

IN THE COURT OF COMMON PLEAS
MIAMI COUNTY, OHIO

MIAMI COUNTY
COMMON PLEAS COURT

2015 DEC -8 AM 11:36

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

CASE NO. 15-107

JUDGE CHRISTOPHER GEE

JAN A. HUTTINGER
CLERK OF COURTS

PLAINTIFF,

v.

GARRY MYERS and PEGGY MYERS
dba LE-O-NA FALLS MOBILE HOME
PARK,

CONSENT ORDER and
Judgment Entry

DEFENDANTS.

WHEREAS, Plaintiff State of Ohio, by its Attorney General Michael DeWine ("State" or "Plaintiff"), has filed the Complaint in this action against Garry Myers and Peggy Myers dba Le-O-Na Falls Mobile Home Park ("Defendants") to enforce the State of Ohio's Water Pollution Control Laws, R.C. Chapter 6111 and the rules promulgated thereunder, concerning the Defendants' operation of a waste disposal system at the Le-O-Na Falls Mobile Home Park located at 8112 State Route 55 West, Union Township, Ludlow Falls, Ohio ("the Site");

WHEREAS, Plaintiff's Complaint seeks injunctive relief and civil penalties for Defendants' alleged violations of R.C. Chapter 6111, Ohio's Water Pollution Control Laws, and the rules promulgated thereunder;

WHEREAS, Defendants have agreed to enter into this Consent Order to resolve Plaintiff's Complaint;

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the Plaintiff and Defendants, it is hereby ORDERED as follows:

000739

I. JURISDICTION AND VENUE

1. The Court has both personal and subject matter jurisdiction over the parties. The Complaint stated a claim upon which relief could be granted against Defendants under Chapter 6111 of the Ohio Revised Code. Venue is proper in this Court. Defendants shall not challenge the Court's jurisdiction to enter or enforce this Consent Order.

II. PERSONS BOUND

2. All terms and provisions of this Consent Order shall apply to and be binding upon Defendants, their assigns, successors in interest, and others bound by Rule 65(D) of the Ohio Rules of Civil Procedure, who are or will be acting in concert and/or in privity with the Defendants. The undersigned representative of each party to this Consent Order certifies that he or she is fully authorized by the party or parties whom she or he represents to enter into the terms and conditions of the Consent Order and execute and legally bind that party or parties to it. This Consent Order is in settlement and compromise of disputed claims and nothing in this Consent Order is to be construed as an admission of any facts or liability.

3. If insolvency, bankruptcy, or other failure occurs, Defendants must pay the remaining unpaid balance of the total civil penalty.

III. SATISFACTION OF LAWSUIT

4. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims under such laws alleged in the Complaint.

IV. RESERVATION OF RIGHTS

5. Nothing in this Consent Order, including the imposition of stipulated civil penalties for violations of this Consent Order, shall limit the authority of the State of Ohio to:

- (a) Seek any legal or equitable relief from Defendants or any other appropriate person for claims or conditions not alleged in the Complaint, including violations that occur after the filing of the Complaint. Notwithstanding the preceding Section, Plaintiff acknowledges the allegations in the Complaint allege all believed conditions and/or violations related to the Site;
- (b) Seek any legal or equitable relief from Defendants or any other appropriate person for claims or conditions alleged in the Complaint that occur or exist on the date of or after the entry of this Consent Order;
- (c) Enforce this Consent Order through a contempt action or otherwise seek relief for violations of this Consent Order;
- (d) Take any action authorized by law against any appropriate person, including Defendants, to eliminate or mitigate conditions at the Site that may present a threat to the public health or welfare, or the environment in derogation of applicable laws and rules, for which Ohio EPA has the authority to enforce; and/or,
- (e) Bring any legal or equitable action against any appropriate person other than Defendants for any violation of applicable laws. For the purposes of this Consent Order, and in particular the provisions of this paragraph, the term "person" includes: an individual, corporation, business trust, estate, trust, partnership, association, municipal corporation, interstate body created by compact, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.

6. Except for the signatories to the Consent Order, nothing in this Consent Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged, against any person not a signatory to this Consent Order for any liability such person may have arising out of matters alleged in the Complaint.

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

8. Defendants shall not assert and/or maintain, any defense or claim of waiver, res judicata, collateral estoppel, issue preclusion, claim splitting, or other defenses based on any contention that Plaintiff's claims in any subsequent judicial or administrative proceeding could or should have been brought in this case.

9. Defendants agree that each is jointly and severally liable for the obligations and requirements of this Consent Order, including, but not limited to, everything in Sections V and VI.

V. INJUNCTION

10. Defendants are permanently enjoined from violating R.C. Chapter 6111 and the rules adopted thereunder.

11. Defendants are permanently enjoined from violating the terms and conditions of NPDES Permit No. 1PV00123*BD and must continue to operate in full compliance with the terms and conditions of NPDES Permit No. 1PV00123*BD and any renewals thereof.

VI. CIVIL PENALTY

12. Based upon a thorough economic analysis of the Defendants' financial condition and taking into consideration their ability to pay a civil penalty within the guidelines set forth by the Ohio Supreme Court in *Dayton Malleable*, the State has agreed to accept a substantially reduced civil penalty and has determined that a civil penalty payment plan is appropriate under the circumstances.

13. Defendants shall pay to the State of Ohio a civil penalty of sixteen-thousand five hundred dollars (\$16,500.00) as follows.

(a) The first payment of \$5,000 will be due on or before November 30, 2015; and

(b) The second and final payment of \$11,500 will be due on or before May 30, 2016.

14. Civil penalty payments shall be made by delivering to Scott Hainer, Paralegal, or his successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215, a certified check, made payable to the order of the "Treasurer, State of Ohio," for the appropriate amount.

15. If the Defendants fail to make any one of the civil penalty payments on or before the date specified by Paragraph 13 of this Consent Order for such payment, the total civil penalty of

sixteen thousand five-hundred dollars (\$16,500) plus applicable interest, less any amount already paid under this Order, shall become immediately due and owing. Any delinquent payments shall accrue interest at the maximum statutory rate prescribed by R.C. 5703.47 calculated from the Effective Date of this Order.

16. It is expressly understood and agreed that upon entry of this Consent Order the State shall be entitled to file a Judgment Lien in the amount of sixteen-thousand five-hundred dollars (\$16,500) to secure payment of the civil penalty set forth in Paragraph 13 if full payment is not made according the schedule in that paragraph.

VII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

17. Performance of the terms of this Consent Order by Defendants is not conditioned on the receipt of any federal or state grant funds or loans. In addition, Defendants' performance is not excused by the failure to obtain or shortfall of any federal or state grant funds or loans, or by the processing of any applications for the same.

VIII. MODIFICATION

18. No modification shall be made to this Consent Order without the written agreement of the parties and the Court.

IX. RETENTION OF JURISDICTION

19. The Court shall retain jurisdiction of this action for the purpose of administering and enforcing compliance with this Consent Order.

X. COSTS

20. Defendants are hereby ordered to pay the court costs of this action.

21. Defendants are hereby ordered to pay the costs incurred by the Ohio EPA for the publication of the Consent Order in Ohio EPA's Weekly Review and a newspaper of general circulation. Defendants shall pay the costs associated with publication by delivering a certified check payable to: "Treasurer, State of Ohio" and with a notation indicating that the funds are going to "Fund 699" on it, in the amount of the costs, to the Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, within thirty (30) days from the date it receives notice of the costs from Ohio EPA.

XI. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

22. The parties agree and acknowledge that final approval by the Plaintiff and the Defendants and entry of this Consent Order is subject to the requirements of 40 C.F.R. 123.27 (d)(2)(iii), which provides for notice of the lodging of the Consent Order, opportunity for public comment, and the consideration of any public comments. Both the State of Ohio and the Defendants reserve the right to withdraw this Consent Order based on comments received during the public comment period.

23. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon the 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 the parties a 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.

DATE



JUDGE

JR 943 pg 739

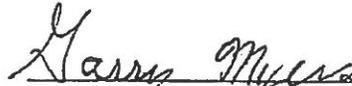
APPROVED:

MICHAEL DEWINE
OHIO ATTORNEY GENERAL

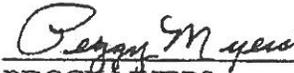


MOLLY J. REITTER (0085424)
JANEAN WEBER (0083960)
TASHA MIRACLE (0092318)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
Telephone: (614) 466-2766
Facsimile: (614) 644-1926
molly.reitter@ohioattorneygeneral.gov
janean.weber@ohioattorneygeneral.gov
tasha.miracle@ohioattorneygeneral.gov

Counsel for Plaintiff, State of Ohio



GARRY MYERS
8112 State Route 55 West
Union Township
Ludlow Falls, Ohio 45339



PEGGY MYERS
8112 State Route 55 West
Union Township
Ludlow Falls, Ohio 45339

Defendants