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ATTORNEY GENERAL OFFICE
ENVIRONMENTAL PROTECTION

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

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CASE NO. 06-CV-63116

Plaintiff,

JONATHAN P. HEIN, JUDGE

vs.

GAYLEN BLOSSER, et. al.

Defendants.

DECISION -
Proposed Consent Decree

Case Facts

The Defendants have since closed the mobile home park due to the prohibitive costs to install waste water treatment equipment and regulatory compliance costs associated therewith. Defendants eventually agreed to a civil penalty of \$25,000 to resolve non-compliance issues.

Procedure

The Court conducted several telephone conferences with counsel regarding the proposed Consent Order. These informal conferences allowed the Court and counsel to informally discuss the facts of this case, questions regarding future implementation of the proposed Order, and other limitations which the Court perceived in the proposed Order. The cooperation of counsel is noted and appreciated by the Court. Ultimately, the matter is now before the Court for decision following supplemental briefing as requested by the Court.

Decision

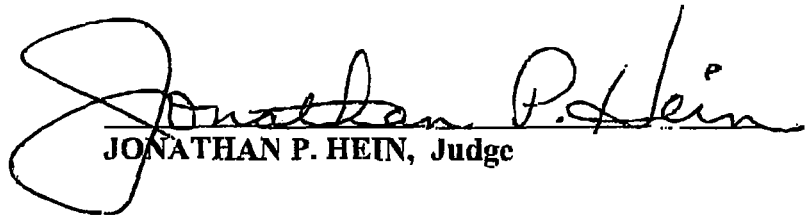
If the Plaintiff is concerned with pollution from this site, the closure of the mobile home court has resulted in an end to potential violations. In some respects, a general public benefit has occurred. However, the Court finds weaknesses in the factual basis which Plaintiff uses to justify the \$25,000 civil penalty. First, there has been no determination of the amount of pollutants which may have been discharged. Second, there is no proof of actual harm to the environment. Third, there has been no clean up costs or remediation expenses incurred. Fourth, there is no proof of any economic benefit to the Defendants by their non-compliance. Finally, the civil penalty does not accrue any benefit to the local environment which may have been polluted. Without these facts, it is immaterial to the Court that the Plaintiff could have sought fines in the amount of \$9,650,000.

While not expressly stated by the Defendant, the Court can comprehend the Defendants' position that they either accept the Plaintiff's settlement offer or face more protracted litigation expenses and the threat of potentially larger penalties.

Rejecting the proposed Consent Order would allow the Court to require the Plaintiff to produce facts, if possible, to justify its civil penalty. However, doing so would be at the additional expense of the Defendants.

Therefore, with reluctance, the Court acquiesces to the proposed Consent Order and signs the proposed Consent Decree approving the civil penalty.

Various interlineations have been imposed by the Court without consent of the parties and pursuant to concerns about the independence of the Court regarding its current and continuing jurisdiction. These changes were previously discussed with counsel. Objections to these interlineations shall be made in writing and filed with the Court within 10 days hereafter or shall be deemed a consent thereto.



JONATHAN P. HEIN, Judge

cc: Jessica B. Atleson / Margaret A. Malone, Assistant Attorneys General for Plaintiff
Jason Aslinger, Attorney for Defendants

jph/civil/decision 63116

**BEFORE THE COURT OF COMMON PLEAS
DARKE COUNTY, OHIO**

STATE OF OHIO, ex rel., JIM PETRO
ATTORNEY GENERAL
 30 East Broad St, 25th Floor
 Columbus, Oh 43215-3400

Plaintiff,

v.

GAYLEN BLOSSER
 6655 Woodbriar Lane
 Greenville, Ohio 45331

and

AMERICAN BUILDERS INC.
c/o Gaylon Blosser, Statutory Agent
 6655 Woodbriar Lane
 Greenville, Ohio 45331

Defendants.

) **CASE NO.** 06-CV-63116

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) **JUDGE JONATHAN P. HEIN**

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COMMON PLEAS COURT
DARKE COUNTY, OHIO
2006 NOV 15 PM 1 30
CLERK

CONSENT ORDER

Plaintiff State of Ohio ("Plaintiff"), by its Attorney General Jim Petro, having filed a Complaint seeking injunctive relief and civil penalties for violations of Ohio Revised Code ("R.C.") Chapter 6111, Ohio's water pollution control law, and the rules promulgated thereunder, and Defendants, Gaylen Blosser, himself and on behalf of American Builders, Inc., hereby consent to the entry of this Consent Order.

NOW, THEREFORE, without 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 the parties and the subject matter of this case pursuant to R.C. Chapter 6111. The Complaint states a claim upon which relief can be granted against the Defendants pursuant to R.C. Chapter 6111. Venue is proper in this Court.

II. PERSONS BOUND

2. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and their officers, agents, servants, employees, successors, and assigns, and those persons in active concert or participation with them. Defendants shall provide a copy of this Consent Order to each general contractor and consultant that Defendants employ to perform the work itemized herein. Defendants shall require each general contractor to provide a copy of this Consent Order to each of its subcontractors for such work.

3. Defendants shall give thirty (30) days notice to Ohio EPA before sale or transfer of the Greene Villa Mobile Home Park ("Greene Villa MHP"). In addition, Defendants 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 shall inform the Ohio EPA of any change in business address or telephone number within sixty (60) days of the change.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

5. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims or violations alleged in the Complaint against Defendants, 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 Defendant or 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 so as to limit the authority of the State of Ohio to undertake any action against any person, including Defendant, to eliminate or mitigate conditions that may present a threat to the public health, welfare or the environment.

7. Within seven (7) days of Defendant's signing of this Consent Order, Defendants agree to file a Notice or Stipulation of Dismissal with the Environmental Review Appeals Commission ("ERAC") for the State of Ohio, in the appeal, *American Builders, Inc. v. Koncelik*, ERAC Case No. 195701. Defendants agree to pay all costs due to ERAC arising out of this action.

IV. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

8. Performance of the terms of this Consent Order by Defendants is not conditioned on the receipt of any federal, state or any other grant, loan, or funds. In addition, Defendants' performance is not excused by the failure to obtain, or shortfall of, any such grant, loan, or funds, or by the processing of any applications for the same.

V. REPORTING REQUIREMENT

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

Ohio Environmental Protection Agency
South West District Office
401 East Fifth St.
Dayton, Ohio 45402-2911
Fax Number: (937) 285-6249
Attention: Sandra Leibfritz or her successor

VI. INJUNCTIVE RELIEF

10. Defendants are hereby enjoined and immediately ordered to permanently comply with R.C. Chapter 6111 and the regulations adopted thereunder, including eliminating all wastewater discharges from the Greenc Villa MHP to waters of the state.

VII. CIVIL PENALTY

11. It is hereby ordered that Defendants shall pay to the State of Ohio a civil penalty of **\$25,000** in accordance with the following schedule:

- a. Five thousand (\$5,000) dollars shall be paid within ninety (90) days of the ^{filing} ~~signing~~ of this Consent Order.
- b. An additional ten thousand (\$10,000) dollars shall be paid by no later than June 29, 2007.
- c. An additional ten thousand (\$10,000) dollars shall be paid by no later than June 30, 2008.

12. If Defendants fail to make any one of the civil penalty payments on or before the date specified in this Consent Order, the total civil penalty less any amount of civil penalty that has already been paid to the State of Ohio pursuant to this section, is immediately due and payable.

13. Each civil penalty payment required under this section, shall be made by **certified check** payable to "Treasurer, State of Ohio", and shall be delivered by mail, or otherwise, to Mark Lemmon, Paralegal, or his successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, Public Protection Division, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

STIPULATED PENALTIES

14. In the event that Defendants fail to meet any of the requirements of this Consent Order, Defendants ~~shall immediately and automatically~~ ^{may} be liable for and ~~shall pay~~ a stipulated penalty according to the following payment schedule:, according to the Court's discretion:

- i. For each day of each failure to meet a requirement of the Consent Order from one (1) day to thirty (30) days - ⁷ Seven Hundred Fifty (\$750.00) per day not met; ^{up to}
- ii. For each day of each failure to meet a requirement of the Consent Order from thirty-one (31) days to sixty (60) days - ^{one} thousand dollars (\$1,000.00) per day not met; ^{up to}
- iii. For each day of each failure to meet a requirement of the Consent Order over sixty-one (61) days - ^{one} thousand ~~dollars~~ five hundred (\$1,500.00) per day not met. ^{up to}

15. Any stipulated penalty payment required to be made under the provisions of this Consent Order shall be made ^{according to Court Order} ~~within thirty (30) days of the violation~~, by certified check, payable to "Treasurer, State of Ohio", and shall be delivered by mail, or otherwise, to:

Ohio Attorney General's Office
Environmental Enforcement Section
Public Protection Division
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400
Attention: Mark Lemmon, Paralegal, or his successor

A letter indicating what violations are being covered by the specific check shall accompany each payment.

16. The imposition, payment and collection of stipulated penalties pursuant to violations of this Consent Order shall not prevent Plaintiff from pursuing additional remedies, civil, criminal ^{/ future} or administrative, for violations of applicable laws.

VIII. RETENTION OF JURISDICTION

17. The Court will retain jurisdiction of this action for purposes of enforcing this Consent Order.

IX. COURT COSTS

18. Defendants are hereby ordered to pay all court costs of this action.

X. MISCELLANEOUS

19. Nothing in this Consent Order shall affect Defendants' obligation to comply with all applicable federal, state and local laws, regulations, rules and ordinances. Defendants shall obtain any and all federal, state, or local permits necessary to comply with this Consent Order.

XI. ENTRY OF CONSENT ORDER AND FINAL JUDGEMENT BY CLERK

20. The parties agree and acknowledge that final approval of this Consent Order by the Plaintiff and Defendants, and entry of this Consent Order by the Court, is subject to the requirements of 40 CFR § 123.27(d)(2)(iii), which requires a public notice period to inform the public that this Consent Order has been lodged with the Court, opportunity for public comment, and the consideration of any public comment. The parties reserve the right to withdraw this Consent Order based on comments received during the public comment period.

21. Defendants shall pay the cost of publishing the public notice.

22. Pursuant to Rule 58(B) 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 in 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.

XII. AUTHORITY TO ENTER INTO THE CONSENT ORDER

23. The signatory for Defendants represents and warrants that he/she has been duly authorized to sign this document and so bind the Defendants to all terms and conditions thereof.


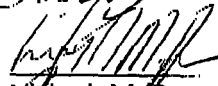
IT IS SO ORDERED

November 15, 2006

DATE

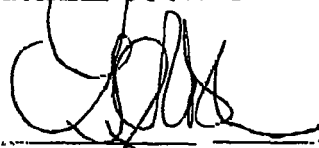
APPROVED:

JIM PETRO,
ATTORNEY GENERAL



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Margaret A. Malone (0021770)
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Telephone: (614) 466-2766
LMBrown@ag.state.oh.us
MMalone@ag.state.oh.us

*Attorneys for Plaintiff
State of Ohio*



JUDGE
COURT OF COMMON PLEAS
DARKE COUNTY


GAYLEN BLOSSER
6655 Woodbriar Lane
Greenville, Ohio 45331

Defendant


AMERICAN BUILDERS, INC
6655 Woodbriar Lane
Greenville, Ohio 45331

Defendant


JASON ASLINGER
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Phone: 937-548-2124
jasonaslinger@yahoo.com

Attorney for Defendants

cc: Jessica B. Atleson/Margaret A. Malone, Assistant Attorneys General for Plaintiff
Jason Aslinger, Attorney for Defendants