



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

MOTION TO...
December 8, 2020 08:59

By: AMBER WOOTTON HERTLEIN 0083858

Confirmation Nbr. 2131081

STATE OF OHIO, EX REL.

CV 18 903788

vs.

COLUMBIA PARK EAST MHP, LLC, ET AL.

Judge: SHIRLEY STRICKLAND SAFFOLD

Pages Filed: 15

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO, ex rel. DAVE YOST, ATTORNEY GENERAL OF OHIO,	:	CASE NO. CV-18-903788
	:	
Plaintiff,	:	JUDGE SHIRLEY
	:	STRICKLAND SAFFOLD
	:	
v.	:	
	:	
COLUMBIA PARK EAST MHP, LLC, et al.	:	
	:	
Defendants.	:	

JOINT MOTION TO ENTER CONSENT ORDER

Plaintiff and Defendants request that this Court approve and enter the proposed Consent Order lodged with this Court October 27, 2020. This Consent Order resolves the claims alleged by the State against Defendants. The State has completed a thirty-day public notice and comment period as required under the Clean Water Act and no comments have been submitted.

At this time, the parties to this motion respectfully request this Court to enter the Consent Order, a copy of which is included as Exhibit A.

Respectfully submitted,

/s/ John W. Monroe (per email authorization)

John W. Monroe (0061845)

Kathryn E. Weber (0095856)

Mansour Gavin LPA

North Point Tower

1001 Lakeside Avenue, Suite 1400

Cleveland, Ohio 44114

(216) 523-1500

*Counsel for Defendants Columbia Park East
MHP LLC, Columbia MHC East LLC, Robert
C. Morgan, George DaGraca, James A.
Martin, and Steven J. Gordon*

/s/ Amber Wootton Hertlein

Amber Wootton Hertlein (0083858)

Nicole Candelora-Norman (0079790)

Assistant Attorneys General

Environmental Enforcement Section

30 East Broad Street, 25th Floor

Columbus, Ohio 43215

(614) 466-2766

Counsel for Plaintiff, the State of Ohio

/s/ Kenneth Burnham (per email authorization)

Kenneth Burnham

Pro Se

EXHIBIT A

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO, <i>ex rel.</i>	:	CASE NO. 18 CV 903788
DAVE YOST	:	
OHIO ATTORNEY GENERAL,	:	
	:	Judge Shirley Strickland Saffold
Plaintiff,	:	
	:	
v.	:	
	:	
COLUMBIA PARK MHP, LLC, et al.,	:	CONSENT ORDER
	:	
	:	
Defendants.	:	

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, has filed a Complaint seeking injunctive relief and civil penalties against Defendants Columbia Park East MHP, LLC; Columbia MHC East, LLC; Kenneth Burnham; Robert C. Morgan; George DaGraca; James A. Martin; and Steven J. Gordon for violations of Ohio’s water pollution control laws under R.C. Chapter 6111 and the rules adopted thereunder concerning the Defendants’ operation of a waste water treatment system at the Columbia Park Mobile Home Park located at 7100 Columbia Road, Olmsted Township, Cuyahoga County, Ohio 44138. 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 Columbia Park East MHP, LLC; Columbia MHC East, LLC; Kenneth Burnham; Robert C. Morgan; George DaGraca; James A. Martin; and Steven J. Gordon.
 - b. “Director” means the Director of the Ohio Environmental Protection Agency (“Ohio EPA”) or her designee.
 - c. “Parties” means Plaintiff, the State of Ohio, and Defendants, Columbia Park East MHP, LLC; Columbia MHC East, LLC; Kenneth Burnham; Robert C. Morgan; George DaGraca; James A. Martin; and Steven J. Gordon.
 - 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 waste water treatment plant located at the Columbia Park Mobile Home Park located at 7100 Columbia Road, Olmsted Township, Cuyahoga County, Ohio 44138.
 - 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 named in the Complaint.
 - g. “Order” refers to this 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 Order.

III. PARTIES BOUND

3. Defendant Columbia Park East MHP, LLC is a Delaware limited liability company with its principal place of business at 7100 Columbia Road, Olmsted Township, Cuyahoga County, Ohio 44138.

4. Defendant Columbia MHC East, LLC is a New York limited liability company with its principal place of business at 7100 Columbia Road, Olmsted Township, Cuyahoga County, Ohio 44138.

5. Defendant Mr. Burnham is an individual with a business address of 7100 Columbia Road, Olmsted Township, Cuyahoga County, Ohio 44138.

6. Defendant Mr. Morgan is an individual with a business address of 7100 Columbia Road, Olmsted Township, Cuyahoga County, Ohio 44138.

7. Defendant Mr. DaGraca is an individual with a business address of 7100 Columbia Road, Olmsted Township, Cuyahoga County, Ohio 44138.

8. Defendant Mr. Martin is an individual with a business address of 7100 Columbia Road, Olmsted Township, Cuyahoga County, Ohio 44138.

9. Defendant Mr. Gordon is an individual with a business address of 7100 Columbia Road, Olmsted Township, Cuyahoga County, Ohio 44138.

10. 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 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 successor in interest and to each key employee, consultant, or contractor employed to perform work referenced herein or to operate the Site.

11. This Order is in settlement and compromise of disputed claims stated in the Complaint filed in this action, and nothing in this Order is to be construed as an admission of any facts or liability.

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

13. The Parties acknowledge that, as a result of Cuyahoga Co. Case No. CV 17-877110, the Columbia Park Mobile Home Park and related assets (collectively, the "Park") are being sold to a third-party. The Parties agree that the terms and enforceability of this Consent Order are expressly contingent upon the sale of the same on or before October 30, 2020.

14. The Parties have reached this agreement in lieu of the pursuit of appeals in this case. The parties acknowledge that, in order to preserve its rights, Plaintiff filed an appeal of the Court's Order entered August 28, 2020. The Plaintiff agrees that, if an appeal is filed, it will be voluntarily dismissed upon the sale of the Park on or before October 30, 2020.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

15. 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. Defendants deny all such allegations.

Compliance with this Order shall constitute full satisfaction of any civil liability of Defendants to Plaintiff for the claims alleged in Plaintiff's Complaint.

16. Nothing in this Order, including the imposition of stipulated civil penalties for violations of this 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 not alleged in the Complaint;
- b. Seek any legal or equitable relief or civil penalties from Defendants or any other appropriate person for claims, conditions, or violations that occur on or exist after the entry of this Order;
- c. Enforce this Order through a contempt action or otherwise seek relief for violations of this Order; and/or
- d. Take any future legal or equitable 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 environment in derogation of applicable laws and rules, which State of Ohio has the authority to enforce.

17. This 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.

18. Except for the signatories to the Order, nothing in this 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 Order for any liability such non-signatory 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 Order.

Notwithstanding the foregoing, the State of Ohio specifically covets not to sue and hereby releases Columbia Far West, LLC (“West”) for any of the allegations stated in the Complaint.

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

20. 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 Order. 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.

21. Defendants agree that each is jointly and severally liable for the obligations and requirements in this Order.

V. PERMANENT INJUNCTION

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

VI. CIVIL PENALTY

23. Under R.C. 6111.09, Defendants are ordered to pay a civil penalty of \$100,000.00, subject to the provisions in this Order. Full payment shall be made within forty-five (45) days of entering this Order or by November 2, 2020 whichever is earlier. Such payment 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.”

24. If full payment of the civil penalty and any other amount due under this Consent Order is not received by the State in accordance with the terms of this Consent Order, the remaining unpaid balance of the total civil penalty and any other amount due, plus applicable interest under R.C. 131.02(D), shall become immediately due and owing. The remaining unpaid balance shall accrue interest at the rate per annum required by R.C. 5703.47 calculated from the Effective Date of this Order.

25. If any amount is not paid in accordance with the terms of this Consent Order, the Attorney General may collect that amount under R.C. 131.02. Pursuant to R.C. 109.081, in addition to the outstanding balance due under this Consent Order, collection costs of ten percent shall be owing and fully recoverable from the Defendants to be paid into the State Treasury to the credit of the Attorney General Claims Fund.

26. 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 statutory interest and collection costs, if the full civil penalty payment is not paid according to the schedule in this Order. 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 the full civil penalty as specified in this Order.

27. If either Defendant Columbia Park East MHP, LLC or Defendant Columbia MHC East, LLC files a petition for bankruptcy, the State of Ohio reserves the right to file a certificate of judgment lien against the other, Defendant Columbia Park East MHP, LLC or Defendant Columbia MHC East, LLC, for the remaining unpaid balance of the total civil penalty, plus applicable statutory interest.

VII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

28. Performance of the terms of this Order by Defendants is not conditioned on the receipt of any private, Federal or State grants, loans, and/or funds except the sale of the Park as stated herein. 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 except the sale of the Park as stated herein.

VIII. SUBMITTAL OF DOCUMENTS

29. All documents required to be submitted to Ohio EPA pursuant to this Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio EPA
Division of Surface Water
50 West Town Street, Suite 700
Columbus, Ohio 43215
Attn: Surface Water Program Compliance Manager

Ohio EPA
Northeast District Office
Division of Surface Water
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: Surface Water Program Manager

IX. EFFECT OF ORDER

30. This Order does not constitute authorization, certification, or approval of the construction, installation, modification, or operation of any water pollution source under R.C. Chapter 6111. Approval for any such certification, construction, installation, modification, or operation 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.

X. MODIFICATION

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

XI. MISCELLANEOUS

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

33. 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 Order shall not relieve Defendants from the obligations created by this Order.

34. Defendants shall inform the Ohio EPA of any change of their personal or business address or telephone numbers, or the cessation of the business that is the subject of this action.

XII. RETENTION OF JURISDICTION

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

XIII. EFFECTIVE DATE

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

XIV. COURT COSTS

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

XV. AUTHORITY TO ENTER INTO THE ORDER

38. 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. By signing this Order, each signatory waives all rights of service of process for the underlying Complaint.

XVI. ENTRY OF ORDER AND FINAL JUDGMENT BY CLERK

39. Under Rule 58 of the Ohio Rules of Civil Procedure, upon signing this 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. 5(B) and note the service in the appearance docket. The failure of the Clerk to serve notice does not affect the validity of this Order.


40. The parties agree and acknowledge that final approval by Plaintiff and Defendant and entry of this 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 Order, opportunity for public comment, and the consideration of any public comments. Both Plaintiff and Defendant reserve the right to withdraw this Order based on comments received during the public comment period.

IT IS SO ORDERED.

JUDGE

DATE

APPROVED AND AGREED TO BY:

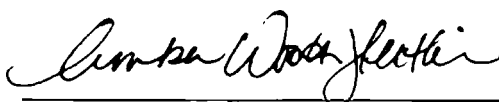


John W. Monroe (0061845)
Kathryn E. Weber (0095856)
Mansour Gavin LPA
North Point Tower
1001 Lakeside Avenue, Suite 1400
Cleveland, Ohio 44114
(216) 523-1500
*Counsel for Defendants Columbia Park East
MHP LLC, Columbia MHC East LLC, Robert
C. Morgan, George DaGraca, James A.
Martin, and Steven J. Gordon.*

[NAME]
*Authorized Representative of Columbia Park
East MHP LLC*

[NAME]
*Authorized Representative of Columbia MHC
East LLC*

Kenneth Burnham
(In his individual capacity)



Amber Wootton Hertlein (0083858)
Nicole Candelora-Norman (0079790)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
(614) 466-2766
Counsel for Plaintiff, the State of Ohio

Robert C. Morgan
(In his individual capacity)

George DaGraca
(In his individual capacity)

James A. Martin
(In his individual capacity)

Steven J. Gordon
(In his individual capacity)

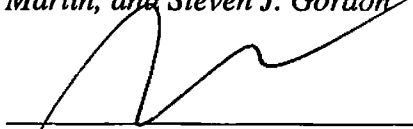
IT IS SO ORDERED.

JUDGE

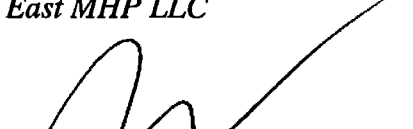
DATE

APPROVED AND AGREED TO BY:

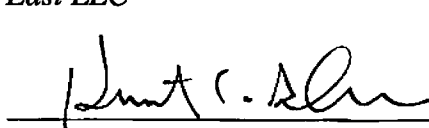
John W. Monroe (0061845)
Kathryn E. Weber (0095856)
Mansour Gavin LPA
North Point Tower
1001 Lakeside Avenue, Suite 1400
Cleveland, Ohio 44114
(216) 523-1500
*Counsel for Defendants Columbia Park East
MHP LLC, Columbia MHC East LLC, Robert
C. Morgan, George DaGraca, James A.
Martin, and Steven J. Gordon*



[NAME]
*Authorized Representative of Columbia Park
East MHP LLC*

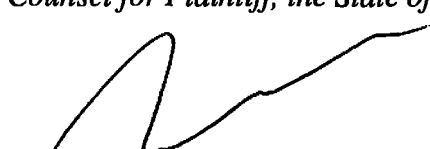


[NAME]
*Authorized Representative of Columbia MHC
East LLC*

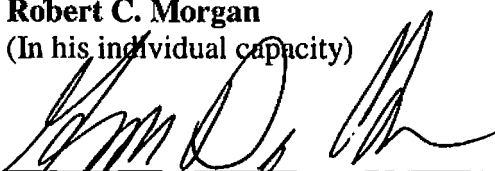


Kenneth Burnham
(In his individual capacity)

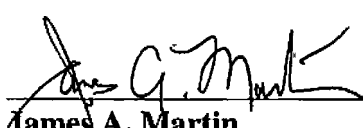
Amber Wootton Hertlein (0083858)
Nicole Candelora-Norman (0079790)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
(614) 466-2766
Counsel for Plaintiff, the State of Ohio



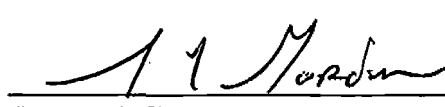
Robert C. Morgan
(In his individual capacity)



George DaGraca
(In his individual capacity)



James A. Martin
(In his individual capacity)



Steven J. Gordon
(In his individual capacity)