FILED
LORAIN COUNTY
2022 DEC 16 P 1:58
COURT OF COMMON PLEAS
TOM ORLANDO

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

STATE OF OHIO, ex rel.	:	**CASE NO. 20CV201576**
DAVE YOST	:	
OHIO ATTORNEY GENERAL,	:	**HON. RAYMOND J. EWERS**
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
LAWRENCE DOVE	:	
dba DOVE MANUFACTURING, INC., et al.,	:	
	:	
Defendants.	:	

CONSENT ORDER FOR PERMANENT INJUNCTION AND CIVIL PENALTIES AGAINST DEFENDANTS DMACK REALTY, LLC, DONALD MCMAHAN, AND LYNN MCMAHAN

The State of Ohio, by its Attorney General ("Plaintiff"/"the State") and at the written request of the Director of the Ohio Environmental Protection Agency ("the Director"), has filed a Complaint against Defendants DMACK Realty, LLC; Donald McMahan; and Lynn McMahan ("the McMahan Defendants"), as well as other defendants not party to this Consent Order. The Complaint seeks injunctive relief and civil penalties against the McMahan Defendants for alleged violations of Ohio's hazardous waste laws under R.C. Chapter 3734 and the rules adopted under that Chapter, arising from the McMahan Defendants' ownership of an alleged unpermitted hazardous waste storage and disposal facility at a 3.6-acre parcel of property at 27100 Royalton

Road, Columbia Station, Lorain County, Ohio 44028. The Complaint also seeks injunctive relief and civil penalties against the McMahan Defendants for alleged air pollution violations under R.C. 3704 arising from open-burning violations. The McMahan Defendants and the State of Ohio have consented to the entry of this Order.

During resolution of the State's claims with the McMahan Defendants, the McMahan Defendants conducted remedial work at the Site to address any soil contamination. Based upon the work conducted by the Defendants, including soil sampling, the Parties have agreed no further work at the Site is necessary. Paragraph 15 of the Consent Order requires the McMahan Defendants to prepare and record an environmental covenant under Ohio Revised Code Section 5301.80 through 5301.92 that restricts future use of the Site and implements a groundwater restriction. The McMahan Defendants' full compliance with Paragraph 15 of the Consent Order shall be deemed to be full compliance with the closure performance standard, as defined in Ohio Adm. Code 3745-55-11(A) and (B). At the time of the Effective Date, the State is not currently aware of any basis for further civil enforcement under R.C. Chapter 3734 or R.C. Chapter 3704 against the McMahan Defendants for conduct or omissions at the Site.

Therefore, without trial, admission, or determination of any issue of fact or law and with the consent of the Parties hereto, it is ORDERED, ADJUDGED, AND DECREED:

I. Definitions

1. As used in this Order, the following terms are defined:

   a. "Director" means the Director of the Ohio Environmental Protection Agency ("Ohio EPA") or the Director's designee.

   b. "Effective Date" means the date the Court signs this Order.

   c. "Environmental Covenant" shall be defined according to Ohio Revised Code

5301.80(D) and consistent with Ohio Revised Code 5301.80–5301.92.

d. "Parties" means Plaintiff, the State of Ohio, and the McMahan Defendants, DMACK Realty, LLC; Donald McMahan; and Lynn McMahan.

e. "Person" means an individual, public or private corporation, business trust, estate, trust, partnership, association, federal government or any agency thereof, municipal corporation or any agency thereof, political subdivision or any agency thereof, public agency, interstate body created by compact, any other entity, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.

f. "Site" means any portion of the property located at 27100 Royalton Road, Columbia Station, Lorain County, Ohio 44028, parcel number 1200085000012.

g. "State" means Plaintiff State of Ohio, by and through its Attorney General, Dave Yost, at the written request of the Director of Environmental Protection.

h. "Order" refers to this Order.

i. "Written" means a paper copy or a saved, stored, or transmitted electronic copy.

II. Jurisdiction and Venue

2. This Court has jurisdiction over the Parties and the subject matter of this action under R.C. Chapters 3704 and 3734. The Complaint states a claim upon which relief can be granted. Venue is proper in this Court. The McMahan Defendants shall not challenge the Court's jurisdiction to enter or enforce this Order.

III. Parties Bound

3. Defendant DMACK Realty, LLC is an Ohio limited liability company organized by Lynn McMahan. Defendant DMACK Realty, LLC's statutory agent is Lynn McMahan, and DMACK

Realty, LLC's articles of organization list Lynn McMahan's mailing address as 9515 Memphis Avenue, Brooklyn, Ohio 44144.

4. Defendant Donald McMahan is an Ohio resident whose mailing address is 9515 Memphis Avenue, Brooklyn, Ohio 44144.

5. Defendant Lynn McMahan is an Ohio resident whose mailing address is 9515 Memphis Avenue, Brooklyn, Ohio 44144.

6. This Order shall apply to and be binding only upon the McMahan Defendants, and, to the extent consistent with Civ. R. 65(D), on their agents, officers, employees, contractors, assigns, successors in interest, and those persons acting in concert, privity, or participation with the McMahan Defendants who receive actual notice of this Order whether by personal service, by public record filed in the county land record, or otherwise. The McMahan Defendants shall provide a copy of this Order to any successor in interest and to each key employee, consultant, or contractor employed to perform work referenced herein or to operate the Site.

7. This Order is in settlement and compromise of disputed claims, and nothing in this Order is to be construed as an admission of any facts or liability.

IV. Satisfaction of Lawsuit and Reservation of Rights

8. The Plaintiff alleges that the McMahan Defendants are responsible for violations of the hazardous waste laws of the State of Ohio under R.C. Chapter 3734 and for violations of the air pollution laws of the State of Ohio under R.C. Chapter 3704. The McMahan Defendants deny all such allegations. Compliance with this Order shall constitute full satisfaction of any civil liability of the McMahan Defendants to Plaintiff for the claims alleged in Plaintiff's Complaint.

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

a. Seek any legal or equitable relief or civil penalties from the McMahan Defendants or any other appropriate person for any claims or violations not alleged in the Complaint;

b. Seek any legal or equitable relief or civil penalties from the McMahan Defendants or any other appropriate person for claims, conditions, or violations that occur on or exist after the entry of this Order;

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

d. Take any future legal or equitable action against any appropriate person, including the McMahan Defendants, to eliminate or mitigate conditions at the Site that may present a threat to public health or welfare or to the environment in derogation of applicable laws and rules, which the State of Ohio has the authority to enforce; and/or,

e. Bring any action against the McMahan Defendants or against any other person, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. 9601, et seq. and/or Revised Code 3734.20 through 3734.27 to: (1) recover natural resource damages, and/or (2) order the performance of, and/or recover costs for any removal, remedial or corrective activities not conducted pursuant to the terms of this Order, for any claims or violations not alleged in the Complaint, and/or for claims, conditions, or violations that occur after the entry of this Order.

10. This Order does not waive, abridge, settle, compromise, or otherwise impact any other claims in law or equity that the State of Ohio or other persons may have against the McMahan Defendants for any claims or violations not alleged in the Complaint, and/or for claims, conditions, or violations that occur after the entry of this Order.

11. Except for the signatories to the Order, nothing in this Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged, against any person not a signatory to this Order for any liability such non-signatory may have arising out of matters alleged in the Complaint. The State of Ohio also specifically reserves its right to sue any entity that is not a signatory to this Order.

12. Nothing in this Order shall relieve the McMahan Defendants of their obligations to comply with applicable federal, state, or local statutes, regulations, rules, or ordinances.

13. Nothing herein shall restrict the right of the McMahan Defendants to raise any administrative, legal, or equitable defense with respect to such further actions reserved by the State in this Section. However, with respect to the actions reserved by the State in this Section, the McMahan Defendants shall not assert and/or maintain, any defense or claim of waiver, res judicata, collateral estoppel, issue preclusion, claim splitting, or other defenses based on any contention that Plaintiff's claims in any subsequent judicial or administrative proceeding could or should have been brought in this case.

14. The McMahan Defendants agree that each is jointly and severally liable for the obligations and requirements in this Order.

V. Permanent Injunction

15. The McMahan Defendants are ordered and enjoined to:

a. File an Environmental Covenant for the Site with the Lorain County Recorder's Office within thirty (30) days of the Effective Date. The environmental covenant shall be recorded in the official records of the Lorain County Recorder pursuant to R.C. 5301.82.

b. Submit to Ohio EPA a file and date-stamped copy of the Environmental Covenant within thirty (30) days of recording the Environmental Covenant with the Lorain County

Recorder's Office. If any McMahan Defendant conveys an interest in the Site, each deed, title, or other instrument shall contain a reference to the recorded Environmental Covenant.

VI. Civil Penalty

16. Under R.C. 3734.13, the McMahan Defendants are ordered to jointly and severally pay a civil penalty of $10,000.00, subject to the provisions in the Section. Full payment shall be made within thirty (30) days of entering this Order. Such payment shall be made by delivering to Sandra Finan, Paralegal, or her successor, Office of the Attorney General, 30 E. Broad St., 25th Floor, Columbus, Ohio 43215, a certified check or checks for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

17. If full payment of the civil penalty and any other amount due under this Consent Order is not received by the State in accordance with the terms of this Consent Order, the remaining unpaid balance of the total civil penalty and any other amount due, plus applicable interest under R.C. 131.02(D), shall become immediately due and owing. The remaining unpaid balance and any delinquent payments shall accrue interest at the rate per annum required by R.C. 5703.47 calculated from the Effective Date of this Order.

18. If any amount is not paid in accordance with the terms of this Consent Order, the Attorney General may collect that amount under R.C. 131.02. Pursuant to R.C. 109.081, in addition to the outstanding balance due under this Consent Order, collection costs of ten percent shall be owing and fully recoverable from the McMahan Defendants to be paid into the State Treasury to the credit of the Attorney General Claims Fund.

19. The State reserves the right to file a certificate of judgment lien against the McMahan Defendants for the remaining unpaid balance of their respective civil penalty, plus applicable statutory interest and collection costs, if the full civil penalty payment is not paid according to the

schedule in this Order. The McMahan Defendants shall not be permitted to claim a force majeure as an excuse for any untimely payment or partial payment of an amount less than the full civil penalty as specified in this Order.

20. If any of the McMahan Defendants file a petition for bankruptcy, the State of Ohio reserves the right to file a certificate of judgment lien against the other, non-filing McMahan defendant(s), for the remaining unpaid balance of the total civil penalty, plus applicable statutory interest.

21. On December 1, 2022 a check for $10,000.00 was received by the Ohio Attorney General's Office. This satisfies the civil penalty requirement.

VII. Stipulated Penalties

22. If the McMahan Defendants fail to comply with any of the requirements of this Order, the McMahan Defendants shall immediately and automatically be jointly and severally liable for stipulated penalties and shall pay stipulated penalties under the following schedule for each failure to comply:

a. The McMahan Defendants shall pay one hundred dollars ($100.00) per day for each day any requirement of this Order is violated up to the first thirty (30) days of violation;

b. For each day any requirement of this Order is violated between thirty (30) days and ninety (90) days of violation, the McMahan Defendants shall pay two hundred dollars ($200.00) per day;

c. For each day any requirement of this Order is violated greater than ninety (90) days of violation, the McMahan Defendants shall pay three hundred dollars ($300.00) per day.

23. Stipulated penalties due under this Order shall be immediately due and owing without demand by the State and shall be paid by check or money order, payable to "Treasurer, State of Ohio" and delivered to Sandra Finan, Paralegal, or her successor at the Office of the Ohio Attorney

General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

24. The McMahan Defendants' payment and Plaintiff's acceptance of such stipulated penalties under this Section shall not be construed to limit Plaintiff's authority, without exception, to seek: 1) additional relief under R.C. Chapter 3734 including civil penalties under R.C. 3734.13; 2) judicial enforcement of this Order for the same violations for which a stipulated penalty was paid; or 3) sanctions for additional remedies, civil, criminal, or administrative, for violations of applicable laws. Further, payment of stipulated penalties by the McMahan Defendants shall not be an admission of liability by the McMahan Defendants.

VIII. Compliance Not Dependent on Grants or Loans

25. Performance of the terms of this Order by the McMahan Defendants is not conditioned on the receipt of any private, Federal or State grants, loans, and/or funds. In addition, the McMahan Defendants' performance is not excused by failing to obtain or any shortfall of any private, Federal or State grants, loans and/or funds or by the processing of any applications for the same.

IX. Site Access

26. Nothing in this Order shall be construed to limit the statutory authority of the Director or the Director's authorized representatives to enter at reasonable times upon the Site in order to inspect, investigate, obtain samples and examine or copy any records to determine compliance with R.C. Chapter 3734.

X. Submittal of Documents

26. All documents required to be submitted to Ohio EPA pursuant to this Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate

in writing:

Ohio EPA
Division of Environmental Response and Revitalization,
Hazardous Waste Program – Compliance Assurance Section
P.O. Box 1049
Columbus, Ohio 43216
Attn: Hazardous Waste Program Compliance Manager
Erik.Hagen@epa.ohio.gov

Ohio EPA
Northeast District Office
Division of Emergency Response and Revitalization,
Hazardous Waste Program
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: Hazardous Waste Program Manager
Natalie.Oryshkewych@epa.ohio.gov

XI. Effect of Order

27. This Order does not constitute authorization or approval of the construction, installation, modification, or operation of any hazardous waste facility, or any building, structure, facility, facility component, operation, installation, disposal or storage site, other physical facility, or real or personal property that stores, discharges, or otherwise manages hazardous waste not previously approved by Ohio EPA. Approval for any such construction, installation, modification, or operation 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.

XII. Modification

28. No modification shall be made to this Order without the written agreement of the Parties filed with the Court.

XIII. Miscellaneous

29. Nothing in this Order shall affect the McMahan Defendants' obligation to comply with

all applicable federal, state or local laws, regulations, rules, ordinances, or orders.

30. Any acceptance by the State of Ohio of any payment, document, or other work due subsequent to the time that the obligation is due under this Order shall not relieve the McMahan Defendants from the obligations created by this Order.

31. Defendant DMACK Realty, LLC shall inform the Ohio Secretary of State of any change in its Registered Agents' address and business addresses or telephone numbers, or the cessation of the business that is the subject of this action.

XIV. Retention of Jurisdiction

32. This Court shall retain jurisdiction for the purpose of administering and enforcing this Order.

XV. Entry of Order and Final Judgment by Clerk

33. Under Rule 58 of the Ohio Rules of Civil Procedure, upon signing this Order by the Court, the Clerk is directed to enter it upon the journal. Within three days of entering the judgment upon the journal, the Clerk is directed to serve upon all Parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Civ.R. 5(B) and note the service in the appearance docket. The failure of the Clerk to serve notice does not affect the validity of this Order.

XVI. Court Costs

34. The McMahan Defendants are ordered to pay 50% of all court costs as of the Effective Date.

XVII. Authority to Enter Into the Order

35. Each signatory represents and warrants that he or she has been duly authorized to sign this document and is fully authorized to agree to its terms and conditions, and, in the case of a person signing on behalf of a corporate entity, may so legally bind the corporate entity to all terms and

conditions in this document. By signing this Order, each signatory waives all rights of service of process for the underlying Complaint.

IT IS SO ORDERED.

JUDGE

12-16-22
DATE

APPROVED AND AGREED TO BY:

DMACK REALTY, LLC

DONALD MCMAHAN

LYNN MCMAHAN

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