

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

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

Plaintiff,

v.

1020 BOLIVAR LLC,

Defendant.

CASE NO. 2010 CV 726172

JUDGE DANIEL GAUL



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CONSENT ORDER AND FINAL JUDGMENT ENTRY

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WHEREAS, Plaintiff, the State of Ohio, on relation of its Attorney General, at the written request of the Director of Environmental Protection, filed a Complaint seeking injunctive relief and civil penalties from Defendant 1020 Bolivar, LLC for violations of Revised Code ("R.C.") Chapter 3704 and the rules promulgated thereunder;

WHEREAS, Plaintiff and Defendant (the "Parties") have consented to the entry of this Consent Order;

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

**I. DEFINITIONS**

1. "Complaint" refers to the State of Ohio's Complaint filed against Defendants in the Cuyahoga County Common Pleas Court on May 10, 2010.
2. "Defendant" means 1020 Bolivar, LLC
3. "Director" means the Director of the Ohio Environmental Protection Agency.

4. "Facility" is defined in Ohio Adm.Code 3745-20-01(B)(18) and is used herein to refer to operations at 1020 Bolivar Avenue in Cleveland, Cuyahoga County, Ohio.
5. "Ohio EPA" means the Ohio Environmental Protection Agency.
6. "Order" refers to this Consent Order.
7. "Plaintiff" means the State of Ohio.
8. All other terms not specifically defined herein, are defined, to the extent applicable, in accordance with the definitions provided in R.C. Chapter 3704 and Ohio Adm.Code Chapter 3745-20.

## II. JURISDICTION AND VENUE

9. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim for which relief can be granted under R.C. Chapter 3704. Venue is proper in this Court for the purposes and duration of this Order.

## III. PERSONS BOUND

10. The provisions of this Consent Order shall apply to and be binding upon the Parties to this action in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure, their officers, agents, servants, employees, attorneys, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Consent Order whether by personal service or otherwise.

## IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

11. Plaintiff alleges in its Complaint that a renovation was conducted at the Facility owned by Defendant in such a manner as to result in violations of the air pollution control laws and regulations of the State of Ohio. Completion of the terms of this Consent Order shall constitute full satisfaction and release of any civil and administrative liability of Defendant to

Plaintiff for the claims alleged in Plaintiff's Complaint up to the date of the Court's entry of this Order.

12. This Order shall not be construed to limit the authority of Plaintiff to seek relief for violations not alleged in the Complaint, nor shall this Order bar the State of Ohio from bringing any action against Defendant for any violation(s) that occur after the entry of this Order. Nothing in this Order shall be construed to relieve Defendant of its obligation to comply with applicable federal, state or local statutes, regulations, or ordinances.

#### V. INJUNCTIVE RELIEF

13. Defendant agrees and is hereby enjoined and ordered to comply with R.C. Chapter 3704 and rules adopted thereunder; specifically, proper asbestos handling, removal and disposal practices pursuant to Ohio Adm.Code Chapter 3745-20.

#### VI. CIVIL PENALTY

14. Pursuant to and in accordance with R.C. 3704.06, Defendant is enjoined and ordered to pay within thirty (30) days of the entry of this consent order a penalty of ten thousand dollars (\$10,000). Such penalty shall be paid as follows:
  - a. Defendant shall, within thirty (30) days of entry of this Consent Order, fund a supplemental environmental project ("SEP") by making a contribution in the amount of twenty (20) percent – two thousand dollars (\$2,000.00)– of the total civil penalty to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Defendant shall tender a certified check payable to the order of "Treasurer, State of Ohio" for two thousand dollars (\$2,000.00). The certified check shall specify that such monies be deposited in Fund 5CD0 established by Ohio EPA for the Clean Diesel School Bus Program. The certified check, together with a letter identifying

Defendant, shall be delivered to Martha Sexton or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 329896."

- b. Defendant shall pay the remaining eighty (80) percent – eight thousand dollars (\$8,000.00) – of the total civil penalty by certified check payable to the order of "Treasurer, State of Ohio" and delivered within thirty (30) days of entry of this Consent Order to Martha Sexton or her successor, Paralegal, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 329896."

#### **VII. STIPULATED PENALTIES**

15. In the event that Defendant fails to comply with any requirement or deadline contained in this Order or any requirement or deadline contained in any document approved in accordance with this Order, Defendant is liable for and shall on its own accord pay stipulated penalties without demand or notice by the State of Ohio in accordance with the following schedule for each failure to comply:

- a. For each day of each failure to comply with any requirement or deadline of this Order up to and including the first thirty (30) days of each failure, five hundred dollars (\$500.00) per day for each requirement or deadline not met.
- b. For each day of each failure to comply with a requirement or deadline of this Order for days thirty-one (31) to sixty (60) days of each failure, seven hundred fifty dollars (\$750.00) per day for each requirement or deadline not met.

- c. For each day of each failure to comply with a requirement or deadline of this Order for each day over sixty (60) days of each failure, one thousand dollars (\$1,000.00) per day for each requirement or deadline not met.

16. Any payment required to be made under the provisions of Section VII of this Order shall be made by delivering to Plaintiff, c/o Martha Sexton or her successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, a certified check, or checks, made payable to the order of "Treasurer, State of Ohio" for the appropriate amount within thirty (30) days from the date of the failure to meet the requirement or deadline of this Order. The payment of the stipulated penalty shall be accompanied by a letter briefly describing the type of violation, deadline, or requirement not met and the date upon which the violation of this Order occurred. 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. 329896."
17. The imposition, 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 remedies, civil, criminal or administrative, for violations of applicable laws, or to otherwise seek judicial enforcement of this Order for the same violation for which a stipulated penalty was paid or for other violations.

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

18. The Court will retain jurisdiction of this action for purposes of enforcing this Consent Order.

#### **IX. TERMINATION**

19. This consent order shall terminate upon receipt by the State of Ohio of the penalty imposed by Section VI.

X. COURT COSTS

20. Defendant is hereby ordered to pay all court costs of this action.

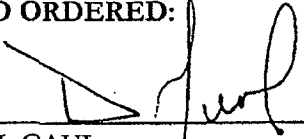
XI. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

21. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, 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 note the service in the appearance docket.

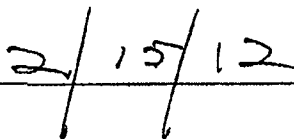
XII. AUTHORITY TO ENTER INTO THE CONSENT ORDER

22. The undersigned represent and warrant that he/she understands the terms and conditions of this Order and certify that he/she is fully authorized to enter into the terms and conditions of this Order and to execute and legally bind the Defendant to this document.

IT IS SO ORDERED:

  
\_\_\_\_\_  
DANIEL GAUL,  
Judge, Cuyahoga County Court of Common Pleas


Date

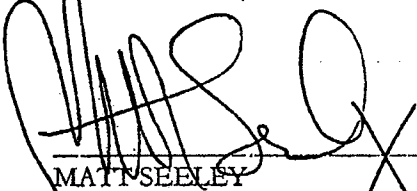
  
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2/15/12

APPROVED:

1020 BOLIVAR, LLC

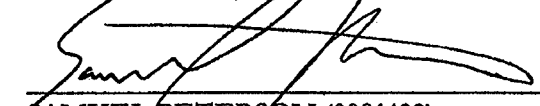
  
By: Lou Frangos

  
By: Matt Seeley

  
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*Attorneys for the Plaintiff, State of Ohio*

RECEIVED FOR FILING

FEB 16 2012

GERALD E. WERTS, CLERK  
By:  Deputy