

LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS

SUIT NO. 35474

**FILED**  
*Gayle Boudreau*  
CLERK OF COURT  
ASSUMPTION PARISH, LA  
DATE OCT 09 2015

23<sup>rd</sup> JUDICIAL DISTRICT COURT

VERSUS

PARISH OF ASSUMPTION

EMELDA B. MILLS

STATE OF LOUISIANA

\*\*\*\*\*

**EX PARTE PETITION TO MAKE COMPLIANCE ORDER(S) EXECUTORY**  
**PURSUANT TO LA. R.S. 40:6(G)**

The petition of Dr. Jimmy Guidry, M.D., in his official capacity as State Health Officer, Louisiana Department of Health and Hospitals (“DHH”), Office of Public Health, through undersigned counsel, respectfully represents:

1.

Dr. Jimmy Guidry, State Health Officer for DHH, Office of Public Health, is granted jurisdiction and authority to enforce the La. State Sanitary Code (Louisiana Administrative Code Title 51) pursuant to La. R.S. 40:4 and R.S. 40:5, including enforcement of compliance orders pursuant to LSA R.S. 40:6(G).

2.

Made defendant herein is **Emelda B. Mills** (hereinafter “Defendant”), a person of full age of majority domiciled in Assumption Parish, Louisiana.

3.

Defendant is the owner of the house and premises located at 111 College Point Lane, Plattenville, Louisiana 70393.

4.

A Compliance Order issued pursuant to La. R.S. 40:4, 40:5, 40:6, and Sanitary Code Part I, §111, signed by Dr. Jimmy Guidry, State Health Officer, and J.T. Lane, DHH Assistant Secretary for the Office of Public Health, was mailed via the United State Postal Service (USPS), Certified Mail, and Return Receipt Requested, to Defendant on March 27, 2015. A certified copy of said Compliance Order, which bears the DHH-assigned number OPH-2015-OW-006, together with all attachments thereto, is attached to this petition as **Exhibit DHH-A**. The return receipt associated with the certified mailing of Compliance Order No. OPH-2015-OW-006 is attached hereto as **Exhibit DHH-B**.

5.

As more particularly described therein, Compliance Order No. OPH-2015-OW-006 was

issued only after DHH personnel conducted various inspections and provided Defendant with all notice(s) required under Sanitary Code Part I.

6.

Compliance Order No. OPH-2015-OW-006 was issued to Defendant because she failed, after numerous notices and other attempts by DHH to obtain voluntary compliance, to comply with Sanitary Code Part XIII, §305(A), which states that:

A person shall not directly or indirectly discharge, or allow to be discharged, the contents or effluent from any plumbing fixtures, vault, privy, portable toilet, or septic tank, into any road, street, gutter, ditch, water course, body of water, or onto the surface of the ground.

And §701(A):

A person shall not install, cause to be installed, alter subsequent to installation, or operate an individual sewage system of any kind without first having obtained a permit from the State Health Officer. No person shall install, cause to be installed, or altered subsequent to installation an individual sewerage system of any kind except in accordance with the plans and specifications for the installation which have been approved as a part of a permit issued by the State Health Officer. Such permits shall be issued in a two-stage process in accordance with §701.B and §701.C.

And §701(B):

Upon receipt of a request for such permit, and approval of plans and specifications for the proposed individual sewerage system (which shall accompany any such request for permit), a temporary permit, authorizing the installation of said system, may be used. Any such temporary permit shall be in writing and shall not be issued until, with respect to the property and its surroundings, the State Health Officer has determined that connection to a community-type sewerage system is not feasible, and that the condition of the soil, drainage patterns, the lot size/dimensions, and other related factors are such that the construction and use of properly designed individual sewerage facilities are not likely to create a nuisance of public health hazard.

7.

As noted in the exhibits attached to Compliance Order No. OPH-2015-OW-006, the onsite sewage treatment system presently in use at Defendant's house is not an approved system, and is draining raw or partially treated sewage into a catch basin at College Point Lane. The onsite sewage system is not in good repair as evidenced by the inadequate covering over the system. All of these deficiencies are in violation of the Sanitary Code.

8.

Despite being properly served with Compliance Order No. OPH-2015-OW-006, Defendant did not thereafter, within the twenty days allowed under Sanitary Code Part I, §111 or otherwise, submit to either DHH or the Division of Administrative Law any form of written request that might be construed as a request for an administrative appeal of said Compliance Order.

9.

A Notice and Order of Imposition of Penalties (“NOIP”) issued pursuant to La. R.S. 40:4, 40:5, 40:6, and Sanitary Code Part I, §113, signed by Dr. Jimmy Guidry and Kathy Kliebert, Secretary for the DHH, was delivered via USPS, Certified Mail, Return Receipt Requested, to Defendant on August 4, 2015. A certified copy of the NOIP is attached hereto as **Exhibit DHH-C**. The return receipt associated with the certified mailing of the NOIP is attached hereto as **Exhibit DHH-D**.

10.

As noted therein, the NOIP was preceded by a Post Order Inspection Report (“POIR”), attached hereto as **Exhibit DHH-E**, conducted and completed by DHH personnel on April 21, 2015, and served upon Defendant’s son, who was home at the time of the inspection, as evidenced by the son’s signature on the POIR.

11.

DHH issued the NOIP because Defendant failed to notify DHH in writing, as required by the POIR, that she had complied with Compliance Order No. OPH-2015-OW-006.

12.

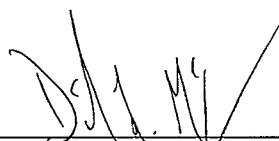
The Defendant has not complied with all of the actions required by Compliance Order No. OPH-2015-OW-006, nor paid the penalty assessed by the NOIP. DHH is thus entitled to an ex parte judgment making both Compliance Order No. OPH-2015-OW-006 and the NOIP a judgment of the district court and making the judgment executory, pursuant to La. R.S. 40:6(G).

13.

Petitioner also suggests that the filing of this Petition and attached documents should be free from payment of any costs of court or other security bonds pursuant to La. R.S. 40:31, which exempts the Department of Health and Hospitals, and its agents and subdivisions, from court costs in any suit.

WHEREFORE, petitioner Dr. Jimmy Guidry, State Health Officer, Louisiana Department of Health and Hospitals (“DHH”), Office of Public Health, prays that Compliance Order No. OPH-2015-OW-006 and the NOIP be made executory in this court, pursuant to La. R.S. 40:6(G), that all costs of these proceedings be taxed against the defendant, and for all other general and equitable relief warranted.

Respectfully Submitted:



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David L. McCay (Bar Roll No. 23527)  
La. Department of Health and Hospitals  
Bureau of Legal Services  
P.O. Box 3836  
Baton Rouge, Louisiana 70821-3836  
Telephone: (225) 342-1123; fax 342-2232  
david.mccay@la.gov

LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS

\* SUIT NO. 35474  
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\* 23<sup>rd</sup> JUDICIAL DISTRICT COURT  
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\* PARISH OF ASSUMPTION  
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\* STATE OF LOUISIANA

VERSUS

EMELDA B. MILLS

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AFFIDAVIT

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*Gayle Boudreau*  
BY CLERK OF COURT  
ASSUMPTION PARISH, LA  
DATE OCT 09 2015

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned Notary Public, personally came and appeared:

**Dr. Jimmy Guidry, State Health Officer**

who, after being duly sworn, did depose and state:

That he is the petitioner in the above and foregoing petition, that he has read the above-captioned petition, and that all of the allegations of fact contained therein are true and correct to the best of his information, knowledge, and belief.

*Jimmy Guidry*  
\_\_\_\_\_  
Jimmy Guidry, M.D.

SWORN TO AND SUBSCRIBED before me, Notary Public, on this 2<sup>nd</sup> day of October, 2015.

*David L. McCay*  
\_\_\_\_\_  
NOTARY PUBLIC  
DAVID L. McCAY  
LA BAR ROLL #23527  
NOTARY PUBLIC, STATE OF LOUISIANA  
MY COMMISSION IS FOR LIFE

LOUISIANA DEPARTMENT OF  
HEALTH AND HOSPITALS

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EMELDA B. MILLS

STATE OF LOUISIANA

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**JUDGMENT**

The court, having reviewed the above and foregoing petition, together with all exhibits and affidavits attached thereto, finds the law and evidence in favor of plaintiff, Louisiana Department of Health and Hospitals, and against the defendant, **Emelda B. Mills** (whose date-of-birth and social security number are unknown to plaintiff). Accordingly:

**IT IS ORDERED, ADJUDGED, AND DECREED** that Compliance Order No. OPH-2015-OW-006 issued by the Louisiana Department of Health and Hospitals to Emelda B. Mills, a copy of which is attached hereto, is hereby made an executory judgment of this court; and

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Notice and Order of Imposition of Penalties dated July 17, 2015, issued by the Louisiana Department of Health and Hospitals to Emelda B. Mills, a copy of which is attached hereto, is hereby made an executory judgment of this court and, accordingly, judgment is hereby rendered in favor of the plaintiff, Louisiana Department of Health and Hospitals, and against the defendant, Emelda B. Mills, in the amount of **Eight Thousand Eight Hundred and 0/100 Dollars (\$8,800.00)**, together with legal interest thereon from date of judicial demand until paid, and for all costs.

SIGNED in chambers this 17<sup>th</sup> day of October, 2015, at  
Gonzales, Louisiana.

**Original Signed By**  
**Jason Verdigata**

\_\_\_\_\_  
JUDGE, 23<sup>rd</sup> Judicial District Court

**PLEASE SERVE NOTICE, PETITION WITH ATTACHMENTS, AND JUDGMENT ON:**

Emelda B. Mills  
111 College Point Lane  
Plattenville, Louisiana 70393

A TRUE COPY  
CLERK OF COURT'S OFFICE  
NAFO' EONVILLE, LA 70380  
*Dawn J. Sandy*