

IN THE COURT OF COMMON PLEAS
SENECA COUNTY, OHIO

STATE OF OHIO, ex rel.
MICHAEL DEWINE
OHIO ATTORNEY GENERAL,

Plaintiff,

v.

FOSTORIA MOBILE ESTATES, INC., et al.,

Defendants.

CASE NO. 11 CV 0211

JUDGE Kelbley

FILED
COMMON PLEAS COURT
SENECA COUNTY, OHIO
11 JUN - 8 AM 11:55
MARY K. WARD
CLERK

CONSENT ORDER FOR PRELIMINARY INJUNCTION

WHEREAS, Plaintiff State of Ohio by its Attorney General (hereinafter "State" or "Plaintiff"), has filed the Complaint in this action against Defendants Joseph Raineri, Lucas W. Stahl, and Fostoria Mobile Estates, Inc., (collectively "Defendants") to enforce Revised Code Chapters 6109 and 6111 and the rules promulgated thereunder, concerning the Defendants' operation of the "public water system" (hereinafter "PWS") and wastewater treatment plant (hereinafter "WWTP") at Fostoria Mobile Estates, located at 5473 N. TR 63, #400, Fostoria, Seneca County, Ohio, 44830.

WHEREAS, Plaintiff's Complaint seeks injunctive relief and civil penalties for Defendants' alleged violations of Revised Code Chapter 6109, Ohio's Safe Drinking Water Laws, and Chapter 6111, Ohio's Water Pollution Control Laws, at Fostoria Mobile Estates; and

WHEREAS, Defendant Fostoria Mobile Estates, Inc. ("Defendant FME") has agreed to enter into this Consent Order for Preliminary Injunction ("COPI");

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the parties hereto, and without admission of any fact, 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. Chapters 6109 and 6111 and the rules promulgated under those statutes, 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 Defendant FME, its 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 Defendant FME. Defendant FME 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 their subcontractors for such work.

III. PRELIMINARY INJUNCTION

3. Beginning on the date of the entry of this Consent Order by the Court and continuing, the Defendant FME is enjoined and ordered to do the following with regard to the Fostoria Mobile Estates WWTP and PWS:

- a) Defendant FME is enjoined to timely begin the process of closing Fostoria Mobile Estates and decommissioning the PWS and WWTP. Defendant FME shall exercise due regard for the current residents of Fostoria Mobile Estates during the process of closing the park. Defendant FME shall submit detail plans for decommissioning, complete decommissioning of the PWS and WWTP, close the

park, and remove all residents within 6 months of the entry of this Order by the Court.

b) Should the Defendant FME elect not to timely close Fostoria Mobile Estates, Defendant FME shall so notify Ohio EPA in writing no later than 1 month after entry of this Order by the Court. Upon notification to Ohio EPA that Fostoria Mobile Estates will remain open, Defendant FME is enjoined to do either of the following in the discretion of the Defendant FME:

i) Defendant FME is enjoined to install improvements to their PWS sufficient to comply with the maximum contaminant level (MCL) for arsenic. Specifically, Defendant FME is enjoined to submit a complete application with approvable plans for an arsenic treatment system to the Director, pursuant to Ohio Adm. Code Chapter 3745-91, within 30 days of notification of the intent to continue operation of the Fostoria Mobile Estates PWS, with full compliance with the arsenic MCL to occur within 15 months of detail plan approval, or

ii) Defendant FME is enjoined to discontinue use of their PWS and connect to a regional or municipal water system. Defendant FME shall submit detailed plans for connection within 30 days of notification to Ohio EPA that Fostoria Mobile Estates will remain open and the connection process will begin within 3 months of plan approval. The connection process will be completed within one year of plan approval.

c) Until such time as the PWS is brought into compliance with the requirements of R.C. Chapter 6109 and the rules promulgated thereunder, or Fostoria Mobile

Estates is closed and all residents have moved out of the park, Defendant FME is enjoined and ordered to do the following with regard to the Fostoria Mobile Estates PWS:

- i) Except as otherwise provided by this Consent Order, Defendant FME is enjoined and ordered to immediately comply with all applicable provisions of R.C. Chapter 6109 and any rules adopted there under, at Fostoria Mobile Estates.
- ii) Defendant FME is enjoined and ordered to immediately monitor for all required contaminants in the PWS in a timely manner as required by Ohio Adm. Code Chapter 3745-81, including any required repeat samples.
- iii) Defendant is enjoined and ordered to immediately maintain at least 0.2 milligrams per liter free chlorine or 1.0 milligrams per liter combined chlorine in the PWS distribution system in accordance with Ohio Adm. Code 3745-83-01.
- iv) Defendant FME is enjoined to apply for a valid license to operate the PWS from Ohio EPA.
- v) Within 14 days of the date of the entry of this Consent Order by the Court, Defendant FME is enjoined to repair and maintain the wells that serve their PWS in accordance with Ohio Adm. Code 3745-9-05 and to remove the yard hydrant with a weephole in accordance with Ohio Adm. Code 3745-95-09.
- vi) Within 7 days of the date of the entry of this Consent Order by the Court, Defendant FME is enjoined to hire and retain an operator of record, who

holds a valid Class A Water Supply Operator Certificate, to oversee the technical operation of the PWS.

- vii) As of the date of the entry of this Consent Order by the Court, Defendant FME is enjoined to make five gallons of bottled water per residence available on the Fostoria Mobile Estates grounds each day, at Defendant FME's cost. These costs shall not be passed on to Fostoria Mobile Estates' residents in any form.
- d) Until such time as the WWTP is brought into compliance with the requirements of R.C. Chapter 6111 and the rules promulgated thereunder, or Fostoria Mobile Estates is closed and all residents have moved out of the park, Defendant FME is enjoined and ordered to do the following with regard to the Fostoria Mobile Estates WWTP:
 - i) Defendant FME is enjoined to properly operate and maintain the WWTP in accordance with R.C. 6111, and the rules promulgated thereunder, the terms and conditions of all licenses, plans, orders, schedules and/or with the permits issued to Defendant pursuant to R.C. Chapter 6111.
 - ii) Defendant FME is enjoined to hire and retain an operator, who holds a valid Class I Wastewater Operator Certificate, to oversee the technical operation of the WWTP.
 - iii) Defendant FME is enjoined to clean the WWTP sand filters and eliminate the bypass alleged in the Complaint.
 - iv) Defendant FME is enjoined to perform routine sampling and reporting in accordance with the NPDES permit.

IV. REPORTING REQUIREMENT

4. Documents or reports with regard to the PWS that are required to be submitted to Ohio EPA's Northwest District Office pursuant to this Consent Order shall be sent to: Ohio Environmental Protection Agency, Northwest District Office, Division of Drinking and Ground Waters, ATTN: JoAnn Sabo, at 347 North Dunbridge Road, Bowling Green, Ohio 43402. Documents with regard to the PWS that are required to be submitted to Ohio EPA's Central Office shall be sent to: Ohio Environmental Protection Agency, Division of Drinking and Ground Waters, ATTN: Tanushree Courlas, at P.O. Box 1049, Columbus, OH 43216.

5. Documents or reports with the regard to the WWTP that are required to be submitted to Ohio EPA's Northwest District Office pursuant to this Consent Order shall be sent to: Ohio Environmental Protection Agency, Northwest District Office, Division of Surface Water, ATTN: Mary Beth Cohen, at 347 Dunbridge Road, Bowling Green, Ohio 43402. Documents with regard to the WWTP that are required to be submitted to Ohio EPA's Central Office shall be sent to: Ohio Environmental Protection Agency, Division of Surface Water, ATTN: Larry Reeder, at P.O. Box 1049, Columbus, Ohio 43216.

V. STIPULATED PENALTIES

6. Except as outlined above, in the event that Defendant FME fails to meet the requirements of this COPI set forth in paragraphs 3(c)(ii)-(vii) and 3(d)(ii)-(iv), Defendant FME shall immediately and automatically be liable for and shall pay a stipulated penalty of two hundred dollars (\$200.00) per day for each requirement not met, for the first sixty (60) days of noncompliance. Defendant FME shall be liable for an additional stipulated penalty of four hundred dollars (\$400.00) per day for each requirement not met if the failure to comply continues for more than sixty (60) days but less than one hundred twenty (120) days. In the

event Defendant FME fails to comply for one hundred twenty-one (121) days or more, Defendants shall be liable for an additional six hundred dollars (\$600.00) per day for each requirement not met.

7. Notwithstanding the foregoing, Plaintiff reserves the right to pursue any other action to enforce all terms of this COPI, including, but not limited to, filing charges in contempt with this Court.

8. Any payment required to be made under the provisions of paragraph 6 of this COPI shall be made by delivering a certified check or checks, made payable to "Treasurer, State of Ohio", for the appropriate amount(s), within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, by mail, or otherwise, to Karen Pierson, Paralegal or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215.

VI. EFFECT OF COPI

9. 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.

VII. RESERVATION OF RIGHTS

10. 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.

11. Plaintiff 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 Defendant FME or others, regardless of whether such claim, demand, right or cause of action was asserted in the Complaint.

12. Nothing herein shall limit the authority of Plaintiff to undertake any action against any entity, including Defendant, 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 Defendant or any other entity may have as to such claims, demands, rights or causes of action.

13. Nothing herein shall be construed to relieve Defendant FME of its obligations to comply with applicable federal, state or local statutes, regulations or ordinances, including, but not limited to, permit requirements. Nothing in this COPI shall be construed as an admission of any fact or violation of any federal, state or local statute or regulation.

VIII. TERMINATION

14. This COPI shall terminate upon Order of this Court, upon Joint Motion of the parties that all activities required or contemplated under this COPI have been completed, 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, however, nothing in this COPI will survive the entry of final judgment in this action, except as reflected in a final decree.

IX. MODIFICATION

15. No modification shall be made to this COPI without either the written agreement of the parties and/or approval of the Court.

X. RETENTION OF JURISDICTION

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

IT IS SO ORDERED.



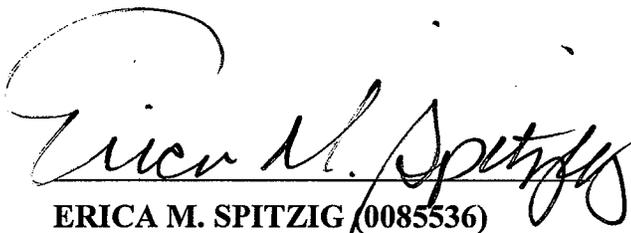
**JUDGE, COURT OF COMMON PLEAS
SENECA COUNTY, OHIO**



DATE

APPROVED:

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