

IN THE COURT OF COMMON PLEAS  
ATHENS COUNTY, OHIO

STATE OF OHIO, *ex rel.*,  
JIM PETRO  
ATTORNEY GENERAL OF OHIO

: CASE NO. 02-CI-001  
:  
: JUDGE L. ALAN GOLDSBERRY  
:  
:

Plaintiff,

vs.

LAWRENCE FAMILY TRUST, et al.

Defendants.

ORIGINAL

**FILED**  
ATHENS COUNTY, OHIO  
JUN - 6 2003

*Christie Mitchell*  
CLERK OF COMMON PLEAS COURT

**CONSENT ORDER AND FINAL JUDGMENT ENTRY**

DATE 6-6-03  
JOURNALIZED  
JR. 403 PG. 390

The Plaintiff State of Ohio, by its Attorney General ("Plaintiff" or "State of Ohio") and Defendants the Lawrence Family Trust and the Sunny Family Trust II ("Defendants Lawrence" or "Defendants"), hereby consent to the entry of this Consent Order in order to resolve the allegations in this matter as to Defendants Lawrence and pursuant to Chapter 6111 of the Ohio Revised Code ("R.C.").

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

**I. DEFINITIONS**

As used in this Consent Order:

**"Consent Order"** means this Consent Order and Final Judgment Entry.

**"Contractor"** means the individual(s) or company or companies retained by or on behalf of Defendants to undertake and complete the work required by this Consent Order.

**"Defendants"** means the Lawrence Family Trust and the Sunny Family Trust II.

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**“Director”** means Ohio's Director of Environmental Protection.

**“Disposal System”** means a system for disposing of sewage, sludge, sludge materials, industrial waste, or other wastes and includes sewerage systems and treatment works.

**“Effective Date”** means the date the Richland County Court of Common Pleas enters this Consent Order.

**“Effluent”** means sewage or other wastewater, treated or untreated, that flows out of a disposal system, treatment plant, sewer, or industrial outfall. Generally refers to wastewater discharged into surface waters.

**“Effluent Limitation”** means restrictions established by the State of Ohio in the NPDES permit on quantities, rates, and concentrations in wastewater discharges.

**“Happy Valley Mobile Home Park”** means the track of land located at 6800 Baker Road, Athens, Athens County, Ohio upon which manufactured homes used for habitation are parked, either free of charge or for revenue purposes, and include any roadway, building, structure, vehicle or enclosure used or intended for use as a part of the facilities of the park.

**“NPDES”** means national pollutant discharge elimination system.

**“NPDES permit”** means the current national pollutant discharge elimination system permit and any renewals thereof.

**“Ohio EPA”** means Ohio Environmental Protection Agency.

**“Plaintiff”** means the State of Ohio by and through the Attorney General of Ohio.

**“Sewerage system”** means pipelines or conduits, pumping stations, and force mains, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting water borne sewage, industrial waste, or other wastes to a point of disposal or treatment.

**“Wastewater treatment plant”** or **“WWTP”** means a facility containing a series of tanks, screens, filter, and other processes by which pollutants are removed from water.

## **II. JURISDICTION AND VENUE**

1. The Court has jurisdiction over the Parties and the subject matter of this case pursuant to R.C. Chapter 6111. The Complaint states a claim upon which relief can be granted against Defendants Lawrence and venue is proper in this Court.

## **III. PARTIES**

2. The provisions of this Consent Order shall apply and be binding upon the Plaintiff and Defendants, Defendants' agents, officers, employees, assigns, successors in interest, buyers and any person acting in concert or privity with any of them.

## **IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS**

3. Defendants Lawrence has operated the Happy Valley Mobile Home Park wastewater treatment plant ("WWTP"), sewer system in such a manner as to result in violations of the requirements of the National Pollution Discharge Elimination System (NPDES) Permit issued to them by Ohio Director of Environmental Protection Agency and in violation of the water pollution laws of the State of Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants Lawrence for all claims of violations alleged in the Complaint alleged against Defendants Lawrence, including the claims for injunctive relief and civil penalties.

4. Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against other appropriate persons for claims or conditions alleged in the Complaint. Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against any Defendants or other appropriate persons for claims or conditions not alleged in the Complaint, including violations which occur or continue after the filing of the Complaint, nor shall anything in

~~this Consent Order limit the right of any Defendants to any defenses it may have for such~~  
claims. Similarly, nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to undertake any action against any Defendants, to eliminate or mitigate conditions which may present a threat to the public health, welfare or the environment.

#### **V. INJUNCTIVE RELIEF**

5. Defendants have indicated they no longer own the Happy Valley Mobile Home Park. Defendants shall not regain operation or ownership of the Happy Valley Mobile Home Park at any future time.

#### **VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS**

6. Performance with the terms of this Consent Order by Defendants Lawrence is not conditioned on the receipt of any federal or state grant, loan or funds. In addition, Defendants' performance is not excused by the failure to obtain or shortfall of any federal or state grant, loan or funds, or by the processing of any applications for the same.

#### **IX. CIVIL PENALTY**

7. Within thirty (30) days of the effective date of this Consent Order, it is hereby ordered that Defendants Lawrence shall pay to the State of Ohio a civil penalty of Ten Thousand Dollars (\$10,000.00) for violation of R.C. Chapter 6111. The civil penalty payment shall be paid by delivering a certified check for the appropriate amount, made payable to "Treasurer, State of Ohio," to Jena Suhadolnik, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215-3400.

## X. STIPULATED PENALTIES

8. If Defendants Lawrence fail to meet the requirements of Section IX, paragraph 10 of this Consent Order, Defendants Lawrence shall pay a stipulated penalty according to the following schedule:

- (1) For each day of each failure to meet a requirement of Section IX, paragraph 7 of this Consent Order up to thirty (30) days -- fifty dollars (\$50.00) per day per requirement not met;
- (2) For each day of each failure to meet a requirement of Section IX, paragraph 7 of this Consent Order from thirty-one (31) to sixty days (60) -- one hundred dollars (\$100.00) per day per requirement not met; and
- (3) For each day of each failure to meet a requirement of Section IX, paragraph 7 of this Consent Order over (61) days -- two hundred dollars (\$200.00) per day per requirement not met.

9. Any payment required to be made under the provisions of Section X of this Consent Order shall be made by delivering to Jena Suhadolnik, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215-3400, 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 this Consent Order, made payable to "Treasurer, State of Ohio." Defendants shall also state in writing the specific failure of the Consent Order and/or NPDES permit term and condition which was not complied with, and the date(s) of non-compliance. The payment of stipulated penalties by Defendants Lawrence and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to

~~Section X shall not be construed to limit Plaintiff's authority to seek additional relief or~~

to otherwise seek judicial enforcement of this Consent Order.

#### **XI. MISCELLANEOUS**

10. Nothing in this Consent Order shall affect Defendants' obligation to comply with all applicable federal, state or local law, regulation, rule or ordinance. Defendants Lawrence shall obtain any and all federal, state, or local permits necessary to comply with this Consent Order.

#### **XII. POTENTIAL FORCE MAJEURE**

11. If any event occurs which causes or may cause a delay in Defendants' compliance with any requirement of this Consent Order, Defendants Lawrence shall notify the Ohio EPA in writing within ten (10) days from when the Defendants knew, or by the exercise of due diligence should have known, of the event. The notification to Ohio EPA shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by the Defendants Lawrence to prevent or minimize the delay, and the timetable by which those measures will be implemented. Defendants shall adopt all reasonable measures to avoid or minimize any such delay.

12. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendants Lawrence may raise that they are entitled to a defense that their conduct was caused by reasons entirely beyond their control such as, by way of example and not limitations, 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 Defendants Lawrence 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, if ever, that a court proceeding to enforce this Consent Order is commenced by the Plaintiff. At that time, Defendants Lawrence will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendants. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or a change in Defendants' financial circumstances, shall not constitute circumstances entirely beyond the control of Defendants Lawrence or serve as a basis for an extension of time under this Consent Order. Failure by Defendants to timely comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendants' right to request an extension of its obligations under this Consent Order based on such incident. An extension of one date based on a particular incident does not mean that Defendants Lawrence qualifies for an extension of a subsequent date or dates. Defendants must make an individual showing of 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 Defendants of any rights or defenses it may have under applicable law.

### **XIII. RETENTION OF JURISDICTION**

13. The Court will retain jurisdiction of this action for the purpose of administering or enforcing Defendants compliance with this Consent Order.

#### **XIV. COSTS**

14. Defendants Lawrence is hereby immediately ordered to pay the court costs of this action.

#### **XV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK**

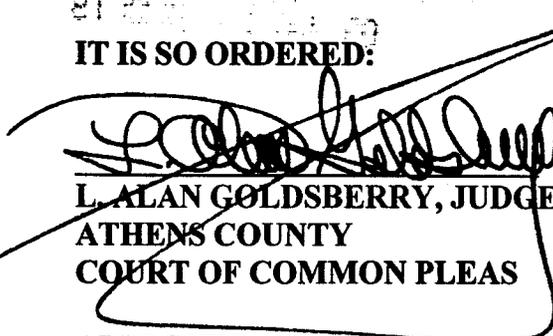
15. The parties agree and acknowledge that final approval by the Plaintiff and Defendants, and entry of this Consent Order is subject to the requirement of 40 C.F.R. §123.27(d)(1)(iii), which provides for notice of the lodging of this Consent Order, opportunity for public comment, and the consideration of any public comment. The Plaintiff and Defendants reserve the right to withdraw consent to this Consent Order based on comments received during the public comment period. Defendants Lawrence shall pay the cost of publishing the public notice within thirty (30) days of receipt of a bill or notice from Ohio EPA.

16. 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 all parties 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.

#### **XVI. AUTHORITY TO ENTER INTO THE CONSENT ORDER**

17. Each signatory for a trust represents and warrants that he/she has been duly authorized as trustee and may sign this document and so bind the trust to all terms and conditions thereof and that he/she submits with this Consent Order an authenticated letter(s) of appointment from a probate court having jurisdiction of the subject matter of the trust.

**IT IS SO ORDERED:**

  
**L. ALAN GOLDSBERRY, JUDGE  
ATHENS COUNTY  
COURT OF COMMON PLEAS**

6/6/03  
**DATE**

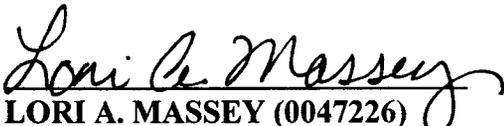
**APPROVED:**

**JIM PETRO  
ATTORNEY GENERAL OF OHIO**

**LAWRENCE FAMILY TRUST  
SUNNY FAMILY TRUST II**

By:

By:

  
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Attorneys for State of Ohio

**JOURNALIZED**

JUN - 6 2003

FINAL APPEALABLE  
ORDER