

IN THE COURT OF COMMON PLEAS  
MONROE COUNTY, OHIO

COURT OF COMMON PLEAS  
MONROE COUNTY, OHIO

2013 AUG -5 AM 10:57

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

Plaintiff,

v.

NEAL WITTENBROOK d.b.a.  
G&N SPORTSBAR AND GRILL, et al.

Defendants.

CASE NO. 2011-362 ANN ROSE  
CLERK OF COURTS

JUDGE SELMON

**PARTIAL CONSENT ORDER**

WHEREAS, Plaintiff, the State of Ohio, by and through its counsel, Ohio Attorney General Michael DeWine, filed a First Amended Complaint against Neal Wittenbrook, doing business as G&N Sportsbar and Grill, and Woodell Inc. (collectively, "Defendants") alleging violations of Ohio's Water Pollution Control laws, Ohio Revised Code ("R.C.") Chapter 6111 at 52230 State Route 800, Malaga, Monroe County, Ohio (the "Site");

WHEREAS, Plaintiff's First Amended Complaint seeks injunctive relief and civil penalties for Defendants' alleged violations of R.C. 6111 and the rules and permits promulgated thereunder;

WHEREAS, **Defendant Woodell Inc.** has agreed to enter into this Consent Order to resolve Plaintiff's claims as they pertain to Defendant Woodell Inc;

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 Woodell Inc. 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 Woodell Inc., Defendant Woodell Inc.'s agents, employees, assigns, successors in interest, and others bound by Ohio Civil Rule 65(D), who are acting in concert, privity or participation with Defendant Woodell Inc. The undersigned representative of each party to this Consent Order certifies that he or she is fully authorized by the party or parties whom he or she 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 Woodell Inc. 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 located on the Site.

4. In the event of the insolvency, bankruptcy, dissolution or other failure of Defendant Woodell Inc., Defendant Woodell Inc. is required to pay any remaining amount and/or implement any remaining requirement as set forth by this Consent Order.

### **III. SATISFACTION OF LAWSUIT**

5. Plaintiff alleges in its Complaint that Defendant Woodell Inc. operates and has operated the wastewater treatment works and disposal system at the Site ("WWTP") in such a manner as to result in numerous violations of the monitoring and reporting requirements of Defendant Woodell Inc.'s National Pollutant Discharge Elimination System ("NPDES") Permit No. OPR00153\*AD. Additionally, Plaintiff alleges in its Complaint that Defendant Woodell Inc. failed to keep the WWTP in good working order in violation of its NPDES Permit No. OPR00153\*AD.

6. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant Woodell Inc. for all claims alleged in the State's First Amended 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 Defendant Woodell Inc. or any other appropriate person for claims or conditions not alleged in the First Amended Complaint, including violations that occur after the filing of the First Amended Complaint;
- (b) Seek any legal or equitable relief from Defendant Woodell Inc. or any other appropriate person for claims or conditions alleged in the First Amended 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 Woodell Inc., to eliminate or mitigate conditions at

the WWTP 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 Woodell Inc. 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**

8. Defendant Woodell Inc. is permanently enjoined and ordered to comply immediately with all applicable provisions of R.C. Chapter 6111 and the rules promulgated under that chapter.

9. Defendant Woodell Inc. is immediately enjoined and ordered to cease discharging effluent from its WWTP until all components of the WWTP are installed and operating in accordance with Ohio EPA Permit to Install, Application No. 576287 ("PTI No. 576287"), which has been attached to this Consent Order as **Exhibit A**.

10. Defendant Woodell Inc. is immediately enjoined and ordered to hire and maintain a certified operator possessing at least a Class A certification to oversee the technical operation of the WWTP.

11. By no later than **seventy-five (75) days** following entry of this Consent Order, Defendant Woodell Inc. is enjoined and ordered to bring the WWTP back into good working order by installing all components of the WWTP in accordance with PTI No. 576287 and performing any other measures necessary to do so.

12. By no later than seventy-five (75) days following entry of this Consent Order, Defendant Woodell Inc. is enjoined and ordered to comply with all terms and conditions of NPDES Permit No. OPR00153\*AD.

#### **VI. SUBMITTAL OF DOCUMENTS**

13. Documents required to be submitted to Ohio EPA's Southeast District Office pursuant to this Consent Order shall be sent to: Environmental Protection Agency, Southeast District Office, Division of Surface Water (ATTN: DSW Enforcement Group Leader) at 2195 Front Street, Logan, Ohio 43138.

#### **VII. CIVIL PENALTY**

14. Defendant Woodell Inc. shall pay to the State of Ohio a civil penalty of eleven thousand dollars (\$11,000) in installments according to the following schedule:

- (a) No later than ninety (90) days after entry of the Consent Order, Defendant Woodell Inc. shall pay a first payment of one thousand eight hundred dollars (\$1,800);
- (b) No later than one hundred eighty (180) days after entry of the Consent Order, Defendant Woodell Inc. shall pay a second payment of one thousand eight hundred dollars (\$1,800);
- (c) No later than two hundred seventy (270) days after entry of the Consent Order, Defendant Woodell Inc. shall pay a third payment of one thousand eight hundred dollars (\$1,800);
- (d) No later than three hundred sixty-five (365) days after entry of the Consent Order, Defendant Woodell Inc. shall pay a fourth payment of one thousand eight hundred dollars (\$1,800);
- (e) No later than four hundred fifty-five (455) days after entry of the Consent Order, Defendant Woodell Inc. shall pay a fifth payment of nine hundred and fifty dollars (\$950);

- (f) No later than **five hundred forty-five (545) days** after entry of the Consent Order, Defendant Woodell Inc. shall pay a sixth payment of nine hundred and fifty dollars (\$950);
- (g) No later than **six hundred thirty-five (635) days** after entry of the Consent Order, Defendant Woodell Inc. shall pay a seventh payment of nine hundred and fifty dollars (\$950); and
- (h) No later than **seven hundred thirty 730 days** after entry of the Consent Order, Defendant Woodell Inc. shall pay an eighth payment of nine hundred and fifty dollars (\$950).

15. Penalty payments shall be made by certified checks for the amounts 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.

16. If Defendant Woodell Inc. misses any of the scheduled payments as set forth in Paragraph 14, above, all remaining payments, along with 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.

#### **VIII. STIPULATED PENALTIES**

17. In the event that Defendant Woodell Inc. fails to comply with any requirement of this Order, Defendant Woodell Inc. 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 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 fifty dollars (\$500.00) per day per requirement not met.

18. Payments due under Paragraph 17 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 and/or the effluent 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. The payment of stipulated penalties by Defendant Woodell Inc. 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 Defendant Woodell Inc. shall not be considered an admission of liability on the part of Defendant Woodell Inc.

#### **IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS**

19. Performance of the terms of this Consent Order by Defendant Woodell Inc. is not conditioned on the receipt of any private, Federal or State grants, loans and/or funds. In addition, Defendant Woodell Inc.'s performance is not excused by the failure to obtain or any shortfall of any private, Federal or State grants, loans and/or funds or by the processing of any applications for the same.

#### **X. EFFECT OF CONSENT ORDER**

20. This Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities not previously approved by Ohio EPA. 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.

#### **XI. MISCELLANEOUS**

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

22. 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 Woodell Inc. from the obligations created by this Consent Order.

23. Defendant Woodell Inc. shall inform the Ohio EPA of any change of its Registered Agent's address and business addresses or telephone numbers, or the cessation of the business that is the subject of this action.

#### **XII. COSTS**

24. Defendant Woodell Inc. shall pay half of the court costs due and owing in this case as of the date of entry of this Partial Consent Order.

25. Defendant Woodell Inc. 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 Woodell Inc. shall pay the costs associated with publication by delivering a certified check payable to: "Treasurer, State of Ohio" 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.

### **XIII. FORCE MAJEURE**

26. Plaintiff and Defendant Woodell Inc. do not agree that a Force Majeure defense to compliance with this Partial Consent Order exists, it is, however, hereby agreed upon by Defendant Woodell Inc. and Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense. The appropriate point at which to adjudicate the existence of such a defense is at the time that Defendant Woodell Inc. asserts a claim or defense of Force Majeure. At that time, Defendant Woodell Inc. will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant Woodell Inc or otherwise meets the definition of a Force Majeure under Ohio law. Notwithstanding the foregoing, unanticipated costs, increased costs, failure to secure funding 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 Woodell Inc. or serve as a basis for an extension of time under this Consent Order.

### **XIV. CONTINUING JURISDICTION**

27. This Court shall retain jurisdiction over this action for the purpose of enforcing and administering Defendant Woodell Inc.'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 Woodell Inc. 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,

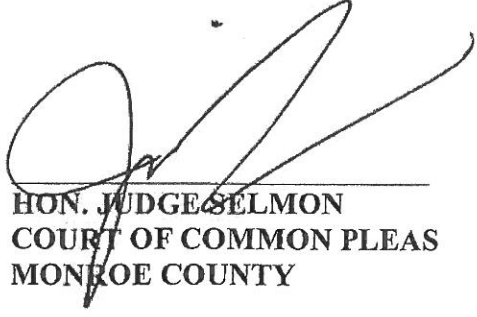
opportunity for public comment, and the consideration of any public comments. Both the State of Ohio and the Defendant Woodell Inc. reserve the right to withdraw this Consent Order based on comments received during the public comment period.

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 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.

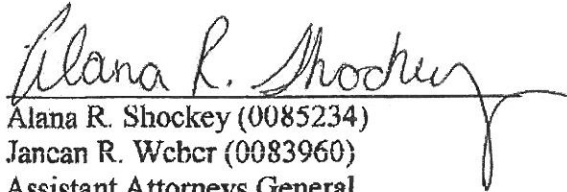
**IT IS SO ORDERED.**

DATE

8/5/13

  
HON. JUDGE SELMON  
COURT OF COMMON PLEAS  
MONROE COUNTY

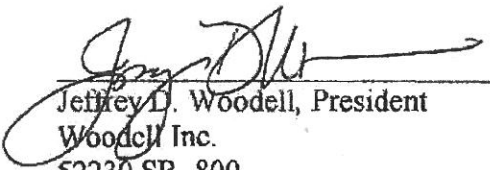
**APPROVED:**



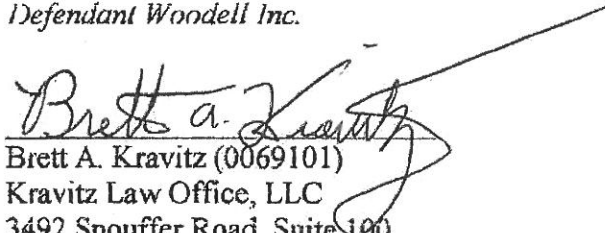
Alana R. Shockey (0085234)  
Janan R. Weber (0083960)  
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215

Telephone: 614-466-2766  
Facsimile: 614-644-1926  
alana.shockey@ohioattorneygeneral.gov  
janean.weber@ohioattorneygeneral.gov

*Counsel for Plaintiff, State of Ohio*

  
Jeffrey D. Woodell, President  
Woodell Inc.  
52230 SR, 800  
Malaga, Ohio 43757

*Defendant Woodell Inc.*

  
Brett A. Kravitz (0069101)  
Kravitz Law Office, LLC  
3492 Snouffer Road, Suite 100  
Telephone: 614-799-2910  
Facsimile: 614-462-1720  
bkravitz@kravitz-lawoffice.com  
*Counsel for Defendant Woodell Inc.*