to receive complaints. In response to one of those complaints made on June 15, 2007, an inspector visited the plant that day but was unable to conduct Method 9 readings as Midwest had ceased operations. (T. 157-59, Pltf. Exh. 37)

CONCLUSIONS OF LAW

Midwest produces asphalt that is laid out as road. Asphalt is a source that emits pollutants. On seven separate occasions between August 25, 2006 and January 2, 2007, the state found Midwest polluted the air based upon the Method 9 readings that were conducted at the plant. The state also determined that there was another violation on April 23, 2007.

Ohio's authority to regulate air pollution is derived from the federal Clean Air Act. (Stip. P-1) Under the Clean Air Act, the U.S. EPA is required to develop rules and regulations for the control of air pollution. These rules and regulations mandate that states must develop pollution control programs and laws. (Stip. P-3) The Supreme Court of Ohio has recognized that environmental statutes, such as the one at issue here, Ohio's

Air Pollution Control Law, R.C. Chapter 3704, has sharp teeth with stiff penalties and was enacted for the purpose of protecting and enhancing the quality of air in the state to promote the public health, welfare, and economic vitality of the people of the state. *State ex rel. Celebrezze v. National Lime & Stone Co.*, 68 Ohio St.3d 377, 627 N.E. 2d 538 (1994).

In accordance with these laws, the Ohio EPA and its local agency, the CDAQ, regulate sources of particulate matter to be maintained within certain thresholds. (Stip. P-20, P-21) They do this by the issuance of permits. (Id.) There are two types of permits, a permit to install a given source and a permit to allow operation of the source once it is installed. (Stip. P-11, P-17) Within those permits are permits of limitations that restrict certain emissions above an established threshold.

42 U.S.C. 7407(d) requires each state to designate those areas within its boundaries where the air quality is better or worse than the national ambient air quality standards "NAAQS" for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an "attainment" area. An area that does not meet the NAAQS is a "non-attainment area. Id. In Cuyahoga County, the county is designated as non-attainment for particulate matter or soot, so the agency strives to bring the county into attainment by making sure that companies within the county operate within their permit limits. (Stip. P-8, P-9, Baker T. 351-355)

40 C.F.R. 60.11(b) provides that compliance with opacity standards shall be determined by conducting observations in accordance with Method 9, Appendix A. (Pltf. Exhibit 1). 40 C.F.R. 60.93(b)(2) provides that Method 9 shall be used to determine

opacity for hot-mix asphalt plants. Ohio Adm. Code 3745-17-03(B)(1)(a) provides that U.S. EPA Method 9 shall be used to determine compliance with Ohio Adm. Code 3745-17-07(A).

The methodology for Method 9 readings is very precise. 40 C.F.R. 60, App. A-4, Meth. 9, p. 312, establishes the applicability and procedures for conducting Method 9 observations. This provision also identifies the variables that may be controlled to an extent to which they no longer exert a significant influence upon the observation, in relevant part, as: (1) The angle of the observer with respect to the plume, (2) the angle of the observer with respect to the sun, and (3) the point of observation of attached and detached steam plume.

Method 9 requires that the observer shall use the following procedure for visually determining the opacity of emissions:

> [T]he observer shall stand at a distance sufficient to provide a clear view of the emissions with the sun oriented in the 140 degree sector to his back. Consistent with maintaining the above requirement, the observer shall, as much as possible, make his observation from a position such that his line of vision is approximately perpendicular to the plume direction, and when observing opacity of emissions from rectangular outlets (e.g. roof monitors, open baghouses, noncircular stacks), approximately perpendicular to the longer axis of the outlet. The observer's line of sight should not include more than one plume at a time when multiple stacks are involved, and in any case the observer should make his observation with the line of sight perpendicular to the longer axis of such a set of multiple stacks (e.g. stub stacks on baghouses.)

Method 9 requires that the field observer shall record:

> The name of the plant, emissions location, type facility, observer's name and affiliation, a sketch of the observer's position relative to the source, and the date on a field date sheet. The time, estimated distance to the emission location, approximate wind direction, estimated wind speed, description of the sky condition (presence and color of clouds), and plume

background are recorded on a field data sheet at the time opacity readings are initiated and completed.

Method 9 requires that observations "shall be made at the point of greatest opacity in that portion of the plume where condensed water vapor is not present. The observer shall not look continuously at the plume, but instead shall observe the plume momentarily at 15 second intervals." Id. Method 9 provides that observed data shall be reduced to an average of 24 consecutive observations at 15 second intervals (i.e., 6-minute average). Id.

Violation 1: On August 25, 2006, CDAQ inspector Valerie Shaffer investigated the complaint and observed yellow to light brown smoke being emitted from the smoke stack. (T. 42) Shaffer followed the established Method 9 protocol for determining opacity levels and recorded visible emissions of 97.9 percent opacity for the first consecutive six minutes. (T. 48, Pltf. Exh. 13) Shaffer noted on her observation sheet that the emissions point was 100 feet from her position with a relative height of 60 feet. (Id.) Shaffer noted on the observation sheet diagram that the sun oriented in the 140 degree sector to her back. (Id.) She testified that she chose her position so as to be perpendicular to the plume with the sun behind her back. (T. 58-59)

Violation 2: On September 1, 2006, CDAQ inspector David Wagner investigated the complaint and observed light gray smoke being emitted from the stack. (T. 173, 177, Pltf. Exh. 14). Wagner conducted Method 9 readings and recorded visible emissions of 52.1 percent opacity as a six-minute average. (T. 181, Pltf. Exh. 14) Wagner noted on his observation sheet that the emissions point was 90 yards from his position with a relative height of 7.8 yards. (Id.)

Violation 3: On September 21, 2006, inspectors Shaffer and Valencia White investigated another complaint and observed "copious amounts of smoke streaming from [the] stack." (T. 151-52, Pltf. Exh. 32). Shaffer conducted the Method 9 readings and recorded visible emissions of 91.7 percent opacity as a six-minute average. (T. 53, Pltf. Exh. 16) Shaffer noted on her observation sheet that she observed "mostly light brown-yellow" smoke and that the emissions point was 100 feet from her position with a relative height of 50 feet. (Id.) The illustration on the observation sheet indicates a perpendicular alignment to the plume. (Id.) Shaffer noted that the sun oriented in the 140 degree sector to her back. (Id.) Shaffer did not indicate why she was positioned less than three stack heights in length away from the emissions point. (Id.) Shaffer also indicated she pointed her car facing East 37th Street, and, thus, conducted the observation from her car and not standing as required by Method 9 protocol. (Id.)

Violation 4: Inspector DeChant was traveling to an unrelated facility when he noticed that "dense brown/tan smoke was observed being emitted from Midwest" and called in a complaint for further investigation. (T. 152-56, Pltf. Exh. 33). Inspector Wagner investigated this complaint on October 5, 2006 and performed Method 9 readings and recorded visible emissions of 95.8 percent opacity as a six-minute average. (T. 188, Pltf. Exh. 18). Wagner noted on his observation sheet that the emissions point was 80 yards from his position with a relative height of 30 feet. (Id.) The illustration on the observation sheet indicates a perpendicular alignment to the plume. (Id.) Wagner noted on the observation sheet diagram that the sun oriented in the 140 degree sector to his back. (Id.) Wagner spoke to Bibbo and Bibbo stated he would check out the problem. During an afternoon phone call, Bibbo stated that the scrubber's fan was

operating at an excessive voltage and lowering the voltage corrected the problem. (T. 156, Pltf. Exh. 33)

Violation 5: On November 21, 2006, CDAQ inspector David DeChant investigated a complaint regarding Midwest about soot falling on cars in a nearby parking lot. (T. 156, Pltf. Exh. 34) Once at the plant, DeChant observed "dense tan/grayish emission." (T. 105) He performed Method 9 readings and recorded visible emissions of 100 percent opacity as a six-minute average. (T. 104-5, Pltf. Exh. 19) DeChant noted on his observation sheet that the emissions point was 150 feet from his position with a relative height of 20 feet. (Id.) The illustration on the observation sheet indicates a perpendicular alignment to the plume. (Id.) DeChant noted on the diagram that the sun oriented in the 140 degree sector to his back. (Id.) DeChant chose this position so he would be at least three stack heights distance, with a good perpendicular view of the plume with the sun behind his back. (T. 104)

Violation 6: On December 11, 2006, Inspector Wagner returned to Midwest and observed a smoke plume with a brownish tint. (T. 191, Pltf. Exh. 20). He performed Method 9 readings and recorded visible emissions of 100 percent opacity as a six-minute average. (Id.) Wagner noted on his observation sheet that the emissions point was 150 yards from his position with a relative height of 20 feet. (Id.) The illustration on the observation sheet indicates a perpendicular alignment to the plume. (Id.) Wagner noted on the observation sheet diagram that the sun oriented in the 140 degree sector to his back. (Id.)

Violation 7: On January 2, 2007, CDAQ inspector Michael Samec investigated the Midwest facility and observed a brown/yellow smoke plume. (T. 124-5, Pltf. Exh. 21)

He performed Method 9 readings from his parked car and recorded visible emissions of 92.3 percent opacity as a six-minute average. (Id., T. 147) Samec noted on his observation sheet that the emissions point was 120 feet from his position with a relative height of 50 feet. (Id.) The illustration on the observation sheet indicated a perpendicular alignment to the plume and the diagram indicated that the sun oriented in the 140 degree sector to his back. (Id.)

Additional alleged Violation: On April 23, 2007, CDAQ Kristopher Gontkovsky responded to another complaint and noticed "thick brown smoke" from the plant's stack. (T. 312-15, Pltf. Exh. 24, 25, 35) Gontkovsky performed Method 9 readings and recorded visible emissions of 98 percent opacity as a six-minute average. (Id.) His observation sheet noted that the emissions point was 100 feet from his position with a relative height of 24 feet. (Id.) The illustration on his observation sheet indicates a perpendicular alignment to the plume and the observation sheet diagram indicates that the sun oriented in the 140 degree sector to his back. (Id.) However, Gontkovsky did not testify at trial.

The Court finds that the inspectors did not follow the Method 9 protocol on September 21, 2006 and January 2, 2007 because the inspectors admitted they completed the testing from their cars and did not have the maximum distance from the smoke plume. The inspectors' supervisor testified these shortcomings could render faulty results. However, the Court determines that the Method 9 protocol was followed for all other violations.

Two remedies are available to the state for violations of the Clean Air Act: injunctive relief and the assessment of a civil penalty.

For a violation of Ohio's air pollution control statute, a penalty in the amount of up to $25,000/day may be awarded. R.C. 3704.06(C). While a court does not have discretion to determine whether to apply a civil penalty, it does have discretion in determining the amount of the fine. Id. A trial court's decision regarding the amount of the civil penalty should only be reversed if it is unreasonable, arbitrary, or unconscionable. *State ex rel. Brown v. Dayton Malleable*, 1 Ohio St.3d 151, 157, 438 N.E.2d 120 (1982). However, the trial court must keep in mind that the civil penalty case law in Ohio reflects the General Assembly's resolve under R.C. 3745.011 that the magnitude of the actual penalty assessed should strongly reflect the number and nature of the violations that have occurred.

When imposing a civil penalty for environmental violations, the proper starting point is the statutory maximum, and any downward adjustments made only based upon the evidence introduced at trial. *United States v. Midwest Suspension and Brake*, 824 Supp. 713, 735 (E.D. Mich. 1993), affirmed 49 F.3d 1197 (C.A. 6, 1995). The major purpose for a penalty is deterrence, first, to prevent the violator and second, to prevent others who may violate the law. It is a necessary enforcement tool to make sure all companies are operating in compliance with Ohio's air laws. To serve a deterrent function, the probability that a significant penalty will be imposed must be high enough so that noncompliance results in substantial monetary risk for the offender without putting the offender in bankruptcy. *State ex rel. Celebrezze v. Thermal-Tron*, 71 Ohio App.3d 11, 14, 592 N.E.2d 912 (1992).

Dayton Malleable, 2nd District. No. 6722, 1981 WL 2776 (April 21, 1981), 3, partially reversed on other grounds, 1 Ohio St.3d 151 (1982) discusses certain factors that will influence the court's analysis of a civil penalty.

First, the Court considers the harm or threat of harm to the environment. Here, the state presented ample evidence that goes to both the gravity and duration of these violations. The evidence demonstrates that Midwest exceeded its permitted levels to an extreme degree. In fact, five of the six violations resulted in Method 9 readings above 90 percent, which is far in excess of Midwest's allowance of 5 percent. Moreover, this threat of harm was readily apparent to the public citizens who contacted CDAQ with complaints of thick smoke and odor. As Midwest identified mechanical problems as the cause of the violations and these repairs were not corrected (if at all) until June 18, 2007, the evidence shows that the public was exposed to pollution for an exceptionally long period of time.

Second, the Court determines whether there was an economic benefit to the violator. Midwest identified specific repairs (the cleaning of the wet scrubber system; the installation of a higher-capacity water pump; repair/replacement of spray bars and nozzles; and repairs to the stack RTD wiring and meter relay). (Pltf. Exh. 22, 26) By delaying repairs and continuing operations, money was not spent to alleviate the problems while income continued to accrue. Therefore, Midwest accrued an economic advantage by delaying the implementation of a fix.

Third, the court considers the level of recalcitrance, defiance, or indifference exhibited by the violator. Here, it took over 4 ½ months to get a response from Midwest and the problems were apparently never fixed; instead, the plant was finally shut down.

Also, Midwest's inaction forced the state to escalate the different levels of enforcement to attempt to reach a resolution.

The last factor for the Court's consideration is the extraordinary enforcement costs of the state to seek a remedy. This case began in 2006 and required the state to make several visits to the plant to conduct Method 9 testing. In addition, the state was forced to send violation notices, a referral to Ohio EPA Central Office in Columbus and ultimately a referral to the Attorney General for enforcement.

After considering the above penalty factors, the Court may then reduce for any mitigation factors, including any part of the noncompliance attributable to the government itself, or factors completely beyond the violator's control, such as floods or fires. *Dayton Malleable*. Id. The Court finds no basis for mitigation due to the government's actions because CDAQ initiated its investigations in response to its established complaint investigation protocol and upon documenting violations put Midwest on notice to ensure that Midwest would remedy the problem. Yet, when CDAQ issued its first violation notice, Midwest did not respond within the requested fourteen days and when CDAQ issued its second violation notice, Midwest still did not respond within the requested time frame. Instead, it was three months later, when Midwest finally responded. Only when it became apparent that Midwest was non-responsive to the problems did CDAQ refer the matter to Ohio's EPA's central office for enforcement. Thus, the violations occurred and persisted through no fault on the part of the government.

Nor is there any evidence of forces beyond Midwest's control that may have contributed to the violations. In fact, Midwest identified the need to clean the wet

scrubber as the main problem, an equipment repair that was within the control of Midwest. Thus, no mitigation is warranted in this case.

However, Midwest seeks mitigation on another basis: the company's apparent inability to pay a civil penalty.

At the trial, Midwest's president, Mr. Bibbo, testified as to his poor health, costs of his medication, his personal bankruptcy, and his inability to borrow money due to his conviction on federal felony bribery charges. (T. 262-73) Mr. Bibbo did not testify as to the full extent of the company's current or former assets or debts. Nor did he offer into evidence tax documents or other financial statements. Instead, he gave only a vague estimation of the amount of debt held by the company. (Id.) He also testified the business closed in June 2008 because of his illness and that he was not going to reopen the plant. (T. 262) However, there is some discrepancy in the reason for the closure of the business. In his deposition, Mr. Bibbo testified that the plant was vandalized in March 2009 and this was the reason the plant was not in operation. (T. 293-94) Mr. Bibbo also testified that Midwest would reopen contingent upon the resolution of his insurance claim regarding the vandalism. (T. 296-97) He also testified he had no plans to sell the equipment. (T. 298)

More importantly, this Court notes that Mr. Bibbo had the opportunity and, indeed, was ordered to produce a settlement position and financial documentation to support Midwest's claim of poor financial condition by February 2, 2011 (shortly before trial began). (Judgment entry of 1/18/11) The Court's order stated that the state would then have its compliance staff and economists evaluate the information to assess whether the documentation supports a finding that Midwest was without resources to pay a civil

penalty. Yet, Midwest failed to respond with either a settlement position or the financial documentation as ordered. Thus, the Court rejects Midwest's arguments regarding its inability to pay.

In determining the amount of a civil penalty, this Court finds relevant the case of *State ex rel. Ohio Attorney General v. Shelly Holding Co,* 191 Ohio App.3d 421, 946 N.E.2d 295, 2010-Ohio-6526, which has a similar fact pattern. *Shelly Holding* involved a series of asphalt plants that were violating under similar circumstances. They had emissions limitations of different types and they exceeded the emissions limitations the same way that Midwest exceeded its opacity limitations. The trial court found that violations under those facts warranted $500/day per violation assessment. The court reasoned that these exceeding emission limits were a significant threat to the public health and environment and therefore warranted a more serious penalty. The appellate court agreed with the trial court regarding the amount per day but found that the violation extends from the first day of non-compliance until there is a date of compliance.

Therefore, applying the per diem ($500.00) and durational factors adopted in *Shelly Holding,* the Court finds that Midwest's violations began on August 25, 2006 and continued through June 18, 2007 (the date upon which Midwest claimed in its May 18, 2007 letter that the repairs would be completed) for a total of 298 days. The Court adopts and orders the state's lower recommendation of a civil penalty of $348,000.00. Finally, the Court notes that Midwest does not contest an award of injunctive relief. Therefore, the Court orders injunctive relief as provided in the prayer for relief in the complaint. Court costs to be paid by defendant. SO ORDERED.

JOHN E. CORRIGAN, JUDGE

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Date: May 25th 2012

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