

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

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

CASE NO. 2004 CV02165

JUDGE HAAS

Plaintiff,

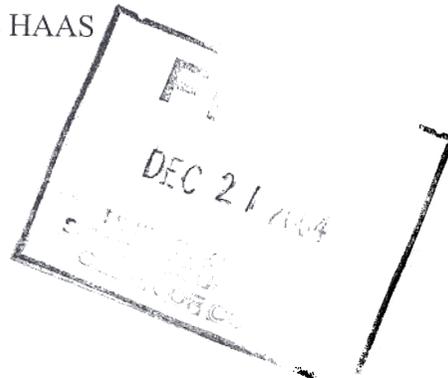
v.

DEBRA L. & DAVID WAYNE WHIPKEY

and

D & H WHIPKEY CONSTRUCTION CO., INC.

Defendants.



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 "Plaintiff"), Defendant Debra Whipkey, Defendant David Wayne Whipkey, and Defendant D&H Whipkey Construction Co., 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 "O.R.C.") and the rules promulgated thereunder,

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.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendants have owned and/or developed the Nova East Industrial Park, located on the northeast corner of Richville Drive Southeast and Nave Road, within the City of Massillon, Stark County, Ohio, (hereinafter the “Site”), in such a manner as to violate the water pollution control laws of the State of Ohio. 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 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 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 so as 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 O.R.C. Chapter 61 and the rules adopted thereunder, with the terms and conditions of the currently effective General or Individual National Pollutant Discharge Elimination System Permit for Stormwater Discharges Associated with Construction Activities and any renewals or modifications thereof.

V. CIVIL PENALTY

6. Within forty-five (45) days of the effective date of this Consent Order, Defendants shall pay to the State of Ohio a civil penalty of ten thousand dollars (\$10,000). This penalty 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:

Ohio Attorney General's Office
State Office Tower
30 E. Broad Street, 25th Floor
Environmental Enforcement Section
Public Protection Division
Columbus, Ohio 43215 - 3400
Attention: Amy Laws

VI. RETENTION OF JURISDICTION

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

VII. COSTS

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

VIII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

9. 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 C.F.R. §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.

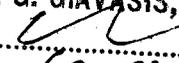
10. Upon the signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon all parties notice of the judgment and its date of entry upon the journal in 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:



JUDGE, COURT OF COMMON PLEAS

12-21-04
Date

A TRUE COPY TESTE:
PHIL G. GIAVASIS, CLERK
By  Deputy
Date 12-21-04

APPROVED:

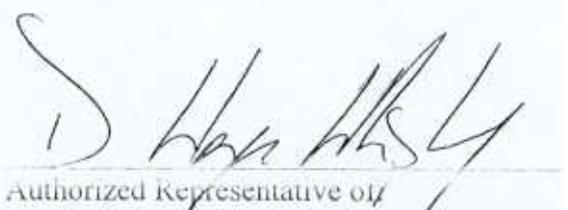
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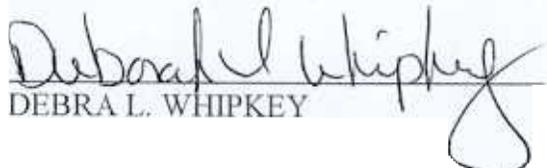
BY:  11-5-2004 

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DAVID WAYNE WHIPKEY


Authorized Representative of
D & H WHIPKEY CONSTRUCTION CO.,
INC.


DEBRA L. WHIPKEY