

CLERK COMMON
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LICKING CO. OHIO

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GARY R. WALTERS
CLERK

IN THE COURT OF COMMON PLEAS
LICKING COUNTY, OHIO

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

CASE NO. 13 CV 1273

JUDGE MARCELAIN

Plaintiff,

v.

THOMAS LILLY, et al.

Defendants.

CONSENT ORDER FOR INJUNCTIVE RELIEF AND CIVIL PENALTY

WHEREAS, Plaintiff, the State of Ohio, by its Attorney General Michael DeWine (“State” or “Plaintiff”), has initiated this action against Thomas Lilly, Renate Lilly, and Chad Jones (“Defendants”) to enforce Ohio’s Water Pollution Control Laws and the rules promulgated under these laws. This Consent Order resolves disputed claims concerning Defendants’ operation of septic systems serving apartments, a duplex, and a trailer, which are located at 7755 and 7761 National Road, Pataskala, Licking County, Ohio.

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the Plaintiff and the Defendant, 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 pursuant to R.C. Chapter 6111. The Complaint states a claim upon which relief can be granted against the Defendants under Chapter 6111 of the Ohio Revised Code. Venue is proper in this Court.

**The Clerk of Courts is hereby ORDERED
to serve a copy of the Judgment Entry
upon all parties or counsel.**

II. PERSONS BOUND

2. All terms and provisions of this Consent Order shall apply to and be binding on the Defendants, the Defendants' agents, employees, assigns, successors in interest and any person acting in concert, privity, or participation with the Defendants. The undersigned representative of each party certifies that the representative is fully authorized by the party it 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. The Plaintiff alleges in its Complaint and Amended Complaint that the Defendants own and operate the septic systems that serve the apartments, a duplex, and a trailer that are located at 7755 and 7761 National Road, Pataskala, Ohio in violation of Ohio's Water Pollution Control Laws, R.C. Chapter 6111, and the rules promulgated under these laws.

4. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims alleged in the Complaint that was filed on December 23, 2013 and the Amended Complaint that was filed on May 22, 2014. Subject to the provisions in Section IV regarding Reservation of Rights and compliance with the requirements of this Consent Order, this satisfaction of liability also applies to violations alleged in the Complaint or Amended Complaint that occur between the entry of this Consent Order and the deadlines imposed in Paragraph 7 below.

IV. RESERVATION OF RIGHTS

5. Nothing in this Consent Order, including the imposition of stipulated civil penalties for violations of this Consent Order, shall limit the authority of the Plaintiff to:

- (a) Seek any legal or equitable relief from the 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 other than the violations described in the second sentence of Paragraph 4 above;
- (b) Seek any legal or equitable relief from the 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 other than the violations described in the second sentence of Paragraph 4 above;
- (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 the Defendants, to eliminate or mitigate conditions at the Defendants' septic systems or other wastewater disposal systems that may present a threat to the public health, safety, welfare, or the environment; or
- (e) Bring any legal or equitable action against any appropriate person other than the 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. INJUNCTION

6. The Defendants are permanently enjoined and ordered to comply immediately with all applicable provisions of R.C. Chapter 6111 and the rules promulgated under this Chapter, except that Defendants are enjoined to abate the violations alleged in the Complaint and Amended Complaint in accordance with the schedule provided in Paragraph 7 below.

7. In accordance with the schedule provided below, the Defendants are enjoined and ordered to decommission the septic systems that are connected to the septic tanks located at 7755 and 7761 National Road, Pataskala, Ohio by implementing the following actions:

- (a) By no later than June 1, 2015, Defendants shall turn off the water and shall cease all use of the septic systems that are connected to the septic tanks located at 7755 and 7761 National Road, Pataskala, Ohio.
- (b) By no later than July 1, 2015, Defendants shall plug the septic lines located on Defendants' property that are connected to the septic tanks located at 7755 and 7761 National Road, Pataskala, Ohio. Defendants shall plug these septic lines using either concrete or bentonite clay so that these septic systems are permanently unable to function.
- (c) By no later than July 1, 2015, Defendants shall remove any pooled sewage that is present at the properties located at 7461, 7755, and 7761 National Road, Pataskala, Ohio and shall apply lime to cover any areas of former sewage at these properties.
- (d) By no later than August 1, 2015, Defendants shall submit a written report to Ohio EPA's Central District Office detailing whether and how they completed the work described in Paragraph 7(a) through 7(c).

VI. REPORTING REQUIREMENT

8. Defendants shall send all documents or reports concerning the septic systems that are required to be submitted to Ohio EPA's Central District Office under this Consent Order to: Ohio Environmental Protection Agency, Central District Office, Division of Surface Water, Attn: Paul Vandermeer, at P.O. Box 1049, Columbus, Ohio, 43216.

VII. CIVIL PENALTY

9. Defendant Chad Jones shall pay a civil penalty totaling ten thousand dollars (\$10,000.00) to the State of Ohio. This civil penalty shall be paid in two equal installments of five thousand dollars (\$5,000.00) over a one-year period. The first payment of five thousand dollars (\$5,000.00) shall be due within six (6) months of the entry of this Consent Order and the second

payment of five thousand dollars (\$5,000.00) shall be due within one (1) year of the entry of this Consent Order.

10. Defendants Thomas and Renate Lilly shall pay a civil penalty totaling nineteen thousand dollars (\$19,000.00) to the State of Ohio.

11. Defendants Thomas and Renate Lilly shall pay at least two thousand, four hundred dollars (\$2,400.00) of this penalty in cash installments according to the following schedule:

- a. By no later than three (3) months following the entry of this Consent Order, Defendants shall pay the first installment of six hundred dollars (\$600.00).
- b. By no later than six (6) months following the entry of this Consent Order, Defendants shall pay the second installment of six hundred dollars (\$600.00).
- c. By no later than nine (9) months following the entry of this Consent Order, Defendants shall pay the third installment of six hundred dollars (\$600.00).
- d. By no later than twelve (12) months following the entry of this Consent Order, Defendants shall pay the fourth installment of six hundred dollars (\$600.00).

12. The State of Ohio agrees to collect the remaining sixteen thousand, six hundred dollars (\$16,600.00) of this penalty from Defendants Thomas and Renate Lilly by lien and foreclosure only in accordance with the procedures paragraphs 12 and 13. Defendants Thomas and Renate Lilly agree not to oppose the State's filing of a lien for nineteen thousand dollars (\$19,000.00) on their property located at 100 North Main Street in Baltimore, Ohio in Fairfield County (Parcel No. 0240148600). However, if the Defendants Thomas and Renate Lilly pay ten thousand dollars (\$10,000.00) of this penalty in cash within twelve months of the entry of this Consent Order, the

State of Ohio will forgive the remaining nine thousand dollar (\$9,000.00) amount of the penalty, which the State of Ohio identifies as the portion of the penalty that would offset the State's extraordinary enforcement costs incurred by pursuing foreclosure. The State shall promptly remove its lien from this property if ten thousand dollars (\$10,000.00) of the total civil penalty is paid within twelve months of the entry of this Consent Order in accordance with Paragraphs 10 and 11 above.

13. If ten thousand dollars (\$10,000.00) of the civil penalty is not paid in full within one year of entry of this Consent Order, Defendants Thomas and Renate Lilly will not oppose a State action to foreclose on this property for the full amount of the nineteen thousand (\$19,000.00) civil penalty less any amounts previously paid.

14. Defendants shall make payments by delivering to Scott Hainer, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, a certified check for the applicable amount as stated in Paragraphs 9 through 13, above, payable to the order of "Treasurer, State of Ohio." The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 469489."

15. If Defendants miss any of the scheduled payments as set forth in paragraphs 9 through 13 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.

VIII. STIPULATED PENALTIES

16. If the Defendants fail to comply with the injunctive requirements that are set forth in Paragraph 7 of this Consent Order, the Defendants are jointly and severally 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, two hundred dollars (\$200.00) 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, four hundred dollars (\$400.00) 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 to ninety (90) days, six hundred dollars (\$600.00) per day per requirement not met.
- (d) For each day of each failure to comply with a requirement or meet a deadline over ninety (90) days, one thousand dollars (\$1,000.00) per day per requirement not met.

17. Defendants shall submit any payment required by Paragraph 16 by delivering a certified check or checks made payable to "Treasurer, State of Ohio," for the appropriate amount(s), 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 Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. The Ohio EPA is not required to notify Defendants of missed deadlines or the corresponding duty to pay stipulated penalties. Each payment shall include a notation in the memorandum portion of the check, or some other prominent location on the transmittal letter or documentation referencing this Consent Order. The payment of stipulated penalties by Defendants and the acceptance of these stipulated penalties by Plaintiff for specific violations under Section VIII shall not limit Plaintiff's authority to seek additional relief or to seek judicial enforcement of this Consent Order.

IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

18. Performance of the terms of this Consent Order by the Defendants is not conditioned on the receipt of any federal or state grant funds or loans. In addition, the 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.

X. MODIFICATION

19. This Consent Order shall not be modified without the written agreement of the parties and this Court.

XI. MISCELLANEOUS

20. Nothing in this Consent Order shall affect the Defendants' obligations to comply with all applicable federal, state, or local laws, regulations, rules or ordinances. The Defendants shall obtain all federal, state, or local permits necessary to comply with this Consent Order.

21. If the State of Ohio accepts any payment, document, or other work due under this Consent Order after the time that the obligation is due under this Consent Order, then this acceptance shall not relieve Defendants from the obligations created by this Consent Order.

22. The Defendants shall inform the Ohio EPA of any change of contact information, or the cessation of the business that is the subject of this action.

XII. COSTS

23. The Defendants shall pay the court costs of this action.

24. The Defendants are 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. The Defendants 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, Division of Surface Water, P.O. Box 1049, Columbus, Ohio 43216-1049, within thirty (30) days from the date it receives notice of the costs from Ohio EPA.

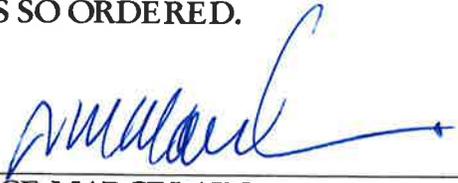
25. This Court shall retain jurisdiction over this action to enforce and administer the Defendants' compliance with this Consent Order.

XIII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

26. The parties agree and acknowledge that final approval by the Plaintiff and the Defendants and entry of this Consent Order are subject to the requirements of 40 C.F.R. 123.27(d)(2)(iii), which requires that the State of Ohio must provide public notice of the lodging of this Consent Order and an opportunity for the public to comment on this Consent Order. Both the Plaintiff and the Defendants reserve the right to withdraw this Consent Order based on comments received during the public comment period.

27. 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 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 MARCELAIN
COURT OF COMMON PLEAS
LICKING COUNTY, OHIO

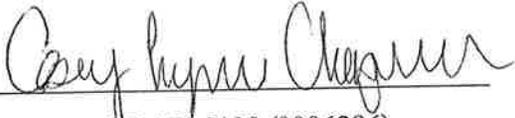
DATE

IN COMPLIANCE WITH CIVIL RULE 58,
IT IS VERIFIED THAT COPIES HAVE BEEN
SENT TO THE PARTIES AND/OR THEIR ATTORNEY
OF RECORD IN A MANNER PRESCRIBED BY CIVIL
RULE 5(B) ON THIS 8 DAY OF July 2015



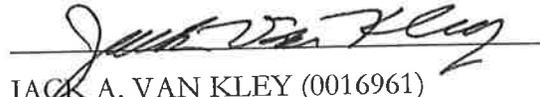
APPROVED:

**MICHAEL DEWINE
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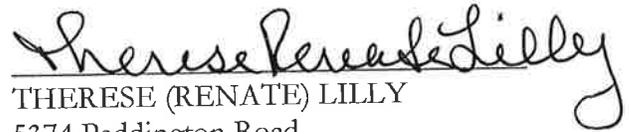


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