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IN THE COURT OF COMMON PLEAS
CLARK COUNTY, OHIO

2004 AUG -2 P 1:57

STATE OF OHIO, ex rel.,
BETTY MONTGOMERY
ATTORNEY GENERAL OF OHIO

Plaintiff,

v.

JMH PROPERTIES, et al.,

Defendants.

CASE NO. 00-CV-0554

JUDGE O'NEILL

ATTORNEY GENERAL OFFICE
ENVIRONMENTAL ENFORCEMENT

ROY VINCENT, CLERK
COMMON PLEAS COURT
CLARK COUNTY, OHIO

2004 JUL 23 1 P 2:45

FILED

PERMANENT INJUNCTION CONSENT ORDER

WHEREAS, the Plaintiff State of Ohio (the "State"), on relation of its Attorney General ("Plaintiff"), has filed a complaint in this matter against Defendant Jeff Ulery ("Defendant Ulery") on behalf of the Director of the Environmental Protection Agency, pursuant to Ohio Revised Code ("R.C.") Chapters 6111 and 6109, and the regulations promulgated thereunder and other laws.

WHEREAS, The State's Complaint seeks, among other things, remedies to investigate and abate alleged pollution at Clearview Mobile Home Park ("Clearview"), currently owned by Defendant Jeff Ulery, and located at 2710 Dayton Road, Springfield, Ohio.

WHEREAS, the Plaintiff and Defendant Ulery hereby consent to the entry of this Consent Order.

FURTHERMORE, Except as otherwise provided in this Permanent Injunction Consent Order, all requirements of the August 4, 2000 Consent Order for Preliminary Injunction and the July 5, 2001 amended Consent Order for Preliminary Injunction, remain in full force and effect.

NOW THEREFORE, without trial of any issue of law or fact, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has both personal jurisdiction over the parties and subject matter jurisdiction over the case pursuant to R.C. Chapters 6109 and 6111. The Complaint states a claim upon which relief can be granted against Defendant Ulery under R.C. Chapters 6109 and 6111 and the rules and regulations promulgated thereunder. Venue is proper in this Court.

II. PERSONS BOUND

2. All terms and provisions of this Consent Order shall apply to and be binding upon Defendant Ulery, Defendant Ulery's agents, officers, employees, assigns, successors in interest, and any other persons acting in concert and/or in privity with any of them.

3. Defendant Ulery shall provide a copy of this Consent Order to each engineer, operator, general contractor, consultant, and any other person or entity employed to perform any work itemized herein. Defendant Ulery shall require each of the above to provide a copy of this Consent Order to all subcontractors hired to perform the work itemized herein.

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III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

4. The State has alleged that Defendant has violated R.C. Chapter 6109 and 6111 and the rules promulgated thereunder in Ohio Admin. Code Chapter 3745-27.

5. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendant and its successors in interest and assigns, for the claims alleged in the State's Amended Complaint.

6. The State of Ohio reserves the right to seek further relief from this or any other Court, including but not limited to, further preliminary and/or permanent injunctive relief and civil penalties. This Consent Order in no way waives any defenses, which Defendant Ulery may have as to such relief.

7. The State of Ohio expressly reserves, and this Consent Order shall be without prejudice to, any claims, demands, rights or causes of action, judicial or administrative, the State of Ohio may have or which may in the future accrue against Defendant Ulery or others, regardless of whether such claim, demand, right or cause of action was asserted in the Complaint. This Consent Order in no way waives any defenses which Defendant Ulery may have as to such claims, demands, rights or causes of actions.

8. Nothing herein shall limit the authority of the State to undertake any action against any entity, including Defendant Ulery, to eliminate or control conditions, which may present a threat to the public health, safety, welfare or environment, and to seek cost reimbursement for any such action. This Consent Order in no way waives any defenses, which Defendant Ulery may have as to such claims, demands, rights or causes of action.

9. Nothing herein shall be construed to relieve Defendant Ulery of his obligation to comply with applicable federal, state or local statutes, regulations or ordinances, including, but not limited to, permit requirements. Further, nothing in this order shall be construed to authorize any action by Defendant Ulery that requires a Permit to Install ("PTI") or other such permit to Ohio EPA.

IV. PERMANENT INJUNCTION

10. Except as otherwise provided in this section, Defendant Ulery is hereby permanently enjoined and immediately ordered to comply with the applicable provisions of Ohio's Water Pollution Control Law, R.C. Chapter 6111, and the rules and regulations promulgated thereunder, and the terms and conditions of any permit that may be issued to the Defendant. Defendant Ulery is hereby permanently enjoined and immediately ordered to maintain all the components of the wastewater treatment system.

11. Except as otherwise provided in this section, Defendant Ulery is hereby permanently enjoined and immediately ordered to comply with the applicable provisions of Ohio's Safe Drinking Water Law, R.C. 6109 and the rules and regulations promulgated thereunder, and the terms and conditions of any license or plan approval that may be issued to the Defendant.

12. No later than June 1, 2005, Defendant Ulery shall replace all drinking water lines at Clearview or complete a pressure test evaluation on the entire distribution system and either replace or properly abandon the lines identified in the evaluation as leaking.

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13. Once a sewerage system comes within two hundred (200) feet of the Clearview property line, and is available, Defendant Ulery has one hundred eighty (180) days to connect Clearview to the publicly owned treatment works. Publicly owned treatment works is defined in R.C. 6111.01(R). Sewerage System is defined in R.C. 6111.01(E). Once Clearview has been connected to the publicly owned treatment work's sewerage system, Defendant Ulery shall decommission Clearview's existing wastewater treatment plant and provide for the proper disposal.

14. No later than June 15, 2004, Defendant Ulery shall repair and/or replace the pump in the lift station that was approved by the Director of Ohio EPA on September 21, 2000 (PTI No. 05-11172). Defendant Ulery is hereby permanently enjoined and immediately ordered to maintain both pumps in the lift station as operational.

15. No later than June 15, 2004 Defendant Ulery shall repair and/or replace the flow metering device that was approved by the Director of Ohio EPA on September 21, 2000 (PTI No. 05-11172). Defendant Ulery is hereby permanently enjoined and immediately ordered to maintain the flow metering device as operational.

16. No later than July 1, 2004, Defendant Ulery shall complete back filling and final grading around Clearview's wastewater treatment units. Final grading shall consist of sloping the ground from the treatment plant to the fence and shall be free of ruts, gullies, and low lying areas and to establish a perennial vegetation cover on the final grading to permanently stabilize the soil. Defendant Ulery is hereby permanently enjoined and immediately ordered to maintain the final grading around Clearview's wastewater treatment plant.

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17. No later than June 15, 2004, Defendant shall repair and/or replace the grate above the wastewater treatment plant or Defendant Ulery shall document having a certified class two wastewater treatment plant operator or engineer to certify that the structural integrity of the grate above the wastewater treatment plant is acceptable. Defendant Ulery is hereby permanently enjoined and immediately ordered to maintain the grate as operational. (If Defendant Ulery has obtained a certification of the structural integrity of the grate, Defendant agrees that he may not use the condition of the grate as an excuse in maintaining compliance with any component of this Consent Order or R.C. 6111 and the rules adopted thereunder.)

18. No later than July 1, 2004, Defendant Ulery shall pay Clearview's 2004 public water system license to operate fee. The check shall be made payable to "Treasure State of Ohio" and sent to Ohio EPA Lazarus Government Center, Division of Drinking and Ground Water, P.O. Box 1049, Columbus, Ohio 43216-1049.

V. SUBMITTAL OF DOCUMENTS

19. All documents required to be submitted to Ohio EPA under this Consent Order shall be submitted to:

Ohio Environmental Protection Agency
Southwest District Office
401 East 5th Street
Dayton, Ohio 45402

Attn.:
For Division of Surface Water
Sandy Leibfritz or her successor

For Division of Drinking and Groundwater
Mariano Haensel or his successor

VI. CIVIL PENALTY

20. Defendant Ulery is ordered to immediately pay the State of Ohio a civil penalty of Fifty Thousand and no/100 Dollars (\$50,000.00). The civil penalty payment shall be paid by certified check for the appropriate amount, made payable to "Treasurer, State of Ohio", which check shall be delivered to Lyndia Jennings, Administrative Assistant, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

VII. STIPULATED PENALTIES

21. This paragraph is meant to coerce compliance. In the event that Defendant Ulery fails to meet any of the deadlines and requirements of Section IV of this Consent Order, Defendant Ulery shall pay a stipulated penalty for each failure according to the following payment schedule:

- (1) For each day of the first thirty (30) days that a deadline or requirement is not met, each failure to meet each deadline or requirement will be assessed a fine of Two Hundred Fifty Dollars (\$250.00) per day, per deadline or requirement not met;
- (2) If such failure to meet a deadline or requirement exceeds thirty days, between the thirty-first (31) and sixtieth (60) days a fine will be assessed of Five Hundred Dollars (\$500.00) per day for each deadline or requirement not met; and

- (3) If such failure to meet a deadline or requirement exceeds sixty days, starting at day sixty-one (61), a fine will be assessed of Seven Hundred Fifty Dollars (\$750.00) per day for each deadline or requirement not met.

22. Any payment for Stipulated Penalties required to be made under Section VII of this Consent Order shall be made by delivering to Lyndia Jennings, or her successor, at the address set forth in Section VI, within forty-five (45) days from the date of the failure to meet the requirement or deadline of the Consent Order, a certified check(s) for the appropriate amount(s), made payable to the "Treasurer, State of Ohio". Defendant Ulery shall also state in writing the specific failure of the Consent Order that was not complied with, and the date(s) of non-compliance. The payment of stipulated penalties by Defendant Ulery and the acceptance of such stipulated penalties by Plaintiff for specific violations under this Consent Order shall not be construed to limit Plaintiff's authority to seek judicial enforcement of this Consent Order.

VIII. TERMINATION OF STIPULATED PENALTIES

23. The provisions of this Consent Order, set forth in Section VII, requiring payment of stipulated penalties, may be terminated upon a demonstration by Defendant Ulery that: (1) he has completed the requirements outlined in Section IV of this Consent Order; and (2) he has paid all penalties required by this Consent Order.

24. Termination of the stipulated penalty section of this Consent Order shall only be obtained by order of the Court upon application by any party, and a demonstration that the conditions outlined above have been met.

IX. MISCELLANEOUS

25. Nothing in this Consent Order shall affect Defendant Ulery's obligation to comply with all applicable federal, state, and/or local laws, regulations, rules, and/or ordinances. Defendant Ulery shall obtain any and all federal, state, and local permits necessary to comply with this Consent Order.

26. Defendant Ulery shall inform the Ohio EPA of any change to his business address or telephone number.

X. RETENTION OF JURISDICTION

27. The Court will retain jurisdiction of this action for the purpose of enforcing and administering Defendant Ulery's compliance with this Consent Order.

XI. COURT COSTS

28. Defendant Ulery is hereby immediately ordered to pay the court costs of this action

XII. EFFECTIVE DATE AND TERMINATION

29. This Consent Order shall be effective upon the date of its entry by the Court. This Consent Order may be terminated by the Court upon demonstration that all of its requirements have been satisfied.

XIII. ENTRY, PUBLIC NOTICE AND FINAL JUDGMENT BY CLERK

30. The parties agree and acknowledge that final approval by Plaintiff and by Defendant Ulery, and entry of this Consent Order by the court, is subject to the requirements of 40 C.F.R. 123.27(d)(1)(iii), which requires public notice of the lodging of the Consent Order, opportunity for public comment, and the consideration of public

comments by the parties. Both Plaintiff and Defendant Ulery reserve the right to withdraw this Consent Order based upon comments received during the public comment period. Defendant Ulery shall pay the costs of public notice within thirty (30) days of receipt of a bill or notice from the State of Ohio.

31. 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 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.

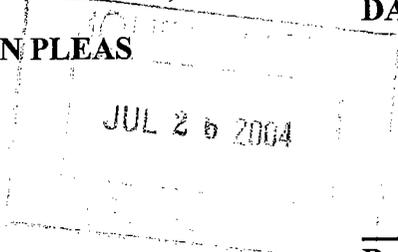
XIV. SIGNATORIES

32. Each of the undersigned representatives for the Parties represents that he/she is fully authorized to enter into the terms and conditions of this Consent Order and legally bind the respective Party to this document.

IT IS SO ORDERED.


**JUDGE O'NEILL,
COURT OF COMMON PLEAS
CLARK COUNTY**

7/23/04
DATE



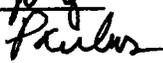
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CLARK COUNTY, OHIO

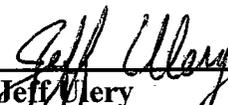
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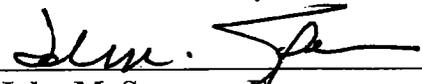
FILED

APPROVED:

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