

IN THE COURT OF COMMON PLEAS  
SCIOTO COUNTY, OHIO

STATE OF OHIO, ex rel.  
JIM PETRO  
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

MICHAEL PISTOLE,

and

LIFE AMBULANCE SERVICE, INC.

Defendants.

CASE NO. 06-CIH-334

JUDGE Warcha

2006 SEP 19 AM 11:56  
SCIO COUNTY  
OHIO  
FILED  
Clerk of Courts

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CONSENT ORDER

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The Complaint in the above-captioned matter having been filed herein, and Plaintiff, State of Ohio, by its Attorney General Jim Petro (hereinafter "Plaintiff"), and Defendants Michael Pistole and Life Ambulance Services, Inc. (hereinafter "Defendants"), having consented to the entry of this Order,

NOW THEREFORE, without trial of any issue of fact or law, 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 Defendants under Chapter 6111 of the Ohio Revised Code (hereinafter "R.C.") and the rules promulgated under that statute, and venue is proper in this Court.

## II. PARTIES

2. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest and others bound by Rule 65(D) of the Ohio Rules of Civil Procedure who are acting in concert and/or privity with Defendants. Defendants shall provide a copy of this Consent Order to each general contractor and/or consultant they employ to perform work itemized herein and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work.

## III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendants have engaged in construction activities on at least three distinct areas of an approximately 86 acre parcel of property (hereinafter "**the Site**") located in Nile Township, Scioto County, Ohio in such a manner as to violate the water pollution control laws of the State of Ohio. The three areas of construction have at various times been referred to as the "**helicopter pad project area,**" the "**racetrack project area**" and the "**sound stage project area.**" Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims alleged in the Complaint.

4. Nothing in this Consent Order shall be construed 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 to limit the authority of the State of Ohio to seek relief against Defendants or other appropriate persons for claims or conditions not alleged in the Complaint, including violations that occur after the filing of the Consent Order. Similarly, nothing in this Consent Order shall be construed to limit the authority of the State of

Ohio to undertake any action against any person, including Defendants, to eliminate or mitigate conditions that may present a threat to the public health, welfare or the environment.

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

5. Defendants are hereby permanently enjoined and immediately ordered to comply with the requirements of R.C. Chapter 6111 and the rules adopted under that statute. Defendants are further hereby permanently enjoined and immediately ordered to comply with the terms and conditions of the April 21, 2003 General National Pollutant Discharge Elimination System Permit for Stormwater Discharges Associated with Construction Activities (hereinafter the “**2003 Permit**”)(attached hereto as **Exhibit A**), and any renewals thereof.

#### **V. COMPLIANCE PROGRAM**

6. Defendants are hereby enjoined and ordered to implement the requirements related to stormwater imposed upon them in R.C. Chapter 6111, the rules adopted under that statute, and the 2003 Permit and any renewals or modifications thereof, in accordance with the following schedule:

(a) By no later than seven (7) days from the effective date of this Consent Order, Defendants shall post a copy of the NOIs for the helicopter pad project area and for the racetrack project area, and shall post copies of the letters from the Director authorizing discharges from these two project areas in a prominent place at the Site for public viewing.

(b) By no later than seven (7) days after the Director authorizes the NOI for the sound stage project area, Defendants shall post a copy of this NOI and shall post a copy of the letter from the Director authorizing discharges from this project area in a prominent place at the Site for public viewing.

(c) By no later than twenty-one (21) days from the date Plaintiff provides Defendants with a list of local professional horticulturists or agronomists, Defendants shall hire a professional horticulturist or agronomist to study all soils on the Site that have not established a uniform perennial vegetative cover with a density of at least 70 percent cover in order to determine the appropriate site and seedbed preparation methods and the appropriate seed mix and species to be employed in accordance with the specifications set forth in the *Rainwater and Land Development, Ohio's Standards for Stormwater Management, Land Development and Urban Stream Protection*, Second Edition, 1996, (hereinafter "**Stormwater Control Specifications**"), page 167 and page 169 respectively. (See Exhibit B). Defendants shall use straw for mulch in strict accordance with the Stormwater Control Specifications, page 160, (attached hereto as **Exhibit B**).

(d) By no later than ten (10) days from the date Plaintiff provides Defendants with a list of professionals experienced in the design and implementation of standard erosion and sediment controls and storm water management practices addressing all phases of construction, Defendant shall submit documentation to the Director to demonstrate: (1) that Defendant has located a professional that Defendant would hire to perform the functions in paragraph 6(e); (2) who the individual professional is that Defendant wishes to hire; and (3) that the professional is experienced in the design and implementation of standard erosion and sediment controls and storm water management practices addressing all phases of construction. In the alternative, instead of the demonstration in (3) above, Defendant can provide demonstration that this individual is a Certified Professional in Erosion and Sediment Control ("CPESC"). This documentation shall be sent to the Director at the following address:

Ohio EPA  
Southeast District Office  
2195 Front Street  
Logan, OH 43138  
attn: Aaron Wolfe.

(e) By no later than twenty-one (21) days from the date Plaintiff provides Defendants with a list of professionals experienced in the design and implementation of standard erosion and sediment controls and storm water management practices addressing all phases of construction, Defendants shall hire a professional that meets those qualifications and shall ensure that this professional engages in the following work on the following schedule:

i) inspects all erosion and sediment controls on the Site weekly and also within 24 hours after each and every storm event that is greater than a ½ inch of rain in a 24 hour period;

ii) inspects the Site weekly to identify areas contributing to stormwater discharges associated with "construction activity" and to evaluate whether the erosion and sediment controls implemented through this Consent Order are adequate, have been properly implemented and are operating correctly, or whether this Consent Order needs to be amended to include the implementation of additional erosion and sediment controls; and

iii) maintains a log of any and all inspections conducted of the erosion and sediment controls on the Site in strict accordance with Part III(G)(2)(i) of the 2003 Permit. Each completed inspection log sheet must contain a signature line signed by Defendants in compliance with Part V(H) of the 2003 Permits.

(f) By no later than fifty-one (51) days from the date Plaintiff provides Defendants with a list of professionals experienced in the design and implementation of standard erosion and sediment controls and storm water management practices addressing all phases of construction, Defendants shall prepare a Stormwater Pollution Prevention Plan (hereinafter "SWPPP") in strict accordance with Part III(A) of the 2003 Permit, and submit it to the Director at the address given in paragraph 6(d) above;

(g) By no later than fifty-one (51) days from the effective date of this Consent Order, Defendants shall submit a Notice of Intent Application Form (hereinafter "NOI") for the construction activities currently being conducted in the sound stage project area and/or for any new areas on the Site on which construction activities will commence to the following address:

Ohio EPA  
Office of Fiscal Administration  
P.O. Box 1049  
Columbus, Ohio 43216-1049;

(h) By no later than eighty-one (81) days from the date Plaintiff provides Defendants with a list of professionals experienced in the design and implementation of standard erosion and sediment controls and storm water management practices addressing all phases of construction, Defendants shall create and submit to the Director a topographical map of the Site, using two foot elevations, demonstrating the contours of the Site prior to the commencement of construction on the Site by Defendants. Aerial photos shall be used in order to create this historical topographical map and it shall be submitted to the Director at the address given in paragraph 6(d) above;

- (i) By no later than ninety (90) days from the effective date of this Consent Order, Defendants shall eliminate the constructed water retention pit, located at the base of the construction area on the Site, by first removing all sediments trapped above the retaining materials, and once this has been accomplished, by removing all materials, including rocks, boulders and wood debris placed into the headwater stream by Defendants or their agents or employees;
- (j) By no later than ninety (90) days from the effective date of this Consent Order, Defendants shall construct centralized "sediment basins" on the Site on all downslope locations where storm water naturally, or as a result of the proper employment of stormwater diversion devices, drains an area of 11 acres or greater. All "sediment basins" shall be constructed and maintained in strict accordance with the Stormwater Control Specifications, pages 98-110 (attached hereto as **Exhibit C**). All centralized "sediment basins" shall be built in strict accordance with R.C. 1521.06 through 1521.064, and with Ohio Administrative Code (hereinafter "O.A.C.") 1501:21-1 through 1501:21-24;
- (k) By no later than ninety (90) days from the effective date of this Consent Order, Defendants may construct "sediment traps" on the Site, in lieu of "sediment basins", on all downslope locations where stormwater naturally, or as a result of the proper employment of storm water diversion devices, drains an area of 10 acres or less. All "sediment traps" shall be constructed and maintained in strict accordance with the Stormwater Control Specifications, pages 111-116 (attached hereto as **Exhibit D**);
- (l) By no later than ninety (90) days from the effective date of this Consent Order, Defendants shall construct "temporary diversion" dikes on the Site on all locations as is necessary to ensure that all stormwater traversing all areas on the Site, where a uniform perennial vegetative cover with a density of at least 70 percent cover for the area has not been established, is directed to a "sediment basin" or "sediment trap." All "temporary diversion" dikes shall be constructed and maintained in strict accordance with the Stormwater Control Specifications, pages 151-153 (attached hereto as **Exhibit E**);
- (m) By no later than ninety (90) days from the effective date of this Consent Order, Defendants shall place a geotextile lining and properly designed riprap in all stormwater conveyance channels that remain on the Site following the conclusion of activities on the Site required by the terms and conditions of this Consent Order and after all areas on the Site have established a uniform perennial vegetative cover with a density of at least 70 percent cover. All such "conveyance channels" shall be constructed and maintained in strict accordance with, Stormwater Control Specifications, pages 42-49 (attached hereto as **Exhibit F**);
- (n) By no later than ninety (90) days from the effective date of this Consent Order, Defendants shall maintain and repair all stormwater control practices at the Site as needed to assure continued performance of their intended function;

(o) By no later than ninety (90) days from the effective date of this Consent Order, Defendants shall "temporarily seed" any and all areas on the Site that have not established a uniform perennial vegetative cover with a density of at least 70 percent cover for the area. Defendants shall "temporarily seed" any and all areas of the Site in strict accordance with the Stormwater Control Specifications, pages 159-170, (See Exhibit B);

(p) By no later than ninety (90) days from the effective date of this Consent Order, Defendants shall "permanently seed" any and all areas on the Site that have reached final grade and that have not established a uniform perennial vegetative cover with a density of at least 70 percent cover for the area. Defendants shall "permanently seed" any and all areas of the Site in strict accordance with the Stormwater Control Specifications, pages 159-175, (attached hereto as **Exhibit G**)(See Exhibit B);

(q) By no later than one hundred (100) days from the effective date of this Consent Order, Defendants shall "permanently seed" any and all areas on the Site that have not established a uniform perennial vegetative cover with a density of at least 70 percent cover for the area. Defendants shall "permanently seed" any and all areas of the Site in strict accordance with the Stormwater Control Specifications, pages 159-175, (See Exhibits B and G);

(r) By no later than three hundred (300) days from the effective date of this Consent Order, Defendants shall completely, fully and permanently comply with the 2003 Permit and any renewals or modifications thereof;

(s) By no later than three hundred (300) days from the effective date of this Consent Order, Defendants shall create and submit to the Director a topographical map of the Site, using two foot elevations, demonstrating the final contours and final grade of the Site. This map shall be submitted to the Director as part of the Notice of Termination submitted to the Director pursuant to Paragraph 7(v) of this Consent Order at the address given in paragraph 6(d) above;

(t) Within forty-five (45) days of completing all permitted land disturbance activities, Defendant shall submit a Notice of Termination Form (hereinafter "**NOT**") to the Director pursuant to the terms and conditions of Part IV of the 2003 Permit for the helicopter pad, racetrack and sound stage project areas pursuant to the terms and conditions of Part IV of the 2003 Permit at the address given in paragraph 6(d) above.

7. Defendants are hereby enjoined and ordered to refrain from commencing or resuming clearing, grading, excavating, grubbing and/or filling activities or earthmoving, or otherwise developing or redeveloping any portion of the Site in such a manner as to result in the disturbance of at least one or more acres of total land, unless Defendants have timely submitted an NOI for coverage under the 2003 Permit or under any renewals or modifications thereof in strict accordance with Part II(A) and Part I(E)(1) of the 2003 Permit, and unless the Director has granted Defendants coverage to discharge under the terms of the 2003 Permit for each NOI submitted.

8. Defendants are hereby enjoined and ordered to refrain from discharging dredged or fill material into or from installing flow control structures in any stream, wetland, or any other "water of the state" located on the Site, as that term is defined in R.C. 6111.01(H), O.A.C. 3745-1-02(77) and O.A.C. 3745-38-01(S), without first applying for and receiving such permits as may be required by applicable federal, state, or local laws, rules, or regulations.

9. By no later than ninety (90) days from the effective date of this Consent Order, Defendants are hereby enjoined and ordered to submit a separate complete and approvable "as built" Permit to Install application in accordance with O.A.C. 3745-31, for each and every sewage treatment system currently located on the Site.

10. Defendants are prohibited from causing, permitting, or allowing the installation of a new system for disposing of sewage, sludge, sludge materials, industrial waste, or other wastes without first obtaining a permit to install from the Director. Defendants are further prohibited from causing, permitting, or allowing the modification of an existing system for disposing of sewage, sludge, sludge materials, industrial waste, or other wastes, without first obtaining a

permit to install from the Director.

## **VI. CIVIL PENALTY**

11. Defendants shall pay to the State of Ohio a civil penalty of fifty thousand dollars (\$50,000), which shall be paid in the following amounts according to the following schedule:

- on or before the August 1, 2006: twenty thousand dollars (\$20,000);
- on or before the August 1, 2007: fifteen thousand dollars (\$15,000);
- on or before the August 1, 2008: fifteen thousand dollars (\$15,000).

All penalties shall be paid by delivering a certified check for the appropriate amount, made payable to "Treasurer, State of Ohio". Said check shall be mailed to the following address:

State of Ohio Attorney General's Office  
State Office Tower  
30 E. Broad Street, 25<sup>th</sup> Floor  
Environmental Enforcement Section  
Public Protection Division  
Columbus, Ohio 43215 - 3400  
Attention: Mark Lemmon

## **VII. STIPULATED PENALTIES**

12. In the event that Defendants fail to meet any requirement of this Consent Order, and/or any term or condition of the 2003 Permit, Defendants shall immediately and automatically be liable for, and shall pay a stipulated penalty according to the following payment schedule:

For each day of each failure to meet a requirement of this Consent Order and/or failure to comply with the 2003 Permit up to thirty (30) days: **\$100** per each violation.

For each day of each failure to meet a requirement of this Consent Order and/or failure to comply with the 2003 Permit, from the 31<sup>st</sup> to the 60<sup>th</sup> violation which occurs after the effective date of this Consent Order: **\$200** per each violation.

For each day of each failure to meet a requirement of this Consent Order and/or failure to comply with the 2003 Permit, from the 61<sup>st</sup> to the 90<sup>th</sup> violation which occurs after the effective date of this Consent Order: \$400 per each violation.

For each day of each failure to meet a requirement of this Consent Order and/or failure to comply with the 2003 Permit, for all violations after and including the 91<sup>st</sup> violation which occurs after the effective date of this Consent Order: \$800 per each violation.

13. Any stipulated penalty required to be paid pursuant to the provisions of Paragraph 12 of this Consent Order shall be made by delivering a certified check or checks for the appropriate amounts, to the order of "Treasurer, State of Ohio", within forty-five (45) days from the date of the failure to comply with this Consent Order. Said check shall be mailed to the address previously listed in Paragraph 11 of this Consent Order. Defendants shall also state in writing the specific failure of the Consent Order and/or 2003 Permit term and condition that was not complied with, and the dates of non-compliance. Payment of stipulated penalties and acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to this Section of the Consent Order shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to R.C. Chapter 6111 or to otherwise seek judicial enforcement of this Consent Order.

#### **VIII. POTENTIAL FORCE MAJEURE**

14. If any event occurs which causes or may cause a delay of any of the requirements of this Consent Order, Defendants shall notify the Ohio Environmental Protection Agency in writing, at the address listed in paragraph 6(d) above, within ten (10) days of the event, describing 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 measures will be implemented. Defendants will adopt all reasonable measures to avoid or minimize any such delay.

15. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendants may raise that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitation, acts of God, acts of war or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by 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 that an enforcement action, if any, is commenced by the Plaintiff. At that time, Defendants will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendants. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Defendants or serve as a basis for an extension of time under this Consent Order. Failure by Defendants to 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 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 Defendants qualify for an extension of a subsequent date or dates. 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 with a Potential Force Majeure Clause does not constitute a waiver by Defendants of any rights or defenses it may have under applicable law.

**IX. EFFECT OF CONSENT ORDER**

16. This Consent Order does not constitute authorization or approval for the construction or modification of any physical structure, facility, disposal system, treatment works or sewerage system, or for the placement of fill in streams, wetlands, or other "waters of the state."

Authorization or approval for any such construction, modification or fill shall be by permit issued by the Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules, or regulations.

**X. RETENTION OF JURISDICTION**

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

**XI. COSTS**

18. Defendants are hereby ordered to pay the costs of this action.

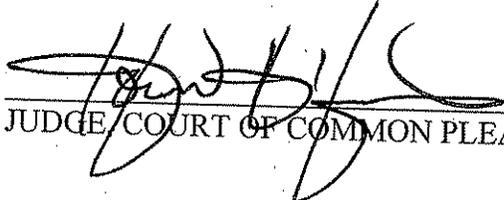
**XII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK**

19. The Parties agree and acknowledge that final approval by the Plaintiff and Defendants, and entry of this Consent Order is subject to the requirement of 40 Code of Federal Regulations Section 123.27(d)(2)(iii), which provides for notice of the lodging of this Consent Order, opportunity for public comment, and the consideration of any public comment. The Plaintiff and Defendants reserve the right to withdraw consent to this Consent Order based on comments received during the public comment period. Defendants shall pay the cost of publishing the public notice within thirty (30) days of receipt of a bill or notice from the Director.

20. 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 notice of the judgment upon all parties, 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.

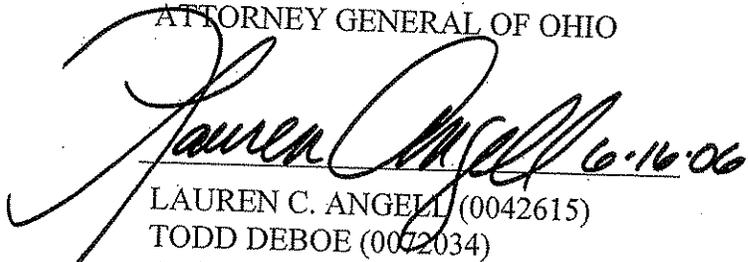
**IT IS SO ORDERED:**

  
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JUDGE, COURT OF COMMON PLEAS

9/18/06  
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Date

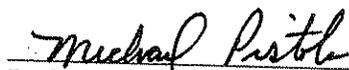
**APPROVED:**

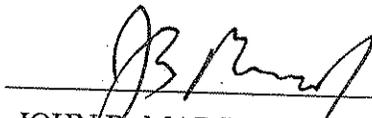
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JIM PETRO  
ATTORNEY GENERAL OF OHIO

  
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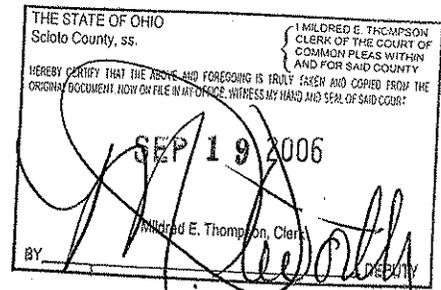
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*Counsel for Defendants*



By:

  
\_\_\_\_\_  
Authorized Representative of Defendant  
Life Ambulance Service, Inc.