

FILED
COMMON PLEAS COURT
DARKE COUNTY, OHIO

2011 JUL 5 PM 1 02

CINDY PIKE
CLERK

IN THE COMMON PLEAS COURT OF DARKE COUNTY, OHIO

STATE OF OHIO, ex. rel. : CASE NO. 08-CV-64753
ATTORNEY GENERAL OF OHIO :

Plaintiff, :

vs. : JONATHAN P. HEIN, JUDGE

STATE LINE AGRI, INC, et. al. :
Defendants. : **DECISION AND ENTRY –**
On Remand from Court of Appeals

This matter came before the Court following remand from the Second District Court of Appeals which rendered its decision on April , 2011. The matter is again before the Court for decision consistent with the instructions of the Court of Appeals. The Court of Appeals reversed several trial court determinations that violations of applicable standards had occurred – either in whole or as to various individuals. The matter was remanded “for reconsideration of the appropriate amount of civil penalties” for Counts 9, 20, 21, 22 and 23.

REMAND

With regard to monetary penalties, the Court herein again adopts its prior findings and conclusions with regard to the penalties, including the following specific findings:

“The imposition of monetary penalties herein considers the punitive and rehabilitative purposes to be served. However, the analysis used by the Court has been on the penalties imposed on all counts, not on an individual basis. Further, when the same conduct violates both ODA regulations (Title 9) and OEPA regulations (Title 61), penalties are awarded for each regulatory violation.

“Regarding factors to consider regarding the penalty to impose, the Court was not provided with any economic data of any economic benefit that Defendants would have received for non-compliance. Further, although regulatory compliance efforts and

litigation enforcement actions were evident, there was no testimony relating the actual economic costs incurred by the Plaintiff. However, the parties did stipulate that Defendants would not raise “ability to pay” as a mitigating circumstance.

On remand, and after applying the decision of the Court of Appeals, the following violations are found to have been committed by the Defendants, with penalties accordingly:

COUNT I – Causing Pollution to Waters of the State from the Ansonia Facility in July, 2003 in violation of R.C. 6111: \$5,000 fine, jointly and severally against SLA and Rick Kremer.

COUNT II – Causing Pollution to Waters of the State from the Celina Facility in 2006 in violation of R.C. 6111: \$7,500 fine for November 29, 2006 and \$7,500 fine for December 1, 2006, jointly and severally. [Total fine of \$15,000.]

COUNT V – Failure to Properly Conduct and/or Document Inspections of Manure Storage Facilities in the Operating Record at the Ansonia Facility: \$100 per violation each month for \$3400 fines against SLA and Rick Kremer, jointly and severally, and an additional fine of \$350 against Richard Fisher.

COUNT VI – Land Application of Manure in Violation of the Terms and Conditions of the PTO: \$500 fine against SLA and Rick Kremer, jointly and severally.

COUNT VIII – Failure to Maintain Vegetation on and Around the Manure Storage Ponds at the Ansonia Facility: \$1,000 fine against SLA and Rick Kremer, jointly and severally. An additional \$250 fine is assessed against Richard Fisher.

COUNT IX – 2007 Land Application of Manure in Violation of the Terms and Conditions of the PTO (Ansonia Facility): After reconsidering the evidence, and with a view of imposing penalties sufficient to encourage future regulatory compliance (as stated in the Court’s prior decision), a monetary award is again assessed as follows: \$10,000 fine for

February 28, 2007 against SLA and Rick Kremer, jointly and severally, and \$10,000 fine for March 1, 2007 against SLA and Rick Kremer, jointly and severally. [Total fine of \$20,000.]

COUNT XI – Land Application on Frozen and/or Snow Covered Ground Without Prior Approval of the ODA (Ansonia Facility): \$2,000 fine against SLA and Rick Kremer, jointly and severally.

COUNT XIII – Exceeding the Application Rate in Violation of the Terms and Conditions of NPDES General Permit (Ansonia facility). \$2,000 fine against SLA and Rick Kremer, jointly and severally. An additional \$200 fine is assessed against Neal Kremer.

COUNT XV – Land Application of Manure on Frozen and/or Snow Covered Ground With Less Than 90% Residue Cover in Violation of NPDES General Permit (Ansonia Facility). \$2,000 fine against SLA and Rick Kremer, jointly and severally. An additional \$200 fine is assessed against Neal Kremer.

COUNT XIX – Failure to Properly Notify OEPA after 2007 Pollution Spill at Ansonia Facility. \$2,000 fine against SLA and Rick Kremer, jointly and severally. An additional \$200 fine is assessed against Neal Kremer.

COUNT XXIII – Failure to Provide Manure Nutrient Analysis to Recipients of Manure (excluding February 28, 2007): \$1,000 fine against SLA and Rick Kremer, jointly and severally.

IT IS THEREFORE ORDERED AND DECREED that injunctive relief is ordered as follows:

(1) For two years after the date of this order, SLA and Rick Kremer are enjoined from violating the terms and conditions of the PTO, the NPDES plan and applicable state laws and regulations regarding the Ansonia facility. The Court retains continuing jurisdiction concerning

compliance with this injunction.

(2) Within 90 days hereafter, SLA and Rick Kremer shall file applications with OEPA, ODA and/or Mercer County Soil and Water Conservation District for compliance with applicable regulations for the Mercer County facility involved herein. After submitting necessary applications, SLA and Rick Kremer shall promptly comply with supplemental requests for information and all other usual and customary steps to accomplish appropriate licensing of the Mercer County facility with OEPA, ODA and/or Mercer County SWCD.

IT IS FURTHER ORDERED AND DECREED that monetary awards are ordered as follows:

(1) SLA and Rick Kremer, jointly and severally, shall pay fines to the Clerk of Courts in the total amount of \$46,400 within 15 days hereafter. [\$16,500 for EPA violations and \$29,900 for ODA violations.] Following receipt, the Clerk of Courts shall forward payment to Plaintiff via counsel of record.

(2) Neal Kremer shall pay fines to the Clerk of Courts in the total amount of \$600 within 15 days hereafter. [\$600 for EPA violations.] Following receipt, the Clerk of Courts shall forward payment to Plaintiff via counsel of record.

(3) Richard Fisher shall pay fines to the Clerk of Courts in the total amount of \$600 within 15 days hereafter. [\$600 for ODA violations.] Following receipt, the Clerk of Courts shall forward payment to Plaintiff via counsel of record.

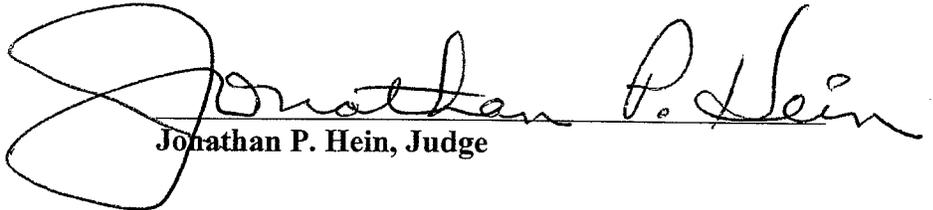
IT IS FURTHER ORDERED AND DECREED that payment of \$30,000 of the fines by SLA and Rick Kremer (listed in paragraph (1) above) is suspended on the following conditions:

(1) that SLA and Rick Kremer comply with terms of the injunction issued herein; and

(2) that within 30 days hereafter, SLA and Rick Kremer contribute \$30,000 to a non-profit, charitable foundation organized in Darke County to establish an endowment fund wherein the net income shall be distributed by the foundation to applicant(s) who provide educational programs and/or events in Darke County which promote agricultural - environmental awareness, promote water and soil pollution control, and promote water and soil conservation, such as those that may be encouraged or organized by Soil and Water Conservation District, Future Farmers of America, OSU Extension Office, institutions of public or private education, etc.

The Court has suspended \$30,000 of the fine in order to reduce animosity between Plaintiff and Defendants, to encourage future cooperation, and to ameliorate any suspicion that Plaintiff's enforcement is motivated by self-interest in the fines. Establishment of a \$30,000 endowment fund within 30 days hereafter seeks to accomplish the same purposes. The \$16,400 fine payable by SLA and Rick Kremer to the Plaintiffs acknowledges the Plaintiffs' investigative and prosecution expenses. [\$8,200 to ODA and \$8,200 to OEPA.]

The Court retains continuing jurisdiction over the terms of this Order for two years after the date of this order (unless extended by further appeal). Violations of the above terms may subject SLA and Rick Kremer to payment of additional fines, incarceration and other penalties for contempt. Court costs to be paid by Defendants, jointly and severally. FINAL APPEALABLE ORDER.


Jonathan P. Hein, Judge

cc: Margaret Malone / Aaron Farmer, Ass't. Attorneys General for Plaintiff (via U.S. mail)
Jack Van Kley, Attorney for Defendants (via U.S. mail)