

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

FILED  
2014 JUN 18 P 3 33  
WINDOW 8  
CLERK OF COURTS  
CUYAHOGA COUNTY

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

Plaintiff,

v.

GRAND AVENUE REALTY COMPANY,  
INC., *et al.*

Defendants.

Case No. CV 11 766695

Judge: MAUREEN CLANCY

**COPY**

**CONSENT ORDER AND FINAL JUDGMENT ENTRY**

Plaintiff, State of Ohio, on relation of its Attorney General ("Plaintiff"), filed the Complaint in this action against Defendants Grand Avenue Realty Company, Inc., North Coast Developers, Inc., Joe Haddad & Sons Construction Company, Edward J. Haddad, Jr., and David Harper to enforce Ohio's air pollution laws found in Chapter 3704 and the rules adopted thereunder and Ohio's hazardous waste laws found in Chapter 3734 of the Revised Code and rules adopted thereunder. On October 13, 2011, a Partial Preliminary Injunction was filed which required Defendant Grand Avenue Realty Company, Inc. to implement a closure plan for hazardous waste management units at 2809-8800 Evarts Road, Cleveland, Ohio (former parcel no. 126-21-013) which has been sold by Defendant Grand Avenue Company, Inc. The Partial Preliminary Injunction was fully complied with and satisfied on October 3, 2013 when Ohio EPA acknowledged certification of closure in writing. Now, Plaintiff and all Defendants having consented to the entry of this Order and Final Judgment Entry.

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

## I. DEFINITIONS

1. As used in this Consent Order:

a. **“Consent Order”** means this Consent Order and Final Judgment Entry.

b. **“Defendants”** means Grand Avenue Realty Company, Inc. (“Grand Avenue Realty”), North Coast Developers, Inc. (“North Coast Developers”), Joe Haddad & Sons Construction Company (“Haddad Construction Company”), Edward J. Haddad, Jr., and David Harper, collectively.

d. **“Effective Date”** means the date the Cuyahoga County Court of Common Pleas enters this Consent Order.

e. **“Site”** means the properties located at 2801 Grand Avenue and 2814-2816 East 90<sup>th</sup> Street (parcel no. 126-21-001) and 2809 Evarts Road (former parcel no. 126-21-013 which is now part of parcel no. 126-21-002), Cleveland, Cuyahoga County, Ohio.

f. **“Ohio EPA”** means the Ohio Environmental Protection Agency.

g. **“Plaintiff”** means the State of Ohio.

## II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapters 3704 and 3734 and the rules adopted thereunder. This Court has jurisdiction over the parties. Venue is proper in this Court. Defendants shall not challenge the Court’s jurisdiction to enter or enforce this Consent Order.

## III. PERSONS BOUND

3. The provisions of this Consent Order shall apply to and be binding upon Plaintiff and Defendants, and Defendants’ agents, officers, employees, assigns, successors-in-interest, and any other

person who would be bound pursuant to Rule 65(D) of the Ohio Rules of Civil Procedure, including any person acting in concert, privity or participation with Defendants who receives actual notice of this Consent Order whether by personal service or otherwise.

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

4. Except as otherwise provided in this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendants to Plaintiff for all claims alleged in the Complaint.

5. Nothing in this Consent Order, including the imposition of stipulated civil penalties, shall limit the authority of the State of Ohio to:

- a. Seek relief for claims or conditions not alleged in the Complaint;
- b. Seek relief for claims or conditions alleged in the Complaint that occur after the Effective Date of this Consent Order;
- c. Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;
- d. Bring any action against Defendants or against any other person, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. 9601, *et seq.*, and/or R.C. 3734.20 through 3734.27 to: (1) recover natural resource damages; and/or (2) order the performance of, and/or recover costs for any removal or remedial or corrective activities not conducted pursuant to the terms of this Consent Order;
- e. Take any action authorized by law against any person, including Defendants, to eliminate or mitigate conditions at the Site that may present an imminent threat to the public health or safety, or to the environment.

6. Nothing in this Consent Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged in the Complaint, against any person, firm, trust, joint venture, partnership, corporation, association, or other entity not a signatory to this Consent Order.

7. Nothing in this Consent Order shall be construed to relieve Defendants of their obligations to comply with applicable federal, state, or local statutes, regulations, rules, or ordinances.

8. Nothing herein shall restrict the right of the Defendants to raise any administrative, legal or equitable claim or defense with respect to such further actions reserved by the State in this Section. However, Defendants 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 the subsequent proceeding were, could, or should have been brought in the instant case.

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

9. From the Effective Date, Defendants Grand Avenue Realty and North Coast Developers are ordered and permanently enjoined to comply with all applicable provisions of the Ohio air pollution laws R.C. Chapter 3704 and Ohio Adm. Code Chapter 3704-20 and Ohio hazardous waste laws R.C. Chapter 3734 and Ohio Adm. Code Chapters 3745-50 through 3745-69, 3745-270, and 3745-279.

10. From the Effective Date, Defendants Haddad Construction Company and Edward J. Haddad, Jr. are ordered and permanently enjoined to comply with all applicable provisions of the Ohio air pollution laws R.C. Chapter 3704 and Ohio Adm. Code Chapter 3704-20.

11. From the Effective Date, Defendant David Harper is ordered and permanently enjoined to comply with all applicable provisions of the Ohio hazardous waste laws R.C. Chapter 3734 and

Ohio Adm. Code Chapters 3745-50 through 3745-69, 3745-270, and 3745-279.

## VI. CIVIL PENALTY

12. Pursuant to R.C. 3704.06(C) and R.C. 3734.13(C), Defendants Grand Avenue Realty and North Coast Developers, jointly and severally, are ordered and enjoined to pay to the State of Ohio a civil penalty in the amount of Ninety Thousand Dollars (\$90,000) according to the following payment schedule:

- a. First payment of Seven Thousand, Five Hundred Dollars (\$7,500) due within thirty (30) days of the Effective Date.
- b. Eleven additional payments of Seven Thousand, Five Hundred Dollars (\$7,500) due no later than the following dates: August 15, 2014; December 15, 2014; March 15, 2015; June 15, 2015; October 15, 2015; January 15, 2016; May 15, 2016; August 15, 2016; December, 15, 2016; March 15, 2016; and May 15, 2016.

In the event Defendants Grand Avenue Realty and North Coast Developers fail to make any payment in full required by this paragraph at the time the payment is due, any and all remaining payments required by this paragraph become immediately due and owing, plus applicable interest pursuant to R.C. 131.02(D) and R.C. 5703.47 calculated from the Effective Date.

13. Pursuant to R.C. 3734.13(C), Defendant David Harper is ordered and enjoined to pay to the State of Ohio a civil penalty in the amount of Five Thousand Dollars (\$5,000) according to the following payment schedule:

- a. First payment of Six Hundred, Twenty-Five Dollars (\$625) due within thirty (30) days of the Effective Date.

- b. Seven additional payments of Six Hundred, Twenty-Five Dollars (\$625) due no later than the following dates: August 15, 2014; December 15, 2014; March 15, 2015; June 15, 2015; October 15, 2015; January 15, 2016; and March 15, 2016.

In the event Defendant David Harper fails to make any payment in full required by this paragraph at the time the payment is due, any and all remaining payments required by this paragraph become immediately due and owing, plus applicable interest pursuant to R.C. 131.02(D) and R.C. 5703.47 calculated from the Effective Date.

14. Pursuant to R.C. 3704.06(C), Defendants Haddad Construction Company and Edward J. Haddad, Jr., jointly and severally, are ordered and enjoined to pay to the State of Ohio a civil penalty in the amount of Five Thousand Dollars (\$5,000) within thirty (30) days of the Effective Date. In the event Defendant Haddad Construction Company and Edward J. Haddad, Jr. fail to make the payment required by this paragraph at the time the payment is due, they shall also be liable for interest pursuant to R.C. 131.02(D) and R.C. 5703.47 calculated from the Effective Date.

15. All civil penalty payments identified in paragraphs 12 through 14 above shall be made by delivering to Plaintiff, c/o Scott Hainer, Paralegal, or his successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, a cashier's or certified check or a money order, payable to the order of "Treasurer, State of Ohio."

## **VII. RETENTION OF JURISDICTION**

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

**VIII. COSTS**

17. Defendants, jointly and severally, shall pay the court costs of this action.

**IX. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK**

18. Upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is directed to serve upon all parties' notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and notes the service in the appearance docket.

**X. AUTHORITY TO ENTER INTO THE CONSENT ORDER**

19. Each signatory for a corporate entity represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof, and that he/she submits with this Consent Order an authenticated and certified resolution from that entity establishing that he/she is so empowered.

**IT IS SO ORDERED:**

  
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**JUDGE MAUREEN CLANCY**  
**CUYAHOGA COUNTY COURT OF**  
**COMMON PLEAS**

**RECEIVED FOR FILING**

**JUN 18 2014**

**CUYAHOGA COUNTY**  
**CLERK OF COURTS**  
By  Deputy

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Print Name: \_\_\_\_\_

**GRAND AVENUE REALTY COMPANY, INC.**

By: David L. Harper Sr.

Title: VICE PRESIDENT

Print Name: DAVID L. HARPER

**NORTH COAST DEVELOPERS, INC.**

By: David L. Harper Sr.

Title: VICE PRESIDENT

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