

IN THE COURT OF COMMON PLEAS  
FAIRFIELD COUNTY, OHIO

STATE OF OHIO ex rel.  
MICHAEL DeWINE  
OHIO ATTORNEY GENERAL,

Plaintiff,

v.

ROCKMILL DEVELOPMENT CORP.

and

MISTY MEADOWS DEVELOPMENT  
CO., LLC

Defendants.

CASE NO. 11 CV 529

JUDGE MARTIN

DEBORAH SHALLEY  
CLERK OF COURTS  
FAIRFIELD CO. OHIO

2012 JUL 19 AM 10:39

FILED

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CONSENT ORDER

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WHEREAS, the State of Ohio, by and through its counsel Attorney General Michael DeWine, (“State”/“Plaintiff”) has filed a Complaint in this action against Defendants Rockmill Development Corporation and Misty Meadows Development Company, LLC (collectively “Defendants”) alleging violations of Ohio Revised Code (“R.C.”) Chapter 6111 on the Misty Meadows subdivision site (“the Site”), which is a piece of property approximately 49.3 acres in size located near the intersection of Fair Avenue and Ety Road in Lancaster, Fairfield County, Ohio;

WHEREAS, Plaintiff’s Complaint seeks injunctive relief and civil penalties for Defendants’ alleged violations of R.C. Chapter 6111 and the rules and permits promulgated thereunder; and

WHEREAS, Defendant Misty Meadows Development Company, LLC (“Misty Meadows”) has agreed to enter into this Consent Order to resolve Plaintiff’s claims as they pertain to Misty Meadows;

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

### **I. JURISDICTION AND VENUE**

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

### **II. PERSONS BOUND**

2. All terms and provisions of this Consent Order shall apply to and be binding upon the Misty Meadows, Misty Meadows' agents, employees, assigns, successors in interest and any person acting in concert, privity or participation with Misty Meadows.

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

3. In pertinent part, Plaintiff alleges in its Complaint that Misty Meadows failed to obtain coverage under the General NPDES Permit for Storm Water Discharges Associated with Construction Activities, No. OHC000002 or the renewal(s) thereof. Plaintiff's allegations in its Complaint are related to Misty Meadows' alleged violations of Ohio's water pollution control laws, R.C. Chapter 6111, and the rules adopted and permits issued thereunder. Nothing contained in this Consent Order shall be construed as an admission by Misty Meadows of any violations of Ohio's water pollution control laws, R.C. Chapter 6111, and the rules adopted and permits issued thereunder.

4. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Misty Meadows for all claims alleged in the State's Complaint.

#### **IV. RESERVATION OF RIGHTS**

5. Nothing in this Consent Order shall limit the authority of the State of Ohio to:
- (a) Seek any legal or equitable relief from Misty Meadows or any other appropriate person for claims or conditions not alleged in the Complaint, including violations that occur after the filing of the Complaint;
  - (b) Seek any legal or equitable relief from Misty Meadows or any other appropriate person for claims or conditions alleged in the Complaint that occur or exist on the date of or after the entry of this Consent Order;
  - (c) Enforce this Consent Order through a contempt action or otherwise seek relief for violations of this Consent Order;
  - (d) Take any action authorized by law against any appropriate person, including Misty Meadows, to eliminate or mitigate conditions at the Site that may present a threat to the public health or welfare, or the environment; and/or,
  - (e) Bring any legal or equitable action against any appropriate person other than Misty Meadows for any violation of applicable laws. For the purposes of this Consent Order, and in particular the provisions of this paragraph, the term "person" includes: an individual, corporation, business trust, estate, trust, partnership, association, municipal corporation, interstate body created by compact, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.

#### **V. PERMANENT INJUNCTION**

6. Misty Meadows is permanently enjoined and ordered to comply immediately with all applicable provisions of R.C. Chapter 6111 and the rules promulgated under that chapter.

7. Misty Meadows is permanently enjoined and ordered to comply immediately with all terms and conditions of the General NPDES Permit for Stormwater Discharges Associated with Construction Activities, No. OHC 000003, and any renewals thereof, at the Site.

8. Misty Meadows is ordered to submit a letter to Ohio Environmental Protection Agency, Central District Office, Division of Surface Water (ATTN: Harry Kallipolitis), P.O. Box 1049, Columbus, Ohio 43216-1049, within thirty (30) days of the date this Consent Order is entered by the Court, detailing which post-construction requirement(s), including all design criteria, will be installed at the Site to ensure compliance with the General NPDES Permit for Stormwater Discharges Associated with Construction Activities, No. OHC 000003.

#### **VI. CIVIL PENALTY**

9. By no later than thirty (30) days after this Consent Order is entered by the Court, Misty Meadows shall pay to the State of Ohio a civil penalty of **five-thousand dollars (\$5,000.00)** for alleged violations of Ohio's water pollution control laws.

10. The penalty payment shall be made by a certified check for the amount as stated above, payable to the order of "Treasurer, State of Ohio" and delivered to Martha Sexton, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

#### **VII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS**

11. Performance of the terms of this Consent Order by Misty Meadows is not conditioned on the receipt of any Federal or State grants, loans and/or funds. In addition, Misty Meadows' performance is not excused by the failure to obtain or any shortfall of any Federal or State grants, loans and/or funds or by the processing of any applications for the same.

### **VIII. MISCELLANEOUS**

12. Nothing in this Consent Order shall affect Misty Meadows' obligation to comply with all applicable federal, state or local laws, regulations, rules or ordinances.

13. Any acceptance by the State of Ohio of any payment, document or other work due hereunder subsequent to the time that the obligation is due under this Consent Order shall not relieve Misty Meadows from the obligations created by this Consent Order.

14. Misty Meadows shall inform the Ohio EPA of any change of the cessation of the business that is the subject of this action.

### **IX. COSTS**

15. Misty Meadows shall pay the court costs of this action incurred from the date of the Complaint's filing until the date of the entry of this Consent Order.

16. Misty Meadows is hereby ordered to pay the costs incurred by the Ohio EPA for the publication of the Consent Order in Ohio EPA's Weekly Review and a newspaper of general circulation. Misty Meadows shall pay the costs associated with publication by delivering a certified check payable to: "Treasurer, State of Ohio" and with a notation indicating that the funds are going to "Fund 699" on it, in the amount of the costs, to the Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, within thirty (30) days from the date he receives notice of the costs from Ohio EPA.

### **X. CONTINUING JURISDICTION**

17. This Court shall retain jurisdiction over this action for the purpose of enforcing Misty Meadows' compliance with this Consent Order.

## **XI. SIGNATORIES**

18. The signatory for Misty Meadows represents and warrants that he has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof.

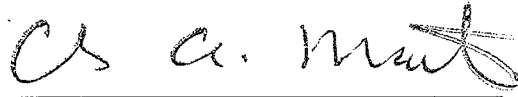
## **XII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK**

19. The parties agree and acknowledge that final approval by Plaintiff and Misty Meadows and entry of this Consent Order is subject to the requirements of 40 C.F.R. 123(d)(1)(iii), which provides for notice of the lodging of the Consent Order, opportunity for public comment, and the consideration of any public comments. Both Plaintiff and Misty Meadows reserve the right to withdraw this Consent Order based on comments received during the public comment period.

20. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon the 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 a 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.

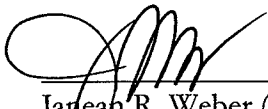
7/19/2012  
DATE



JUDGE CHRIS A. MARTIN  
COURT OF COMMON PLEAS  
FAIRFIELD COUNTY

**APPROVED:**

MICHAEL DEWINE  
OHIO ATTORNEY GENERAL



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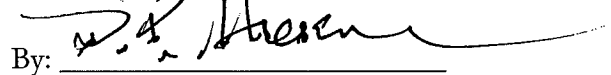


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*Counsel for Defendant, Misty Meadows*

**MISTY MEADOWS DEVELOPMENT  
COMPANY, LLC**

**By: HICKMAN PROPERTIES I  
LIMITED, Member**



By: Donald P. Hickman  
Donald P. Hickman, Member

*Defendant*