

IN THE COURT OF COMMON PLEAS
ROSS COUNTY, OHIO

STATE OF OHIO, ex rel.
RICHARD CORDRAY,
OHIO ATTORNEY GENERAL,

Plaintiff,

v.

J & M HOLDINGS OF OHIO, LLC, et al.

Defendants.

CASE NO. 09 CI 239

JUDGE SCOTT NUSBAUM

FILED
ROSS COUNTY COMMON PLEAS
CLERK OF COURTS
TY D. HINTON

2009 AUG 31 AM 10:40

COURT OF COMMON PLEAS

CONSENT ORDER FOR PRELIMINARY INJUNCTION

WHEREAS, the Plaintiff, State of Ohio, by its Attorney General Richard Cordray (“Plaintiff”) on April 2, 2009 filed its Complaint in the above-captioned case against J & M Holdings, of Ohio, LLC, James Hawthorne, and Michael Mulhern (collectively “Defendants”) pursuant to Ohio Revised Code Chapter 6111 and the rules promulgated thereunder, and Ohio Revised Code Chapter 3767; Plaintiff’s Complaint seeks, among other things, preliminary injunctive relief and civil penalties for Defendants violations of Ohio’s Water Pollution Control Laws at the Cattail Apartments, located at 2789 Cattail Road, Union Township, Ross County, Ohio (“Cattail”);

WHEREAS, Plaintiff on May 6, 2009 filed a Motion for Preliminary Injunction which was set by the Court for hearing on May 28, 2009.

WHEREAS, Defendants have agreed to enter into this Consent Order for Preliminary Injunction (“COPI”) without the need for hearing;

NOW THEREFORE, upon consent of the parties hereto, it is hereby 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. Chapter 6111, and the rules promulgated thereunder, and R.C. Chapter 3767, and 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 Defendants. Defendants shall provide a copy of this COPI to each general contractor and/or consultant it employs to perform work itemized herein and each general contractor shall provide a copy of this COPI to each of its subcontractors for such work.

III. PRELIMINARY INJUNCTION

3. Defendants are hereby enjoined and ordered to immediately hire and are to continue to retain an operator of record who holds a valid Class I Waste Water Treatment Plant Operator Certificate to oversee the technical operation of the Cattail disposal system, until such time as the Cattail disposal system is connected to the Pleasant Valley Regional Sewer District. Defendants shall ensure that the Operator is present at the Cattail disposal system three times per week for a minimum of one half hour per visit.

Defendants shall ensure that the certified operator performs the following functions at each visit, and documents each in writing: checks for and documents any break outs from the leach fields, switches leach fields should a break out occur and lime any areas of breakout sewage discharge, monitors the sand filters to ensure that they are in proper working order and are not overflowing, checks for and removes any excess solid build-up from the sand filters, monitors sand filters to ensure that they are being properly dosed, ensures that the pumps are functioning and that the alarms are turned on, checks the aeration tanks, makes sure the blowers are working properly, and any other maintenance or monitoring necessary to ensure that the Cattail disposal system is properly operating.

4. Defendants shall perform daily checks of the leach fields to check for sewage break outs. Should a break out occur, Defendants shall switch leach fields and lime the area of breakout sewage discharge. Any sewage break outs must be documented in writing, and the Ohio EPA must immediately be notified of their occurrence.

5. Defendants shall maintain all operating and maintenance records, including but not limited to, records of all expenses, receipts, and payroll costs associated with the operation of the Cattail disposal system, any records of a sand filter being switched and the reason for the switch, regardless as to whether done by the Defendants or the operator of record, and any records of a leach field being switched and the reason for the switch, regardless as to whether done by the Defendants or the operator of record. Defendants shall also immediately document any malfunctions or problems with the disposal system and measures taken to remedy the situation. Defendants are responsible for immediately reporting to the Ohio EPA, Southeast District Office, any problems or malfunctions with the disposal system, including any sewage break outs from the leach fields, regardless as

to whether Defendants were notified of any such problems, malfunctions, or break outs by the operator of record.

6. Defendants are hereby enjoined and ordered to provide to the Ohio EPA, Southeast District Office, on a monthly basis, a written report documenting all of the information required in paragraphs 4 and 5, above. Documentation must also be provided of the operator of record's hours on site at the Cattail Apartments, and any observations made by the operator and work performed by the operator while at the Cattail Apartments. Reports documenting the previous month must be submitted to the Ohio EPA, Southeast District Office, postmarked no later than the first day of the subsequent month. Reports shall be sent to:

Mr. Jack Knapp
Ohio EPA, Southeast District Office
2795 S. Front St.
Logan, Ohio 43138

7. Defendants are hereby enjoined and ordered to erect a six-foot high locked fence around the sand filters within seven (7) days of this Order.

8. Defendants are hereby enjoined and ordered to immediately put lime on the areas of sewage discharge, including the ditch running along the western portion of the property into which the fifth triplex is or was discharging, the break out areas along the leach fields, and the leach fields, so as to eliminate any odor. Defendants are ordered and enjoined to put lime in these areas, and any other areas where an odor is present, until all odors are eliminated, and to maintain the property free from any odors caused by raw or partially treated sewage.

9. Defendants are hereby enjoined and ordered to submit a complete and approvable Permit to Install (PTI) application to the Director of the Ohio EPA by no later

than thirty (30) days after this Order that seeks approval for the installation of a connection to the Pleasant Valley Regional Sewer District sanitary sewer system, and which sets forth the steps for the proper abandonment of the Cattail disposal system, and abandonment of the dosing tank and any other equipment to which the fifth triplex is or may be connected. Abandonment of the disposal system must be performed in a manner consistent with the elimination of any potential public nuisance and removal of wastes and all treatment work components, other than the leach fields, and the management of the leach fields to eliminate any present, and prevent any future, threat to the public health and the environment. The Permit to Install application should include a proposed time schedule for the commencement of construction, completion of construction, and a date when all sewage from the Cattail Apartments will be directed to the Pleasant Valley Regional Sewer District via sanitary sewer. The PTI shall also include a date by which the proper abandonment of the existing Cattail disposal system has been completed.

10. Defendants are enjoined and ordered to complete the connection to the Pleasant Valley Regional Sewer District and abandonment of the Cattail disposal system as expeditiously as possible, and in any event, in accordance with the schedule approved in the PTI.

11. If the Director determines that the permit application required pursuant to Paragraph 9 above is incomplete, insufficient or un-approvable, the Defendants are hereby enjoined and ordered to submit to the Director a revised version of the application that has addressed the deficiencies noted within 10 (ten) business days of receipt of deficiency notification from the Ohio EPA.

12. Within 15 (fifteen) days of receipt of the approved Permit to Install from the Director the Defendants shall proceed with the work necessary to connect to the Pleasant Valley Regional Sewer District along with the other work set forth in the approved Permit to Install.

13. Defendants are hereby ordered to distribute, in writing, to all tenants of the Cattail Apartments, as well as the residents of any property contiguous to the Cattail Apartments, a notification stating that raw and partially treated sewage is collecting on the property, and where it is located. The notice shall also clearly set forth the health hazards associated with coming into contact with such raw and partially treated sewage, and advise the tenants and their guests, and the residents of the contiguous properties, to avoid the areas where it is collecting. Further, Defendants shall post signs clearly marking the areas of discharge and notifying residents and guests of the property to stay off of those areas.

IV. EFFECT OF COPI

14. This COPI does not constitute authorization or approval for the construction or modification of any physical structure, facility, public water system, distribution system, or treatment works. Authorization or approval for any such construction or modification shall be by approval letter or permit issued by the Director or other such permits as may be required by applicable federal, state, or local laws, rules, or regulations.

V. RESERVATION OF RIGHTS

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

16. Nothing herein shall be construed to be a final settlement of the claims raised in Plaintiff's Complaint for Injunctive Relief. Plaintiff retains the right to seek permanent injunctive relief, civil penalties, costs of this action, attorneys' fees, and/or extraordinary litigation costs as demanded in the Complaint.

17. 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.

18. 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. This COPI in no way waives any defenses which Defendants may have as to such claims, demands, rights or causes of action.

19. 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, and any of Defendants' obligations under R.C. Chapter 5321, Ohio's Landlord Tenant Laws.

VI. TERMINATION

20. This COPI shall terminate upon further Order of this Court, or upon entry of final judgment in this action. Nothing herein shall preclude Plaintiff from seeking further

investigatory 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.

VII. MODIFICATION

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

VIII. RETENTION OF JURISDICTION

22. The Court will retain jurisdiction of this action for the purpose of administering and enforcing Defendant's compliance with this COPI.

IX. COSTS

23. Defendants are hereby ordered to pay the costs of this action.

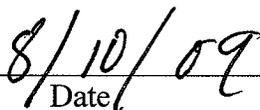
X. SIGNATORIES

24. The undersigned is a representative of Defendants and understands the terms and conditions of this COPI and certifies that he or she is fully authorized to enter into the terms and conditions of this COPI and to execute and legally bind Defendants to this document.

IT IS SO ORDERED:



JUDGE

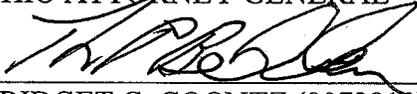


Date

APPROVED:

The Clerk of the Court is hereby directed to serve a copy of this Judgement Order, and its date of Entry upon the Journal, upon all counsel of record and all parties not represented by counsel, by personal service or by U.S. Mail, and to note service on the Docket.

RICHARD CORDRAY
OHIO ATTORNEY GENERAL



BRIDGET C. COONTZ (0072919)
THOMAS P. BEHLEN (0042721)
Assistant Attorneys General
Environmental Enforcement Section
30 E. Broad St., 25th Floor
Columbus, Ohio 43215-3400
Phone: (614) 466-2766
Fax: (614) 644-1926
Bridget.coontz@ohioattorneygeneral.gov
Thomas.behlen@ohioattorneygeneral.gov

Counsel for Plaintiff



JAMES K. CUTRIGHT (0009806)
CUTRIGHT & CUTRIGHT
76 W. 2nd St.
Chillicothe, Ohio 45601
Phone: (740) 772-5595

*Counsel for Defendants,
J & M Holdings of Ohio, LLC., Michael Mulhern and James Hawthorne*