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IN THE COURT OF COMMON PLEAS
GREENE COUNTY, OHIO

STATE OF OHIO, ex rel, LEE FISHER ATTORNEY GENERAL OF OHIO, Plaintiff, vs. NUGLO LABORATORIES, INC. and BASIL B. MATTHEWS, III, Defendants.	:	CASE NO. 91CV0151 JUDGE JUDGE ROSE 5

CONSENT ORDER

The Complaint in the above-captioned case having been filed herein, and the Plaintiff State of Ohio by its Attorney General, Lee Fisher (hereinafter "Plaintiff") and the Defendants NuGlo Laboratories, Inc. and Basil B. Matthews, III (hereinafter "Defendants"), having consented to entry of this Consent Order.

Now, therefore, without trial of any issues of law or fact, and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. JURISDICTION

1. This Court has jurisdiction over the subject matter herein pursuant to Chapters 3734 and 6111 of the Ohio Revised Code ("O.R.C.") and the rules and regulations adopted

thereunder. The Complaint states a claim upon which relief can be granted. This Court has jurisdiction over the parties hereto. Venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest and those acting on behalf of or for any of the parties.

III. SATISFACTION OF LAWSUIT

3. As alleged in the Complaint, Defendants have operated the NuGlo Laboratories, Inc. facility, located at 3465 Dayton-Xenia Road, (the "facility") in violation of various provisions of Ohio's water pollution control and hazardous waste laws and regulations. Defendants' compliance with this Consent Order shall constitute satisfaction of Defendants' civil liability, including potential liability for clean-up and remediation costs which could potentially be pursued pursuant to O.R.C. §3734.20(B), for the violations alleged in the Complaint; provided, however, that nothing in this Consent Order shall be construed to prohibit the State, pursuant to O.R.C. §3734.20(B), from entering upon the facility and performing those measures necessary to abate or prevent water pollution or soil contamination, and from obtaining and enforcing a lien against the property, located at 3465 Dayton-Xenia Road, in order to recover all or part of the costs of such abatement or preventative measures.

4. This Consent Order does not limit the authority of

the State of Ohio to seek relief for any claim or conditions not alleged in the Complaint, including claims not known at this time, or future violations of Ohio's water pollution control or hazardous waste laws or regulations promulgated thereunder occurring after the filing of this Consent Order. Nothing herein shall be construed to limit the authority of the State of Ohio to undertake any action against any person, including the Defendants, to eliminate or control conditions which may present an imminent endangerment to the public health or welfare, or to the environment.

5. Nothing in this Consent Order shall be construed to relieve the parties of their rights and obligations to comply with applicable federal, state, or local statutes, regulations or ordinances.

IV. INJUNCTION

6. Defendants agree to refrain from and are permanently prohibited and enjoined from violating O.R.C. Chapters 6111 and 3734 and the regulations promulgated thereunder, including O.R.C. Section 3734.02(E), (prohibiting the establishment and operation of a hazardous waste facility without a facility installation and operation permit), O.R.C. Section 3734.02(F), (prohibiting storage, treatment, or disposal of hazardous waste other than at a licensed hazardous waste facility), OAC Rule 3745-54-51 and/or 3745-65-51, OAC Rule 3745-54-13(A)(1) and/or 3745-65-13(A)(1), OAC Rule 3745-54-13(B) and/or 3745-65-13(B), OAC Rule 3745-54-16 and/or 3745-65-16, OAC Rule 3745-54-73 and/or 3745-65-73, OAC Rule 3745-54-75 and/or 3745-65-75, and

9520-90-16

OAC Rule 3745-52-12.

V. CIVIL PENALTY

7. A civil penalty of Thirty-Six Thousand, One Hundred and Seventy Dollars ($36,170.00) is assessed, jointly and severally, against Defendants NuGlo Laboratories, Inc. and Basil B. Matthews, III. This penalty shall be paid within thirty (30) days after entry of this Consent Order by delivering to Plaintiff's counsel, for payment into the Hazardous Waste Cleanup Special Account created by Ohio Revised Code Section 3734.28, a certified check in such amount made payable to the order of "Treasurer, State of Ohio".

VI. RIGHT OF ENTRY

8. OEPA and/or its authorized representatives, consultants, and/or contractors shall have the authority to enter and freely move about all the property at the NuGlo facility, located at 3465 Dayton-Xenia Road, at all reasonable times, for the purposes of investigating and remediating contamination at or near the NuGlo facility. Nothing in this paragraph shall be construed to limit Plaintiff's statutory or regulatory authority to conduct inspections and/or take samples at the facility.

9. To the extent that OEPA and/or its authorized representatives determine that contamination from the NuGlo facility has migrated to property not owned by the Defendants, and that such contamination must be remediated, Defendants agree and are hereby enjoined to employ their best efforts to obtain access agreements from the owners of such property which

shall allow OEPA and/or its authorized representatives, consultants, and/or contractors to enter upon such property for the purpose of investigating and remediating the contamination. Defendants shall employ such efforts to obtain access agreements within fourteen (14) days of notification by OEPA that such access agreements are necessary.. Defendants shall notify OEPA of the results of such efforts within the same fourteen (14) day period.

VII. DEED NOTICE, LAND USE, AND CONVEYANCE OF TITLE

10. Defendants agree and are enjoined to ensure that no portion of the site will be used in any manner which would adversely affect the integrity of any contamination monitoring, capture, or containment systems which may be installed at the site by OEPA and/or its authorized representatives.

11. Defendants agree to refrain and are hereby enjoined from conveying any title, easement, or other interest in the property without obtaining the prior approval of Plaintiff.

12. Defendants agree to refrain and are enjoined from conveying any title, easement, or other interest in any portion of the site without providing for continued operation and maintenance of any contamination monitoring, containment or capture system installed pursuant to this Consent Order. Defendants shall notify OEPA by registered mail of any intent to convey any interest in the property or any portion thereof, and of the provisions made for continued operation and maintenance of the contamination monitoring, capture or contamination systems. Such notification shall be made at

least ninety (90) days prior to any such proposed conveyance.

13. In the event that Defendants convey any interest in the property, Defendants agree and are enjoined to place an appropriate notice in the deed as to the condition of the property. Defendants shall obtain OEPA's approval of such notice prior to any conveyance.

VIII. MISCELLANEOUS

14. The Court will retain jurisdiction of this suit to oversee the implementation of this Consent Order.

15. Defendants shall pay court costs.

4/10/91

DATE

JUDGE, COURT OF COMMON PLEAS

LAF

APPROVED BY:

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