

IN THE COURT OF COMMON PLEAS  
CLARK COUNTY, OHIO

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

Plaintiff,

vs.

SPEEDWAY SUPERAMERICA LLC,

Defendant.

CASE NO.

JUDGE

CONSENT ORDER

06CV  
0830

The Plaintiff State of Ohio, by its Attorney General (hereinafter "Plaintiff" or "State of Ohio") and Defendant Speedway SuperAmerica LLC (hereinafter "Defendant"), hereby consent to the entry of this Consent Order in order to resolve the allegations in this matter and pursuant to Chapter 6111 of the Ohio Revised Code (hereinafter "RC").

**NOW THEREFORE**, without trial 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. JURISDICTION AND VENUE**

1. The Court has jurisdiction over the parties and the subject matter of this case pursuant to RC Chapter 6111. The Complaint states a claim upon which relief can be granted against the Defendant and venue is proper in this Court.

**II. PARTIES**

2. The provisions of this Consent Order shall apply and be binding upon the Plaintiff and Defendant, Defendant's agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them with respect to the matters addressed herein

or work to be performed in order to comply with this Consent Order. Defendant shall provide a copy of this Consent Order to each general contractor and consultant it employs to perform the work itemized herein. Defendant shall require each general contractor to provide a copy of this Consent Order to each of its subcontractors for such work.

### **III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS**

3. In its Complaint, Plaintiff alleges that Defendant has operated wastewater treatment works and/or oil-water separators at the following three facilities in such a manner as to result in violations of Ohio's water pollution laws in R.C. Chapter 6111 and the rules adopted under that Chapter: (1) Speedway SuperAmerica #3547, located at 7837 E. Lincoln Highway, Lima, OH 45801 (Allen County); (2) Speedway SuperAmerica #3065, located at 5639 U.S. Route 20 East, Bellevue, OH 44811 (Huron County); and (3) former Speedway SuperAmerica #5256, located at 8924 Lake Road, Seville, OH 44273 (Medina County). Defendant does not admit the allegations contained in the Complaint. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims and violations alleged in the Complaint, including any continuing violations through the date of entry of this Consent Order which are properly reported to Ohio EPA and identified by the State in the Complaint. Compliance with the terms of this Consent Order shall also constitute full satisfaction of any civil liability by Defendant for any violations of the terms of the NPDES permits for Speedway SuperAmerica #3547 and Speedway SuperAmerica #3065 occurring through the date of entry of this Consent Order which are properly reported to Ohio EPA.

4. Nothing in this Consent Order shall be construed 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 to limit the authority of the State

of Ohio to seek relief against Defendant or any other appropriate persons for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint. Similarly, nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to undertake any action against any person, including Defendant, to eliminate or mitigate conditions which may present a threat to the public health, welfare or the environment.

#### **IV. PERMANENT INJUNCTION**

5. Defendant is permanently enjoined and ordered to comply immediately with all provisions of RC Chapter 6111 and the rules promulgated under that chapter and the terms and conditions of the NPDES permits and other permits issued to Defendant by the Ohio EPA pursuant to RC Chapter 6111 and the rules promulgated under that chapter for the facilities addressed herein, which facilities are located at 7837 E. Lincoln Highway, Lima, Ohio 45801 and 5639 U.S. Route 20 East, Bellevue, Ohio 44811, except as specifically provided in paragraph 9 below.

#### **SPEEDWAY SUPERAMERICA #3065 5639 U.S. Route 20 East, Bellevue, OH 44811 (Huron County)**

6. Defendant is enjoined and ordered to achieve and maintain compliance with all terms and conditions of NPDES Permit No. 2PR00148 \*BD, or any renewal or modification thereof, including but not limited to the effluent limitations specified in Part I.A. of the NPDES permit.

**SPEEDWAY SUPERAMERICA #3547**  
**7837 E. Lincoln Highway, Lima, OH 45801 (Allen County)**

7. Defendant is enjoined and ordered to cease the generation of wastewater and abandon the wastewater treatment system at Speedway SuperAmerica #3547, located at 7837 E. Lincoln Highway, Lima, OH 45801 by no later than October 31, 2006. If Defendant is going to continue the operation of Speedway SuperAmerica #3547 after October 31, 2006, Defendant is enjoined and ordered to connect the facility's disposal systems to the Village of Beaverdam's sewer system in accordance with the terms and conditions of the PTI issued in response to application 55780 or such other PTI issued by the Director for the installation of the sewer line prior to continuing or resuming operations at Speedway SuperAmerica #3547 after October 31, 2006.

8. Defendant is enjoined and ordered to notify Ohio EPA in writing of its completion of the tasks referenced in Paragraph 7 above, within 10 days of completion of the task.

9. Until such time as Defendant completes the tasks in Paragraph 7 above, Defendant is enjoined and ordered to maintain in good working order and operate as efficiently as possible its wastewater treatment works at Speedway SuperAmerica #3547. Until such time as Defendant completes the tasks in Paragraph 7 above, Defendant is enjoined and ordered to comply with Part II and Part III of NPDES Permit 2PR00109\*AD, or any renewal or modification thereof, and all requirements of Part I of the NPDES permit except for the numeric effluent limitations for Nitrogen, Ammonia (NH<sub>3</sub>), CBOD 5 day, and Total Suspended Solids that are listed on page 2 in Part I, A, of the permit. With regard to these effluent limitations, Defendant is enjoined and ordered to meet the following effluent limits until such time as Defendant completes the tasks in Paragraph 7 above:

<u>Parameter</u>	<u>Concentrations (mg/l)</u>		<u>Loadings (kg/day)</u>	
	<u>Weekly</u>	<u>Monthly</u>	<u>Weekly</u>	<u>Monthly</u>
CBOD 5 Day	16.6	11.1	0.9	0.6
Total Suspended Solids	19.3	12.9	1.1	0.7
Nitrogen, Ammonia (May 1 through Oct. 31)	2.8	1.9	0.2	0.1
Nitrogen, Ammonia (Nov. 1 through Apr. 30)	33.2	22.1	1.9	1.3

With regard to these effluent limitations, Defendant shall sample for these parameters at the frequencies specified in Part I, A of NPDES Permit 2PR00109, and any renewal or modification thereof.

#### **V. REPORTING REQUIREMENT**

10. Any report or notification required to be sent to Ohio EPA under this Consent Order shall be sent to the following address:

Ohio EPA  
Northwest District Office  
347 N. Dunbridge Road  
Bowling Green, Ohio 43402-9398

#### **VI. CIVIL PENALTY**

11. Defendant is ordered and enjoined to pay a civil penalty of Eighty Thousand Dollars (\$80,000.00) within 30 days of entry of this Consent Order. The civil penalty shall be paid by delivering a certified check for the amount, made payable to "Treasurer, State of Ohio," to be delivered to Mark Lemmon, Paralegal, or his successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215-3400.

**VII. STIPULATED PENALTIES**

**SPEEDWAY SUPERAMERICA #3065  
5639 U.S. Route 20 East, Bellevue, OH 44811 (Huron County)**

12. If Defendant fails to meet any of the effluent limits of NPDES Permit No. 2PR00148\* BD, or any renewal or modification thereof, Defendant shall pay a stipulated penalty according to the following schedule:

- (a) For each failure to meet any effluent limitation, five hundred dollars (\$500.00) for each effluent limitation violation for each 30-day period during which such failure occurs;
- (b) For each second consecutive failure to meet any effluent limitation, one thousand dollars (\$1,000.00) for each consecutive effluent limitation violation for each 30-day period during which such consecutive failure occurs;
- (c) For each failure beyond the second consecutive failure to meet any effluent limitation, two thousand dollars (\$2,000.00) for each consecutive effluent limitation violation for each 30-day period during which such consecutive failure occurs.

The provisions of this paragraph shall apply to each effluent limitation of NPDES Permit No. 2PR00148\*BD, or any renewal or modification thereof. Any failure to monitor for any effluent limit at the frequencies required by NPDES Permit No. 2PR00148\*BD, or any renewal or modification thereof, shall count as a violation of that limit for purposes of this paragraph.

**SPEEDWAY SUPERAMERICA #3547  
7837 E. Lincoln Highway, Lima, OH 45801 (Allen County)**

13. In the event that the Defendant fails to timely meet any of the requirements set forth in Paragraph 7 of this Consent Order, Defendant shall pay a stipulated penalty according to the following schedule:

- (a) For each day of each failure to meet a requirement of paragraph 7 of this Consent Order up to thirty (30) days – two hundred dollars (\$200.00) per day per requirement not met;

(b) For each day of each failure to meet a requirement of paragraph 7 of this Consent Order from thirty-one (31) to sixty (60) days – five hundred dollars (\$500.00) per day per requirement not met;

(c) For each day of each failure to meet a requirement of paragraph 7 of this Consent Order over sixty (60) days – one thousand dollars (\$1,000.00) per day per requirement not met.

14. If Defendant fails to meet the numeric effluent limitations set forth in paragraph 9 above for Nitrogen, Ammonia (NH<sub>3</sub>), CBOD 5 day, and Total Suspended Solids or numeric effluent limitations for Dissolved Oxygen, Fecal Coliform, and Total Residual Chlorine that are listed on page 2 in Part I, A, of NPDES Permit No. 2PR00109\*AD, and any renewal or modification thereof, Defendant shall pay a stipulated penalty according to the following payment schedule:

- (a) For each failure to meet any effluent limitation, five hundred dollars (\$500.00) for each 30-day period during which each such failure occurs;
- (b) For each second consecutive failure to meet any effluent limitation, one thousand dollars (\$1,000.00) for each consecutive 30-day period during which each such consecutive failure occurs;
- (c) For each failure beyond the second consecutive failure to meet any effluent limitation, two thousand dollars (\$2,000.00) for each consecutive 30-day period during which each such consecutive failure occurs.

The provisions of this paragraph shall apply to each effluent limitation as either set forth in paragraph 9 above or set forth in of NPDES Permit No. 2PR00109\*AD, or any renewal or modification thereof, as applicable. Any failure to monitor for any effluent limit at the frequencies required by paragraph 9 above or NPDES Permit No. 2PR00109\*AD, or any

renewal or modification thereof, as applicable, shall count as a violation of that limit for purposes of this paragraph.

15. Any payment required to be made under the provisions of Section VII of this Consent Order shall be made by delivering to Mark Lemmon, Paralegal, or his successor, at the address set forth in Section VI, 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." Defendant shall also state in writing the specific provision of the Consent Order which was not complied with, and the date(s) of non-compliance. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to Section VII shall not be construed to relieve Defendant from specific compliance with this Consent Order and applicable federal and state law, nor shall it limit the authority of the State to require compliance with such laws or to seek judicial enforcement of this Consent Order.

### **VIII. TERMINATION OF STIPULATED PENALTIES**

16. Defendant may move the Court to terminate the stipulated penalty section (Section VII, paragraph 12) as it is applicable to violations of Defendant's NPDES permit(s) for store #3065 (paragraph 6) upon a demonstration by Defendant that: 1) it has paid all penalties required by this Consent Order; and 2) it has achieved and maintained compliance with all terms and conditions of its currently effective NPDES permit or any renewals or modifications thereof, for a period of 24 consecutive months from the entry of this Consent Order. Termination of the stipulated penalty section (Section VII, paragraph 12) as it is applicable to violations of Defendant's NPDES permit for store #3065 (paragraph 6) shall only be by order of the Court

upon motion by any party, and a demonstration that the conditions outlined in this paragraph have been met. Defendant may move the Court to terminate the stipulated penalty section (Section VII, paragraphs 13 and 14) as it is applicable to violations of paragraphs 7 and 9 of this consent order upon a demonstration by Defendant that: 1) it has paid all penalties required by this Consent Order; and 2) it has achieved and maintained compliance with all terms and conditions of its currently effective NPDES permit or any renewals or modifications thereof and paragraph 9 of this order for a period of 12 consecutive months from the entry of this Consent Order or that it has completed all actions needed to comply with the provisions of paragraph 7 of this consent order. Termination of the stipulated penalty section (Section VII, paragraphs 13 and 14) as it is applicable to violations related to Defendant's store #3547 shall only be by order of the Court upon motion by any party, and a demonstration that the conditions outlined in this paragraph have been met.

#### **IX. POTENTIAL FORCE MAJEURE**

17. If any event occurs which causes or may cause a delay in achieving compliance with any of the requirements of this Consent Order, including the failure to receive any state or local permit or authorization required to achieve compliance with paragraph 7 of this Consent Order, Defendant shall notify the Ohio EPA in writing within ten (10) days of the event or failure, describing 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 Defendant to prevent or minimize the delay and the timetable by which such measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

18. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendant may raise that it is entitled to a defense that its conduct was caused by reasons

entirely beyond its control such as, by way of example and not limitations, acts of God, strikes, acts of war or civil disturbances, or acts or omissions of a governmental or regulatory agency. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant 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 that an enforcement action, if any, is commenced by the Plaintiff. At that time, Defendant will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Defendant or serve as a basis for an extension of time under this Consent Order. Failure by Defendant to 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 Defendant's 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 Defendant qualifies for an extension of a subsequent date or dates. Defendant 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 with a Potential Force Majeure Clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

## **X. MISCELLANEOUS**

19. Nothing in this Consent Order shall affect Defendant's obligation to comply with all applicable federal, state or local laws, regulations, rules or ordinances. Defendant shall obtain any and all federal, state, or local permits necessary to comply with this Consent Order. This Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Approval for any such construction or modification shall be by permit issued by the Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations. This Consent Order does not limit Defendant's right to appeal any permit issued to Defendant pursuant to existing law.

20. Any acceptance by the State of Ohio of any payment, document, or other work due under this Consent Order subsequent to the time that the obligation is due under this Consent Order shall not relieve Defendant from the obligations created by this Consent Order, unless otherwise agreed to by the parties in writing.

21. Defendant shall inform the Ohio EPA of any change of its business addresses or telephone numbers.

## **XI. RETENTION OF JURISDICTION**

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

## **XII. COSTS**

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

**XIII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK**

24. The parties agree and acknowledge that final approval by the Plaintiff and Defendant, and entry of this Consent Order, is subject to the requirement of 40 C.F.R. §123.27 (d)(2)(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 Defendant reserve the right to withdraw consent to this Consent Order based on comments received during the public comment period. Defendant shall pay the cost of publishing the public notice within thirty (30) days of receipt of a bill or notice from Ohio EPA.

25. 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.

**XIV. SIGNATORIES**

26. 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  
CLARK COUNTY  
COURT OF COMMON PLEAS

10/26/06  
\_\_\_\_\_  
DATE

OCT 27 2006

APPROVED:

JIM PETRO  
ATTORNEY GENERAL

SPEEDWAY SUPERAMERICA LLC

By: 

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By: 

**James T. Morgan**  
**Vice President, Operations**  
*Authorized Representative of*  
*Defendant Speedway SuperAmerica LLC*

  
