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COURT OF COMMON PLEAS

AUG 24 1999

IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

DELORES REED, Clerk
PORTAGE COUNTY, OHIO

STATE OF OHIO, <i>ex rel.</i>	:	CASE NO. <u>99-CV-543</u>
BETTY D. MONTGOMERY	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE <u>JOSEPH KAINRAD</u>
	:	
Plaintiff,	:	Designation: Other Civil
	:	
vs.	:	
	:	
CYNTHIA L. GENTILE, <i>et al.</i>	:	<u>CONSENT ORDER AND FINAL</u>
	:	<u>JUDGMENT ENTRY</u>
Defendants.	:	Final Appealable Order

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio by its Attorney General Betty D. Montgomery (hereinafter "Plaintiff") and Defendants, Cynthia L. Gentile, Debra S. Harlan, Stanley W. Bach, and Randolph Ltd. (collectively referred to as "Defendants"), having consented to entry of this Order,

NOW THEREFORE, without trial of any issue of fact or law, and upon 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. The Complaint states a claim upon which relief can be granted against Defendants under Ohio Revised Code ("R.C.") Chapter 6111, and venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply to and be binding upon Defendants, their agents, officers, employees, attorneys, assigns, successors in interest, and those persons in active concert or participation with them, who receive actual notice of the Consent

Order whether by personal service or otherwise. Defendants shall provide a copy of this Consent Order to each general contractor and/or consultant that Defendants employ to perform work itemized herein, and Defendants shall require each general contractor to provide a copy of this Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in the Complaint that Defendants have operated the Randolph Acres Mobile Home Park wastewater treatment plant in such a manner as to result in numerous violations of the discharge limitations and monitoring requirements of the National Pollutant Discharge Elimination System ("NPDES") permit, of the Director's Final Findings and Orders, and/or the permit to install ("PTI") issued to Defendants by the Director of the Environmental Protection Agency ("Ohio EPA"), and in violation of the water pollution laws of the State of Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims under such laws alleged in the Complaint. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint.

IV. DEFINITIONS

4. As used in this Order:
 - a. "Randolph Acres Wastewater Treatment Plant" shall mean the wastewater treatment facility located at the Randolph Acres Mobile Home Park, 3560 Waterloo Road, Randolph Township, Portage County, Ohio.

V. PERMANENT INJUNCTION

5. Defendants are hereby permanently enjoined and ordered to immediately comply with the requirements of R.C. Chapter 6111 and the rules adopted under that Chapter, and the terms and conditions of NPDES permit no. 3PV00004 and any renewals or modifications thereof.

VI. COMPLIANCE SCHEDULE

6. At the Randolph Acres Wastewater Treatment Plant, Defendants are hereby enjoined and ordered to:

- a. Install a continuous flow meter in accordance with PTI no. 02-7063, effective June 11, 1993. - COMPLETED -
- b. Complete and submit an inflow and infiltration analysis of the sewage collection system. - COMPLETED -
- c. By February 28, 1999, submit to Ohio EPA an approvable PTI application with detail plans for the installation of flow equalization. - COMPLETED -
- d. By December 1, 1999, install and operate flow equalization in accordance with the terms and conditions of the PTI issued by the Director.

VII. REVIEW OF SUBMITTALS, NOTICE, AND RESUBMITTALS

7. Upon the submission of a PTI application by Defendants pursuant to Paragraph 6.c., if Ohio EPA determines that the PTI application is incomplete or that the detail plans do not meet the requirements of Ohio Administrative Code ("O.A.C.") Chapter 3745-31, Defendants shall resubmit to Ohio EPA, within twenty-one (21) days of notification from Ohio EPA that the PTI application is incomplete and/or the detail plans do not meet the requirements, a complete, approvable PTI application and/or another set of detail plans that will meet such requirements. The Ohio EPA may issue an approval of each such document with additional terms and

conditions.

8. Within ten (10) business days after the deadlines in the paragraphs of Section VI of this Consent Order, Defendants shall submit to Ohio EPA written notification of Defendants' compliance with said deadlines.

9. All written notifications and correspondence, including reports, permit applications, and plans as required by this Consent Order, shall be sent to:

Ohio EPA
Northeast District Office
Division of Surface Water
Attn.: Enforcement Group Leader
2110 E. Aurora Road
Twinsburg, Ohio 44087

VIII. CIVIL PENALTY

10. Defendants shall pay to the State of Ohio a civil penalty of Ten Thousand Four Hundred Eighty-nine and 00/100 Dollars (\$10,489.00). The penalty shall be paid by delivering, within forty-five (45) days from the date of entry of this Consent Order, a certified check or checks for that amount, payable to the order of "Treasurer, State of Ohio", to Jena Suhadolnik, Administrative Assistant, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, OH 43215-3428.

IX. STIPULATED PENALTIES

11. In the event that Defendants fail to meet any of the requirements of this Consent Order as set forth in Paragraphs 6 through 10, including any scheduled milestone requirement, and/or any of the final affluent and monitoring limitations of their then current NPDES permit and any renewals or modifications thereof, Defendants shall, immediately and automatically, be

liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of each failure to meet a requirement, up to thirty (30) days - Five Hundred Dollars (\$500.00) per day for each requirement not met. For each day of each failure to meet a requirement, from thirty-one (31) to sixty (60) days - One Thousand Dollars (\$1,000.00) per day for each requirement not met. For each day of each failure to meet a requirement, from sixty-one (61) to ninety (90) days - One Thousand Five Hundred Dollars (\$1,500.00) per day for each requirement not met. For each day of each failure to meet a requirement, over ninety (90) days - Two Thousand Dollars (\$2,000.00) per day for each requirement not met.

12. Any payment required to be made under the provisions of Paragraph 11 of this Consent Order shall be made by delivering, within forty-five (45) days from the date of failure to meet the requirement of the Consent Order and/or NPDES permit, a certified check or checks for the appropriate amounts made payable to "Treasurer, State of Ohio", to Jena Suhadolnik, Administrative Assistant, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428. Defendants shall also state in writing the specific failure of the Consent Order and/or NPDES permit term and condition which was not complied with, and the date(s) of non-compliance. The payment of stipulated penalties by Defendants and the acceptance of such stipulated penalties for specific violations pursuant to Section IX shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order.

X. POTENTIAL FORCE MAJEURE

13. If any event occurs which causes or may cause a delay of any requirements of this Consent Order, Defendants shall notify the Ohio EPA in writing within ten (10) calendar days of

the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendants to prevent or minimize the delay and the timetable by which measures will be implemented. Defendants will adopt all reasonable measures to avoid or minimize any such delay.

14. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendants may raise that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitations, acts of God, strikes, acts of war, civil disturbances, or vandalism. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendants and the Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that a proceeding to enforce this Consent Order, if any, is commenced by the Plaintiff. At that time, Defendants will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendants. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Defendants or serve as a basis for an extension of time under this Consent Order. Failure by Defendants to comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendants' right to request an extension of its obligations under this Consent Order based on such incident. An extension of one date based on a particular incident does not mean that Defendants qualify for an extension of a subsequent date or dates. Defendants must make an

individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order without a Force Majeure Clause does not constitute a waiver by Defendants of any rights or defenses they may have under applicable law.

XI. TERMINATION OF STIPULATED PENALTIES

15. The provisions of this Consent Order set forth in Section IX requiring the payment of stipulated penalties may be terminated upon a demonstration by Defendants of compliance with the following requirements:

- a. Defendants have paid all penalties required by this Consent Order,
- b. Defendants have completed the requirements outlined in Section VI of this Consent Order, and
- c. For a period of twelve (12) consecutive months, Defendants have achieved and maintained compliance with the final effluent and monitoring limitations contained in the then current NPDES permit (3PV00004*AD) and any renewals or modifications thereof, through a showing of no violations or the excuse of violations due to a potential force majeure.

16. If during the one (1) year period (twelve consecutive months) set forth in Paragraph 15, Defendants fail to comply with any of the requirements of Paragraph 15, the one (1) year period (twelve consecutive months) will begin anew on the first date after such failure that Defendants are back into compliance with the requirement of Paragraph 15. Any of Defendants' subsequent failures to maintain compliance with Paragraph 15 shall be treated in the same manner as above, with the one (1) year period (twelve consecutive months) beginning anew from the date Defendants come back into compliance.

17. Termination of the stipulated penalty provisions of Paragraph 11 of this Consent Order shall only be by order of the Court upon application by any party and a demonstration that

the conditions outlined in Paragraph 15 of this Consent Order have been met.

XII. AUTHORITY TO ENTER INTO THE CONSENT ORDER

18. The signatory for Defendant Randolph Ltd. represents and warrants that he or she has been duly authorized to sign this document and so bind Defendant to all terms and conditions thereof.

XIII. RETENTION OF JURISDICTION

19. The Court will retain jurisdiction of this action for the purpose of administering and enforcing Defendants' compliance with the terms and provisions of this Consent Order.

XIV. COSTS

20. Defendants are hereby ordered to pay the costs of this action.

21. Defendants are hereby ordered to pay the costs incurred by the Ohio EPA for the publication of notice of the Consent Order in a newspaper of general circulation. Defendants shall pay the costs associated with publication by delivering a certified check payable to "Treasurer, State of Ohio", with a notation on the check that the funds go to "Fund 699", in the amount of the costs, to the Fiscal Officer, Ohio EPA, P.O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43216-1049, within 30 days from the date they receive notice of the costs from Ohio EPA.

XV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK


22. The parties agree and acknowledge that final approval by Plaintiff and Defendants and entry of this Consent Order is subject to the requirements of 40 C.F.R. 123.27(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 Plaintiff and Defendants reserve 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 signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the Order upon the journal, the clerk is directed to serve upon all parties notice of the Order and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and to note the service in the appearance docket.

IT IS SO ORDERED.

DATE



JUDGE, COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

APPROVED:

**STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO**



J. GREGORY SMITH (0061728)
Assistant Attorney General
Environmental Enforcement Section
30 E. Broad Street, 25th Floor
Columbus, Ohio 43215-3428
(614) 466-2766

Trial Attorney for Plaintiff State of Ohio



CYNTHIA L. GENTILE
431 Deer Island Dr.
Aurora, Ohio 44202

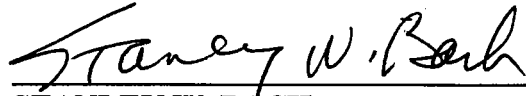
Defendant

RANDOLPH LTD.



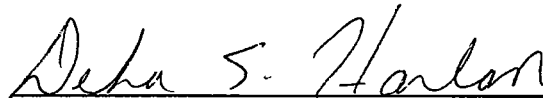
STANLEY W. BACH
5341 State Route 8
Peninsula, Ohio 44264

Defendant



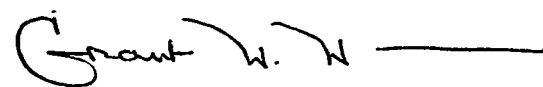
STANLEY W. BACH
32855 Jackson Boulevard
Moreland Hills, Ohio 44022

Defendant



DEBRA S. HARLAN
4029 Orangewood Dr.
Orange Village, Ohio 44122

Defendant



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Trial Attorney for Defendants Cynthia L.
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and Randolph Ltd.