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IN THE COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

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CASE No 5

STATE OF OHIO,
ex rel. LEE FISHER
ATTORNEY GENERAL OF OHIO

JAMES L. SIMMONS, JUDGE
COMMON PLEAS COURT
CLERMONT COUNTY

Plaintiff,

COURT
COUNTY

v.

WAYNE and DIANE KLEKAMP, d/b/a
BROADRIPPLE MOBILE HOME PARK,
et al.,

Defendants.

CONSENT ORDER BETWEEN
THE STATE OF OHIO AND
DEFENDANTS WAYNE AND DIANE
KLEKAMP, d/b/a BROADRIPPLE
MOBILE HOME PARK

The Plaintiff, State of Ohio, ex rel. Lee Fisher, Attorney General of Ohio ("State" or "Plaintiff"), having filed the Complaint in this action against Defendants Wayne and Diane Klekamp ("Klekamp"), John Jones ("Jones"), James Glass, Sr. ("Glass"), James Fraley ("Fraley"), James Hall ("Hall"), John Jones Construction Company ("JJCC"), Glass & Jones Partnership ("G&JP"), and Broadripple Management Company, Inc. ("BMCI"), to enforce the State of Ohio's safe drinking water laws and the rules promulgated thereunder concerning the Defendants' drinking water maintenance practices at the Broadripple Mobile Home Park located at Robinwood Drive, Moscow, Clermont County, Ohio (the "facility"), and Plaintiff and Defendant Klekamp having consented to the entry of this Consent Order;

NOW THEREFORE, without adjudication or admission of any issue of fact or law, and upon consent of the Plaintiff and Defendant Klekamp hereto, it is hereby ORDERED, ADJUDGED and DECREED as follows:

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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 Klekamp under Chapter 6109. of the Ohio Revised Code. Venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply to and be binding upon Defendants Wayne and Diane Klekamp, their agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them. Said provisions shall in no way apply to and be binding upon Defendants Jones, Glass, Fraley, Hall, JJCC, G&JP, or BMCI. Defendant Klekamp shall provide a copy of this Consent Order to each general contractor it employs to perform work itemized herein, and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant Klekamp has operated a public water system in such a manner as to result in numerous violations of the safe drinking water laws of the State of Ohio. After reasonable inquiry by counsel, the State of Ohio believes that it has alleged in the Complaint all violations of the safe drinking water laws involving the Broadripple Mobile Home Park of which it is currently aware. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability

by Defendant Klekamp for all claims under such laws alleged in the Complaint. Defendant Klekamp denies all allegations of violations contained in said Complaint. In addition, nothing in this Consent Order shall be construed so as 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 filing of the Complaint. Furthermore, nothing in this Consent Order shall be construed as a waiver or an admission, by either the State of Ohio or Defendant Klekamp, of any issue in dispute in Case No. 91-CV-0509 in the Clermont County Court of Common Pleas.

IV. PERMANENT INJUNCTION

4. Defendant Klekamp is hereby enjoined and ordered to comply with the requirements of Ohio Revised Code ("ORC") Chapter 6109, and the terms and conditions of the rules and regulations adopted thereunder including, but not limited to, the requirements set forth below, until the Broadripple Mobile Home Park has been formally closed and all residents have left the premises:

- a. Sample for microbiological contaminants, as required by Ohio Administrative Code ("OAC") Rule 3745-81-21;
- b. Monitor for inorganic chemicals, as required by OAC Rule 3745-81-23;
- c. Monitor for organic chemicals, as required by OAC Rule 3745-81-24;
- d. Monitor for radioactivity, as required by OAC Rule 3745-81-26;
- e. Maintain a minimum chlorine residual, as required by OAC Rule 3745-83-02;

- f. Report sampling and analysis results as specified in OAC Chapter 3745-81, unless ordered to do otherwise by the Director of the Ohio EPA; and
- g. Prepare and submit monthly operating reports as specified in OAC Rule 3745-83-05, unless ordered to do otherwise by the Director of the Ohio EPA.

In addition, Defendant Klekamp is enjoined and ordered to properly abandon the existing wells at the Broadripple Mobile Home Park, as specified in OAC Rule 3745-9-10, within thirty (30) days of the last resident's departure from the premises. Furthermore, Defendant Klekamp is enjoined and ordered to tie the Broadripple Mobile Home Park into the Tate-Manroe Water System prior to reopening the facility after closure.

V. EFFECT OF CONSENT ORDER

5. This Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing public water 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.

VI. PAYMENT MADE PURSUANT TO ORC SECTION 6109.33

6. Defendant Klekamp shall pay to the State of Ohio the sum of ten thousand dollars (\$10,000.00). The sum shall be paid by delivering to counsel for Plaintiff a certified check or checks for that amount, which check or checks shall be made payable to the order of "Treasurer, State of Ohio." The payment of such sum shall in no way be construed as a waiver or an admission, by either the State of Ohio or Defendant Klekamp,

of any of the violations alleged in the Complaint in this matter. The sum shall be paid in accordance with the following schedule:

<u>AMOUNT</u>	<u>DATE DUE</u>
\$2,500.00	Within forty-five (45) days of the entry of this Consent Order
\$2,500.00	Within six (6) months of the entry of this Consent Order
\$2,500.00	Within one (1) year of the entry of this Consent Order
\$2,500.00	Within eighteen (18) months of the entry of this Consent Order

VII. STIPULATED PENALTIES

7. In the event that Defendant Kiekamp fails to meet any of the requirements of this Consent Order set forth in paragraph 4, up to sixty (60) days, the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty of one thousand dollars (\$1,000.00) per day for each requirement not met. The Defendant shall be liable for an additional stipulated penalty of one thousand five hundred dollars (\$1,500.00) per day for each requirement not met if the failure to comply continues for more than sixty (60) days but less than one hundred twenty (120) days, i.e., two thousand five hundred dollars (\$2,500.00) per day for each requirement not met. In the event that failure to comply continues more than one hundred twenty (120) days, Defendant shall be liable for an additional two thousand five hundred dollars (\$2,500.00) per day for each requirement not met, i.e., five thousand dollars (\$5,000.00) per day for each requirement not met.

8. Any payment required to be made under the provisions of paragraph 7 of this Consent Order shall be made by delivering to Plaintiff's counsel a certified check or checks for the appropriate amounts, within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, which check or checks should be made payable to "Treasurer, State of Ohio."

VIII. POTENTIAL FORCE MAJEURE

9. In any action to enforce any of the provisions of this Consent Order, Defendant Klekamp may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons beyond its control such as, by way of example and not limitation, act of God, unusually severe weather conditions, strikes, acts of war or civil disturbances, or orders of any regulatory agency. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by the parties 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 enforcement action, if any, is commenced. Acceptance of this Consent Order without a force majeure clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

10. Performance of the terms of this Consent Order by Defendant Klekamp is not conditioned on the receipt of any federal or state grant funds or loans. In addition, Defendant Klekamp's performance is not excused by the failure to obtain

or shortfall of any federal or state grant funds or loans, or by the processing of any applications for the same.

X. RETENTION OF JURISDICTION

11. The Court will retain jurisdiction of this action for the purposes of overseeing that Defendant Klekamp complies with this Consent Order and making any order or decree which it deems appropriate to carry out this Consent Order.

XI. COSTS

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

ENTERED THIS _____ DAY OF _____, 1991.

[Signature]

JUDGE, CLERMONT COUNTY COURT OF COMMON PLEAS

APPROVED:

STATE OF OHIO,
ex rel. LEE FISHER
ATTORNEY GENERAL OF OHIO

[Signature]

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State of Ohio

[Signature]

WAYNE KLEKAMP, d/b/a BROADRIPPLE
MOBILE HOME PARK, Defendant

[Signature]

DIANE KLEKAMP, d/b/a BROADRIPPLE
MOBILE HOME PARK, Defendant

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