

JOURNALIZED 12-2-03

VOL 47 PG 12

IN THE COURT OF COMMON PLEAS
FULTON COUNTY, OHIO

FILED
FULTON COUNTY
COMMON PLEAS COURT

03 DEC -1 AM 11:19

MARY GYPE
CLERK

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

CASE NO. 02CV260

Plaintiff,

JUDGE BARBER

v.

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

and

GARY R. VAN CLEEF
d.b.a. THE SWANTON MEADOWS
MOBILE HOME PARK
2738 Westchester Boulevard
Ottawa Hills, Ohio 43615

and

VAN CLEEF, GOODELL, &
GOODELL PARTNERS
d.b.a. THE SWANTON MEADOWS
MOBILE HOME PARK
2738 Westchester Boulevard
Ottawa Hills, Ohio 43615

Defendants.

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 ("Plaintiff"), and the Defendants Joseph E. Goodell, d.b.a. the Swanton Meadows Mobile Home Park, Gary Van Cleef, d.b.a. the Swanton Meadows Mobile Home Park, and Van Cleef, Goodell, and Goodell Partners ("Defendants") hereby consent 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 Defendants 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 Defendants, the Defendants' agents, officers, employees, assigns, successors in interest, and any other person acting in concert and/or in privity with any of them.

3. The Defendants 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 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 AND RESERVATION OF RIGHTS

4. The Plaintiff alleges in its Complaint that the Defendants have operated their wastewater treatment plant ("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 Defendants' WWTP serving the Swanton Meadows Mobile Home Park has been discharging "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 ("NPDES") permit; that the Defendants have failed to properly maintain and operate the WWTP in contravention of the Permit to Install ("PTI"); and that the Defendants have failed to comply with the effluent limitations and monitoring requirements contained in their NPDES permit.

5. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by the Defendants 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 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 Defendants 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 Defendants 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 Defendants, to eliminate or mitigate conditions that may present a threat to the public health, welfare, or the environment.

IV. PERMANENT INJUNCTION

The Defendants are hereby enjoined and immediately ordered, as follows:

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

8. The Defendants are enjoined and immediately ordered to undertake any and all necessary investigations and to conduct all necessary activities which meet with the approval of Ohio EPA to abate pollution and restore, at the Defendants' own expense, AI Creek and any associated riparian areas necessary to support other waters of the State adversely impacted due to the Defendants' activities.

9. The Defendants are enjoined and immediately ordered to make the following improvements to the operation and maintenance of the sewage treatment facilities and any associated equipment and structures currently in operation at the Swanton Meadows Mobile Home Park:

- A. Within thirty (30) days of the effective date of this Consent Order, the Defendants shall hire a wastewater treatment plant operator who shall properly operate and maintain the WWTP and any associated equipment and structures presently in operation. 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;

- B. Within seven (7) days of hiring a certified operator, the Defendants shall submit to the Ohio EPA Northwest District Office (NWDO) a copy of the operator's job description and signed contract;
- C. Beginning immediately and lasting until the Defendants obtain a valid and unexpired NPDES modified permit, the Defendants shall comply with the following effluent limitations and monitoring requirements:

<u>Effluent Characteristic</u>			<u>Discharge Limitations</u>				<u>Monitoring Requirements</u>	
Reporting Code	Units	Parameter	Concentration Specified Units		Loading* kg/day		Meas. Freq.	Sample Type
			30 Day	7 Day	30 Day	7 Day		
0010	°C	Water Temperature	-	-	-	-	1/Week	Grab
00083	UNITS	Color, Severity (1)	-	-	-	-	Daily	Estimate
00530	Mg/l	Total Suspended Solids	30	45	2.27	3.4	1/month	Grab
00610	Mg/l	Nitrogen, Ammonia (NH ₃) (Summer) (Winter)	3.6	5.4	0.27	0.41	1/month	Grab
			16.5	24.8	1.2	1.88		
01330	UNITS	Odor, Severity (1)	-	-	-	-	Daily	Estimate
01350	UNITS	Turbidity, Severity (1)	-	-	-	-	Daily	Estimate
31616	#/100ml	Fecal Coliform (Summer Only)	1000	2000	-	-	1/month	Grab
50050	MGD	Flow Rate	-	-	-	-	Daily	Continuous
80082	Mg/l	CBOD ₅	10	15	0.76	1.1	1/month	Grab

1. If the entity uses chlorine for disinfection, the Chlorine Residual (Reporting Code 50060) shall be maintained at a level not to exceed 0.019 mg/l and shall be monitored ½ weeks by grab sample (Summer only).

2. The Dissolved Oxygen (Reporting Code 00300) shall be maintained at a level of not less than 5.0 mg/l and shall be monitored 1/week by grab sample.

* The average effluent loading limitations are established using the following flow value: .020 MGD;

- D. Monitoring data shall be reported on Ohio EPA Form 4500 (EPA Form 4500) or a mutually agreed form and be submitted to the Ohio EPA on a monthly basis. Individual reports for each month must be received by the Ohio EPA, NWDO, no later than the 15th day of the following month; and
- E. All waste management records, analysis results, soil analysis results, and/or wastewater test results shall be kept for at least the most recent three years and made available to Ohio EPA upon request.

10. The Defendants are enjoined and immediately ordered to achieve long-term compliance with R.C. Chapter 6111 and Ohio Administrative Code 3745 in accordance with the following schedule:

- A. Within thirty (30) days of the effective date of this Consent Order, the Defendants shall submit to the Ohio EPA a complete and approvable PTI application and detail plan for the complete replacement of the WWTP serving the Swanton Meadows Mobile Home Park;
- B. Within one hundred ~~twenty~~ ^{eighty 180} (120) days of the effective date of this Consent Order, the Defendants shall initiate construction of the new WWTP serving the Swanton Meadows Mobile Home Park in accordance with the terms and conditions of the approved PTI; *SM*
- C. Within ~~one hundred eighty~~ ^{two forty 240} (180) days of the effective date of this Consent Order, the Defendants shall complete construction and initiate operation of the new WWTP in accordance with the terms and conditions of the approved PTI; *SM*
- D. The Defendants shall submit to Ohio EPA a complete and approvable application for an NPDES modified permit for the new WWTP serving the Swanton Meadows Mobile Home Park and shall attain compliance with R.C. 6111, the rules and regulations promulgated thereunder, and the final effluent limitations, terms, and conditions of the new and approved NPDES modified permit; and
- E. Within sixty (60) days of the completion of construction and initiation of operation of the new WWTP, the new WWTP shall attain compliance with the final effluent limitations, terms, and conditions of the approved NPDES modified permit.

11. The Defendants are enjoined and ordered to submit to Ohio EPA a complete and approvable sludge management plan for the removal of sludge from the polishing pond located at the Swanton Meadows Mobile Home Park within thirty (30) days of the signing of this Consent Order by the Court. The Defendants shall remove all sludge from the polishing pond within ninety (90) days of the signing of this Consent by the Court. The sludge shall be immediately deposited at an Ohio EPA approved facility and/or site.

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

with Ohio EPA comments and resubmit the PTI and/or NPDES applications in accordance with Ohio EPA comments.

13. The Defendants are enjoined and immediately ordered to ensure that all PTI applications submitted to Ohio EPA for the Swanton Meadows Mobile Home Park are reviewed, signed and certified by a professional engineer who is currently licensed and registered in the State of Ohio.

14. The Defendants are enjoined and immediately ordered not to expand the size or number of households and/or residents or tenants at the Swanton Meadows 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 Defendants are in compliance with all PTI permits as well as any applicable state and local health codes and laws.

15. The Defendants are enjoined and immediately ordered to properly operate and maintain its current WTP and any associated equipment and structures until such time as the WWTP is properly abandoned.

16. The Defendants are enjoined and immediately ordered to connect to a public sanitary sewer system when such a system becomes available and accessible to the Swanton Meadows Mobile Home Park.

17. 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 Swanton Meadows Mobile Home Park and shall have access to any other property controlled by or available to the Defendants to which access is necessary to effectuate the restoration and remediation actions required by this 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

18. 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

19. 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 Group Enforcement
Leader

VII. CIVIL PENALTY

20. The Defendants are ordered and enjoined to pay a civil penalty of \$20,000.00 within sixty (60) days of the signing of this Consent Order by the Court. The civil penalty 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

21. In the event that the Defendants fail to meet any of the deadlines and requirements of this Consent Order, the 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 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) days 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.

22. 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 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 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

23. Performance of the terms of this Consent Order by the Defendants is not conditioned on the receipt of any federal or state grant or loan funds. In addition, the 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. MISCELLANEOUS

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

25. The Defendants shall inform Ohio EPA of any change of its business addresses or telephone numbers.

XI. POTENTIAL FORCE MAJEURE

26. If any event occurs which causes or may cause a delay in the Defendants' compliance with any requirement of this Consent Order, the Defendants shall notify the Ohio EPA in writing within ten (10) days from when the Defendants 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 Defendants to prevent or minimize the delay, and the timetable by which those measures will be implemented. The Defendants shall adopt all reasonable measures to avoid or minimize any such delay.

27. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, the Defendants may raise that they are entitled to a defense that their conduct was caused by reasons entirely beyond their 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 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, if ever, that a court proceeding to enforce this Consent Order is commenced by the Plaintiff. At that time, the Defendants will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of the Defendants. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or a change in the Defendants' financial circumstances, shall not constitute circumstances entirely beyond the control of the Defendants or serve as a basis for an extension of time under this Consent Order. Failure by the Defendants 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 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 the Defendants qualify for an extension of a subsequent date or dates. The 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 the Defendants of any rights or defenses it may have under applicable law.

XII. RETENTION OF JURISDICTION

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

XIII. COURT COSTS

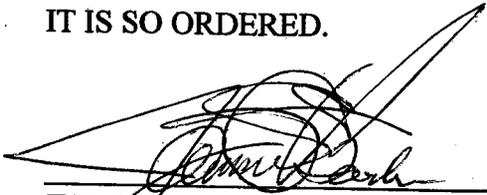
29. The Defendants are hereby ordered to pay the court costs of this action.

XIV. ENTRY OF CONSENT ORDER AND FINAL JUDGEMENT BY CLERK

30. 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 the Plaintiff and the Defendants reserve the right to withdraw this Consent Order based upon comments received during the public comment period. The Defendants 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.

IT IS SO ORDERED.

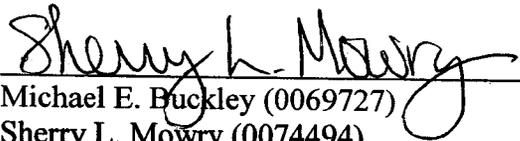


JUDGE JAMES E. BARBER, COURT OF
COMMON PLEAS, FULTON COUNTY

12-1-03
DATE

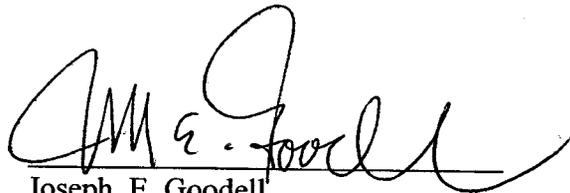
APPROVED:

JIM PETRO,
ATTORNEY GENERAL OF OHIO



Michael E. Buckley (0069727)
Sherry L. Mowry (0074494)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
Telephone (614) 466-2766
Facsimile (614) 644-1926
mbuckley@ag.state.oh.us
smowry@ag.state.oh.us

Counsel for Plaintiff



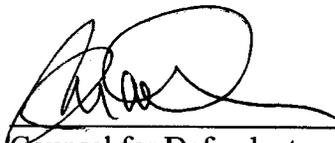
Joseph E. Goodell

Defendant Owner



Gary R. Van Cleef

Defendant Owner



Counsel for Defendants

Copies Served 12/3/03
Mary Gype, Clerk
By _____ *cu*