

IN THE COURT OF COMMON PLEAS
RICHLAND COUNTY, OHIO

RICHLAND COUNTY
CLERK OF COURTS
FILED

03 MAY 28 AM 9:02

STATE OF OHIO, *ex rel.*,
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO,
30 East Broad Street
Columbus, Ohio 43215-3428,

CASE NO. 01-1159D
JUDGE JAMES DEWEESE
PHILLIP J. DEWEESE
CLERK OF COURTS

Plaintiff,

vs.

WILLIAM A. LAWRENCE, et al

Defendants.

PARTIAL CONSENT ORDER AND FINAL JUDGMENT ENTRY
AS TO DEFENDANT CAVEN S. MCLOUGHLIN

The Plaintiff State of Ohio, by its Attorney General (“Plaintiff” or “State of Ohio”) and Defendant Caven S. McLoughlin (“Defendant McLoughlin” or “Defendant”), hereby consent to the entry of this Partial Consent Order in order to resolve the allegations in this matter as to Defendant McLoughlin and pursuant to Chapters 6111 and 6109 of the Ohio Revised Code (“R.C.”).

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

I. DEFINITIONS

As used in this Partial Consent Order:

“Contractor” means the individual(s) or company or companies retained by or on behalf of Defendant to undertake and complete the work required by this Partial Consent Order.

“Defendant” means Caven S. McLoughlin.

- “Director”** means Ohio's Director of Environmental Protection.
- “Disposal System”** means a system for disposing of sewage, sludge, sludge materials, industrial waste, or other wastes and includes sewerage systems and treatment works.
- “Effective Date”** means the date the Richland County Court of Common Pleas enters this Partial Consent Order.
- “Effluent”** means sewage or other wastewater, treated or untreated, that flows out of a disposal system, treatment plant, sewer, or industrial outfall, and generally refers to wastewater discharged into surface waters.
- “Effluent Limitation”** means restrictions established by the State of Ohio in the NPDES permit on quantities, rates, and concentrations in wastewater discharges.
- “Hillside Mobile Home Park”** means the track of land located at 2075 Ashland Road, Mansfield, Richland County, Ohio upon which manufactured homes used for habitation are parked, either free of charge or for revenue purposes, and include any roadway, building, structure, vehicle or enclosure used or intended for use as a part of the facilities of the park.
- “Maximum Containment Level”** or **“MCL”** means the maximum permissible level of a contaminant in drinking water which is delivered to any user of a public water system.
- “NPDES”** means national pollutant discharge elimination system.
- “NPDES permit”** means the current national pollutant discharge elimination system permit and any renewals thereof.
- “Ohio EPA”** means Ohio Environmental Protection Agency.
- “Partial Consent Order”** means this Partial Consent Order and Final Judgment Entry As To Defendant Caven S. McLoughlin.
- “Plaintiff”** means the State of Ohio by and through the Attorney General of Ohio.
- “Public water system”** means a system which provides water for human consumption through pipes or other constructed conveyances, in such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least

sixty days out of the year. Such term includes any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system, and any water supply system serving an agriculture labor camp, as defined in section 3733.41 of the Revised Code.

“Wastewater treatment plant” or “WWTP” means a facility containing a series of tanks, screens, filter, and other processes by which pollutants are removed from water.

“Sewerage system” means pipelines or conduits, pumping stations, and force mains, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting water borne sewage, industrial waste, or other wastes to a point of disposal or treatment.

II. JURISDICTION AND VENUE

1 The Court has jurisdiction over the Parties and the subject matter of this case pursuant to R.C. Chapters 6109 and 6111. The Complaint states a claim upon which relief can be granted against Defendant McLoughlin and venue is proper in this Court.

III. PARTIES AND NOTICE OF SALE

2. The provisions of this Partial Consent Order shall apply and be binding upon the Plaintiff and Defendant McLoughlin, Defendant’s agents, officers, employees, assigns, successors in interest, buyers and any person acting in concert or privity with any of them. Defendant McLoughlin shall provide a copy of this Partial Consent Order to each contractor and consultant he employs to perform the work itemized herein. Defendant McLoughlin shall require each general contractor to provide a copy of this Partial Consent Order to each of its subcontractors for such work.

3. Defendant McLoughlin shall give thirty (30) days notice to Ohio EPA before he sells the Hillside Mobile Home Park (“Hillside”). In addition, Defendant

McLoughlin shall provide a copy of this Partial Consent Order to any subsequent owner(s) or successor(s) prior to the transfer of Defendant McLoughlin's ownership rights.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

4. Defendant McLoughlin has operated his Hillside wastewater treatment plant ("WWTP"), sewer system and Public Water System in such a manner as to result in violations of the requirements of the National Pollution Discharge Elimination System (NPDES) Permit issued to him by the Director and in violation of the water pollution and drinking water laws of the State of Ohio. Compliance with the terms of this Partial Consent Order shall constitute full satisfaction of any civil liability by Defendant McLoughlin for all claims of violations alleged in the Complaint against Defendant McLoughlin, including the claims for injunctive relief and civil penalties.

5. Nothing in this Partial 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 Complaint. Nothing in this Partial Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against any Defendant or other appropriate persons for claims or conditions not alleged in the Complaint, including violations which occur or continue after the lodging of this Partial Consent Order with the Court pursuant to Section XIII, nor shall anything in this Partial Consent Order limit the right of any Defendant to any defenses it may have for such claims. Similarly, nothing in this Partial Consent Order shall be construed so as to limit the authority of the State of Ohio to undertake any action against any Defendant, to

eliminate or mitigate conditions which may present a threat to the public health, welfare or the environment.

V. PERMANENT INJUNCTION

6. Defendant McLoughlin is hereby permanently enjoined and immediately ordered to comply with the requirements of R.C. Chapters 6111 and 6109 and the rules adopted thereunder, and the terms and conditions of the currently effective NPDES Permit No. 2PV00700*AD, and any renewals or modifications thereof. Defendant shall properly operate and maintain the Hillside Mobile Home Park WWTP, sewer system and any associated equipment and structures. Defendant shall also properly operate and maintain the Hillside Public Water System. All renewals, modifications or changes to Hillside Mobile Home Park's NPDES Permit approved by the Director and/or effective after the entry of this Partial Consent Order shall be deemed to be incorporated in full and made an enforceable part of this Partial Consent Order.

VI. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

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

VII. CIVIL PENALTY

8. Within thirty (30) days of the Effective Date of this Partial Consent Order, it is hereby ordered that Defendant McLoughlin shall pay to the State of Ohio a civil penalty of Twelve Thousand Five Hundred Dollars (\$12,500.00) for violation of

R.C. Chapter 6111 The civil penalty payment shall be paid by delivering a certified check for the appropriate amount, made payable to "Treasurer, State of Ohio," to Jena Suhadolnik, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215-3400.

9. Within thirty (30) days of the Effective Date of this Partial Consent Order, it is hereby ordered that Defendant McLoughlin shall pay to the State of Ohio a civil penalty of Four Thousand Eight Hundred Dollars (\$4,800.00) for violation of R.C. Chapter 6109. The civil penalty payment shall be paid by delivering a certified check for the appropriate amount, made payable to "Treasurer, State of Ohio," to Jena Suhadolnik, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215-3400.

VIII. STIPULATED PENALTIES

10. In the event that there is: (a) a violation of the effluent limitations established in Part I of the NPDES permit; or (b) an exceedence of a drinking water MCL that has been confirmed by the required repeat sampling, Defendant McLoughlin shall pay a stipulated penalty of one thousand dollars (\$1,000.00) per day per effluent limitation violation or MCL exceedence. In addition, if there is an unauthorized discharge or bypass from any location in the Hillside Mobile Home Park WWTP or disposal system, except as otherwise provided by the NPDES permit Defendant McLoughlin shall pay a stipulated penalty of one thousand and five hundred dollars (\$1,500.00) for each unauthorized discharge or bypass from any location.

11 If Defendant McLoughlin fails to meet the requirements of Section VII, paragraphs 8 and/or 9 of this Partial Consent Order, Defendant McLoughlin shall pay a stipulated penalty according to the following schedule:

(1) For each day of each failure to meet a requirement of Section VII, paragraphs 8 and/or 9 of this Partial Consent Order up to thirty (30) days - fifty dollars (\$50.00) per day per requirement not met;

(2) For each day of each failure to meet a requirement of Section VII, paragraphs 8 and/or 9 of this Partial Consent Order from thirty-one (31) to sixty days (60) - one hundred dollars (\$100.00) per day per requirement not met; and

(3) For each day of each failure to meet a requirement of Section VII, paragraphs 8 and/or 9 of this Partial Consent Order over (61) days – two hundred dollars (\$200.00) per day per requirement not met.

12. Except as provided above in paragraph 10, if Defendant McLoughlin fails to comply with Defendant's NPDES permit terms or conditions or the regulations relating to Public Water Systems, Defendant McLoughlin shall pay a stipulated penalty according to the following schedule:

(1) For each day of each failure to meet a requirement of this Partial Consent Order and/or failure to comply with Defendant's NPDES permit term or condition and/or any regulation(s) relating to the Public Water System up to thirty (30) days – two-hundred-fifty dollars (\$250.00) per day per requirement not met;

(2) For each day of each failure to meet a requirement of this Partial Consent Order and/or failure to comply with Defendant's NPDES permit term or condition and/or any regulation(s) relating to the Public Water System from thirty-one (31) to sixty days (60) - five hundred dollars (\$500.00) per day per requirement not met; and

(3) For each day of each failure to meet a requirement of this Partial Consent Order and/or failure to comply with Defendant's NPDES permit term or condition and/or any

regulation(s) relating to the Public Water System over (61) days – seven hundred fifty dollars (\$750.00) per day per requirement not met.

13 Any payment required to be made under the provisions of Section VIII of this Partial Consent Order shall be made by delivering to Jena Suhadolnik, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215-3400, a certified check or checks in the appropriate amounts, made payable to "Treasurer, State of Ohio." Stipulated penalty payments shall be made within forty-five (45) days from the date the violation of paragraphs 10 through 12 of this Partial Consent Order occurred. All stipulated penalty checks shall be accompanied by a written statement identifying the terms of this Partial Consent Order, NPDES permit, or MCL limitation that was not complied with, and the date(s) of such non-compliance. The payment of stipulated penalties by Defendant McLoughlin and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to Section VIII shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Partial Consent Order. However, Defendant's timely payment of such stipulated penalties may be considered by the Director in determining the extent of additional enforcement remedies sought.

IX. MISCELLANEOUS

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

15. Defendant McLoughlin shall inform the Ohio EPA of any change of his business addresses or telephone numbers.

X. POTENTIAL FORCE MAJEURE

16. If any event occurs which causes or may cause a delay in Defendant's compliance with any requirement of this Partial Consent Order, Defendant McLoughlin 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 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 McLoughlin to prevent or minimize the delay, and the timetable by which those measures will be implemented. Defendant shall adopt all reasonable measures to avoid or minimize any such delay.

17. In any action by the Plaintiff to enforce any of the provisions of this Partial Consent Order, Defendant McLoughlin may raise a defense that his conduct was caused by force majeure events that were beyond Defendant's control including but not limited to 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 Defendant McLoughlin 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 Partial Consent Order is commenced by the Plaintiff. At that time, Defendant McLoughlin will bear the burden of proving that any delay was or will be caused by circumstances beyond the control of Defendant. Unanticipated or increased costs

associated with the implementation of any action required by this Partial Consent Order, or a change in Defendant's financial circumstances, shall not constitute circumstances entirely beyond the control of Defendant McLoughlin or serve as a basis for an extension of time under this Partial Consent Order. Failure by 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 Defendant's right to request an extension of its obligations under this Partial Consent Order based on such incident. An extension of one date based on a particular incident does not mean that Defendant McLoughlin qualifies for an extension of a subsequent date or dates. Defendant must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Partial Consent Order without a Force Majeure Clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

XI. RETENTION OF JURISDICTION

18. The Court will retain jurisdiction of this action for the purpose of administering or enforcing Defendant McLoughlin's compliance with this Partial Consent Order.

XII. COSTS

19. Defendant McLoughlin is hereby immediately ordered to pay half of the court costs of this action. The other half of the court costs shall be paid by Defendants Lawrence.

**XIII. ENTRY OF PARTIAL CONSENT ORDER AND
FINAL JUDGMENT BY CLERK**

20. The parties agree and acknowledge that final approval by the Plaintiff and Defendant, and entry of this Partial Consent Order is subject to the requirement of 40 C.F.R. §123.27(d)(1)(iii), which provides for notice of the lodging of this Partial Consent Order, opportunity for public comment, and the consideration of any public comment. The Plaintiff and Defendant reserve the right to withdraw consent to this Partial Consent Order based on comments received during the public comment period. Defendant McLoughlin shall pay the cost of publishing the public notice within thirty (30) days of receipt of a bill or notice from Ohio EPA.

21 Upon the signing of this Partial 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 all 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. TERMINATION OF STIPULATED PENALTIES

22. The provisions of the Partial Consent Order set forth in Section VIII requiring the payment of stipulated penalties may be terminated upon a demonstration by Defendant McLoughlin that he has paid all penalties required by this Partial Consent Order and for a period of twelve consecutive months (which could begin as early as October 1, 2002), he has achieved and maintained compliance with the final effluent limitations contained in his currently effective NPDES permit No. 2PV00700*AD, along with the other terms and conditions of said permit, and any renewals or modifications thereof.

23 If during the one (1) year period (twelve consecutive months) set forth in Paragraph 22, Defendant fails to comply with its currently effective NPDES permit No. 2PV00700*AD, and any renewals or modifications thereof, the one (1) year period (twelve consecutive months) will begin anew on the first date after such failure that the Defendant is back into compliance with the final effluent limitations contained in his currently effective NPDES permit No. 2PV00700*AD, along with the other terms and conditions of said permit, and any renewals or modifications thereof. Any of Defendant's subsequent failures to maintain compliance with the final effluent limitations contained in his currently effective NPDES permit No. 2PV00700*AD, along with the other terms and conditions of said permit, and any renewals or modifications thereof, shall be treated in the same manner, with the one (1) year period (twelve consecutive months) beginning anew from the date Defendant comes back into compliance.

24. Termination of the stipulated penalty section of this Partial Consent Order shall only be by order of the Court upon application by any party, and a demonstration that the conditions outlined in Paragraph 22 have been met.

IT IS SO ORDERED:



JAMES DEWEESE, JUDGE
RICHLAND COUNTY
COURT OF COMMON PLEAS

5-22-03

DATE

APPROVED:

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

By:

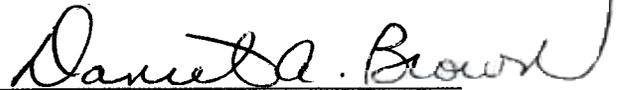


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