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FEB 14 2005

COMMONWEALTH OF KENTUCKY

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

DEPARTMENT FOR ENVIRONMENTAL PROTECTION

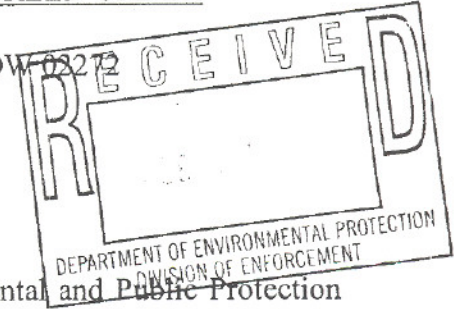
Office of Administrative Hearings

IN THE MATTER OF:

AGREED ORDER

Finke Homes, Inc.
3180 Burlington Pike
Burlington, Kentucky 41005

DOW 02272



WHEREAS, the parties to this Agreed Order, the Environmental and Public Protection Cabinet (hereinafter the Cabinet) and Finke Homes, Inc., state:

1. The Cabinet is charged with the statutory duty of enforcing KRS Chapter 151 and Chapter 224 and the regulations promulgated pursuant thereto.
2. Finke Homes, Inc., a Kentucky corporation, owns and operates the Pebble Creek Subdivision located in Boone County, Kentucky. Finke Homes, Inc. holds KPDES Stormwater General Permit No. KYR100106 for this development.
3. Finke Homes, Inc. entered into Agreed Order No. DOW 99069, executed on April 24, 2000, which established a plan by which Finke Homes, Inc., was to bring its development into compliance with KRS Chapter 151 and Chapter 224 and the regulations promulgated pursuant thereto and KPDES permit No. KYR100106, its renewals and amendments.
4. This Agreed Order No. DOW 02272, when it is executed shall supersede Agreed Order No. DOW 99069.
5. On March 19, 2002, authorized representatives of the Cabinet identified the following alleged violations of KRS Chapter 151 and Chapter 224 and the regulations promulgated pursuant thereto at the facility described in paragraph 2 above:
 - a. degradation of the waters of the Commonwealth, a violation of 401 KAR 5:031;
 - b. failure to implement and maintain an adequate Best Management Practices (BMP) plan, a violation of 401 KAR 5:065;
 - c. failure to mitigate, a violation of 401 KAR 5:065; and
 - d. failure to comply with the terms of Agreed Order DOW 99069 by failure to

restore the stream by September 1, 2000, and by failure to implement an adequate Best Management Plan (BMP), approved by the Cabinet on January 11, 2000; violations of KRS 224.70-110.

6. On April 11, 2002, the Cabinet issued a Notice of Violation to Finke Homes, Inc., for the alleged violations described in paragraph 5, above.

7. Finke Homes, Inc., attended an administrative conference at the Cabinet's Division of Water in Frankfort, Kentucky, on August 27, 2002, and Finke Homes, Inc., neither admits nor denies the alleged violations described in paragraph 5, but accepts civil liability for the violations as set forth herein.

NOW THEREFORE, in the interest of settling all civil claims and controversies involving the alleged violations described above, the parties hereby consent to the entry of this Agreed Order and agree as follows:

REMEDIAL MEASURE

8. Finke Homes, Inc. shall remain in compliance with all terms and conditions of KPDES Stormwater General Permit No. KYR100106, including compliance with the BMP plan.

PENALTIES

9. Finke Homes, Inc. shall pay the Cabinet a civil penalty in the amount of two thousand seven hundred dollars (\$2,700) within fifteen (15) days of receipt of this Order, for the alleged violations referenced in paragraph 5 (a) (b) and (c), of this Order.

10. Finke Homes, Inc., shall pay the Cabinet the performance civil penalty assessed under Agreed Order No. DOW 99069 in the amount of fifteen thousand dollars (\$15,000) within fifteen (15) days of receipt of this Order for the alleged violations referenced in paragraph 5 (d) of this Order.

11. Finke Homes, Inc., shall pay the Cabinet a performance civil penalty in the amount of two thousand dollars (\$2,000), within thirty (30) days of receipt of written notice from the Cabinet for each failure to comply with any requirement of this Order. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed. The additional penalty specified in this paragraph only shall be waived after a period of one year from the date of execution of this Order by the Secretary of the Environmental and Public Protection Cabinet if all terms of this Order have been complied with.

12. Finke Homes, Inc., shall tender all penalty payments to the Cabinet by certified check, cashier's check or money order, **payable to the Kentucky State Treasurer**. Payment shall be tendered to the Kentucky Division of Enforcement, 14 Reilly Road, Frankfort, Kentucky 40601. Note "Case No. DOW 02272" on the instrument of payment.

MISCELLANEOUS PROVISIONS

13. This Agreed Order addresses only those alleged violations specifically described above. Nothing contained herein shall be construed to waive or to limit any remedy or cause of action by the Cabinet based on statutes or regulations under its jurisdiction, and Finke Homes, Inc., reserves its defenses thereto. The Cabinet expressly reserves its right at any time to issue administrative orders and to take any other action it deems necessary, including the right to order all necessary remedial measures, assess penalties for violations, or recover all response costs incurred, and Finke Homes, Inc., reserves its defenses thereto.

14. This Agreed Order shall not prevent the Cabinet from issuing, reissuing, renewing, modifying, revoking, suspending, denying, terminating, or reopening any permit to Finke Homes, Inc. Finke Homes, Inc., reserves its defenses thereto, except that Finke Homes, Inc., shall not use this Agreed Order as a defense.

15. Finke Homes, Inc., waives its right to any hearing on the matters alleged herein. However, failure by Finke Homes, Inc., to comply strictly with the terms of this Agreed Order shall be grounds for the Cabinet to seek enforcement of this Agreed Order in Boone Circuit Court and/or Franklin Circuit Court and to pursue any other appropriate administrative or judicial action under KRS Chapter 151 and/or Chapter 224 and the regulations promulgated pursuant thereto.

16. Each separate provision, condition or duty contained in this Agreed Order may be the basis for an enforcement action for a separate violation and penalty pursuant to KRS Chapter 151 and Chapter 224 upon failure to comply with the terms of this Agreed Order.

17. This Agreed Order may not be amended except by a written order of the Cabinet's Secretary or her designee. Finke Homes, Inc., may request an amendment by writing the Director of the Division of Enforcement at 14 Reilly Road, Frankfort, Kentucky 40601 and stating the reasons for the request. If such request is granted, the amended Agreed Order shall not affect any provision of this Agreed Order unless expressly provided in the amended Agreed Order.

18. The Cabinet does not, by its consent to the entry of this Agreed Order, warrant or aver in any manner that Finke Homes, Inc.'s complete compliance with this Agreed Order will result in compliance with the provisions of KRS Chapter 151 and/or Chapter 224, and the regulations promulgated pursuant thereto. Notwithstanding the Cabinet's review and approval of any plans formulated pursuant to this Agreed Order, Finke Homes, Inc., shall remain solely responsible for compliance with the terms of KRS Chapter 151 and Chapter 224 and the regulations promulgated pursuant thereto, this Agreed Order and any permit requirements.

19. The provisions of this Agreed Order shall apply to and be binding upon Finke Homes, Inc. The acts or omissions of Finke Homes, Inc.'s officers, directors, agents, and employees shall not excuse the performance of any provision of this Agreed Order. The Cabinet reserves the right to seek enforcement of this Agreed Order against the successors and assigns of Finke Homes, Inc., and Finke Homes, Inc., reserves its defenses thereto. Finke Homes, Inc., shall give

notice of this Agreed Order to any purchaser, lessee or successor in interest prior to the transfer of ownership and/or operation of any of its now-existing property occurring prior to termination of this Agreed Order, shall notify the Cabinet that such notice has been given, and shall follow all statutory and regulatory requirements for a transfer. Whether or not a transfer takes place, Finke Homes, Inc., shall remain fully responsible for payment of all civil penalties and for performance of all remedial measures identified in this Agreed Order.

20. The Cabinet agrees to allow the performance of the above-listed remedial measures and payment of civil penalties by Finke Homes, Inc., to satisfy Finke Homes, Inc.'s obligations to the Cabinet generated by the alleged violations described above.

21. This Agreed Order shall be of no force and effect unless and until it is entered by the Secretary or her designee as evidenced by her signature thereon. If this Agreed Order contains any date by which Finke Homes, Inc., is to take any action, and the Secretary enters the Agreed Order after that date, then Finke Homes, Inc. is nonetheless obligated to have taken the action by the date contained in this Agreed Order.

AGREED TO BY:

X Sgt Julie Penn.
Authorized Agent for Finke Homes, Inc.

12 7 04
DATE

APPROVAL RECOMMENDED BY:

Aaron B. Keatley
Aaron B. Keatley, Acting Director
Division of Enforcement

12/16/04
DATE

Lloyd R. Cross
Lloyd R. Cross, Commissioner
Department for Environmental Protection

12/20/04
DATE

Debra da Lane
Attorney for the Cabinet
Office of Legal Services

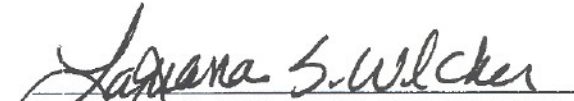
12-22-04
DATE

David A. Smart
David A. Smart, Executive Director
Office of Legal Services

Jan 4 '05
DATE

ORDER

WHEREAS, the foregoing Agreed Order is entered as the final Order of the Environmental and Public Protection Cabinet this 10 day of February, 2005


LAJUANA S. WILCHER SECRETARY
ENVIRONMENTAL AND PUBLIC
PROTECTION CABINET

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing AGREED ORDER was mailed; postage prepaid, to the following this 14th day of February, 2005

Finke Homes, Inc
3180 Burlington Pike
Burlington, Kentucky 41005

Kelly Byrd
DOCKET COORDINATOR

DISTRIBUTION:

Division of Water
Order File
Attorney, Office of Legal Services
LTS
GDM