

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

STATE OF OHIO, ex rel.
LEE FISHER
ATTORNEY GENERAL OF OHIO,
Environmental Enforcement Section
30 E. Broad St., 25th Floor
Columbus, Ohio 43266-1410,

Plaintiff,

v.

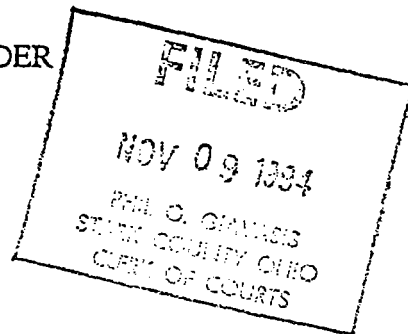
LEONARD A. COOPER,
d/b/a/ SKYLAND HILLS MOBILE
HOME PARK,
14000 Lincoln St. S.E.
Minerva, Ohio 44657

Defendant.

CASE NO. 1994CV00160-OC-1

JUDGE GWIN

CONSENT ORDER



WHEREAS, 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 Leonard A. Cooper (hereinafter "Defendant") 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. DEFINITIONS

1. As used in this Order, the following terms are defined as follows:
 - A. "Skyland Hills" means Skyland Hills Mobile Home Park located at 14000 Lincoln St., S.E., Minerva, Ohio 44657.
 - B. "Ohio EPA" means the Ohio Environmental Protection Agency.
 - C. "Water System" means the public water system owned and operated by Defendant Leonard A. Cooper which serves the residents of Skyland Hills.

- D. "Distribution System" means the system of pipes, conduits, mains, and other conveyances by which water is transported from the Water System well to user connections.

II. JURISDICTION AND VENUE

2. 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 6109. of the Ohio Revised Code, and venue is proper in this Court.

III. PARTIES

3. 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.

4. The Defendant shall provide a copy of this Consent Order to each contractor employed to perform any of the work itemized herein, and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work.

IV. SATISFACTION OF LAWSUIT

5. Plaintiff alleges in its Complaint that Defendant has committed numerous violations of the safe drinking water laws of the State of Ohio arising out of Defendant's operation of the Skyland Hills Mobile Home Park's Public Water System located in Stark County, Ohio. 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 relief for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint.

V. INJUNCTION

6. Defendant is hereby enjoined and ordered as follows:

- A. Defendant is enjoined and ordered to immediately comply with the Ohio drinking water laws and regulations contained in Ohio Revised Code § 6109 and Ohio Administrative Code Chapters 3745-07, 3745-09, 3745-81 through 3745-99. In the event that the Ohio drinking water laws or regulations are amended, Defendant is enjoined and ordered to comply with such amended laws and regulations.

Construction of New Well and Connection to Water System:

- B. Defendant shall construct a new well and connect the new well to the Water System in accordance with the following requirements:
- (i) Within one (1) week of entry of this Consent Order, Defendant shall submit to Ohio EPA a well site proposal which meets the requirements of O.A.C. Rule 3745-9-04(C) and Chapter 3.4 of the Guidelines for Design of Small Public Water Systems. If Ohio EPA determines that the well site does not meet the requirements of O.A.C. Rule 3745-9-04(C) and Chapter 3.4 of the Guidelines for Design of Small Public Water Systems, Defendant shall resubmit to Ohio EPA, within seven (7) days of notification from Ohio EPA that the well site does not meet the requirements, a well site proposal which meets such requirements. If the resubmittal does not meet the requirements of O.A.C. Rule 3745-9-04(C), Ohio EPA will designate a well site which meets such requirements.
 - (ii) Within sixty (60) days of entry of this Consent Order, Defendant shall construct the new well in accordance with O.A.C.

Rule 3745-9-05 and the Guidelines for Design of Small Water Systems.

- (iii) Within two (2) weeks of construction of the new well, Defendant shall perform a new well analysis in accordance with O.A.C. Rule 3745-91-06(B) and 3745-91-06(D)(3), and Chapter 3.5 of the Guidelines for Design of Small Public Water Systems. Defendant shall submit the results of the new well analysis to Ohio EPA. If, after reviewing the results of the new well analysis, Ohio EPA determines that the well does not meet the requirements set forth in O.A.C. Chapters 3745-9, 3745-81, 3745-91 and/or Chapter 3.5 of the Guidelines for Design of Small Public Water Systems, Defendant shall, within seven (7) days of notice of determination, submit a new well site proposal to Ohio EPA as set forth in Paragraph (6)(B)(i) above and thereafter shall implement construction of the new well in accordance with this schedule.
- (iv) Within three (3) days of performing the new well analysis as required in Paragraph 6(B)(iii) above, Defendant shall disinfect the well as required by O.A.C. Rule 3745-9-08(A). On the fifth (5th) day following disinfection, Defendant shall cause one total coliform bacteria sample from the new well to be drawn and analyzed, in order to establish that bacteria is not present in the source water in harmful amounts, as required by O.A.C. Rule 3745-9-08(B). If such sample is determined to be total coliform-positive, Defendant shall, within twenty-four (24) hours of receiving notice of the laboratory analysis, cause four repeat samples to be collected in accordance with O.A.C. Rule 3745-9-08(B). Copies of all

laboratory analyses of such samples shall be forwarded to Ohio EPA. If any such repeat samples are determined to be total coliform-positive, Defendant shall, within seven (7) days of receipt of the laboratory analyses, submit a new well site proposal to Ohio EPA as set forth in Paragraph 6(B)(i) and thereafter shall implement construction of the new well in accordance with this schedule.

- (v) Within thirty (30) days of construction of the new well, Defendant shall submit approvable Detail Plans and Specifications for the new well and all related changes to the Water System to Ohio EPA in accordance with the requirements of O.A.C. Chapter 3745-91. If the Detail Plans and Specifications are not approvable, Ohio EPA will notify the Defendant in writing of any deficiencies. Defendant shall address the deficiencies and resubmit approvable Detail Plans and Specifications within thirty (30) days of such notification of deficiencies.
- (vi) Upon receipt of the Plan Approval issued by Ohio EPA, Defendant shall cause at least two sets of four total coliform bacteria samples from the new well to be drawn and analyzed, in order to establish that bacteria is not present in the source water in harmful amounts, as required by O.A.C. Rule 3745-9-08(B). If any such sample is determined to be total coliform-positive, Defendant shall, within twenty-four (24) hours of receiving notice of the laboratory analyses, draw one set of four total coliform bacteria samples per day until such time as two (2) consecutive sets of four total coliform bacteria samples are determined to be total coliform-negative.

Copies of all laboratory analyses of such samples shall be forwarded to Ohio EPA.

- (vii) Within seven (7) days of receiving notice that all four of the initial total coliform bacteria samples have been determined to be total coliform-negative, or, if repeat samples were required, within seven (7) days of receiving notice that at least two (2) consecutive sets of four repeat samples have been determined to be total coliform-negative, Defendant shall connect the new well to the existing Water System in accordance with the terms and conditions of the Plan Approval.

Water System and Distribution System Monitoring and Notification Requirements:

- C. In the event that the Water System becomes depressurized at any time, Defendant shall immediately cause at least two sets of four total coliform bacteria samples from the Distribution System to be drawn and analyzed at twenty-four hour intervals, in order to establish that the Distribution System has been adequately disinfected after any depressurization(s) of the Water System. If any such sample is determined to be total coliform-positive, Defendant shall cause repeat samples to be collected in accordance with O.A.C. § 3745-81-21(B). Copies of all laboratory analyses of such samples shall be forwarded to Ohio EPA.
- D. Defendant shall cause to be collected, on a monthly basis, at least one total coliform bacteria sample at one or more sites representative of the water throughout the Distribution System, in accordance with O.A.C. § 3745-81-21. When a sample is determined to be total coliform-positive, Defendant shall cause repeat samples to be collected in accordance with O.A.C. § 3745-81-21(B).

- E. Defendant shall ensure that the water collected and delivered via the Water System complies at all times with the maximum contaminant levels for coliform bacteria set forth in O.A.C. § 3745-81-14.
- F. In the event that the Water System is depressurized or fails to comply with the maximum contaminant level for total coliform bacteria, Defendant shall notify the residents of Skyland Hills in accordance with O.A.C. § 3745-81-32(A)(1) by immediately distributing the Public Notice attached hereto as Appendix A as follows:
1. by hand delivery to all households of Skyland Hills, or by continuous posting in conspicuous places throughout the area served by the Water System, and
 2. by furnishing a copy of the notice to the radio and television stations serving the Skyland Hills area.
- G. In the event that Defendant or the operator of the Water System fails to perform the monitoring required by O.A.C. Chapter 3745-81, Defendant shall provide notice to all persons served by the Water System in accordance with O.A.C. § 3745-81-32.
- H. For any notice issued pursuant to Paragraphs 6(F) or 6(G) of this Order, Defendant shall repeat any such notice made by mail delivery or by hand delivery at least once every thirty days for the duration of the violation giving rise to the notice. For a notice made by posting, Defendant shall maintain the posting for the duration of the violation giving rise to said notice. Defendant shall provide the Ohio Environmental Protection Agency with a copy of any notice given pursuant to this Order, together with a signed affidavit stating the methods used and the date the notice was issued, no later than ten days following the date the notice was issued.

- I. In the event of depressurization of the Water System or other significant interruption of service, or in the event that chlorination is not being provided to the Distribution System, Defendant shall immediately report such event by telephone to the Northeast District Office of Ohio EPA.
- J. Defendant shall place the responsibility for the technical operation and maintenance of the Water System under the responsible charge of a certified operator of at least Class I, in accordance with O.A.C. § 3745-7-02(A).
- K. Defendant shall cause the Water System to be operated in accordance with the Contingency Plan submitted by Defendant to Ohio EPA on or about November 23, 1993.
- L. Documents which are required to be submitted to Ohio EPA under this Consent Order shall be sent to the following address:

Ohio Environmental Protection Agency
Northeast District Office
2110 E. Aurora Rd.
Twinsburg, Ohio 44087
Attn: David Bowland, Division of Drinking and Ground Waters

VI. CIVIL PENALTY

7. Defendant shall pay to the State of Ohio a total civil penalty of Ten Thousand Dollars (\$10,000.00). The penalty shall be paid in four installments of \$2,500.00, payable on or before December 15, 1994, March 15, 1995, June 15, 1995, and September 15, 1995, respectively, by delivering certified checks in said amounts to Matt Sanders, Administrative Assistant, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410.

VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

8. In addition to the civil penalty provided for in Paragraph 7, above, Defendant has agreed to install at Skyland Hills an additional drinking water well and related piping to be incorporated into the Water System, which activities are described fully in Paragraph 6(B), above. Defendant shall expend at least Thirty-One Thousand, Seven Hundred Dollars (\$31,700.00) in execution of the duties set forth in Paragraph 6(B), above. In the event that Defendant fails to make all expenditures required by this Paragraph within eighteen (18) months of the entry of this Consent Order, Defendant shall pay the unexpended balance to the State of Ohio as a civil penalty in accordance with Paragraph 7 of this Consent Order. No stipulated penalties shall accrue pursuant to Paragraphs 9 or 10 of this Consent Order for failure to make all expenditures required by this Paragraph 8, provided Defendant pays the unexpended balance to the State of Ohio in accordance with this Paragraph. Nothing in this Paragraph shall be construed to relieve Defendant of any other obligation or time limit set forth in this Consent Order.

VIII. STIPULATED PENALTIES

9. In the event that Defendant fails to meet any of the requirements of this Consent Order set forth in paragraph 6, including any scheduled milestone requirement, the Defendant shall, immediately and automatically, be liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of failure to meet a requirement up to Thirty (30) days--Five Hundred Dollars (\$500.00) per day for each requirement not met. For each day of failure to meet a requirement, from Thirty-one (31) to Sixty (60) days--One Thousand Dollars (\$1,000.00) per day for each requirement not met. For each day of failure to meet a requirement, from Sixty-one (61) to Ninety (90) days--Two Thousand Five Hundred Dollars (\$2,500.00) per day for each requirement not met. For each day of failure to meet a requirement, over Ninety (90) days--Three Thousand Five Hundred Dollars (\$3,500.00) per day for each requirement not met.

10. Any payment required to be made under paragraph 9 of this Consent Order shall be made by delivering to Matt Sanders, Administrative Assistant, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, a certified check or checks for the appropriate amounts made payable to "Treasurer, State of Ohio."

IX. RETENTION OF JURISDICTION

11. 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.

X. COSTS

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

IT IS SO ORDERED.

By James S. Gwin
JUDGE JAMES S. GWIN
STARK COUNTY COURT OF COMMON PLEAS
11/7/1994
Date

APPROVED:

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

LEONARD A. COOPER

Leonard A. Cooper
Leonard A. Cooper

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Akron, Ohio 44313-7120

Counsel for Defendant

Counsel for Plaintiff State of Ohio

A TRUE COPY TESTE:
PHILIP G. CIVASIO, CLERK
By: Philip G. Civasio Deputy
Date: 11-9-94

PUBLIC NOTICE WATER SYSTEM ADVISORY

[DEFENDANT TO FULLY EXPLAIN CIRCUMSTANCES NECESSITATING NOTICE]

The United States Environmental Protection Agency ("USEPA") sets drinking water standards and has determined that the presence of total coliform is a possible health concern. The presence of these bacteria in drinking water generally is a result of a problem with water treatment or the pipes which distribute the water, and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, fever, nausea, and possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. USEPA has set enforceable drinking water standards for total coliforms to reduce the risk of these adverse health effects. Under these standards,

- A. Drinking water which is free of coliform bacteria is usually not associated with a health risk from disease-causing bacteria and should be considered safe. Due to the presence or risk of coliform bacteria, as a precaution, state and local health officials recommend that, until further notice, consumers vigorously boil, for at least one minute, any water used for drinking (including water used to make ice), cooking or oral hygiene.
- B. No more than 5.0 percent of the samples collected during a month can contain these bacteria, except that systems collecting fewer than forty samples per month that have one total coliform-positive sample per month are not violating the standard. Drinking water which meets this standard is usually not associated with a health risk from disease-causing bacteria and should be considered safe.

The water system operator is conducting an investigation and will advise when further sampling show that the problem has been resolved. For further information contact [insert water system contact person] at [insert appropriate telephone number].