

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

G. SCOTT	:	CASE NO. 2005 CVH 10023
CO., ET AL.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	JUDGE YOUNG
	:	
FRANKLIN COUNTY, et al.,	:	MAGISTRATE PETRUCCI
	:	
Defendants,	:	
and	:	
	:	CONSENT ORDER
STATE OF OHIO,	:	
	:	(Oak Hills MHC
	:	and State of Ohio)
Third-Party Plaintiff,	:	
	:	
v.	:	
	:	
GAYLE SCOTT, Jr., et al. ,	:	
	:	
Third-Party Defendant.	:	

Defendant State of Ohio (State), by its Attorney General Mike DeWine, at the written request of the Director of the Ohio Environmental Protection Agency (Ohio EPA), filed Counterclaims for injunctive relief and civil penalties against Plaintiff, Oak Hills Mobile Home Community, LLC (Oak Hills MHC) for violations of Ohio Revised Code (R.C.) Chapter 6111 and the rules promulgated thereunder. After judgment of this Court, the parties consent to the entry of this Order,

NOW, THEREFORE, upon the agreement 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. Venue is proper in this Court.

II. PERSONS BOUND

2. The provisions of this Consent Order shall apply to and be binding upon the State, Oak Hills MHC, and, in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure, their officers, agents, servants, employees, successors, transferees and assigns.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

3. Full compliance with the terms and conditions of this Consent Order shall constitute full satisfaction of all civil liability by Oak Hills MHC for the claims as alleged by the State of Ohio in the Counterclaims against Oak Hills MHC occurring at the wastewater treatment plant (WWTP) located on or about 5965 Harrisburg-Georgesville Road, Pleasant Township, Franklin County, Ohio 43123, through the entry date of this Consent Order.

4. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to take any action authorized by law against Oak Hills MHC and/or any person to enforce the Consent Order through a contempt action for violations of this Consent Order. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief against Oak Hills MHC or other appropriate persons for claims or conditions not alleged in the Counterclaim or Third-party Complaint, including violations which occur after the filing of the Consent Order. 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 Oak Hills MHC, to eliminate or mitigate conditions that may present a threat to the public health, welfare, or the

environment. Finally, nothing in this Consent Order shall limit the right of Oak Hills MHC to assert any defenses it may have for any such claims above.

IV. PERMANENT INJUNCTION

5. Oak Hills MHC and its officers, agents, servants, employees, successors, transferees and assigns are hereby permanently enjoined and immediately ordered to comply with the requirements of R.C. Chapter 6111 and the rules adopted thereunder, except as otherwise provided in this Consent Order.

V. POST-CONSENT ORDER VIOLATIONS

6. Violations of R.C. Chapter 6111 related to any discharge from the existing Oak Hills MHC WWTP that occur after the entry of this Consent Order by the Court and before the sewer connection from the MHC to the Franklin County Darbydale sewer system is placed into operation, shall be governed by this Consent Order (stipulated penalties regulating the discharge from the existing MHC WWTP during this time are provided below).

V. INJUNCTIVE RELIEF

7. Oak Hills MHC shall construct the necessary sewer connection facilities and connect the Oak Hills MHC sanitary sewers to the Franklin County sanitary sewer system within twelve (12) months of the entry of this Order and decommission the Oak Hills MHC WWTP, according to the following schedule:

- a. Oak Hills MHC shall submit a complete and approvable application for a Permit to Install (PTI) the necessary sewer connection facilities within three (3) months of entry of this Consent Order;

b. Oak Hills MHC shall commence construction of the sewer connection facilities in accordance with an approved PTI within six (6) months of entry of this Consent Order;

c. Oak Hills MHC shall complete construction of the sewer connection facilities in accordance with an approved PTI within twelve (12) months of the entry of this Consent Order.

d. Within sixty (60) days of connecting to the Franklin County sanitary sewer system, Oak Hills MHC shall decommission the Oak Hills MHC WWTP as follows:

- i. Seal or remove the outfall pipe;
- ii. Unless the concrete tanks are being used as part of the sewer connection facilities, clean out all wastewater and sludge from the concrete tanks, remove all metal, piping and wire, collapse the concrete tanks in place and raise the area to grade, or dispose of the concrete in accordance with paragraph iii below;
- iii. Remove all piping, conduit, steel tanks, and mechanical equipment, such as blowers and pumps, from the site and dispose of it in a licensed construction and demolition debris landfill or solid waste landfill.

8. Oak Hills MHC shall comply with all rules, regulations, and the previous National Pollutant Discharge Elimination System (NPDES) Permit, Permit 4PV00008*ED issued to Oak Hills MHC, while completing connection to the Franklin County sanitary sewer system.

9. Failure to comply with all rules, regulations, and the previous NPDES permit terms while completing connection to the Franklin County sanitary sewer system will result in the application of stipulated penalties, discussed more fully herein.

VI. CIVIL PENALTY

10. Oak Hills MHC is hereby ordered and enjoined to pay a civil penalty of four hundred thousand dollars (\$400,000) to the State of Ohio within thirty (30) days of the date of entry of this Consent Order. Upon payment of the civil penalty, Oak Hills MHC, Ohio EPA and State shall voluntarily dismiss their respective appeals regarding their claims against each party in Case Number 16-AP-000312;

11. Civil penalty payments shall be paid by delivering to the Attorney General's Office, c/o Scott Hainer, Paralegal, or his successor, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, a certified or cashier's check payable to the order of "Treasurer State of Ohio" and will be deposited by the Attorney General's Office in accordance with R.C. 6111.09(B).

12. In the event that Oak Hills fails to comply with the terms set forth in paragraph 11 of this Consent Order, the total civil penalty of Four Hundred Thousand Dollars (\$400,000.00) plus applicable interest shall become immediately due and owing. Any delinquent payments shall accrue interest at the maximum statutory rate prescribed by R.C. 5703.47 calculated from the effective date of this Order.

VII. STIPULATED PENALTIES

13. In the event Oak Hills MHC fails to comply with any requirement of this Consent Order, Oak Hills MHC is liable for and shall immediately pay stipulated penalties in accordance with the following schedule for each failure to comply:

- a. For each day between twelve (12) to eighteen (18) months of failure to comply with the requirement to complete sewer connection within twelve (12) months – one thousand dollars (\$1,000.00) per day;
- b. For each day between eighteen (18) to twenty-four (24) months of failure to comply with the requirement to complete sewer connection within twelve (12) months – one thousand five hundred dollars (\$1,500.00) per day;
- c. For each day after twenty-four (24) months of failure to comply with the requirement to complete sewer connection within twelve (12) months – two thousand dollars (\$2,000.00) per day;
- d. For each day of failure to comply with the requirements to decommission the WWTP in accordance with Paragraph 8 (d) – one thousand dollars (\$1,000.00) per day per requirement not met.
- e. For each day of each failure to comply with any interim deadline set forth in Paragraph 8 (a) and (b) – five hundred dollars (\$500.00) per day per requirement not met until the deadline is met;
- f. For each day of failure to comply with any applicable rule, regulation, or previous NPDES permit term – five hundred dollars (\$500.00) per day per requirement not met.

14. Stipulated penalty payments shall be paid by delivering to the Attorney General's Office, c/o Scott Hainer, Paralegal, or his successor, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, a certified or cashier's check payable to the order of "Treasurer State of Ohio" and deposited by the Attorney General's Office in accordance with R.C. 6111.09(B).

VIII. POTENTIAL FORCE MAJEURE

15. If any event occurs which causes or may cause a delay in Oak Hills MHC's compliance with any requirement of this Consent Order, Oak Hills MHC shall notify the Ohio EPA in writing within ten (10) days from when they knew or should have known about the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Oak Hills MHC to prevent or minimize the delay and the timetable by which measures will be implemented. Oak Hills MHC will take all reasonable measures to avoid or minimize any such delay.

16. In any action by the State to enforce any of the provisions of this Consent Order, Oak Hills MHC may raise that they are entitled to a defense because their conduct was caused by circumstances entirely beyond their control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While the State does not agree that such a defense exists, it is, however, hereby agreed upon by Oak Hills MHC and the State that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an enforcement action, if any, is commenced by the State. At that time, Oak Hills MHC will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Oak Hills MHC. Unanticipated or increased costs associated with the implementation of any action required by this

Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Oak Hills MHC or serve as a basis for an extension of time under this Consent Order unless a Federal Bankruptcy Court decides otherwise. Failure by Oak Hills MHC to comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved and shall constitute a waiver of Oak Hills MHC's right to request an extension of their obligations under this Consent Order based on such incident. An extension of one date or waiver of stipulated penalty based on a particular incident does not mean that Oak Hills MHC qualifies for an extension of a subsequent date or dates or waiver of penalty. Oak Hills MHC must make an individual showing of proof regarding each incremental step or other requirement for which an extension or waiver is sought. Acceptance of this Consent Order with a Potential Force Majeure Clause does not constitute a waiver by Oak Hills MHC of any rights or defenses they may have under applicable law.

IX. RIGHT OF ENTRY

17. The State of Ohio, its agents and employees, shall have full access to the Property, as described in this Consent Order, at any and all reasonable times to observe the work required by this Consent Order, to determine compliance with R.C. Chapter 6111 and other laws it administers, or as otherwise may be necessary for the implementation of this Consent Order.

18. Nothing in this Consent Order shall be construed to limit the State's statutory authority under R.C. Chapter 6111, the rules adopted thereunder, or any other provision of the Revised Code, to obtain or seek access, conduct inspections or surveys, take samples, field evaluations, and/or assessments at, on or near the sites described in this Consent Order.

X. RETENTION OF JURISDICTION

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

XI. COURT COSTS

20. Oak Hills MHC is hereby ordered to pay all court costs of this action as related to Oak Hills MHC's claims against the State and as to the State's claims against Oak Hills MHC.

XII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

21. The parties agree and acknowledge that final approval by the State and Oak Hills MHC, and entry of this Consent Order is subject to the requirement of 40 C.F.R. § 123.27(d)(2)(iii), which provides for notice of the lodging of this Consent Order, opportunity for public comment, and the consideration of any public comment. The State and Oak Hills MHC reserve the right to withdraw this Consent Order based on comments received during the public comment period. Oak Hills MHC shall pay the cost of publishing the public notice.

22. 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 Court's 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.

XIII. AUTHORITY TO ENTER INTO THE CONSENT ORDER

23. The signatories for Oak Hills MHC represent and warrant that they have been duly authorized to sign this document and bind the corporation and individuals to all terms and conditions thereof.

IT IS SO ORDERED

12/27/16
DATE

[Signature]
JUDGE YOUNG
COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

APPROVED:

MIKE DEWINE,
OHIO ATTORNEY
GENERAL

[Signature]

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Counsel for State of Ohio

APPROVED:

Oak Hills MHC, LLC

By: [Signature]

Its: Member
Oak Hills MHC



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