

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO ex rel.	:	CASE NO. 2011 CV 01666
MICHAEL DEWINE	:	
OHIO ATTORNEY GENERAL	:	JUDGE KONTOS
	:	
Plaintiff,	:	
	:	
v.	:	<u>CONSENT ORDER</u>
	:	
PHILIP BALDAUF et al.,	:	
	:	
Defendant.	:	

CONSENT ORDER FOR INJUNCTIVE RELIEF AND CIVIL PENALTY

WHEREAS, Plaintiff State of Ohio, by its Attorney General Michael DeWine ("State" or "Plaintiff"), has filed the Complaint in this action against Philip Baldauf ("Defendant"), dba, Baldauf 4-Plex Apartments ("the Complex"), to enforce the State of Ohio's water pollution control laws, and the rules promulgated thereunder, concerning the Defendant's operation of a private wastewater treatment system at the Complex located at 1587 Warner Road, Vienna Township, Trumbull County, Ohio. This Consent Order constitutes a resolution of disputed claims.

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the Plaintiff and 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 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, Defendant's agents, employees, assigns, successors in interest and any person acting in concert, privity, or participation with 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.

3. Defendant shall provide a copy of this Consent Order to any successor in interest and each key employee, consultant or contractor employed to perform work referenced herein or operate the treatment works.

III. SATISFACTION OF LAWSUIT

4. Plaintiff alleges in its Complaint that Defendant has operated his disposal system at the Complex in such a manner as to result in numerous violations of the discharge limitations and monitoring requirements of Defendant's National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit No. 3PW00031*AD, and in addition, unauthorized discharges after Defendant's NPDES Permit expired, all in violation of Ohio's water pollution control laws, R.C. Chapter 6111, and the rules adopted thereunder.

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

IV. RESERVATION OF RIGHTS

6. 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 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 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 Defendant, to eliminate or mitigate conditions at the Complex and the surrounding areas 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 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

7. 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.

8. Defendant is enjoined and ordered to hire a certified operator to monitor the system at a minimum twice a week, for half hour each visit, in compliance with O.A.C. 3745-7-04(C).

9. Defendant has submitted a complete NPDES Permit application, and is enjoined to respond to any Ohio EPA comments on the application within 30 days and to comply with all terms and conditions of any NPDES Permit when issued.

VI. CIVIL PENALTY

10. Defendant shall pay to the State of Ohio a civil penalty of ten thousand, dollars (\$10,000.00) to settle alleged violations of Ohio's water pollution control laws (R.C. Chapter 6111). The penalty shall be paid by delivering to Martha Sexton, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, within thirty (30) days from the date of entry of this Consent Order, a certified check for one half of the amount stated above, payable to the order of "Treasurer, State of Ohio." Within one hundred eighty (180) days from the date of entry of this Consent Order, Defendant shall deliver the outstanding one half of the amount stated above pursuant to the same means and mechanism.

VII. STIPULATED PENALTIES

11. In the event that Defendant fails to comply with any requirement of paragraph II.3, section V., section VI., and paragraph XIII.27 of this Order, other than effluent violations which will be addressed separately in paragraphs 12, 13 and 14, 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 – one hundred dollars (\$100.00) 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 – two hundred dollars (\$200.00) per day per requirement not met;
- (c) For each day of each failure to comply with a requirement or meet a deadline from sixty-one (61) days to ninety (90) days – three hundred dollars (\$300.00) 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 – five hundred dollars (\$500.00) per day per requirement not met.

12. If Defendant fails to meet any of the daily effluent discharge limits of any of its NPDES Permits, the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

- (a) For each day of each failure to comply with a requirement or meet a deadline from one (1) day to thirty (30) days – one hundred dollars (\$100.00) 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 – two hundred dollars (\$200.00) per day per requirement not met;
- (c) For each day of each failure to comply with a requirement or meet a deadline from sixty-one (61) days to ninety (90) days – three hundred dollars (\$300.00) 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 – five hundred dollars (\$500.00) per day per requirement not met.

13. For the purpose of calculating stipulated penalties under the provisions of this paragraph, each weekly period of violations of a specific average weekly effluent discharge limitation shall be calculated as a single violation. If Defendant fails to meet any of the weekly average effluent discharge limits of any of its NPDES Permits, the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

- (a) For each first through fourth failure to meet any average weekly effluent limitation, one hundred twenty-five dollars (\$125.00) for each average weekly period during which each such failure occurs;
- (b) For each fifth through eighth failure to meet any weekly average effluent limitation, two hundred fifty dollars (\$250.00) for each average weekly period during which each such failure occurs;
- (c) For each ninth through twelfth failure to meet any average weekly effluent limitation, three hundred seventy-five dollars (\$375.00) for each average weekly period during which each such failure occurs;
- (d) For each failure beyond the twelfth failure to meet any average weekly effluent limitation, five hundred dollars (\$500.00) for each average weekly period during which each such failure occurs.

14. For the purpose of calculating stipulated penalties under the provisions of this paragraph, each monthly period of violation of a specific average monthly effluent discharge limitation shall be calculated as a single violation. If Defendant fails to meet any of the average monthly effluent discharge limits of any of its NPDES Permits, the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

- (a) For the first failure to meet any average monthly effluent limitation, two hundred fifty dollars (\$250.00) for each average monthly period during which each such failure occurs;
- (b) For each second failure to meet any average monthly effluent limitation, five hundred dollars (\$500.00) for each average monthly period during which each such failure occurs;
- (c) For each third failure to meet any average monthly effluent limitation, one thousand dollars (\$1,000.00) for each average monthly period during which each such failure occurs;

- (d) For each failure beyond the third failure to meet any average monthly effluent limitation, one thousand two hundred fifty dollars (\$1,250.00) for each average monthly period during which each such failure occurs.

15. Payments due under paragraph 11, 12, 13 and 14 shall be made within forty-five (45) days from the date of the failure to meet the applicable deadline or knowledge of the effluent discharge limitation violation. Payments shall be accompanied by a written explanation of the deadline missed and/or the effluent discharge violation. Any payment required to be made under this paragraph shall be made by delivering to Martha Sexton, or her successor, at the address set forth in Section VI., paragraph 10, a certified check or checks for the appropriate amounts, made payable to "Treasurer, State of Ohio." The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to Section VII shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order. Further, payment by Defendant shall not be considered an admission of liability on the part of Defendant.

VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

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

17. If Defendant is delayed, hindered, or prevented from performing any requirement of sections V., VI., and VII., and paragraph XIII.27 of this Order due to a "Force Majeure Event," Defendant shall notify the Ohio EPA in writing within 10 days of the event or failure, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendant to prevent or minimize the delay and the timetable by which such measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize such delay.

18. In any action by Plaintiff to enforce any of the provisions of the Consent Order, Defendant may raise that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances, or acts or omissions of a governmental or regulatory agency. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an enforcement action, if any, is commenced by Plaintiff. At that time, Defendant will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Defendant or serve as a basis for an extension of time under this Consent Order. Failure by Defendant to comply with the notice requirements of this section shall render this section void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendant's right to request an extension of its obligations under this Consent Order based on such incident. An

extension of one date based on a particular incident does not mean that Defendant qualifies for an extension of a subsequent date or dates. Defendant must make an individual showing of proof regarding each incremental step or other requirements for which an extension is sought. Acceptance of this Consent Order with a Potential Force Majeure Clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

X. MODIFICATION

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

XI. TERMINATION

20. Defendant may move this Court to terminate paragraphs 12 to 14, the Stipulated Penalty Section applicable to violations of any of the effluent limitations contained in Defendant's NPDES permit and this Consent Order, upon a demonstration by Defendant that; 1) Defendant has paid all penalties required by this Consent Order; 2) Defendant has been in compliance with the obligations of paragraphs 12 to 14 for the previous 24 months and 3) Defendant has achieved and maintained compliance with all final effluent limitations contained in the NPDES permit or any renewals or modifications thereof and interim effluent limitations contained in this Consent Order applicable to Defendant for a period of 24 consecutive months from entry of this Consent Order. Termination of paragraphs 12 to 14 of the Stipulated Penalty Section applicable to violations of the effluent limitations contained in Defendant's NPDES permit and this Consent Order, shall only be by order of this Court upon motion by any party, and a demonstration that the conditions outlined in this paragraph have been met.

21. Defendant may move the Court to terminate the Stipulated Penalty provisions in all other portions of this Consent Order upon a demonstration of Defendant that: 1) it has paid all

penalties required by this Consent Order; and 2) it has completed all tasks and achieved and maintained compliance with all terms and conditions in this Consent Order for a period of 24 consecutive months from the entry of this Consent Order. Termination of the Stipulated Penalty provisions contained in this Consent Order shall only be by order of the Court upon motion by any Party, and a demonstration that the conditions outlined in this paragraph have been met.

XII. MISCELLANEOUS

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

23. 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.

24. Defendant shall inform the Ohio EPA of any change of his home and business addresses or telephone numbers, or the cessation of the business that is the subject of this action.

XIII. COSTS

25. Defendant shall pay the court costs of this action.

26. Defendant 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. 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.

XIV. CONTINUING JURISDICTION

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

XV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

28. 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 State of Ohio and the Defendant reserve the right to withdraw this Consent Order based on comments received during the public comment period.

29. 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

7/17/12

JUDGE KONTOIS



APPROVED:

12

JUDGE

TO THE CLERK OF COURTS: YOU ARE ORDERED TO SERVE COPIES OF THIS JUDGMENT ON ALL COUNSEL OF RECORD OR UPON THE PARTIES WHO ARE UNREPRESENTED FORTHWITH BY ORDINARY MAIL.



FILED
COURT OF COMMON PLEAS
JUL 17 2012
TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

MICHAEL DEWINE
OHIO ATTORNEY GENERAL



CASEY L. CHAPMAN (0086286)

L. SCOTT HELKOWSKI (0068622)

Assistant Attorneys General

Environmental Enforcement Section

30 East Broad Street, 25th Floor

Columbus, Ohio 43215

Telephone: (614) 466-2766

Facsimile: (614) 644-1926

Casey.Chapman@ohioattorneygeneral.gov

Lawrence.Helkowski@ohioattorneygeneral.gov

Counsel for Plaintiff, State of Ohio



GREGORY R. GLICK (0000769)

Gregory R. Glick, LLC

147 Bell St., Suite 302

Chagrin Falls, Ohio 44022

Telephone: (216) 292-8108

Facsimile: (866) 429-8738

glickllc@sbcglobal.net

Counsel for Defendant, Philip Baldauf



ANDREA M. SALIMBENE (00806)

McMahon DeGulis LLP

1335 Dublin Road, Suite 216A

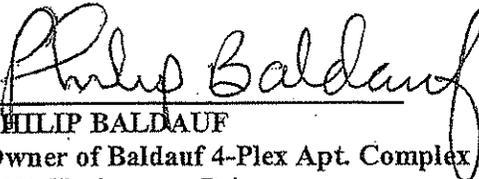
Columbus, Ohio 43215

Telephone: (614) 678-5372

Facsimile: (614) 485-9108

asalimbene@mdllp.net

Counsel for Defendant, Philip Baldauf



PHILIP BALDAUF

Owner of Baldauf 4-Plex Apt. Complex

3691 Hughstowne Drive

Akron, Ohio 44333