

IN THE COURT OF COMMON PLEAS
WOOD COUNTY, OHIO

CINDY A. HOFNER

STATE OF OHIO, ex rel.
RICHARD CORDRAY
OHIO ATTORNEY GENERAL

Plaintiff,

v.

MAURER MOBILE HOME COURT, INC.,

Defendant.

: CASE NOS. 03 CV 805
: 07 CV 556
:
:
: JUDGE KELSEY
:
:
:
:

CONSENT ORDER FOR INJUNCTIVE RELIEF AND CIVIL PENALTY

Plaintiff State of Ohio by its Attorney General Richard Cordray (hereinafter "State" or "Plaintiff"), having filed the Complaint in this action against Defendant Maurer Mobile Home Court, Inc., (hereinafter "Maurer") to enforce the State of Ohio's drinking water laws and the rules promulgated thereunder, concerning the Defendant's operation of Defendant's "public water system" (hereinafter "PWS") "community water system" (hereinafter "CWS") ID Number: 8701412 at Defendant Maurer located at 18330 Brim Road, Bowling Green, Ohio, Wood County, and

Plaintiff and Defendant seeking to resolve all issues concerning Defendant's compliance with the Court's orders in the case, *State ex rel v Maurer Mobile Home Court, Inc*, Case No. 03 CV 805 concerning the operation of the wastewater treatment plant at this same location, and

Plaintiff and Defendant Maurer having consented to the entry of this Consent Order;

JOURNALIZED

OCT 20 2009

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the Plaintiff and Defendant Maurer hereto, it is hereby **ORDERED, ADJUDGED** and **DECREED** 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 Defendant Maurer under Chapters 6109 and 6111 of the Ohio Revised Code. Venue is proper in this Court.

II. PERSONS BOUND

2. All terms and provisions of this Consent Order shall apply to and be binding upon Defendant Maurer and his assigns, successors in interest and others bound by Rule 65(D) of the Ohio Rules of Civil Procedure, who are or will be acting in concert and/or in privity with the Defendant. The Defendant shall provide a copy of this Consent Order to each contractor and/or consultant employed to perform any and all work itemized herein and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant Maurer has operated a PWS/CWS at Maurer Mobile Home Court in such a manner as to result in numerous violations safe drinking water laws of the State of Ohio. Defendant specifically disputes Plaintiff's allegations. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant Maurer for all claims under such laws alleged in the Complaint. In addition, compliance with the terms of this Consent Order shall resolve all outstanding issues regarding Defendant's compliance with the Court's orders in case no 03 CV 805.

4. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief against Defendant 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 Defendant to any defenses it may have for such claims. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief against other appropriate persons, not covered by this Consent Order for claims or conditions alleged in the Complaint. Similarly, nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to undertake any action against any person, including Defendant, to eliminate or mitigate conditions that may present a threat to the public health, welfare or the environment.

IV. PERMANENT INJUNCTION

A. Defendant's Wastewater Treatment Plant

5. Defendant Maurer 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 his National Pollutant Discharge Elimination System, (hereinafter "NPDES") Permit, number 2PY00005*BD and any renewals or modifications thereof for the WWTP at Maurer Mobile Home Court. Within 120 days from the date of this Order, Defendant shall complete any and all remaining injunctive relief required in this Court's Order of July 6, 2006 issued in Wood County Case No. 03 CV 805 and Journalized in Volume 453, Page 106, including but not limited to installation of the sludge holding tank.

B. Defendant's Drinking Water System

6. Defendant Maurer is permanently enjoined and ordered to immediately comply with the requirements of R.C. Chapter 6109 and the rules adopted thereunder.

7. Within 120 days from the date of this Order, Defendant shall properly abandon and disconnect its gaseous chlorine disinfection system and shall properly convert to a liquid chlorine disinfection system. Defendant shall obtain all necessary plan approvals from the Ohio EPA prior to making this conversion.

V. EFFECT OF CONSENT ORDER

8. This Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing public water system or wastewater treatment plant. Approval for any such construction or modification shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

VI. CIVIL PENALTY

9. Pursuant to R.C. Sections 6109.33 and 6111.09, it is hereby ordered that Defendant Maurer shall pay to the State of Ohio a cash civil penalty of eighty thousand dollars (\$80,000.00). The penalty shall be without interest provided that payments are made according to the schedule set forth below. Defendant shall make payments of this civil penalty to the State of Ohio according to the following schedule;

- a. No later than January 1, 2010, the amount of ten thousand dollars (\$10,000.00);
- b. No later than August 1, 2010, the amount of five thousand dollars (\$5,000.00);
- c. No later than January 1, 2011, the amount of fifteen thousand dollars (\$15,000.00);

JOURNALIZED

OCT 20 2009

Vol 483 Pg 562

d. No later than June 30, 2011 the remaining balance of fifty thousand dollars (\$50,000.00);

10. If the Defendant fails to make any one of the civil penalty payments on or before the date specified by paragraph 9 this Consent Order for such payment, the total civil penalty of eighty thousand (\$80,000.00) ordered to be paid by the Defendant becomes immediately due and payable to the State of Ohio. The Defendant shall pay the eighty thousand dollars (\$80,000.00) civil penalty less any amount of civil penalty that has already been paid to the State of Ohio pursuant to paragraph 9 of this Consent Order. Should the Defendant anticipate not being able to meet the payment due on June 30, 2011, the State shall be notified no later than April 30, 2011. If Defendant requests a modification of the June 30, 2011, payment, the Defendant shall provide all financial information requested by the State in order to evaluate the reasonableness of said request.

11. The civil penalty payments shall be made by delivering 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, a certified check or checks, made payable to the order of the "Treasurer, State of Ohio," for the appropriate amount.

VII. STIPULATED PENALTIES

12. In the event that Defendant Maurer fails to meet any of the requirements of this Consent Order set forth in paragraph 7, the Defendant 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. The Defendant 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 that failure to comply continues more than one hundred twenty (120) days, Defendant shall be liable for an additional six hundred dollars (\$600.00) per day for each requirement not met.

13. Any payment required to be made under the provisions of paragraph 12 of this Consent Order shall be made by delivering a certified check or checks, made payable to "Treasurer, State of Ohio", for the appropriate amounts, 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 address set forth in paragraph 11.

14. If Defendant Maurer fails to meet any of the daily effluent limits of any of his NPDES Permits, the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

- (a) For each day of each failure to comply with the daily effluent limits in its NPDES Permit from one (1) day to thirty (30) days – two hundred fifty dollars (\$250.00) per day per violation not met;
- (b) For each day of each failure to comply with the daily effluent limits in its NPDES Permit from thirty-one (31) days to sixty (60) days – five hundred dollars (\$500.00) per day per violation not met;
- (c) For each day of each failure to comply with the daily effluent limits in its NPDES Permit from sixty-one (61) days to ninety (90) days– seven hundred fifty dollars (\$750.00) per day per violation not met.
- (d) For each day of each failure to comply with the daily effluent limits in its NPDES Permit over ninety (90) days – one thousand dollars (\$1000.00) per day per violation not met.

15. For the purpose of calculating stipulated penalties under the provisions of this paragraph, each 7-day period of violations of a specific 7-day average effluent limitation shall be calculated as a single violation. If Defendant fails to meet any of the 7-day average effluent limits of

JOURNALIZED

OCT 20 2009

any of his NPDES Permits, the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

- a. for each first through fourth consecutive failure to meet any 7-day average effluent limitation, five hundred dollars (\$500.00) for each 7-day period during which each failure occurs;
- b. For each fifth through eight consecutive failure to meet any 7-day average effluent limitation, one thousand dollars (\$1,000.00) for each 7-day period during which each such failure occurs;
- c. for each ninth through eleventh consecutive failure to meet any 7-day average effluent limitation, one thousand two hundred fifty dollars (\$1,250.00) for each 7-day period during which each such failure occurs;
- d. for each failure beyond the eleventh consecutive failure to meet any 7-day average effluent limitation, one thousand five hundred dollars (\$1,500.00) for each 7-day period during which each such failure occurs.

16. For the purpose of calculating stipulated penalties under the provisions of this paragraph, each 30-day period of violation of a specific 30-day average effluent limitation shall be calculated as a single violation. If Defendant fails to meet any of the 30-day average effluent limits of any of his NPDES Permits, the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

- (a) For each failure to meet any 30-day average effluent limitation, one thousand dollars (\$1000.00) for each 30-day period during which each such failure occurs;
- (b) For each second consecutive failure to meet any 30-day average effluent limitation, one thousand five hundred dollars (\$1,500) for each 30-day period during which each such consecutive failure occurs;
- (c) For each third consecutive failure to meet any 30-day average effluent limitation, two thousand dollars (\$2,000.00) for each 30-day period during which each such consecutive failure occurs;
- (d) For each failure beyond the third consecutive failure to meet any 30-day average effluent limitation, two thousand five hundred dollars (\$2,500.00) for each 30-day period during which each such consecutive failure occurs.

17. Payments due under paragraphs 14, 15 and 16 shall be made within forty-five (45) days from the date of the failure to meet the applicable deadline or knowledge of the effluent limitation violation. Payments shall be accompanied by a written explanation of the effluent violation(s). Any payment required to be made under this paragraph shall be made by delivering to Karen Pierson, or her successor, at the address set forth in paragraph 11, a certified check or checks for the appropriate amounts, made payable to "Treasurer, State of Ohio".

18. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to Section IX shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this

Consent Order. Further, payment by Defendant shall not be considered an admission of liability on the part of Defendant.

19. This Consent Order shall terminate one year after all stipulated penalties, which include any penalties incurred under this agreement for non-compliance, have been paid in full. Violations that result from or are caused by reasons beyond Defendant's control will be a valid defense to additional penalties and such defense will be brought to the attention of the enforcement agency. If the parties cannot agree that the violation(s) was because of some reason beyond the Defendant's control then the matter will be adjudicated.

VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

20. Performance of the terms of this Consent Order by Defendant Maurer is not conditioned on the receipt of any federal or state grant funds or loans. In addition, Defendant Maurer's performance is not excused by the failure to obtain or shortfall of any federal or state grant funds or loans, or by the processing of any applications for the same.

IX. RETENTION OF JURISDICTION

21 The Court will retain jurisdiction of this action for the purposes of overseeing that Defendant Maurer complies with this Consent Order and making any order or decree that it deems appropriate to carry out this Consent Order.

X. COURT COSTS

22. Defendant Maurer is hereby ordered to pay the court costs of this action.

XI. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

23. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon 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 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.

IT IS SO ORDERED.


DATE



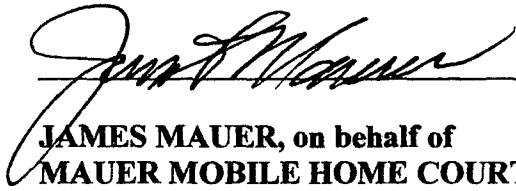
JUDGE KELSEY

APPROVED:

**RICHARD CORDRAY,
OHIO ATTORNEY GENERAL**

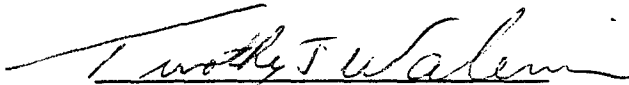

**L. SCOTT HELKOWSKI (0068622)
THOMAS BEHLEN (0042721)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
(614) 466-2766
Counsel for Plaintiff State of Ohio**

10/7/09
DATE


**JAMES MAUER, on behalf of
MAUER MOBILE HOME COURT Inc.
17910 N. Dixie Highway
Bowling Green, Ohio 43402
(419)-352-5111**

Defendant

9-29-09
DATE


**TIMOTHY J. WALERIUS (0063790)
316 N. Michigan Ave.
8th Floor
Toledo, Ohio 43604
Counsel for Defendant**

10-17-09
DATE

JOURNALIZED

OCT 20 2009

Vol 483 Pg 568