

7-19-12 C

IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

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

Plaintiff,

v.

JOSEPH SYLVESTER
CONSTRUCTION CO., INC., *et al.*

Defendants.

CASE NO. 2011 CV 00925

JUDGE KRICHBAUM

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| CLERK OF COURTS MAHONING COUNTY, OHIO |
| JUL 19 2012 |
| FILED ANTHONY VIVO, CLERK |

CONSENT ORDER AND FINAL JUDGMENT ENTRY

WHEREAS, Plaintiff, the State of Ohio, on relation of its Attorney General Mike DeWine ("Plaintiff"/"the State") and at the written request of the Director of Environmental Protection ("Director"), filed a Complaint seeking injunctive relief and civil penalties from Defendant Joseph Sylvester Construction Co., Inc. and Defendant Joseph Sylvester, Jr. ("Defendants") for violations of Revised Code Chapter 3704 and the rules promulgated thereunder.

WHEREAS, Plaintiff and Defendants have consented to the entry of this Consent Order and Final Judgment Entry.

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

I. DEFINITIONS

1. "Complaint" refers to the State of Ohio's Complaint filed against Joseph Sylvester Construction Co., Inc., and Joseph Sylvester, Jr. in the Mahoning County Court of Common Pleas on March 23, 2011.



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2. "Court" refers to the Mahoning County Court of Common Pleas.
3. "Defendants" means Joseph Sylvester Construction Co., Inc. and Joseph Sylvester,

Jr.

4. "Director" means the Director of the Ohio Environmental Protection Agency.
5. "Effective date" means the date the Court enters this fully executed Consent Order.
6. "Facility" means the property located at 3410 and 3512 South Meridian Road,

Youngstown, Mahoning County, Ohio 44511.

7. "MTAPCA" means the Mahoning-Trumbull Air Pollution Control Agency.
8. "Ohio EPA" means the Ohio Environmental Protection Agency.
9. "Order" refers to this Consent Order.
10. "Plaintiff" means the State of Ohio.

11. All other terms not specifically defined herein, are defined, to the extent applicable, in accordance with the definitions provided in R.C. 3704, Ohio Adm.Code Chapter 3745-15 and Ohio Adm.Code Chapter 3745-20.

II. JURISDICTION AND VENUE

12. This Court has jurisdiction over Defendants and the subject matter of this action. The Complaint states a claim upon which relief may be granted under R.C. Chapter 3704. Venue is proper in this Court for the purposes and duration of this Order. Defendants shall not challenge the Court's jurisdiction to enter and enforce this Order.

III. PERSONS BOUND

13. Unless otherwise specified, the provisions of this Order shall apply to and be binding upon Plaintiff and Defendants, and Defendants' agents, officers, employees, assigns, successors-in-interest, heirs and any other person who would be bound pursuant to Rule 65(D) of the Ohio Rules

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of Civil Procedure, including any person acting in concert, privity or participation with Defendants who receives actual notice of this Order whether by personal service or otherwise.

IV. SATISFACTION OF LAWSUIT

14. The State alleges in its Complaint that Defendants have violated R.C. Chapter 3704 and Ohio Adm.Code Chapter 3745-20. Completion of the terms of this Consent Order shall constitute full satisfaction of any civil and administrative liability of Defendants to Plaintiff for the claims alleged in Plaintiff's Complaint up to the date of the Court's entry of this Consent Order.

15. Nothing in this Consent Order, including the imposition of stipulated civil penalties, shall limit the authority of Plaintiff 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; and
- C. Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order.

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

17. 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 Plaintiff in any subsequent judicial or administrative proceeding were, could, or should have been brought in the instant case.

V. INJUNCTIVE RELIEF

18. Upon the Effective Date, Defendants are hereby permanently enjoined and ordered to comply with all applicable provisions of the Ohio air laws and rules as set forth in R.C. Chapter 3704, Ohio Adm.Code Chapters 3745-15 and 3745-20.

19. Defendants are further permanently enjoined and ordered to comply with Ohio Adm.Code Chapter 3745-20, and in particular, enjoined from conducting demolition and renovation operations without prior inspection of the facility to be demolished or renovated and, if required by rule, without prior notification and authorization by Ohio EPA or its authorized agent.

VI. CIVIL PENALTY

20. Pursuant to R.C. 3704.06, Defendants are enjoined and ordered to pay a total civil penalty of \$15,000 to the State of Ohio. Such penalty shall be paid as follows:

- a. Defendants shall pay the \$15,000 civil penalty according to the following schedule:
\$5,000 within 180 days of the Effective Date; \$5,000 within 360 days of the Effective Date; \$5,000 within 540 days of the Effective Date.
- b. Defendants shall make the civil penalty payments by cashier's or certified check payable to the order of "Treasurer, State of Ohio" 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. 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. 3810383."
- c. The payment shall be credited by Ohio EPA to its accounts in the following fashion:
 - i. \$3,000 shall be credited to Ohio EPA's Clean Diesel School Bus Program Fund.
 - ii. \$12,000 shall be credited to the environmental education fund and the air pollution control administration fund in accordance with R.C. 3704.06.

21. In the event that Defendant Joseph Sylvester Construction Co., Inc. fails to timely make the payments as set forth in Paragraph 20, any remaining balance of the total civil penalty shall

then become immediately payable to the State in its entirety. Notwithstanding the Defendants joint and severable liability, the State agrees to not seek payment from Defendant Joseph Sylvester, Jr., unless Defendant Joseph Sylvester Construction Co., Inc. fails to make timely payments in accordance with Paragraph 20.

VII. STIPULATED PENALTIES

22. In the event that Defendants fail to comply with any of the requirements of Sections V and VI of this Consent Order, Defendants shall immediately and automatically be liable for and shall pay a stipulated penalty in accordance with the following schedule:

- a. For each day of each failure to comply with a requirement or deadline of this Consent Order, up to and including 30 days – \$100.00 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 Consent Order, from 31 to 60 days – \$250.00 per day for each requirement or deadline not met; and
- c. For each day of each failure to comply with a requirement or deadline of this Consent Order, over 60 days – \$500.00 per day for each requirement or deadline not met.

23. Stipulated penalties due under this Consent Order shall be paid by check or money order, payable to "Treasurer, State of Ohio" and mailed to Martha Sexton, Paralegal, or her successor, Office of the Ohio Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215.

24. The payment of stipulated penalties by Defendants 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 relief pursuant to R.C. Chapter 3704, including civil penalties under R.C.

3704.06, or to otherwise seek judicial enforcement of this Consent Order, for the same violation for which a stipulated penalty was paid or for other violations.

VIII. RETENTION OF JURISDICTION AND WAIVER OF SERVICE

25. The Court shall retain jurisdiction of this action for purposes of enforcing this Consent Order during the effective term thereof.

IX. EFFECTIVE DATE

26. This Consent Order shall be effective upon the date of its entry by the Court.

X. COURT COSTS

27. Defendants are hereby ordered to pay all court costs of this action.

XI. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

28. Pursuant to Civ.R. 58, upon signing of this Consent Order by the Court, the Clerk is directed to enter it upon the journal. Within 3 days of entering the judgment upon the journal, the Clerk is directed to serve notice upon all parties of the judgment and its date of entry upon the journal in the manner prescribed by Civ.R. 5(B) and note the service in the current docket.

X. SIGNATORIES

29. Each of the undersigned representatives for the Parties represent 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.

IT IS SO ORDERED:

DATE: 7/19/12

R. Scott Krichbaum
JUDGE KRICHBAUM

APPROVED:

MICHAEL DEWINE
OHIO ATTORNEY GENERAL

JOSEPH SYLVESTER
CONSTRUCTION CO., INC.

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efarbman@roth-blair.com

By: [Signature]
Title: C.E.O.

Authorized Representative of Defendant Joseph Sylvester Construction Co., Inc.

JOSEPH SYLVESTER, Jr.
[Signature]
Defendant Joseph Sylvester, Jr.

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ATTORNEY GENERAL OFFICE
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