

FILED
COMMON PLEAS COURT
DARKE COUNTY, OHIO

IN THE COURT OF COMMON PLEAS
DARKE COUNTY, OHIO

2015 MAY 7 AM 7 48

CINDY PIKE
CLERK

STATE OF OHIO, ex rel.
MICHAEL DeWINE,

Plaintiff,

v.

ROMAN KREMER, et al.,

Defendants.

Case No. 13-CV-00222

JUDGE HEIN

Entity: State Line Agri / Roman Kremer
Doc Type: Judicial Order
Doc Subtype: Consent Order
Program: NPDES
County: Merger
Secondary ID: 2 MP00013

CONSENT ORDER

The Complaint in the above-captioned matter having been filed, and Plaintiff, State of Ohio, by its Attorney General Michael DeWine ("Plaintiff"), and Defendants State Line Agri, Inc., Roman Kremer, and Rick Kremer ("Defendants") having consented to the entry of this Order;

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

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the parties and the subject matter of this case pursuant to the Ohio Revised Code ("R.C.") Chapter 6111. The Complaint states a claim upon which relief can be granted against the Defendants pursuant to R.C. Chapter 6111. Venue is proper in this Court.

II. PERSONS BOUND

2. The provisions of this Consent Order shall apply to and be binding upon the parties to this action and upon their officers, agents, servants, employees, successors, and assigns, and those

persons in concert or privity with them, and any other persons as may be applicable pursuant to Civ.R.65(D).

3. Defendants shall provide a copy of this Consent Order to all successors in interest, prior to the transfer of Defendants' ownership rights.

4. No change in ownership or status of Defendants, including but not limited to any transfer of assets or personal property or declaration of bankruptcy, shall in any way alter Defendants' rights or obligations under this Consent Order, except as specified in Paragraph 15.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

5. Plaintiff alleges in its Complaint that the Defendants have committed various violations of R.C. Chapter 6111, and rules and permits issued pursuant to that Chapter. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims of violations alleged in the Complaint up to the date of the entry of this Consent Order.

6. Defendants do not admit the allegations set forth in the Plaintiff's Complaint and deny any violation of local, state, or federal statute, regulation, rule or common law.

7. Nothing in this Consent Order shall be construed to limit the authority of the Plaintiff to seek any appropriate relief from persons other than the Defendants for claims or conditions alleged in the Complaint. Nothing in this Consent Order shall be construed to limit the authority of the Plaintiff to bring any legal or equitable action against any person other than Defendants. Nothing in this Consent Order shall be construed to limit the authority of the Plaintiff to seek any appropriate relief against the Defendants or any other appropriate persons for claims or conditions not alleged in the Complaint, including violations that arise, continue, or occur after the filing of the Complaint. Nothing in this Consent Order shall be construed to relieve the Defendants of their obligations to comply with applicable federal, state, or local statutes, rules, regulations, or ordinances. Further, nothing in this Consent Order shall be construed as to limit the authority of the Plaintiff to take any

action against any person, including the Defendants, to eliminate or mitigate conditions that may present a threat to the public health, welfare, or the environment. Nothing in this Consent Order shall be construed to limit the authority of the Plaintiff to enforce this Consent Order through a contempt action or to otherwise seek relief pursuant to the terms of the Consent Order for violations of the Consent Order or other subsequent violations of law by the Defendants. This Consent Order in no way waives any defense afforded to Defendants by law in any contempt action or any other action brought by the Plaintiff. Finally, Defendants reserve all rights that they may have under Ohio's Rules of Civil Procedure.

IV. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

8. Performance of the terms of this Consent Order is not predicated on the receipt of any grant, loan or funds from the federal or state government or private financial institution. In addition, performance of the terms of this Consent Order is not excused by the failure to obtain, or shortfall of, any such grant, loan or funds, or by the processing of any applications for the same.

V. INJUNCTIVE RELIEF

9. Defendants State Line Agri Inc., Roman Kremer, and Rick Kremer are hereby permanently enjoined and ordered to immediately comply with the requirements of R.C. Chapter 6111, the rules adopted under those laws, and the terms and conditions of permits issued by the Director of the Ohio Environmental Protection Agency.

10. Defendants are ordered to maintain at least 1.4 feet of freeboard in the lagoon located at the Wabash Farm, which is located at 1031 State Route 29, Celina, Mercer County, Ohio ("Wabash Farm Lagoon"), even if no operations are being conducted on the farm. To the extent that the farm is in the possession of a Receiver or other manner of in custodia legis, the Defendants shall seek immediate authority to comply with this provision.

11. Defendants are permanently enjoined and prohibited from discharging material from the Wabash Farm Lagoon into waters of the State without a permit from the Ohio Environmental Protection Agency authorizing such discharge. Permits to install do not authorize such a discharge.
12. For two years after the date this Order, Defendants are enjoined and prohibited from populating the Wabash Farm with swine, or other livestock, unless the following conditions are met: (1) the lagoon has at least 2.4 feet of freeboard; (2) Defendants have provided the Ohio EPA, Division of Surface Water with at least 7 days advance notice; and (3) Defendants have emailed the Ohio EPA, Division of Surface Water a photograph of the lagoon verifying the level of wastewater in the lagoon. This order pertains to each and every time swine or other livestock are added to the Wabash Farm.
13. Defendants and any successors in interest are permanently enjoined and prohibited from adding any industrial waste to the Wabash Farm Lagoon other than manure from the Wabash Farm.
14. No duty of Defendants 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. Should such transfer of authority occur before the termination of this Consent Order, Defendants shall continue to comply with all terms, including payment of penalties, and shall also comply with the lawfully issued permits, orders and rules issued or adopted by the Director of Agriculture as may be applicable.
15. Paragraphs 9 through 14 above are terminated upon the transfer of the ownership of the lagoon at Wabash Farm to a person or entity who is not and has not been a relative, business partner, or employee of nor an entity owned by any of the Defendants.

VI. CIVIL PENALTY

16. Defendants State Line Agri Inc. and Roman Kremer are ordered to pay to the State of Ohio \$25,000 in civil penalties. The penalty shall be paid and collected in the following manner:

a. The \$25,000 civil penalty is owed to the State of Ohio by Roman Kremer and State Line Agri, Inc. immediately upon entry of this order, subject however to the provisions below as it relates to Roman Kremer.

b. Roman Kremer agrees that, as a Debtor and a member of Kremer Family Farms, the Consolidated Debtor in the United States Bankruptcy Court, Case No. 13-32027 shall cause to be filed a Motion to Compromise to gain approval of the terms of this Consent Order.

c. Rick Kremer guarantees full payment of this civil penalty. In the event that the State of Ohio's civil penalty is not paid in full by this bankruptcy proceeding within two years of the date of this Consent Order, unreduced by any percentage applied to other claims in the bankruptcy proceeding, Rick Kremer is personally liable for any deficiency up to the full amount. This payment from Rick Kremer shall be made within 30 days after this obligation has been triggered.

d. Roman Kremer shall, within 10 days of the filing of this Order, file with the bankruptcy court a request as part of the Motion to Compromise that the State's Claim be allowed as an administrative claim. Specifically, Roman Kremer shall file the document attached hereto as "Attachment A" with the bankruptcy court.

e. Roman Kremer as a member of the Consolidated Debtor shall, as part of the Motion to Compromise, seek to amend the Consolidated Debtor's Chapter 11 Plan of Reorganization to include the language attached hereto as "Attachment B."

17. All payments under this section shall be made by delivering by mail or otherwise, a certified check for the appropriate amount made payable to "Treasurer, State of Ohio," to the attention of

Scott Hainer, Paralegal, or his successor, at Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

VII. RETENTION OF JURISDICTION

18. The Court will retain jurisdiction of this action for the purpose of enforcing and administering Defendants' compliance with this Consent Order.

VIII. COURT COSTS

19. Defendants are ordered to pay the court costs of this action.

IX. MODIFICATION

20. No modification shall be made to this Consent Order without the written agreement of the parties and the Court.

X. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

21. The parties agree and acknowledge that final approval by the Plaintiff and Defendants and entry of this Consent Order is subject to the requirements of 40 C.F.R. § 123(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 Defendants reserve the right to withdraw this Consent Order based on comments received during the public comment period.

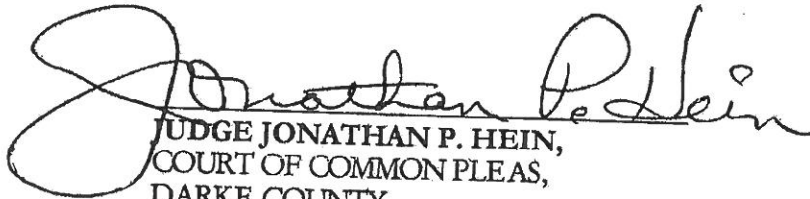
22. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon the signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the parties a notice 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.

XI. SIGNATORIES

25. Each of the undersigned representatives for the parties represent that he/she is fully authorized to enter into the terms and conditions of this Consent Order and legally bind the respective Party to this document.

IT IS SO ORDERED.

DATE _____


JUDGE JONATHAN P. HEIN,
COURT OF COMMON PLEAS,
DARKE COUNTY

APPROVED:

MICHAEL DEWINE
OHIO ATTORNEY GENERAL

STATE LINE AGRI INC.



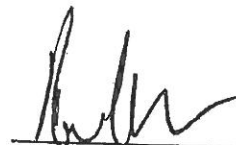
Date 1-27-15

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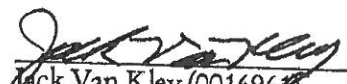
Date 1-7-15

Rick Kremer as president of
State Line Agri Inc., Defendant



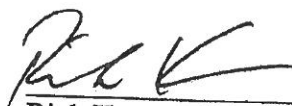
Date 1-7-15

Roman Kremer, Defendant



Date 1-13-15

Jack Van Kley (0016964)
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132 Northwoods Blvd., Suite G-1
Columbus, Ohio 43235
Telephone: (614) 431-8900
vankley@vankleywalker.com
Counsel for the Defendants



Date 1-7-15

Rick Kremer, Defendant

