

IN THE COURT OF COMMON PLEAS
WOOD COUNTY, OHIO

FILED
WOOD COUNTY CLERK
COMMON PLEAS COURT
1-23-08 10:58
2008 JAN 23 A 10:58

STATE OF OHIO ex rel.
MARC DANN,
ATTORNEY GENERAL OF OHIO,

CASE NO. 06 CV 232

JUDGE KELSEY

Plaintiff,

v.

ROBERT MAURER
d.b.a. RIVER BEND
MOBILE HOME PARK

Defendant.

CONSENT ORDER

Plaintiff, the State of Ohio, by and through its counsel Attorney General Marc Dann, filed a Complaint against Robert Maurer, himself and doing business as River Bend Mobile Home Park, (hereinafter referred to as "Defendant") alleging violations of Ohio's Water Pollution Control laws, Ohio Revised Code (hereinafter "R.C.") Chapter 6111. The allegations relate to the disposal system as well as the treatment works owned and operated by the Defendant located at State Route 64, McClure, Henry County, Ohio (hereinafter "River Bend Mobile Home Park"). This Consent Order constitutes a resolution of disputed claims.

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

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I. JURISDICTION AND VENUE

1. The Court has both jurisdiction over the parties and the subject matter of this action pursuant to R.C. Chapter 6111. The Complaint states a claim upon which relief can be granted against the Defendant under R.C. 6111. 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 Defendant, Defendant's agents, employees, assigns, successors in interest and any person acting in concert, privity or participation with Defendant.

3. Defendant shall provide a copy of this Consent Order to any lessee or successor in interest and each key employee, consultant or contractor employed to perform work referenced herein or operate the disposal system or treatment works.

III. SATISFACTION OF LAWSUIT

4. Plaintiff alleges in its Complaint that Defendant operates and has operated his treatment works and disposal system at the River Bend Mobile Home Park in such a manner as to result in numerous violations of the discharge limitations and monitoring requirements of Defendant's National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit No. 2PY00026*AD, in addition to, unauthorized discharges before Defendant's NPDES was issued in violation of Ohio's water pollution control laws, RC Chapter 6111, and the rules adopted thereunder.

5. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims alleged in the State's Complaint.

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IV. RESERVATION OF RIGHTS

6. Nothing in this Consent Order, including the imposition of stipulated civil penalties for violations of this Consent Order, shall limit the authority of the State of Ohio to:

(a) Seek any legal or equitable relief from Defendant or any other appropriate person for claims or conditions not alleged in the Complaint, including violations that occur after the filing of the Complaint;

(b) Seek any legal or equitable relief from Defendant or any other appropriate person for claims or conditions alleged in the Complaint that occur or exist on the date of or after the entry of this Consent Order;

(c) Enforce this Consent Order through a contempt action or otherwise seek relief for violations of this Consent Order;

(d) Take any action authorized by law against any appropriate person, including Defendant, to eliminate or mitigate conditions at the disposal system at River Bend Mobile Home Park and the surrounding areas that may present a threat to the public health or welfare, or the environment; and/or,

(e) Bring any legal or equitable action against any appropriate person other than Defendant for any violation of applicable laws. For the purposes of this Consent Order, and in particular the provisions of this Paragraph, the term "person" includes: an individual, corporation, business trust, estate, trust, partnership, association, municipal corporation, interstate body created by compact, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.

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V. PERMANENT INJUNCTION

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

8. Defendant is enjoined and ordered to comply with all terms and conditions of its NPDES Permit Nos. 2PY0026CD and 2PY00026AD and any renewals and modifications thereof.

VI. SUBMITTAL OF DOCUMENTS

9. Documents required to be submitted to Ohio EPA's Northwest District Office pursuant to this Consent Order shall be sent to: Environmental Protection Agency, Northwest District Office, Division of Surface Water (ATTN: DSW Enforcement Group Leader) at 347 North Dunbridge Road, Bowling Green, Ohio 43402.

VII. CIVIL PENALTY

10. Defendant shall pay to the State of Ohio a civil penalty of ten thousand dollars (\$10,000.00) for violations of Ohio's water pollution control laws (ORC Chapter 6111). The penalty shall be paid by delivering to Martha Sexton, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, within thirty (30) days from the date of entry of this Consent Order, a certified check for the amount stated above, payable to the order of "Treasurer, State of Ohio."

VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

11. In lieu of paying Twelve Thousand Five Hundred (\$12,500.00) of additional civil penalty, Defendant shall as a supplemental environmental project contribute Fifteen Thousand Dollars (\$15,000.00) to the Bowling Green Parks and Recreation Foundation, Inc., for creation

of the Simpson Park on Wintergarden Road and an additional Ten Thousand Dollars (\$10,000.00) to the Bowling Green Parks and Recreation Foundation, Inc., for land acquisition.

12. In order to obtain credit for this supplemental environmental project, Defendant shall make the required payment to the Bowling Green Parks and Recreation Foundation, Inc., within thirty (30) days from the date of entry of this Consent Order and shall furnish proof of said payment to the Ohio EPA within ten (10) days following the date of payment. Defendant shall pay a stipulated penalty to the State in accordance with Paragraph 14 of this Consent Order in the event that payment is not timely made.

13. If Defendant fails to comply with the requirements of paragraphs 11 and 12 of this Consent Order, the suspended penalties in paragraph 11 shall be immediately due and payable by delivering certified check(s) to Martha Sexton, Environmental Enforcement Section, Ohio Attorney General's Office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, in the manner and appropriate amount as set forth in paragraphs 10 and 11 above.

IX. STIPULATED PENALTIES

14. In the event that Defendant fails to comply with any requirement of this Order, other than effluent violations which will be addressed separately in paragraphs 15, 16 and 17, Defendant is liable for and shall immediately pay stipulated penalties in accordance with the following schedule for each failure to comply:

- (a) For each day of each failure to comply with a requirement or meet a deadline from one (1) day to thirty (30) days – two hundred dollars (\$200.00) per day per requirement not met;
- (b) For each day of each failure to comply with a requirement or meet a deadline from thirty-one (31) days to sixty (60) days – four hundred dollars (\$400.00) per day per requirement not met;

- (c) For each day of each failure to comply with a requirement or meet a deadline over sixty-one (61) days to ninety (90) days – six hundred dollars (\$600.00) per day per requirement not met.
- (d) For each day of each failure to comply with a requirement or meet a deadline over ninety (90) days – one thousand dollars (\$1000.00) per day per requirement not met.

15. If Defendant fails to meet any of the daily effluent limits of any of its NPDES Permits, the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

- (a) For each day of each failure to comply with a requirement or meet a deadline from one (1) day to thirty (30) days – two hundred dollars (\$200.00) per day per requirement not met;
- (b) For each day of each failure to comply with a requirement or meet a deadline from thirty-one (31) days to sixty (60) days – four hundred dollars (\$400.00) per day per requirement not met;
- (c) For each day of each failure to comply with a requirement or meet a deadline over sixty-one (61) days to ninety (90) days – six hundred dollars (\$600.00) per day per requirement not met;
- (d) For each day of each failure to comply with a requirement or meet a deadline over ninety (90) days – one thousand dollars (\$1000.00) per day per requirement not met.

16. For the purpose of calculating stipulated penalties under the provisions of this paragraph, each 7-day period of violations of a specific 7-day average effluent limitation shall be calculated as a single violation. If Defendant fails to meet any of the 7-day average effluent limits of any of its NPDES Permits, the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

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- (a) For each first through fourth failure to meet any 7-day average effluent limitation, two hundred fifty dollars (\$250.00) for each 7-day period during which each failure occurs;
- (b) For each fifth through eighth failure to meet any 7-day average effluent limitation, five hundred dollars (\$500.00) for each 7-day period during which each such failure occurs;
- (c) For each ninth through twelfth failure to meet any 7-day average effluent limitation, seven hundred fifty dollars (\$750.00) for each 7-day period during which each such failure occurs;
- (d) For each failure beyond the twelfth failure to meet any 7-day average effluent limitation, one thousand dollars (\$1,000.00) for each 7-day period during which each such failure occurs.

17. For the purpose of calculating stipulated penalties under the provisions of this paragraph, each 30-day period of violation of a specific 30-day average effluent limitation shall be calculated as a single violation. If Defendant fails to meet any of the 30-day average effluent limits of any of its NPDES Permits, the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

- (a) For each failure to meet any 30-day average effluent limitation, five hundred dollars (\$500.00) for each 30-day period during which each such failure occurs;
- (b) For each second failure to meet any 30-day average effluent limitation, one thousand dollars (\$1,000.00) for each 30-day period during which each such consecutive failure occurs;
- (c) For each third failure to meet any 30-day average effluent limitation, two thousand dollars (\$2,000.00) for each 30-day period during which each such consecutive failure occurs;
- (d) For each failure beyond the third failure to meet any 30-day average effluent limitation, two thousand five hundred dollars (\$2,500.00) for each 30-day period which each such failure occurs.

18. Payments due under paragraph 14, 15, 16 and 17 shall be made within forty-five (45) days from the date of the failure to meet the applicable deadline or knowledge of the

effluent limitation violation. Payments shall be accompanied by a written explanation of the deadline missed and/or the effluent violation. Any payment required to be made under this paragraph shall be made by delivering to Martha Sexton, or her successor, at the address set forth in Section VIII, paragraph 16, a certified check or checks for the appropriate amounts, made payable to "Treasurer, State of Ohio." The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to Section IX shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order. Further, payment by Defendants shall not be considered an admission of liability on the part of Defendants.

19. The stipulated penalties imposed by paragraphs 14, 15, 16 and 17 of this Consent Order may be terminated as to each specific paragraph of this Consent Order, for which stipulated penalties are imposed, only after Defendant has achieved and maintained compliance with all the requirements of that paragraph for a period of twelve consecutive months and has paid all stipulated penalties incurred related to that paragraph. Termination of one paragraph subject to stipulated penalties under this Consent Order shall not terminate the accrual of or the liability for payment of stipulated penalties under any other paragraph. Termination of stipulated penalties under this Consent Order shall only be upon written application by any party, and by order of the Court after the Court has made a determination that the requirements of this paragraph have been satisfied.

20. Payments required by paragraph 14 shall be paid within thirty (30) days of the violation by delivering a certified check payable to "Treasurer, State of Ohio," to Martha Sexton, Environmental Enforcement Section, Ohio Attorney General's Office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, along with a letter summarizing the violations

for which the penalty is paid. The payment of stipulated penalties by Defendant and the acceptance of each stipulation for specific violations pursuant to the section shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order.

X. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

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

XI. EFFECT OF CONSENT ORDER

22. This Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system, or the modification of any existing public water system or distribution system. Approval for any such construction or modification shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

XII. MISCELLANEOUS

23. Nothing in this Consent Order shall affect Defendant's obligation to comply with all applicable federal, state or local laws, regulations, rules or ordinances. Defendant shall obtain any and all federal, state, or local permits necessary to comply with this Consent Order.

24. Any acceptance by the State of Ohio of any payment, document or other work due hereunder subsequent to the time that the obligation is due under this Consent Order shall not relieve Defendant from the obligations created by this Consent Order.

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25. Defendant shall file an Entry of Dismissal dismissing ERAC Case No. 345692, before the Environmental Review Appeals Commission.

26. Defendant shall inform the Ohio EPA of any change of his home and business addresses or telephone numbers, or the cessation of the business that is the subject of this action.

XIII. COSTS

27. Defendant shall pay the court costs of this action.

28. Defendant is hereby ordered to pay the costs incurred by the Ohio EPA for the publication of the Consent Order in Ohio EPA's Weekly Review and a newspaper of general circulation. Defendant shall pay the costs associated with publication by delivering a certified check payable to: "Treasurer, State of Ohio" and with a notation indicating that the funds are going to "Fund 699" on it, in the amount of the costs, to the Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, within thirty (30) days from the date he receives notice of the costs from Ohio EPA.

XIV. CONTINUING JURISDICTION

29. This Court shall retain jurisdiction over this action for the purpose of enforcing and administering Defendant's compliance with this Consent Order.

XV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

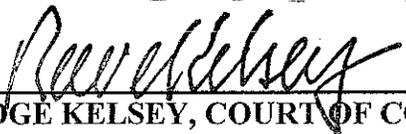
30. The parties agree and acknowledge that final approval by the Plaintiff and the Defendant and entry of this Consent Order is subject to the requirements of 40 C.F.R. 123(d)(1)(iii), which provides for notice of the lodging of the Consent Order, opportunity for public comment, and the consideration of any public comments. Both the State of Ohio and the

Defendant reserve the right to withdraw this Consent Order based on comments received during the public comment period.

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.

DATE



JUDGE KELSEY, COURT OF COMMON
PLEAS WOOD COUNTY

Clerk to furnish copy to counsel of
record and unrepresented parties

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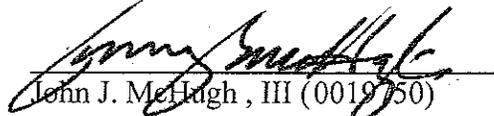
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APPROVED:

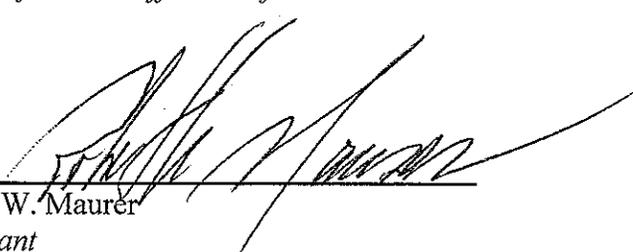
**MARC DANN,
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Robert W. Maurer
Defendant

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