

*Sherry
Murray*

IN THE COURT OF COMMON PLEAS
DEFIANCE COUNTY, OHIO

STATE OF OHIO, ex rel. : CASE NO. 02-CV-35951
BETTY D. MONTGOMERY :
ATTORNEY GENERAL OF OHIO, :
Environmental Enforcement Section :
30 East Broad St., 25th Floor :
Columbus, Ohio 43215-3428 : JUDGE SCHMENK

Plaintiff,

v.

JOSEPH E. GOODELL
d.b.a. THE GREEN ACRES
MOBILE HOME PARK
4540 Brookside Road
Toledo, Ohio 43615

Defendant.

FILED
IN THE COURT OF COMMON PLEAS
DEFIANCE COUNTY, OHIO

NOV 24 2003

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein and the Plaintiff, State of Ohio, by and through its counsel, the Attorney General of Ohio (hereinafter referred to as the "Plaintiff"), and the Defendant Joseph E. Goodell, d.b.a. the Green Acres Mobile Home Park (hereinafter collectively referred to as the "Defendant") hereby consents to the entry of this Consent Order.

NOW THEREFORE, without trial of any issue of law or fact, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has both personal jurisdiction over the parties and subject matter jurisdiction over the case pursuant to R.C. Chapter 6111. The Complaint states a claim upon which relief can be granted against the Defendant under R.C. Chapter 6111 and the rules and regulations promulgated thereunder. 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 Plaintiff and the Defendant, the Defendant's agents, officers, employees, assigns, successors in interest, and any other person acting in concert and/or in privity with any of them.

3. The Defendant shall provide a copy of this Consent Order to each engineer, operator, and general contractor and/or consultant employed to perform any and all work itemized herein. The Defendant 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 AND RESERVATION OF RIGHTS

4. The Plaintiff alleges in its Complaint that the Defendant operated his wastewater treatment plant (hereinafter referred to as "WWTP") in such a manner as to result in violations of the water pollution control laws of the State of Ohio. Specifically, the Plaintiff alleges in its Complaint that the Defendant's former WWTP serving the Green Acres Mobile Home Park discharged "sewage" to "waters of the State" as those terms are defined in R.C. 6111.01, without a valid and unexpired National Pollutant Discharge Elimination System (hereinafter referred to as "NPDES") permit and that the Defendant failed to properly operate and maintain the WWTP in contravention of the Permit to Install (hereinafter referred to as "PTI"). The Plaintiff also alleges that the Defendant failed to construct and operate its sanitary sewers according to the

approved PTI, and that the Defendant has allowed unpermitted discharges of sewage from the sanitary sewers onto the ground and into waters of the State.

5. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by the Defendant for all claims of violations alleged in the Complaint, including any continuing violations through the date of entry of this Consent Order that are properly reported to the Ohio EPA and identified by the State in its Complaint.

6. Nothing in this Consent Order shall be construed so as to limit the authority of the Plaintiff to seek relief against other appropriate persons for claims or conditions alleged in this Complaint. Nothing in this Consent Order shall be construed so as to limit the authority of the Plaintiff to seek relief against the Defendant or any other appropriate persons for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint, nor shall anything in this Consent Order limit the right of the Defendant to raise any defenses it may have for such claims. Similarly, nothing in this Consent Order shall be construed so as to limit the authority of the Plaintiff to undertake any action against any person, including the Defendant, to eliminate or mitigate conditions that may present a threat to the public health, welfare, or the environment.

IV. PERMANENT INJUNCTION

The Defendant is hereby enjoined and immediately ordered, as follows:

7. Except as otherwise provided in this section, the Defendant is enjoined and immediately ordered to comply with the applicable provisions of Ohio's Water Pollution Control Law, R.C. Chapter 6111, the rules and regulations promulgated thereunder, any renewal or modification thereof, and the terms and conditions of any permit or PTI that may be issued.

8. The Defendant is enjoined and immediately ordered to undertake any and all necessary investigations and to conduct all necessary remedial activities which meet with the approval of the Ohio EPA to abate pollution and restore, at the Defendant's own expense, the unnamed tributary of Webb Run, as stated in the Plaintiff's Complaint, and any associated riparian areas necessary to support other waters of the State adversely impacted due to the Defendant's activities.

9. The Defendant is enjoined and immediately ordered to achieve long-term compliance with R.C. 6111 and Ohio Administrative Code 3745 in accordance with the following schedule:

- A. Within sixty (60) days of the effective date of this Consent Order, the Defendant shall completely repair and/or replace the sewage collection system serving the Green Acres Mobile Home Park. The Defendant shall thereafter properly maintain the sewage collection system at all times;
- B. Within ninety (90) days of the effective date of this Consent Order, the Defendant shall submit all written documentation of such repairs (of the sewage collection system) to Ohio EPA;
- C. Within one hundred twenty (120) days of the effective date of this Consent Order, the Defendant shall submit to the Defiance County Engineer a complete and approvable set of storm water removal plans for the Green Acres Mobile Home Park. The storm water removal plans shall be reviewed and stamped by a licensed Ohio Certified Professional Engineer (prior to being submitted to the Defiance County Engineer);
- D. Within one hundred and eighty (180) days of the effective date of this Consent Order, the Defendant shall complete construction of the storm water removal system at the Green Acres Mobile Home Park. Upon completing construction of the storm water removal system, the Defendant shall initiate operation of the system;
- E. Within thirty (30) days of commencing construction of the storm water removal system, the Defendant's Certified Professional Engineer shall inspect the storm water removal system and submit copies of the inspection reports to the Defiance County Engineer and Ohio EPA; and

F. The storm water removal system shall be properly operated and maintained at all times and shall be constructed in such a way that it eliminates standing water.

10. The Defendant is enjoined and immediately ordered not to expand the size or number of households and/or residents or tenants at the Green Acres Mobile Home Park until such time as all of the provisions of this Consent Order have been complied with, all plan approvals have been obtained, and the Defendant is in compliance with all permits as well as any applicable state and local health codes and laws.

11. As of the effective date of this Consent Order, the Plaintiff and its representatives and contractors shall have access at all reasonable times to the Green Acres Mobile Home Park and shall have access to any other property controlled by or available to the Defendant to which access is necessary to effectuate the restoration and remediation actions required by this Consent Order. Nothing in this paragraph shall be construed to diminish any statutory rights and authority for access to the property by the Director or his authorized representatives.

V. TIME EXTENSIONS

12. If any date for performance falls upon a weekend or state or federal holiday, the time for performance is extended to the next working day following the weekend or holiday.

VI. SUBMITTAL OF DOCUMENTS

13. All required documents required under this Consent Order shall be submitted to:

- a. Ohio EPA
Northwest District Office
347 North Dunbridge Road
Bowling Green, Ohio 43402-9398
Telephone (419) 352-8461 Facsimile (419) 352-8468
Attn.: Division of Surface Water Enforcement Group Leader

VII. CIVIL PENALTY

14. The Defendant is ordered and enjoined to pay a civil penalty of \$20,000.00 within sixty (60) days of the filing of this Consent Order by the Court. The civil penalty payment shall be paid by certified check for the appropriate amount, made payable to "Treasurer, State of Ohio", which check shall be delivered by mail, or otherwise, to Jena Suhadolnik, Administrative Assistant, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

VIII. STIPULATED PENALTIES

15. In the event that the Defendant fails to meet any of the deadlines and requirements of this Consent Order, the Defendant shall pay a stipulated penalty for each failure according to the following payment schedule:

- (A) For each day of each failure to meet each deadline or requirement, up to fifteen (15) days --Two Hundred Dollars (\$200.00) per day for each deadline or requirement not met;
- (B) For each day of each failure to meet each deadline or requirement, from sixteen (16) to thirty (30) days -- Four Hundred Dollars (\$400.00) per day for each deadline or requirement not met;
- (C) For each day of each failure to meet each deadline or requirement, from thirty-one (31) to sixty (60) days -- Five Hundred Dollars (\$500.00) per day for each deadline or requirement not met; and
- (D) For each day of each failure to meet each deadline or requirement, over sixty-one (61) days -- Seven Hundred Fifty Dollars (\$750.00) per day for each deadline or requirement not met.

16. Any payment required to be made under Section VIII of this Consent Order shall be made by delivering to Jena Suhadolnik, or her successor, at the address set forth in Section VII within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, a certified check or checks for the appropriate amount(s), made payable to the order of "Treasurer, State of Ohio". The Defendant shall also state in writing the specific failure of the Consent Order that was not complied with, and the date(s) of non-compliance. The payment of stipulated penalties by the Defendant and the acceptance of such stipulated penalties by the Plaintiff for specific violations under this Consent Order shall not be construed to limit the Plaintiff's authority to seek judicial enforcement of this Consent Order.

IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

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

X. MISCELLANEOUS

18. Nothing in this Consent Order shall affect the Defendant's obligation to comply with all applicable federal, state, or local law, regulation, rule, or ordinance. The Defendant shall obtain any and all federal, state, or local permits necessary to comply with this Consent Order.

19. The Defendant shall inform the Ohio EPA of any change of its business addresses or telephone numbers.

XI. POTENTIAL FORCE MAJEURE

20. If any event occurs which causes or may cause a delay in the Defendant's compliance with any requirement of this Consent Order, the Defendant shall notify the Ohio

EPA in writing within ten (10) days from when the Defendant knew, or by the exercise of due diligence should have known, of the event. The notification to the Ohio EPA shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by the Defendant to prevent or minimize the delay, and the timetable by which those measures will be implemented. The Defendant shall adopt all reasonable measures to avoid or minimize any such delay.

21. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, the Defendant 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, or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by the Defendant 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, if ever, that a court proceeding to enforce this Consent Order is commenced by the Plaintiff. At that time, the Defendant will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of the Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or a change in the Defendant's financial circumstances, shall not constitute circumstances entirely beyond the control of the Defendant or serve as a basis for an extension of time under this Consent Order. Failure by the Defendant to timely 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 the Defendant's 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 the

Defendant qualifies for an extension of a subsequent date or dates. The Defendant 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 the Defendant of any rights or defenses it may have under applicable law.

XII. RETENTION OF JURISDICTION

22. The Court will retain jurisdiction of this action for the purpose of enforcing and administering the Defendant's compliance with this Consent Order.

XIII. COURT COSTS

23. The Defendant is hereby immediately ordered to pay the court costs of this action.

XIV. ENTRY OF CONSENT ORDER AND FINAL JUDGEMENT BY CLERK

24. The parties agree and acknowledge that final approval by the Plaintiff and the Defendant 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 the Plaintiff and the Defendant reserve the right to withdraw this Consent Order based upon comments received during the public comment period. The Defendant shall pay the costs of public notice within thirty (30) days of receipt of a bill or notice from the State of Ohio.

25. 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 (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 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.

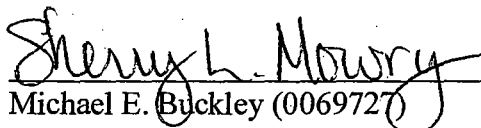
IT IS SO ORDERED.


JUDGE SCHMENK, COURT OF COMMON PLEAS
DEFIANCE COUNTY

2/17/03
DATE

APPROVED:

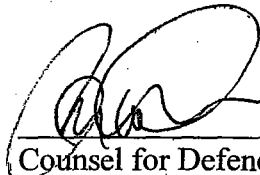
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