



FILED
WOOD COUNTY CLERK
COMMON PLEAS COURT

JOURNALIZED

JUL 27 2010

2010 JUL 22 A 10: 56

Vol 491 Pg 625

CINDY A. HOFNER

IN THE COURT OF COMMON PLEAS OF WOOD COUNTY, OHIO

Southview Estates, LLC,

Case No. 2009-CV-0406

Plaintiff,

**MEMORANDUM DECISION AND
JUDGMENT ENTRY ON COURT
TRIAL**

vs.

City of Perrysburg, et al.,

Defendants.

Judge Robert C. Pollex

This matter came before this Court for consideration on civil trial this 23rd day of June, 2010. The Court received testimony and exhibits together with arguments of counsel. The State of Ohio supplemented their closing arguments by filing a memorandum. Appearing on behalf of the State of Ohio was L. Scott Helkowski, Esq. and Janean Weber, Esq. Appearing on behalf of Robert Maurer and Southview Estates, LLC was Max Rayle, Esq.

The Court makes the following Findings of Fact:

1. The State of Ohio has demonstrated that the Third-Party Defendants, Southview and Maurer did not connect to the Perrysburg sewer system within the time limits as required by statute.
2. The Defendant, Southview did however connect to the City of Perrysburg at great expense (over \$120,000) to Southview and its owner Mr. Maurer within a reasonable time.
3. The Court finds that the delay in attaching to the Perrysburg sewer system was not entirely the fault of the Third-Party Defendant, but rather was caused by the delays of the City of Perrysburg in determining how and where they were to enter the sewer system. Mr. Maurer did in fact sign and execute an easement for certain property demonstrating his willingness to proceed to attach to the City of Perrysburg, and demonstrating his compliance.

4. The Third-Party Plaintiff, State of Ohio did demonstrate that Mr. Maurer and Southview were in violation of affluent requirements for the total number of 435 days. Although, many of these days had very minor differences between the affluent and the State's (EPA) requirements.
5. Defendants (Third-Party), Southview and Maurer, did make substantial progress in arriving at compliance and in eventually, at great cost to them, connecting to the Perrysburg sewer system. Considering all of the circumstances and facts of this case, the Court finds that the 435 days of violation was established by clear and convincing evidence.
6. Considering all such circumstances the Court finds that the fine or penalty should be minor as many of the violations were minor. Therefore, the court finds that a reasonable penalty is ten dollars (\$10.00) per day for each day of violation.
7. Therefore, the Third-Party Defendants, Southview and Maurer, should pay penalties and fines in the total amount of \$4,350.00 for and as civil penalties pursuant to the Ohio Environmental Protection Agency Clean Water Act contained in Chapter 6111 of the Ohio Revised Code.

JOURNALIZED

JUL 27 2010

CONCLUSIONS OF LAW

Vol 491 Pg 626

Ohio Revised Code § 6111.04(A)(1) prohibits anyone, without a permit, from placing sewer or sludge in a location where it may cause pollution of any waters of the state. Ohio Revised Code § 6111.07 provides that no person shall fail to perform a duty or violate any term or condition of a permit issued by the Ohio EPA. Each day of violation is a separate offense and Ohio Revised Code § 6111.09(A) provides that anyone who violates these actions shall be liable for a civil penalty of not more than \$10,000.00 per day per violation. The Court has broad discretion to examine the factual circumstances of the case. *State, ex rel., Brown v. Dayton Malleable, Inc.* (1981). Under this case the court analyzes the following factors to determine the penalty: (1) the sum appropriate to redress the harm or risk of harm to public health or the environment; (2) the sum appropriate to remove the economic benefit gained or to be gained from

delayed compliance; (3) the sum appropriate as a penalty for violators degree of recalcitrance, defiance, or indifference to requirements of the law; (4) the sum appropriate to recover unusual or extra ordinary enforcement costs thrust upon the public.

In this case there has been substantial improvement made by Southview and Mr. Maurer, and a continuing effort to comply with the permit requirements of the Ohio EPA. The Defendants attempted to attach their system to the Perrysburg sewer system but were prevented by the lack of ability to do so, beyond their control. When the City did finally allow the Defendants to tap into the Perrysburg sewer system, there was some "foot dragging" but not to any substantial degree. There were extensive costs to the Third-Party Defendants to attach their system, and since they have done so future violations will not occur.

Considering these factors, the Court finds that the civil penalty in this case should be nominal as they have now connected to the Perrysburg sewer system there should be no future violations so no deterrent effect from penalty will be resulting. Accordingly, the Court finds that a reasonable civil penalty is ten dollars (\$10.00) per day for the total 435 days of violation. Many of the violations on a daily basis were based on estimates and many times were very nominal violations, although the Ohio EPA considers any violation of its standards to be the same regardless of the readings as measured. The Court finds that Southview and Mr. Maurer were making efforts at connecting to the Perrysburg sewer system as soon as they were able. Likewise, in the interim, there were attempts to reduce any pollution due to the failure of their treatment system. Nevertheless, there should be some penalty for noncompliance and this Court's determination fits the total circumstances presented by the evidence in this case (clear and convincing evidence).

JOURNALIZED

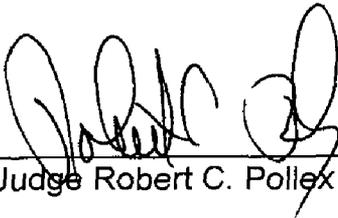
JUL 27 2010

Vol 491 Pg 627

JUDGMENT ENTRY

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the Third-Party Plaintiff, State of Ohio has demonstrated by clear and convincing evidence that there have been 435 days of violation and that a civil penalty should be issued by this

Court. The Court finds that the total amount of civil penalty is \$4,350.00. Set amount to be paid within sixty (60) days of this Judgment Entry. Costs to the Plaintiff/Third-Party Defendant.



Judge Robert C. Pollex

cc: Max Rayle, Esq.
L. Scott Helkowski, Esq.

**CLERK TO FURNISH TO ALL COUNSEL
OF RECORD AND UNREPRESENTED PARTIES
NOT IN DEFAULT FOR FAILURE TO APPEAR
WITH A COPY OF THIS ENTRY INCLUDING
THE DATE OF ENTRY ON THE JOURNAL**

JOURNALIZED

JUL 27 2010

Vol 491 Pg 628