

IN THE COURT OF COMMON PLEAS  
CLERMONT COUNTY, OHIO

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

Plaintiff,

vs.

BILL D. [REDACTED] /b/a  
HI-VIEW ESTATES MOBILE HOME  
PARK

Defendant.

CASE NO. 91CV0379  
JUDGE \_\_\_\_\_

CONSENT ORDER

91 MAR 24 11:51  
CLERMONT COUNTY

FILED

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Lee Fisher (hereinafter "Plaintiff") and Defendant Bill D. Colwell d/b/a/ Hi-View Estates Mobile Home Park (hereinafter "Defendant" or "Colwell") 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 Chapter 6111 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. Defendant Colwell shall provide a copy of this Consent Order to each contractor he 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 has operated the wastewater treatment plant and sewer system located at the Hi-View Estates Mobile Home Park in such a manner as to result in numerous violations of the water pollution laws of the State of Ohio. The Complaint further alleges that Defendant has never been issued a National Pollutant Discharge Elimination System (NPDES) permit authorizing the discharge of sewage, industrial waste or other waste into waters of the state, i.e., Twelve Mile Creek. 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. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek and obtain relief for claims or conditions not alleged in the Complaint,

including violations which occur after the filing of the Complaint.

#### IV. INJUNCTION

4. Defendant Colwell is hereby enjoined and ordered to immediately comply with the requirements of Chapter 6111 of the Ohio Revised Code and the terms and conditions of the rules and regulations adopted under that Chapter, for the wastewater treatment plant at the Hi-View Estates Mobile Home Park, except as provided in paragraph 5. Defendant Colwell is hereby enjoined to properly operate and maintain his wastewater treatment plant, sewer system and any associated equipment and structures. After November 15, 1991, Defendant is enjoined to meet all final NPDES permit limitations as set forth in Attachment "2" or in any NPDES Permit which may be issued to Defendant Colwell. Should an NPDES Permit be issued to Defendant Colwell, the final effluent limitations contained in said permit shall apply and take precedence over Attachment "2". Defendant Colwell will be required to meet the effluent limitations contained in the NPDES Permit by the date required in the NPDES Permit.

#### V. INTERIM REQUIREMENTS

5. Between the effective date of this Consent Order and November 15, 1991, Defendant is enjoined to comply with the

interim effluent limitations and monitoring requirements set forth in Attachment "1" attached hereto. The interim effluent limits contained in Attachment "1" do not constitute an NPDES permit.

6. Samples and measurements taken as required herein shall be representative of the quality, volume and nature of the monitored flow. Test procedures for the analysis of pollutants shall conform to regulation 40 CFR 136, "Test Procedures For The Analysis of Pollutants" unless other test procedures are approved, in advance, by Ohio EPA. Defendant shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals to insure accuracy of measurements.

7. For each measurement or sample required to be taken pursuant to this Consent Order, Defendant shall record the following information:

- (a) The exact place and date of sampling;
- (b) The person(s) who performed the sampling or measurement;
- (c) The date the analyses were performed on those samples;
- (d) The laboratory and laboratory personnel who performed the analyses;
- (e) The analytical techniques or methods used; and
- (f) The results of all analyses and measurements.

8. Monitoring data required by this Consent Order shall be reported on Ohio EPA form 4500 on a monthly basis.

C Individual reports for each sampling station are to be received by no later than the 15th of the next month. Until such time as a NPDES permit is issued, if ever, the original plus first copy of each report shall be signed and mailed to:

Group Leader, Enforcement Group  
Ohio Environmental Protection Agency  
Southwest District Office  
40 South Main St., 5th Flr.  
Dayton, Ohio 45402

8(a). If Defendant monitors any pollutant at the location(s) described in Attachment "1" more frequently than required by this Consent Order, using approved analytical methods, the results of such monitoring shall be included in the calculation and reporting of the values.

8(b). If Defendant monitors any pollutant at the locations(s) designated herein more frequently than required by this Consent Order, using approved analytical methods, the results of such monitoring shall be included in the calculation and reporting of the values required in the reports specified above.

8(c). Analyses of pollutants not required by this Consent Order, except as provided for in Paragraph 7(a), shall not be reported on Ohio EPA form 4500 but records shall be retained as required in Paragraph 8.

9. Defendant shall retain all operational records for the wastewater treatment plant located at the Hi-View Estates Mobile Home Park for a minimum of three years, including, at a minimum:

- (a) All sampling and analytical records (including internal sampling data not required);
- (b) All original recordings for any continuous monitoring instrumentation;
- (c) All instrumentation, calibration and maintenance records;
- (d) All plant operation and maintenance records; and
- (e) All reports required by this Consent Order;
- (f) Records of all data used to complete Defendant's application for an NPDES permit submitted to the Ohio EPA on or about March 30, 1990.

VI. CONSTRUCTION SCHEDULE

10. Defendant Colwell is enjoined and ordered to complete construction of all improvements to the wastewater treatment plant located at the Hi-View Estates Mobile Home Park necessary to attain compliance with the final effluent limitations set forth in Attachment "2". Should an NPDES permit be issued during the pendency of any construction required herein, the final effluent limitations contained in said permit shall take precedence over Attachment "2" and said final effluent limitations shall be met and complied with by the date given in the NPDES Permit. Plant upgrades shall be undertaken pursuant to Defendant's Permit to Install Application (PTI) for construction of wastewater treatment plant improvements, as ultimately approved, in accordance with the following schedule:

TASK

COMPLETION DATE

- (a) Submission of Permit To Install Application. COMPLETE
- (b) Submission of Application for an NPDES Permit to Ohio EPA. COMPLETE
- (c) Initiation of Construction. May 1, 1991
- (d) Completion of Construction Necessary to Meet Final Effluent Limitations. November 1, 1991
- (e) Attain and Maintain Compliance With Final Effluent Limitations. November 15, 1991

11. 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.

12. Within seven (7) days from the completion date of each milestone listed above, Defendant shall submit a written report stating whether it has performed the action set forth therein to Ohio EPA's Southwest District Office.

VII. CIVIL PENALTY

13. Defendant Colwell shall pay to the State of Ohio a civil penalty of Ten Thousand Dollars (\$ 10,000.00). The penalty shall be paid by delivering to counsel for Plaintiff a

certified check for that amount, payable to the order of Treasurer, State of Ohio" within forty-five (45) days from the date of entry of this Consent Order.

#### VIII. STIPULATED PENALTIES

14. In the event that Defendant Colwell fails to meet any of the requirements of this Consent Order set forth in Paragraphs 4 through 9 or Subparagraphs 10(c) or 10(d), including any scheduled milestone requirement, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule: For each day of each failure to meet a requirement, up to thirty (30) days - Five Hundred Dollars (\$500.00) per day, per violation. For each day of each failure to meet a requirement, from thirty-one (31) to sixty days (60) - One Thousand Dollars (\$1,000.00) per day, per violation. For each day of each failure to meet a requirement, from sixty-one (61) to ninety (90) days - Two Thousand Five Hundred Dollars (\$2,500.00), per day, per violation. For each day of each failure to meet a requirement, over ninety days (90) days - Three Thousand Five Hundred Dollars (\$3,500.00) per day, per violation.

15. In the event that Defendant Colwell fails to meet any of the requirements of this Consent Order set forth in Subparagraph 10(e), Defendant shall immediately and



automatically be liable for payment of a stipulated penalty of \$5,000.00 per day for each violation of each requirement. Defendant shall be liable for an additional stipulated penalty of One Thousand Dollars (\$1,000.00) per day for each violation if the failure to comply continues for more than thirty (30) days, i.e. Six Thousand Dollars (\$6,000.00) per day for each violation. In the event that failure to comply with the requirements of Subparagraph 10(e) continues more than sixty (60) days, Defendant shall be liable for an additional Four Thousand Dollars (\$4,000.00) per day for each violation, i.e., Ten Thousand Dollars (\$10,000.00) per day for each violation.

16. Any payment required to be made under the provisions of Paragraphs 14 or 15 of this Order shall not be suspended by the Court, in whole or in part, and 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, made payable to "Treasurer, State of Ohio".

#### IX. POTENTIAL FORCE MAJEURE

17. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Defendant shall notify the Ohio EPA in writing within ten (10) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendant to prevent or minimize the

delay and the timetable by which measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

18. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendant may raise whether it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and the Plaintiff 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 by the Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant shall rest with Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances shall not constitute circumstances entirely beyond the control of Defendant, or serve as a basis for an extension of time under this Consent Order. Failure by Defendant to comply with the notice requirements of Paragraph 17 shall render this Paragraph void and of no force and effect as to the particular incident

involved and shall constitute a waiver of Defendant's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one compliance date based on a particular incident does not mean that Defendant qualifies for an extension of a subsequent compliance date or dates. Defendant must make an individual showing or proof regarding each incremental step or other requirement for which an extension is sought. 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.

X. RETENTION OF JURISDICTION

19. 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.

XI. COSTS

20. Defendant Colwell is hereby ordered to pay the costs of this action.

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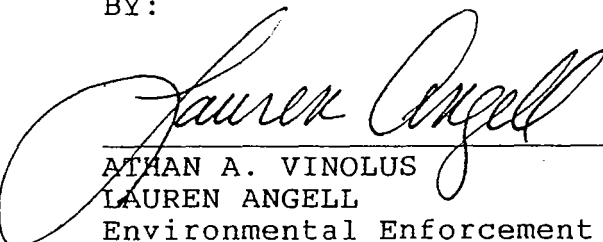
JUDGE, COURT OF COMMON PLEAS

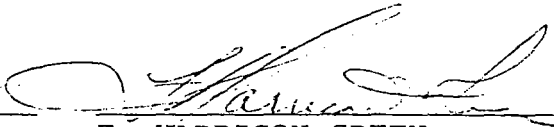
APPROVED:

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

  
BILL D. COLWELL

BY:

  
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3031E/9-20  
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ATTACHMENT I

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS  
FOR HI-VIEW\*

<u>1. EFFLUENT CHARACTERISTIC</u>		<u>DISCHARGE LIMITATIONS</u>		<u>MONITORING REQUIREMENTS</u>	
Reporting Code	UNITS PARAMETER	Concentration Other Units (Specify)		Meas. Freq.	Sample Type
		30 day	7 day		
50050 MGD	Flow	-	-	Daily	Continuous (Estimate)
00010 °C	Temperature	-	-	Daily	Grab (Maximum)
00530 mg/l	Suspended Solids	30	45	1/week	Composite
31616 Count /100ml	Fecal Coliform (Summer)	-	-	1/month	Grab
80082 mg/l	CBOD <sub>5</sub>	25	40	1/week	Composite
00610 mg/l	Ammonia (N)	-	-	2/month	Composite

2. The pH (Reporting code 00400) shall not be less than 6.5 S.U. nor greater than 9.0 S.U. and shall be monitored 1/week by grab sample.
3. The Dissolved Oxygen (Reporting Code 00300) shall be maintained at a level of not less than 6.0 mg/l and shall be monitored 1/week by grab sample.

\*Samples are to be taken at the end of the discharge pipe prior to discharge to Twelve Mile Creek.

2281E1

ATTACHMENT "2"

Effluent Characteristic Parameter	Discharge Limitations	
	30 day avg.	7 day avg.
CBOD <sub>5</sub>	10 mg/l	15 mg/l
Suspended Solids	12 mg/l	18 mg/l
Ammonia (N)		
(Summer)	2 mg/l	3 mg/l
(Winter)	5 mg/l	7.5 mg/l
Fecal Coliform (Summer Only)	1000/100 ml	2000/100 ml

2. The pH shall not be less than 6.5 S.U. nor greater than 9.0 S.U.
3. The Chlorine Residual shall be maintained at a level not to exceed 0.5 mg/l.
4. The Dissolved Oxygen shall be maintained at a level of not less than 6.0 mg/l.

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