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COURT OF COMMON PLEAS  
LUCAS COUNTY, OHIO

IN THE  
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LUCAS COUNTY, OHIO

COPY

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

Plaintiff,

vs.

MARIO'S PARTY STORE AND GAS,  
INC., et al.

Defendants.

: CASE NO. 95-1164

: JUDGE JAMES D. JENSEN

CONSENT ORDER AND FINAL JUDGMENT ENTRY

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio ("State") by its Attorney General, Betty D. Montgomery, and Defendants, Mario's Party

Store and Gas, Inc. and Mario Arvanitis (hereinafter referred to as "Defendants") 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**

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 Chapters 6111 and 3750 of the Ohio Revised Code ("R.C."), and venue is proper in this Court.

### **II. PARTIES**

The provisions of this Consent Order shall apply 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.

### **III. SATISFACTION OF LAWSUIT**

A. The State alleges in its Complaint that on December 21, 1991, a release of gasoline to city storm sewers and to the waters of the State occurred at Mario's Party Store and Gas, Inc. located at 6005 Secor Road, Toledo, Ohio (hereinafter "Defendants' facility") and that Defendants failed to respond to the release as required by law, and thus, acted in violation of the water pollution control and emergency planning laws of the State of Ohio found in R.C. Chapters 6111 and 3750 and the rules adopted thereunder.

B. Defendants admit full liability for all violations alleged in the Complaint.

C. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims alleged in the Complaint.

D. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief for claims or conditions not alleged in the Complaint, to seek relief for violations of the claims set forth in the Complaint which occur after the filing of this Consent Order, and/or to seek contempt for noncompliance with this Consent Order.

#### **IV. PERMANENT INJUNCTION**

A. Defendants are hereby permanently enjoined and ordered to immediately comply with the requirements of R.C. Chapters 6111 and 3750 and the rules adopted thereunder.

B. Defendants are enjoined and ordered to reimburse the costs expended by governmental entities which responded and remediated the December 21, 1991 release of gasoline to Toledo storm sewers and the waters of the State from Defendants' facility by July 1, 1999.

C. Defendants are enjoined and ordered to contribute the sum of Fifteen Thousand Dollars (\$15,000.00) to the Maumee River Remedial Action Plan (hereinafter "Maumee River RAP") by July 1, 2000. The monetary contribution will enable the Maumee River RAP to conduct projects such as planting trees, seeding buffer zones, restoration/creation of habitats and river bank clean-ups and to implement other projects to improve water quality in the Maumee Area of Concern. The contribution shall be made by delivering a certified check in that amount made payable to "TMACOG- Maumee River RAP" which states "earmarked for deposit into the

Maumee River RAP account” to the Toledo Metropolitan Area Council of Governments (TMACOG), P.O. Box 9508, Toledo, Ohio 43697-9508. The Defendants shall submit the attached cover letter with the check.

D. From July 1, 2001 to July 1, 2002, Defendants are enjoined and ordered to purchase and place advertisements in the Toledo Blade, or other local newspapers, to advertise events and solicit volunteers, such as those listed in paragraph C. These advertisements will assist the Maumee River RAP in conducting environmental protection, water quality improvement, and conservation projects. Advertising will include a statement that the Defendants are paying for the advertisement as part of an enforcement penalty. The rest of the advertisement, including size, shape, design, and topic are to be decided by the Ohio Environmental Protection Agency’s Northwest District Office Division of Surface Water. By April 1, 2001, Defendants shall contact Cherie A. Blair, Maumee River RAP Coordinator, or her successor, Ohio EPA, Northwest District Office, Division of Surface Water, 347 Dunbridge Road, Bowling Green, Ohio 43402, (419) 352-8461 to discuss and reach an agreement concerning the advertisements. The Maumee River RAP Coordinator shall be the final determiner of advertising frequency and content. The Defendants shall not incur costs under the terms of this paragraph in excess of Two Thousand, Five Hundred Dollars (\$2,500.00).

#### **V. SUBMITTAL OF REIMBURSEMENT COSTS**

A. Defendants shall reimburse the costs of the governmental entities as follows. To the City of Toledo Fire Department by delivering a certified check for Four Thousand, One Hundred Dollars (\$4,100.00) payable to the order of “City of Toledo” to the attention of Jon

Kromenacker, 545 North Huron Street, Toledo, Ohio 43604. To the United States Coast Guard by delivering a certified check for Fifteen Thousand, Three Hundred Eighty Dollars and Eighty-two cents (\$15,380.82) payable to the order of "U.S. Coast Guard-Oil Pollution" and include upon the face of the check the project identification number of "FPN 092004" to Matthew Marriman, Esq., U.S. Coast Guard National Pollution Funds Center, 4200 Wilson Blvd., Suite 1000, Arlington, VA 22203. To the Ohio Environmental Protection Agency by delivering a certified check for One Thousand, Six Hundred Twenty-five Dollars and Sixty-seven cents (\$1,625.67) payable to the order of "Treasurer, State of Ohio" to Jena Suhadolnik, Administrative Assistant, or her successor, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

B. Defendants shall submit said reimbursement on or before July 1, 1999 in accordance with Article IV, Paragraph B of this Order.

## **VI. CIVIL PENALTY**

A. Defendants are ordered, pursuant to R.C. Section 6111.09, to pay to the State a civil penalty of Ten Thousand Dollars (\$10,000.00) for violations of R.C. Chapter 6111. The penalty shall be paid by delivering certified checks totaling that amount over a five (5) year period beginning at the date of entry of this Consent Order made payable to the order of "Treasurer, State of Ohio" to Jena Suhadolnik, Administrative Assistant, or her successor, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428. Payment shall be made in accordance with the following schedule:

1. on September 1, 1999, December 1, 1999, March 1, 2000 and June 1, 2000 make payments of five hundred (\$500.00) dollars each;
2. on September 1, 2000, December 1, 2000, March 1, 2001 and June 1, 2001 make payments of payments of one thousand dollars (\$1,000.00) each;
3. on September 1, 2001, December 1, 2001, March 1, 2002 and June 1, 2002 make payments of five hundred dollars(\$500.00) each; and
4. on September 1, 2002, December 1, 2002, March 1, 2003 and June 1, 2003 make payments of five hundred dollars (\$500.00) each.

B. Defendants are ordered, pursuant to R.C. Section 3750.20, to pay to the State a civil penalty of Ten Thousand Dollars (\$10,000.00) for violation of R.C. Chapter 3750 to be credited to the emergency planning and community right-to-know fund created in section 3750.14 of the Revised Code. The penalty shall be paid by delivering certified checks totaling that amount over a five (5) year period beginning at the date of entry of this Consent Order made payable to the order of "Treasurer, State of Ohio" to Jena Suhadolnik, Administrative Assistant, or her successor, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428. Payment shall be made in accordance with the following schedule:

1. on September 1, 1999, December 1, 1999, March 1, 2000 and June 1, 2000 make payments of five hundred (\$500.00) dollars each;
2. on September 1, 2000, December 1, 2000, March 1, 2001 and June 1, 2001 make payments of payments of one thousand dollars (\$1,000.00) each;
3. on September 1, 2001, December 1, 2001, March 1, 2002 and June 1, 2002 make payments of five hundred dollars(\$500.00) each; and
4. on September 1, 2002, December 1, 2002, March 1, 2003 and June 1, 2003 make payments of five hundred dollars (\$500.00) each.

## **VII. STIPULATED PENALTIES**

A. In the event that Defendants fail to meet any of the requirements of this Consent Order set forth in Articles IV and/or V, Defendants shall be liable for and shall pay a stipulated penalty according to the following payment schedule:

1. For each day of each failure to meet a requirement up to thirty (30) days -- two thousand dollars (\$2,000.00) per day per violation;
2. For each day of each failure to meet a requirement from thirty-one (31) to sixty days (60) -- four thousand dollars (\$4,000.00) per day per violation;
3. For each day of each failure to meet a requirement from sixty-one (61) to ninety (90) days -- six thousand dollars (\$6,000.00) per day per violation;
4. For each day of each failure to meet a requirement from ninety-one (91) to one hundred twenty (120) days -- eight thousand dollars (\$8,000.00);
5. For each day of each failure to meet a requirement for the one hundred twenty-first (121) day and beyond -- ten thousand dollars (\$10,000.00).

B. Any stipulated penalty payment required to be made under the provisions of Paragraph A of this Article shall be made within seven (7) days from the date of the failure to meet any requirement of Article IV and/or V of this Consent Order by delivering a certified check, or checks, for the appropriate amounts, made payable to "Treasurer, State of Ohio" to the attention of Jena Suhadolnik, Administrative Assistant, or her successor, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

**VIII. RETENTION OF JURISDICTION**

The Court will retain jurisdiction of this action for the purpose of enforcing the terms and provisions of this Consent Order.

**IX. 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 (3) 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.

**X. AUTHORITY TO ENTER INTO THE CONSENT ORDER**

Each signatory for Defendants represents and warrants that he has been duly authorized to sign this document and so bind Defendants to all terms and conditions thereof.

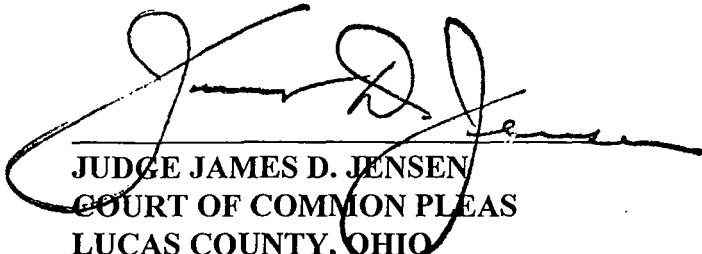
**XI. COSTS**

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

**IT IS SO ORDERED:**

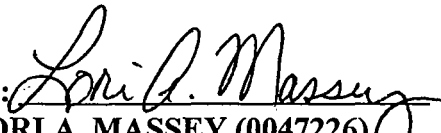
Entered this day of \_\_\_\_\_ day of \_\_\_\_\_, 1998.



  
JUDGE JAMES D. JENSEN  
COURT OF COMMON PLEAS  
LUCAS COUNTY, OHIO

APPROVED:


BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO

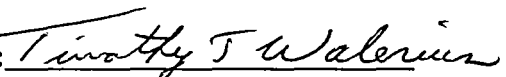

By:   
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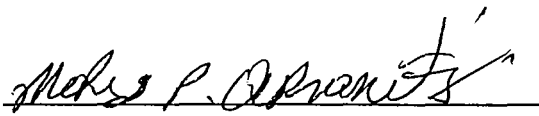
MARIO'S PARTY STORE AND GAS, INC.

By:

  
MARIOS P. ARVANITIS, President

By:   
KAREN A. NOVAK (0001181)  
TIMOTHY J. WALERIUS ( 0063790 )  
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in his individual capacity