

IN THE COURT OF COMMON PLEAS
FULTON COUNTY, OHIOFILED
FULTON COUNTY
COMMON PLEAS COURT

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MARY GYPE
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MAY 15 8:08 AM '00
MAY 15 1:15 PM '00

STATE ex rel.

BETTY D. MONTGOMERY,

ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

FOREST PARK MOBILE ASSOCIATES,
FOREST PARK MOBILE, L.L.C., AND
PETER KOSTISHAK

Defendants.

CASE NO. 98 CV 000034

JUDGE JAMES E. BARBER

CONSENT ORDER

Plaintiff, The State of Ohio, by and through its counsel, Attorney General Betty D. Montgomery, and at the written request of the Director of Environmental Protection, filed a Complaint ("Complaint") against Forest Park Mobile Associates, Forest Park Mobile, L.L.C., and Peter Kostishak (collectively referred to as "Defendant"), alleging violations of Ohio's Safe Drinking Water laws, R.C. Chapter 6109, Water Pollution Laws R.C. Chapter 6111 and regulations adopted under those laws. The allegations relate to the public water system ("PWS") and wastewater treatment plant ("WWTP") formerly owned and operated by Defendant at the Forest Park Mobile Home Park ("Forest Park MHP") on County Road E, Delta, Fulton County, Ohio. Defendant no longer has any legal interest in or right to control the Forest Park MHP or said WWTP or PWS as the property was placed into receivership in January 1998 and eventually sold at a Sheriffs sale which was confirmed and approved by the Court pursuant to the Journal Entry dated October 2, 1998 in the foreclosure action titled Ricker, et al. v. Forest Park Mobile

Associates, Inc., et al., Case No. 98CV10 in Fulton County Court of Common Pleas. This Consent Order constitutes a resolution of all disputed claims as set out in the Complaint filed in this action between Plaintiff and Defendant relating to the Forest Park MHP WWTP and PWS.

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 the parties and the subject matter of this action pursuant to R.C. Chapters 6109 and 6111. The Complaint states a claim upon which relief can be granted against Defendant and venue is proper in this Court.

II. PERSONS BOUND

2. The provisions of this Consent Order shall apply to and be binding upon the Defendant in this action, and Defendant's agents, employees, assigns, and successors in interest.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that the Defendant operated the Forest Park MHP PWS and WWTP in violation of Ohio's Safe Drinking Water Laws, R.C. Chapter 6109, Ohio's Water Pollution Laws, R.C. Chapter 6111 and the regulations adopted thereunder.

4. Defendant neither admits nor denies the allegations in the Complaint, but agrees to the terms and conditions in this Consent Order to avoid the expense and time of a trial of any issue of fact or law in this lawsuit.

5. Except as provided herein, compliance with the terms of this Consent Order shall constitute full satisfaction of all civil liability by Defendant for: (A) all claims alleged in the State's Complaint, and; (B) any claims of violations of R.C. Chapters 6109 and 6111 as alleged

in the Complaint filed in this case relating to the Forest Park WWTP or PWS which may have occurred after the filing of the Complaint but before the date of this Consent Order.

IV. RESERVATION OF RIGHTS

6. Nothing in 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 related to the WWTP or PWS.
 - B. Enforce this Consent Order through a contempt action or otherwise seek relief for violations of this Order; and
 - C. Bring any legal or equitable action against any appropriate person other than Defendant for any violation of applicable laws or to eliminate or mitigate conditions at the Forest Park MHP WWTP, PWS, or surrounding area that may present a threat to public health, welfare or the environment. For 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, 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 hereby permanently enjoined and immediately prohibited from operating a PWS or a WWTP in the State of Ohio for five ("5") years from the date of this Consent Order.

VI. CIVIL PENALTY

8. Defendant shall pay the State of Ohio Eighteen Thousand Dollars (\$18,000.00) to resolve the disputed claims. The Plaintiff and Defendant agree that the funds held by the Court in Ricker v. Forest Park Mobil Associates, Case No. 98CV10 may be released directly to the State, after court costs and expenses from that case and the present case are deducted, as partial payment of the eighteen thousand dollar payment. Plaintiff and Defendant will notify the Court that said funds may be released directly to the State without objection. The State shall prepare all

necessary pleadings or filings to accomplish said release of funds and Defendant or Defendant's attorney shall sign any such document to effectuate said release. Within thirty (30) days of notification of the release of said funds to the State and the final amount of the funds released, Defendant shall pay the State the balance due so that the total amount paid to the State is eighteen thousand dollars (\$18,000.00). Defendant's payment shall be made by delivering to Jena Suhadolnik, or her successor, Administrative Assistant, Environmental Enforcement Section, 30 E. Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check in the amount of the balance due payable to the order of "Treasurer, State of Ohio."

VII. COMPLIANCE NOT DEPENDANT ON GRANTS OR LOANS

9. 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 excluded by the failure to obtain or any short fall of any federal or state grants, loans and/or funds or by the processing of any applications for the same.

VIII. EFFECT OF CONSENT ORDER

10. This Consent Order does not constitute authorization or approval of the construction of any facilities, modification of any existing treatment works, or modification of any existing public water supply system. Approval for any construction or modification shall be by permit issued by Ohio EPA or other government agency as may be required by applicable federal, state, or local laws, rules or regulations.

IX. MISCELLANEOUS

11. Nothing in this Consent Order shall affect Defendant's obligations to comply with any 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 Order.

12. Acceptance by the State of Ohio of any payments, document or other work due hereunder subsequent to the time that the obligation is due under this Order shall not relieve the Defendants from the obligations created by this Order.

X. COSTS

13. Defendant shall pay the court costs of this action.

XI. CONTINUING JURISDICTION

14. This Court shall retain jurisdiction over this action for the purposes of enforcing and administering Defendant's compliance with this Consent Order, but said Consent Order shall expire by its own terms five (5) years from the date of this Consent Order.

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

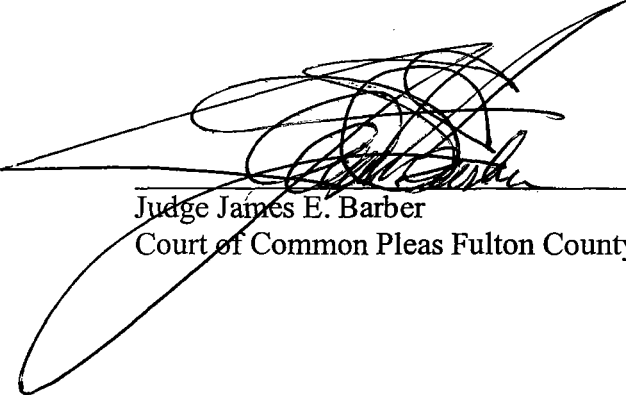
15. Pursuant to Rule 58 of Ohio Rules of Civil Procedure, upon signing this Consent Order the Clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the Consent Order upon the journal, the Clerk is hereby directed to serve upon the parties notice of the Consent Order and its date of entry upon the journal in a matter prescribed by Rule 5(B) of

the Ohio Rules of Civil Procedure and note the service in the applicable docket.

IT IS SO ORDERED.

Date

5/15/00

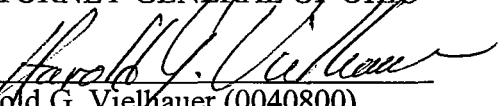

Judge James E. Barber

Court of Common Pleas Fulton County

APPROVED BY:

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

By:


Harold G. Vielhauer (0040800)

Robert J. Karl (0042292)

Assistant Attorney Generals

Environmental Enforcement Section

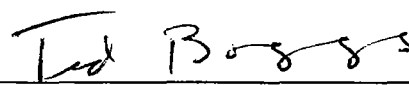
30 E. Broad Street, 25th Floor

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(614) 466-2766

Counsel for Plaintiff

By:


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52 East Gay Street

P.O. Box 1008

Columbus, Ohio 43216-1008

(614) 464-8319

Counsel for all Defendants


Peter Kostishak

Copies Served 5/15/00

Mary Gype, Clerk

By

CG