

COPY

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**BEFORE THE COURT OF COMMON PLEAS
PICKAWAY COUNTY, OHIO**

07 JUL 13 PM 1:38

**STATE OF OHIO, ex rel., MARC DANN
ATTORNEY GENERAL**

: CASE NO. 2006-CI-242

:

: JUDGE KNECE

LEAH
CLERK OF COURTS
PICKAWAY COUNTY

Plaintiff,

:

:

v.

:

:

**THE ESTATE OF FRANK A.Z.
WILDASINN, ET AL.**

:

:

:

Defendants.

:

CONSENT ORDER

Plaintiff State of Ohio ("Plaintiff"), by its Attorney General Marc Dann, having filed a Complaint seeking injunctive relief and civil penalties for violations of Ohio Revised Code ("R.C.") Chapter 6111 and the rules promulgated thereunder, and Defendants, The Estate of Frank A.Z. Wildasinn by Emy Willowby, Executor, and The Frank A.Z. Wildasinn Trust by Emy Willowby, Trustee, ("Defendants"), hereby consent to the entry of this Consent Order. The entry of this Consent Order relieves Defendants of the obligation to comply with the Final Findings and Orders issued by the Director of Environmental Protection ("the Director") on December 27, 2000 on appeal to the Environmental Review Appeals Commission.

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

I. 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 the Defendants pursuant to R.C. Chapter 6111. Venue is proper in this Court.

II. PERSONS BOUND

2. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and their officers, agents, servants, employees, successors, and assigns, and those persons in active concert or participation with them. Defendants shall provide a copy of this Consent Order to each general contractor and consultant that Defendants employ to perform the work itemized herein. Defendants shall require each general contractor to provide a copy of this Consent Order to each of its subcontractors for such work.

3. Defendants shall give thirty (30) days notice to Ohio EPA before sale or transfer of the Vantage Point Mobile Home Park or the land on which the park was located. In addition, Defendants shall provide a copy of this Consent Order to any subsequent owner(s) or successor(s) prior to the transfer of Defendants' ownership rights.

4. Defendants shall inform the Ohio EPA of any change in business address or telephone number within sixty (60) days of the change.

III. MUTUAL RELEASE

5. Emy Willowby is bound by the terms and conditions of this Consent Order in her representative capacity as executor of Defendant Estate of Frank A.Z. Wildasinn and as trustee of Defendant Frank A.Z. Wildasinn Trust. Defendants Emy Willowby, Sherry Hazen and Kimberly Klein are hereby dismissed from this action in their individual capacities. Defendants

Emy Willowby, Sherry Hazen and Kimberly Klein hereby release the State from any potential claims they may have against the State as a result of this action.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

6. Plaintiff alleges that Defendants have operated their wastewater treatment plant (“WWTP”) and sewer system in such a manner as to result in violations of R.C. Chapter 6111 and the requirements set forth in the Final Findings and Orders issued by the Director on December 27, 2000 to Frank Wildasinn d.b.a. Vantage Point Mobile Home Park, his assigns and successors in interest related to the Vantage Point Mobile Home Park. The State’s allegations include but are not limited to allegations that Defendants have had unauthorized discharges from its sewer system and wastewater treatment plant. Defendants deny the allegations of the Complaint.

7. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims or violations alleged in the Complaint against Defendants, including the claims for injunctive relief and civil penalties. Compliance with the terms of this Consent Order shall also constitute full satisfaction of the Final Findings and Orders issued by the Director on December 27, 2000 to Frank Wildasinn d.b.a. Vantage Point Mobile Home Park, his assigns and successors in interest related to the Vantage Point Mobile Home Park.

8. 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 Defendants or other appropriate persons for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the

Complaint, nor shall anything in this Consent Order limit the right of Defendants or other persons to any defenses they 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 person, including Defendants, to eliminate or mitigate conditions that may present a threat to the public health, welfare or the environment.

9. Within seven (7) days of the effective date of this Consent Order, Defendants agree to file a Notice or Stipulation of Dismissal with the Environmental Review Appeals Commission (“ERAC”) for the State of Ohio, in the appeal, *Frank A.Z. Wildasinn v. Koncelik*, ERAC Case No. 654901. Defendants agree to pay all costs due to ERAC arising out of this action.

V. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

10. Performance of the terms of this Consent Order by Defendants is not conditioned on the receipt of any federal, state or any other grant, loan, or funds. In addition, Defendants’ performance is not excused by the failure to obtain, or shortfall of, any such grant, loan, or funds, or by the processing of any applications for the same.

VI. REPORTING REQUIREMENT

11. Any report or notification required under this Consent Order shall be sent to Ohio EPA at the following address:

Ohio Environmental Protection Agency
Central District Office
Lazarus Government Center
50 West Town St., Suite 700
Columbus, Ohio 43215
Fax Number: (614) 728-3898
Attention: Sheree Gossett-Johnson or her successor

VII. INJUNCTIVE RELIEF

12. Defendants are hereby permanently enjoined from operating any of the wastewater treatment works and/or disposal system remaining on the property previously known as Vantage Point Mobile Home Park, and permanently enjoined from discharging “sewage”, “industrial waste”, or “other wastes” to “waters of the state” (as defined in R.C. 6111.01) from the wastewater treatment works and/or disposal system. In the event that the successors in interest to Defendants desire to again establish a mobile home park on the property, or otherwise develop the property, the successors in interest of the property shall comply with R.C. Chapter 6111 and the rules adopted thereunder, including but not limited to, obtaining any necessary approvals, permits to install, and NPDES permits required under R.C. Chapter 6111 and the rules adopted thereunder.

VIII. CIVIL PENALTY

13. It is hereby ordered that Defendants, the Estate of Frank A.Z. Wildasinn and the Frank A.Z. Wildasinn Trust, jointly and severally, shall pay to the State of Ohio a civil penalty of **\$35,000.00** within thirty (30) days of the entry of the signing of this Consent Order. The civil penalty payment shall be made by certified check or checks payable to “Treasurer, State of Ohio,” and shall be delivered to Martha Sexton, Paralegal, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, Public Protection Division, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

IX. STIPULATED PENALTIES

14. In the event that Defendants fail to meet any of the requirements of this Consent Order, Defendants shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

- i. For each day of non-compliance after the scheduled milestone date from one (1) day to thirty (30) days – Seven Hundred Fifty dollars (\$750.00) per day not met;
- ii. For each day of non-compliance after the scheduled milestone date from thirty-one (31) days to sixty (60) days – One Thousand dollars (\$1,000.00) per day not met;
- iii. For each day of non-compliance after the scheduled milestone date over sixty-one (61) days – One Thousand Five Hundred dollars (\$1,500.00) per day not met.

15. Any stipulated penalty payment required to be made under the provisions of this Consent Order shall be made within thirty (30) days of the violation, by certified check, payable to “Treasurer, State of Ohio,” and shall be delivered to Martha Sexton, Paralegal, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, Public Protection Division, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. Defendants shall also include a written statement of the specific provision(s) of the Consent Order that was not complied with and the date(s) of non-compliance.

16. The imposition, payment and collection of stipulated penalties for specific violations of this Consent Order shall not prevent Plaintiff from pursuing additional remedies, civil, criminal or administrative, for violations of applicable laws.

X. RETENTION OF JURISDICTION

17. The Court will retain jurisdiction of this action for purposes of enforcing this Consent Order.

XI. COURT COSTS

18. Defendants are hereby ordered to pay all court costs of this action.

XII. MISCELLANEOUS

19. Nothing in this Consent Order shall affect Defendants' obligation to comply with all applicable federal, state and local laws, regulations, rules and ordinances. Defendants shall obtain any and all federal, state, or local permits necessary to comply with this Consent Order.

XIII. ENTRY OF CONSENT ORDER AND FINAL JUDGEMENT BY CLERK

20. The parties agree and acknowledge that final approval by the Plaintiff and Defendants, and entry of this Consent Order is subject to the requirement of 40 CFR § 123.27(d)(2)(iii), which provides for public notice that this Consent Order has been lodged with the Court, opportunity for public comment, and the consideration of any public comment. The State and Defendants reserve the right to withdraw this Consent Order based on comments received during the public comment period.

21. Defendants shall pay the cost of publishing the public notice.

22. Pursuant to Rule 58(B) of the Ohio Rules of Civil Procedure, 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 the parties notice of the judgment and its date of entry in 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.

XIV. AUTHORITY TO ENTER INTO THE CONSENT ORDER

23. The signatory for Defendants represents and warrants that he/she has been duly authorized to sign this document and so bind the Defendants to all terms and conditions thereof.

IT IS SO ORDERED

DATE

JUDGE P. RANDALL KNECE
COURT OF COMMON PLEAS
PICKAWAY COUNTY

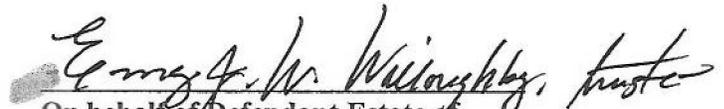
APPROVED:

MARC DANN,
ATTORNEY GENERAL

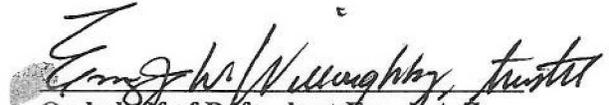


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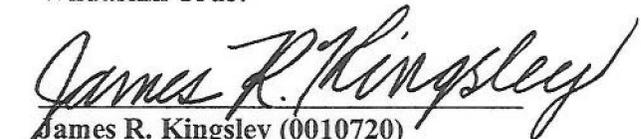
Counsel for Plaintiff, State of Ohio



On behalf of Defendant Estate of
Frank A.Z. Wildasinn

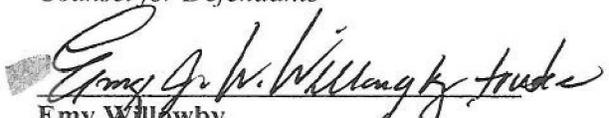


On behalf of Defendant Frank A.Z.
Wildasinn Trust



James R. Kingsley (0010720)
157 West Main St
Circleville, Ohio 43113
Phone: (740) 477-2546
Kingsleyjrlaw@yahoo.com

Counsel for Defendants



Emy Willowby

Sherry Hazen

Kimberly Klein

IT IS SO ORDERED

DATE

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COURT OF COMMON PLEAS
PICKAWAY COUNTY

APPROVED:

MARC DANN,
ATTORNEY GENERAL

On behalf of Defendant Estate of
Frank A.Z. Wildasinn

Jessica Atleson (0077871)
Margaret A. Malone (0021770)
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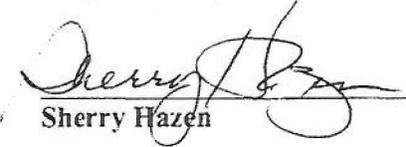
Counsel for Plaintiff, State of Ohio

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Kingsleyjrlaw@yahoo.com

Counsel for Defendants

Emy Willowby



Sherry Hazen

Kimberly Klein

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Counsel for Defendants

Amy Willowby

Sherry Hazen

Kimberly Klein
Kimberly Klein

IT IS SO ORDERED

DATE 07/13/07

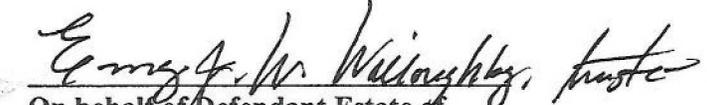

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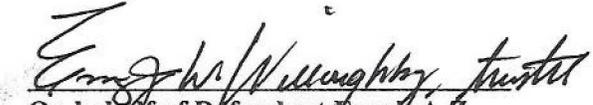
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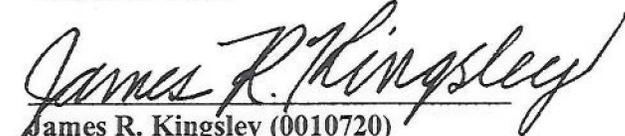
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Counsel for Plaintiff, State of Ohio


On behalf of Defendant Estate of
Frank A.Z. Wildasinn


On behalf of Defendant Frank A.Z.
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Civil Case Summary Sheet

Date consent order filed on 7/13/07
Filing Date Complaint filed on 5/5/06

Case name

State v. Estate of Frank A.Z. Wildasinn, et al.

Consent Order



Judgment



Attorney assigned:

Jessica Atleson

EAGO Number:

240153

Client:

Director | Ohio EPA

Penalties: (INDICATE IF PAYMENTS WILL BE OCCURRING)

Amount: \$35,000.00 Due Dates: 8/12/07 (30 days from entry)

COST RECOVERY

Amount:

Due Dates:

Attorney and Investigative Fees:

Amount:

Due Dates:

supplemental Environmental Project:

Amount:

Due Dates:

DESCRIPTION OF SEP:

Other Instructions: