

FILED
COMMON PLEAS COURT
2013 JAN 11 AM 10 58

IN THE COURT OF COMMON PLEAS
OTTAWA COUNTY, OHIO

GARY A. KOHLI
CLERK OF COURTS
OTTAWA COUNTY, OH

STATE OF OHIO, ex rel.	:	CASE NO. 10-CV-772H
MICHAEL DEWINE,	:	
OHIO ATTORNEY GENERAL	:	JUDGE BRUCE WINTERS
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
D-Q ENTERPRISES, LLC, et al.	:	
	:	
Defendants	:	

CONSENT ORDER FOR INJUNCTIVE RELIEF AND CIVIL PENALTY

Plaintiff, the State of Ohio, by its Attorney General Michael DeWine ("Plaintiff") filed a Complaint in the above-captioned case on November 1, 2010 against D-Q Enterprises, LLC, Skyway Restaurant, LLC, and South Shore Beach Condominium Association Inc., ("Defendants") to enforce Ohio's Safe Drinking Water and Water Pollution Control Laws, as codified in R.C. Chapters 6109 and 6111 respectively and the rules promulgated thereunder. Plaintiff's Complaint seeks injunctive relief and civil penalties for Defendants' alleged violations of Revised Code Chapter 6109, Ohio's Safe Drinking Water Laws, and Chapter 6111, Ohio's Water Pollution Control Laws, at Skyway Restaurant and South Shore Beach Condominium Association.

Defendants and the State have agreed to resolve the issues raised in the State's Complaint by entering into this Consent Order.

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

I. JURISDICTION AND VENUE

1. The Court has both personal and subject matter jurisdiction over the parties with respect to the Plaintiff's Complaint. The Complaint states a claim upon which relief can be granted against Defendants under R.C. Chapters 6109 and 6111 and the rules promulgated under those statutes, and venue is proper in this Court for the purposes and duration of this Consent Order.

II. PARTIES

2. All terms and provisions of this Consent Order shall apply to and be binding upon the Defendants, Defendants' agents, employees, assigns, successors in interest and any person acting in concert, privity, or participation with Defendants. 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 DQ Enterprises, LLC ("DQ") shall be dismissed as a party Defendant to this action and any reference to "Defendants" shall not include DQ.

III. SATISFACTION OF LAWSUIT

4. Plaintiff alleges in its Complaint that Defendants have operated the water and treatment system at the facilities in such a manner as to result in numerous violations of the Chapters 6109 and 6111 and the rules adopted thereunder, including failure to monitor and operating a public water system without a valid license to operate.

5. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants 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 Plaintiff 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 Consent Order;

(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;

(c) Enforce this Consent Order through a contempt action or otherwise seek relief for violations of this Consent Order and/or;

(d) 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

7. Defendants are enjoined and immediately ordered to comply with the applicable requirements of R.C. Chapters 6109 and 6111 and the rules adopted under those statutes and with this Consent Order.

8. Defendants, as well as Susan Thwaite individually, agree to and are ordered and enjoined to not apply for a license to operate a public water system for a period of five years beginning from January 1, 2012.

VI. CIVIL PENALTY

9. Defendants shall pay to the State of Ohio a civil penalty of ten thousand dollars (\$10,000.00) to settle alleged violations of Ohio's drinking water laws (R.C. Chapter 6109) and 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 ten thousand dollars payable to the order of "Treasurer, State of Ohio." Defendants shall provide "A.G. EAGO No. 403540" in the memorandum section of each certified check.

VII. STIPULATED PENALTIES

10. In the event that Defendants fail to comply with any requirement of paragraph 6, 7, or 8, of this Order, Defendants are 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 from 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 (\$1000.00) per day per requirement not met.
- (e) Within the next five years from the effective date of the Consent Order, for each day that any Defendant or Donald or Susan Thwaite own or operate a drinking water system that qualifies as a public water system - \$5,000.00 per day per violation.

11. Payments due under paragraph 9 shall be made within forty-five (45) days from the date of the failure to meet the applicable deadline. Payments shall be accompanied by a written explanation of the deadline missed. 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 paragraph 8, a certified check or checks for the appropriate amounts, made payable to "Treasurer, State of Ohio." The payment of stipulated penalties by Defendants and the acceptance of such stipulated penalties by Plaintiff for specific violations 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 Defendants shall not be considered an admission of liability on the part of Defendants.

VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

12. Performance of the terms of this Consent Order by Defendants is not conditioned on the receipt of any federal or state grant or loan funds. In addition,

Defendants' performance is not excused by the failure to obtain any federal or state grant or loan funds, or by the processing of any applications for the same.

IX. MODIFICATION

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

X. COSTS

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

XI. CONTINUING JURISDICTION

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

XII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

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

17. 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.

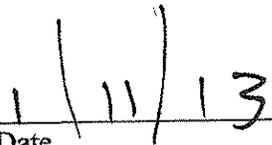
XIII. SIGNATORIES

18. The undersigned is a representative of Defendants and understands the terms and conditions of this Consent Order and certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to execute and legally bind Defendants to this document.

IT IS SO ORDERED:



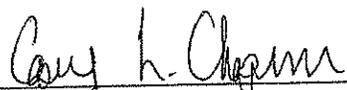
JUDGE BRUCE WINTERS



Date

Approved:

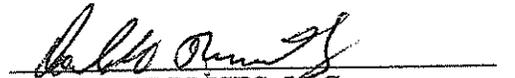
MICHAEL DEWINE
OHIO ATTORNEY GENERAL

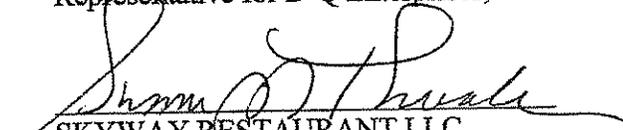


CASEY L. CHAPMAN (0086286)
AARON S. FARMER (0080251)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
Telephone: (614) 466-5279
Facsimile: (614) 644-1926
casey.chapman@ohioattorneygeneral.gov
aaron.farmer@ohioattorneygeneral.gov
Counsel for Plaintiff, State of Ohio

Approved:


Susan Thwaite


D-Q ENTERPRISES, LLC.
1240 Tri Motor Drive, South Bass Island
Put-in-Bay, Ohio 43456
Representative for D-Q Enterprises, LLC


SKYWAY RESTAURANT LLC
1248 Tri Motor Drive, South Bass Island
Put-in-Bay, Ohio 43456
Representative for Skyway Restaurant, LLC


SOUTH SHORE BEACH CONDOMINIUM ASSOCIATION, INC.,
1240 Tri Motor Drive, South Bass Island
Put-in-Bay, Ohio 43456
Representative for South Shore Beach Condominium Association, Inc.


KEVIN R. NOSE
471 East Broad Street, 19th Floor
Columbus, Ohio 43215
Attorney for D-Q Enterprises, LLC (Skyway
Restaurant, LLC and South Shore Beach
Resort c/o Donald and Susan Thwaite)

Counsel for Defendants