

OHIO E.P.A.

JUN - 1 2015

IN THE COURT OF COMMON PLEAS
DEFIANCE COUNTY, OHIO

STATE OF OHIO'S JOURNAL

STATE OF OHIO, *ex rel.*
MICHAEL DEWINE,
OHIO ATTORNEY GENERAL

CASE NO. 15 CV 43182

Plaintiff,

FILED
IN COURT OF COMMON PLEAS
DEFIANCE COUNTY, OHIO

JUDGE _____

v.

APR 27 2015

VISSERS DAIRY, LLC

Amy M. Halbraith
CLERK

Defendant.

CONSENT ORDER

Plaintiff, the State of Ohio, by and through its counsel Attorney General Michael DeWine, has filed a Complaint in this action against Vissers Dairy, LLC, (the "Defendant") for failure to operate a concentrated animal feeding operation ("CAFO") in compliance with Ohio's Water Pollution Control laws and rules, and the terms and conditions of its National Pollutant Discharge Elimination System Permit ("NPDES Permit" or "Permit").

WHEREAS, this Consent Order constitutes a resolution of Defendant alleged violations of Ohio Revised Code ("Ohio Rev. Code") Chapter 6111, and the rules promulgated and permits issued thereunder.

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

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

By: *Amy Casser* Date: 6-1-15

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the parties and the subject matter of this action pursuant to Ohio Rev. Code Chapter 6111. The Complaint states a claim upon which relief can be granted against the Defendant under Ohio Rev. Code Chapter 6111. Venue is proper in this Court for the purposes and duration of this Consent Order.

II. PERSONS BOUND

2. All terms and provisions of this Consent Order shall apply to and be binding upon the Defendant, as well as the Defendant's agents, employees, servants, assigns, successors in interest, and any others bound by Ohio Civ. R. 65(D) acting in concert, privity, or participation with the Defendant who receive actual notice of this Consent Order whether by personal service or otherwise.

III. SATISFACTION OF LAWSUIT AND EFFECT OF CONSENT ORDER

3. The State has alleged that the Defendant has violated Ohio Rev. Code Chapter 6111 and the rules promulgated thereunder. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil and administrative liability of the Defendant, and its owners, operators, officers, agents, assigns, successors in interest, and employees, including but not limited to Petrus F.S. Vissers and Cornelia Joosen (FKA "Corinne Vissers") for all claims and facts alleged in the State's Complaint or known by the Ohio Environmental Protection Agency ("Ohio EPA") at the time this Consent Order is entered by the Court.

IV. RESERVATION OF RIGHTS

4. Nothing in this Consent Order shall limit the authority of the State of Ohio to:

(a) Seek any legal or equitable relief from the Defendant or any other appropriate person for claims or conditions not alleged in the Complaint or not known by the Ohio EPA, including violations that occur on the date of or after the filing of the Complaint;

(b) Seek any legal or equitable relief from the Defendant or any other appropriate person for claims or conditions alleged in the Complaint that occur on the date of or after the filing of the Consent Order.

(c) Seek any legal or equitable relief from this or any other Court including, but not limited to, further preliminary and/or permanent injunctive relief and civil penalties, except with respect to any civil liability satisfied by this Consent Order.

(d) Enforce this Consent Order through a contempt action or otherwise seek relief for violations of this Consent Order;

(d) Nothing herein shall limit the authority of Plaintiff to undertake any action against any entity, including the Defendant, to eliminate or to control conditions which may present a threat to the public health, safety, welfare, or environment, and to seek cost reimbursement for any such action. This Consent Order in no way waives any defenses which Defendant or any other entity may have to such claims, demands, rights or causes of action.

(e) Bring any legal or equitable action against any appropriate person other than Defendant 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.

(f) Nothing herein shall be construed to relieve the Defendant of its obligation to comply with applicable federal, state or local statutes, regulations or ordinances, including, but not limited to, permit requirements. Nothing in this Consent Order shall be construed as an admission of any fact or violation of any federal, state or local statute or regulation.

V. INJUNCTION AND COMPLIANCE

5. While this Consent Order is in effect, the Defendant is permanently enjoined and ordered to comply immediately with all applicable provisions of Ohio Rev. Code Chapter 6111 and the rules promulgated under that chapter.

6. No duty of the Defendant pursuant to this Consent Order shall be impacted by any complete or partial transfer of regulatory authority for any requirement herein from Ohio EPA to the Ohio Department of Agriculture ("ODA"). Should such transfer of authority occur before the termination of this Consent Order, the Defendant shall continue to comply with all terms and requirements of this Consent Order.

VI. CIVIL PENALTY

7. The Defendant has agreed to pay in advance a civil penalty totaling Ten Thousand dollars (\$10,000.00) to the State of Ohio.

8. Contemporaneous with the Defendant's execution of this Consent Order and contingent upon final entry, the Defendant submitted for payment by certified check the amount as stated above, payable to the order of "Treasurer, State of Ohio," which was delivered to Scott Hainer, Paralegal, or his successor, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

9. Plaintiff shall return to Defendant the civil penalty payment in the event that consent to this Consent Order is withheld or withdrawn before entry or the Court declines to enter the Consent Order.

VII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

10. Performance of the terms of this Consent Order by the Defendant is not conditioned upon the receipt of any Federal or State grants, loans and/or funds. In addition, performance by the Defendant 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. MODIFICATION

11. No modification shall be made to this Consent Order without either the written agreement of the parties or approval of the Court.

IX. RETENTION OF JURISDICTION

12. The Court will retain jurisdiction of this action for the purpose of administering and enforcing compliance with this Consent Order until terminated pursuant to Paragraph 19 of this Consent Order.

X. COSTS

13. The Defendant shall pay the court costs of this action within thirty (30) days from the date the Defendant receives notice of the court costs from Ohio EPA.

14. The Defendant 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. The Defendant 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 the Defendant receive notice of the costs from Ohio EPA.

XI. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

15. The parties agree and acknowledge that final approval by the Plaintiff and the Defendant and entry of this Consent Order is subject to the requirements of 40 C.F.R. 123.27(d)(2)(iii), which provides for notice of the lodging of the Consent Order, opportunity for public comment, and the consideration of any public comments. The State of Ohio and the Defendant reserve the right to withdraw this Consent Order based on comments received during the public comment period.

16. 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.

XII. AUTHORITY TO ENTER INTO THE ORDER

17. The undersigned representative of each party to this Consent Order certifies that he or she is fully authorized by the Party or Parties whom she or he represents to enter into the terms and conditions of the Consent Order and execute and legally bind that Party or Parties to it.

XIII. EFFECTIVE DATE

18. This Consent Order shall become effective upon the date of entry by the Court.

XIX. TERMINATION OF CONSENT ORDER

19. After the Defendant has paid all required Court and Publication costs under Paragraphs 13 and 14, respectively, the Defendant may move this Court, pursuant to Ohio Civ. R. 60(B), to terminate this Consent Order one (1) year after the entry of the Consent Order. Plaintiff takes no position with regard to such motion at this time, and reserves its right to oppose the motion. Termination of any or all of the provisions of this Consent Order may also be granted upon a joint motion by the parties.

IT IS SO ORDERED.

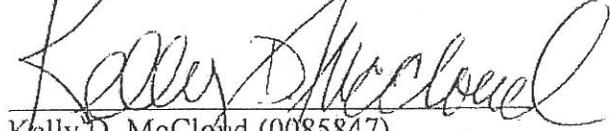
/s/ Joseph N. Schmenk

DATE

**JUDGE
COURT OF COMMON PLEAS
DEFIANCE COUNTY**

APPROVED:

MICHAEL DEWINE
OHIO ATTORNEY GENERAL



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