

IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO

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STATE OF OHIO, ex rel. JIM PETRO :  
ATTORNEY GENERAL OF OHIO, :

CASE NO. 02CV 04042

ATTORNEY GENERAL OFFICE  
ENVIRONMENTAL ENFORCEMENT

Plaintiff, :

JUDGE SWEENEY

v. :

JOSEPH ZDRILICH, :

Defendant. :

CLERK OF COURTS  
MAHONING COUNTY, OHIO  
NOV - 8 2005  
FILED  
ANTHONY WIVO, CLERK

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CONSENT ORDER

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The Complaint in the above-captioned matter having been filed herein, and Plaintiff, State of Ohio, by its Attorney General Jim Petro (hereinafter "Plaintiff"), and Defendant Joseph Zdrilich (hereinafter "Defendant"), hereby consent to entry of this Consent Order in order to resolve the allegations in this matter and pursuant to Chapter 6111 of the Ohio Revised Code (hereinafter "R.C.").

NOW THEREFORE, with liability imposed by summary judgment in this action but without trial on the issue of the amount of civil penalty in this action, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

**I. JURISDICTION AND VENUE**

1. The Court has both personal and subject matter jurisdiction over the matter. The Complaint states a claim upon which relief can be granted against Defendants under Chapter 6111 of the Ohio Revised Code and the rules promulgated thereunder, and venue is proper in this Court.

## **II. PARTIES**

2. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and to Defendant's agents, officers, employees, assigns, successors in interest, corporations under Defendant's ownership and/or control, and any person acting in concert or privity with any of them.

## **III. SATISFACTION OF LAWSUIT**

3. Defendant has owned and/or developed the Ivy Hills Subdivision located on Ivy Hills Drive, north of Western Reserve Road, approximately 0.5 miles east of Interstate 680, Boardman Township, Mahoning County, Ohio (hereinafter the "IHD Development Site"). The Plaintiff alleges that the defendant has conducted or otherwise authorized construction activities at this site in such a manner as to violate the Water Pollution Control laws of the State of Ohio. Defendant denies these allegations. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claimed violations alleged in the Complaint.

4. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek further relief, including, but not limited to, civil penalties, for claims or conditions not alleged in the Complaint. Nothing in this Order shall be construed to limit the authority of the State to seek further relief against Defendant for violations which occur after the filing of the Complaint, and/or to bring any legal or equitable action against any person other than Defendant. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to take any action authorized by law against any person, including Defendant, to eliminate or mitigate conditions at the site and the surrounding area that may present a threat to the public health and welfare or to the environment.

#### **IV. PERMANENT INJUNCTION**

5. Defendant is hereby permanently enjoined and immediately ordered to comply with the requirements of R.C. Chapter 6111 and the rules adopted thereunder, with the terms and conditions of any effective General or Individual National Pollutant Discharge Elimination System Permit for storm water discharges associated with construction activities, and any renewals or modifications thereof, concerning any construction site in Ohio in which he has an property interest or exercises operational, management or other supervisory control over the site.

#### **V. CIVIL PENALTY**

6. It is hereby ordered that Defendant shall pay the State of Ohio a civil penalty of twenty-four thousand dollars (\$24,000.00). Defendant shall make payments of this civil penalty to the State of Ohio according to the following schedule;

- a. No later than August 31, 2005, the amount of one thousand dollars (\$1000.00);
- b. No later than September 8, 2005, the amount of four thousand dollars (\$4000.00);
- c. No later than ninety-days following the entry of this Consent Order by the Court, the amount of nineteen thousand dollars (\$19,000.00).

7. If the Defendant fails to make any one of the civil penalty payments on or before the date specified by paragraph 6 this Consent Order for such payment, the total civil penalty ordered to be paid by the Defendant is hereby increased to forty thousand dollars (\$40,000.00), with the total

amount of the forty thousand dollars (\$40,000.00) civil penalty becoming immediately due and payable to the State of Ohio. The Defendant shall pay the forty thousand dollars (\$40,000.00) civil penalty less any amount of civil penalty that has already been paid to the State of Ohio pursuant to paragraph 6 of this Consent Order.

8. The civil penalty payments shall be made by delivering to Amy Laws, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio, 43215-3400, a certified check or checks, made payable to the order of the "Treasurer, State of Ohio," for the appropriate amount.

#### **VI. RETENTION OF JURISDICTION**

9. The Court will retain jurisdiction of this action for the purpose of enforcing and administering Defendant's compliance with this Consent Order.

#### **VII. COSTS**

10. Defendant is hereby ordered to pay the costs of this action.

#### **VIII. MISCELLANEOUS**

11. Nothing in this Consent Order shall affect Defendant's obligation to comply with all applicable federal, state or local laws, regulations, rules or ordinances.

12. Defendant shall inform Ohio EPA of any change of its business addresses or telephone numbers, or the cessation of business.

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

13. The parties agree and acknowledge that final approval by Plaintiff and Defendant of the entry of this Consent Order are subject to the requirements of 40 C.F.R. 123.27(d)(2)(iii), which provides for public notice of the lodging of the order, an opportunity for public comment and the consideration of any public comment by Plaintiff. The Plaintiff reserves the right to withdraw this Consent Order based upon comments received during the public comment period.

14. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby 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.

**IT IS SO ORDERED:**

11-7-05  
Date

  
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JUDGE, COURT OF COMMON PLEAS

**APPROVED:**

STATE OF OHIO, ex rel.  
JIM PETRO  
ATTORNEY GENERAL

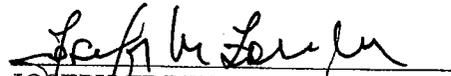


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JOSEPH ZDRILICH  
Defendant