

IN THE COURT OF COMMON PLEAS
MADISON COUNTY, OHIO

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

Plaintiff,

v.

ELBOCO ENTERPRISES, CO.

Defendant.

CASE NO. CVH 20110261

JUDGE NICHOLS

FILED

In The Court of Common Pleas
Madison County, Ohio

APR 02 2013

Rene E. Boardil
Clerk of Courts

CONSENT ORDER

Plaintiff, the State of Ohio ("Plaintiff"/"State"), by and through its counsel Attorney General Michael DeWine, filed a Complaint against Defendant Elboco Enterprises, Co., alleging violations of Ohio's Water Pollution Control laws, Ohio Revised Code ("R.C.") Chapter 6111 occurring at the Richmir Private Adult Community ("the Site"), which is a piece of property approximately 29.78 acres in size located on the west side of West Jefferson-Kiousville Road in West Jefferson, Madison County, Ohio, and which was owned or operated by Defendant at all times relevant to the Complaint. This Consent Order constitutes a resolution of disputed claims.

NOW THEREFORE, without the trial of any issue of fact or law, and upon the consent of the parties hereto, it is hereby **ORDERED, ADJUDGED** and **DECREED** 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 Defendant under R.C. Chapter 6111. 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. Defendant shall provide a copy of this Consent Order to each general contractor and/or consultant employed to perform work itemized herein.

III. SATISFACTION OF LAWSUIT

3. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant 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 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. 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 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, 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 Defendant, 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 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. INJUNCTION AND COMPLIANCE

5. 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, except as otherwise provided in this Consent Order.

6. Defendant is permanently enjoined and ordered to comply immediately with the 2008 General Permit as well as any renewals or modifications of the 2008 General Permit that are applicable to the Site.

7. By no later than thirty (30) days following the entry of this Consent Order, Defendant is ordered to submit to Ohio EPA, Central District Office, Division of Surface Water (ATTN: Greg Sanders), 50 West Town Street, Suite 700, P.O. Box 1049, Columbus, Ohio 43216 a complete and approvable Stormwater Pollution Prevention Plan ("SWPPP") for the Site that satisfies the requirements of the 2008 General Permit.

8. Defendant is ordered to retain a copy of the approved SWPPP at the Site, until final stabilization is complete in all disturbed areas of the Site, as “final stabilization” is defined by the 2008 General Permit.

9. By no later than **thirty (30) days** following the entry of this Consent Order, Defendant shall implement all requirements within Defendant’s approved SWPPP, including adequately sizing and maintaining the sediment pond so that it is free from weeds and other debris.

VI. CIVIL PENALTY

10. Defendant agrees to pay a civil penalty totaling **fifty thousand dollars (\$50,000.00)** to the State of Ohio as follows:

- (a) By no later than **thirty (30) days** following the entry of this Consent Order, Elboco shall pay the first installment of **twenty thousand dollars (\$20,000)**.
- (b) By no later than **one (1) year** following the entry of this Consent Order, Elboco shall pay a second installment of **fifteen thousand dollars (\$15,000)**.
- (c) By no later than **two (2) years** following the entry of this Consent Order, Elboco shall pay a third installment of **fifteen thousand dollars (\$15,000)**.
- (d) If Elboco enters into a contract to sell or otherwise transfer any real property owned by Elboco, Elboco shall provide Plaintiff with fifteen (15) day notice of the closing of such sale or transfer and shall use the proceeds from the sale or transfer of said property to satisfy any outstanding penalty amount due under this Section.

11. Penalty 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 Martha Sexton, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, or her successor.

12. If Defendant misses any of the scheduled payments as set forth in Paragraph 10, 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. STIPULATED PENALTIES

13. In the event that Defendant fails to comply with Paragraphs 6, 7, 8 and/or 9 of this Consent Order, 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 and twenty five dollars (\$125.00) 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 and fifty dollars (\$250.00) 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 – seven hundred fifty dollars (\$750.00) per day per requirement not met.

14. Payments due under Paragraph 13 shall be made within forty-five (45) days from the date of the failure to meet the applicable deadline or knowledge of the violation. Payments shall be accompanied by a written explanation of the deadline missed and/or the violation. Any payment required to be made under this paragraph shall be made by delivering a certified check or checks for the appropriate amount(s), made payable to “Treasurer, State of Ohio,” to Martha Sexton, Environmental Enforcement Section, Ohio Attorney General’s Office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, or her successor. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff 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.

15. The stipulated penalties imposed by Paragraph 13 of this Consent Order may be terminated as to each specific paragraph of this Consent Order, for which stipulated penalties are imposed, only after Defendant has achieved and maintained compliance with all the requirements of that paragraph for a period of twelve (12) consecutive months and has paid all stipulated penalties incurred related to that paragraph. Termination of one paragraph subject to stipulated penalties under this Consent Order shall not terminate the accrual of or the liability for payment of stipulated penalties under any other paragraph. Termination of stipulated penalties under this Consent Order shall only be upon written application by any party, and by order of the Court after the Court has made a determination that the requirements of this paragraph have been satisfied.

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 grants, loans and/or funds. In addition, Defendant's 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.

IX. MISCELLANEOUS

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

18. 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.

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

X. COSTS

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

21. 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 as required in Paragraph 23, below. 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.

XI. CONTINUING JURISDICTION

22. 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

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

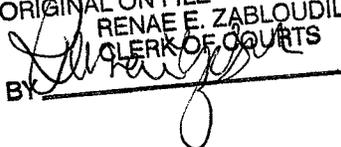
24. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon the signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the parties a notice of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



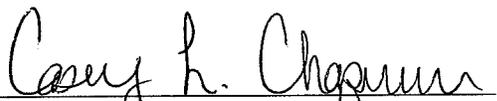
JUDGE NICHOLS
COURT OF COMMON PLEAS
MADISON COUNTY

DATE

I HEREBY CERTIFY THAT THIS
IS A TRUE COPY OF THE
ORIGINAL ON FILE
RENAE E. ZABLOUDIL
CLERK OF COURTS
BY 

APPROVED:

MICHAEL DEWINE
OHIO ATTORNEY GENERAL



CASEY L. CHAPMAN (0086286)
JANEAN WEBER (0083960)
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
janean.weber@ohioattorneygeneral.gov

Counsel for Plaintiff, State of Ohio



ROBERT J. SCHMIDT (0062261)

Porter, Wright, Morris & Arthur LLP

41 S. High St.

Columbus, Ohio 43215-3400

Telephone: (614) 227-2097

Telefax: (614) 227-2100

Counsel for Defendant



Elboco Enterprises, Co.

By: Richard Bobo, President