



**Mike DeWine**

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January 13, 2012

The Honorable Stephen A. Wolaver  
Greene County Courthouse  
45 North Detroit Street  
Xenia, Ohio 45385

**RE: *State of Ohio v. Clemens Development Co., et al.*, Case No. 2011 CV 0939**

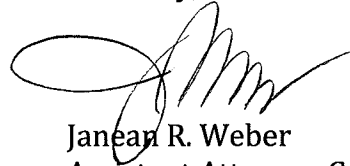
Dear Judge Wolaver:

Enclosed is a copy of a proposed Consent Order which reflects the settlement reached by the parties to *State of Ohio v. Clemens Development Co., et al.*, Case No. 2011 CV 0939. Pursuant to 40 Code of Federal Regulations 123.27(d)(2)(iii), the Ohio Environmental Protection Agency must allow thirty (30) days for a public notice and public comment period regarding the proposed Consent Order. If public comments received during this thirty (30) day period require a change in the terms and conditions of the proposed Consent Order, its provisions expressly provide that the parties are not bound by it.

Because this public comment process must now proceed, the proposed Consent Order has now only been lodged with the Court. As such, the parties are *not* requesting that the Court enter this Consent Order at this time. We will be contacting you as soon as the public comment period has concluded to let you know if this proposed Consent Order is going to be the final version that the parties will seek to have the Court enter. At that time, the parties anticipate that any request to the Court for the entry of a Consent Order would take the form of a motion for entry. Only upon receipt of such further motion would we request that you review and consider whether the Consent Order that accompanies that motion should be entered.

Thank you in advance for your attention to this matter. If you have any questions regarding the status of this proposed settlement, the parties would be pleased to schedule a conference call at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Weber', written in a cursive style.

Janean R. Weber  
Assistant Attorney General  
Environmental Enforcement Section

Enclosure(s)

cc: David Montgomery, Pickrel, Schaeffer and Ebeling  
Michael Sandner, Pickrel, Schaeffer and Ebeling  
Rachel DeMuth, Ohio EPA

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

STATE OF OHIO, ex rel.	:	CASE NO. 2011 CV 0939
MICHAEL DEWINE	:	
OHIO ATTORNEY GENERAL	:	
30 East Broad Street, 25 <sup>th</sup> Floor	:	JUDGE WOLAVER
Columbus, Ohio 43215	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CLEMENS DEVELOPMENT CO.	:	
c/o PS&E Corporate Services, Inc.,	:	
Statutory Agent	:	
2700 Kettering Tower	:	
40 North Main Street	:	
Dayton, Ohio 45423	:	
	:	
and	:	
	:	
RICHARD M. CLEMENS	:	
3847 Murphy's Crossing	:	
Dayton, Ohio 45440	:	
	:	
Defendants.	:	

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**CONSENT ORDER**

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Plaintiff, the State of Ohio (“Plaintiff”/“State”), by and through its counsel Attorney General Michael DeWine, filed a Complaint against Defendants Clemens Development Co. and Richard M. Clemens (“Defendants”) alleging violations of Ohio’s Water Pollution Control laws, Ohio Revised Code (“R.C.”) Chapter 6111 occurring at Sections 1 and 2 of the Highview Terrace subdivision site (“the Site”), which is a piece of property approximately seventy-one (71) acres in size located on the east side of Little Sugarcreek Road, north of State Route 725, Greene County, Ohio, and which was owned or operated by Defendants at all times relevant to the Complaint. This Consent Order constitutes a resolution of disputed claims.

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

**I. JURISDICTION AND VENUE**

1. The Court has both jurisdiction over the parties and the subject matter of this action pursuant to R.C. Chapter 6111. The Complaint states a claim upon which relief can be granted against Defendants under R.C. Chapter 6111. Venue is proper in this Court.

**II. PERSONS BOUND**

2. All terms and provisions of this Consent Order shall apply to and be binding upon the Defendants, Defendants' agents, employees, assigns, successors in interest and any person acting in concert, privity or participation with Defendants.

**III. SATISFACTION OF LAWSUIT**

3. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims alleged in the State's Complaint.

**IV. RESERVATION OF RIGHTS**

4. Nothing in this Consent Order, including the imposition of stipulated civil penalties for violations of this Consent Order, shall limit the authority of the State of Ohio to:

- (a) Seek any legal or equitable relief from Defendants or any other appropriate person for claims or conditions not alleged in the Complaint, including violations that occur after the filing of the Complaint. Notwithstanding the preceding Section, Plaintiff acknowledges the allegations in the Complaint allege all believed conditions and/or violations related to the Site;

- (b) Seek any legal or equitable relief from Defendants or any other appropriate person for claims or conditions alleged in the Complaint that occur or exist on the date of or after the entry of this Consent Order;
- (c) Enforce this Consent Order through a contempt action or otherwise seek relief for violations of this Consent Order;
- (d) Take any action authorized by law against any appropriate person, including Defendants, to eliminate or mitigate conditions at the Site that may present a threat to the public health or welfare, or the environment in derogation of applicable laws and regulations, for which Ohio EPA has the authority to enforce; and/or,
- (e) Bring any legal or equitable action against any appropriate person other than Defendants 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.

#### **V. PERMANENT INJUNCTION**

5. Defendants are permanently enjoined and ordered to comply immediately with all applicable provisions of R.C. Chapter 6111 and the rules promulgated under that chapter subject to the terms hereof.

6. Defendants are permanently enjoined and ordered to comply immediately with the 2003 General Permit as well as any renewals or modifications of the 2003 General Permit.

7. Defendants are ordered to immediately submit to Ohio EPA, Southwest District Office, Division of Surface Water (ATTN: Chris Cotton), 401 East Fifth Street, Dayton, Ohio 45402 for review and approval a revised and updated Stormwater Pollution Prevention Plan (“SWPPP”) for the Site that satisfies the requirements of the 2003 General Permit. The receipt of which by Ohio EPA, is hereby acknowledged.

8. Defendants are ordered immediately comply with, and retain a copy of, the approved SWPPP at the Site, until final stabilization is complete in all disturbed areas of the Site, as "final stabilization" is defined by the 2003 General Permit.

## **VI. CIVIL PENALTY**

9. Defendants shall pay to the State of Ohio a civil penalty of thirty thousand dollars (\$30,000) for violations of Ohio's water pollution control laws in installments according to the following schedule:

- (a) By no later than thirty (30) days following the entry of this Consent Order Defendants shall pay the first twenty thousand dollars (\$20,000) of the civil penalty.
- (b) By no later than May 31, 2012, Defendants shall pay the final ten thousand dollars (\$10,000) of the civil penalty.

10. Penalty payments shall be made by a certified check for the amount as stated above, payable to the order of "Treasurer, State of Ohio" and delivered to Martha Sexton, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

11. If Defendants miss any of the scheduled payments as set forth in Paragraph 9, above, all remaining payments, along with interest as set forth in R.C. 5703.47 accruing from the date of entry of this Consent Order, shall become due and owing immediately.

## VII. STIPULATED PENALTIES

12. In the event that Defendants fail to comply with any requirement of this Consent Order, Defendants are liable for and shall immediately pay stipulated penalties in accordance with the following schedule for each failure to comply:

- (a) For each day of each failure to comply with a requirement or meet a deadline from one (1) day to thirty (30) days – one hundred fifty dollars (\$150.00) per day per requirement not met;
- (b) For each day of each failure to comply with a requirement or meet a deadline from thirty-one (31) days to sixty (60) days – three hundred dollars (\$300.00) per day per requirement not met;
- (c) For each day of each failure to comply with a requirement or meet a deadline over sixty-one (61) days – four hundred fifty dollars (\$450.00) per day per requirement not met.

13. Payments due under Paragraph 12 shall be made within forty-five (45) days from the date of the failure to meet the applicable deadline or knowledge of the effluent limitation violation. Payments shall be accompanied by a written explanation of the deadline missed and/or the effluent violation. Any payment required to be made under this paragraph shall be made by delivering a certified check or checks for the appropriate amount(s), made payable to “Treasurer, State of Ohio,” to Martha Sexton, Environmental Enforcement Section, Ohio Attorney General’s Office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. The payment of stipulated penalties by Defendants and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to Section VIII shall not be construed to limit Plaintiff’s authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order. Further, payment by Defendants shall not be considered an admission of liability on the part of Defendants.

14. The stipulated penalties imposed by Paragraph 12 of this Consent Order may be terminated as to each specific paragraph of this Consent Order, for which stipulated penalties are

imposed, only after Defendants have achieved and maintained compliance with all the requirements of that paragraph for a period of twelve consecutive months and has paid all stipulated penalties incurred related to that paragraph. Termination of one paragraph subject to stipulated penalties under this Consent Order shall not terminate the accrual of or the liability for payment of stipulated penalties under any other paragraph. Termination of stipulated penalties under this Consent Order shall only be upon written application by any party, and by order of the Court after the Court has made a determination that the requirements of this paragraph have been satisfied.

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

15. Performance of the terms of this Consent Order by Defendants is not conditioned on the receipt of any Federal or State grants, loans and/or funds. In addition, Defendants' performance 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.

#### **IX. MISCELLANEOUS**

16. Nothing in this Consent Order shall affect Defendants' obligation to comply with all applicable federal, state or local laws, regulations, rules or ordinances.

17. Any acceptance by the State of Ohio of any payment, document or other work due hereunder subsequent to the time that the obligation is due under this Consent Order shall not relieve Defendants from the obligations created by this Consent Order.

18. Defendants shall inform the Ohio EPA of any change or cessation of the business that is the subject of this action.



## **X. COSTS**

19. Defendants shall pay the court costs of this action.

20. Defendants are 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 as required in Paragraph 22, below. Defendants 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 he receives notice of the costs from Ohio EPA.

## **XI. CONTINUING JURISDICTION**

21. This Court shall retain jurisdiction over this action for the purpose of enforcing and administering Defendants' compliance with this Consent Order.

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

22. The parties agree and acknowledge that final approval by Plaintiff and Defendants and entry of this Consent Order is subject to the requirements of 40 C.F.R. 123(d)(1)(iii), which provides for notice of the lodging of the Consent Order, opportunity for public comment, and the consideration of any public comments. Both Plaintiff and Defendants reserve the right to withdraw this Consent Order based on comments received during the public comment period.

23. 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 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.

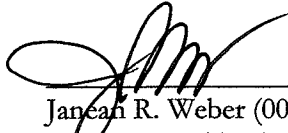
**IT IS SO ORDERED.**

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**JUDGE WOLAVER  
COURT OF COMMON PLEAS  
GREENE COUNTY**

\_\_\_\_\_  
**DATE**

**APPROVED:**

MICHAEL DEWINE  
OHIO ATTORNEY GENERAL



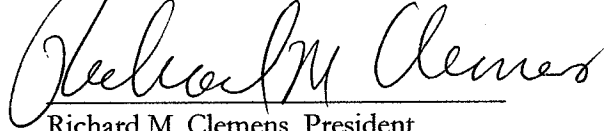
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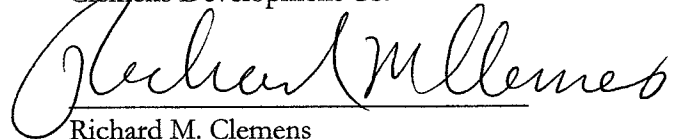


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*Counsel for Defendants, Clemens Development Co.  
and Richard M. Clemens*



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Richard M. Clemens, President  
Clemens Development Co.

  
Richard M. Clemens