

DIANA ZALESKI
IN THE COURT OF COMMON PLEAS
2002 APR 12 AM 9:50
SUMMIT COUNTY, OHIO

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

Plaintiff/Defendant

v.

JOEL A. HELMS, d.b.a.
COUNTRYVIEW APARTMENTS, et al.

Defendants/Plaintiffs

: CASE NO. 2000-07-3102
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: JUDGE Schneiderman
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CONSENT ORDER FOR CIVIL PENALTY AND INJUNCTIVE RELIEF

The Complaint in the above-captioned matter having been filed herein, and Plaintiff/Defendant State of Ohio by its Attorney General Betty D. Montgomery (hereinafter referred to as "Plaintiff") and Defendants/Plaintiffs Joel A. Helms, James J. Helms, and Mildred A. Helms, doing business as Countryview Apartments (hereinafter collectively referred to as "Defendants"), having consented to the 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 both personal jurisdiction over the Parties and subject matter jurisdiction over this case. The Plaintiff's Complaint states a claim upon which relief can be granted against Defendants under Chapter 6111 of the Ohio Revised Code (hereinafter referred to as "R.C.") and the rules promulgated under that chapter. 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 Defendants and their assigns, successors in interest and others bound by Rule 65(D) of the Ohio Rules of Civil Procedure, who are or will be acting in concert and/or in privity with the Defendants. The Defendants shall provide a copy of this Consent Order to each contractor and/or consultant employed to perform any and all work itemized herein and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

3. Plaintiff alleges in its Complaint that the Defendants operate and have operated their wastewater treatment plant (hereinafter "WWTP") at Countryview Apartments, discharging "sewage" to "waters of the State" as those terms are defined in R.C. 6111.01, without a National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit in violation of Ohio's water pollution control laws, R.C. Chapter 6111 and the rules and regulations promulgated thereunder. Plaintiff further alleges in its Complaint that Defendants installed and removed sewage disposal systems without obtaining prior plan approval and the necessary permits from the Director of Ohio EPA in violation of Ohio's water pollution control laws, R.C. Chapter 6111, and the rules and regulations promulgated thereunder. Plaintiff further alleges that the

Defendants failed to construct a chlorine contact tank as required by their approved permit to install in violation of Ohio's water pollution control laws, R.C. Chapter 6111, and the rules and regulations promulgated thereunder. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for the claims under such laws as alleged in the State's Complaint against Defendants.

4. 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 State's complaint. Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against Defendants or other appropriate persons for claims or conditions not alleged in the State's Complaint, including violations that occur after the filing of the Complaint, nor shall anything in this Consent Order limit the right of Defendants to 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 State of Ohio to undertake any action against any person, including Defendants, to eliminate or mitigate conditions that may present a threat to the public health, welfare or the environment.

IV. PERMANENT INJUNCTION

5. Defendants are hereby permanently enjoined and immediately ordered as follows:

A. Except as otherwise provided in this section, Defendants are permanently enjoined and ordered to immediately comply with the applicable provisions of Ohio's water pollution control laws, R.C. Chapter 6111, the rules and regulations promulgated thereunder, and the terms and conditions of any NPDES permit or PTI that may be issued.

B. Defendants are hereby permanently enjoined and ordered to make the following improvements to the operation and maintenance of its WWTP and any associated equipment and structures:

- 1) Within thirty (30) days of the effective date of this Consent Order, Defendants shall hire a wastewater treatment plant operator who shall properly operate and maintain the WWTP and any associated equipment and structures. The certified operator shall hold at least a class I operator's license and shall conduct daily inspections of the treatment plant and outfall. A log of inspections and corrective actions taken shall be kept and maintained for at least three (3) years.
- 2) Within seven (7) days of hiring a certified operator, Defendants shall submit to the Ohio EPA Northeast District Office (NEDO) a copy of the operator's job description and signed contract.
- 3) All waste management records shall be kept for at least the most recent three (3) years and made available to Ohio EPA upon request.

C. Defendants are hereby permanently enjoined and ordered to attain and maintain compliance with Ohio's water pollution control laws, R.C. Chapter 6111, for discharges from the WWTP as expeditiously as practicable, but not later than the dates established in the following schedule:

- 1) On or before May 14, 2002, Defendants shall submit to Ohio EPA a complete and approvable permit to install (hereinafter "PTI") application and detail plans for the WWTP serving Countryview Apartments to correct the alleged violations;
- 2) On or before May 14, 2002, Defendants shall submit to Ohio EPA a complete and approvable application for an NPDES permit for the WWTP serving Countryview Apartments;
- 3) No later than two (2) months after receiving an approved PTI from Ohio EPA, Defendants shall initiate construction of improvements to the WWTP serving Countryview Apartments in accordance with the terms and conditions of their approved PTI;
- 4) No later than three (3) months after receiving an approved PTI from Ohio

EPA, Defendants shall complete construction of improvements to the WWTP serving Countryview Apartments in accordance with terms and conditions of their approved PTI;

5) No later than two (2) months after completing construction, Defendants shall attain compliance with R.C. Chapter 6111, the rules and regulations promulgated thereunder, and the final effluent limitations, terms, and conditions of their approved NPDES Permit.

D. In the event that Ohio EPA has comments on the PTI and/or NPDES applications, Defendants shall modify the PTI and/or NPDES applications in accordance with Ohio EPA comments and immediately resubmit the PTI and/or NPDES applications in accordance with Ohio EPA comments.

E. Defendants are permanently enjoined and immediately ordered to properly operate and maintain its WWTP and any associated equipment and structures at all times.

F. Defendants shall not construct additional units at Countryview Apartments until such time as all of the provisions of this Consent Order have been complied with, all plan approvals have been obtained, and Defendants are in compliance with all PTI and NPDES permits as well as all applicable state and local health codes and laws.

G. The Defendants are permanently enjoined and immediately ordered to ensure that all PTI applications submitted to Ohio EPA for Countryview Apartments are reviewed, signed and certified by a professional engineer who is currently licensed and registered in the State of Ohio.

V. TIME EXTENSIONS

6. 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

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

- a. Ohio EPA
Northeast District Office
2110 E. Aurora Rd.
Twinsburg, Ohio 44087

Attn.: Surface Water Unit Supervisor

VII. CIVIL PENALTY

8. Pursuant to R.C. Section 6111.09, it is hereby ordered that Defendants shall pay to the State of Ohio a civil penalty of \$25,000.00 within sixty (60) days of the signing 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

9. In the event that Defendants fail to meet any of the deadlines and requirements of this Consent Order, Defendants 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 thirty (30) days -- Two Hundred and Fifty Dollars (\$250.00) per day for each deadline or requirement not met; (b) 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; (c) for each day of each failure to meet each deadline

for each deadline or requirement not met; (c) for each day of each failure to meet each deadline or requirement, over sixty-one (61) days -- One Thousand Dollars (\$1000.00) per day for each deadline or requirement not met.

10. Any payment required to be made under the provisions of 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." Defendants 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 Defendants and the acceptance of such stipulated penalties by the Plaintiff for specific violations pursuant to Section VIII shall not be construed to limit Plaintiff's authority to seek judicial enforcement of this Consent Order.

IX COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

11. Performance of the terms of this Consent Order by Defendants are not conditioned on the receipt of any Federal or State grant or loan funds. In addition, Defendants' 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. RETENTION OF JURISDICTION

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

XI. COURT COSTS

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

XII. ENTRY OF CONSENT ORDER AND FINAL JUDGEMENT BY CLERK

14. The parties agree and acknowledge that final approval by the Plaintiff and the 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 the Defendants reserve the right to withdraw this Consent Order based upon comments received during the public comment period. Defendants shall pay the costs of public notice associated with this Consent Order.

15. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon 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.

XIII. MISCELLANEOUS PROVISIONS

16. Defendants shall file a notice of voluntary dismissal (with prejudice) of the counterclaim filed against the State of Ohio by March 1, 2002.

IT IS SO ORDERED.

DATE

JUDGE

APPROVED:

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

David G. Kern 2/21/02

David G. Kern (0072421)
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Counsel for Plaintiff/Defendant State of Ohio

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John. C. Pierson (0018607)
Twin Oaks Estate
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Akron, Ohio 44313

Counsel for Plaintiffs/Defendants

Joel A. Helms
Joel A. Helms

James J. Helms
James J. Helms

Mildred L. Helms
Mildred L. Helms (By Power By,
of Attorney) James J. Helms her attorney.
Fax

GENERAL DURABLE POWER OF ATTORNEY

GIVEN BY

MILDRED L. HELMS

SECTION 1

APPOINTMENT OF AGENT

1.1 I, **MILDRED L. HELMS**, hereinafter referred to as "Principal", of SUMMIT County, State of Ohio, have this day appointed my SPOUSE, **JAMES J. HELMS** of SUMMIT County, State of Ohio, to serve as my Attorney-in-Fact, hereinafter referred to as "Agent", to do and perform any and every act and thing whatsoever that may be necessary or advisable in the management of my affairs, as fully as I might or could do if acting in person, and the enumeration of certain powers herein shall not be construed as limiting or restricting in any way the general powers hereby granted to my Agent to act on my behalf in any and every lawful way, as fully and to all intents and purposes as I might or could do if personally present. If **JAMES J. HELMS** shall be unable or unwilling to serve or to continue to serve, then I appoint **JOYCE A. SCOTT** to act as Alternate Agent. If **JOYCE A. SCOTT** shall be unable or unwilling to serve or to continue to serve, then I appoint **JAMES A. HELMS** to act as Second Alternate Agent.

1.2 Any Alternate Agent may execute and deliver an affidavit that my Agent is unwilling or unable to serve or to continue to serve, and such affidavit shall be conclusive evidence, insofar as third parties are concerned, of the facts set forth therein, and in such event any person acting in reliance upon such affidavit shall incur no liability to me, my estate, and any other person because of such reliance.

1.3 This Durable Power of Attorney shall become effective upon the date of its execution by the Principal.

1.4 The Principal shall be deemed to be incapacitated if, at any time, the two (2) licensed physicians named in the Principal's Competency Clause Addendum certify in writing, in the Statement of Expert Evaluation, that the Principal has become physically or mentally incapacitated and is unable to manage her affairs in her best interest, whether or not a court of competent jurisdiction has declared the Principal incompetent, mentally ill or in need of a guardian to the person.

1.5 In addition, the incapacity of my Agent or any Alternate Agent shall be deemed a resignation by such individual as Agent or Alternate Agent, as the case may be. For the purposes of this document, a person's incapacity shall be deemed to exist when the person's incapacity has been verified in writing by two (2) physicians licensed to practice in the State of such person's residence, stating that, in the opinion of the physicians, the person is incapable of caring for himself or herself, and is physically and/or mentally incapable of managing his or her affairs, or when a person has been declared by a court of competent jurisdiction to be mentally and/or physically incapacitated, or when a conservator for such person has been appointed. The effective date of such incapacity shall be the date of the physicians'

certificate, the date of the decree adjudicating the incapacity, or the date of the decree appointing the conservator.

1.6 If my spouse has been appointed my Agent or an Alternate Agent hereunder and subsequent to the execution of this instrument an action is filed to dissolve our marriage, then the filing of such action shall automatically remove my spouse as Agent or Alternate Agent.

1.7 In the event that any provision herein is invalid, the remaining provisions shall nonetheless be in full force and effect.

1.8 This Power of Attorney revokes any prior Durable Power of Attorney for Property Management executed previously by the Principal.

1.9 When signing on behalf of the Principal under this Durable Power of Attorney, the Agent shall sign as follows:

MILDRED L. HELMS by JAMES J. HELMS, her Attorney-in-Fact.

SECTION 2

GENERAL DURABLE POWERS

- 2.1 To make, carry out and execute any and all contracts;
- 2.2 To sell, convey, barter, exchange, encumber, lease, transfer or otherwise dispose of any property belonging to me, whether real, personal or mixed, or any part thereof or any interest therein, and to execute the necessary or required bills of sale, assignments, transfers, leases, notes, mortgages or conveyances, whether under seal or otherwise;
- 2.3 To carry on, conduct and conclude any and all negotiations in and about any business of mine or in which I may be interested within the State of Ohio or elsewhere;
- 2.4 To draw and sign checks or withdrawal orders upon any bank or savings association or other depository in which I now have or may hereafter have an account or accounts subject to withdrawal, and to endorse any and all bills of exchange payable to me;
- 2.5 To receive, endorse and collect checks payable to my order, drawn on the Treasurer of the United States, for whatever account, and to give full discharge for same;
- 2.6 To make, sign, execute and deliver promissory notes or bills of exchange, with or without warrant of attorney;

2.7 To sign or endorse any and all stock certificates issued by any corporation or similar organization;

2.8 To sign or endorse any and all bonds;

2.9 To enter any safe deposit box leased in my name and to remove any part or all of the contents thereof;

2.10 To vote at any general or special meeting of stockholders all stock owned, held or controlled by me or standing in my name;

2.11 To receive and receipt for dividends upon any stock belonging to me or standing in my name and on which I may be entitled to receive dividends;

2.12 To collect, receive and receipt for all interest moneys and all money or credits of any kind or nature belonging or owing to me on account whatsoever;

2.13 To act without limitation on my behalf with regard to federal, state and local income taxes, estate, gift, and other tax returns of all sorts, including but not limited to, claims for refunds, requests for extensions of time to file returns or pay taxes, and protests and/or petitions to administrative agencies or courts related to tax matters;

2.14 To compromise, settle or to sue and carry on any and all suits or legal proceedings of any kind in my name or for my benefit and, generally;

2.15 To perform any act necessary or desirable, including the transfer of real or personal property, in order for me to qualify for and receive all types of government benefits, including, but not limited to, medicare, medicaid, social security, veterans', and workers compensation benefits. I nominate my agent to serve as my representative payee for government benefits;

2.16 To disclaim an inheritance from an estate, life insurance proceeds, and any interest I may be entitled by means of inheritance or bequest;

2.17 To create any Trust, revocable or irrevocable for my benefit and that of my spouse and issue that I may have power to create myself; to amend or revoke such trust or trusts or any other trust that I may have the power to amend or revoke, to transfer any or all of my tangible or intangible personal property or real property to any such trusts; to the extent permitted by such trust or trust, to remove any or all property from such trust or trusts' (the fact that my agent may be a remainderman or a beneficiary in connection with any such transfer hereunder shall not affect the validity thereof, nor, by itself, constitute a breach of his or her fiduciary duty hereunder);

2.18 To make loans in my name; to borrow money in my name, individually or jointly with others; to give promissory notes or other obligations therefor; and to deposit or mortgage as collateral or for

security for the payment thereof any or all of my securities, real estate, personal property, or other property of whatever nature and wherever situated, held by me personally or in trust for my benefit;

2.19 To purchase, maintain, modify, renew, convert, exchange, borrow against, surrender, cancel, collect or select payment options, and give receipts or releases under any insurance or annuity contract.

If I have long-term care insurance, I instruct my agent to keep my long-term care coverage in force as long as it is financially practical to do so;

2.20 To exercise any and all rights with respect to any insurance policy on my life or any annuity contract, or any interest in any such policy or contract, as fully as any owner or beneficiary of the same, to engage in any transaction and to exercise and enjoy all options benefits, rights, and privileges under such policy or contract including the right to borrow upon the same, to pledge the same for a loan or loans, to assign ownership of the same to any person, trust or other entity, to change the beneficiary, and to surrender, assign, exchange, or otherwise modify any such policy or contract;

2.21 To exercise in any manner any election or option under and to make any one or more withdrawals from any Individual Retirement Account or any stock option, profit sharing, pension, thrift, savings or other employee benefit plans in which I may have an interest, and to become a participant in such plan or to establish an Individual Retirement Account in my name, to change the designation of beneficiary in effect for any such Individual Retirement Account or employee benefit plan, to waive any rights which I may have with respect to any employee benefit plan in which my spouse is a participant, to contribute to an existing Individual Retirement Account or other employee

benefit plan in my name, and to roll over the proceeds of a lump sum distribution from any qualified pension or profit-sharing plan into an Individual Retirement Account or another qualified pension or profit-sharing plan;

2.22 To make charitable gifts and gifts of not more than the amount of the federal estate tax annual gift exclusion per year to each of my children and grandchildren for birthdays, holidays, education, and extraordinary expenses or for estate tax purposes. However, my agent has the sole and absolute discretion as to whether to make any gifts, the amounts of any gifts and the recipients of any gifts (the fact that my agent may be a recipient of a gift in connection with this provision shall not affect the validity thereof, nor, by itself, constitute a breach of his or her fiduciary duty hereunder);

2.23 To employ, pay, and discharge attorneys, accountants and other professional advisors to render services to me or for my benefit. This power shall include the authority to waive confidentiality or privilege for the purpose of facilitating communication among my agent, my attorney, and other advisors. By agreeing to act as my agent, my agent consents to having any attorney or other professional advisor employed to advise my agent on a matter related to this power of attorney to disclose any act or omission that may be a breach of fiduciary duty to me or the appropriate civil authority. This waiver of confidentiality includes information my agent may have given to the attorney or advisor;

2.24 To manage all of my property and business, and to do any and every act of whatsoever nature concerning the same or in relation thereto which I might personally do, hereby giving and granting unto

my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite or necessary or proper to be done in and about the premises as fully and to all intents and purposes as I might or could do if personally present with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney may lawfully do or cause to be done by virtue hereof;

2.25 The rights, powers, and authority of my Agent to exercise any and all of the rights and power herein granted shall remain in full force and effect until I specifically revoke, in writing, such rights, power and authority and until I give written notice of such revocation to my said Agent. Furthermore, pursuant to Ohio Revised Code 1337.09(A), all power and authority herein shall not be affected by my disability, incapacity, adjudged incompetency, or lapse of time.

SIGNATURE

IN WITNESS WHEREOF, I have hereunto set my hand and seal on

APR 19 2000

Mildred Helms
MILDRED L. HELMS

Signed and acknowledged in the presence of:

Clinton A. Cross
WITNESS (Signature)

Clinton A. Cross
WITNESS (Print Name)

Timothy J. Forrest
WITNESS (Signature)

Timothy J. Forrest
WITNESS (Print Name)

STATE OF OHIO)

COUNTY OF SUMMIT)

SS:

On **APR 19 2000**, before me, a Notary Public, personally appeared **MILDRED L. HELMS**, personally known to me or proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that she did sign the foregoing instrument and that the same is her free act and deed. I attest that the principal appears to be of sound mind and not under or subject to duress, fraud, or undue influence.

Timothy J. Forrest
Notary Public

NOTARY SEAL

My Commission Expires:

TIMOTHY J. FORRESTAL, Attorney At Law
Notary Public - State of Ohio
My commission has no expiration date
Section 147.03 O.R.C.

Durable Power of Attorney
for Property Management for MILDRED L. HELMS