FILED
MIAMI COUNTY
COMMON PLEAS COURT
16 JUN 10 AM 10: 18
JAN A. HOTTINGER
CLERK OF COURTS

COURT OF COMMON PLEAS
MIAMI COUNTY, OHIO

STATE OF OHIO, *ex rel.* MICHAEL DEWINE,	:	**CASE NO. 14-457**
	:	
	:	**JUDGE CHRISTOPHER GEE**
Plaintiff,	:	
	:	
v.	:	
	:	
CHADWICK ESTATES, LLC	:	Entity: Chadwick Estates LLC Doc Type: Judicial Order Doc Subtype: Consent order Program: NPDES County: Miami Secondary ID: 8 01L 00034
	:	
and	:	
	:	
ROBERT E. RECK	:	
	:	
Defendants.	:	

CONSENT ORDER

WHEREAS, Plaintiff State of Ohio, by its Attorney General Michael DeWine ("State" or "Plaintiff"), has filed the Complaint in this action against Chadwick Estates, LLC and Robert E. Reck (collectively referred to as "Defendants") to enforce the State of Ohio's Water Pollution Control Laws and Nuisance Laws, R.C. Chapters 6111 and 3767, respectively, and the rules promulgated thereunder, concerning the Defendants' operation of Class V injection wells at Chadwick Estates, located at 8785 North State Route 66, Piqua, Miami County, Ohio ("the Site").

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

I. JURISDICTION AND VENUE

1. The Court has both personal and subject matter jurisdiction over the parties. The Complaint states a claim upon which relief can be granted against Defendants under Chapters 6111 and 3767 of the Ohio Revised Code. 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 Defendants, their assigns, successors in interest, and others bound by Rule 65(D) of the Ohio Rules of Civil Procedure, who are or will be acting in concert and/or in privity with the 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.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendants have operated at least one (1) Class V injection well at Chadwick Estates in such a manner as to result in violations of the Nuisance and Water Pollution Control Laws of the State of Ohio. Defendants specifically dispute Plaintiff's allegations. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims under such laws alleged in the Complaint filed contemporaneously with this Consent Order.

4. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief against Defendants or other appropriate persons for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the

Complaint, nor shall anything in this Consent Order limit the right of Defendants to any defenses it may have for such claims including that Defendants no longer operate a Class V injection well. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief against other appropriate persons, not covered by this Consent Order, for claims or conditions alleged in the Complaint. Similarly, nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to undertake any action against any person, including Defendants, to eliminate or mitigate conditions that may present a threat to the public health, welfare or the environment.

IV. PERMANENT INJUNCTION

5. Defendants are permanently enjoined from violating R.C. Chapters 6111, 3767, and the rules adopted under those laws.

6. Defendants are enjoined and ordered to do the following with respect to the septic tanks and Class V injection wells located at Chadwick Estates:

A. Within thirty (30) days of the entry of this Order, Defendants shall, on a day that is mutually agreeable to Ohio EPA, and with a representative of Ohio EPA present, complete the following work at the Site:

   a. Disconnect all plumbing from all sinks and toilets in the industrial buildings at the Site, and cap all lines associated with all sinks and toilets in the industrial buildings. Defendants shall trench to a minimum depth of three (3) feet around the bank (east) and sides (north and south) of the industrial buildings at the Site in order to locate any plumbing lines, sewage lines, or waste disposal lines leaving the industrial buildings. All plumbing lines, sewage lines, waste disposal lines and visibly contaminated soils shall be removed and the trench back-filled with clean fill soil.

B. Defendants shall remove all waste disposal lines connecting the trailers to the septic tanks and dry wells. All excavated trenches shall be back filled with clean fill soil. Defendants shall take photographs of all of the waste disposal lines, the removal of the waste disposal lines and the locations of back-fill activity with clean soil. Defendants shall submit those photos to Ohio EPA

within three (3) days of the waste disposal line removal activity.

C. By July 16, 2016, Defendants shall complete all work described in paragraphs 6.A and 6.B above, and shall submit a Closure Report pursuant to Ohio Adm.Code 3745-34-11(O) describing in detail: all work that has been performed; all soils and materials removed and the quantities of those soils and materials; the clean fill soil that was used and the quantity of clean fill soil; and the location where all septic tanks, Class V wells, waste disposal lines, and contaminated soils were taken. Defendants shall additionally submit with the Closure Report all receipts and invoices from Campbell's Septic, Hemmelgarden and Sons, and any other contractor hired to perform work at the Site. The Closure Report shall contain a certification statement in accordance with Ohio Adm.Code 3745-34-17(D) that all Class V wells were closed in compliance with Ohio Adm.Code 3745-34-11(O). Defendants shall submit the Closure Report and certification statement to Ohio EPA, Division of Drinking and Ground Water, Underground Injection Control, Attn: Valerie Orr or her successor, at 50 W. Town St. Suite 700, P.O. Box 1049, Columbus, Ohio 43216-1049.

V. EFFECT OF CONSENT ORDER

7. This Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing structure where a permit is required. 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.

VI. CIVIL PENALTY

8. Pursuant to R.C. 6111.09(A) Defendants shall pay to the State of Ohio a cash civil penalty of fifteen thousand dollars ($15,000.00), to be paid within thirty (30) days of the entry of this Order.

9. The civil penalty payment shall be made by delivering to Scott Hainer, Paralegal, or his 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," for the appropriate amount.

VII. STIPULATED PENALTIES

10. In the event that Defendants fail to meet any of the terms or requirements of this Consent Order, Defendants shall immediately and automatically be liable for and shall pay a stipulated penalty of one hundred dollars ($100.00) per day for each requirement not met, for the first sixty (60) days of noncompliance. Defendants shall be liable for an additional stipulated penalty of two hundred dollars ($200.00) per day for each requirement not met if the failure to comply continues for more than sixty (60) days, but less than one hundred twenty (120) days. In the event that failure to comply continues more than one hundred twenty (120) days, Defendants shall be liable for an additional three hundred dollars ($300.00) per day for each requirement not met.

11. Any payment required to be made under the provisions of paragraph 10 of this Consent Order shall be made by delivering a certified check or checks, made payable to "Treasurer, State of Ohio" for the appropriate amounts within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, by mail, or otherwise, to Scott Hainer, Paralegal or his successor, at the address set forth in paragraph 9.

12. The payment of stipulated penalties by Defendants and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to Section VII 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

13. Performance of the terms of this Consent Order by Defendants is not conditioned on the receipt of any federal or state grant funds or loans. In addition, Defendants' performance is not excused by the failure to obtain or shortfall of any federal or state grant funds or loans, or by the processing of any applications for the same.

IX. MODIFICATION

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

X. RETENTION OF JURISDICTION

15. The Court will retain jurisdiction of this action for the purposes of overseeing that Defendants comply with this Consent Order and making any order or decree that it deems appropriate to carry out this Consent Order.

XI. COSTS

16. Defendants are hereby ordered to pay the court costs of this action.

17. 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. Defendants shall pay the costs associated with publication by delivering a certified check for two hundred dollars ($200) 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.

XII. CONTINUING JURISDICTION

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

XIII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

19. 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.

20. 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.

_____ CHRISTOPHER GEE, JUDGE

DATE JUDGE GEE

APPROVED:

MICHAEL DEWINE
OHIO ATTORNEY GENERAL

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Counsel for Defendants, Chadwick Estates, LLC and Robert E. Reck

Chadwick Estates, LLC
By: Robert E. Reck, Member

Robert E. Reck
Individually

Defendants

Reeder, Larry

From: Casey Chapman <Casey.Chapman@ohioattorneygeneral.gov>
Sent: Tuesday, June 14, 2016 9:24 AM
To: Reeder, Larry; Orr, Valerie; Speakman, Anne
Cc: Reynolds, Joseph; matthew.justice@epa.ohio.gov; Tasha N. Miracle; Fischbein, William; Bennett, Colin
Subject: Chadwick Consent Order
Attachments: 2016.06.13 Signed Consent Order.PDF

Team,

Attached is the Consent Order for State v. Chadwick Estates which was signed by the Judge.

Great job everyone. This was a case with a difficult Defendant and some elusive issues.

Larry and Val you did an excellent job presenting the issues during our (many) mediation attempts, keeping cool in light of some heated encounters, and staying on top of a sneaky Defendant.

Joe and Matt, thank you for the hard work you put into preparing for trial on this. Even though it did not go that route, you would have made excellent witnesses and being able to rely on your expertise made our settlement position stronger.

Please let me know if you have any questions,

Casey Lynn Chapman
Associate Assistant Attorney General
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