

**IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO**

**STATE OF OHIO ex rel.
MICHAEL DeWINE
OHIO ATTORNEY GENERAL**

Plaintiff,

v.

**BROAD MEADOW ESTATES
PHASE I, LLC, et al.,**

Defendants.

Case No. 2011 CV 1033

Judge Logan

CORRECTED CONSENT ORDER

Plaintiff, the State of Ohio ("Plaintiff"/"State"), by and through its counsel Attorney General Michael DeWine, filed a Complaint against Defendant Broad Meadow Estates Phase I, LLC ("Defendant Broad Meadow"), and Lawrence Robinson, Sr. ("Defendant Robinson", collectively "Defendants"), alleging violations of Ohio's Water Pollution Control laws, Ohio Revised Code ("R.C.") Chapter 6111 occurring at the Broad Meadow Estates ("the Site"), which is a piece of property approximately 22 acres in size located on McCleary-Jacoby Road, west of the State Route 46 intersection, in Bazetta Township, Trumbull County, Ohio ("the Property"), and which was owned or operated by Defendants at all times relevant to the Complaint. Defendants filed a third party Complaint against contractors Silver Oak Engineering Co., Bernard G. Petro, and Jason A. Paris and J.S. Paris Excavating Inc., (collectively "Third-Party Defendants"). This Consent Order constitutes a resolution of all disputed claims in the Complaint and the Third-Party Complaint.

NOW THEREFORE, without the trial of any issue of fact or law, 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 both 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 Defendants and Third-Party Defendants under R.C. Chapter 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 Defendants and Third-Party Defendants, their agents, employees, assigns, successors in interest and any person acting in concert, privity or participation with Defendants and/or Third-Party Defendants. Defendants and Third-Party Defendants shall provide a copy of this Consent Order to each general contractor and/or consultant employed to perform work itemized herein.

III. SATISFACTION OF LAWSUIT

3. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants and Third-Party Defendants for all claims alleged in the State's Complaint and in the Third Party Complaint.

IV. RESERVATION OF RIGHTS

4. Nothing in this Consent Order, including the imposition of 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 Defendants, Third-Party Defendants or any other appropriate person for claims or conditions not alleged in the Complaint, including violations that occur after the filing of the Complaint. Notwithstanding the preceding Section, Plaintiff acknowledges the allegations in the Complaint allege all believed conditions and/or violations related to the Site;
- (b) Seek any legal or equitable relief from Defendants, 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, to the extent that those claims or conditions are not addressed by 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 Defendants, or Third-Party Defendants, to eliminate or mitigate conditions at the Site that may present a threat to the public health or welfare, or the environment in derogation of applicable laws and regulations, for which Ohio EPA has the authority to enforce; and/or,
- (e) Bring any legal or equitable action against any appropriate person other than Defendants or Third-Party Defendants 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. INJUNCTION AND COMPLIANCE

5. Defendants are permanently enjoined and ordered to comply immediately with all applicable provisions of R.C. Chapter 6111 and the rules promulgated under that Chapter, except as otherwise provided in this Consent Order.

6. Defendants are permanently enjoined and ordered to comply immediately with the 2008 General Permit as well as any renewals or modifications of the 2008 General Permit that are applicable to the Site.

7. Prior to commencing construction on the Site, Defendants, must submit to Ohio EPA, Northeast District Office, Division of Surface Water (ATTN: Chris Moody), 2110 East Aurora Road, Twinsburg, Ohio 44087 a complete and approvable Stormwater Pollution Prevention Plan (“SWPPP”) for the Site that satisfies the requirements of the 2008 General Permit and/or any other applicable state or federal permits.

8. Defendants are ordered to retain a copy of the approved SWPPP at the Site, until final stabilization is complete in all disturbed areas of the Site, as “final stabilization” is defined by the 2008 General Permit and/or any other applicable state or federal permit.

9. Defendants are enjoined to submit a wetland delineation report from a reputable consultant listed by the U.S. Army Corps of Engineers Office prior to any on-site disturbance.

10. Defendants are enjoined, prior to impacting any water resources on site, to submit to Ohio EPA a jurisdictional determination made by the Pittsburgh District Army Corps of Engineers, along with a proposed site development plan.

11. Prior to engaging in construction activity on the Site, Defendants are ordered to obtain all necessary federal and State permits.

VI. CIVIL PENALTY

12. Defendants and/or Third Party Defendants, jointly and severally, agree to pay a civil penalty totaling **twenty eight thousand dollars (\$28,000.00)** to the State of Ohio as follows:

- (a) By no later than **ninety (90) days** following the entry of this Consent Order, Defendants and/or Third Party Defendants shall pay the first installment of **twenty three thousand dollars (\$23,000.00)**. Third Party Defendants Silver Oak Engineering Co., Bernard Petro, Jason A. Paris, and Jason A. Paris Excavating agree to pay the first installment of twenty three thousand dollars (\$23,000.00).
- (b) Defendants agree to the placement of a judgment lien in the amount of five thousand dollars (\$5,000.00) against the following parcels currently owned by Defendant Broad Meadow Estates:

33-033441, 33-054205, 33-054210, 33-075910, 33-076496, 33-076497, 33-076498, 33-076499, 33-076500, 33-076501, 33-076502, 33-076503, 33-076504, 33-076505, 38-198500, 38-439900, 39-033135, 39-058435 and 39-339850
- (c) If Defendants refinance the parcels identified in Paragraph 10(b) above, the State's lien in Paragraph 10(b) shall be subordinate to the refinanced mortgage provided that Defendants receive no cash back as a result of the refinancing activities and the amount of equity that Defendants have in the property shall not decrease and the language that appears in Attachment A shall be included in the refinanced mortgage;
- (d) If Defendants enter into a contract to sell or otherwise transfer any of the parcels identified in Paragraph 10(b) above, Defendants shall provide Plaintiff with fifteen (15) days' notice of the closing of such sale or transfer and shall use the proceeds from the sale or transfer of such parcels to

satisfy the five thousand dollar (\$5,000.00) judgment lien in paragraph 10(b) above;

- (e) If Defendants have not sold or otherwise transferred the parcels identified in Paragraph 10(b) above and satisfied the lien, as described in Paragraphs 10(b) and (d), Defendants shall pay any amounts of the civil penalty described in Paragraph 10(b) within four (4) years following the entry of this Consent Order.

13. Penalty payments shall be made by a certified check for the amount as stated above, payable to the order of "Treasurer, State of Ohio" and delivered to Martha Sexton or her successor, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

14. If Defendants miss any of the scheduled payments as set forth in Paragraph 12, above, payment as well as interest as set forth in R.C. 5703.47 accruing from the date of entry of this Consent Order, shall become due and owing immediately.

VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

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

IX. MISCELLANEOUS

16. Nothing in this Consent Order shall affect Defendants' and/or Third-Party Defendants' obligation to comply with all applicable federal, state or local laws, regulations, rules or ordinances.

17. 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 Defendants and/or Third-Party Defendants from the obligations created by this Consent Order.

18. Defendants shall inform the Ohio EPA of any change or cessation of the business that is the subject of this action.

X. COSTS

19. Defendants and/or Third-Party Defendants shall pay the court costs of this action.

20. Defendants and/or Third-Party Defendants are hereby ordered to pay the costs incurred by the Ohio EPA for the publication of the Consent Order in Ohio EPA's Weekly Review and a newspaper of general circulation as required in Paragraph 23, below. Defendants and/or Third-Party Defendants shall pay the costs associated with publication by delivering a certified check payable to: "Treasurer, State of Ohio" and with a notation indicating that the funds are going to "Fund 699" on it, in the amount of the costs, to the Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, within thirty (30) days from the date he receives notice of the costs from Ohio EPA.

XI. CONTINUING JURISDICTION

21. This Court shall retain jurisdiction over this action for the purpose of enforcing and administering Defendants' and Third-Party Defendants' compliance with this Consent Order.

XII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

22. The Parties agree and acknowledge that final approval by Plaintiff, Defendants and Third-Party Defendants 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. Plaintiff reserves the right to withdraw this Consent Order based on comments received during the public comment period.

23. 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 days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the parties a 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.

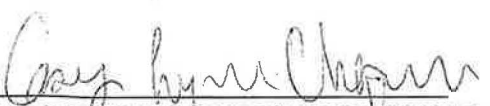
IT IS SO ORDERED.


JUDGE LOGAN
COURT OF COMMON PLEAS
TRUMBULL COUNTY


DATE

APPROVED BY:

MICHAEL DeWINE
OHIO ATTORNEY GENERAL


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Broad Meadow Estates Phase I, LLC and

Lawrence Robinson, Sr.

* Lawrence Robinson

Broad Meadow Estates Phase I, LLC

By: Lawrence Robinson, President

* Lawrence Robinson

Lawrence Robinson, President

* Telephonic authorization granted 12/17/13.

*

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* Bernard Petro

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* Bernard Petro

Silver Oak Engineering Co.

By: Bernard Petro

* Telephonic authorization granted 12/18/13.

Attachment A

For Value Received, _____ holder of a Certificate of Judgment No. _____, recorded in Docket _____, Page __, of the Judgment Lien Records of Trumbull County, Ohio (the "Certificate of Judgment"), waves the priority of the Certificate of Judgment in favor of, and agrees that the liens of the Certificate of Judgment shall be subordinate to, the mortgage in favor of _____, securing the sum of \$ _____, plus interest and advancements, recorded in Volume _____, Page _____, of the Mortgage Records of Trumbull County, Ohio, which is a lien on the following real property parcels:

33-033441, 33-054205, 33-054210, 33-075910, 33-076496, 33-076497, 33-076498, 33-076499, 33-076500, 33-076501, 33-076502, 33-076503, 33-076504, 33-076505, 38-198500, 38-439900, 39-033135, 39-058435 and 39-339850

This waiver of priority shall not otherwise waive or affect the lien, priority, or validity of the Certificate of Judgment.

Signed and effective this _____ (date).