

**THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO**

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

PLAINTIFF,

v.

**MARY TALBERT dba
CATALPA GROVE
MOBILE HOME PARK, et al.,**

DEFENDANTS.

CASE NO. 2015 CV 06338

JUDGE BLAINE

CONSENT ORDER FOR INJUNCTIVE RELIEF AND CIVIL PENALTY

WHEREAS, Plaintiff, the State of Ohio, by its Attorney General (hereinafter “State” or “Plaintiff”) has initiated this action against Mary Talbert dba Catalpa Grove Mobile Home Park and Estate of Michael Talbert c/o sole fiduciary Mary Talbert (“Defendants”) to enforce Ohio’s Safe Drinking Water Laws and the rules promulgated under these laws. This Consent Order resolves disputed claims concerning Defendants’ operation of the public water system (the “Public Water System”) at the mobile home park located at 5017 Wolfcreek Pike, Dayton, Montgomery County, Ohio 45426.

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

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over both the parties and the subject matter pursuant to R.C. Chapter 6109. The State's Amended Complaint states a claim upon which relief can be granted against the Defendants under Chapter 6109 of the Ohio Revised Code. Venue is proper in this Court.

II. PERSONS BOUND

2. This Order shall apply to and be binding upon Defendants, and, to the extent consistent with Civ. R. 65(D), on their agents, officers, employees, contractors, assigns, successors in interest, and those persons acting in concert, privity, or participation with any Defendant who receives actual or constructive notice of this Order whether by personal service, by public record filed in the county land record, or otherwise. Defendants shall provide a copy of this Order to any new owner of the Public Water System, to the manager of the mobile home park, and to the certified operator of the Public Water System within twenty-four hours of the entry of this Order. Defendants shall also provide a copy of this Order to any new manager of the mobile home park and to any new certified operator of the Public Water System within twenty-four hours of their employment. The requirements of Parts V, VI, and VIII of the Consent Order shall cease to apply to Defendants upon the transfer of the ownership of the mobile home park to another person. However, these requirements will apply to the new owner. Any violations of Parts V, VI, and VIII of the Consent Order that accrue prior to the sale are reserved as to Defendants.

III. SATISFACTION OF LAWSUIT

3. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims alleged in the Complaint that was filed on

December 4, 2015, the Amended Complaint that was filed on September 7, 2016, and the contempt charges filed by the Plaintiff in this case. This satisfaction of liability also applies to any violations of any past order issued by the Court in this case, including but not limited to the Temporary Restraining Order of March 23, 2016, the Preliminary Injunction of May 6, 2016, the Amended Preliminary Injunction of June 20, 2016, the Temporary Restraining Order of July 29, 2016, and the Decision, Entry and Order of October 11, 2016.

IV. RESERVATION OF RIGHTS

4. Nothing in this Consent Order, including the imposition of stipulated civil penalties for violations of this Consent Order, shall limit the authority of the Plaintiff to:

(a) Seek any legal or equitable relief from the Defendants or any other appropriate person for claims or conditions not alleged in the Complaint or Amended Complaint, including violations that occur after the filing of the Complaint other than the violations described in the second sentence of Paragraph 3 above;

(b) Seek any legal or equitable relief from the Defendants or any other appropriate person for claims or conditions alleged in the Complaint or Amended Complaint that occur or exist on the date of or after the entry of this Consent Order other than the violations described in the second sentence of Paragraph 3 above;

(c) Enforce this Consent Order through a contempt action or otherwise seek relief for violations of this Consent Order;

(d) Take any action authorized by law against any appropriate person, including the Defendants, to eliminate or mitigate conditions at the Defendants' public water system that may present a threat to the public health, safety, welfare, or the environment; or

(e) Bring any legal or equitable action against any appropriate person other than the Defendants for any violation of applicable laws. For the purposes of this Consent Order, and in particular the provisions of this Paragraph, the term “person” includes: an individual, corporation, business trust, estate, trust, partnership, association, municipal corporation, interstate body created by compact, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.

V. INJUNCTION

5. The Defendants are permanently enjoined and ordered to comply immediately with all applicable provisions of R.C. Chapter 6109 and the rules promulgated under this Chapter.

6. Defendant shall maintain an appropriately certified Operator of Record, in accordance with Ohio Adm.Code 3745-7.

7. Defendants shall, in the event of an interruption in water service or an interruption in disinfection, provide direct notice to all residents as soon as reasonably possible but no later than 24 hours after either actually learning of the interruption or when a reasonable person should have known of the interruption, advising that the water from their taps should not be used, without first boiling, until the residents are notified that Catalpa Grove MHP’s water has tested safe for potable use. Direct notice shall include posting notice on each residence and/or hand delivery to each residence.

8. Defendants shall provide a minimum of one gallon of bottled water per day per resident legally residing at the park when there is a boil advisory of more than 48 hours. Defendants shall provide a minimum of one gallon of bottled water per day per resident legally residing at the park within 24 hours of an interruption in water service, unless water

service is restored during that 24 hours. Defendants may also comply with this requirement by providing each resident legally residing at the park with a gallon of water within 24 hours prior to an anticipated interruption of water, so that the resident can have the gallon of water on hand for use during the interruption, provided that at least one resident in each trailer signs an acknowledgement that he or she has received a gallon of water for each person legally residing there. If any resident does not want the water, the resident must sign in writing that the resident understands he is entitled to the water but does not want the water for the current interruption. Such signed waivers shall be provided to Ohio EPA district staff within 24 hours of the waiver being signed. The quantity of water provided to these residents during any such day shall be replenished by the next day in a quantity necessary to make one gallon of bottled water per day per resident legally residing at the park available by that time. For each instance in which bottled water must be provided, notice shall be provided within 48 hours for boil advisories or within 24 hours for water interruptions to residents of the availability of bottled water, the times and location of availability, and a contact number shall be on all notices. The notice shall state that delivery assistance may be requested due to incapacity. Such bottled water shall either (1) be made available from 9 a.m. to 12 p.m. and from 4 p.m. to 7 p.m. on each day on which bottled water must be made available, or (2) delivered directly to each mobile home occupied by a resident legally residing at the park, except for those mobile homes whose residents state that they do not want the water. If any resident does not want the water, he must sign in writing that he understands he is entitled to the water but does not want the water. Such signed waivers shall be provided to Ohio EPA district staff within 24 hours of the waiver being signed. If option (1) is exercised, Defendants shall ensure that an individual with a key to access this bottled water is available

during these times and, within two hours of the time of the required posting or required delivery, shall also notify Ohio EPA of that individual's contact information, including a valid phone number where that individual can be reached during the time when bottled water must be made available or is being delivered.

9. Defendants shall conduct all the sampling and monitoring for contaminants required of a public water system by R.C. Chapter 6109.

10. Defendants shall report any interruptions in water service, including boil advisories, to the Ohio EPA Southwest District Office immediately but no later than twenty-four hours from actually learning of the interruption or no later than twenty-four hours from when Defendant should have reasonably known about the interruption, advising Ohio EPA of the suspected cause and the steps being made to resolve the cause of the interruption or boil advisory.

11. Defendants shall maintain on-site a backup chlorine feed pump of sufficient capacity to replace the largest unit, and shall ensure spare parts are available onsite to replace parts subject to wear and breakage, in accordance with Section 4.4.1.3 of the Great Lakes-Upper Mississippi River Board of State And Provincial Public Health And Environmental Managers, "Recommended Standards for Water Works," 2012 Edition.

12. Defendants shall immediately utilize proper disinfection and maintain the required minimum chlorine residual of at least two-tenths milligrams per liter free chlorine or one milligram per liter combined chlorine measured at representative points throughout the distribution, in accordance with Ohio Adm.Code 3745-83-01(C), and comply with the total chlorine maximum residual disinfection level of 4.0 milligrams per liter, in accordance with Ohio Adm.Code 3745-81-10.

13. Defendants shall maintain a minimum pressure of twenty pounds per square inch gauge at ground level at all points in the distribution system under all conditions of flow other than conditions caused by line breaks, extreme fire flows, or other extraordinary circumstances, in accordance with Ohio Adm.Code 3745-83-01(E).

VI. REPORTING REQUIREMENT

14. Defendants shall send all documents or reports concerning the public water system that are required to be submitted to Ohio EPA's District Office under this Consent Order to: Ohio Environmental Protection Agency, Southwest District Office, Mariano Haensel, or his successor, 401 East Fifth Street, Dayton, Ohio 45402.

VII. CIVIL PENALTY

15. Based upon its economic analysis of the Defendants' financial condition and taking into consideration their ability to pay a civil penalty within the guidelines set forth by the Ohio Supreme Court in *State ex rel. Brown v. Dayton Malleable*, the State has agreed to accept a substantially reduced civil penalty.

16. Defendants are jointly and severally assessed a civil penalty totaling nine thousand dollars (\$9,000) to be paid to the State of Ohio, which shall be paid in 12 quarterly installments at the rate of \$750 per installment. The first installment is due by the end of the first full quarter of the year following the execution of the Order by the Court, and subsequent installments are due by the end of each following quarter of the year, making installments due on March 31, June 30, September 30, and December 31 of each year until the civil penalty is paid in full. This payment schedule is subject to the provisions of Paragraph 26.

17. Defendants shall make payments by delivering or mailing to Scott Hainer, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, certified checks or money orders for the applicable amounts as stated in Paragraphs 16, above, payable to the order of “Treasurer, State of Ohio.”

18. If Defendants miss a scheduled payment as set forth in paragraph 16 above, the missed payment along with interest as set forth in R.C. 5703.47 accruing from the deadline for the payment shall become due and owing immediately.

VIII. STIPULATED PENALTIES

19. If the Defendants fail to comply with the injunctive requirements that are set forth in Paragraphs 6-14 of this Consent Order, the Defendants are jointly and severally liable for and shall immediately 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 meet a deadline from one (1) day to thirty (30) days, one hundred dollars (\$100.00) per day per requirement not met.
- (b) For each day of each failure to comply with a requirement or meet a deadline from thirty-one (31) days to sixty (60) days, two hundred dollars (\$200.00) per day per requirement not met.
- (c) For each day of each failure to comply with a requirement or meet a deadline over sixty-one (61) days to ninety (90) days, three hundred dollars (\$300.00) per day per requirement not met.
- (d) For each day of each failure to comply with a requirement or meet a deadline over ninety (90) days, five hundred dollars (\$500.00) per day per requirement not met.

20. Defendants shall submit any payment required by Paragraph 19 by delivering or mailing a certified check or money order 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 Scott Hainer, Paralegal, or his successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. The Ohio EPA is not required to notify Defendants of missed deadlines or the corresponding duty to pay stipulated penalties. Each payment shall include a notation in the memorandum portion of the check, or some other prominent location on the transmittal letter or documentation referencing this Consent Order. The payment of stipulated penalties by Defendants and the acceptance of these stipulated penalties by Plaintiff for specific violations under Section VIII shall not limit Plaintiff's authority to seek additional relief or to seek judicial enforcement of this Consent Order, except that the State shall not seek additional civil penalties for violations for which it has accepted stipulated penalties.

IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

21. Performance of the terms of this Consent Order by the Defendants is not conditioned on the receipt of any federal or state grant funds or loans. In addition, the Defendants' 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.

X. MODIFICATION

22. This Consent Order shall not be modified without the written agreement of the parties and this Court.

XI. MISCELLANEOUS

23. Nothing in this Consent Order shall affect the Defendants' obligations to comply with all applicable federal, state, or local laws, regulations, rules or ordinances. The

Defendants shall obtain all federal, state, or local permits necessary to comply with this Consent Order.

24. If the State of Ohio accepts any payment, document, or other work due under this Consent Order after the time that the obligation is due under this Consent Order, then this acceptance shall not relieve Defendants from the obligations created by this Consent Order.

25. The Defendants shall inform the Ohio EPA of any change of contact information, or the cessation of the business that is the subject of this action.

26. The State reserves the right to place a lien on the property of the Defendants, except that the State agrees not to place a lien on the following properties in order to expedite their sale: (1) 1748 Kentucky Avenue (Parcel No. 3400700033222008); (2) 1514 Lexington Avenue (Parcel No. 3400700028213022); (3) 735-739 W. Mulberry Street (Parcel No. 3400600004225001); and (4) 532 Gallagher Street (Parcel No. 3400700034228008) (the "Four Properties"). After the Defendants apply the proceeds of the sales of the Four Properties to pay off the mortgages on the properties and to pay the realtor fees, taxes, and other customary closing costs for the sales, Defendants shall use the sale proceeds that are left, if any, to pay off as much of the \$9,000 civil penalty assessed by Paragraph 16 above as can be paid from the remaining sales proceeds. If the proceeds are sufficient to pay part, but not all, of the civil penalty, Defendants shall continue to make the quarterly payments under Paragraph 16 until the \$9,000 civil penalty is paid off. If the State places a lien on any property of the Defendants other than the Four Properties, Defendants shall apply the proceeds of any sale of that property to the payment of any portion of the civil penalty assessed by Paragraph 16 above that is in arrears at the time, at which time the State will sign a release of the lien as to the specific parcel in order to facilitate the sale. If no portion of the

civil penalty assessed by Paragraph 16 above is in arrears at the time of sale, the State will sign a release of the lien as to the specific parcel in order to facilitate the sale.

27. All prior orders in this case are hereby terminated, including but not limited to the Temporary Restraining Order of March 23, 2016, the Preliminary Injunction of May 6, 2016, the Amended Preliminary Injunction of June 20, 2016, the Temporary Restraining Order of July 29, 2016, and the Decision, Entry and Order of October 11, 2016.

28. This Order shall no longer apply to the Estate of Michael Talbert once the estate is closed by the Probate Court.

29. This Court shall retain jurisdiction over this action to enforce and administer the Defendants' compliance with this Consent Order.

XII. COSTS

30. The Defendants shall pay the court costs of this action.

XI. AUTHORITY TO ENTER INTO CONSENT ORDER

31. Each signatory represents and warrants that he or she has been duly authorized to sign this document and is fully authorized to agree to its terms and conditions, and, in the case of a person signing on behalf of a corporate entity or estate, may so legally bind the corporate entity or estate to all terms and conditions in this document.

Copies of this Order shall be immediately served by the Clerk upon counsel for the parties.

IT IS SO ORDERED.

**JUDGE BLAINE
COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO**

DATE

APPROVED:

**MICHAEL DeWINE
OHIO ATTORNEY GENERAL**

/s/ Casey L Chapman

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Counsel for Defendants

/s/ Mary Talbert

MARY TALBERT
DBA Catalpa Grove Mobile Home Park

/s/ Mary Talbert

MARY TALBERT
Fiduciary for Estate of Michael Talbert



General Division
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Type: Consent Judgment Entry
Case Number: 2015 CV 06338
Case Title: STATE OF OHIO EX REL MICHAEL DEWINE vs MARY TALBERT

So Ordered

A handwritten signature in black ink, appearing to be "E. R. Blaine", written over a horizontal line.