

IN THE COURT OF COMMON PLEAS
ROSS COUNTY, OHIO

COURT OF COMMON PLEAS

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

Plaintiff,

v.

J & M HOLDINGS OF OHIO, LLC, et al.,

Defendants.

CASE NO. 09ci239

JUDGE SCOTT W. NUSBAUM

CONSENT ORDER

2015 DEC 17 PM 12:03

ROSS COUNTY COMMON PLEAS
CLERK OF COURTS
TY D. HINTON

WHEREAS, Plaintiff, State of Ohio, by its Attorney General on April 9, 2009, filed its Complaint in the above-captioned case against J & M Holdings of Ohio, LLC, James Hawthorne and Michael Mulhern (collectively "Defendants") pursuant to Ohio Revised Code Chapter 6111 and the rules promulgated thereunder, and Ohio Revised Code Chapter 3767. Plaintiff's Complaint seeks, among other things, preliminary injunctive relief and civil penalties for Defendants' violations of Ohio's Water Pollution Control Laws at the Cattail Apartment, located at 2789 Cattail Road, Union Township, Ross County, Ohio;

WHEREAS, on May 6, 2009, Plaintiff filed a Motion for Preliminary Injunction;

WHEREAS, on August 31, 2009, this Court entered a Consent Order for Preliminary Injunction ("COPI") agreed to by Plaintiff and Defendants;

WHEREAS, on September 13, 2013, Plaintiff filed Written Charges in Contempt against Defendants which alleged that Defendants had failed to comply with the COPI;

WHEREAS, on November 12, 2013, a hearing was held on Plaintiff's Written Charges in Contempt;

WHEREAS, on November 25, 2013 the Court issued an Order finding Defendants in contempt for failing to comply with the COPI and ordered Defendants to (1) hire a certified

operator; (2) notify residents of sewage outbreaks; (3) commence construction of a sewer connection to the Pleasant Valley Ridge Regional Sewer District; and (4) complete construction of the sewer connection;

WHEREAS, on August 21, 2014, Plaintiff filed Second Written Charges in Contempt alleging Defendants failed to comply with the Court's November 25, 2013 Order of Contempt;

WHEREAS, Defendants have now complied with the requirements in the Court's November 25, 2013 Order;

WHEREAS, Defendants have agreed to enter into this Consent Order without the need for hearing to resolve the violations alleged in the Complaint and Second Written Charges in Contempt;

NOW THEREFORE, without a trial or admission of any issue of fact or law, and upon the 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 parties. The Complaint and Charges in Contempt states claims upon which relief can be granted against Defendants under R.C. Chapter 6111, and the rules promulgated thereunder, R.C. Chapter 3767, and R.C. Chapter 2705. Venue is proper in this Court for the purposes and duration of this Consent Order.

II. PARTIES

2. The provisions of this Consent Order shall apply to and be binding upon Defendants, their agents, officers, employees, assigns, successors in interest and others bound by Rule 65(D) of the Ohio Rules of Civil Procedure who are acting in concert and/or privity with Defendants. Defendants shall provide a copy of this Consent Order to each general contractor

and/or consultant it employs to perform work itemized herein and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work.

III. CIVIL PENALTY

3. Defendants, jointly and severally, agree to pay a civil penalty totaling **sixty three thousand dollars (\$63,000)** to the State of Ohio as follows:

- a. By no later than thirty (30) days following entry of this Consent Order, Defendants shall pay fifteen thousand dollars (\$15,000).
- b. By no later than sixty (60) days following entry of this Consent Order, and due on the first day of each month thereafter for two years, Defendants shall make installment payments. The first through twelfth installment payments shall be for one thousand, five hundred dollars (\$1,500), and the thirteenth through twenty fourth payments shall be for two thousand, five hundred dollars (\$2,500).

4. If Defendants miss any of the payments as set forth in Paragraph 3 above, full payment, as well as interest as set forth in R.C. 5703.47 accruing from the date of entry of this Consent Order, shall become due and owing immediately. In addition, if Defendants miss any of the payments set forth in Paragraph 3 above, the Plaintiff reserves the right to file a lien on Defendants' property in the full amount of any unpaid payments.

5. The civil penalty payment shall be made by certified check or checks payable to "Treasurer, State of Ohio," and shall be delivered 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 43215-3400.

IV. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

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

V. MISCELLANEOUS

7. Nothing herein shall affect the Defendants' obligation to comply with all applicable federal, state, or local laws, regulations, rules, or ordinances. The Defendants shall obtain all federal, state, or local permits and/or licenses necessary to comply with this Order.

VI. RETENTION OF JURISDICTION

8. The Court shall retain jurisdiction of this action for purposes of enforcing this Consent Order.

9. There shall be no modification of this Consent Order without written approval by all of the Parties and the Court.

VII. COURT COSTS

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

11. Defendants are hereby ordered to pay for 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. Defendant shall pay the costs associated with publication 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," with a notation of "publication cost" written on the check, in an amount of two hundred dollars (\$200.00) within thirty (30) days from the date of entry of this order.

VIII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

12. The parties agree and acknowledge that final approval by the Plaintiff and Defendants, and entry of this Consent Order is subject to the requirement of 40 C.F.R. § 123.27(d)(2)(iii), which provides for public notice that this Consent Order has been lodged with the Court, there was opportunity for public comment, and there was the consideration of any public comment. The State and Defendants reserve the right to withdraw this Consent Order based on comments received during the public comment period.

13. Pursuant to Rule 58(B) 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 notice of the judgment and its date of entry in 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.

IX. AUTHORITY TO ENTER INTO THE CONSENT ORDER

14. The signatories for Defendants represent and warrant that they have been duly authorized to sign this document and so bind the Defendants to all terms and conditions thereof.

IT IS SO ORDERED, THIS _____ DAY OF JULY 2015.

**JUDGE SCOTT W. NUSBAUM
ROSS COUNTY COMMON PLEAS
COURT**

APPROVED:

**MICHAEL DEWINE
OHIO ATTORNEY GENERAL**



**CASEY LYNN CHAPMAN (0086286)
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*Counsel for Plaintiff
State of Ohio*

J & M HOLDINGS OF OHIO, LLC

By: 
Title: Member
Defendant

MICHAEL MULHERN
Defendant

JAMES HAWTHORNE
Defendant

JAMES K. CUTRIGHT (0009806)
CUTRIGHT & CUTRIGHT
76 W. 2nd Street
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Telephone: (740) 772-5595
jkcwright@cutrightlaw.com

Counsel for Defendants

IT IS SO ORDERED, THIS _____ DAY OF JULY 2015.

**JUDGE SCOTT W. NUSBAUM
ROSS COUNTY COMMON PLEAS
COURT**

APPROVED:

**MICHAEL DEWINE
OHIO ATTORNEY GENERAL**

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*Counsel for Plaintiff
State of Ohio*

J & M HOLDINGS OF OHIO, LLC

By: 
Title: Partner
Defendant

MICHAEL MULHERN
Defendant

JAMES HAWTHORNE
Defendant

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Counsel for Defendants

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