

FILED
COMMON PLEAS COURT
DARKE COUNTY, OHIO

2013 MAY 2 PM 3 31

CINDY PIKE
CLERK

IN THE COURT OF COMMON PLEAS
DARKE COUNTY, OHIO

STATE OF OHIO, *ex rel.*
MICHAEL DEWINE
OHIO ATTORNEY GENERAL
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400

Plaintiff,

v.

STATE LINE AGRI, INC., *et al.*
9159 State Route 118
Ansonia, Ohio 45303

Defendants.

CASE NO. 13CV222

JUDGE HEIN

CONSENT ORDER FOR PRELIMINARY INJUNCTION

WHEREAS, Plaintiff State of Ohio by its Attorney General has filed a Complaint in this action against Defendants Roman Kremer, Rick Kremer, and State Line Agri, Inc. ("Defendants") to enforce Revised Code Chapter 6111 and the rules promulgated under that statute, concerning the Defendants' operation of an industrial wastewater treatment lagoon ("the lagoon") at the Wabash Farm, located at 1031 State Route 29, Celina, Mercer County, Ohio; and

WHEREAS, Plaintiff's Complaint seeks injunctive relief and civil penalties for Defendants' alleged violations of Revised Code Chapter 6111, Ohio's Water Pollution Control Laws, at Wabash Farm; and

WHEREAS, Defendants have agreed to enter into this Consent Order for Preliminary Injunction ("COPI");

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

I. JURISDICTION AND VENUE

1. The Court has both personal and subject matter jurisdiction over the parties. The Complaint states a claim upon which relief can be granted against Defendants under R.C. Chapters 6111 and the rules promulgated under that statute. Venue is proper in this Court for the purposes and duration of this COPI.

II. PARTIES

2. The provisions of this COPI shall apply to and be binding upon Defendants, their agents, officers, employees, assigns, successors in interest, and others bound by Rule 65(D) of the Ohio Rules of Civil Procedure who are acting in concert and/or privity with any Defendant.

III. PRELIMINARY INJUNCTION

3. Beginning on the date of the signing of this COPI and continuing, the Defendants are enjoined and ordered to do the following with regard to the Wabash Farm and Wabash Farm lagoon:

- a) Defendants are ordered to install a staff gauge, or an equivalent permanent measuring device, in the lagoon. The gauge, or equivalent, must at least mark the points of 1.4 and 2.4 feet below the top of the bank of the lagoon. Defendants must install the staff gauge, or equivalent, within 30 days;
- b) Defendants are enjoined and ordered to lower the level of wastewater in the lagoon to 1.4 feet below the top of the bank of the lagoon by August 1, 2013.

Until such time, Defendants must ensure that the wastewater in the lagoon does not exceed the lagoon's capacity;

- c) Defendants are enjoined and ordered to maintain at least 1.4 feet of freeboard in the lagoon beginning August 1, 2013, and continuing throughout the duration of this COPI;
- d) Defendants are enjoined and prohibited from populating/re-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 with at least 7 days advanced notice; and (3) Defendants have emailed the Ohio EPA a photograph of the lagoon verifying the level of wastewater in the lagoon and the date and time of the photograph. This order pertains to each and every time swine or other livestock are added to the Wabash Farm for the duration of this COPI;
- e) Defendants are enjoined and prohibited from adding any industrial waste, other than manure generated at the Wabash Farm, to the lagoon for the duration of this COPI;
- f) Defendants are enjoined and ordered to submit weekly reports to the Ohio EPA indicating the level of wastewater in the lagoon. The reports must include a photograph of the level of wastewater in the lagoon. The reports must be submitted until 1.4 feet of freeboard is attained in the lagoon;
- g) Defendants acknowledge that, in addition to the reporting requirements in subparagraphs (d) and (f), that the State, through the Ohio EPA or the Mercer County Soil and Water Conversation District shall have the right to enter and

inspect the Wabash Farm for compliance with the terms of this COPI and other applicable laws or rules; and

- h) Defendants are enjoined and ordered to comply with the terms and conditions of their Permit to Install No. 699820 and their Land Application Management Plan Permit No. 2MP00013*AM, with the exception of the freeboard requirements which shall be governed by orders (b) and (c) of this COPI, and other terms that may be set by the Court, until the termination of this COPI.

IV. REPORTING REQUIREMENT

4. All notices, reports, or photographs required to be submitted to Ohio EPA pursuant to this COPI shall be sent to: Michelle Sharp, or her successor, Ohio Environmental Protection Agency, Division of Surface Water, 347 N. Dunbridge Road, Bowling Green, Ohio 43402; Email address: Michelle.Sharp@epa.ohio.gov.

V. EFFECT OF COPI

5. This COPI does not constitute authorization or approval for the construction or modification of any physical structure, facility, treatment works, or the lagoon itself. Authorization or approval for any such construction or modification shall be by an approval letter or a permit issued by the Director or other such permits as required by applicable federal, state, or local laws, rules, or regulations.

VI. RESERVATION OF RIGHTS

6. Plaintiff reserves the right to seek further relief from this or any other Court including, but not limited to, further temporary, preliminary and/or permanent injunctive relief and civil penalties.

7. Plaintiff expressly reserves, and this COPI shall be without prejudice to, any

claims, demands, rights or causes of action, judicial or administrative, that Plaintiff may have or which may in the future accrue against Defendants or others, regardless of whether such claim, demand, right or cause of action was asserted in the Complaint.

8. Nothing herein shall limit the authority of Plaintiff to undertake any action against any entity, including Defendants, 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. Agreement to this COPI in no way waives any defenses which Defendants may have as to such claims, demands, rights, or causes of action, nor shall it be deemed an admission of the truth of any of the allegations in the State's Complaint.

9. Nothing herein shall be construed to relieve Defendants of their obligations to comply with applicable federal, state or local statutes, regulations or ordinances, including, but not limited to, permit requirements.

VII. TERMINATION

10. This COPI shall terminate upon order of this Court, upon joint motion of the parties, or upon entry of final judgment in this action. Nothing herein shall preclude Plaintiff from seeking further investigatory or remedial work in connection with implementation of this COPI or to address an imminent threat of harm to the public health or the environment. This Section, as well as the Section of this COPI on Reservation of Rights, shall survive this termination provision.

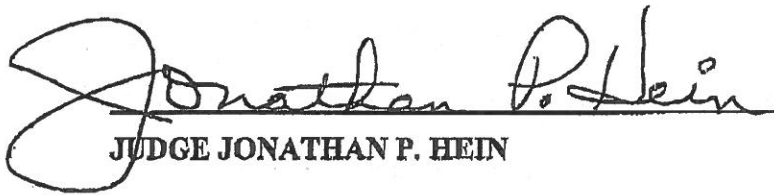
VIII. MODIFICATION

11. No modification shall be made to this COPI without the written agreement of the parties and the Court.

IX. RETENTION OF JURISDICTION

12. The Court will retain jurisdiction of this action for the purpose of administering and enforcing Defendants' compliance with this COPI.

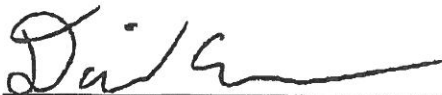
IT IS SO ORDERED.


JUDGE JONATHAN P. HEIN

May 2, 2013
DATE

APPROVED:

MICHAEL DEWINE
OHIO ATTORNEY GENERAL



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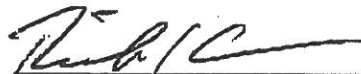


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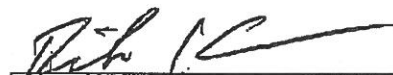
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