

2013 MAY 30 AM 11:33
BARBARA A. WEDERHORN
CLERK OF COMMON PLEAS COURT
CLERMONT COUNTY, OH

**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

STATE OF OHIO, ex rel.	:	CASE NO. 2012 CVH 1998
MICHAEL DeWINE,	:	
OHIO ATTORNEY GENERAL	:	JUDGE MCBRIDE
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
KEN BUTTS	:	
d/b/a LAUREL BELL APARTMENTS	:	
	:	
Defendant.	:	

ENTRY AND ORDER

On May 13, 2013 at 9:00 a.m., this matter came before this Court for a hearing on default judgment, injunctive relief and civil penalty against Defendant Ken Butts.

Upon the application of the Plaintiff, State of Ohio, by and through its Attorney General Michael DeWine, pursuant to Civ.R. 55, and for good cause shown, this Court ORDERS that judgment by default be entered against Defendant Ken Butts. Accordingly, Plaintiff's Motion for Default Judgment is GRANTED.

The Court hereby preliminarily and permanently orders and enjoins Defendant to:

- a. Comply with R.C. 6111, the rules promulgated thereunder, and the terms and conditions of any permit that may be issued to Defendant by Ohio EPA;

- b. Comply immediately with all terms and conditions of the NPDES permit and/or any subsequent NPDES permit renewals;
- c. Immediately begin recording monitoring data and submit discharge monitoring reports to the Director on a monthly basis, by no later than the 20th day of the month following the month for which the discharge monitoring report pertains to;
- d. Contract with an Operator of Record with a valid certification of a class equal to or greater than Class A to oversee operations of the WWTW within thirty (30) days from the entry of this Order;
- e. Complete and submit an Operator of Record form to Ohio EPA Southwest District Office within thirty (30) days from the entry of this Order;
- f. Staff the WWTW with an Operator of Record that fulfills the staffing time requirements for a Class A WWTW within thirty (30) days from the entry of this Order;
- g. Relocate the effluent discharge sampling point immediately to a point that is discharging effluent only;
- h. Contract with a Professional Engineer licensed in the State of Ohio within thirty (30) days of entry of this Order to evaluate the Defendant's WWTW and propose a plan of action for bringing the WWTW into compliance with Defendant's NPDES permit within ninety (90) days from the entry of this Order, and to submit this plan to Ohio EPA Southwest District Office immediately upon receipt from the Professional Engineer;
- i. Immediately submit DMRs for any and every month in which Defendant completed sampling but failed to submit a DMR to Ohio EPA;

This Court will retain jurisdiction of this suit for the purpose of making any order or decree which it may deem necessary at any time to carry out its judgment. This Order shall remain in effect against Defendant and any successors in interest.

Furthermore, this Court recognizes that it may use its informed discretion to impose a civil penalty that is appropriate to: (1) redress the harm or risk of harm posed to the environment by the violations at issue; (2) remove the economic benefit gained by the violation; (3) penalize the level of recalcitrance, defiance, or indifference demonstrated by the violator of the law; and (4) recover the extraordinary costs incurred by the State of Ohio. *State ex rel. Brown v. Dayton Malleable, Inc.*, 2d Dist. No. 6722 (Apr. 21, 1981), at *8, partially reversed on other grounds, 1 Ohio St.3d 151, 158, 438 N.E.2d 120 (1982).

Having considered the four factors articulated in *Dayton Malleable* and the evidence submitted by the Plaintiff, State of Ohio, this Court finds that a civil penalty for Defendant's violations of R.C. Chapter 6111 and the rules promulgated thereunder is merited.

Therefore, it is ORDERED, ADJUDGED AND DECREED that that Defendant Ken Butts pay to the State of Ohio a civil penalty of \$82,000, pursuant to R.C. 6111.09.

DATE



HON. JERRY R. MCBRIDE, JUDGE

Copies to:
Christine Rideout, Ohio Attorney General's Office
Ken Butts

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Entry and Order* has been served by U.S. Mail on the 29th day of May, 2013, upon the following:

Ken Butts
1881 Laurel Lindale Rd.
Lot 9
New Richmond, Ohio 45157



Christine L. Rideout (0088134)
Assistant Attorney General