

IN THE COURT OF COMMON PLEAS  
DEFIANCE COUNTY, OHIO

STATE OF OHIO, ex rel.  
JIM PETRO  
ATTORNEY GENERAL OF OHIO,  
Environmental Enforcement Section  
30 East Broad St., 25th Floor  
Columbus, Ohio 43215-3428,

CASE NO. 04CV36948

FILED  
IN COURT OF COMMON PLEAS  
DEFIANCE COUNTY OHIO

Plaintiff,

v.

OCT 20 2004

JUDGE SCHMENK

5 C'S FARM, INC.  
05-327 Thiel Road  
Hicksville, Ohio 43526

*Jean Ziegler*  
CLERK

Defendant.

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CONSENT ORDER

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The Complaint in the above-captioned matter having been filed herein and the Plaintiff, State of Ohio ("Plaintiff" or "Director"), and the Defendant 5 C's Farm, Inc. ("Defendant") having agreed 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 903. The Complaint states a claim upon which relief can be granted against Defendant under R.C. Chapter 903 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 Plaintiff and Defendant, their agents, officers, employees, assigns, successors in interest, and any other person acting either in concert or in participation, or both, with any of them who receive actual notice of the Consent Order.

## **III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS**

3. Defendant currently operates a concentrated animal feeding facility ("CAFF") located at Route 2, Box 05191 Thiel Road, Hicksville, Defiance County, Ohio 43526 (the "Facility"). Plaintiff alleges in its Complaint that, since August 19, 2002, Defendant has operated and continues to operate the Facility without a Permit to Install ("PTI") from Ohio EPA, a Review Compliance Certificate ("RCC") from the Director, or a Permit to Operate ("PTO") from the Director as required by R.C. 903.03(A)(2). Defendant denies these allegations. The execution by Defendant of this Consent Order shall not constitute an admission that any of the allegations are true. Defendant has submitted a completed PTO application to the Director.

4. Compliance with the terms of this Consent Order shall constitute full satisfaction and release of any civil liability by Defendant and its shareholders, agents, officers, employees, assigns, and successors in interest for all claims of violations alleged in the Complaint up through the date the Director either approves or denies Defendant's application for a PTO. This Consent Order shall also constitute full satisfaction and release of any civil liability by Defendant and its shareholders, agents, officers, employees, assigns, and successors in interest for any installation, construction, or modification of the Facility occurring between August 19, 2002 through the date this Consent Order is signed without the issuance of a PTI by the Director under R.C. 903.02. However, if the Director denies Defendant's PTO application and Defendant continues to operate the Facility after such denial, this Consent Order does not preclude Plaintiff

from bringing claims for any violations resulting from Defendant's continuing operation of the Facility without a PTO or RCC after such denial.

5. Nothing in this Consent Order shall be construed to limit the authority of Plaintiff to seek relief against appropriate persons other than those released in paragraph 4 above for claims or conditions alleged in the Complaint. Nothing in this Consent Order shall be construed so as to limit the authority of Plaintiff to seek relief against Defendant or any other appropriate persons for claims not alleged in the Complaint and violations occurring after the filing of the Complaint, except for the failure to obtain a PTI under R.C. 903.02 for any installation, construction, or modification of the Facility occurring between August 19, 2002 through the date this Consent Order is signed and except for any continuing operation of the Facility before the Director approves or denies Defendant's PTO application. Nothing in this Consent Order shall limit Defendant's right 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 Defendant, to eliminate or mitigate conditions that may present a threat to the public health, welfare, or the environment. Further, nothing in this Consent Order shall be construed to diminish the Director's authority or discretion to grant, deny or revoke the permit application or any future permit application associated with the Facility.

#### **IV. PERMANENT INJUNCTION**

6. Defendant is hereby enjoined and immediately ordered, as follows:

A. Defendant shall not make any future modifications, as defined by the rules promulgated under R.C. Chapter 903, to 5C's Farm without first applying for and receiving a PTI from the Director in accordance with R.C. 903.02.

B. Defendant shall not construct or operate any new concentrated animal feeding facility without first applying for and receiving a PTI and PTO from the Director in accordance with R.C. 903.02 and 903.03.

**V. TIME EXTENSIONS**

7. 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. CIVIL PENALTY**

8. Defendant is hereby ordered and enjoined to pay a civil penalty of \$11,000.00 within sixty (60) days of the signing of this Consent Order by the Court. The civil penalty shall be paid by certified or cashier's check for the appropriate amount, made payable to "Treasurer, State of Ohio, for deposit to the Livestock Management Fund 5L8", which check shall be delivered by mail, or otherwise, to Amy Laws, Paralegal, or her successor at Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215-3400.

**VII. MISCELLANEOUS**

9. Nothing in this Consent Order shall affect Defendant's obligation to comply with all 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 Consent Order.

**VIII. RETENTION OF JURISDICTION**

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

**IX. COURT COSTS**

11. Defendant is hereby ordered to pay the court costs of this action.

**X. ENTRY OF CONSENT ORDER AND FINAL JUDGEMENT BY CLERK**

12. 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.

**XI. SIGNATORIES**

13. The undersigned is a representative of Defendant and understands the terms and conditions of the Consent Order and certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and legally bind the Defendant to this document.

IT IS SO ORDERED.

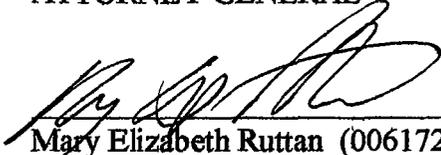
/s/ Joseph N. Schmenk

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JUDGE, COURT OF COMMON PLEAS  
DEFIANCE COUNTY

\_\_\_\_\_  
DATE

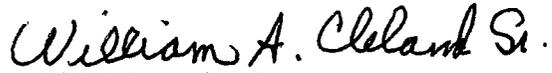
APPROVED:

JIM PETRO,  
ATTORNEY GENERAL



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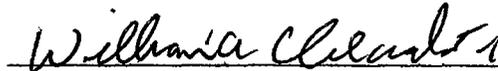
5 C's FARM, INC.



William Cleland, Sr.

President

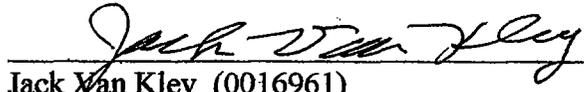
Title



William Cleland, Jr.

V.P.

Title



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Counsel for Defendant