

FILED  
 2011 AUG 9 PM 3 40  
 CLERK

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

STATE OF OHIO, ex. rel.	:	CASE NO. 08-CV-64753
ATTORNEY GENERAL OF OHIO	:	
Plaintiff,	:	JONATHAN P. HEIN, JUDGE
vs.	:	
STATE LINE AGRI, INC, et. al.	:	<u>DECISION AND ENTRY -</u>
Defendants.	:	Plaintiffs' Motion for Relief; Defendants' Motion to Correct

This matter came before the Court on Defendants' motion for relief from judgment as filed July 25, 2011 pursuant to Civil Rule 60(A) and (B). Also, before the Court is Plaintiff's motion for relief from judgment filed July 22, 2011 pursuant to Civil Rule 60(A). Responses have been filed and considered.

Regarding the Plaintiff's motion, and upon Defendants' agreement, the Court finds that it made an error by omitting penalties for Counts 12 and 18. This error is one correctable pursuant to Civil Rule 60(A). The Court concurs with the parties that the total penalties to be imposed herein are \$53,900 (\$26,000 for Ohio E.P.A. and \$27,900 for Ohio Department of Agriculture).

Regarding the Defendants' motion, they ask the Court to reconsider a \$20,000 penalty under Count Nine for violation of manure spreading regulations on a six (6) acre tract. Defendants argue that the amount is excessive in view of their appellate success which resulted

in a remand concerning some allegations under Count Nine which were overturned. However, the Court disagrees; success at the appellate level does not necessarily mean that the penalties must be reduced. Indeed, as the Court stated in its trial decision:

“The imposition of monetary penalties herein considers the punitive and rehabilitative purposes to be served. However, the analysis used by the Court has been on the penalties imposed on all counts, not on an individual basis. Further, when the same conduct violates both ODA regulations (Title 9) and OEPA regulations (Title 61), penalties are awarded for each regulatory violation.

“Regarding factors to consider regarding the penalty to impose, the Court was not provided with any economic data of any economic benefit that Defendants would have received for non-compliance. Further, although regulatory compliance efforts and litigation enforcement actions were evident, there was no testimony relating the actual economic costs incurred by the Plaintiff. However, the parties did stipulate that Defendants would not raise “ability to pay” as a mitigating circumstance.

At the time of its trial decision, the Court articulated the purpose of using economic incentives to motivate Defendants’ future behavior. Such purpose remains. Also, the Court again acknowledges the parties’ stipulation that ability to pay is not a mitigating circumstance. While Defendants did prevail on several appellate issues, the Court has always stated its intention to consider penalties in a holistic - not piecemeal - manner. No change will now be made from the decision issued on remand. The trial decision ordered total payments of \$68,900 with \$20,000 suspended to ensure compliance. Following remand, payments totaled \$46,400 with no amount suspended. This corrected decision now orders total payments of \$53,900 but the Court will suspend \$37,500 to ensure future compliance (\$30,000 + \$7500).

**IT IS THEREFORE ORDERED AND DECREED** that Defendants’ motion for relief from judgment is overruled as to the penalties imposed on remand.

**IT IS FURTHER ORDERED AND DECREED** that Plaintiff's motion for relief from judgment is granted and the total amount of penalties is corrected to \$53,900 (\$26,000 to Ohio E.P.A. and \$27,900 to Ohio Dept. of Agriculture).

**IT IS FURTHER ORDERED AND DECREED**, based on the corrected amount of \$53,900 as described above, that monetary awards are ordered as follows:

(1) SLA and Rick Kremer, jointly and severally, shall pay fines to the Clerk of Courts in the total amount of \$53,900 within 15 days hereafter. [\$26,000 for EPA violations and \$27,900 for ODA violations.] Following receipt, the Clerk of Courts shall forward payment to Plaintiff via counsel of record. Prior penalties assessed on July 5, 2011 against Neal Kremer and Rich Fisher are not affected by this decision.

**IT IS FURTHER ORDERED AND DECREED** that payment of \$37,500 of the fines by SLA and Rick Kremer is suspended on the following conditions:

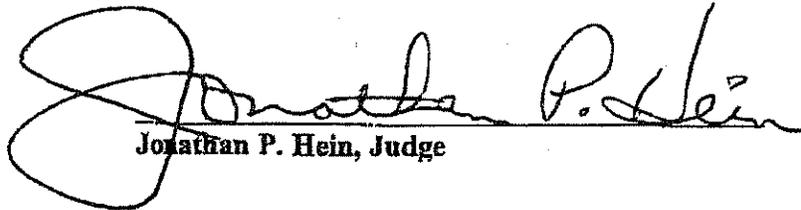
- (1) that SLA and Rick Kremer comply with terms of the injunction issued herein; and
- (2) that within 15 days hereafter, SLA and Rick Kremer contribute \$30,000 to a non-profit, charitable foundation organized in Darke County to establish an endowment fund wherein the net income shall be distributed by the foundation to an applicant(s) who provide educational programs and/or events in Darke County which promote agricultural - environmental awareness, promote water and soil pollution control, and promote water and soil conservation, such as those that may be encouraged or organized by Soil and Water Conservation District, Future Farmers of America, OSU Extension Office, institutions of public or private education, etc.

The Court suspends \$37,500 of the penalty in order to reduce animosity between Plaintiff and Defendants, to encourage future cooperation, and to ameliorate any suspicion that Plaintiff's enforcement is motivated by self-interest in the penalty. Establishment of a \$30,000

endowment fund within 15 days hereafter seeks to accomplish the same purposes. The \$16,400 fine payable by SLA and Rick Kremer to the Plaintiffs acknowledges the Plaintiff's investigative and prosecution expenses. [\$8,200 to ODA and ~~\$8,200 to OEPA~~] \$7,500 remains suspended to ensure Defendants' future compliance.

The Court retains continuing jurisdiction over the terms of this Order for two years after the date of this order (unless extended by further appeal). Violations of the above terms may subject SLA and Rick Kremer to payment of additional fines in the suspended amount of \$7,500, incarceration and other penalties for contempt.

**IT IS FURTHER ORDERED AND DECREED** that Defendants' motion for relief from judgment as to allocation of court costs is granted. See separate Entry filed herein.



Jonathan P. Hein, Judge

cc: Aaron Farmer, Ass't. Attorney General for Plaintiffs (via fax)  
Jack Van Kley, Attorney for Defendants (via fax)

jph/msj/farm pollution spill - corrected