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IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO, <i>ex rel.</i> ,	:	CASE NO. 01-CV-2623
JIM PETRO	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE ANDREW D. LOGAN
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
WILLIAM A. LAWRENCE, et al	:	
	:	
Defendants.	:	

**CONSENT ORDER AND FINAL JUDGMENT ENTRY
AS TO DEFENDANT CAVEN S. MCLOUGHLIN**

The Plaintiff State of Ohio, by its Attorney General ("Plaintiff" or "State of Ohio") and Defendant Caven S. McLoughlin ("Defendant McLoughlin" or "Defendant"), hereby consent to the entry of this Consent Order in order to resolve the allegations in this matter as to Defendant McLoughlin and pursuant to Chapter 6111 of the Ohio Revised Code ("R.C.").

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

I. DEFINITIONS

As used in this Consent Order:

"**Bet-Mar Mobile Home Park**" means the track of land located at 2640 Highland Avenue, Warren, Trumbull County, Ohio upon which manufactured homes used for habitation are parked, either free of charge or for revenue purposes, and include any roadway, building, structure, vehicle or enclosure used or intended for use as a part of the facilities of the park.

"**Consent Order**" means this Consent Order and Final Judgment Entry as to Defendant

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Caven S. McLoughlin.

"Contractor" means the individual(s) or company or companies retained by or on behalf of Defendant to undertake and complete the work required by this Consent Order.

"Defendant" means Caven S. McLoughlin.

"Director" means Ohio's Director of Environmental Protection.

"Disposal System" means a system for disposing of sewage, sludge, sludge materials, industrial waste, or other wastes and includes sewerage systems and treatment works.

"Effective Date" means the date the Trumbull County Court of Common Pleas enters this Consent Order.

"Effluent" means sewage or other wastewater, treated or untreated, that flows out of a disposal system, treatment plant, sewer, or industrial outfall, and generally refers to wastewater discharged into surface waters.

"Effluent Limitation" means restrictions established by the State of Ohio in the NPDES permit on quantities, rates, and concentrations in wastewater discharges.

"NPDES" means national pollutant discharge elimination system.

"NPDES permit" means the current national pollutant discharge elimination system permit and any renewals thereof.

"Ohio EPA" means Ohio Environmental Protection Agency.

"Plaintiff" means the State of Ohio by and through the Attorney General of Ohio.

"Publicly owned treatment works" or "POTW" means device or system used in the treatment (including recycling and reclamation) of domestic sewage or industrial waste of a liquid nature that is owned by a municipality, county or state entity or any public body created under state law that has authority over disposal of sewage.

"Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting water borne sewage, industrial waste, or other wastes to a point of disposal or treatment.

"Wastewater treatment plant" or "WWTP" means a facility containing a series of tanks, screens, filter, and other processes by which pollutants are removed from water.

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II. JURISDICTION AND VENUE

1. The Court has jurisdiction over the Parties and the subject matter of this case pursuant to R.C. Chapter 6111. The Complaint states a claim upon which relief can be granted against Defendant McLoughlin and venue is proper in this Court.

III. PARTIES AND NOTICE OF SALE

2. The provisions of this Consent Order shall apply and be binding upon the Plaintiff and Defendant McLoughlin, Defendant's agents, officers, employees, assigns, successors in interest, buyers and any person acting in concert or privity with any of them. Defendant McLoughlin shall provide a copy of this Consent Order to each contractor and consultant he employs to perform the work itemized herein. Defendant McLoughlin shall require each general contractor to provide a copy of this Consent Order to each of its subcontractors for such work.

3. Defendant McLoughlin shall give thirty (30) days notice to Ohio EPA before he sells the Bet-Mar Mobile Home Park ("Bet-Mar"). In addition, Defendant McLoughlin shall provide a copy of this Consent Order to any subsequent owner(s) or successor(s) prior to the transfer of Defendant McLoughlin's ownership rights.

4. Defendant McLoughlin shall inform the Ohio EPA of any change of his business addresses or telephone numbers.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

5. Defendant McLoughlin has operated his Bet-Mar wastewater treatment plant ("WWTP") and sewer system in such a manner as to result in violations of the requirements of the National Pollution Discharge Elimination System (NPDES) Permit issued to him by

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the Director and in violation of the water pollution laws of the State of Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant McLoughlin for all claims of violations alleged in the Complaint against Defendant McLoughlin, including the claims for injunctive relief and civil penalties.

6. Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against other appropriate persons for claims or conditions alleged in the Complaint. Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against any Defendant or other appropriate persons for claims or conditions not alleged in the Complaint, including violations which occur or continue after the lodging of this Consent Order with the Court pursuant to Section XV, nor shall anything in this Consent Order limit the right of any Defendant to any defenses it may have for such claims. Similarly, nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to undertake any action against any Defendant, to eliminate or mitigate conditions which may present a threat to the public health, welfare or the environment.

V. PERMANENT INJUNCTION

7. Defendant McLoughlin is hereby permanently enjoined and immediately ordered to comply with the requirements of R.C. Chapter 6111 and the rules adopted thereunder, and the terms and conditions of the currently effective NPDES Permit No. 3PV00070*AD, and any renewals or modifications thereof. Defendant shall properly operate and maintain the Bet-Mar Mobile Home Park WWTP, sewer system and any associated equipment and structures. All renewals, modifications or changes to Bet-Mar

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Mobile Home Park's NPDES Permit approved by the Director and/or effective after the entry of this Consent Order shall be deemed to be incorporated in full and made an enforceable part of this Consent Order.

VI. COMPLIANCE SCHEDULE

8. Defendant McLoughlin is hereby permanently enjoined and ordered to construct a sewer line(s) and any other associated improvements to direct the sewage and other waste generated from the Bet-Mar Mobile Home Park, and any other flow currently or previously directed to the Bet-Mar wastewater treatment works, to the sanitary sewer system owned and operated by Trumbull County by constructing and connecting sewer line(s) to the Trumbull County sanitary sewers. Defendant McLoughlin is hereby permanently enjoined and ordered to attain and maintain compliance with Ohio's water pollution control laws, R.C. Chapter 6111, for discharges from the WWTP by ceasing any further discharges to waters of the state no later than the dates established in the following schedule:

- (a) On or before July 1, 2005, Defendant McLoughlin shall initiate construction of the sewer(s) and any other associated improvements in accordance with the terms and conditions of approved PTI #02-11779;
- (b) On or before April 1, 2006, Defendant McLoughlin shall complete construction of the sewer(s) and any other associated improvements in accordance with terms and conditions of approved PTI #02-11779;
- (c) No later than seven days after completing construction of the sewer(s) and any other associated improvements, Defendant McLoughlin shall apply for permission to connect the newly constructed improvements to the Trumbull County sanitary sewer system and pay any required application or connection fees. Upon receiving such permission from Trumbull County, Defendant McLoughlin shall connect the Bet-Mar Mobile Home Park to the sewer(s) and direct all sewage and/or other wastes to such sewer(s) and immediately cease any further discharge of sewage or other

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wastes to the Bet-Mar wastewater treatment plant.

- (d) Defendant McLoughlin shall, no later than seven days after flow from the Bet-Mar Mobile Home Park has been connected to and directed to the sewer(s) pursuant to paragraph eight (8) above, properly abandon and decommission the Bet-Mar wastewater treatment plant. Such decommissioning/abandonment shall at a minimum include: (a) pumping all tanks and other vessels to remove all sewage or other material; (b) proper transportation and disposal of any sewage, industrial waste or other wastes at a licensed POTW or sanitary sewer system; (c) proper disposal of any remaining chemicals in accordance with the applicable requirements of Ohio Law established pursuant to Revised Code Chapters 3734 and/or 6111; (d) crushing the sides of all tanks and other vessels; and (e) filling the site with clean fill dirt.

Defendant shall maintain all waste management records for three (3) years after connection to the Trumbull County sanitary sewer system and make these records available to Ohio EPA upon request. Defendant shall notify Ohio EPA thirty (30) days prior to destruction of these records.

9. Within seven (7) days of completing each item listed in Paragraph 8(a)-(d) above, Defendant McLoughlin shall submit to Ohio EPA a written report describing the actions taken therein.

VII. TIME EXTENSIONS

10. If any date for performance falls upon a weekend or state or federal holiday, the time for performance is extended to the next working day following the weekend or holiday.

VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

11. Performance of the terms of this Consent Order by Defendant McLoughlin is not conditioned on the receipt of any federal or state grant, loan or funds. In addition, Defendant's performance is not excused by the failure to obtain or shortfall of any federal or

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state grant, loan or funds, or by the processing of any applications for the same.

IX. CIVIL PENALTY

12. Within ninety (90) days of the Effective Date of this Consent Order, it is hereby ordered that Defendant McLoughlin shall pay to the State of Ohio a civil penalty of Fifteen Thousand Dollars (\$15,000.00) for violation of R.C. Chapter 6111. The civil penalty payment shall be paid by delivering a certified check for the appropriate amount, made payable to "Treasurer, State of Ohio," to J. Marc Lemmon, or his successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215-3400.

X. STIPULATED PENALTIES

13. In the event that Defendant McLoughlin fails to comply with any requirement or deadline contained in Section VI of this Consent Order or any requirement or deadline contained in any document approved in accordance with this Consent Order, Defendant is liable for and shall pay stipulated penalties in accordance with the following schedule for each failure to comply:

- (a) For each day of each failure to comply with a requirement or deadline of this Consent Order, up to and including thirty (30) days - Two Hundred Fifty Dollars (\$250.00) per day for each requirement or deadline not met.
- (b) For each day of each failure to comply with a requirement or deadline of this Consent Order, from thirty-one (31) to sixty (60) days - Six Hundred Dollars (\$600.00) per day for each requirement or deadline not met.
- (c) For each day of each failure to comply with a requirement or deadline of this Consent Order, over sixty (60) days - Eight Hundred Fifty Dollars (\$850.00) per day for each requirement or deadline not met.

14. In the event that there is a violation of the effluent limitations established in

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Part I of the NPDES permit, Defendant McLoughlin shall pay a stipulated penalty of One Thousand and Five Hundred Dollars (\$1,500.00) per day per effluent limitation violation.

In addition, if there is an unauthorized discharge or bypass from any location in the Bet-Mar Mobile Home Park WWTP or disposal system, except as otherwise provided by the NPDES permit Defendant McLoughlin shall pay a stipulated penalty of One Thousand and Five Hundred Dollars (\$1,500.00) for each unauthorized discharge or by pass from any location.

15. Except as provided above in Paragraph 14, if Defendant McLoughlin fails to comply with Defendant's NPDES permit terms or conditions, Defendant McLoughlin shall pay a stipulated penalty according to the following schedule:

- (a) For each day of each failure to meet a requirement of this Consent Order and/or failure to comply with Defendant's NPDES permit term or condition up to thirty (30) days - To Hundred Fifty Dollars (\$250.00) per day per requirement not met;
- (b) For each day of each failure to meet a requirement of this Consent Order and/or failure to comply with Defendant's NPDES permit term or condition from thirty-one (31) to sixty (60) days - Five Hundred Dollars (\$500.00) per day per requirement not met; and
- (c) For each day of each failure to meet a requirement of this Consent Order and/or failure to comply with Defendant's NPDES permit term or condition over Sixty-one (61) days - Seven Hundred Fifty Dollars (\$750.00) per day per requirement not met.

16. Any payment required to be made under the provisions of Section X of this Consent Order shall be made by delivering to J. Mark Lemmon, or his successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215-3400, a certified check or checks in the appropriate amounts within forty-five (45) days from date of the failure to meet the requirement of the Consent Order, made payable to "Treasurer, State of Ohio." Defendant shall also state in

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writing the specific failure of the Consent Order and/or NPDES permit term and condition which was not complied with, and the date(s) of non-compliance. The payment of stipulated penalties by Defendant McLoughlin and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to Section X shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order.

XI. MISCELLANEOUS

17. Nothing in this Consent Order shall affect Defendant's obligation to comply with all applicable federal, state or local law, regulation, rule or ordinance. Defendant McLoughlin shall obtain any and all federal, state, or local permits necessary to comply with this Consent Order.

XII. POTENTIAL FORCE MAJEURE

18. If any event occurs which causes or may cause a delay in Defendant's compliance with any requirement of this Consent Order, Defendant McLoughlin shall notify the Ohio EPA in writing within ten (10) days from when the Defendant knew, or by the exercise of due diligence should have known, of the event. The notification to Ohio EPA shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by the Defendant McLoughlin to prevent or minimize the delay, and the timetable by which those measures will be implemented. Defendant shall adopt all reasonable measures to avoid or minimize any such delay.

19. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendant McLoughlin may raise a defense that his conduct was caused by

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force majeure events that were beyond Defendant's control including but not limited to acts of God, strikes, acts of war or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant McLoughlin and the Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time, if ever, that a court proceeding to enforce this Consent Order is commenced by the Plaintiff. At that time, Defendant McLoughlin will bear the burden of proving that any delay was or will be caused by circumstances beyond the control of Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or a change in Defendant's financial circumstances, shall not constitute circumstances entirely beyond the control of Defendant McLoughlin or serve as a basis for an extension of time under this Consent Order. Failure by Defendant to timely comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendant's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one date based on a particular incident does not mean that Defendant McLoughlin qualifies for an extension of a subsequent date or dates. Defendant must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order without a Force Majeure Clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

XIII. RETENTION OF JURISDICTION

20. The Court will retain jurisdiction of this action for the purpose of administering or enforcing Defendant McLoughlin's compliance with this Consent Order.

XIV. COSTS

21. Defendant McLoughlin is hereby immediately ordered to pay half of the court costs of this action. The other half of the court costs shall be paid by Defendants Lawrence.

XV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

22. The parties agree and acknowledge that final approval by the Plaintiff and Defendant, and entry of this Consent Order is subject to the requirement of 40 C.F.R. §123.27(d)(2)(iii), which provides for notice of the lodging of this Consent Order, opportunity for public comment, and the consideration of any public comment. The Plaintiff and Defendant reserve the right to withdraw consent to this Consent Order based on comments received during the public comment period. Defendant McLoughlin shall pay the cost of publishing the public notice within thirty (30) days of receipt of a bill or notice from Ohio EPA.

23. Upon the signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon all parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

XVI. TERMINATION OF STIPULATED PENALTIES

24. The provisions of the Consent Order set forth in Section X requiring the payment of stipulated penalties may be terminated upon a demonstration by Defendant McLoughlin that he has paid all penalties required by this Consent Order and for a period of twelve consecutive months beginning on the date of entry of this Consent Order, he has achieved and maintained compliance with the final effluent limitations contained in his currently effective NPDES permit No. 3PV00070*AD, along with the other terms and conditions of said permit, and any renewals or modifications thereof.

25. Termination of the stipulated penalty section of this Consent Order shall only be by order of the Court upon application by any party, and a demonstration that the conditions outlined in Paragraph 24 have been met.

IT IS SO ORDERED:


ANDREW D. LOGAN, JUDGE
TRUMBULL COUNTY
COURT OF COMMON PLEAS

March 9, 2007
DATE

[Signature page follows]

JEFF INFANTE ALLEN
CLERK OF COURTS
TRUMBULL COUNTY

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CLERK OF COURTS
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APPROVED:

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