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IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

CLERK OF COURTS
MAHONING COUNTY, OHIO
FEB - 3 2003
FILED
ANTHONY VIVO, CLERK

STATES OF OHIO, EX REL)
)
 PLAINTIFF)
)
 VS.)
)
 JAMES A. DAVIS, DBA J AND J CONST.)
)
 DEFENDANT)

CASE NO. 02-CV-2722

JUDGE JOHN M. DURKIN

JUDGMENT ENTRY

This matter was considered on the Magistrate's Decision filed January 17, 2003. After review pursuant to Civil Rule 53(E)(4)(a), the Court finds that no written objections have been filed and that no error of law or other defect appears on the face of the Magistrate's Decision. Therefore, the Magistrate's Decision is hereby adopted and made the action, judgment and order of this Court.

2/3/03
DATE:

John M. Durkin
JUDGE JOHN M. DURKIN

THE CLERK SHALL SERVE NOTICE
OF THIS ORDER UPON ALL PARTIES
WITHIN THREE (3) DAYS PER CIV.R.5

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IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

STATE OF OHIO, ex rel. JIM PETRO,

PLAINTIFF,

vs.

JAMES A. DAVIS,
dba J & J CONSTRUCTION,

DEFENDANT.

CASE NO. 02 CV 2722

JUDGE JOHN M. DURKIN

MAGISTRATE'S DECISION
CLERK OF COURTS
MAHONING COUNTY, OHIO
JAN 17 2003
FILED
ANTHONY VIVO, CLERK

A hearing to determine civil penalty was held before the Magistrate on January 15 2003, following a default judgment entered December 13 2002.

Defendant appeared in person without counsel. It appears that Defendant filed a *pro se* Answer in this cause on or about November 18 2002 (erroneously captioned "Complaint for Civil Penalties and Injunctive Relief",) wherein he admitted that he failed to provide written notice to the Ohio EPA of his intention to demolish a commercial building, which contained asbestos, known as the Jolly Bar at 3404 Wilson Avenue, Campbell, Ohio, on or about January 12 2001. In his response, Defendant alleged in Para. 7 that the City of Campbell is liable to pay the State of Ohio the civil penalties sought by Plaintiff herein. Defendant failed to serve a copy of his response filed November 18 2002 upon counsel for Plaintiff.

Counsel for Plaintiff State of Ohio presented, by way of Affidavit, evidence as to an appropriate civil penalty under R. C. 3704.06 for the air pollution and asbestos emission control violation committed by Defendant as alleged in the Complaint. Defendant admitted the facts alleged in Plaintiff's Complaint, but stated that he believed that the notice to the Ohio EPA was not required in this instance because the City of Campbell had requested an "emergency demolition" due to public health and safety concerns about the building. Defendant further stated that he was currently without funds to pay a civil penalty and provided evidence of a tax assessment by IRS. Although Defendant was provided an opportunity to request a reasonable continuance to obtain counsel and further opportunity to contest the imposition of a civil penalty, he consented to the imposition of a civil penalty. Defendant noted that he had previously agreed

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during an earlier meeting with the Ohio EPA to the imposition of a civil penalty, but was unable to supply the agency with tax returns for the past five years due to his failure to file tax returns for several years because of problems with his accountant.

It is therefore ordered that Defendant James A. Davis, dba J & J Construction, of 2256 Coral Sea Drive, Youngstown, Ohio 44511-2230, pay to Plaintiff State of Ohio by check or money order payable to "Treasurer, State of Ohio," a civil penalty in the amount of seventeen thousand dollars (\$17,000), plus court costs herein.

Defendant is further ordered and enjoined to immediately comply with R.C. Chapter 3704 and Ohio Adm. Code Chapter 3745-20 before conducting any further demolition activities in the State of Ohio.

Dated: January 17 2003



EUGENE J. FEHR, MAGISTRATE

THE CLERK SHALL SERVE NOTICE
OF THIS ORDER UPON ALL PARTIES
WITHIN THREE(3) DAYS PER CIVILR.5.