

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

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

Plaintiff,

v.

RICHARD B. THOMPSON dba
TIMES SQUARE RESTAURANT, *et al.*

Defendants.

CASE NO. 2012-CV-2229

JUDGE KONTOS
MAGISTRATE CORNICELLI

CONSENT ORDER

Plaintiff, the State of Ohio, by and through its counsel Attorney General Michael DeWine, filed a Complaint against Richard B. Thompson, himself, and doing business as Times Square Restaurant, Times Square Restaurant, LLC, and against Kenny L. Wilson and Carol A. Wilson (collectively "Defendants") alleging violations of Ohio's Water Pollution Control laws, Ohio Revised Code ("R.C.") Chapter 6111. The allegations relate to the wastewater treatment works and disposal system owned and/or operated by Defendants and located at 8078 Main Street, Kinsman Township, Trumbull County, Ohio 44428 ("Times Square Restaurant"). 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 both jurisdiction over the parties and the subject matter of this action pursuant to R.C. Chapters 3767 and 6111. The Complaint states a claim upon which relief

can be granted against the Defendants under R.C. Chapters 3767 and 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 Defendants, Defendants' agents, employees, assigns, successors in interest and any person acting in concert, privity or participation with Defendants in accordance with Civ.R. 65(D). The undersigned representative of each party to this Consent Order certifies that she or he 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. Defendants shall provide a copy of this Consent Order to any lessee or successor in interest and each key employee, consultant or contractor employed to perform work referenced herein or operate the disposal system or treatment works.

4. The obligation of Defendants to pay the amounts and implement the requirements of this Consent Order is joint and several. In the event of the insolvency, bankruptcy, or other failure of a Defendant to pay any required amount and/or implement any requirement, the remaining Defendant(s) shall pay the amount and/or implement the requirement as required by this Consent Order.

III. SATISFACTION OF LAWSUIT

5. Plaintiff alleges in its Complaint that Defendants' operation of the wastewater treatment works and disposal system at Times Square Restaurant ("Times Square WWTP") has

resulted in numerous violations of Ohio Water Pollution Control Laws, R.C. Chapters 6111 and 3767 and rules promulgated thereunder. Defendants specifically dispute Plaintiff's allegations.

6. 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

7. 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;

(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;

(d) Take any action authorized by law against any appropriate person, including Defendants, to eliminate or mitigate conditions at the wastewater treatment plant/disposal system at Times Square Restaurant 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 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. PERMANENT INJUNCTION

8. Defendants are permanently enjoined and ordered to comply immediately with all applicable provisions of R.C. Chapters 3767 and 6111 and the rules promulgated under these Chapters.

9. Defendants are enjoined and ordered, to operate the leach field for the Times Square Restaurant in compliance with all applicable requirements of the Ohio Sanitary Code, codified at O.A.C. Chapter 3701-29, and any additional applicable ordinances or rules administered by the Trumbull County Health Department or the Ohio Environmental Protection Agency ("Ohio EPA").

10. Defendants are enjoined and ordered to comply with Ohio Sanitary Code 3701-29-07(I) and shall pump the septic tank for the Times Square Restaurant when the sludge and scum level of the septic tank on site exceeds one third (1/3) of the total liquid capacity.

11. In the event the leach field for the Times Square Restaurant begins to show signs of failure, Defendants are enjoined and ordered to replace the disposal system within 120 days of the signs of failure.

12. Defendants are enjoined and ordered to connect the discharge from the Times Square Restaurant to the Kinsman's sanitary sewerage system within one hundred and twenty (120) days of completion of Phase II of the sanitary sewers in Kinsman, Ohio by Trumbull County.

13. Defendants are enjoined and ordered to provide written notice to Plaintiff within fourteen (14) days after connecting to the Kinsman sanitary sewerage system.

14. Defendants are enjoined and ordered to remove and properly dispose of any sewage and sludge stored or contained in the septic tank, disconnect the piping between the septic tank and the leach field, break up the septic tank, and backfill with soil within thirty (30) days of connection of the Times Square Restaurant to the Kinsman sanitary sewerage system.

VI. POTENTIAL FORCE MAJEURE

15. If any event occurs which causes or may cause a delay in the Defendants' compliance with any requirement of this Consent Order, the Defendants shall notify Ohio EPA in writing within ten (10) days from when the Defendants knew, or by the exercise of due diligence should have known, of the event. The notification to Ohio EPA shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by the Defendants to prevent or minimize the delay, and the timetable by which those measures will be implemented. The Defendants shall adopt all reasonable measures to avoid or minimize any such delay.

16. In any action by the State to enforce any provisions of this Consent Order, the Defendants may raise that they are entitled to a defense that their conduct was caused by reasons entirely beyond their control such as, by way of example and not limitation, acts of God, strikes, acts of war, or civil disturbances. While the State does not agree that such a defense exists, it is, however, hereby agreed upon by the Defendants and the State that it is premature at this time to raise and adjudicate the existence of such a defense, and that the appropriate time to adjudicate the existence of such a defense is when, if ever, that a court proceeding to enforce this Consent

Order is commenced. At that time, the Defendants will bear the burden of proving that any delay or other violation of this Consent Order was, or will be, caused by circumstances entirely beyond the control of the Defendants. Unanticipated or increased costs associated with the implementation of any action required under this Consent Order, or a change in the Defendants' financial circumstances, shall not constitute circumstances entirely beyond the control of the Defendants. Failure by the Defendants to timely 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 the Defendants' right to request an extension of their obligations under this Consent Order based on such incident. An extension of one date based on a particular incident does not mean that the Defendants qualify for an extension of a subsequent date or dates. The Defendants must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order with a potential Force Majeure Clause does not constitute a waiver by the Defendants of any rights or defenses they may have under applicable law.

VII. SUBMITTAL OF DOCUMENTS

17. Documents 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: DSW Enforcement Group Leader) at 2110 East Aurora Road, Twinsburg, Ohio 44087.

VIII. CIVIL PENALTY

18. Defendants shall pay to the State of Ohio a total civil penalty of ten thousand dollars (\$10,000) for violations of Ohio's water pollution control laws. The civil penalty shall be apportioned as follows:

- a) A cash penalty of \$5,750.00 shall be paid by delivering to Martha Sexton, Paralegal, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215, a certified check, made payable to the order of the "Treasurer, State of Ohio,".
- b) In lieu of an additional cash civil penalty, \$4,250.00 shall be paid as a supplemental environmental project (SEP) to the Ohio Environmental Protection Agency's Surface Water Improvement Fund, created pursuant to Revised Code 6111.0382, to be used for water quality restoration and protection projects. The SEP payment shall be paid within thirty (30) days of the Effective Date of this Consent Order. For purposes of determining the due date for the SEP payment, a "day" means a calendar day, and any due dates falling on a weekend shall carry over to the following Monday. Nothing herein precludes Defendants from making an early SEP payment.
 - i. Defendants' SEP payment shall be made by delivering to Carol Butler, a cashier's or certified check, payable to the "Treasurer, State of Ohio" at the Ohio Environmental Protection Agency, P.O. Box 1049, Columbus, Ohio 43216. A copy of the SEP payment shall be mailed to Plaintiff,

Attn: Martha Sexton, Paralegal, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215.

- ii. If Defendants fail to make the SEP payment within the applicable deadline provided in subsection (i), the SEP payment shall be immediately due and payable as a civil penalty to Plaintiff Attn: Martha Sexton, Paralegal, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215.

19. If the Defendants miss any of the scheduled payments as set forth in paragraph 18, above, all remaining payments, along with interest as set forth in R.C. 5703.47 accruing from the date of entry of this Consent Decree, shall become due and owing immediately.

IX. STIPULATED PENALTIES

20. In the event that Defendants fail to comply with any requirement of this Order other than those in paragraph 18, 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 – one hundred dollars fifty dollars (\$150.00) 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 – three hundred fifty dollars (\$350.00) 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 – five hundred dollars (\$500.00) per day per requirement not met.

21. Payments due under paragraph 20 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 or predecessor, Environmental Enforcement Section, Ohio Attorney General's Office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. The payment of stipulated penalties by Defendants and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to Section VIII 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.

X. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

22. 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.

XI. EFFECT OF CONSENT ORDER

23. This Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system, or the modification of any existing public water system or distribution system. Approval for any such construction or modification shall be by permit issued by Ohio

EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

XII. MISCELLANEOUS

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

25. 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.

26. Each 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

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

28. 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. 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 AND TERMINATION

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

30. This Consent Order may be terminated upon a demonstration that the Defendants have completed the requirements outlined in Section V of this Order, and have paid all stipulated penalties, if any, required under Paragraph 20 of this Consent Order. Termination of this Consent Order shall only be by order of the Court upon application of any party, according to Ohio Rule of Civil Procedure 60(B).

XV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

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

32. 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 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.

DATE

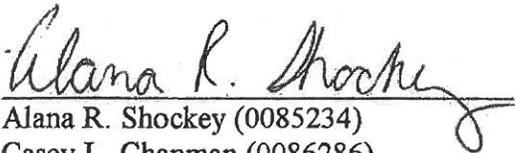


JUDGE KONTOS
COURT OF COMMON PLEAS
TRUMBULL COUNTY

TRUMBULL COUNTY, OH
KAREN INANTE ALLEN, CLERK
OCT 29 2013
FILED
COURT OF COMMON PLEAS

APPROVED:

MICHAEL DEWINE
OHIO ATTORNEY GENERAL



Alana R. Shockey (0085234)

Casey L. Chapman (0086286)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
Telephone: 614-466-2766
Facsimile: 614-644-1926
alana.shockey@ohioattorneygeneral.gov
casey.chapman@ohioattorneygeneral.gov



Richard B. Thompson

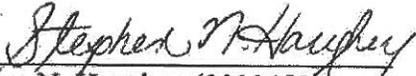
P.O. Box 389
Kinsman, Ohio 44428

Defendant



Times Square Restaurant, LLC

Counsel for Plaintiff, State of Ohio


Stephen N. Haughey (0010459)
Frost Brown Todd LLC
3300 Great American Tower
301 East Fourth Street
Cincinnati, OH 45202

Counsel for Defendants
Richard B. Thompson and
Times Square Restaurant, LLC;


JAMES M. BRUTZ (0011144)
Attorney at Law
410 Mahoning Avenue, N.W.
Warren, OH 44483
Telephone: (330) 609-5045
Facsimile: (330) 609-5048
brutzlaw@earthlink.net

Counsel for Defendants Kenny L. and Carol A. Wilson

CINLibrary 0120519.0580940 2980302v1

by: Kenny L. Wilson
3297 Wakefield Creek
Farmdale, Ohio 44417

Defendant


Kenny L. Wilson
3297 Wakefield Creek
Farmdale, Ohio 44417

Defendant


Carol A. Wilson
3297 Wakefield Creek
Farmdale, Ohio 44417

Defendant

