

**IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO**

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| STATE OF OHIO, ex rel. NANCY ROGERS ATTORNEY GENERAL OF OHIO | : | Case No. 2007 07 2754 |
| | : | |
| Plaintiff, | : | Judge Andrew Nastoff |
| | : | |
| v. | : | |
| | : | |
| MIKE'S TOP PAINTING, INC., et al. | : | |
| | : | |
| Defendants. | : | |

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COURT OF COMMON PLEAS

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JUDGMENT ENTRY

This matter came on for an evidentiary hearing on September 2, 2008 to determine damages pursuant to Civil Rule 55 subsequent to this Court's grant of a Default Judgment against the Defendants on May 28, 2008.

The Court finds the testimony of Ohio Environmental Protection Agency Enforcement Coordinator Isaac Wilder to be credible and reasonable and adopts same as the "Findings of Facts" in this matter which are incorporated by reference into this Judgment Entry.

Further, Plaintiff's Exhibits 1, 2 and 3 reflecting photographs of the Mike's Top Painting Facility located at 1011 and 1015 Oxford State Road, Parcel Number 113 Middletown, Ohio were admitted into evidence and are incorporated by reference. Additionally, Exhibits 4, 5 and 6 which demonstrate the process of penalty calculation by the Ohio Environmental Protection Agency in this matter, were also admitted into

evidence and are incorporated by reference. Copies of Exhibits 1 through 6 are attached to this Judgment Entry. The Court hereby finds that based upon the testimony and exhibits presented at the hearing, the Plaintiff established the following violations of Ohio's

Environmental Laws:

1. OAC 3745-52-11: in that the Defendants did not properly determine their waste materials to be hazardous waste.
2. OAC 3345-51-05(G) (3) in that the Defendants failed to ensure that the hazardous waste which they produced were delivered to an off-site treatment storage or disposal facility.
3. OAC 3334.02(E) and (F): in that the Defendants illegally disposed of hazardous waste at their facility by simply dumping paint and used solvents on the ground for a period of two and up to three years.

Said hazardous wastes were characteristic for ignitability.

The evidence adduced at the hearing also demonstrated that two dogs belonging to an adjacent neighbor of Mike's Top Painting, Inc., unfortunately ingested said hazardous waste which had migrated on the surface of the ground and into the neighbor's yard. Said dogs died as a result ingesting the hazardous waste substances which were poisonous. The Court further finds that the Defendants' violations noted above were detrimental to the health and safety of humans and the environment in Middletown, Ohio.

As a result of the above noted violations of Ohio's Environmental Laws and in accord with ORC 3734.13(A), this Court imposes the requested penalties in the amount of \$8,000.00 for failure to properly characterize the hazardous waste in violation of OAC

3345-52-11 and a penalty in the amount of \$10,000.00 for the illegal disposal of hazardous waste by the dumping of same on the ground in violation of ORC 3334.02 (E) and (F).

The total amount of this Judgment is \$18,000.00.

The Court further finds that consistent with the mandates of Ohio's Environmental Laws this amount will serve to deter the Defendants as well as others in the public from future violations of these environmental said laws.

Finally, based upon the foregoing, it is Ordered, Adjudged and Decreed that Defendant Mike's Top Painting, Inc. and Defendant Michael E. Etter are jointly and severally liable for the violations, penalties and judgment of damages set out in this Judgment Entry.

IT IS SO ORDERED,

JUDGE ANDREW NASTOFF

cc: James A. Carr
Assistant Attorney General
State of Ohio