

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

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 DEFENDANT EVERGREEN ENVIRONMENTAL CORP.

WHEREAS, Plaintiff, the State of Ohio, by and through its counsel Attorney General Michael DeWine (“Plaintiff” or “State”), filed a Complaint against RAAW, LLC; Robert A. Walley, Sr.; Robert A. Walley, Jr.; 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;

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, Defendant Evergreen Environmental Corp. (“Defendant Evergreen”) has agreed to enter into this Consent Order to resolve Plaintiff’s claims as they pertain to Defendant Evergreen;

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. DEFINITIONS

1. "Evergreen Site" shall mean six (6) acres of property consisting of parcel no. 12-765117 located south of West Liberty Street and Interstate 80 and northwest of the Norfolk Southern railroad lines, Liberty Township, Trumbull County, Ohio.

2. "Wetlands on the Evergreen Site" shall mean the approximately one (1) acre of jurisdictional wetlands located on the northern half of the Evergreen Site, which boundaries are specifically determined in the 2011 Wetlands Delineation map, which has been attached at **Exhibit A**.

II. JURISDICTION AND VENUE

3. 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 Defendant Evergreen under R.C. Chapter 6111. Venue is proper in this Court.

III. PERSONS BOUND

4. All terms and provisions of this Consent Order shall apply to and be binding upon the Defendant Evergreen, Defendant Evergreen's agents, employees, assigns, successors in interest and any person acting in concert, privity or participation with Defendant Evergreen. 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.

5. Defendant Evergreen 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.

IV. SATISFACTION OF LAWSUIT

6. Plaintiff alleges in its Complaint that Defendant Evergreen's industrial activities on the Evergreen Site resulted in violations of Ohio Water Pollution Control Laws, R.C. Chapter 6111 and rules promulgated thereunder.

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

V. RESERVATION OF RIGHTS

8. 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 Evergreen 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 Defendant Evergreen 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 Defendant Evergreen, to eliminate or mitigate conditions on the Evergreen Site 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 Evergreen 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

9. Defendant Evergreen is permanently enjoined and ordered to comply immediately with all applicable provisions of R.C. Chapter 6111 and the rules promulgated under this chapter.

10. Until such time as a valid Notice of Termination is processed by Ohio EPA in accordance with Part 1.4 of the General National Pollutant Discharge Elimination System Permit for Storm Water Discharges Associated with Industrial Activities, Permit No. OHR000005 ("2011 General Permit"), Defendant Evergreen is enjoined and ordered to:

- (a) comply with the terms and conditions of the 2011 General Permit at the Evergreen Site;
- (b) cease discharging leachate from material stockpiles and/or sediment from the screening process into surface waters of the state at the Evergreen Site; and
- (c) cease discharging industrial process wastewater from materials washing to waters of the State, including, but not limited to Crab Creek, and the tributaries to Crab Creek.

VII. CIVIL PENALTY

11. By no later than thirty (30) days following entry of this Consent Order, Defendant Evergreen shall pay to the State of Ohio a total civil penalty of **twenty-three thousand dollars (\$23,000)**.

12. Civil penalty payment shall be made by a certified check for the amount as stated above, payable to the order of "Treasurer, State of Ohio" and delivered to Scott Hainer or his

successor, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

VIII. ACCESS TO SITE

13. Defendant Evergreen agrees to cooperate with any Court-ordered restoration or enhancement of the approximately one (1) acre of Wetlands on the Evergreen Site by allowing persons or entities access to the Evergreen Site for the sole purpose of completing and/or monitoring the wetlands restoration or enhancement activities. Defendant Evergreen will grant access to the Evergreen Site to such persons or entities, including representatives of the State of Ohio, upon notice to Defendant Evergreen. If Defendant Evergreen sells or otherwise transfers the Evergreen Site, Defendant Evergreen shall require any transferee to allow access on the terms and subject to the conditions set forth in this paragraph.

IX. STIPULATED PENALTIES

14. In the event that Defendant Evergreen fails to comply with any requirement of Section VI of this Consent Order, Defendant Evergreen 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 – 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.

15. Payments due under Paragraph 14 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 or his successor, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. The payment of stipulated penalties by Defendant Evergreen and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to this Section 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 Evergreen shall not be considered an admission of liability on the part of Defendant Evergreen.

X. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

16. Performance of the terms of this Consent Order by Defendant Evergreen is not conditioned on the receipt of any Federal or State grants, loans and/or funds. In addition, Defendant Evergreen's 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.

XI. MISCELLANEOUS

17. Nothing in this Consent Order shall affect Defendant Evergreen's obligations to comply with all applicable federal, state or local laws, regulations, rules or ordinances.

18. 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 Evergreen from the obligations created by this Consent Order.

19. Defendant Evergreen shall inform the Ohio EPA of any change of registered agent including the registered agent's addresses or telephone numbers, or the cessation of the business that is the subject of this action.

XII. COSTS

20. Defendant Evergreen shall pay any court costs assessed to Defendant Evergreen by the Clerk of Courts at the conclusion of this action.

21. Defendant Evergreen 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 Evergreen 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

22. This Court shall retain jurisdiction over this action for the purpose of enforcing and administering Defendant Evergreen's compliance with this Consent Order.

XIV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

23. The parties agree and acknowledge that final approval by the Plaintiff and Defendant Evergreen and entry of this Consent Order is subject to the requirements of 40 C.F.R.

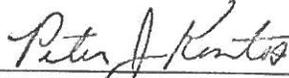
123(d)(1)(iii), which provides for notice of the lodging of the Consent Order, opportunity for public comment, and the consideration of any public comments. The State of Ohio and the Evergreen reserve the right to withdraw this Consent Order based on comments received during the public comment period.

24. 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

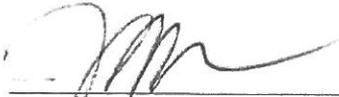
JUDGE KONTOS
COURT OF COMMON PLEAS
TRUMBULL COUNTY



FILED
COURT OF COMMON PLEAS
MAR 19 2015
TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

APPROVED:

MICHAEL DeWINE
OHIO ATTORNEY GENERAL



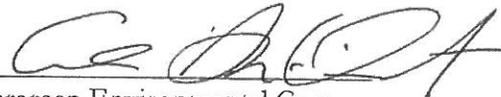
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