

J. Hook

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IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO, ex rel	:	CASE NO. 84-CV-541
ANTHONY J. CELEBREZZE, JR.	:	
ATTORNEY GENERAL OF OHIO	:	JUDGE NADER
30 East Broad Street	:	
Columbus, Ohio 43215,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	<u>CONSENT JUDGMENT</u>
PARKHURST MALL CORPORATION,	:	
et. al.,	:	
	:	
Defendants.	:	

The case having come before this Court on Plaintiff's complaint for violation of Ohio's Water Pollution Control Laws, Ohio Revised Code Chapter ("O.R.C.") 6111 and before taking of any evidence thereon, and the Plaintiff and Defendant having consented to entry of this Order and this Court having found that the entry of this Judgment is in the public interest, it is hereby ORDERED, ADJUDGED AND DECREED that:

I.

The Court has jurisdiction over the parties and the subject matter of this case and this Complaint states a claim upon which relief can be granted against Defendant under Sections 6111.04, 6111.07, and 6111.09 of the Ohio Revised Code.

II.

The provisions of this Consent Judgment shall apply to and be binding upon the parties of this action, their agents, servants, employees, and successors in interest. In addition, the provisions of this Consent Judgment shall apply to all persons, corporations and other entities having notice of this Consent Judgment, who are or will be acting in concert and privity with Defendants or their officers, directors, agents, servants, employees, successors and assigns.

III.

The Complaint filed in this matter alleges that Defendants have violated Chapter 6111 of the Ohio Revised Code by discharging sewerage and other wastes as they are defined in O.R.C. Section 6111.01(B) and (D), respectively, into the waters of the State. Defendants deny these allegations. Compliance with the terms of this Consent Judgment shall be in full satisfaction of Defendant's liability for these alleged violations of law alleged in the Complaint which have occurred to the date of the signing of this Consent Judgment.

IV.

It is ordered that Defendants, their officers, directors, agents, servants, employees, assigns, successors in interest, and any parent companies or subsidiaries of Defendants are permanently enjoined to comply with the O.R.C. Chapter 6111.

V.

Defendants shall not discharge or cause to be discharged other than to the City of Warren's sanitary sewer, any sewerage or other waste from the property at 4041 Parkman Road, Warren, Trumbull County, Ohio, including but not limited to the Murphy Mark Plaza located on this property, and any residential or business structure located on or adjacent to this property which belong to or are under the care or control of Defendants. Furthermore, Defendants shall not cause pollution, nor place or cause to be placed any sewerage, or other waste, into any drainage well or ditch or other area which may directly or indirectly flow into the waters of the State.

VI.

Defendant Parkhurst Mall Corporation is hereby ordered and enjoined to pay a civil penalty under O.R.C. Section 6111.09 in the amount of One Thousand Dollars (\$1,000.00) within thirty(30) days of filing of this Consent Decree. Payment shall be made by delivering to Plaintiff's counsel or her successor a certified check in the appropriate amount made to the order of "Treasurer, State of Ohio" for payment into the General Revenue Fund. Payment should be mailed to the following address:

Monica L. Fries or Margaret A. Malone
Assistant Attorney General
Environmental Enforcement Section
State Office Tower, 17th Floor
30 East Broad Street
Columbus, Ohio, 43266-0410

Should Plaintiff State of Ohio fail to receive payment of civil penalties on or before thirty (30) days from the filing of this action, Defendant Parkhurst Mall Corporation shall be considered in contempt of court and Plaintiff may seek a contempt finding from this court and may execute upon this judgment to recover such civil penalty as if upon any other judgment.

VII.

Defendants are ordered to perform within ten (10) days of the filing of this Consent Judgment, a "dye test" whereby they are to release dye in the City of Warren's sanitary sewer to which they connected their wastewater treatment plant at Murphy Mart Plaza to verify that they tied into the City of Warren's sanitary sewer and not any other sewers. This test shall be performed in accordance with the standard procedures for dye testing. Defendants shall notify Ohio EPA, City of Warren Health Department and City of Warren Sanitary Engineer in writing within seven(7) days of performing this test. Such

test shall be conducted in the presence of and completed to the satisfaction of Ohio EPA officials. If such test is performed to the satisfaction of Ohio EPA officials, Ohio EPA will so indicate in writing to Defendant Parkhurst Mall Corporation. In the event that the test is not completed to the satisfaction of Ohio EPA officials, Defendants shall repeat the test.

If the results of the test show that Defendants have hooked up to some sewer other than the City of Warren's sanitary sewer, the Defendants shall immediately stop discharging to the sewer and hook up to the City of Warren's sanitary sewer within ten (10) days of the discovery of the improper connection.

. VIII.

If Defendants fail to implement the actions required in Paragraphs IV, V, VI and VII, Defendant Parkhurst Mall Corporation shall be considered in contempt of court and shall automatically pay to the State of Ohio a stipulated penalty for each of violation of said paragraphs in the amount of Five Hundred Dollars (\$500.00) per day per violation. These penalties shall be paid within ten (10) days after Defendants violation(s) of Paragraphs IV, V, VI and VII by delivering to Plaintiff's counsel or successor in this office a certified check in the appropriate amount made to the order of "Treasurer, State of Ohio". This stipulated penalty is not to be suspended in part or in whole. Defendants waive all rights they may have to contest the imposition of these stipulated penalties for violations of the Consent Decree, except the defense that the Defendants did in fact comply with Paragraphs IV, V, VI and VII.

IX.

This Consent Judgment shall not be construed so as to preclude the State of Ohio from seeking monetary, injunctive, or other relief provided by law or equity for violations of Ohio Revised Code Chapter 6111, which violations occur subsequent to the signing of this document, nor shall it be construed to preclude the State of Ohio or its agencies from seeking monetary, injunctive, or other relief against Defendant for any violation of any State or Federal law other than those referred to in the Complaint regardless of when the violation occurred.

X.

This Court shall retain jurisdiction over the Defendants to enforce compliance with this Judgment.

XI.

The costs of this action are hereby assessed against Defendant Parkhurst Mall Corporation.

JUDGE NADAR

APPROVED:



MARGARET A. MALONE
MONICA L. FRIES
Assistant Attorneys General
Environmental Enforcement
Section
30 East Broad Street, 17th Fl.
Columbus, Ohio 43266-0410

ATTORNEYS FOR PLAINTIFF