

IN THE COURT OF COMMON PLEAS  
HOLMES COUNTY, OHIO

FILED

'98 NOV 13 PM 2 26

CASE NO. **98-CV-133**

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

RECORDED & INDEXED  
COMMERCIAL COURT  
HOLMES COUNTY, OHIO

JUDGE THOMAS D. WHITE

Plaintiff,

vs.

CLYDE W. KAUFMAN dba J.R.'S  
ROLLING WHEELS ESTATE

Defendant.

CONSENT 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 referred to as "Plaintiff") and Defendant Clyde W. Kaufman dba J.R.'s Rolling Wheels Estate (hereinafter "Defendant") having consented to the entry of this Order.

WHEREAS, Defendant does not admit the allegations set forth in the Complaint;

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 Defendant. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 6109. of the Ohio Revised Code and the rules promulgated under that chapter. Venue is proper in this Court.

## **II. PERSONS BOUND BY THE ORDER**

2. All terms and provisions of this Consent Order shall apply to and be binding upon Defendant and his assigns, successors in interest, agents, representatives, servants, employees, officers, directors, contractors, consultants, subsidiaries or divisions, and/or all persons, firms, or corporations who are or will be acting in concert or in privity with the Defendant. The Defendant shall provide a copy of this Consent Order to each contractor and/or consultant employed to perform any and all 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 Defendant has committed numerous violations of safe drinking water laws of the State of Ohio arising out of Defendant's operation of his public water system located in Holmes County, Ohio due to Defendant's failure to comply with the applicable requirements of Ohio Administrative Code ("Ohio Admin. Code") Chapter 3745-81. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for the claims under such laws as alleged in the Complaint against Defendant. Nothing in this Consent Order shall be construed so as 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. 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 Defendant, to eliminate or mitigate conditions which may present a threat to the public health, welfare or the environment.

#### IV. PERMANENT INJUNCTION

4.A. Defendant is hereby immediately and permanently enjoined and ordered to comply with all applicable provisions of Chapter 6109 of the Ohio Revised Code and the rules promulgated under that chapter.

4.B. Defendant is further ordered and enjoined to begin the following within thirty (30) days of the effective date of this Consent Order:

1. monitor for all required contaminants in accordance with Ohio Admin. Code Chapter 3745-81;
2. submit analytical results in accordance with Ohio Admin. Code Rule 3745-81-31;
3. perform all repeat monitoring for total coliform positive results in a timely manner in accordance with Ohio Admin. Code Rules 3745-14 and 3745-81-21;
4. submit monthly operating reports, which records all required information, including iron and manganese and chlorine results, by the tenth day of the following month in accordance with Ohio Admin. Code Rule 3745-83-05;
5. maintain a minimum chlorine residual of 0.2 mg/l free or 1.0 combined in accordance with Ohio Admin. Code Rule 3745-83-02;
6. operate the iron and manganese removal system in accordance with the plan approved by the Director and Ohio Admin. Code Chapter 3745-91; and
7. submit payment for license to operate fee in accordance with Ohio Admin. Code Rule 3745-84-03.

#### V. CIVIL PENALTY

5. It is hereby ordered that Defendant shall pay to the State of Ohio a civil penalty of Six Thousand Dollars (\$6,000.00) within thirty (30) days after the entry of this Consent Order by

delivery of a certified check for that amount, made payable to "Treasurer, State of Ohio," to Jena Suhadonik, Administrative Assistant, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

## **VI. STIPULATED PENALTIES**

6. In the event that Defendant fails to comply with Paragraph 4 of this consent order, Defendant shall pay a stipulated penalty for each failure according to the following payment schedule: (a) for each day of each failure to meet each deadline or requirement, up to fifteen (15) days -- One Hundred Fifty Dollars (\$150.00) per each day for each deadline or requirement not met; (b) for each day of each failure to meet each deadline or requirement, from sixteen (16) to thirty (30) days -- Two Hundred Dollars (\$200.00) per day for each deadline or requirement not met; (c) for each day of each failure to meet each deadline or requirement, from thirty-one (31) to sixty (60) days -- Four Hundred Dollars (\$400.00) per each day for each deadline or requirement not met; (d) for each day of each failure to meet each deadline or requirement, over sixty (60) days -- Seven Hundred Dollars (\$700.00) per each day for each deadline or requirement not met.

7. Any payment required to be made under the provisions of Paragraph six (6) of this Consent Order shall be made by delivering a certified check or checks for the appropriate amount(s) made payable to the order of "Treasurer, State of Ohio," to Jena Suhadonik, Administrative Assistant, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428 within thirty (30) days from the date of the failure to meet the requirement of the Consent Order.

## **VII. RETENTION OF JURISDICTION**

8. The court will retain jurisdiction of this action for the purpose of interpreting, enforcing and administering compliance with this Consent Order.

## **VIII. POTENTIAL FORCE MAJEURE**

9. If any event occurs which causes or may cause a delay in Defendant's compliance with any requirements of this Consent Order, Defendant shall notify the Ohio EPA in writing within ten (10) days of being on notice of the event, describing in detail the anticipated length of the delay, precise cause or causes of delay, the measures taken and to be taken by Defendant to prevent or minimize the delay and the timetable by which those measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

10. In any action by the Plaintiff to enforce any of the provision of this Consent Order, Defendant may raise whether he is entitled to a defense that his conduct was caused by reasons entirely beyond his control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and 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 Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant shall rest with Defendant. 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 Defendant, or serve as a basis for an extension of time under this Consent Order. Failure by Defendant to comply with the notice requirements of Paragraph 9 shall render this Paragraph voidable by the State as to the particular incident involved and shall, at the State's option, constitute a waiver of Defendant's right to request an extension of his obligations under this Consent Order based on such incident. An extensions of one compliance date based on a particular incident does not mean the Defendant qualifies for an extension of a subsequent compliance date or dates. Defendant must make an individual showing or proof regarding each incremental step or other requirement of which an extension is sought.

**IX. TERMINATION OF STIPULATED PENALTIES**

11. The provisions of this Consent Order set forth in Article VI requiring the payment of stipulated penalties may be terminated upon a demonstration by Defendant that: 1) he has completed the requirements outlined in Articles IV and V; 2) he has paid all penalties required by this Consent Order; and 3) for a period of twelve consecutive months, he has achieved and maintained compliance with all applicable provisions of Chapter 6109 of the Ohio Revised Code and the rules promulgated under that Chapter.

12. If during the one (1) year period (twelve consecutive months) set forth in Paragraph 11, Defendant fails to comply with all applicable provisions of Chapter 6109 of the Ohio Revised Code and the rules promulgated under that Chapter, the one (1) year period (twelve consecutive months) will begin anew on the first date after such failure that Defendant is back into compliance with all applicable provisions of Chapter 6109 of the Ohio Revised Code and the rules promulgated under that Chapter. Any of Defendant's subsequent failures to maintain

compliance with all applicable provisions of Chapter 6109 of the Ohio Revised Code and the rules promulgated under that Chapter, shall be treated in the same manner, with the one (1) year period (twelve consecutive months) beginning anew from the date Defendant comes back into compliance.

13. Termination of the stipulated penalty section of this Consent Order shall only be by order of the Court upon application by any party, and a demonstration that the conditions outlined in Paragraph 11 have been met.

#### **X. MODIFICATION**

14. There shall be no modification of this Consent Order without written approval by all the parties to this Consent Order and the Court or by order of the Court.

#### **XI. COURT COSTS**

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

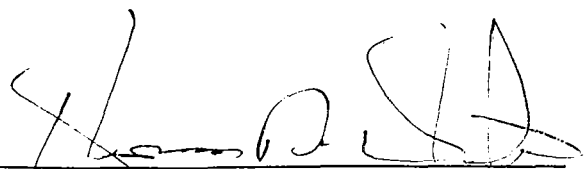
#### **XII. ENTRY OF CONSENT ORDER AND FINAL JUDGEMENT BY CLERK**

16. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon 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:

11/13/28

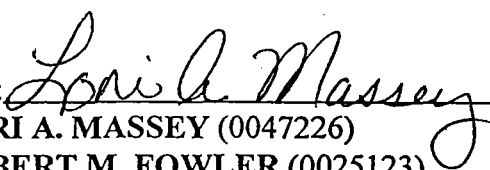
Date


  
JUDGE THOMAS D. WHITE  
COURT OF COMMON PLEAS,  
HOLMES COUNTY, OHIO

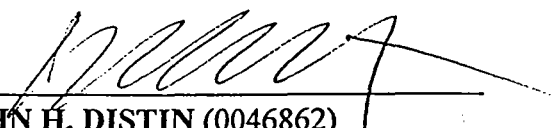
APPROVED:

BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO

CLYDE W. KAUFMAN dba J.R.'S  
ROLLING WHEELS ESTATE

BY:   
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