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IN THE COURT OF COMMON PLEAS
CLARK COUNTY, OHIO

2004 AUG -2 P 1:57

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

CASE NO. 00-CV-0554

ATTORNEY GENERAL OFFICE
ENVIRONMENTAL ENFORCEMENT

Plaintiff,

JUDGE O'NEILL

RON VINCENT, CLERK
COMMON PLEAS COURT
CLARK COUNTY, OHIO

2004 JUL 23 1 P 2:45

FILED

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v.

JMH PROPERTIES, et al.,

Defendants.

PERMANENT INJUNCTION CONSENT ORDER

WHEREAS, the Plaintiff State of Ohio (the "State"), on relation of its Attorney General ("Plaintiff"), has filed a complaint in this matter against Defendant Jeff Ulery ("Defendant Ulery") on behalf of the Director of the Environmental Protection Agency, pursuant to Ohio Revised Code ("R.C.") Chapters 6111 and 6109, and the regulations promulgated thereunder and other laws.

WHEREAS, The State's Complaint seeks, among other things, remedies to investigate and abate alleged pollution at Clearview Mobile Home Park ("Clearview"), currently owned by Defendant Jeff Ulery, and located at 2710 Dayton Road, Springfield, Ohio.

WHEREAS, the Plaintiff and Defendant Ulery hereby consent to the entry of this Consent Order.

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FURTHERMORE, Except as otherwise provided in this Permanent Injunction Consent Order, all requirements of the August 4, 2000 Consent Order for Preliminary Injunction and the July 5, 2001 amended Consent Order for Preliminary Injunction, remain in full force and effect.

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. Chapters 6109 and 6111. The Complaint states a claim upon which relief can be granted against Defendant Ulery under R.C. Chapters 6109 and 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 Defendant Ulery, Defendant Ulery's agents, officers, employees, assigns, successors in interest, and any other persons acting in concert and/or in privity with any of them.

3. Defendant Ulery shall provide a copy of this Consent Order to each engineer, operator, general contractor, consultant, and any other person or entity employed to perform any work itemized herein. Defendant Ulery shall require each of the above to provide a copy of this Consent Order to all subcontractors hired to perform the work itemized herein.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

4. The State has alleged that Defendant has violated R.C. Chapter 6109 and 6111 and the rules promulgated thereunder in Ohio Admin. Code Chapter 3745-27.

5. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendant and its successors in interest and assigns, for the claims alleged in the State's Amended Complaint.

6. The State of Ohio reserves the right to seek further relief from this or any other Court, including but not limited to, further preliminary and/or permanent injunctive relief and civil penalties. This Consent Order in no way waives any defenses, which Defendant Ulery may have as to such relief.

7. The State of Ohio expressly reserves, and this Consent Order shall be without prejudice to, any claims, demands, rights or causes of action, judicial or administrative, the State of Ohio may have or which may in the future accrue against Defendant Ulery or others, regardless of whether such claim, demand, right or cause of action was asserted in the Complaint. This Consent Order in no way waives any defenses which Defendant Ulery may have as to such claims, demands, rights or causes of actions.

8. Nothing herein shall limit the authority of the State to undertake any action against any entity, including Defendant Ulery, to eliminate or control conditions, which may present a threat to the public health, safety, welfare or environment, and to seek cost reimbursement for any such action. This Consent Order in no way waives any defenses, which Defendant Ulery may have as to such claims, demands, rights or causes of action.

9. Nothing herein shall be construed to relieve Defendant Ulery of his obligation to comply with applicable federal, state or local statutes, regulations or ordinances, including, but not limited to, permit requirements. Further, nothing in this order shall be construed to authorize any action by Defendant Ulery that requires a Permit to Install ("PTI") or other such permit to Ohio EPA.

IV. PERMANENT INJUNCTION

10. Except as otherwise provided in this section, Defendant Ulery is hereby permanently enjoined and immediately ordered to comply with the applicable provisions of Ohio's Water Pollution Control Law, R.C. Chapter 6111, and the rules and regulations promulgated thereunder, and the terms and conditions of any permit that may be issued to the Defendant. Defendant Ulery is hereby permanently enjoined and immediately ordered to maintain all the components of the wastewater treatment system.

11. Except as otherwise provided in this section, Defendant Ulery is hereby permanently enjoined and immediately ordered to comply with the applicable provisions of Ohio's Safe Drinking Water Law, R.C. 6109 and the rules and regulations promulgated thereunder, and the terms and conditions of any license or plan approval that may be issued to the Defendant.

12. No later than June 1, 2005, Defendant Ulery shall replace all drinking water lines at Clearview or complete a pressure test evaluation on the entire distribution system and either replace or properly abandon the lines identified in the evaluation as leaking.

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13. Once a sewerage system comes within two hundred (200) feet of the Clearview property line, and is available, Defendant Ulery has one hundred eighty (180) days to connect Clearview to the publicly owned treatment works. Publicly owned treatment works is defined in R.C. 6111.01(R). Sewerage System is defined in R.C. 6111.01(E). Once Clearview has been connected to the publicly owned treatment work's sewerage system, Defendant Ulery shall decommission Clearview's existing wastewater treatment plant and provide for the proper disposal.

14. No later than June 15, 2004, Defendant Ulery shall repair and/or replace the pump in the lift station that was approved by the Director of Ohio EPA on September 21, 2000 (PTI No. 05-11172). Defendant Ulery is hereby permanently enjoined and immediately ordered to maintain both pumps in the lift station as operational.

15. No later than June 15, 2004 Defendant Ulery shall repair and/or replace the flow metering device that was approved by the Director of Ohio EPA on September 21, 2000 (PTI No. 05-11172). Defendant Ulery is hereby permanently enjoined and immediately ordered to maintain the flow metering device as operational.

16. No later than July 1, 2004, Defendant Ulery shall complete back filling and final grading around Clearview's wastewater treatment units. Final grading shall consist of sloping the ground from the treatment plant to the fence and shall be free of ruts, gullies, and low lying areas and to establish a perennial vegetation cover on the final grading to permanently stabilize the soil. Defendant Ulery is hereby permanently enjoined and immediately ordered to maintain the final grading around Clearview's wastewater treatment plant.

VI. CIVIL PENALTY

20. Defendant Ulery is ordered to immediately pay the State of Ohio a civil penalty of Fifty Thousand and no/100 Dollars (\$50,000.00). 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 to Lyndia Jennings, 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.

VII. STIPULATED PENALTIES

21. This paragraph is meant to coerce compliance. In the event that Defendant Ulery fails to meet any of the deadlines and requirements of Section IV of this Consent Order, Defendant Ulery shall pay a stipulated penalty for each failure according to the following payment schedule:

(1) For each day of the first thirty (30) days that a deadline or requirement is not met, each failure to meet each deadline or requirement will be assessed a fine of Two Hundred Fifty Dollars (\$250.00) per day, per deadline or requirement not met;

(2) If such failure to meet a deadline or requirement exceeds thirty days, between the thirty-first (31) and sixtieth (60) days a fine will be assessed of Five Hundred Dollars (\$500.00) per day for each deadline or requirement not met; and

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

31. 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.

XIV. SIGNATORIES

32. Each of the undersigned representatives for the Parties represents that he/she is fully authorized to enter into the terms and conditions of this Consent Order and legally bind the respective Party to this document.

IT IS SO ORDERED.

[Signature]
JUDGE O'NEILL
COURT OF COMMON PLEAS
CLARK COUNTY

7/23/04
DATE

JUL 26 2004

2004 JUL 23 P 2:45
RON VINCENT, CLERK
COMMON PLEAS COURT
CLARK COUNTY, OHIO

FILED

APPROVED:

JIM PETRO
ATTORNEY GENERAL

[Signature]
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Phone: (614) 466-2766
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[Signature]
By: Jeff Ulery
Defendant Ulery

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116 South Church Street
New Carlisle, Oh 45344

Counsel for Defendant Jeff Ulery & Suburban Properties