

FILED
LORAIN COUNTY

B IN THE COURT OF COMMON PLEAS

LORAIN COUNTY, OHIO JUL 22 P 2:15

STATE OF OHIO, ex rel. JIM PETRO, :
ATTORNEY GENERAL OF OHIO, :
30 East Broad Street :
Columbus, Ohio 43215-3428 :

CASE NO. **03CN136059**
RON NABAKOWSKI

JUDGE

Plaintiff,

vs.

LEH PROPERTIES, INC. :
P.O. Box 194 :
LaGrange, Ohio 44050 :
c/o Lee E. Holztrager :
276 Eastlake Drive :
LaGrange, Ohio 44050 :

Defendant.

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio by its Attorney General Jim Petro (hereinafter referred to as "Plaintiff") and Defendant LEH Properties, Inc. (hereinafter referred to as "Defendant") having consented to the entry of this Order, hereby agree to the entry of this Consent Order to resolve the allegations set forth in the Complaint.

NOW THEREFORE, without trial of any issue of fact or law, without any admission of fact or law by Defendant, 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 and subject matter jurisdiction over the Parties. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 6111

of the Ohio Revised Code ("R.C.") and the rules promulgated under that chapter. Venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply and be binding upon the Plaintiff State of Ohio and Defendant, Defendant's agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

3. Plaintiff has alleged that Defendants has violated by installing sanitary sewer extensions without an approved Permit to Install ("PTI") issued by the Ohio Environmental Protection Agency ("Ohio EPA"). Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims of violations alleged in the complaint, including the claims for injunctive relief and civil penalties.

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 Complaint. Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against Defendant or 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 Defendant 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 Defendant, to eliminate or mitigate conditions which may present a threat to the public health, welfare or the environment.

IV. PERMANENT INJUNCTION

5. Defendant is permanently enjoined and ordered to immediately comply with all applicable provisions of R.C. Chapter 6111 and the rules promulgated under that chapter.

6. Defendant is permanently enjoined from constructing or installing any sanitary sewer extension, any "disposal system" as that term is defined in R.C. § 6111.01(G), or any connection to any sewerage system or treatment works without having submitted plans for such extension or connection to Ohio EPA and having obtained Ohio EPA approval for the sanitary sewer extension or connection.

7. Defendant shall not authorize any sanitary sewer connections or laterals or cause any connections or laterals to be made to the sanitary sewer line depicted in Defendant's withdrawn PTI Application No. 02-14773 as "Phase 2B". Phase 2B and the lots contained within Phase 2B are depicted on Attachment A to this Consent Order.

8. Within ten days of the sale of any lot in Phase 2B (or within 10 days of entry of this Consent Order for any lot in Phase 2B that Defendant has already sold), Defendant shall give notice to any purchaser of a lot in Phase 2B that Ohio EPA has not approved the sanitary sewer line depicted in withdrawn PTI Application No. 02-14773 for Phase 2B and that there is no approval from Ohio EPA for any sanitary sewer connection from any lot in Phase 2B. At the time of giving the notice described in this paragraph, Defendant shall also give a copy of this Consent Order to the purchaser of any lot in Phase 2B.

9. Defendant shall notify Ohio EPA in writing of any sale it makes of any lot in Phase 2B within ten days of the sale of the lot (or within 10 days of entry of this Consent Order for any lot in Phase 2B that Defendant has already sold). This written notice shall specify, at a

minimum, the name and address of the buyer and identify the lot(s) sold by reference to the lot numbers for Phase 2B that are listed on Attachment A.

V. TIME EXTENSIONS

10. 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

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

a. Ohio EPA
Northeast District Office
2195 Front Street
Twinsburg, Ohio 43138
Attn.: Manager, Division of Surface Water

b. Ohio EPA
Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn.: Manager, Enforcement Section

VII. CIVIL PENALTY

12. It is hereby ordered that within 30 days from the date of this order, Defendant shall pay to the State of Ohio a civil penalty of \$2180.00. 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

13. In the event that Defendant fails to meet any of the deadlines and requirements of

this Consent Order, Defendant 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 Dollars (\$200.00) per each 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 – 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, over sixty-one (61) days – Six Hundred Dollars (\$600.00) per each day for each deadline or requirement not met.

14. 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". Defendant shall also state in writing the specific deadline or requirement of the Consent Order which was not complied with, and the date(s) of non-compliance. The payment of stipulated penalties by Defendant 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 additional relief or to otherwise seek judicial enforcement of this Consent Order.

IX. RETENTION OF JURISDICTION

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

jurisdiction for the purpose of interpretation of this Consent Order should any disagreement arise between the parties.

X. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

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

XII. COURT COSTS

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

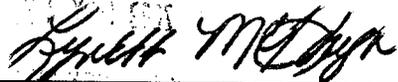
XIII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

18. The parties agree and acknowledge that final approval by the Plaintiff and Defendant, and entry of this 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 Consent Order, opportunity for public comment, and consideration of any public comment. The Plaintiff and Defendant reserve the right to withdraw consent to this Consent Order based on comments received during the public comment period. Defendant shall pay the cost of publishing the public notice within thirty days of receipt of a bill or notice from Ohio EPA.

19. 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 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.

IT IS SO ORDERED:

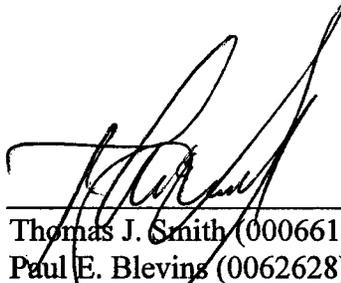
DATE



JUDGE, COURT OF COMMON PLEAS,
LORAIN COUNTY, OHIO

APPROVED:

BY:



Thomas J. Smith (0006619)
Paul E. Blevins (0062628)
McCray, Muzilla, Smith & Meyers, Co., LPA
260 Burns Road, Suite 150
Elyria, OH 44035
Telephone: (440) 366-9930
Facsimile: (440) 366-1910

*Attorneys for Defendant
LEH Properties, Inc.*

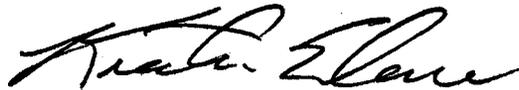
BY:



*Authorized Representative of
Defendant LEH Properties, Inc.*

JIM PETRO
ATTORNEY GENERAL OF OHIO

BY:



Kristina Erlewine (0071469)
Teri Jo Finfrock (0037903)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
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Facsimile: (614) 644-1926

*Attorneys for Plaintiff
State of Ohio*