

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

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

Plaintiff,

v.

LYNN D. MANN, d/b/a
BY-WAY TRAILER PARK, INC.
and d/b/a MANN'S MOBILE
HOMES, INC.

Defendant.

CASE NO. 93CVH07-4989

JUDGE O'NEILL

CONSENT ORDER

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
95 MAR -9 AM 10:32
CLERK OF COURTS

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Betty D. Montgomery (hereinafter "Plaintiff") and Defendant Lynn D. Mann (hereinafter "Defendant Mann" or "Defendant") 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 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 Chapters 6111., 6109. and 3737. of the Ohio Revised Code, 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 any person acting in concert or privity with any of them.

3. The Defendant shall provide a copy of this Consent Order to each contractor employed to perform any of the work itemized herein, and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work. Defendant shall also provide a copy of this Consent Order to Jerry Francis or his successor, Administrator, City of Columbus Public Utilities and Aviation Department, Division of Sewerage and Drainage, Utilities Complex, 910 Dublin Road, 4th Floor, Columbus, Ohio 43215-9053 .

III. SATISFACTION OF LAWSUIT

4. Plaintiff alleges in its Complaint that Defendant Mann has committed numerous violations of the nuisance, safe drinking water, and water pollution control laws of the State of Ohio arising out of Defendant's operation of the By-Way Trailer Park Wastewater Treatment Plant and Public Water System located in Franklin County, Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims under such laws alleged in the Complaint which are based on violations which have occurred prior to the entry of this Consent Order. 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 entry of this Consent Order.

IV. INJUNCTION

5. Except as authorized under paragraphs 6 through 10 of this Consent Order, Defendant Mann is enjoined and ordered to immediately comply with the requirements of Chapters 6109. and 6111. of the Ohio Revised Code and the rules and regulations adopted under those Chapters.

6. Defendant Mann is enjoined and ordered to comply with the "Voluntary Sewer Assessment Agreement between the City of Columbus and Lynn D. Mann, Owner and Operator of By-Way Trailer Park." (hereinafter the "Voluntary Sewer Assessment Agreement" attached hereto as Exhibit "A" and incorporated by reference herein). Upon completion of construction of Capital Improvement Project No. 455 or such other sewer line connecting By-Way Trailer Park to the City of Columbus POTW, Defendant is ordered and enjoined to immediately and permanently:

- a. cease any further direct discharge to waters of the state from the By-Way Trailer Park Wastewater Treatment Plant;
- b. abandon operation of the By-Way Trailer Park Wastewater Treatment Plant;
- c. perform such abandonment so as to remove all liquids and solids from the treatment plant, render it inoperable, and ensure it will not constitute a nuisance; and
- d. direct all wastewater flow from the By-Way Trailer Park into the City of Columbus Sanitary Sewerage System which connects to the POTW.

7. Defendant Mann is enjoined and ordered to properly operate and maintain the By-Way Trailer Park Wastewater Treatment Plant and any associated equipment and structures until such time as it is abandoned. Specifically, Defendant Mann is enjoined and ordered to immediately place the responsibility for technical operation and maintenance of the By-Way Trailer Park Wastewater Treatment Plant under a State Certified Operator having a Class I Certificate for wastewater.

Defendant Mann is further enjoined and ordered to assure that the operator who is hired shall check and monitor the Wastewater Treatment Plant at least three days per week for a total of six hours per week to insure that the Wastewater Treatment Plant is operating at its optimum efficiency. Defendant Mann is further enjoined and ordered to immediately hire a hauler to haul and dispose of the sludge from the By-Way Trailer Park Wastewater Treatment Plant to the City of Columbus Wastewater Treatment Plant once every two months, or more frequently, as deemed necessary by the Class I Certified Operator for wastewater and/or Ohio EPA.

8. If the City of Columbus issues a Notice of Termination of Capital Improvement Project No. 455, Defendant Mann is ordered and enjoined to submit to Ohio EPA, within ninety (90) days of the issuance of the City's Notice of Termination, a complete and approvable permit-to-install application including detail plans and specifications for upgrading the By-Way Trailer Park Wastewater Treatment Plant and a complete National Pollutant Discharge Elimination System ("NPDES") permit application. If Ohio EPA advises Defendant Mann that any application submitted pursuant to this paragraph is not complete and approvable, Defendant Mann is ordered and enjoined to supplement the application to the

satisfaction of Ohio EPA so as to make the application complete and approvable.

Any such supplemented application shall be re-submitted no later than thirty (30) days after notification that the original application is not complete and approvable.

9. Defendant Mann is ordered and enjoined to properly operate and maintain the chlorine retention tank for the Public Water System in accordance with the plans as approved by Ohio EPA and any terms and conditions of that plan approval.

10. 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 Ohio EPA or other such permits as may be required by applicable federal, state or local laws, rules or regulations.

11. Defendant Mann is ordered and enjoined to notify Ohio EPA in writing of compliance with each of the requirements listed in paragraphs 6 through 8 above within Ten (10) days after compliance or deadline date, whichever is earlier.

12. Documents which must be submitted under this Consent Order shall be sent as follows:

For documents related to the By-Way Trailer Park Wastewater Treatment Plant and/or Chapter 6111. of the Ohio Revised Code, send to:

Ohio Environmental Protection Agency
Attention: Larry Korecko
Central District Office
Division of Surface Water
3232 Alum Creek Drive
Columbus, Ohio 43207-3417

and to:

Ohio Environmental Protection Agency
Attention: Randy Bourriquet
Central Office
Division of Surface Water
P.O. Box 1049
1800 WaterMark Drive
Columbus, Ohio 43266-0149

VI. CIVIL PENALTY

13. Defendant Mann shall pay to the State of Ohio a civil penalty of One Hundred Thousand Dollars (\$100,000.00) payable as follows:

a. Fifteen Thousand Dollars (\$15,000.00) within four (4) months of the entry of this Consent Order;

b. Ten Thousand Dollars (\$10,000.00) within eight (8) months of the entry of this Consent Order;

c. Seventy-Five Thousand Dollars (\$75,000.00) payable over five (5) years in pro rata equal annual installments of Fifteen Thousand Dollars (\$15,000.00) each, with the first installment due two (2) years from the entry of this Consent Order and equal annual installments thereafter until the balance is paid.

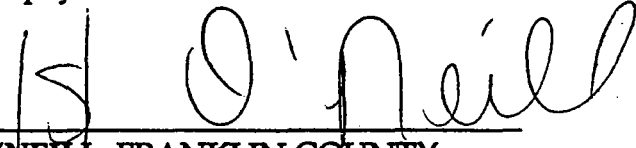
Each installment shall be paid by certified check payable to the order of "Treasurer, State of Ohio." The penalty shall be paid by delivering the certified checks for the amount designated in Paragraphs 13.a, 13.b. and 13.c to Matt Sanders, at Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410.

VII. RETENTION OF JURISDICTION

14. 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 Consent Order.

IX. COSTS

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

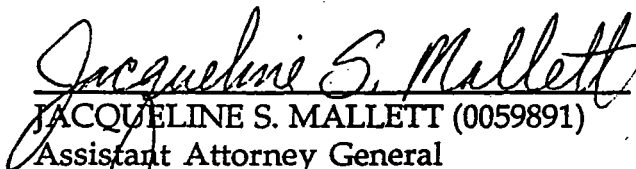


JUDGE O'NEILL, FRANKLIN COUNTY
COURT OF COMMON PLEAS

APPROVED:

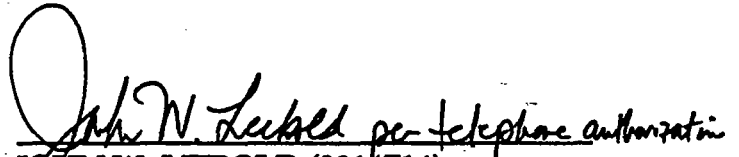
STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

BY:



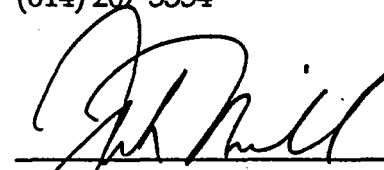
JACQUELINE S. MALLET (0059891)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410
(614) 466-2766

Counsel for Plaintiff State of Ohio



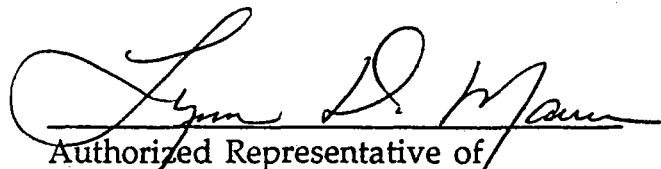
JOHN W. LEIBOLD (0014714)
3006 North High Street
Columbus, Ohio 43202
(614) 267-5354

3/6/95 FM



FRANK L. MERRILL (0039381)
Bricker & Eckler
100 South Third Street
Columbus, Ohio 43215
(614) 227-2300

Counsel for Defendant



Authorized Representative of
Defendant Lynn D. Mann

filed

VOLUNTARY SEWER ASSESSMENT AGREEMENT

Between City of Columbus and Lynn D. Mann,
Owner and Operator of By-Way Trailer Park

WHEREAS, Lynn D. Mann is the owner and operator of real property as described in deeds attached hereto as Exhibit A, located within the City of Columbus at 2778 Innis Road, known as the By-Way Trailer Park, hereafter By-Way, tax parcel number 010-146475; and

WHEREAS, By-Way is not currently connected to the City sanitary sewer system, but rather provides sanitary sewer services to its tenants by means of an on-site wastewater treatment plant; and

WHEREAS, it has been determined in the interest of the tenants' and the public's health, welfare and safety and in the interest of protecting the environment, that By-Way should be connected to the City's sanitary sewer system with the on-site plant to be closed; and

CT 00533R

WHEREAS, it has been determined that extension of the public sewer from the Alum Creek trunk line to By-Way can be constructed as project named Mainline Lateral - North of Innis Road and West of Alum Creek, Capital Improvement Project no. 455(hereafter Project) of the City of Columbus to be partially financed by a voluntary assessment upon By-Way with other financial guarantees to be provided by Mr. Mann.

NOW, THEREFORE, this Voluntary Sewer Assessment Agreement is entered into this 23RD day of September, 1993, by Lynn D. Mann and the City of Columbus, Ohio, acting by and through its Director of Public Utilities, pursuant to and under the authority of Ordinance No. 1977-93, passed and approved on September 20, 1993, subject to the following terms and conditions.

In consideration of the City of Columbus' construction as a Capital Improvement Project, a public gravity sewer between By-Way private sewer system (at manhole 8 designated on the

existing sewer plan CC-6782) and the existing Alum Creek trunks, Lynn D. Mann agrees, promises and covenants as follows:

1. Lynn D. Mann, his successors and assigns, agree that the real property known as By-Way Trailer Park, located at 2778 Innis Road, Columbus, Ohio, tax parcel number 010-146475 is to be subject to a voluntary sewer assessment pursuant to Ohio Revised Code Chapter 727 and the Charter of the City of Columbus. This assessment will be equal to fifty percent (50%) of the actual total cost of the project which includes all engineering, construction and inspection costs, along with any costs incurred by the City in acquiring easements, and is not subject to any limitation on assessments contained in Ohio Revised Code Chapter 727 or the Charter of the City of Columbus. The voluntary sewer assessment will be for a period of ten years. In addition, Mr. Mann agrees to execute a promissory note in favor of the City for the amount of the assessment.

2. Lynn D. Mann, his successors and assigns, agree to provide to the City, in form acceptable to the City, permanent and construction easements upon the By-Way premises for the purposes of constructing and maintaining the public sewer being built by this Project. In addition, Lynn D. Mann, his successors and assigns, agree to provide acceptable permanent easements to the City, along with a 20-foot temporary construction easement along both sides of the permanent easement to allow for later possible extension of the public sewer as shown on the existing sanitary sewer plan (CC-6782) from manhole 8 through manhole 11.

3. Lynn D. Mann, his successors and assigns, agree that system capacity fees (tap-in charges) which are based on the size of the domestic water tap will be due for all trailers at By-Way to be served by the sewer extension. The total amount for the system capacity fees for existing trailers will be due after completion of construction of the sewer but prior to the abandonment of the existing wastewater treatment plant and connection to the public sewer. All trailers will be charged the minimum system capacity fee (based on a 3/4-inch domestic water tap) which is in effect at the time the trailer is connected to the public sewer system.

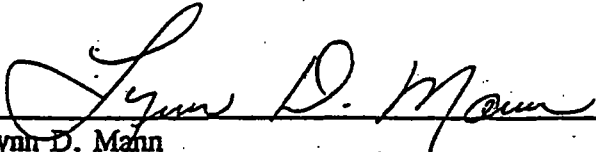
4. Lynn D. Mann, his successors and assigns, agree that Mr. Mann will caused to be installed at his cost, an acceptable flow meter in the sewer system at the connection of By-Way to the public sewer for purposes of billing, prior to connection of By-Way to the public sewer.

5. Lynn D. Mann, his successors and assigns, agree that upon completion of the proposed public sewer, the operation and maintenance of the existing on-site sewer system serving By-Way will continue to be Mr. Mann's, his successors' and assigns', responsibility. Prior to connection to the public sewer, manholes on the existing on-site sewer system shall be raised and sealed by Mr. Mann, in a manner acceptable to the City, to prevent or reduce ground water and surface water infiltration into the system.

6. Lynn D. Mann understands and agrees that the City, in building this Project as a Capital Improvement Project of the City, does not represent or

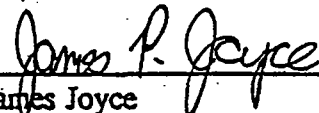
warrant as to when the project will be completed and available for connections from By-Way due to, but not limited to, delays caused by acts of God, easement acquisition, availability of funds, approval of permits, contractor performance or other causes.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this 23rd day of September, 1993.



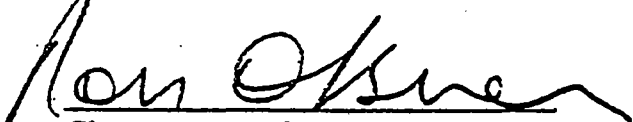
Lynn D. Mann
Owner and Operator of By-Way Trailer Park

THE CITY OF COLUMBUS

By: 

James Joyce
Director of Public Utilities

APPROVED AS TO FORM:
APPROVED AS TO FORM:



City Attorney, Columbus, Ohio
By [Signature] 9/24/93

Know all Men by these Presents

That **EDYTHA H. WEBSTER, Widow and Unremarried,**

10658

TRANSFER TAX PAID
323. ⁰⁰ By <i>[Signature]</i>
ARCH I. WARREN
FRANKLIN COUNTY, AUDITOR

of the City of Columbus County of Franklin and State of Ohio Grantor in consideration of the sum of

to her paid by **LYNN D. MANN**

of the City of Columbus County of Franklin and State of Ohio Grantee the receipt whereof is hereby acknowledged, do as hereby grant, bargain, sell and convey to the said Grantee **LYNN D. MANN**

60 his heirs and assigns forever, the following Real Estate situated in the County of Franklin in the State of Ohio and in the Township of Mifflin and bounded and described as follows:

PARCEL I: Being Lot No. 1 bounded and described as follows: BEGINNING at a stake in the center of the County Road and southeast corner of Philander Patterson, thence with his line north 2° 30' east 74.50 poles to a stake near an elm stump (one of the original corner trees); thence south 87° 30' east 10.74 poles to a stake; thence south 2° 30' west 74.50 poles to a stake in the center of the County Road; thence with the center line of said road north 87° 30' west 10.74 poles to the place of beginning, containing five acres.

PARCEL II: Being Lot No. 2 bounded and described as follows: BEGINNING at a stake in the center of the County Road at the southeast corner of Lot No. 1; thence with east line of said lot north 2° 30' east 74.50 poles to a stake in the northeast corner of Lot No. 1; thence south 87° 30' east 10.74 poles to a stake; thence south 2° 30' west 74.50 poles to a stake in the center of the County Road; thence with said road north 87° 30' west 10.74 poles to the beginning, containing five acres.

PARCEL III: Being a part of Section Number Two (2) Township Number One (1) Range Seventeen (17), United States Military Lands, and bounded and described as follows: Beginning at the center of a County Road leading from Mifflinville to the Park Mill Bridge over Alum Creek, and Southwest corner of David Beers lot; thence with his line North 3° East 75 poles to an elm stump North-west corner to said Beers lot; thence North 87° West 15 poles to a stake in the Wilson's South line; thence South 3° West 75 poles to the center of said County Road; thence with said County Road South 87° East 15 poles to the beginning, and containing Seven (7) acres of land, more or less, and being Lot Number Six (6) set off to Edward Shafer in certain partition proceedings in the Court of Common Pleas of Franklin County, Ohio, and of record in Complete Record No. 95, page 561, said Court.

Less the following previously conveyed to Paul K. and Edytha Webster: Situated in the County of Franklin, State of Ohio, Township of Mifflin, being a part of Section 2, Township 1, Range 17, United States Military

EXHIBIT A

wa 3650 REC 442

Lands and bounded and described as follows:

Beginning at an iron pin in the west line of the Homer Timson tract as shown of record in Deed book 539, Page 144, Recorder's Office, Franklin County, Ohio, being in the west line of Lot 6 set off to Edward Shafer in certain proceedings in the Court of Common Pleas of Franklin County, Ohio, and of record in complete Record 95, Page 561, said Court, said iron pin being North 3° 00' East, 360.4 feet from the center line of Innis Road;

Thence along the west line of Lot 6 and the east line of the Alfred J. Heister tract, North 3° 00' East, 873.43 feet to a steel angle iron post set in concrete;

Thence along the south line of the O. C. Rittenour tract, South 87° 14' 30" East, 250.43 feet to an iron pin;

Thence along the P. K. Webster tract, South 3° 07' 30" West, 873.45 feet to an iron pin;

Thence North 87° 14' 30" West, 248.28 feet to the place of beginning, containing 5.0 acres.

Leaving 2.054 acres more or less

(360.4 feet on the west boundary; 247.74 feet on the south boundary; 359.90 feet on the east boundary; and 248.28 feet on the north boundary, all according to the survey done on August 9, 1961 by G. E. Evans, registered surveyor 1483)

PARCEL IV: Situate in the County of Franklin, State of Ohio, Township of Mifflin, being a part of Section 2, Township 1, Range 17, United States Military Lands and bounded and described as follows:

Beginning at an iron pin in the west line of the Homer Timson tract as shown of record in Deed Book 539, page 144, Recorder's Office, Franklin County, Ohio, being in the west line of Lot 6 set off to Edward Shafer in certain proceedings in the Court of Common Pleas of Franklin County, Ohio, and of record in Complete Record 95, Page 561, said Court, said iron pin being North 3° 00' East, 360.4 feet from the center line of Innis Road;

thence along the west line of Lot 6 and the east line of the Alfred J. Heister tract, North 3° 00' East, 873.43 feet to a steel angle iron post set in concrete;

(Legal Description continued on last page)

LAST TRANSFER: Deed Record Volume,

Page

To have and to hold said premises with all the privileges and appurtenances

thereunto belonging, to the said Grantor

Lynn D. Mann

his heirs and assigns forever.

And the said Grantor

Edythe H. Webster

for herself and her heirs.

do as hereby covenant with the said Grantor Lynn D. Mann

his heirs and assigns, that she is lawfully seized of the premises

aforesaid; that the said premises are Free and Clear from all Incumbrances whatsoever

except current real estate taxes, easements, restrictions, covenants, and reservations of record.

and that she will forever Warrant and Defend the same, with the appurtenances, unto the said Grantee Lynn D. Mason his heirs and assigns against the lawful claims of all persons whomsoever.

In Witness Whereof the said Grantee Edytha H. Webster

who hereby releases her right of dower in the premises, do herewith set her hand this 17th day of May in the year of our Lord one thousand nine hundred and seventy-seven (1975)

Signed and acknowledged in presence of

[Signatures of witnesses]

EDYTHA H. WEBSTER

The State of FRANKLIN County ss.

Be it Remembered that on this 17th day of May A.D. 1975 before me, the subscriber, in and for said county, personally came the above named Edytha H. Webster

the Grantee

in the foregoing deed and acknowledged the signing of the same to be her voluntary act and deed, for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.



[Signature of Notary] EUGENE L. MATH Notary Public, State of Ohio

Warranty deed

3650 444

EDITHA H. WEBSTER

TO

LYNN D. KANN

10/25/78

Transferred _____

STATE OF OHIO

COUNTY AUSTIN

COUNTY OF _____ SS
RECEIVED FOR RECORD ON THE _____

day of _____ 1978

at _____ VI
and RECORDED _____ 11 _____ in
Deed Book _____ Page _____

Reconers Fee \$ _____
COURT REPORTER

W. J. Schaefer

(Legal Description continued from Page 2)

thence along the south line of the C. C. Rittenour tract, South 87° 14' 30" East, 250.43 feet to an iron pin;
thence along the P. K. Webster tract, South 3° 07' 30" West, 873.45 feet to an iron pin;
thence North 87° 14' 30" West, 248.28 feet to the place of beginning, containing 5.3 acres, more or less.

TRANSFERRED
MAY 5 1978
ARCH J. WARREN
AUSTIN
FRANKLIN COUNTY, OHIO

MAY 5 1978
Received
Recorded MAY 9 1978
Recorder's Fee \$ 1.00
JAMES SCHAEFER, Recorder
Franklin County, Ohio

MAIL
Eugene L. Masten
16 E. Broad St.
Columbus, Ohio 43215