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COURT OF COMMON PLEAS

AUG 23 1999

IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

DELORES REED, Clerk
PORTAGE COUNTY, OHIO

STATE OF OHIO, <i>ex rel.</i>	:	CASE NO. <u>99-CV-544</u>
BETTY D. MONTGOMERY	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE <u>JOHN A. ENLOW</u>
	:	
Plaintiff,	:	Designation: Other Civil
	:	
vs.	:	
	:	
STANLEY W. BACH, <i>et al.</i>	:	<u>CONSENT ORDER AND FINAL</u>
	:	<u>JUDGMENT ENTRY</u>
Defendants.	:	Final Appealable Order
	:	

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio by its Attorney General Betty D. Montgomery (hereinafter "Plaintiff") and Defendants, Stanley W. Bach, Raymond R. Vehovec, Stan B. & Ray V. Partnership, Stan B. and Ray V. Ltd., Ray-Stan Ltd., and P&M Ltd. (collectively referred to as "Defendants"), having consented to 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 jurisdiction over the parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Defendants under Ohio Revised Code ("R.C.") Chapter 6111, and venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply to and be binding upon Defendants, their agents, officers, employees, attorneys, assigns, successors in interest, and those

persons in active concert or participation with them, who receive actual notice of the Consent Order whether by personal service or otherwise. Defendants shall provide a copy of this Consent Order to each general contractor and/or consultant that Defendants employ to perform work itemized herein, and Defendants shall require each general contractor to provide a copy of this Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in the Complaint that Defendants have operated the three (3) wastewater treatment plants described in the Complaint in such a manner as to result in numerous violations of the discharge limitations and monitoring requirements of the National Pollutant Discharge Elimination System ("NPDES") permits, permits to install, and/or Director's Final Findings and Orders issued to Defendants by the Director of the Environmental Protection Agency ("Ohio EPA") and in violation of the water pollution 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 under such laws alleged in the Complaint. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint.

IV. DEFINITIONS

4. As used in this Order:
 - a. "All Seasons Wastewater Treatment Plant" shall mean the wastewater treatment facility located at the All Seasons Mobile Home Park, 2300 State Route 14, Deerfield Township, Portage County, Ohio;

- b. "Hamlet Wastewater Treatment Plant" shall mean the wastewater treatment facility located at the Hamlet Mobile Home Park, 5108 State Route 59, Ravenna Township, Portage County, Ohio; and
- c. "P&M Estates Wastewater Treatment Plant" shall mean the wastewater treatment facility located at the P&M Estates Mobile Home Park, 9181 State Route 82, Windham Township, Portage County, Ohio.

V. PERMANENT INJUNCTION

5. Defendants are hereby permanently enjoined and ordered to immediately comply with the requirements of R.C. Chapter 6111 and the rules adopted under that Chapter, and the terms and conditions of NPDES permit no. 3PV00047 (All Seasons Wastewater Treatment Plant), NPDES permit no. 3PV00041 (Hamlet Wastewater Treatment Plant), and NPDES permit no. 3PX00004 (P&M Estates Wastewater Treatment Plant), and any renewals or modifications of those permits.

VI. COMPLIANCE SCHEDULES

All Seasons Wastewater Treatment Plant

6. At the All Seasons Wastewater Treatment Plant, Defendants are hereby enjoined and ordered to submit to Ohio EPA a complete PTI application and approvable, as-built detail plans for the ultraviolet disinfection unit and the relocation of the discharge pipe, and a PUCO certificate of public convenience and necessity. - COMPLETED -

Hamlet Wastewater Treatment Plant

7. At the Hamlet Wastewater Treatment Plant, Defendants are hereby enjoined and ordered to:

- a. Complete the sewer system evaluation survey ("SSES") required by PTI no. 02-7535, effective July 8, 1993. - COMPLETED -

- b. Submit to Ohio EPA for its review and approval a report detailing the following: the findings of the SSES, the possible options for addressing those findings, the proposed improvements to the sewer system based on those findings, and a proposed schedule for implementing the proposed improvements. COMPLETED-
- c. Submit to Ohio EPA a report on the effectiveness of the improvements required by PTI no. 02-7535, effective July 8, 1993. - COMPLETED -
- d. By May 31, 1999, submit to Ohio EPA for its review and approval detail plans for and a proposed schedule for implementation of the following efforts to address the inflow/infiltration problems: installation of a diversion dike/mound at the top of the hill immediately to the west of the treatment plant to divert as much of the surface water as possible to the existing catch basins; installation of watertight concrete or steel wall around the perimeter of the aeration tank; excavation of ditches or swales around the treatment plant and installation of additional catch basins; installation of grade rings at the appropriate manholes and resealing/grouting of all manholes in the park; replacement of individual riser pipes at each home with plastic pipe and mechanical rubber couplings; and replacement of the sections of the sewer system which were found to be defective.

P&M Estates Wastewater Treatment Plant

8. At the P&M Estates Wastewater Treatment Plant, Defendants are hereby enjoined and ordered to:

- a. Submit to Ohio EPA a complete PTI application and approvable as-built detail plans for the ultraviolet disinfection unit, trash trap, and flow meter. - COMPLETED -
- b. Submit to Ohio EPA a complete PTI application and approvable detail plans for the installation of stand-by power to the pump station, as required by NPDES permit no. 3PX00004, and a PUCO certificate of public convenience and necessity. - COMPLETED -
- c. Install stand-by power at the pump station in accordance with the terms and conditions and deadline set forth in the PTI issued by the Director. - COMPLETED -
- d. Provide to the Ohio EPA written certification, with supporting data, of twelve (12) consecutive months of consistent operation of the rapid sand filters; or in the alternative, provide to the Ohio EPA an approvable PTI application for necessary improvements or

repairs to the rapid sand filters in order to ensure consistent, proper operation, and a PUCO certificate of public convenience and necessity. -COMPLETED-

VII. REVIEW OF SUBMITTALS, NOTICE, AND RESUBMITTALS

9. Upon the submission of a PTI application by Defendants pursuant to Paragraphs 6., 8.a., 8.b., and 8.d., if Ohio EPA determines that the PTI application is incomplete or that the detail plans do not meet the requirements of Ohio Administrative Code ("O.A.C.") Chapter 3745-31, Defendants shall resubmit to Ohio EPA, within twenty-one (21) days of notification from Ohio EPA that the PTI application is incomplete and/or the detail plans do not meet the requirements, a complete, approvable PTI application and/or another set of detail plans that will meet such requirements. The Ohio EPA may issue an approval of each such document with additional terms and conditions.

10. Upon the submission of a report by Defendants pursuant to Paragraphs 7.b. and 7.c., if Ohio EPA determines that the report is incomplete or that improvements other than or in addition to those proposed by Defendants are necessary, then Defendants shall resubmit to Ohio EPA, within fourteen (14) days of notification from Ohio EPA that the report is incomplete or that improvements other than or in addition to those proposed by Defendants are necessary, a complete report that addresses those improvements requested by Ohio EPA. The Ohio EPA may issue an approval of each such document with additional terms and conditions. Upon Ohio EPA's final approval, Defendants shall implement the improvements in accordance with a schedule approved by Ohio EPA. This schedule for implementing the improvements, when approved by Ohio EPA, shall be considered to be incorporated into Section VI of this Consent

Order and fully enforceable as a requirement of this Consent Order.

11. Within ten (10) business days after the deadlines in the paragraphs of Section VI of this Consent Order, Defendants shall submit to Ohio EPA written notification of Defendants' compliance with said deadlines.

12. All written notifications and correspondence, including reports, permit applications, and plans as required by this Consent Order, shall be sent to:

Ohio EPA
Northeast District Office
Division of Surface Water
Attn.: Enforcement Group Leader
2110 E. Aurora Road
Twinsburg, Ohio 44087

VIII. CIVIL PENALTY

13. Defendants shall pay to the State of Ohio a civil penalty of Thirty-One Thousand Eight Hundred Seventy-nine and 00/100 Dollars (\$31,879.00). The penalty shall be paid by delivering, within forty-five (45) days from the date of entry of this Consent Order, a certified check or checks for that amount, payable to the order of "Treasurer, State of Ohio", to Jena Suhadolnik, Administrative Assistant, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

IX. STIPULATED PENALTIES

14. In the event that Defendants fail to meet any of the requirements of this Consent Order as set forth in Paragraphs 6 through 13, including any scheduled milestone requirement, and/or any of the final affluent and monitoring limitations of their then current NPDES permits and any renewals or modifications thereof, Defendants shall 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, up to thirty (30) days - Five Hundred Dollars (\$500.00) per day for each requirement not met. For each day of each failure to meet a requirement, from thirty-one (31) to sixty (60) days - One Thousand Dollars (\$1,000.00) per day for each requirement not met. For each day of each failure to meet a requirement, from sixty-one (61) to ninety (90) days - One Thousand Five Hundred Dollars (\$1,500.00) per day for each requirement not met. For each day of each failure to meet a requirement, over ninety (90) days - Two Thousand Dollars (\$2,000.00) per day for each requirement not met.

15. Any payment required to be made under the provisions of Paragraph 14 of this Consent Order shall be made by delivering, within forty-five (45) days from the date of failure to meet the requirement of the Consent Order and/or NPDES permit, a certified check or checks for the appropriate amounts made payable to "Treasurer, State of Ohio" to Jena Suhadolnik, Administrative Assistant, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428. Defendants shall also state in writing the specific failure of the Consent Order and/or NPDES permit term and condition which was not complied with, and the date(s) of non-compliance. The payment of stipulated penalties by Defendants and the acceptance of such stipulated penalties 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.

X. POTENTIAL FORCE MAJEURE

16. If any event occurs which causes or may cause a delay of any requirements of this Consent Order, Defendants shall notify the Ohio EPA in writing within ten (10) calendar 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 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.

17. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendants may raise that they are entitled to a defense that their conduct was caused by reasons entirely beyond their control such as, by way of example and not limitations, acts of God, strikes, acts of war, civil disturbances, or vandalism. 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 a proceeding to enforce this Consent Order, 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 without a Force Majeure Clause does not constitute a waiver by Defendants of any rights or defenses they may have under applicable law.

XI. TERMINATION OF STIPULATED PENALTIES

18. The provisions of this Consent Order set forth in Section IX requiring the payment of stipulated penalties may be terminated for a particular mobile home park upon a demonstration by Defendants of compliance at that particular mobile home park with the following requirements:

- a. Defendants have paid all penalties required by this Consent Order,
- b. Defendants have completed the requirements outlined in Section VI of this Consent Order for that mobile home park, and
- c. for a period of twelve (12) consecutive months, Defendants have achieved and maintained compliance at that mobile home park with the final effluent and monitoring limitations contained in the then current NPDES permit (3PV00047*BD for All Seasons, 3PV00041*AD for Hamlet, 3PX00004*BD for P&M Estates) and any renewals or modifications thereof, through a showing of no violations or the excuse of violations due to a potential force majeure.

19. If during the one (1) year period (twelve consecutive months) set forth in Paragraph 18, Defendants fail to comply with any of the requirements of Paragraph 18, the one (1) year period (twelve consecutive months) for that mobile home park will begin anew on the first date after such failure that Defendants are back into compliance with the requirement of Paragraph 18. Any of Defendant's subsequent failures to maintain compliance with Paragraph 18 shall be treated in the same manner as above, with the one (1) year period (twelve consecutive months) beginning anew from the date Defendants come back into compliance. The one (1) year

period (twelve consecutive months) for each mobile home park runs independently of the period for the other mobile home parks.

20. Termination of the stipulated penalty provisions of Paragraph 14 of this Consent Order as they apply for a particular mobile home park shall only be by order of the Court upon application by any party and a demonstration that the conditions outlined in Paragraph 18 of this Consent Order have been met for that mobile home park.

XII. AUTHORITY TO ENTER INTO THE CONSENT ORDER

21. The signatory for Stan B. & Ray V. Partnership, Stan B. and Ray V. Ltd., Ray-Stan Ltd., and P & M Ltd. each represents and warrants that he or she has been duly authorized to sign this document and so bind the particular Defendant to all terms and conditions thereof.

XIII. RETENTION OF JURISDICTION

22. The Court will retain jurisdiction of this action for the purpose of administering and enforcing Defendants' compliance with the terms and provisions of this Consent Order.

XIV. COSTS

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

24. Defendants are hereby ordered to pay the costs incurred by the Ohio EPA for the publication of notice of the Consent Order in a newspaper of general circulation. Defendants shall pay the costs associated with publication by delivering a certified check payable to "Treasurer, State of Ohio", with a notation on the check that the funds go to "Fund 699", in the amount of the costs, to the Fiscal Officer, Ohio EPA, P.O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43216-1049, within 30 days from the date they receive notice of the costs from Ohio EPA.


XV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

25. The parties agree and acknowledge that final approval by Plaintiff and Defendants and entry of this Consent Order is subject to the requirements of 40 C.F.R. 123.27(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 Plaintiff and Defendants reserve the right to withdraw this Consent Order based on comments received during the public comment period.

26. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the Order upon the journal, the clerk is directed to serve upon all parties notice of the Order and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and to note the service in the appearance docket.

IT IS SO ORDERED.

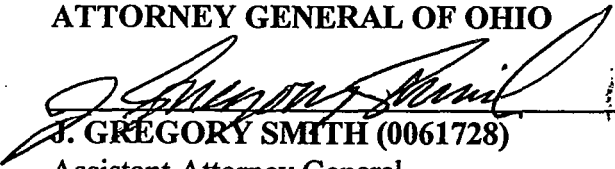
DATE



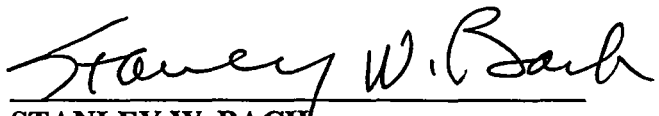
JUDGE, COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

APPROVED:

**STATE OF OHIO, *ex rel.*
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO**

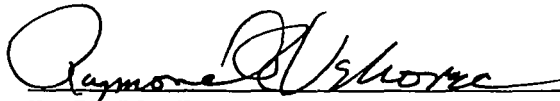


J. GREGORY SMITH (0061728)
Assistant Attorney General
Environmental Enforcement Section
30 E. Broad Street, 25th Floor
Columbus, Ohio 43215-3428
(614) 466-2766
Trial Attorney for Plaintiff State of Ohio



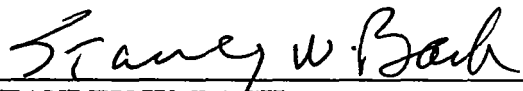
STANLEY W. BACH
32855 Jackson Boulevard
Moreland Hills, Ohio 44022

Defendant


RAYMOND R. VEHOVEC
1460 Ridgcrest Dr.
Kent, Ohio 44240

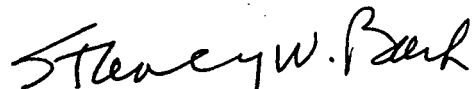
Defendant

STAN B. and RAY V. LTD.


STANLEY W. BACH
Authorized Representative
5341 State Route 8
Peninsula, Ohio 44264

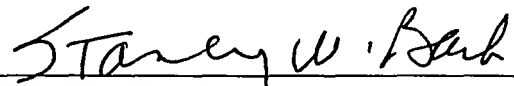
Defendant

P & M LTD.


STANLEY W. BACH
Authorized Representative
30700 Bainbridge Road #L
Solon, Ohio 44139

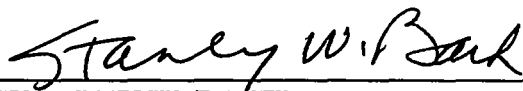
Defendant

STAN B. & RAY V. PARTNERSHIP

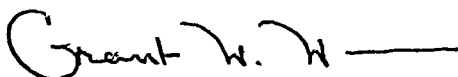

STANLEY W. BACH, Partner
32855 Jackson Road
Moreland Hills, Ohio 44022

Defendant

RAY-STAN LTD.


STANLEY W. BACH
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30700 Bainbridge Road #L
Solon, Ohio 44139

Defendant


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Trial Attorney for Defendants Stanley W. Bach, Raymond R. Vehovec, Stan B. & Ray V. Partnership, Stan B. and Ray V. Ltd., Ray-Stan Ltd., and P&M Ltd.