

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

STATE OF OHIO, ex rel.	:	CASE NO. 2012 CV 0518
MICHAEL DEWINE,	:	
ATTORNEY GENERAL OF OHIO	:	JUDGE MACKEY
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
NORTHRIDGE MUSIC CENTER LTD.	:	
et al.	:	
	:	
Defendants.	:	

CONSENT ORDER

WHEREAS, the State of Ohio, by and through its counsel Attorney General Michael DeWine, (“State” or “Plaintiff”) has filed a Complaint in this action against Defendants Jitendra and Trupti Kapasi, dba Geneva Motel, (“Defendants”) to enforce Revised Code Chapter 6111 and the rules promulgated thereunder, concerning the Defendants’ discharge of pollutants to waters of the state from residents of the Geneva Motel, located at 4829 Northridge Road, Geneva Township, Ashtabula County, Ohio;

WHEREAS, Plaintiff’s Complaint seeks injunctive relief and civil penalties for Defendants’ alleged violations of R.C. Chapter 6111, Ohio’s Water Pollution Control Laws, and the rules promulgated and permits issued thereunder; and

WHEREAS, Defendants Jitendra and Trupti Kapasi, dba Geneva Motel, have agreed to enter into this Consent Order;

NOW THEREFORE, without the trial of any issue of fact or law, and upon the consent of the parties hereto, it is hereby **ORDERED**, as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over both the parties and the subject matter of this action pursuant to R.C. Chapter 6111. The Complaint states a claim upon which relief can be granted against Defendants under R.C. Chapter 6111. Venue is proper in this Court.

II. PERSONS BOUND

2. The provisions of this Consent Order shall apply to and be binding upon Defendants Jitendra and Trupti Kapasi and anyone operating the Geneva Motel, as well as Geneva Defendants' agents, officers, employees, assigns, successors in interest and others bound by Rule 65(D) of the Ohio Rules of Civil Procedure who are acting in concert and/or privity with Mr. and/or Ms. Kapasi. Defendants shall provide a copy of this Consent Order to each general contractor and/or consultant they employ to perform work itemized herein and each general contractor shall provide a copy of this Consent Order to each of their subcontractors for such work.

III. SATISFACTION OF LAWSUIT

3. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims alleged in the State's Complaint.

IV. RESERVATION OF RIGHTS

4. Nothing in this Consent Order, including the imposition of stipulated civil penalties for violations of this Consent Order, shall limit the authority of the State of Ohio to:

- (a) Seek any legal or equitable relief from Defendants or any other appropriate person for claims or conditions not alleged in the Complaint, including violations that occur after the filing of the Complaint. Notwithstanding the preceding Section, Plaintiff acknowledges the allegations in the Complaint allege all believed conditions and/or violations related to the Site;
- (b) Seek any legal or equitable relief from Defendants 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, to the extent that those claims or conditions are not addressed by 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 Defendants, to eliminate or mitigate conditions at the Site that may present a threat to the public health or welfare, or the environment in derogation of applicable laws and regulations, for which Ohio EPA has the authority to enforce; and/or,
- (e) Bring any legal or equitable action against any appropriate person other than Defendants 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.

V. INJUNCTION AND COMPLIANCE

5. Defendants are permanently enjoined and ordered to comply immediately with all applicable provisions of R.C. Chapter 6111 and the rules promulgated under that chapter, except as otherwise provided in this Consent Order.

6. Ohio EPA staff will visit the Geneva Motel site prior to April 30, 2014. If Ohio EPA staff notifies Defendant in writing that wetland vegetation has not been established as determined by Ohio EPA staff prior to April 30, 2014, Defendants must revegetate the wetland in accordance with the Geneva Motel’s 2012 PTI by no later than May 16, 2014.

7. Defendants are permanently enjoined to meet the requirements set forth in Part I.A. of NPDES Permit No. 3PR00549*AD related to effluent characteristics until expiration of the permit.

8. Defendants are permanently enjoined to meet the requirements set forth in Part I.B. of NPDES Permit No. 3PR00549*AD related to sludge monitoring until expiration of the permit.

9. Defendants are permanently enjoined to meet the requirements set forth in Part II. Of NPDES Permit No. 3PR00549*AD until expiration of the permit.

VI. CIVIL PENALTY

10. Defendants agree to pay a civil penalty totaling **ten thousand (\$10,000.00)** to the State of Ohio as follows:

- (a) By no later than **thirty (30) days** following the entry of this Consent Order, Defendants shall pay the first installment of **five thousand dollars (\$5,000)**.
- (b) By no later than **sixty (60) days** following the entry of this Consent Order, Defendants shall pay a second installment of **five thousand dollars (\$5,000)**.

11. Defendants are jointly and severally responsible for penalty payments and these payments shall be made by a certified check for the amount as stated above, payable to the order of "Treasurer, State of Ohio" and delivered to Scott Hainer, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, or his successor.

12. If Defendants miss any of the scheduled payments as set forth in Paragraph 7, above, payment as well as interest as set forth in R.C. 5703.47 accruing from the date of entry of this Consent Order, shall become due and owing immediately.

VII. REPORTING REQUIREMENT

13. Documents or reports with regard to the WWTP that are required to be submitted to Ohio EPA's Northeast District Office pursuant to this Consent Order shall be sent to: Ohio Environmental Protection Agency, Northeast District Office, Division of Surface Water, ATTN: John Schmidt, at 2110 East Aurora Road, Twinsburg, Ohio 44087.

VIII. STIPULATED PENALTIES

14. Except as outlined above, in the event that Defendants fail to meet the requirements of this Consent Order set forth in paragraphs 5 through 10, Defendants shall immediately and

automatically be liable for and shall pay a stipulated penalty of two hundred fifty dollars (\$250.00) per day for each requirement not met, for the first sixty (60) days of noncompliance. Defendants shall be liable for an additional stipulated penalty of five hundred dollars (\$500.00) per day for each requirement not met if the failure to comply continues for more than sixty (60) days but less than one hundred twenty (120) days. In the event Defendants fail to comply for one hundred twenty (120) days or more, Geneva Defendants shall be liable for an additional one thousand dollars (\$1000.00) per day for each requirement not met.

15. Notwithstanding the foregoing, Plaintiff reserves the right to pursue any other action to enforce all terms of this Consent Order, including, but not limited to, filing charges in contempt with this Court.

16. Any payment required to be made under the provisions of paragraph 11 of this Consent Order shall be made by delivering a certified check or checks, made payable to “Treasurer, State of Ohio”, for the appropriate amount(s), within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, by mail, or otherwise, 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.

IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

17. Performance of the terms of this Consent Order by Defendants is not conditioned on the receipt of any Federal or State grants, loans and/or funds. In addition, Defendants’ performance is not excused by the failure to obtain or any shortfall of any Federal or State grants, loans and/or funds or by the processing of any applications for the same.

X. TERMINATION

18. This Consent Order shall terminate upon Order of this Court, upon Joint Motion of the parties that all activities required or contemplated under this Consent Order have been completed. Nothing herein shall preclude Plaintiff from seeking further investigatory work in connection with implementation of this Consent Order or to address an imminent threat of harm to the public health or the environment. This Section, as well as the Section of this Consent Order on Reservation of Rights, shall survive this termination provision, however, nothing in this Consent Order will survive the entry of final judgment in this action, except as reflected in a final decree.

XI. MODIFICATION

19. No modification shall be made to this Consent Order without either the written agreement of the parties and/or approval of the Court.

XII. MISCELLANEOUS

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

21. Any acceptance by the State of Ohio of any payment, document or other work due hereunder subsequent to the time that the obligation is due under this Consent Order shall not relieve Defendants from the obligations created by this Consent Order.

22. Defendants shall inform the Ohio EPA of any change or cessation of the business that is the subject of this action.

XIII. COSTS

23. Defendants shall pay the court costs of this action.

24. Defendants are 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 as required in Paragraph 23, below. Defendants 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 he receives notice of the costs from Ohio EPA.

XIV. CONTINUING JURISDICTION

25. This Court shall retain jurisdiction over this action for the purpose of enforcing and administering Defendants' compliance with this Consent Order.

XV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

26. The Parties agree and acknowledge that final approval by Plaintiff and Defendants and entry of this Consent Order is subject to the requirements of 40 C.F.R. 123(d)(1)(iii), which provides for notice of the lodging of the Consent Order, opportunity for public comment, and the consideration of any public comments. Both Plaintiff and Defendants reserve the right to withdraw this Consent Order based on comments received during the public comment period.

27. 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 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.

27. 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 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.

JUDGE MACKAY
COURT OF COMMON PLEAS
MADISON COUNTY

DATE

APPROVED:

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Jitendra Kapasi

JITENDRA KAPASI
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