

AUGLAIZE COUNTY
COMMON PLEAS COURT
FILED

2015 DEC 28 AM 10:55

I. JEAN NECKSTROTH
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
AUGLAIZE COUNTY, OHIO

STATE OF OHIO, ex rel.
MICHAEL DeWINE,
OHIO ATTORNEY GENERAL

CASE NO. 2015 CV0014

JUDGE PEPPE

Plaintiff,

v.

CARL A. MAAG & PAUL A. MAAG
EASY CAMPGROUND PARTNERSHIP,
et al.

Defendants.

CONSENT ORDER FOR CARL MAAG

WHEREAS, Plaintiff, the State of Ohio, by its Attorney General Michael DeWine ("State" or "Plaintiff"), has filed the Complaint in this action against Carl A. Maag & Paul A. Maag Easy Campground Partnership, Carl Maag and Todd Smith to enforce the State of Ohio's Water Pollution Control Laws, R.C. Chapter 6111 and the rules promulgated thereunder, concerning the Defendants' operation of a wastewater treatment system at the campground located at 14338 Townline-Kossuth Road, St. Marys, Auglaize County, Ohio ("the Site").

WHEREAS, Plaintiff's Complaint seeks injunctive relief and civil penalties for Defendant Carl Maag's (hereinafter "Maag") alleged violations of R.C. Chapter 6111, Ohio's Water Pollution Control Laws, and the rules promulgated thereunder;

WHEREAS, Maag has agreed to enter into this Consent Order to resolve Plaintiff's Complaint;

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the Plaintiff and Maag it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has both personal and subject matter jurisdiction over the parties. The Complaint states a claim upon which relief can be granted against Maag under Chapter 6111 of the Ohio Revised Code. Venue is proper in this Court. Maag shall not challenge the Court's jurisdiction to enter or enforce this Consent Order.

II. PERSONS BOUND

2. All terms and provisions of this Consent Order shall apply to and be binding upon Maag, his assigns, successors in interest, and others bound by Rule 65(D) of the Ohio Rules of Civil Procedure, who are or will be acting in concert and/or in privity with Maag. The undersigned representative of each party to this Consent Order certifies that he or she is fully authorized by the party or parties whom she or he represents to enter into the terms and conditions of the Consent Order and execute and legally bind that party or parties to it. 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.

3. If insolvency, bankruptcy, or other failure occurs, the remaining unpaid balance of the any civil penalty adjudged herein becomes due and owing immediately.

III. SATISFACTION OF LAWSUIT

4. Nothing in this Consent Order shall limit the authority of the State of Ohio to:
- (a) Seek any legal or equitable relief from Maag or any other appropriate person for claims or conditions not alleged in the Complaint, including violations that occur after the filing of the Complaint.

- (b) Seek any legal or equitable relief from Maag or any other appropriate person for claims or conditions alleged in the Complaint that occur or exist on the date of or after the entry of this Consent Order;
- (c) Enforce this Consent Order through a contempt action or otherwise seek relief for violations of this Consent Order;
- (d) Take any action authorized by law against any appropriate person, including Maag, to eliminate or mitigate conditions at the Site that may present a threat to the public health or welfare or to the environment in derogation of applicable laws and rules, which the State of Ohio has the authority to enforce; and/or,
- (e) Bring any legal or equitable action against any appropriate person other than Maag for any violation of applicable laws. For the purposes of this Consent Order, and in particular the provisions of this paragraph, the term "person" includes: an individual, corporation, business trust, estate, trust, partnership, association, municipal corporation, interstate body created by compact, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.

5. 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 person may have arising out of matters alleged in the Complaint, including the remaining named Defendants.

6. Nothing in this Consent Order shall relieve Maag of his obligations to comply with applicable federal, state, or local statutes, regulations, rules, or ordinances.

7. Maag 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.

IV. INJUNCTION

8. Maag is permanently enjoined from violating R.C. Chapter 6111 and the rules adopted thereunder, as well as all permits and permit renewals issued to Maag.

V. CIVIL PENALTY

9. Pursuant to R.C. 6111.09(A) Maag shall pay to the State of Ohio a cash civil penalty of Eight Thousand Dollars (\$8,000.00) to be paid within 30 days of the entry of this Order by the Court.

10. The civil penalty payment shall be made by delivering to Scott Hainer, Paralegal, or his successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215, a certified check, made payable to the order of the "Treasurer, State of Ohio," for the appropriate amount.

11. It is expressly understood and agreed that upon entry of this Consent Order the State shall be entitled to file a Judgment Lien in the amount of eight thousand dollars (\$8,000) to secure payment of the unpaid civil penalty balance set forth in Paragraph 9 if full payment is not made within thirty days of the entry of this Order by the Court.

VI. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

12. Performance of the terms of this Consent Order by Maag is not conditioned on the receipt of any federal or state grant funds or loans. In addition, Maag's performance is not excused by the failure to obtain or shortfall of any federal or state grant funds or loans, or by the processing of any applications for the same.

VII. MODIFICATION

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

VIII. RETENTION OF JURISDICTION

14. The Court shall retain jurisdiction of this action for the purpose of administering and enforcing compliance with this Consent Order.

IX. COSTS

15. Maag is hereby ordered to pay the court costs of this action up to the date of the Entry of this Consent Order.

16. Maag is hereby ordered to pay the costs incurred by the Ohio EPA for the publication of the Consent Order in Ohio EPA's Weekly Review and a newspaper of general circulation. Maag shall pay the costs associated with publication 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 from the date it receives notice of the costs from Ohio EPA.

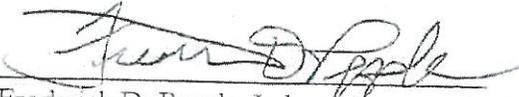
X. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

17. The parties agree and acknowledge that final approval by the Plaintiff and the Maag 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 the State of Ohio and Maag reserve the right to withdraw this Consent Order based on comments received during the public comment period.

18. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon the signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the parties a 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.

IT IS SO ORDERED.

12/28/15
DATE


Frederick D. Pepple, Judge
Auglaize County Court of Common Pleas

APPROVED:

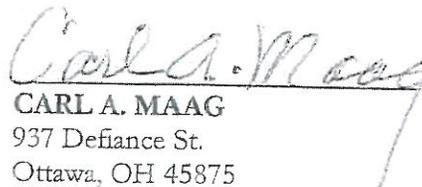
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