

COMMON PLEAS COUR
MARION CO. OHIO

2003 MAY 2 AM 10: 5

JULIE M. KAGEL
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
MARION COUNTY, OHIO

STATE OF OHIO, *ex rel.*,
JIM PETRO
ATTORNEY GENERAL OF OHIO

CASE NO. 01-CV-0705
JUDGE RICHARD M. ROGERS

Plaintiff,

vs.

WILLIAM A. LAWRENCE, et al.

Defendants.

CONSENT ORDER AND FINAL JUDGMENT ENTRY

The Plaintiff State of Ohio, by its Attorney General (“Plaintiff” or “State of Ohio”) and Defendants William A. Lawrence, Lucille A. Lawrence, the Lawrence Family Trust and the Sunny Family LTD Partnership II (“Defendants Lawrence” or “Defendants”), hereby consent to the entry of this Consent Order in order to resolve the allegations in this matter as to Defendants Lawrence and pursuant to Chapters 6111 and 6109 of the Ohio Revised Code (“R.C.”).

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

I. DEFINITIONS

As used in this Consent Order:

“**Consent Order**” means this Consent Order and Final Judgment Entry.

“Contractor” means the individual(s) or company or companies retained by or on behalf of Defendants to undertake and complete the work required by this Consent Order.

“Defendants” means William A. Lawrence, Lucille A. Lawrence, the Lawrence Family Trust and the Sunny Family LTD Partnership II.

“Director” means Ohio's Director of Environmental Protection.

“Disposal System” means a system for disposing of sewage, sludge, sludge materials, industrial waste, or other wastes and includes sewerage systems and treatment works.

“Effective Date” means the date the Marion County Court of Common Pleas enters this Consent Order.

“Effluent” means sewage or other wastewater, treated or untreated, that flows out of a disposal system, treatment plant, sewer, or industrial outfall. Generally refers to wastewater discharged into surface waters.

“Effluent Limitation” means restrictions established by the State of Ohio in the NPDES permit on quantities, rates, and concentrations in wastewater discharges.

“Indian Trails Mobile Home Park” means the track of land located at 6605 Marion-Agosta Road, Marion, Marion County, Ohio upon which manufactured homes used for habitation are parked, either free of charge or for revenue purposes, and include any roadway, building, structure, vehicle or enclosure used or intended for use as a part of the facilities of the park.

“NPDES” means national pollutant discharge elimination system.

“NPDES permit” means the current national pollutant discharge elimination system permit and any renewals thereof.

“Ohio EPA” means Ohio Environmental Protection Agency.

“Plaintiff” means the State of Ohio by and through the Attorney General of Ohio.

“Public water system” means a system which provides water for human consumption through pipes or other constructed conveyances, in such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least

sixty days out of the year. Such term includes any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system, and any water supply system serving an agriculture labor camp, as defined in section 3733.41 of the Revised Code.

“Sewerage system” means pipelines or conduits, pumping stations, and force mains, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting water borne sewage, industrial waste, or other wastes to a point of disposal or treatment.

“Wastewater treatment plant” or **“WWTP”** means a facility containing a series of tanks, screens, filter, and other processes by which pollutants are removed from water.

II. JURISDICTION AND VENUE

1 The Court has jurisdiction over the Parties and the subject matter of this case pursuant to R.C. Chapters 6111 and 6109. The Complaint states a claim upon which relief can be granted against Defendants Lawrence and venue is proper in this Court.

III. PARTIES AND NOTICE OF SALE

2. The provisions of this Consent Order shall apply and be binding upon the Plaintiff and Defendants Lawrence, Defendants’ agents, officers, employees, assigns, successors in interest, buyers and any person acting in concert or privity with any of them. Defendants Lawrence shall provide a copy of this Consent Order to each contractor and consultant he employs to perform the work itemized herein. Defendants Lawrence shall require each general contractor to provide a copy of this Consent Order to each of its subcontractors for such work.

3. Defendants Lawrence shall give thirty (30) days notice to Ohio EPA before he sells the Indian Trails Mobile Home Park. In addition, Defendants Lawrence

shall provide a copy of this Consent Order to any subsequent owner(s) or successor(s) prior to the transfer of Defendants' ownership rights.

4. Defendants Lawrence shall inform the Ohio EPA of any change of its business addresses or telephone numbers.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

5. Defendants Lawrence have operated their Indian Trails Mobile Home Park wastewater treatment plant ("WWTP"), sewer system and Public Water System in such a manner as to result in violations of the requirements of the National Pollution Discharge Elimination System (NPDES) Permit issued to them by Ohio Director of Environmental Protection Agency and in violation of the water pollution and drinking water laws of the State of Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants Lawrence for all claims of violations alleged in the Complaint alleged against Defendants Lawrence, including the claims for injunctive relief and civil penalties.

6. Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against other appropriate persons for claims or conditions alleged in the Complaint. Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against any Defendants or other appropriate persons for claims or conditions not alleged in the Complaint, including violations which occur or continue after the filing of the Complaint, nor shall anything in this Consent Order limit the right of any Defendants to any defenses it may have for such claims. Similarly, nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to undertake any action against any Defendants, to

eliminate or mitigate conditions which may present a threat to the public health, welfare or the environment.

V. PERMANENT INJUNCTION

7. Defendants Lawrence are hereby permanently enjoined and immediately ordered to comply with the requirements of R.C. Chapter 6111 and the rules adopted thereunder. Defendants Lawrence shall properly operate and maintain the Indian Trails Mobile Home Park sewer system and any associated equipment and structures.

8. Defendants Lawrence are hereby enjoined and ordered to comply with all applicable provisions of R.C. Chapter 6109 and the rules adopted thereunder. Defendants Lawrence are further enjoined and ordered to begin the following within thirty 30 days of the effective date of this Consent Order:

Prepare and keep at their public water system, a written sample siting plan that complies with the criteria set in O.A.C. Chapter 3745-81 and O.A.C. Rule 3745-81-21.

VI. COMPLIANCE SCHEDULE

9. Defendants are enjoined and ordered to test the integrity of their collection system in accordance with the following schedule:

<u>Task</u>	<u>Compliance Date</u>
(a) Implement the following improvements to the collection system in accordance with the May 23, 2001 letter submitted by Roger Dietrich of Dietrich Utilities.	On or before October 1, 2003.
(1) Repair trailer connection for Lot #31.	
(2) Check sewer plugs in collector line in undeveloped area and reset as necessary.	

(3) Inspect main line interceptor manholes for I/I potential and repair.

(4) Smoke test sanitary line from Manhole 19 to Manhole 22 for potential leaking capped lateral connection and repair.

(b) After completion of Items (a)(1) through (a)(4), submit a report comparing water usage and wastewater flow to Ohio EPA at the address shown in Paragraph 10. Based upon this report, additional I/I removal may be required.

On or before July 1, 2004.

VII. REPORTING REQUIREMENT

10. Within twenty (20) days from the completion date of each task listed in Section VI, Defendants Lawrence are ordered to submit a written report stating whether they have performed the actions set forth therein to the following address:

Ohio EPA
Northwest District Office
Division of Surface Water
347 North Dunbridge Road
Bowling Green, Ohio 43402
Attn: Elizabeth Wick or her successor.

Any Permit to Install ("PTI") or NPDES permit application(s), revision(s) or other reporting and/or review requirements of Section VI requiring Ohio EPA approval, consent or acceptance shall be sent to the same address and individual listed above.

VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

11. Performance with the terms of this Consent Order by Defendants Lawrence is not conditioned on the receipt of any federal or state grant, loan or funds. In addition, Defendants' performance is not excused by the failure to obtain or shortfall of

any federal or state grant, loan or funds, or by the processing of any applications for the same.

IX. CIVIL PENALTY

12. Within thirty (30) days of the effective date of this Consent Order, it is hereby ordered that Defendants Lawrence shall pay to the State of Ohio a civil penalty of Ten Thousand Dollars (\$10,000.00) for violation of R.C. Chapter 6111. The civil penalty payment shall be paid by delivering a certified check for the appropriate amount, made payable to "Treasurer, State of Ohio," to Jena Suhadolnik, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215-3400.

13. Within forty-five (45) days of the effective date of this Partial Consent Order, it is hereby ordered that Defendants Lawrence shall pay to the State of Ohio a civil penalty of Twenty Thousand Dollars (\$20,000.00) for violation of R.C. Chapter 6109. The civil penalty payment shall be paid by delivering a certified check for the appropriate amount, made payable to "Treasurer, State of Ohio," to Jena Suhadolnik, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215-3400.

X. STIPULATED PENALTIES

14. In the event that Defendants Lawrence fail to comply with any requirement or deadline contained in Section VI of this Consent Order or any requirement or deadline contained in any document approved in accordance with this Consent Order, Defendants are liable for and shall pay stipulated penalties in accordance with the following schedule for each failure to comply:

- (a) For each day of each failure to comply with a requirement or deadline of this Consent Order, up to and including thirty (30) days -- Two Hundred Fifty Dollars (\$250.00) per day for each requirement or deadline not met.
- (b) For each day of each failure to comply with a requirement or deadline of this Consent Order, from thirty-one (31) to sixty (60) days -- Six Hundred Dollars (\$600.00) per day for each requirement or deadline not met.
- (c) For each day of each failure to comply with a requirement or deadline of this Consent Order, over sixty (60) days -- Eight Hundred Fifty Dollars (\$850.00) per day for each requirement or deadline not met.

15. If Defendants Lawrence fail to meet the requirements of Section IX, paragraph 12 and/or 13 of this Consent Order, Defendants Lawrence shall pay a stipulated penalty according to the following schedule:

- (1) For each day of each failure to meet a requirement of Section IX, paragraph 12 and/or 13 of this Consent Order up to thirty (30) days -- fifty dollars (\$50.00) per day per requirement not met;
- (2) For each day of each failure to meet a requirement of Section IX, paragraph 12 and/or 13 of this Consent Order from thirty-one (31) to sixty days (60) -- one hundred dollars (\$100.00) per day per requirement not met; and
- (3) For each day of each failure to meet a requirement of Section IX, paragraph 12 and/or 13 of this Consent Order over (61) days -- two hundred dollars (\$200.00) per day per requirement not met.

16. Any payment required to be made under the provisions of Section X of this Consent Order shall be made by delivering to Jena Suhadolnik, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad

Street, 25th Floor, Columbus, Ohio, 43215-3400, a certified check or checks, for the appropriate amounts within forty-five (45) days from the date of the failure to meet the requirement of this Consent Order, made payable to "Treasurer, State of Ohio." Defendants shall also state in writing the specific failure of the Consent Order and/or NPDES permit term and condition which was not complied with, and the date(s) of non-compliance. The payment of stipulated penalties by Defendants Lawrence and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to Section X shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order.

XI. MISCELLANEOUS

7. Nothing in this Consent Order shall affect Defendants' obligation to comply with all applicable federal, state or local law, regulation, rule or ordinance. Defendants Lawrence shall obtain any and all federal, state, or local permits necessary to comply with this Consent Order.

XII. POTENTIAL FORCE MAJEURE

18. If any event occurs which causes or may cause a delay in Defendants' compliance with any requirement of this Consent Order, Defendants Lawrence shall notify the Ohio EPA in writing within ten (10) days from when the Defendants knew, or by the exercise of due diligence should have known, of the event. The notification to Ohio EPA shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by the Defendants Lawrence to prevent or minimize the delay, and the timetable by which those measures will be

implemented. Defendants shall adopt all reasonable measures to avoid or minimize any such delay.

19 In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendants Lawrence may raise that they are entitled to a defense that their conduct was caused by reasons entirely beyond their control such as, by way of example and not limitations, acts of God, strikes, acts of war or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendants Lawrence and the Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time, if ever, that a court proceeding to enforce this Consent Order is commenced by the Plaintiff. At that time, Defendants Lawrence will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendants. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or a change in Defendants' financial circumstances, shall not constitute circumstances entirely beyond the control of Defendants Lawrence or serve as a basis for an extension of time under this Consent Order. Failure by Defendants to timely comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendants' right to request an extension of its obligations under this Consent Order based on such incident. An extension of one date based on a particular incident does not mean that Defendants Lawrence qualifies for an extension of a subsequent date or dates. Defendants must make an individual showing of proof regarding each incremental step or

other requirement for which an extension is sought. Acceptance of this Consent Order without a Force Majeure Clause does not constitute a waiver by Defendants of any rights or defenses it may have under applicable law.

XIII. RETENTION OF JURISDICTION

20. The Court will retain jurisdiction of this action for the purpose of administering or enforcing Defendants compliance with this Consent Order.

XIV. COSTS

21. Defendants Lawrence is hereby immediately ordered to pay the court costs of this action.

XV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

22. 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)(1)(iii), which provides for notice of the lodging of this Consent Order, opportunity for public comment, and the consideration of any public comment. The Plaintiff and Defendants reserve the right to withdraw consent to this Consent Order based on comments received during the public comment period. Defendants Lawrence shall pay the cost of publishing the public notice within thirty (30) days of receipt of a bill or notice from Ohio EPA.

23. 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 all 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.

XVI. AUTHORITY TO ENTER INTO THE CONSENT ORDER

24. Each signatory for a trust represents and warrants that he/she has been duly authorized as trustee and may sign this document and so bind the trust to all terms and conditions thereof and that he/she submits with this Consent Order an authenticated letter(s) of appointment from a probate court having jurisdiction of the subject matter of the trust.

TO THE CLERK: Pursuant to Civil Rule 58(B), the Clerk is directed to serve upon the parties a notice of the filing of this Judgment entry and of the date of entry upon the Journal.

IT IS SO ORDERED:

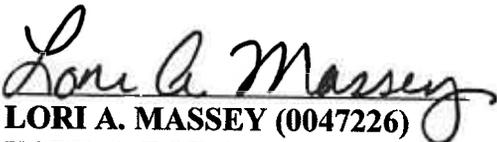
**RICHARD M. ROGERS, JUDGE
MARION COUNTY
COURT OF COMMON PLEAS**

DATE

APPROVED:

**JIM PETRO
ATTORNEY GENERAL OF OHIO**

By:



**LORI A. MASSEY (0047226)
TODD DeBOE (0072034)**
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400
Telephone: (614) 466-2766
Facsimile: (614) 644-1926/752-2441
E-Mail: lmasssey@ag.state.oh.us



WILLIAM A. LAWRENCE
in his individual capacity
1251 Cimmaron Road, Apt. 7
Las Vegas, Nevada 89117
Telephone: (702) 371-0632
Facsimile: (702) 838-1883

Attorneys for State of Ohio

LAWRENCE FAMILY TRUST

SUNNY FAMILY LTD PARTNERSHIP I I

By:



WILLIAM A. LAWRENCE

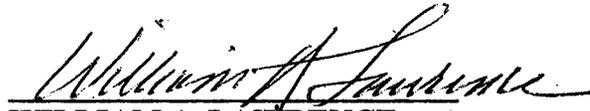
Trustee

1251 Cimmaron Road, Apt. 7

Las Vegas, Nevada 89117

Telephone: (702) 371-0632

Facsimile: (702) 838-1883



WILLIAM A. LAWRENCE

General Partner

1251 Cimmaron Road, Apt. 7

Las Vegas, Nevada 89117

Telephone: (702) 371-0632

Facsimile: (702) 838-1883