

COMMON PLEAS COURT
MARION CO. OHIO

IN THE COURT OF COMMON PLEAS
MARION COUNTY, OHIO

STATE OF OHIO ex rel.
MIKE DEWINE,
OHIO ATTORNEY GENERAL,
Environmental Enforcement Section
30 East Broad St., 25th Floor
Columbus, Ohio 43215

Plaintiff,

v.

UNITED MOBILE HOMES, INC.,
d.b.a. WOOD VALLEY ESTATES
1493 North Whetstone River Road
Caledonia, Ohio 43314

Defendant.

CASE NO. 2010 CV 0543

JUDGE: Robert S. Davidson

CONSENT ORDER

Plaintiff, the State of Ohio, by and through its counsel Attorney General Mike DeWine, filed a Complaint against United Mobile Homes, Inc. itself and doing business as Wood Valley Estates, now known as UMH Properties, Inc., (hereinafter referred to as "Defendant") alleging violations of Ohio's Water Pollution Control laws, Ohio Revised Code (hereinafter "R.C.") Chapter 6111. The allegations relate to the disposal system as well as the treatment works owned and operated by the Defendant located at 1493 North Whetstone River Road, Caledonia, Marion County, Ohio 43314 (hereinafter "Wood Valley"). This Consent Order constitutes a resolution of disputed claims.

NOW THEREFORE, without the trial of any issue of fact or law, or any admission of violation of law or issued permits by Defendant, 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 both jurisdiction over the parties and the subject matter of this action pursuant to R.C. Chapter 6111. The Complaint states a claim upon which relief can be granted against the Defendant under R.C. 6111. 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 the Defendant, Defendant's agents, employees, assigns, successors in interest and any person acting in concert, privity or participation with Defendant.

3. Defendant shall provide a copy of this Consent Order to any lessee of the disposal system or treatment works or successor in interest, and each key employee, consultant or contractor employed to perform work referenced herein or operate the disposal system or treatment works.

III. SATISFACTION OF LAWSUIT

4. Plaintiff alleges in its Complaint that Defendant operates and has operated his treatment works and disposal system at Wood Valley in such a manner as to result in numerous violations of the discharge limitations and monitoring requirements of Defendant's National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit No. No.2PY00015*BD, in addition to, unauthorized discharges before Defendant's NPDES was issued in violation of Ohio's water pollution control laws, R.C. Chapter 6111, and the rules adopted thereunder. By execution hereof, Defendant does not admit liability for any alleged violation of R.C. Chapter 6111 or of its NPDES permit.

5. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims alleged in the State's Complaint.

IV. RESERVATION OF RIGHTS

6. Nothing in this Consent Order, including the imposition of stipulated civil penalties for violations of this Consent Order, shall limit the authority of the State of Ohio to:

(a) Seek any legal or equitable relief from Defendant or any other appropriate person for claims or conditions not alleged in the Complaint, including violations that occur after the filing of the Complaint;

(b) Seek any legal or equitable relief from Defendant or any other appropriate person for claims or conditions alleged in the Complaint that occur or exist on the date of or after the entry of this Consent Order;

(c) Enforce this Consent Order through a contempt action or otherwise seek relief for violations of this Consent Order;

(d) Take any action authorized by law against any appropriate person, including Defendant, to eliminate or mitigate conditions at the disposal system at Wood Valley that may present a threat to the public health or welfare, or the environment; and/or,

(e) Bring any legal or equitable action against any appropriate person other than Defendant or Defendant's agents or employees or affiliated persons, for any violation of applicable laws. For the purposes of this Consent Order, and in particular the provisions of this Paragraph, the term "person" includes: an individual, corporation, business trust, estate, trust, partnership, association, municipal corporation, interstate body created by compact, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.

V. PERMANENT INJUNCTION

7. Defendant is permanently enjoined and ordered to comply with all applicable provisions of R.C. Chapter 6111 and the rules promulgated under that chapter.

8. Defendant is enjoined and ordered to comply with all terms and conditions of NPDES Permit Nos. No.2PY00015*BD and any renewals and modifications thereof.

VI. CIVIL PENALTY

9. Defendant shall pay to the State of Ohio a civil penalty of forty thousand dollars (\$40,000.00) for violations of Ohio's water pollution control laws (ORC Chapter 6111). Defendant shall also reimburse the agency for enforcement costs in the amount of ten thousand dollars (\$10,000.00). Both amounts shall be paid by delivering to Karen Pierson, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, within thirty (30) days from the date of entry of this Consent Order, a certified check for the amount stated above, payable to the order of "Treasurer, State of Ohio."

VII. STIPULATED PENALTIES

10. If Defendant fails to meet any of the daily effluent limits of any of its NPDES Permits, the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

- (a) For each day of each failure to comply with a requirement or meet a deadline from one (1) day to thirty (30) days – one hundred dollars (\$100.00) per day per requirement not met;
- (b) For each day of each failure to comply with a requirement or meet a deadline from thirty-one (31) days to sixty (60) days – two hundred dollars (\$200.00) per day per requirement not met;

- (c) For each day of each failure to comply with a requirement or meet a deadline over sixty-one (61) days to ninety (90) days – three hundred dollars (\$300.00) per day per requirement not met;
- (d) For each day of each failure to comply with a requirement or meet a deadline over ninety (90) days – five hundred dollars (\$500.00) per day per requirement not met.

11. For the purpose of calculating stipulated penalties under the provisions of this paragraph, each 30-day period of violation of a specific 30-day average effluent limitation shall be calculated as a single violation. If Defendant fails to meet any of the 30-day average effluent limits of any of its NPDES Permits, the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

- (a) For each failure to meet any 30-day average effluent limitation, two hundred fifty dollars (\$250.00) for each 30-day period during which each such failure occurs;
- (b) For each second failure to meet any 30-day average effluent limitation, five hundred dollars (\$500.00) for each 30-day period during which each such consecutive failure occurs;
- (c) For each third failure to meet any 30-day average effluent limitation, one thousand dollars (\$1,000.00) for each 30-day period during which each such consecutive failure occurs;
- (d) For each failure beyond the third failure to meet any 30-day average effluent limitation, twelve thousand five hundred dollars (\$12,500.00) for each 30-day period which each such failure occurs.

12. Defendant shall submit with each monthly discharge monitoring report a supporting statement explaining the basis, and corrective action taken, for any excession of the applicable effluent limitations. Within forty-five (45) days of submission of the discharge monitoring report and supporting statement, Plaintiff may demand payment of a penalty in accordance with the terms of this Consent Order. If Defendant does not dispute Plaintiff's demand, payments shall be made as provided in paragraph 14, below. If a dispute arises as to

whether there has been an effluent limitation exceedance that constitutes a violation of the NPDES permit, the dispute shall be resolved in accordance with the provisions of paragraph 14 hereof. Any payment of stipulated penalties for disputed exceedances shall be stayed pending resolution as provided below. Any payment required to be made under this paragraph shall be made by delivering to Karen Pierson, or her successor, at the address set forth in Section VIII, paragraph 9, a certified check or checks for the appropriate amounts, made payable to "Treasurer, State of Ohio." Further, payment by Defendants shall not be considered an admission of liability on the part of Defendants.

13. Payments required by paragraph 12 shall be paid by delivering a certified check payable to "Treasurer, State of Ohio," to Karen Pierson, Environmental Enforcement Section, Ohio Attorney General's Office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, along with a letter summarizing the violations for which the penalty is paid. The payment of stipulated penalties by Defendant and the acceptance of each stipulation for specific violations pursuant to the section shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order.

14. Any disputes arising under this Consent Order shall be resolved in accordance with the following procedure:

- (a) If Defendant disputes any notice from Plaintiff or Ohio EPA of effluent limitation violation, notice of disapproval, or requirement made pursuant to this Order, Defendant shall notify Plaintiff and Ohio EPA in writing of its objections within twenty-one (21) days of the receipt of the notice of violation, notice of disapproval, or requirement. Defendant's written objections shall define the

dispute, state the basis of Defendant's objections, and be sent certified mail, return receipt requested. The parties then have an additional twenty-one (21) days to reach agreement, unless the parties mutually agree to a longer period. If an agreement is not reached within twenty-one (21) days, Defendant may request a determination by the Ohio EPA Director's Office. The Director's determination is Ohio EPA's final decision. Defendant shall have the right within fifteen (15) days of the Director's determination to petition the Court for a final determination of the dispute, which judicial determination shall be final and unappealable.

- (b) Defendant is not automatically relieved of its obligations under this Consent Order while a matter is pending in dispute resolution. The invocation of dispute resolution does not automatically stay stipulated penalties under this Consent Order. Plaintiff and Ohio EPA, however, retain authority to suspend or alter the applicable schedule during the dispute resolution process, and also retain authority to waive recovery of stipulated penalties, where appropriate. any penalties alleged shall be lodged with the Court by Defendant pending final resolution.

VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

- 15. Performance of the terms of this Consent Order by Defendant is not conditioned on the receipt of any Federal or State grants, loans and/or funds. In addition, Defendant's

performance is not excused by the failure to obtain or any shortfall of any Federal or State grants, loans and/or funds or by the processing of any applications for the same.

16. 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, or the modification of any existing public water system or distribution system. Approval for any such construction or modification shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

X. MISCELLANEOUS

17. Nothing in this Consent Order shall affect Defendant's obligation to comply with all applicable federal, state or local laws, regulations, rules or ordinances.

18. Any acceptance by the State of Ohio of any payment, document or other work due hereunder 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.

19. Defendant shall inform the Ohio EPA of any change of its business address or telephone numbers, or the cessation of the business that is the subject of this action.

XI. CONTINUING JURISDICTION

20. This Court shall retain jurisdiction over this action for a period of one year after the date of entry for the purpose of enforcing and administering Defendant's compliance with this Consent Order. Thereafter, the provisions of Article V and VII of this Consent Order shall lapse and be of no effect.

XII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

21. The parties agree and acknowledge that final approval by the Plaintiff and the Defendant and entry of this Consent Order is subject to the requirements of 40 C.F.R. 123(d)(1)(iii), which provides for notice of the lodging of the Consent Order, opportunity for public comment, and the consideration of any public comments. Both the State of Ohio and the Defendant reserve the right to withdraw this Consent Order based on comments received during the public comment period.

22. 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.

IT IS SO ORDERED.

9/13/11
DATE

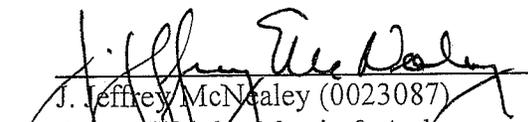


JUDGE DAVIDSON, COURT OF COMMON
PLEAS, MARION COUNTY, OHIO

APPROVED:
MIKE DEWINE,
OHIO ATTORNEY GENERAL



L. Scott Helkowski (0068622)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
Telephone: (614) 466-2766
Facsimile: (614) 644-1926



J. Jeffrey McNealey (0023087)
Potter, Wright, Morris & Arthur
41 South High Street
Columbus, Ohio 43215
Telephone: (614) 227-2074
Facsimile: (614) 227-4522
Counsel for Defendant United Mobile
Homes, Inc. now known as UMH
Properties, Inc.

Counsel for Plaintiff State of Ohio

UNITED MOBILE HOMES, INC., now known
as UMH Properties, Inc.

By: *all Nagel*

Its *General Counsel*

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