

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO, *ex rel.*
ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO

Plaintiff,

vs.

HARDRIVES ASPHALT PAVING
MATERIALS, INC.

and

HARDRIVES PAVING & CONSTRUCTION,
INC.

and

JAMES R. SABATINE

Defendants.

CASE NO. 90 CV 534

JUDGE MITCHELL F. SHAKER

CONSENT ORDER

VOL. _____ PAGE _____
FILED
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MARGARET A. O'BRIEN
CLERK OF COURTS
TRUMBULL COUNTY

The Complaint and Amended Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Anthony J. Celebrezze, Jr. (hereinafter "*Plaintiff*") and Defendants Hardrives Asphalt Paving Materials, Inc., Hardrives Paving & Construction, Inc. and James R. Sabatine (hereinafter "*Defendants*") have consented to the entry of this Order.

NOW THEREFORE, without trial of any issue of act or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the parties and the

subject matter of this case. The Complaint and Amended Complaint state a claim upon which relief can be granted against Defendants under Chapter 3704. of the Ohio Revised Code, and venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply and be binding upon the Defendants to this action, their agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them. Defendants shall provide a copy of this Consent Order to each of its employees responsible for operating the drum mix asphalt plant located at 3550 Union Street, Mineral Ridge, Ohio 44400 in Trumbull County.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint and Amended Complaint that the Defendants have operated and maintained the drum mix asphalt plant (hereinafter "Hardrives asphalt plant") located at 3550 Union Street, Mineral Ridge, Ohio 44440 in Trumbull County in a manner that has resulted in the commission of violations of the air pollution laws of the State of Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims alleged in the Complaint and Amended Complaint. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for claims not alleged in the Complaint or Amended Complaint and/or

for violations of claims alleged in the Complaint or Amended Complaint which occur after the entry of this Consent Order.

IV. INJUNCTIVE RELIEF

4. Defendants are permanently enjoined to comply with all the requirements of O.R.C. Chapter 3704., the rules adopted thereunder, and the terms and conditions of any permits, including modifications and renewals, issued pursuant to O.R.C. Chapter 3704.

V. CIVIL PENALTY

5. Pursuant to O.R.C. Section 3704.06, Defendants shall pay to the State of Ohio a civil penalty of Eight Thousand Dollars (\$8,000.00). This Eight Thousand Dollars shall be paid in four installments according to the following schedule:

- A first payment of Two Thousand Dollars (\$2,000.00) within fifteen (15) days of entry of this Consent Order.
- A second payment of Two Thousand Dollars (\$2,000.00) within six (6) months of entry of this Consent Order.
- A third payment of Two Thousand Dollars (\$2,000.00) within twelve (12) months of entry of this Consent Order.
- A fourth payment of Two Thousand Dollars (\$2,000.00) within eighteen (18) months of entry of this Consent Order.

These payments shall be made by rendering a certified check to Plaintiff's Attorney or his successor. Said check shall be made payable to the "*Treasurer, State of Ohio*" and rendered at the following address:

Attorney General's Celebrezze's Office
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410

VI. STIPULATED PENALTIES

6. In the event that Defendants fail to meet any of the requirements of this Consent Order set forth in Section IV-Injunctive Relief, the Defendants shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

For each day of failure to meet a requirement, up to thirty (30) days, Two Hundred and Fifty Dollars (\$250.00) per day for each requirement not met.

For each day of failure to meet a requirement, from thirty-one (31) to sixty (60) days, One Thousand Dollars (\$1,000.00) per day for each requirement not met.

For each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days, Two Thousand Dollars (\$2,000.00) per day for each requirement not met.

For each day of failure to meet a requirement, over ninety days (90) days, Three Thousand Dollars (\$3,000.00) per day for each requirement not met.

If any person responsible for operating the Hardrives asphalt plant is notified, verbally by any employee of Ohio EPA or the Mahoning-Trumbull Air Pollution Control Agency, of the failure to meet a requirement, or if written notification, from any employee of Ohio EPA or the Mahoning-Trumbull Air Pollution Control Agency is received at the Hardrives asphalt plant's mailing address, of the failure to meet a requirement, Defendants, at the end of the working day, upon which verbal or written notification is received, are ordered and enjoined to shut down the air contaminant source at the Hardrives asphalt plant which is failing to meet the requirement. Such contamination source shall remain shut down until compliance with the requirement is achieved or the condition causing non-compliance is corrected. During the time the source is shut down further stipulated penalties do not accrue.

Any payment required to be made under the provisions of this Paragraph shall be made within thirty (30) days from the date of the failure to meet a requirement of this Order by delivering to Plaintiff's counsel, at the address in Paragraph 5, a certified check or checks for the appropriate amounts made payable to the "*Treasurer, State of Ohio*".

VII. RETENTION OF JURISDICTION

7. The Court will retain jurisdiction of this action for purposes of overseeing the implementation of this

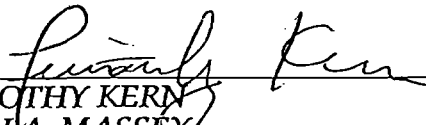
Order.

VII. COSTS

8. Defendants are hereby ordered to pay the costs of this action.

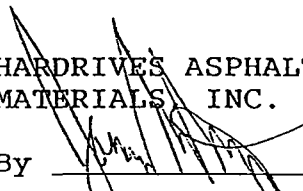

JUDGE MITCHELL F. SHAKER

STATE OF OHIO, *ex rel.*
LEE FISHER
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By 
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MATERIALS, INC.

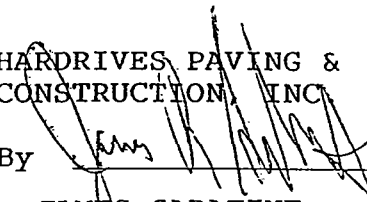
By 
Name JAMES SABATINE

Title PRESIDENT

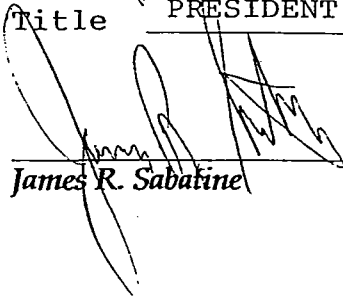

JAMES A. VITULLO
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Youngstown, Ohio 44503

Attorney for Defendants

HARDRIVES PAVING &
CONSTRUCTION, INC.

By 
Name JAMES SABATINE

Title PRESIDENT


James R. Sabatine

TK:baf

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