

IN THE COURT OF COMMON PLEAS  
TRUMBULL COUNTY, OHIO

STATE OF OHIO, ex. rel. :  
LEE FISHER, ATTORNEY :  
GENERAL OF OHIO, :  
 :  
Plaintiff, :  
 :  
v. :  
 :  
LAKEVIEW MOBILE HOME PARK, :  
et al., :  
 :  
Defendants. :  
 :

Case No. 95 cv 69

JUDGE: McKay

FILED  
RECORDED  
INDEXED  
JUL 23 11 25 AM '97  
CLERK OF COURT  
TRUMBULL COUNTY, OHIO

CONSENT ORDER

Plaintiff, State of Ohio, by its Attorney General, Lee Fisher (hereinafter "Plaintiff"), having filed the Complaint in this action against Defendants Lakeview Mobile Home Park and Jay Plymale (hereinafter "Defendants") to enforce Ohio's water pollution laws found in Chapter 6111 of the Revised Code and rules adopted thereunder; Plaintiff and Defendant have consented to the entry of this Order;

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

## I. DEFINITIONS

As used in this Consent Order:

"Consent Order" or "Order" means this Consent Order and all appendices hereto. In the event of conflict between this Order and an appendix, the Order shall control.

"Defendants" mean Lakeview Mobile Home Park and Jay Plymale.

"Facility" refers to the wastewater treatment plant which is located at Lakeview Mobile Home Park, 2917 Durst Colebrook Road, Cortland, Trumbull County, Ohio, 44410.

"O.A.C." means the Ohio Administrative Code.

"OEPA" means the Ohio Environmental Protection Agency.

"O.R.C." means the Ohio Revised Code.

"Plaintiff" means the State of Ohio by and through the Attorney General of Ohio.

## II. JURISDICTION

The Court has jurisdiction over the subject matter of this action, pursuant to O.R.C. Chapter 6111. This Court has jurisdiction over the parties. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted against the Defendants.

### III. PERSONS BOUND

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 any person acting in concert, privity or participation with them who receive actual notice of this Consent Order, whether by personal service or otherwise.

### IV. SATISFACTION

1. Except as otherwise provided in this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendants to Plaintiff for all claims alleged in the Complaint.

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

- (a) Seek relief for claims or conditions not alleged in the Complaint;
- (b) Seek relief for claims or conditions alleged in the Complaint which occur after the entry of this Consent Order;
- (c) Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;
- (d) Bring any legal or equitable action against Defendants or against any person under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9601, et seq., O.R.C. Chapter 3734 and/or 6111 to: (1) recover natural resource damages which occur after the entry of this consent order and/or (2) to enjoin the performance of, and/or recover response

costs for, any removal, remedial or corrective activities to address the release of any hazardous substances and/or wastes.

(e) Take any action authorized by law against any person, including Defendants, to eliminate or mitigate conditions at the Facility which may present an imminent threat to the public health or welfare, or the environment.

#### V. FACILITY ACCESS

1. As of the date of entry of this Consent Order, Plaintiff and its representatives and contractors shall have access at all times to the Facility, and shall have access to any other property controlled by or available to Defendants to which access is necessary to effectuate the actions required by this Order. Access shall be allowed for the purposes of conducting activities related to this Order including but not limited to:

- (a) Monitoring the work or any other activities taking place at the Facility;
- (b) Verifying any data or information submitted to Plaintiff;
- (c) Conducting investigations relating to contamination at or near the Facility;
- (d) Obtaining samples;
- (e) Assessing the need for, planning, or implementing additional response actions at or near the Facility;
- (f) Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Defendants or their agents, consistent with this Consent Order and applicable law; or

(g) Assessing Defendants' compliance with this Consent Order.

2. Nothing in this Consent Order shall be construed to limit the statutory authority of the Director or his authorized representatives to enter at reasonable times upon any private or public property, real or personal, to inspect or investigate, obtain samples, and examine or copy any records to determine compliance with O.R.C. Chapter 6111.

#### VI. CIVIL PENALTY

Defendants are ordered and enjoined to pay to the State of Ohio a civil penalty in the amount of Twelve Thousand Dollars (\$12,000.00) pursuant to R.C. §6111.09. This amount shall be paid in One Thousand Dollar (\$1,000.00) installments every month by delivering to Plaintiff, c/o Matt Sanders, Administrative Assistant, or his successor at the Office of the Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, OH 43266-0410, a certified check in that amount, payable to the order of "Treasurer, State of Ohio", with the first installment payment due ninety (90) days from the date of entry of this Consent Order.

#### VII. INJUNCTIVE RELIEF

1. Defendants are hereby ordered and enjoined to comply with all applicable provisions of O.R.C. Chapter 6111 and rules promulgated thereunder in managing all sewage or other waste (hereinafter "wastewater").

2. Defendants are hereby ordered and enjoined to comply with all requirements of NPDES permit #3PV00020\*BD (OH0044881), and any renewals

and/or modifications thereof, and O.R.C. § 6111.07 and O.A.C. 3745-33-05, including but not limited to:

- (a) Within thirty (30) days of entry of this Consent Order, Defendants are ordered and enjoined to complete construction of the sludge drying beds pursuant to the requirements of NPDES permit #3PV00020\*BD (OH0044881), and any renewals and/or modifications thereof, and O.R.C. §§ 6111.07.
- (b) Within thirty (30) days of entry of this Consent Order, Defendants are ordered and enjoined to employ and keep employed a daily operator qualified to perform all required testing pursuant to the requirements of NPDES permit #3PV00020\*BD (OH0044881), and any renewals and/or modifications thereof, and O.R.C. §§ 6111.07.
- (c) Within thirty (30) days of entry of this Consent Order, Defendants are ordered and enjoined to reseal the sand filters and assure the Facility is in good working order pursuant to the requirements of NPDES permit #3PV00020\*BD (OH0044881), and any renewals and/or modifications thereof, and O.R.C. §§ 6111.07.
- (d) Within thirty (30) days of entry of this Consent Order, Defendants are ordered and enjoined to install a railing above the working level of the tank (the edge of the tank) to assure safety to all operation personnel.
- (e) Within sixty (60) days of entry of this Consent Order, Defendants are ordered and enjoined to have an easily removable cover for the sampling port to assure samples can be obtained consistent with the

requirements of NPDES permit #3PV00020\*BD (OH0044881), and any renewals and/or modifications thereof, and O.R.C. §§ 6111.07.

- (f) Within ninety (90) days of entry of this Consent Order, Defendants are ordered and enjoined to make the necessary improvements in the roofing to assure the Facility is in good working order pursuant to the requirements of NPDES permit #3PV00020\*BD (OH0044881), and any renewals and/or modifications thereof, and O.R.C. §§ 6111.07.
- (g) Within one-hundred twenty (120) days of entry of this Consent Order, Defendants are ordered and enjoined to have an operational flow meter that accurately measures the daily flow pursuant to the requirements of NPDES permit #3PV00020\*BD (OH0044881), and any renewals and/or modifications thereof, and O.R.C. §§ 6111.07.(h) Before May 1, 1995, Defendants are ordered and enjoined to install a final effluent sampling station pursuant to the requirements of NPDES permit #3PV00020\*BD (OH0044881), and any renewals and/or modifications thereof, and O.R.C. §§ 6111.07. The final effluent sampling station should be positioned after the Chlorine Contact Tank.

3. 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. Approval for any such construction or modification shall be by permit issued by OEPA or other such permits as may be required by applicable federal, state, or local laws, rules, or regulations.

### VIII. STIPULATED PENALTIES

1. In the event that Defendants fail to meet any of the requirements contained in Article VI and VII of the Consent Decree, Defendants are immediately and automatically liable for and are ordered and enjoined to pay to Plaintiff immediately a stipulated penalty as follows:

- (a) For each day of each failure to pay the monthly installments of the civil penalty - One Hundred Dollars (\$100.00).
- (b) For each day of each failure to meet each requirement, up to thirty (30) days a requirement is due to be met - Five Hundred Dollars (\$500.00).
- (c) For each day of each failure to meet each requirement, from thirty-one (31) to sixty (60) days after a requirement is due to be met - One Thousand Dollars (\$1,000.00).
- (d) For each day of each failure to meet each requirement, from sixty-one (61) days to ninety (90) days after a requirement is due to be met - Two Thousand Dollars (\$2,000.00).
- (e) For each day of each failure to meet each requirement, over ninety (90) days - Three Thousand Dollars (\$3,000.00).

2. Defendants are ordered and enjoined to pay any required stipulated penalty by delivering to Plaintiff, c/o Matt Sanders, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, a certified check in the amount of the stipulated penalty, payable to the order of "Treasurer, State of Ohio."



3. The payment of stipulated penalties by Defendants and the acceptance of such stipulated penalties by Plaintiff pursuant to this Article shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to O.R.C. Chapter 6111 or to otherwise seek judicial enforcement of this Consent Order, for the same violation for which a stipulated penalty was paid or for other violations.

#### IX. POTENTIAL FORCE MAJEURE

1. If any event causes or may cause a delay or interruption in meeting any requirement of Section VII of this Consent Order, Defendants shall notify the OEPA, in accordance with Section X, in writing within ten (10) days of the event, describing in detail the anticipated length of the delay or interruption, the precise cause or causes of the delay or interruption, the measures taken by Defendants to prevent or minimize the delay or interruption, and the timetable by which measures will be implemented.

2. Upon receipt of the notice referenced in the preceding paragraph, Plaintiff may agree to waive or defer one or more requirements herein or the enforcement thereof. Plaintiff will inform Defendants of its decision in writing by certified mail. Plaintiff is not bound by oral representations of OEPA personnel concerning the validity of Defendants' reason for delay or interruption. A decision by Plaintiff to waive or defer any requirement of this Consent Order shall not be a bar to any enforcement action for Defendants' failure to meet the requirement as deferred. Any deferred requirement shall be considered enforceable in place of the specified requirement and shall be subject to the same stipulated penalty provisions

as the original requirement. A decision by Plaintiff to defer enforcement of any requirement or stipulated penalties set forth in this Consent Order shall not constitute a waiver of enforcement action with regard to the terms of this Consent Order, unless the Plaintiff expressly so agrees in writing.

3. In any action by the State of Ohio 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 limitation, acts of God, strikes, acts of war, civil disturbances and orders or actions of any court or regulatory agency. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed upon by Defendants and the State of Ohio 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 action to enforce the terms of this Consent Order is commenced by Plaintiff. At that time, the burden of proving that any delay or interruption was or will be caused by circumstances entirely beyond the control of Defendants shall rest with said Defendants. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order 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. Acceptance of this Consent Order with this Potential Force Majeure clause does not constitute a waiver by Defendants of any rights or defenses they may have under

applicable law.

#### X. NOTICE AND SUBMITTAL OF DOCUMENTS

1. Any notice or submission to the OEPA required by this Consent Order shall be sent by certified mail to each of the following addresses:

- a. Ohio Environmental Protection Agency  
Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
Attn: Ermelindo Gomes or his successor
- b. Ohio Environmental Protection Agency  
Division of Water Pollution Control  
P.O. Box 1049  
1800 Watermark Drive  
Columbus, Ohio 43266-0149  
Attn: Jim Borton or his successor

2. Any notice or submission to Defendants required by this Consent Order, unless otherwise indicated, shall be sent by certified mail to the following address:

- a. Jay Plymale  
7437 Berkniir Drive  
Kent, Ohio 42240

#### XI. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS

All activities undertaken by Defendants pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal and state and local laws, rules and regulations, and permits. For work both on and off the Facility, Defendants are ordered and enjoined to obtain all permits or approvals necessary under applicable federal, state or local laws and shall submit timely applications and requests for any such permits and approvals. Where such laws

appear to conflict with the other requirements of this Consent Order, Defendants are ordered and enjoined to immediately notify the OEPA of the potential conflict. Defendants are ordered and enjoined to include in all contracts or subcontracts entered into for work required under this Consent Order, provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and rules. This Consent Order is not a permit issued pursuant to any federal or state or local law or rule.

#### XII. RETENTION OF JURISDICTION

This Court will retain jurisdiction of this action for the purpose of enforcing this Consent Order.

#### XIII. COSTS

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

#### XIV. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

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 days of entering the judgment upon the journal, the clerk is 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.

XV. AUTHORITY TO ENTER INTO THE CONSENT ORDER

Each Signatory for Lakeview Mobile Home Park represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof. Each Signatory for Lakeview Mobile Home Park shall submit with this Consent Order an authenticated and certified resolution from Lakeview Mobile Home Park establishing that he/she is so empowered to sign for and bind Lakeview Mobile Home Park.

10-22-97  
DATE

*W. W. ...*

\_\_\_\_\_  
JUDGE, COURT OF COMMON PLEAS  
TRUMBULL COUNTY

APPROVED:

ON BEHALF OF PLAINTIFF  
STATE OF OHIO EX REL. FISHER:

By:

~~Vicki Lee Deisner~~  
JEANNETTE WEAVER (0039697)  
VICKI LEE DEISNER (0060026)  
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street, 25th Fl.  
Columbus, Ohio 43266-0410  
Telephone: (614) 466-2766

Attorneys for Plaintiff  
State of Ohio

ON BEHALF OF DEFENDANTS  
LAKEVIEW MOBILE HOME PARK:

By:

~~Jay Plymale per phone 1/6/95~~  
LAKEVIEW MOBILE HOME PARK  
Authorized Representative  
Bazetta Township  
Trumbull County, Ohio

~~Jay Plymale per phone 1/6/95~~  
JAY PLYMALE  
7437 Berknir Drive  
Kent, Ohio 42240

Defendants

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