

IN THE COURT OF COMMON PLEAS  
STARK COUNTY, OHIO

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

Plaintiff,

v.

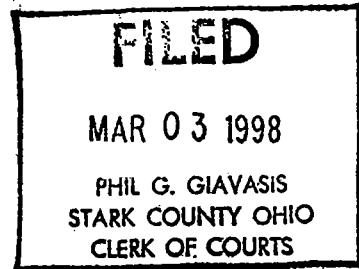
LEONARD A. COOPER,  
d/b/a/ SKYLAND HILLS MOBILE  
HOME PARK,

Defendant.

Case No. 1994CV00160-OC-1

JUDGE JOHN G. HAAS

MODIFIED CONSENT ORDER



WHEREAS, the Complaint in the above-captioned matter having been filed herein on January 27, 1994, and the Plaintiff State of Ohio by its Attorney General Betty D. Montgomery (hereinafter "Plaintiff") and Defendant Leonard A. Cooper (hereinafter "Defendant") having consented to the entry of a prior Consent Order entered on November 9, 1994 (hereinafter "the 1994 Order"), and

WHEREAS, the 1994 Order was entered to resolve Defendant's violations of Ohio Revised Code ("R.C.") Chapter 6109 and regulations adopted thereunder and which required the payment of a \$10,000 civil penalty, which penalty was paid by Defendant, and

WHEREAS, on November 24, 1997, Plaintiff filed its Written Charges in Contempt as the result of Defendant's violations of Paragraph 6 of the 1994 Order requiring the construction, installation and operation of a new drinking water well, and

WHEREAS, the 1994 Order is modified: to establish deadlines for construction of improvements necessary to bring Defendant into compliance with the 1994 Order, R.C. Chapter 6109 and the regulations adopted thereunder; to require a performance bond; and, for violations

of the 1994 Order as alleged in Plaintiff's Written Charges in Contempt, to provide a stipulated penalty which may be adjusted by the Court,

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. DEFINITIONS

1. As used in this Order, the following terms are defined as follows:
  - A. "Skyland Hills" means Skyland Hills Mobile Home Park located at 14000 Lincoln St., S.E., Minerva, Ohio 44657.
  - B. "Ohio EPA" means the Ohio Environmental Protection Agency.
  - C. "Water System" means the public water system owned and operated by Defendant Leonard A. Cooper which serves the residents of Skyland Hills.
  - D. "Distribution System" means the system of pipes, conduits, mains, and other conveyances by which water is transported from the Water System well(s) to user connections.
  - E. "Wastewater System" means the pipes and equipment for the treatment and discharge of wastewater from the iron and manganese treatment system.

### II. JURISDICTION AND VENUE

2. 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 Defendant under Chapter 6109. of the Ohio Revised Code, and venue is proper in this Court.

### III. PARTIES

3. The provisions of this Modified Consent Order shall apply to and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them.

4. The Defendant shall provide a copy of this Modified Consent Order to each contractor employed to perform any of the work itemized herein, and each general contractor shall provide a copy of this Modified Consent Order to each of its subcontractors for such work.

#### IV. SATISFACTION OF LAWSUIT

5. Plaintiff alleges in its Complaint that Defendant has committed numerous violations of the safe drinking water laws of the State of Ohio arising out of Defendant's operation of the Skyland Hills Mobile Home Park's Public Water System located in Stark County, Ohio. Compliance with the terms of this Modified Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims under such laws alleged in the Complaint. In addition, compliance with Paragraph 6.B. of this Modified Consent Order shall constitute satisfaction of Plaintiff's Written Charges in Contempt, subject to any decision of this Court regarding the payment of stipulated penalties discussed in Paragraph 8, below. 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.

#### V. INJUNCTION

6. Defendant is hereby enjoined and ordered as follows:

A. Defendant is enjoined and ordered to immediately comply with the Ohio drinking water laws and regulations contained in Ohio Revised Code Chapter 6109 and Ohio Administrative Code Chapters 3745-07, 3745-09, 3745-81 through 3745-99. In the event that the Ohio drinking water laws or regulations are amended, Defendant is enjoined and ordered to comply with such amended laws and regulations.

Construction of New Well and Connection to Water System:

B. Defendant is enjoined and ordered to install, construct, and connect an iron and manganese treatment system, a Wastewater System, and all related changes to the Water System, and to operate the new well, iron and manganese treatment system, Wastewater System, and all related changes to the Water System, all in accordance with the following schedule:

- (i) By February 27, 1998, Defendant is enjoined and ordered to submit to the Ohio EPA approvable and complete detailed plans and specifications for the new drinking water well, the iron and manganese treatment system, and all other related changes to the Distribution System which meet all the requirements of O.A.C. Chapter 3745-91. For purposes of this Paragraph 6.B(i), "approvable" and "complete" shall be determined in accordance with O.A.C. Chapter 3745-91.
- (ii) By February 27, 1998, Defendant is enjoined and ordered to submit to the Ohio EPA an approvable and complete application for a Permit to Install a Wastewater System and a complete and approvable NPDES application and antidegradation addendum for discharge from the Wastewater System that meet all the requirements of O.A.C. Chapters 3745-1, 3745-31, and 3745-33. For purposes of this Paragraph 6.B(ii), "approvable" and "complete" shall be determined in accordance with O.A.C. Chapters 3745-1, 3745-31, and 3745-33.
- (iii) If the Ohio EPA determines that any of the documents submitted pursuant to Paragraphs 6.B(i) and 6.B(ii), above, are either not complete or not approvable, or both, Ohio EPA shall inform Defendant or his agents. Defendant is enjoined and ordered to resubmit - within ten (10) calendar days of receipt of any notice of deficiency from the Ohio EPA, whether actual, constructive or otherwise - all necessary documents to correct the incomplete or unapprovable nature of the documents submitted pursuant to Paragraphs 6.B(i) and 6.B(ii), above. If the second submittal(s) is/are either not complete or not approvable, or both, in accordance with applicable requirements of the O.A.C., the Ohio EPA may approve the second submittal document(s) with modifications or additional terms and conditions.
- (iv) Defendant is enjoined and ordered, immediately upon receipt of notice, whether actual, constructive or otherwise, of issuance by the Director of the Ohio EPA of the PTI and/or the NPDES permit for the Wastewater System, to commence soliciting bids for implementing the installation, construction and operation of the new well, the iron and manganese treatment system, and the Wastewater System.
- (v) Defendant is enjoined and ordered, within sixty (60) calendar days of issuance by the Director of the Ohio EPA of the Plan Approval, the PTI, or the NPDES permit

for the Wastewater System, whichever is issued last, to initiate installation and construction of the iron and manganese treatment system and the Wastewater System, such installation and construction to be in accordance with the Approved Plans, the PTI, and the NPDES permit.

- (vi) Defendant is enjoined and ordered, within one hundred fifty (150) calendar days of issuance by the Director of the Ohio EPA of the Plan Approval, the PTI, or the NPDES permit for the Wastewater System, whichever is issued last, to complete the installation and construction of the iron and manganese treatment system, and the Wastewater System, and, upon completion of installation and construction of all of the above, is enjoined and ordered to immediately begin operation of the new well, the iron and manganese treatment system, and the Wastewater System. In no event shall Defendant operate the new well and/or the iron and manganese treatment system until the Wastewater System is installed and constructed.
- (vii) Not more than sixty (60) calendar days prior to beginning operation of the new well in accordance with Paragraph 6.B(vi), above, Defendant is enjoined and ordered to monitor for chemical, bacteriological, and radiological contaminants in accordance with O.A.C. Chapter 3745-81 to determine compliance with the maximum contaminant levels in O.A.C. Chapter 3745-81. Defendant is enjoined and ordered to forward copies of all laboratory analyses of such monitoring results to the Ohio EPA prior to operation of the new well. In the event that the monitoring results reveal violations of the maximum contaminant levels, Defendant is enjoined and ordered to take all necessary steps to correct the violations prior to operation of the new well.
- (viii) Not more than fourteen (14) calendar days prior to beginning operation of the new well in accordance with Paragraph 6.B(vi), above, Defendant is enjoined and ordered to cause at least two (2) sets of four (4) total coliform bacteria samples from the new well to be drawn and analyzed, in order to establish that bacteria is not present in the source water in harmful amounts, as required by O.A.C. 3745-9-08(B). If any such sample is determined to be total coliform-positive, Defendant is enjoined and ordered to, within twenty-four (24) hours of receiving notice of the laboratory analyses, draw one (1) set of four (4) total coliform bacteria samples per day until such time as two (2) consecutive sets of four total coliform bacteria samples are determined to be total coliform-negative. Defendant is enjoined and ordered to forward copies of all laboratory analyses of such results to the Ohio EPA.
- (ix) Within seven (7) calendar days of completion of each requirement set forth in Paragraph 6.B, Defendant is enjoined and ordered to provide notice in writing to the Ohio EPA of the date on which the requirement was completed.

Water System and Distribution System Monitoring and Notification Requirements

C. In the event that the Water System becomes depressurized at any time, Defendant shall immediately cause at least two sets of four total coliform bacteria samples from the Distribution System to be drawn and analyzed at twenty-four hour intervals, in order to establish that the Distribution System has been adequately disinfected after any depressurization(s) of the Water System. If any such sample is determined to be total coliform-positive, Defendant shall cause repeat samples to be collected in accordance with O.A.C. 3745-81-21(B). Copies of all laboratory analyses of such samples shall be forwarded to Ohio EPA.

D. Defendant shall cause to be collected, on a monthly basis, at least one total coliform bacteria sample at one or more sites representative of the water throughout the Distribution System, in accordance with O.A.C. 3745-81-21. When a sample is determined to be total coliform-positive, Defendant shall cause repeat samples to be collected in accordance with O.A.C. 3745-81-21(B).

E. Defendant shall ensure that the water collected and delivered via the Water System complies at all times with the maximum contaminant levels for coliform bacteria set forth in O.A.C. 3745-81-14.

F. In the event that the Water System is depressurized or fails to comply with the maximum contaminant level for total coliform bacteria, Defendant shall notify the residents of Skyland Hills in accordance with O.A.C. 3745-81-32(A)(1) by immediately distributing the Public Notice attached hereto as Appendix A as follows:

1. by hand delivery to all households of Skyland Hills, or by continuous posting in conspicuous places throughout the area served by the Water System, and
2. by furnishing a copy of the notice to the radio and television stations serving the Skyland Hills area.

G. In the event that Defendant or the operator of the Water System fails to perform the monitoring required by O.A.C. Chapter 3745-81, Defendant shall provide notice to all persons served by the Water System in accordance with O.A.C. 3745-81-32.

H. For any notice issued pursuant to Paragraphs 6.F or 6.G of this Order, Defendant shall repeat any such notice made by mail delivery or by hand delivery at least once every thirty days for the duration of the violation giving rise to the notice. For a notice made by posting, Defendant shall maintain the posting for the duration of the violation giving rise to said notice. Defendant shall provide the Ohio Environmental Protection Agency with a copy of any notice given pursuant to this Order, together with a signed affidavit stating the methods used and the date the notice was issued, no later than ten days following the date the notice was issued.

I. In the event of depressurization of the Water System or other significant interruption of service, or in the event that chlorination is not being provided to the Distribution System, Defendant shall immediately report such event by telephone to the Northeast District Office of Ohio EPA at (330) 963-1200.

J. Defendant shall place the responsibility for the technical operation and maintenance of the Water System under the responsible charge of a certified operator of at least Class I, in accordance with O.A.C. 3745-7-02(A).

K. Defendant shall cause the Water System to be operated in accordance with the Contingency Plan submitted by Defendant to Ohio EPA on or about November 23, 1993, as updated as necessary to comply with O.A.C. 3745-85-05.

L. In the event of an interruption of service, for any reason, Defendant is enjoined and ordered to provide bulk drinking water for all of the households of Skyland Hills beginning on the sixth cumulative hour of interruption and continuing until such time as service is resumed.

M. Documents which are required to be submitted to Ohio EPA under this Modified Consent Order shall be sent to the following address: Ohio Environmental Protection Agency, Northeast District Office, 2110 E. Aurora Rd., Twinsburg, Ohio 44087, Attn: David Bowland, Division of Drinking and Ground Water, or his successor.

#### VI. PERFORMANCE BOND

7. Defendant is enjoined and ordered, within ten (10) calendar days of the entry of this Modified Consent Order, to post a performance bond in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) in the name of "Donald R. Schregardus, Director of the Ohio Environmental Protection Agency, or his successor" and to send a copy of the bond to the Ohio EPA. In the event that Defendant fails to comply with any of the deadlines set forth in Paragraph 6.B, above, the Director, in his sole discretion, may petition this Court to appoint a Commissioner who shall perform the improvements required under Paragraph 6.B using the performance bond to cover the costs of compliance with Paragraph 6.B. The State reserves the right to, in the event that the performance bond is not sufficient to pay for completion of all of the improvements required under Paragraph 6.B, collect from Defendant that amount necessary to pay for completion of all of the improvements. The performance bond shall terminate upon Defendant's compliance with Paragraph 6.B(vi), above.

#### VII. PAYMENT OF STIPULATED PENALTIES

8. For Defendant's violations of the 1994 Order, the Court orders a stipulated penalty in the amount of Fifty Thousand Dollars (\$50,000.00). Defendant's payment to Plaintiff of this stipulated penalty is temporarily suspended until such time as the Court, after conducting an evidentiary hearing, orders payment by Defendant of a stipulated penalty. In the event that Defendant fails to comply with any of the requirements of this Modified Consent Order, the State



may immediately move for an evidentiary hearing on Defendant's noncompliance with the requirement(s) of this Modified Consent Order, and on whether the suspended stipulated penalty imposed by this Paragraph should be increased. Based upon the evidence presented at the evidentiary hearing, the Court may impose a stipulated penalty in an amount which may be greater than the suspended stipulated penalty. In the event that the State does not move for an evidentiary hearing for noncompliance with any of the requirements of this Modified Consent Order, the Court shall, within thirty (30) days after the date specified in Paragraph 6.B(vi), above, set an evidentiary hearing to determine whether the suspended stipulated penalty imposed by this Paragraph should be increased based upon Defendant's violations of the 1994 Order or decreased based upon Defendant's conduct under the Modified Consent Order. Based upon the evidence presented at the evidentiary hearing, the Court may impose a stipulated penalty in an amount which may be greater than or less than the suspended stipulated penalty. Defendant is enjoined and ordered to pay the stipulated penalty in accordance with the Court's order issued subsequent to the evidentiary hearing.

#### VIII. STIPULATED PENALTIES

9. In the event that Defendant fails to meet any of the requirements of this Modified Consent Order set forth in Paragraph 6, including any scheduled milestone requirement, the Defendant shall, immediately and automatically, be liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of 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 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 failure to meet a requirement, from Sixty-one (61) to Ninety (90) days--Two Thousand Five Hundred

Dollars (\$2,500.00) per day for each requirement not met. For each day of failure to meet a requirement, over Ninety (90) days--Three Thousand Five Hundred Dollars (\$3,500.00) per day for each requirement not met.

10. Any payment required to be made under Paragraph 9 of this Modified Consent Order shall be made by delivering to Jena Suhadolnik, Administrative Assistant, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, within forty-five (45) days from the date of the failure to meet the requirement of the Modified Consent Order, a certified check or checks for the appropriate amounts made payable to "Treasurer, State of Ohio."

**IX. RETENTION OF JURISDICTION**

11. The Court will retain jurisdiction of this action for the purpose of making any order or decree which it deems appropriate to carry out this Modified Consent Order. Any alleged violation(s) for which a stipulated penalty(ies) would accrue under Paragraph 9 of this Order are subject to the Court's continuing jurisdiction.

**X. COSTS**

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

**IT IS SO ORDERED.**

3/3/98  
DATE

/s/ John Haas  
JUDGE JOHN G. HAAS  
STARK COUNTY  
COURT OF COMMON PLEAS

A TRUE COPY TESTE:  
PHIL G. GIAVASIS, CLERK  
By D. Curran Deputy  
Date 3-3-98

APPROVED:

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



J. GREGORY SMITH (0061728)

DAVID G. COX (0042724)

Assistant Attorneys General

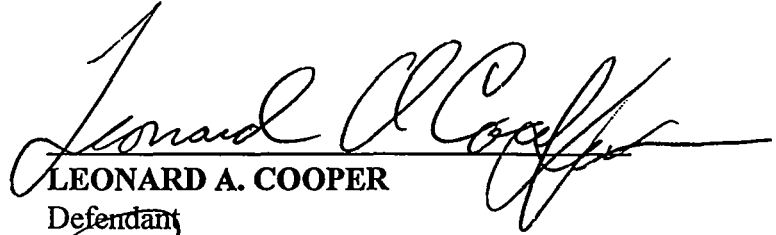
Environmental Enforcement Section

30 East Broad Street, 25th Floor

Columbus, Ohio 43215-3428

(614) 466-2766

Counsel for Plaintiff State of Ohio



LEONARD A. COOPER

Defendant



PATRICK J. NEMAN (0032555)

135 Ghent Road

Fairlawn, Ohio 44333-3338

(330) 864-3377

Counsel for Defendant Leonard A. Cooper

## **Appendix A**

# PUBLIC NOTICE WATER SYSTEM ADVISORY

[FULLY EXPLAIN CIRCUMSTANCES NECESSITATING NOTICE]

The United States Environmental Protection Agency ("USEPA") sets drinking water standards and has determined that the presence of total coliform is a possible health concern. The presence of these bacteria in drinking water generally is a result of a problem with water treatment or the pipes which distribute the water, and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, fever, nausea, and possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. USEPA has set enforceable drinking water standards for total coliform to reduce the risk of these adverse health effects. Under these standards,

- A. Drinking water which is free of coliform bacteria is usually not associated with a health risk from disease-causing bacteria and should be considered safe. Due to the presence or risk of coliform bacteria, as a precaution, state and local health officials recommend that, until further notice, consumers vigorously boil, for at least one minute, any water used for drinking (including water used to make ice), cooking or oral hygiene.
- B. No more than 5.0 percent of the samples collected during a month can contain these bacteria, except that systems collecting fewer than forty samples per month that have one total coliform-positive sample per month are not violating the standard. Drinking water which meets this standard is usually not associated with a health risk from disease-causing bacteria and should be considered safe.

The water system operator is conducting an investigation and will advise when further sampling show that the problem has been resolved.

For further information contact [water system contact person] at [appropriate telephone number].