

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

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| STATE OF OHIO <i>ex rel.</i> | : | |
| MICHAEL DEWINE, | : | CASE NO. 2013 CV 00674 |
| OHIO ATTORNEY GENERAL | : | |
| | : | |
| Plaintiff, | : | JUDGE KONTOS |
| | : | |
| v. | : | |
| | : | |
| RAAW, LLC, <i>et al.</i> | : | |
| | : | |
| Defendants. | : | |

CONSENT ORDER
AS TO DEFENDANTS TRI COUNTY SPORTS COMPLEX, INC.
AND MOHAMMAD FARD

WHEREAS, Plaintiff, the State of Ohio, by and through its counsel Attorney General Michael DeWine (“Plaintiff” / “State”), filed a Complaint against RAAW, LLC; Robert A. Walley, Sr.; Robert M. Walley; Evergreen Environmental Corp.; Tri County Sports Complex, Inc.; Mohammad Fard; and Steve Sicilian (collectively, “Defendants”) alleging violations of Ohio’s Water Pollution Control laws, Ohio Revised Code (“R.C.”) Chapter 6111; and

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

WHEREAS, Defendants Mohammad Fard and Tri County Sports Complex, Inc. (collectively, the “Fard Defendants”) have agreed to enter into this Consent Order to resolve Plaintiff’s claims in said Complaint as they pertain to the Fard Defendants;

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:



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I. DEFINITIONS

1. "The Fard Properties" shall mean the real property consisting of Parcel Nos. 12-765115, 12-704450, and 12-765012 and located north of Logan Gate Road, northwest of the Norfolk Southern railroad lines, and east of Powder Mill Run in Liberty Township, Trumbull County, Ohio.

2. The 2008 General Permit shall mean the General NPDES Permit for Storm Water Discharges Associated with Construction Activities, Permit No. OHC000003, issued by the Director of Ohio EPA on April 21, 2008.

3. The 2013 General Permit shall mean the General NPDES Permit for Storm Water Discharges Associated with Construction Activities, Permit No. OHC000004, issued by the Director of Ohio EPA on April 11, 2013.

II. JURISDICTION AND VENUE

4. 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 the Fard Defendants under R.C. Chapter 6111. Venue is proper in this Court.

III. PERSONS BOUND

5. All terms and provisions of this Consent Order shall apply to and be binding upon the Fard Defendants and their agents, employees, assigns, successors in interest and any person acting in concert, privity or participation with the Fard 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 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.

6. The Fard 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.

7. The Fard Defendants' duties set forth in this Consent Order are joint and several. In the event of the insolvency, bankruptcy, or other failure of either of the Fard Defendants to pay any required amount and/or implement any requirement, the other Fard Defendant shall pay the amount and/or implement the requirement as required by this Consent Order.

IV. SATISFACTION OF LAWSUIT

8. Plaintiff alleges in its Complaint that the Fard Defendants' construction activities on the Fard Properties resulted in violations of Ohio Water Pollution Control Laws, R.C. Chapters 6111 and rules promulgated thereunder.

9. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by the Fard Defendants for all claims alleged in the State's Complaint.

V. RESERVATION OF RIGHTS

10. 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 the Fard 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 the Fard 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 either of the Fard Defendants, to eliminate or mitigate conditions on the Fard Properties 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 the Fard 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.

VI. INJUNCTION

11. The Fard Defendants are permanently enjoined and ordered to comply with all applicable provisions of R.C. Chapter 6111 and the rules promulgated under these chapters.

12. Specifically, the Fard Defendants are ordered to comply with either option (a) or (b) below:

- (a) Should the Fard Defendants elect to continue their permit coverage under the General Permit, the Fard Defendants shall:
 - i. Within thirty (30) days of entry of this Consent Order, submit a Notice of Intent for coverage under the 2013 General Permit.
 - ii. Upon issuance of coverage, comply with all terms and conditions of the 2013 General Permit including, but not limited to, the development and implementation of a complete and approvable SWPPP.
- (b) Should the Fard Defendants elect to terminate their permit coverage under the 2008 General Permit, the Fard Defendants shall:

- i. Within thirty (30) days of entry of this Consent Order, permanently stabilize all areas of the Fard Properties that have not become stabilized through natural germination processes.
- ii. Within sixty (60) days of entry of this Consent Order, submit detailed drawings of the post-construction best management practice that will serve the parking lot extension's storm sewer system. The post-construction best management practice that will serve the parking lot extension's storm sewer system shall be designed in accordance with Part III.G.2 of the 2008 General Permit.
- iii. Within sixty (60) days of entry of this Consent Order, a copy of the operation and maintenance plan developed for the post-construction best management practice that will serve the parking lot extension's storm sewer system. The operation and maintenance plan developed for the post-construction best management practice that will serve the parking lot extension's storm sewer system must be satisfy Part III.G.2 of the 2008 General Permit.
- iv. Within sixty (60) days of entry of this Consent Order, initiate construction of the post-construction best management practice that will serve the parking lot extension's storm sewer system.
- v. Within seventy-five (75) days of entry of this Consent Order, complete construction of the post-construction best management practices that will serve the parking lot extension's storm sewer system and permanently stabilize any earth disturbance associated with the construction of the the post-construction best management practice that will serve the parking lot extension's storm sewer system.
- vi. Within ninety (90) days of entry of this Consent Order, achieve final stabilization, in accordance with Part VII of the 2008 General Permit, of the Fard Properties, and submit a Notice of Termination in accordance with Part IV.C of the 2008 General Permit.

VII. CIVIL PENALTY

13. Based upon a thorough economic analysis of the Fard Defendants' financial condition and taking into consideration their ability to pay a civil penalty within the guidelines set

forth by the Ohio Supreme Court in *State ex rel. Brown v. Dayton Malleable*, the State has agreed to accept a substantially reduced civil penalty and has determined that a civil penalty payment plan is appropriate under the circumstances.

14. The Fard Defendants shall pay a civil penalty of **twenty-thousand dollars (\$20,000)** in installments as follows:

- (a) By no later than January 15, 2016, the Fard Defendants shall pay the first installment of five-thousand dollars (\$5,000).
- (b) By no later than January 15, 2017, the Fard Defendants shall pay the second installment of seven-thousand, five-hundred dollars (\$7,500).
- (c) By no later than January 15, 2018, the Fard Defendants shall pay the final installment of seven-thousand, five-hundred dollars (\$7,500).

15. Civil penalty payments shall be made by a certified check for the amounts as stated above, payable to the order of "Treasurer, State of Ohio" and delivered to Scott Hainer, Paralegal, or his successor, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

16. If the Fard Defendants fail to make any one of the civil penalty payments on or before the dates specified by Paragraph 14 of this Consent Order, the total civil penalty of twenty thousand dollars (\$20,000) plus applicable interest, less any amount already paid under this Order, shall become immediately due and owing. Any delinquent payments shall accrue interest at the maximum statutory rate prescribed by R.C. 5703.47 calculated from the Effective Date of this Order.

17. It is expressly understood and agreed that upon entry of this Consent Order the State shall be entitled to file a Judgment Lien in the amount of twenty thousand dollars (\$20,000) to secure payment of the civil penalty set forth in Paragraph 14.

VIII. STIPULATED PENALTIES

18. In the event that the Fard Defendants fail to comply with any requirement of Section VI of this Order, the Fard 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 – three hundred dollars (\$300.00) 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 – six hundred dollars (\$600.00) 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 – nine hundred dollars (\$900.00) per day per requirement not met.

19. Payments due under Paragraph 18 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 Scott Hainer, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. The payment of stipulated penalties by the Fard Defendants and the acceptance of such stipulated penalties by Plaintiff for specific violations 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 of any stipulated penalty by the Fard Defendants shall not be considered an admission of liability on the part of the Fard Defendants.

IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

20. Performance of the terms of this Consent Order by the Fard Defendants is not conditioned on the receipt of any Federal or State grants, loans and/or funds. In addition, the Fard 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.

X. EFFECT OF CONSENT ORDER

21. This Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities. 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

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

23. 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 the Fard Defendants from the obligations created by this Consent Order.

24. The Fard Defendants shall inform the Ohio EPA of any change of registered agent including the registered agent's address or telephone number, or the cessation of the business that is the subject of this action. If the Fard Defendants choose to remain bound by a General Permit as set forth in Paragraph 12(a) above, they shall inform Ohio EPA of the name of the permittee or point of contact, and of the change of that permittee or contact should such change occur.

XII. COSTS

25. The Fard Defendants shall pay any court costs assessed to the Fard Defendants by the Clerk of Courts at the conclusion of this action.

26. The Fard 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. The Fard Defendants 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. CONTINUING JURISDICTION

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

XIV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

28. The parties agree and acknowledge that final approval by the Plaintiff and the Fard 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 Fard Defendants 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.

1/7/16
DATE


JUDGE KONTOS
COURT OF COMMON PLEAS
TRUMBULL COUNTY

FILED
COURT OF COMMON PLEAS
JAN 7 2016
KAREN MEFAITE ALLEN, CLERK
TRUMBULL COUNTY, OH

APPROVED:

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