

**IN THE COURT OF COMMON PLEAS
DEFIANCE COUNTY, OHIO**

STATE OF OHIO, <i>ex rel.</i>	:	CASE NO. 03CV36440
JIM PETRO	:	
ATTORNEY GENERAL OF OHIO	:	JUDGE JOSEPH N. SCHMENK
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
ENVIRO ARTSCAPING, INC.	:	
dba GARDEN RIDGE NURSERY	:	
	:	
Defendant.	:	

PRELIMINARY INJUNCTION CONSENT ORDER

WHEREAS, Plaintiff State of Ohio, on relation of Jim Petro, Attorney General of Ohio, at the written request of the Director of the Ohio Environmental Protection Agency (“Ohio EPA”), filed a complaint commencing this action against Defendant Enviro Artscaping, Inc. dba Garden Ridge Nursery to enforce the provisions of Ohio’s solid waste laws and water pollution control laws, and to pursue other legal and equitable relief;

WHEREAS, Plaintiff and Defendant consent to the entry of this Preliminary Injunction Consent Order 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 undersigned parties to this action and the subject matter of the Complaint. Venue is proper in this Court.

II. PARTIES BOUND

2. The provisions of this Preliminary Injunction Consent Order shall apply to and be binding upon Defendant, successors in interest and assigns, and others to the extent provided in Civ.R. 65(D).

3. Defendant shall provide a copy of this Preliminary Injunction Consent Order to each general contractor, subcontractor, consultant, agent, employee, and person hired to provide work or services related to this Preliminary Injunction Consent Order on behalf of Defendant.

III. DEFINITIONS

4. The terms used in this Preliminary Injunction Consent Order shall have the same meaning as used in R.C. Chapters 3734 and 6111 and the regulations promulgated thereunder.

5. “Facility” shall mean the Garden Ridge Nursery facility located at 05557 State Route 66 N, Defiance, Defiance County, Ohio.

6. “Animal waste” shall have the same definition as contained in Ohio Adm.Code 3745-27-01(A)(5).

7. “Leachate collection structures” shall mean those structures identified in Exhibit A, List #1 and the Southeast Pond identified on Exhibit A.

8. For purposes of this Preliminary Injunction Consent Order, at each leachate collection structure, “freeboard” is to be measured from the lowest point at which wastewater could leave over the berm of the leachate collection structure.

IV. INJUNCTION

9. Defendant agrees and is hereby ordered and enjoined from discharging industrial wastewater to waters of the State unless otherwise authorized by the Director of Ohio EPA.

10. Within seven (7) days of the entry of this Consent Order, Defendant and representatives of the Ohio EPA shall meet at the Facility to measure the existing freeboard in each leachate collection structure identified on List #1, Exhibit A.

11. Defendant agrees and is hereby ordered and enjoined to collect leachate generated at the Facility only in those leachate collection structures identified on List #1, Exhibit A.

12. Until such time as Defendant obtains a Permit to Install (PTI) from Ohio EPA for the land application of wastewater generated at the Facility, Defendant agrees and is hereby ordered and enjoined to perform the following activities with respect to all leachate collection structures at the Facility as identified in List #1, Exhibit A, by disposing of the leachate at a permitted wastewater treatment plant, or reducing the leachate levels by any other legal means in accordance with the following schedule:

- a. Within fourteen (14) days of the entry of this Preliminary Injunction Consent Order, Defendant shall establish and maintain three (3) inches of freeboard in each leachate collection structure;
- b. Within twenty-eight (28) days of the entry of this Preliminary Injunction Consent Order, Defendant shall establish and maintain six (6) inches of freeboard in each leachate collection structure;
- c. Within forty-two (42) days of the entry of this Preliminary Injunction Consent Order, Defendant shall establish and maintain nine (9) inches of freeboard in each leachate collection structure;
- d. Within fifty-six (56) days of the entry of this Preliminary Injunction Consent Order, Defendant shall establish and maintain twelve (12) inches of freeboard in each leachate collection structure;
- e. Within seventy (70) days of the entry of this Preliminary Injunction Consent Order, Defendant shall establish and maintain sixteen (16) inches of freeboard in each leachate collection structure.
- f. Defendant shall submit to Ohio EPA all records and/or receipts of disposal of any wastewater disposed of to achieve compliance with Paragraph 10a-e within fourteen (14) days of disposal.

Defendant shall not be in violation of this paragraph, if after establishing freeboard pursuant to the schedule above, a precipitation event causes the leachate level to rise above the freeboard required by this paragraph, provided that Defendant restores the freeboard to the required level within fourteen (14) days after the precipitation event, and provided that Defendant maintains records at the Facility of the date and amount of precipitation that reduced the freeboard.

13. Defendant shall not create freeboard or additional storage capacity in the existing leachate collection structures by adding additional soil and/or other material to the existing berms or by deepening or widening the existing leachate collection structures.

14. Defendant agrees and is hereby ordered and enjoined to perform the following activities with respect to the Southeast Pond and all other leachate collection structures at the Facility that are not on List #1, Exhibit A:

- a. Defendant shall immediately prevent any release into waters of the State by seepage, overflow, or direct discharge;
- b. Within thirty (30) days of the entry of this Preliminary Injunction Consent Order, Defendant shall either:
 - i. Dewater all leachate collection structures not identified in List #1, Exhibit A, by pumping leachate to leachate collection structures identified in List #1, Exhibit A. In no event shall pumping performed pursuant to this section result in the leachate collection structures identified in List #1, Exhibit A to exceed the required freeboard space required by Paragraph 12, above; or
 - ii. Pump and haul leachate from all leachate collection structures not identified in List #1, Exhibit A to a permitted wastewater treatment plant, or remove the leachate by any other legal means.
- c. Within ninety (90) days of the entry of this Preliminary Injunction Consent Order, Defendant shall remove the embankments and grade these areas such that water no longer ponds after rain events.

15. Within fourteen (14) days of the entry of this Preliminary Injunction Consent Order, Defendant shall submit to the Ohio EPA an administratively complete application for a Permit-to-Install (PTI) for the land application of wastewater generated at the Facility.

16. Within forty-five (45) days of the entry of this Preliminary Injunction Consent Order, Defendant shall remove all solid animal waste from the Northwest Pond at the Facility (as identified in Exhibit A). If Defendant chooses to keep the solid animal waste at the Facility, Defendant shall manage the solid animal waste so that it is properly contained within the second Class III composting area.

17. Defendant agrees and is hereby ordered and enjoined to cease accepting animal waste at the Facility until the provisions contained in Paragraph 12a-c of the Preliminary Injunction Consent Order are fully completed.

18. Defendant is hereby ordered and enjoined from constructing any new structure for the purpose of containing leachate or altering existing leachate collection structures identified on List #1, Exhibit A, without first obtaining an approved PTI from the Director of Ohio EPA, except that Defendant shall be allowed to perform maintenance and repairs and shall be allowed to close such structures by filling them or removing their berms after the leachate has been removed.

V. ACCESS

19. Defendant agrees and consents that Ohio EPA, its employees and agents, shall have full access to the Facility, at all reasonable times, without the need for a warrant, as may be necessary for the implementation of this Preliminary Injunction Consent Order.

20. To the extent that the Facility or any other property to which access is required for the implementation of this Preliminary Injunction Consent Order is owned or controlled by

persons other than Defendant, Defendant shall use its best efforts to secure from such persons access for Defendant and Ohio EPA as necessary to effectuate this Preliminary Injunction Consent Order. Copies of all access agreements obtained by Defendant shall be submitted to Ohio EPA, Attn: Mike Reiser and Dana Martin-Hayden, within ten (10) days of receipt by Defendant. If any access required to effectuate this Preliminary Injunction Consent Order is not obtained within thirty (30) days of the date that Ohio EPA notifies Defendant in writing that additional access beyond that previously secured is necessary, Defendant shall promptly notify Ohio EPA in writing of the steps Defendant has taken to obtain access. Ohio EPA may, as it deems appropriate, assist Defendant in obtaining access.

21. Paragraphs 19 and 20 of this Preliminary Injunction Consent Order shall not be construed to eliminate or restrict any State right to seek access to the Facility, that the State of Ohio may have under applicable Federal or State law.

VI. STIPULATED PENALTIES

22. If Defendant fails to comply with Paragraph 9 of this Preliminary Injunction Consent Order, Defendant is liable for and shall immediately pay a stipulated penalty of one thousand five hundred dollars (\$1,500) per day for each failure to comply.

23. If Defendant fails to comply with Paragraphs 11-18 of this Preliminary Injunction Consent Order, Defendant is liable for and shall immediately pay stipulated penalties according to the following schedule: for each day of each failure to meet a requirement, up to thirty (30) days – fifty hundred dollars (\$50.00) per day; for each day of each failure to meet a requirement from thirty-one (31) to sixty (60) days – one hundred dollars (\$100.00) per day; for each day of each failure to meet a requirement from sixty-one (61) to ninety (90) days – one hundred-fifty

dollars (\$150.00) per day; for each day of each failure to meet a requirement over ninety (90) days – two-hundred fifty dollars (\$250.00) per day.

24. Stipulated penalties due under this Preliminary Injunction Consent Order shall be paid by certified check or money order, payable to the order of “Treasurer, State of Ohio,” and mailed to Jena Suhadolnik or her successor, Administrative Assistant, Office of the Attorney General, Environmental Enforcement Section, 30 E. Broad St., 25th Fl., Columbus, OH 43266-0410 within thirty (30) days of the occurrence of the failure to comply with this Order as described above.

VII. SATISFACTION OF MOTIONS AND RESERVATION OF RIGHTS

25. Compliance with the terms of this Preliminary Injunction Consent Order shall constitute full satisfaction of Plaintiff’s request for preliminary relief and Defendant hereby withdraws its request for preliminary injunction without prejudice to re-filing at a later date.

26. By entering this Preliminary Injunction Consent Order, the State of Ohio and Defendant do not waive any legal arguments and positions which they may assert in further proceedings before this Court or any administrative body. If the Court’s ruling on Defendant’s counterclaims provides that PTIs or plan approvals issued by the Director of Ohio EPA, pursuant to his authority under R.C. Chapter 6111, are not required for Defendant’s activities, then any PTIs or plan approvals issued by the Director of Ohio EPA, pursuant to his authority under R.C. Chapter 6111, to perform the activities required by this Preliminary Injunction Consent Order shall be terminated.

27. The State of Ohio and Defendant reserve the right to seek further relief from this Court or any other court, including but not limited to, further preliminary and/or permanent injunctive relief, civil penalties and cost recovery for any work beyond this Preliminary

Injunction Consent Order. This Preliminary Injunction Consent Order in no way waives any defenses which the State of Ohio and Defendant may have as to such further relief.

28. The State of Ohio and Defendant expressly reserve the right, and this Preliminary Injunction Consent Order shall be without prejudice to, any civil and criminal claims, demands, rights, or causes of action, judicial or administrative, the State of Ohio and Defendant may have or which may in the future accrue against the State of Ohio and Defendant or others, regardless of whether such claim, demand, right or cause of action was asserted in the Complaint or Defendant's counterclaims.

29. Nothing herein shall limit the authority of the State of Ohio to undertake any action against any entity, including Defendant to eliminate or control conditions which may present a threat to the public health, safety, welfare or environment, and to seek cost reimbursement for any such action.

30. Nothing herein shall be construed to relieve Defendant of its obligation to comply with applicable Federal, State, or local statutes, regulations, or ordinances, including but not limited to permit requirements.

31. Entering into this Preliminary Injunction Consent Order, the Preliminary Injunction Consent Order itself, or the taking of any action in accordance with the Preliminary Injunction Consent Order does not constitute an admission by either party of any factual or legal matters or opinions set forth herein. Nothing herein absolves the parties from the duty to comply with this Preliminary Injunction Consent Order.

32. Defendant reserves all rights that it may have against any other person under all Federal, State and local laws.

VIII. RETENTION OF JURISDICTION

33. This Court shall retain jurisdiction of this matter for the purpose of overseeing compliance with this Preliminary Injunction Consent Order.

IX. COURT COSTS

34. Defendant shall pay the court costs associated with this Preliminary Injunction Consent Order.

X. SIGNATORIES

35. The undersigned representative of Defendant understands the terms and conditions of this Preliminary Injunction Consent Order and certifies that he or she is fully authorized to enter into the terms and conditions of this Preliminary Injunction Consent Order and to execute and legally bind Defendant to this document.

SIGNED AT THIS _____ DAY OF _____, 2003.

JOSEPH N. SCHMENK, JUDGE

APPROVED BY:

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ATTORNEY GENERAL OF OHIO

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