

**IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO**

<b>STATE OF OHIO <i>ex rel.</i></b>	:	<b>CASE NO. CV 2010-05-3680</b>
<b>MICHAEL DEWINE</b>	:	
<b>OHIO ATTORNEY GENERAL</b>	:	<b>JUDGE TEODOSIO</b>
	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>JITENDRA KAPASI</b>	:	<b>CONSENT ORDER</b>
	:	
<b>Defendant.</b>	:	

**CONSENT ORDER FOR INJUNCTIVE RELIEF AND CIVIL PENALTY**

WHEREAS, Plaintiff State of Ohio, by its Attorney General Michael DeWine (“the State” or “the Plaintiff”), has filed the Complaint in this action against Jitendra Kapasi (“the Defendant”) to enforce the State of Ohio’s water pollution control laws, and the rules promulgated thereunder, concerning the Defendant’s ownership and operation of the Hilltop Motel in Summit County, the Palms Motel in Portage County, Ohio and the Gateway Motel in Trumbull County, Ohio. This Consent Order constitutes a resolution of all matters raised in the Complaint in this case.

**NOW THEREFORE**, without trial of any issue of fact or law, and upon consent of the Plaintiff and the Defendant, 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 pursuant to R.C. Chapter 6111. The Complaint states a claim upon which relief can be granted against the Defendant under Chapter 6111 of the Ohio Revised Code. Venue is proper in this Court.

## **II. PERSONS BOUND**

2. All terms and provisions of this Consent Order shall apply to and be binding upon the Defendant, the Defendant's agents, employees, assigns, successors in interest and any person acting in concert, privity, or participation with the Defendant. 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.

## **III. SATISFACTION OF LAWSUIT**

3. The Plaintiff alleges in its Complaint that the Defendant owned and operated the wastewater treatment and disposal systems at businesses identified as the Hilltop Motel, the Palms Motel and the Gateway Motel in violation of Ohio's water pollution control laws, R.C. Chapter 6111, the rules adopted and permits issued thereunder.

4. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by the Defendant for all claims under such laws alleged in the Complaint.

## **IV. RESERVATION OF RIGHTS**

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

- (a) Seek any legal or equitable relief from the Defendant 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 the Defendant 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 the Defendant, to eliminate or mitigate conditions at the Hilltop Motel, the Palms Motel and/or the Gateway Motel that may present a threat to the public health or welfare, or the environment; and/or,
- (e) Bring any legal or equitable action against any appropriate person other than the Defendant 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. PERMANENT INJUNCTION

6. The Defendant is permanently enjoined and ordered to comply immediately with all applicable provisions of R.C. Chapter 6111 and the rules promulgated under that Chapter.

#### VI. CIVIL PENALTY

7. The Defendant shall pay to the State of Ohio a civil penalty of **two hundred twenty-five thousand dollars (\$225,000)** for violations of Ohio’s water pollution control laws (R.C. Chapter 6111), according to the following schedule:

- (a) Beginning on February 1, 2014, and continuing for twenty-three (23) additional consecutive months thereafter, the Defendant shall pay a monthly installment payment equal to four thousand, one hundred sixty-six dollars and sixty-seven cents (\$4,166.67). Each installment payment shall be paid on or before the first (1<sup>st</sup>) day of each month. In total, Defendant shall make twenty-four (24) monthly installment payments totaling one-hundred thousand dollars (\$100,000).
- (b) In the event that the Defendant pays the first twenty-four (24) installment payments totaling one-hundred thousand dollars (\$100,000) timely pursuant to the schedule set forth in Paragraph 7(a) above, the Defendant will be released from payment of the remaining one hundred twenty-five thousand dollars (\$125,000).
- (c) In the event that the Defendant fails to pay the first twenty-four (24) installment payments totaling one-hundred thousand dollars (\$100,000)

timely pursuant to the schedule set forth in Paragraph 7(a) above, the unpaid balance of the full civil penalty shall become immediately due and payable.

8. All civil penalty payments shall be paid by delivering to Scott Hainer, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215, a certified check for the applicable amount as stated in Paragraphs 7(a) through 7(c), payable to the order of “Treasurer, State of Ohio.”

## **VII. STIPULATED PENALTIES**

9. In the event that the Defendant fails to comply with any requirement of Section V of this Order, the Defendant is liable for and shall immediately pay stipulated penalties in accordance with the following schedule for each failure to comply:

- (a) For each day of each failure to comply with a requirement or meet a deadline from one (1) day to thirty (30) days – two hundred dollars (\$200.00) per day per requirement not met;
- (b) For each day of each failure to comply with a requirement or meet a deadline from thirty-one (31) days to sixty (60) days – four hundred dollars (\$400.00) per day per requirement not met;
- (c) For each day of each failure to comply with a requirement or meet a deadline over sixty-one (61) days to ninety (90) days – six hundred dollars (\$600.00) per day per requirement not met.
- (d) For each day of each failure to comply with a requirement or meet a deadline over ninety (90) days – one thousand dollars (\$1,000.00) per day per requirement not met.

## **VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS**

10. Performance of the terms of this Consent Order by the Defendant is not conditioned on the receipt of any federal or state grant funds or loans. In addition, the Defendant’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.

## **IX. MODIFICATION**

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

## **X. MISCELLANEOUS**

12. Nothing in this Consent Order shall affect the Defendant's obligation to comply with all applicable federal, state or local laws, regulations, rules or ordinances. The Defendant shall obtain any and all federal, state, or local permits necessary to comply with this Consent Order.

13. 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 Defendant from the obligations created by this Consent Order.

14. The Defendant shall inform the Ohio EPA of any change of his home and business addresses or telephone numbers.

## **XI. COSTS**

15. The Defendant shall pay the court costs of this action.

16. The Defendant is 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. The Defendant 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.

**XII. CONTINUING JURISDICTION**

17. This Court shall retain jurisdiction over this action for the purpose of enforcing and administrating the Defendant's compliance with this Consent Order.

**XIII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK**

18. The parties agree and acknowledge that final approval by the Plaintiff and the Defendant 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 the Plaintiff and the Defendant reserve the right to withdraw this Consent Order based on comments received during the public comment period.

19. 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 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.

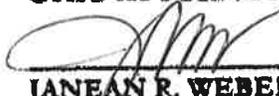
**IT IS SO ORDERED.**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**JUDGE TEODOSIO**

**APPROVED:**

**MICHAEL DEWINE  
OHIO ATTORNEY GENERAL**



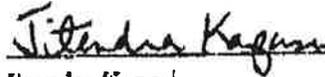
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*Defendant, Jitendra Kapasi*



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*Defendant*