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MAUREEN G. KELLY
LAKE CO. CLERK OF COURT

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

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

Plaintiff,

v.

SANDS TRAILER PARK &
SALES, INC., et al.,

Defendants.

: CASE NO. 09CV000616

: JUDGE VINCENT A. CULOTTA

: CONSENT ORDER

The State of Ohio, by its Attorney General ("Plaintiff"/"the State") and at the written request of the Director of the Ohio Environmental Protection Agency ("the Director"), has filed a Complaint seeking injunctive relief and civil penalties against Defendants Sands Trailer Park & Sales, Inc. ("Sands") and David Ungers ("Ungers") for violations of Ohio's water pollution laws under Revised Code ("R.C.") Chapter 6111 and the rules adopted thereunder concerning the Defendants' operation of the Sands Mobile Home Park ("the Park" or "Sands MHP") located at 5245 North Ridge Road, Madison Township, Lake County, Ohio. The Parties have consented to the entry of this Order.

Therefore, without trial, admission, or determination of any issue of fact or law and with the consent of the Parties hereto, it is ORDERED, ADJUDGED, AND DECREED:

I. DEFINITIONS

- 1. As used in this Order, the following terms are defined:
 - a. "Defendants" means Sands Trailer Park & Sales, Inc. and Mr. Ungers.
 - b. "Director" means the Director of the Ohio Environmental Protection Agency ("Ohio EPA") or his designee.

Entity: Sands Trailer Park & Sales, Inc.
Doc Type: Judicial Order
Doc Subtype: Consent Order
Program: NPDES
County: LAKE
Secondary ID: 3PV00114

- c. "Parties" means Plaintiff, the State of Ohio, and Defendants, Sands Trailer Park & Sales, Inc. and Mr. Ungers.
- d. "Person" means an individual, public or private corporation, business trust, estate, trust, partnership, association, federal government or any agency thereof, municipal corporation or any agency thereof, political subdivision or any agency thereof, public agency, interstate body created by compact, any other entity, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.
- e. "Site" means the Sands Mobile Home Park ("the Park" or "Sands MHP") located at 5245 North Ridge Road, Madison Township, Lake County, Ohio.
- f. "State" means Plaintiff, the State of Ohio, including the Director, Ohio Environmental Protection Agency, or the Ohio Attorney General on behalf of the State, or any State entity.
- g. "Order" refers to this Consent Order.
- h. "Written" means a paper copy or a saved or stored electronic copy.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the Parties and the subject matter of this action under R.C. Chapter 6111. The Complaint states a claim upon which relief can be granted. Venue is proper in this Court. Defendants shall not challenge the Court's jurisdiction to enter or enforce this Consent Order.

III. PARTIES BOUND

3. Defendant Sands Trailer Park & Sales, Inc. is an Ohio for profit corporation with its principal place of business at 5245 North Ridge Road, Madison Township, Lake County, Ohio, 44057.

4. Defendant Mr. Ungers is an individual with a business address of 5245 North Ridge Road, Madison Township, Lake County, Ohio, 44057.

5. This Order shall apply to and be binding only 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 Defendants who receive 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 Consent Order to any successor in interest and to each key employee, consultant, or contractor employed to perform work referenced herein or to operate the Site.

6. This Consent Order is in settlement and compromise of disputed claims, and nothing in this Consent Order is to be construed as an admission of any facts or liability.

7. If insolvency, bankruptcy, or other failure occurs, Defendants must pay the remaining unpaid balance of the total civil penalty.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

8. The Plaintiff alleges that Defendants are responsible for violations of the water pollution control laws of the State of Ohio under R.C. Chapter 6111. Compliance with this Consent Order shall constitute full satisfaction of any civil liability of Defendants to Plaintiff for the claims alleged in Plaintiff's Complaint up to the date of the Court's entry of this Consent Order.

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

- a. Seek any legal or equitable relief or civil penalties from Defendants or any other appropriate person for any claims or violations that occurred after filing the Complaint and that are not alleged in the Complaint;
- b. Seek any legal or equitable relief or civil penalties from Defendants or any other appropriate person for claims or violations not alleged in the Complaint;
- c. Seek any legal or equitable relief or civil penalties from Defendants or any other appropriate person for claims or conditions that occur on or exist after the entry of this Consent Order;

- d. Enforce this Consent Order through a contempt action or otherwise seek relief for violations of this Consent Order; and/or
- e. Take any future legal or equitable action against any appropriate person, including Defendants, to eliminate or mitigate conditions at the Site that may present a threat to public health or welfare or to the environment in derogation of applicable laws and rules, which State of Ohio has the authority to enforce.

10. This Consent Order does not waive, abridge, settle, compromise, or otherwise impact any other claims in law or equity that the State of Ohio or other persons may have against Defendants.

11. Except for the signatories to the Consent Order, nothing in this Consent Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged, against any person not a signatory to this Consent Order for any liability such non-signatory(ies) may have arising out of matters alleged in the Complaint. The State of Ohio also specifically reserves its right to sue any entity that is not a signatory to this Consent Order.

12. Nothing in this Consent Order shall relieve Defendants of their obligations to comply with applicable federal, state, or local statutes, regulations, rules, or ordinances.

13. Nothing herein shall restrict the right of Defendants to raise any administrative, legal, or equitable defense with respect to such further actions reserved by the State in this Section. However, with respect to the actions reserved by the State in this Section, Defendants shall not assert and/or maintain any defense or claim of waiver, *res judicata*, collateral estoppel, issue preclusion, claim splitting, or other defenses based on any contention that Plaintiff's claims in any subsequent judicial or administrative proceeding could or should have been brought in this case.

14. Defendants agree that each is jointly and severally liable for the obligations and requirements in this Consent Order, including, but not limited to, everything in Sections V, VI, and VII.

V. PERMANENT INJUNCTION

15. Defendants are ordered and permanently enjoined to comply fully with R.C. Chapter 6111 and the rules thereunder.

16. Defendants are ordered and enjoined to conduct the following:

- a. Not later than October 15, 2018, Defendants shall pay to the Lake County, Ohio sanitary engineer the full amount required to connect to the Lake County, Ohio sanitary sewer system.
- b. Not later than five (5) years after the date of entry of this Consent Order, Defendants shall complete all sewer line and lateral replacement within the Park and connect to the Lake County, Ohio sanitary sewer system and direct all wastewater generated from the Sands MHP wastewater treatment plant ("WWTP") to this system.
- c. Following connection of the WWTP to the Lake County, Ohio sewer system, Defendants shall discontinue the usage of their existing WWTP, as a WWTP, and take all necessary actions to eliminate all wastewater discharges from the WWTP to waters of the State, including the unnamed tributary of Lake Erie, within seven (7) days of the date of connection to the Lake County sewer system. Defendants shall also decommission the existing WWTP, except for any part of the treatment plant necessary to convey wastewater to the Lake County sewer system, and provide for the proper disposal of all wastes associated with the WWTP. Defendants shall properly dispose of all waste material generated during the decommissioning of the wastewater treatment plant.
- d. Until such time as Defendants connect to the Lake County Ohio sanitary sewer system, as provided in paragraph 16.b, above, Defendants shall comply with the terms and conditions of the NPDES Permit attached hereto as Attachment A, including the effluent limitations and monitoring requirements, notwithstanding any inconsistent effective dates contained in Part I, A. Failure to comply with the NPDES Permit attached as Attachment A, or any modification or renewal of that NPDES Permit, shall constitute a violation of this Consent Order.
- e. Within fourteen (14) days of the date of entry of this Consent Order, hire and retain the services of a certified operator holding a valid Class I

wastewater treatment certificate from the Ohio EPA for operation of the WWTP and ensure a log book is maintained as required by Ohio Adm.Code 3745-7-09(A)(3) and minimum staffing requirements under Ohio Adm.Code 3745-7-04 are met until such time as the Sands MHP is connected to the Lake County sewer system and the WWTP is decommissioned in accordance with paragraphs 16.b and c above.

- f. Pursuant to Ohio Adm.Code 3745-7-02, submit an Operator Notification form to Ohio EPA within 30 days of the date of entry of this Consent Order.
- g. Within thirty (30) days following the date of entry of this Consent Order, Defendants shall withdraw their request for hearing in the case *In the Matter of David Ungers, d/b/a Sands Trailer Park*, Case No. 11-WD-05-2 before the Ohio Environmental Protection Agency.

VI. CIVIL PENALTY

17. Under R.C. 6111.07, Defendants are ordered and enjoined to pay a civil penalty of seventy-five thousand dollars (\$75,000.00). Defendants shall make the payments according to the following schedule:

- a. Not later than one (1) year after the date of entry of this Consent Order, Defendants shall pay fifteen thousand dollars (\$15,000.00). In the event that Defendants have connected to the Lake County, Ohio sanitary sewer system not later than two (2) years after the date of entry of this Consent Order, in the manner set forth in Paragraph 16.b above and to the satisfaction of the Ohio EPA, Defendants will be released from payment of the remaining sixty thousand dollars (\$60,000.00).
- b. Unless release is granted under Paragraph 17.a above, not later than two (2) years after the date of entry of this Consent Order, Defendants shall pay an additional fifteen thousand dollars (\$15,000.00). In the event that Defendants have connected to the Lake County, Ohio sanitary sewer system later than two (2) years but not later than three (3) years after the date of entry of this Consent Order, in the manner set forth in Paragraph 16.b above and to the satisfaction of the Ohio EPA, Defendants will be released from payment of the remaining forty-five thousand dollars (\$45,000.00).
- c. Unless release is granted under Paragraph 17.a or b above, not later than three (3) years after the date of entry of this Consent Order, Defendants shall pay an additional fifteen thousand dollars (\$15,000.00). In the event that Defendants have connected to the Lake County, Ohio sanitary sewer system later than three (3) years but not later than four (4) years of the

date of entry of this Consent Order, in the manner set forth in Paragraph 16.b above and to the satisfaction of the Ohio EPA, Defendants will be released from payment of the remaining thirty thousand dollars (\$30,000.000).

- d. Unless release is granted under Paragraph 17.a, b, or c above, not later than four (4) years after the date of entry of this Consent Order, Defendants shall pay an additional fifteen thousand dollars (\$15,000.00). In the event that Defendants have connected to the Lake County, Ohio sanitary sewer system later than four (4) years but not later than five (5) years after the date of entry of this Consent Order, in the manner set forth in Paragraph 16.b above and to the satisfaction of the Ohio EPA, Defendants will be released from payment of the remaining fifteen thousand dollars (\$15,000.000).
- e. Unless release is granted under Paragraph 17.a, b, c, or d above, not later than five (5) years after the date of entry of this Consent Order, Defendants shall pay an additional fifteen thousand dollars (\$15,000.00).

18. All civil penalty payments shall be made by delivering to Sandra Finan, Paralegal, or her successor, Office of the Attorney General, 30 E. Broad St., 25th Floor, Columbus, Ohio 43215, a certified check or checks for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

19. If payment is not paid as required in Paragraph 17 above, the remaining unpaid balance of the total civil penalty, plus applicable interest under R.C. 131.02(D), less any amount already paid under this Order, shall become immediately due and owing. Any delinquent payments shall accrue interest at the maximum statutory rate under R.C. 5703.47 calculated from the Effective Date of this Order.

20. The State reserves the right to file a certificate of judgment lien against Defendants for the remaining unpaid balance of the total civil penalty, plus applicable interest per Paragraph 19 above, if the full payment is not paid according to the schedule in Paragraph 17 above. Defendants shall not be permitted to claim a force majeure as an excuse for any untimely payment or partial payment of an amount less than that specified in Paragraph 17.

21. If any Defendant files a petition for bankruptcy, the State of Ohio reserves the right to file a certificate of judgment lien against the other, non-filing Defendant, for the remaining unpaid balance of the total civil penalty, plus applicable interest per Paragraph 19 above.

VII. STIPULATED PENALTIES

22. If Defendants fail to comply with any of the requirements of this Order, including violations of the NPDES Permit, Defendants shall immediately and automatically be liable for and shall pay stipulated penalties under the following schedule for each failure to comply:

- a. Defendants shall pay three hundred dollars (\$300.00) per day for each day any requirement of this Consent Order is violated up to the first thirty (30) days of violation;
- b. For each day any requirement of this Consent Order is violated between thirty (30) days and ninety (90) days of violation, Defendants shall pay six hundred dollars (\$600.00) per day;
- c. For each day any requirement of this Consent Order is violated greater than (90) days of violation, Defendants shall pay one thousand dollars (\$1,000.00) per day.

23. Stipulated penalties due under this Consent Order shall be immediately due and owing without demand by the State and shall be paid by check or money order, payable to "Treasurer, State of Ohio" and delivered to Sandra Finan or her successor, Paralegal, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

24. Defendants' payment and Plaintiff's acceptance of such stipulated penalties under this Section shall not be construed to limit Plaintiff's authority, without exception, to seek: 1) additional relief under R.C. Chapter 6111, including civil penalties under R.C. 6111.09; 2) judicial enforcement of this Order for the same violations for which a stipulated penalty was paid; or 3) sanctions for additional remedies, civil, criminal, or administrative, for violations of

applicable laws. Further, payment of stipulated penalties by Defendants shall not be an admission of liability by Defendants.

VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

25. Performance of the terms of this Consent Order by Defendants is not conditioned on the receipt of any private, Federal or State grants, loans, and/or funds. In addition, Defendants' performance is not excused by failing to obtain or any shortfall of any private, Federal or State grants, loans and/or funds or by the processing of any applications for the same.

IX. EFFECT OF CONSENT ORDER

26. This Consent Order is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits, and the Defendants' compliance with this Consent Order shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. Defendants shall obtain all permits required by R.C. Chapter 6111 and the rules promulgated thereunder. Nothing within this Consent Order shall be deemed to be a waiver of any rights that Defendants may have to challenge any terms and conditions of any future permits.

X. MODIFICATION

27. No modification shall be made to this Consent Order without the written agreement of the parties and the Court.

XI. MISCELLANEOUS

28. Nothing in this Consent Order shall affect Defendants' obligation to comply with all applicable federal, state or local laws, regulations, rules, ordinances, or orders.

29. Any acceptance by the State of Ohio of any payment, document, or other work due subsequent to the time that the obligation is due under this Consent Order shall not relieve Defendants from the obligations created by this Consent Order.

30. Defendant Ungers shall inform the Ohio EPA of any change of his personal address and Defendant Sands shall inform Ohio EPA of any change in Registered Agents' address and business addresses or telephone numbers, or the cessation of the business that is the subject of this action.

XII. RETENTION OF JURISDICTION

31. This Court shall retain jurisdiction for the purpose of administering and enforcing this Consent Order.

XIII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

32. The parties agree and acknowledge that final approval by Plaintiff and Defendants and entry of this Consent Order is subject to the requirements of 40 C.F.R. 123.27(d)(2)(iii), which provides for notice of the lodging of the Consent Order, opportunity for public comment, and the consideration of any public comments. Both Plaintiff and Defendants reserve the right to withdraw this Consent Order based on comments received during the public comment period.

33. The Defendants shall pay the costs incurred by Ohio EPA for the publication of the Consent Order in Ohio EPA's Weekly Review and a newspaper of general circulation by delivering a certified check, payable to "Treasurer, State of Ohio" and with a notation indicating that the funds are going to "Fund 699" on it, in the amount of the costs to the Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, within thirty (30) days of receipt of notice of the costs from Ohio EPA.

34. Under Rule 58 of the Ohio Rules of Civil Procedure, upon signing this Consent Order by the Court, the Clerk is directed to enter it upon the journal. Within three (3) days of

entering the judgment upon the journal, the Clerk is directed to serve upon all Parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Civ.R. 58(B) and note the service in the appearance docket. The failure of the Clerk to serve notice does not affect the validity of this Consent Order.

XIV. EFFECTIVE DATE

35. This Consent Order shall be effective upon the date of its entry by the Court.

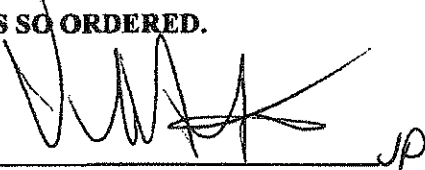
XV. COURT COSTS

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

XVI. AUTHORITY TO ENTER INTO THE CONSENT ORDER

37. Each signatory represents and warrants he 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, may so legally bind the corporate entity to all terms and conditions in this document.

IT IS SO ORDERED.

 JP

JUDGE


10/22/18

DATE

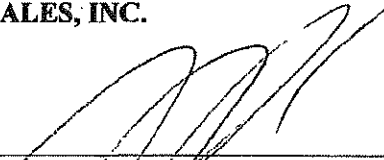
APPROVED AND AGREED TO BY:

MICHAEL DeWINE
OHIO ATTORNEY GENERAL

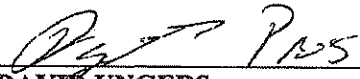
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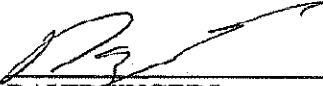

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DAVID UNGERS
*Authorized Representative of Sands Trailer
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DAVID UNGERS
(In his individual capacity)