

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

FILED

2014 OCT 27 P 2:56

TAMI PENTEK
CLERK OF COURTS
COMMON PLEAS COURT
ASHTABULA CO. OH

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

CASE NO. 2012 CV 0518

JUDGE MACKEY

Plaintiff,

v.

NORTHRIDGE MUSIC CENTER, LTD. :
et al. :

Defendants. :

CONSENT ORDER

WHEREAS, the State of Ohio, by and through its counsel Attorney General Michael DeWine, ("State" or "Plaintiff") has filed a Complaint in this action against Defendants Northridge Music Center, Ltd., Steven Geho, and Richard Branham, (collectively "Defendants") to enforce Revised Code Chapter 6111 and the rules promulgated thereunder concerning the Defendants' discharge of pollutants to waters of the state from operations at the Northridge Music Center, Ltd., located at 4795 North Ridge Road East, Geneva Township, Ashtabula County, Ohio;

WHEREAS, Plaintiff's Complaint seeks injunctive relief and civil penalties for Defendants' alleged violations of R.C. Chapter 6111, Ohio's Water Pollution Control Laws, and the rules promulgated and permits issued thereunder; and

WHEREAS, Defendants have agreed to enter into this Consent Order;

Judicial Order
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Ashtabula County
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NOW THEREFORE, without the trial of any issue of fact or law, and upon the consent of the parties hereto, it is hereby **ORDERED**, 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 Defendants under R.C. Chapter 6111. Venue is proper in this Court.

II. PERSONS BOUND

2. The provisions of this Consent Order shall apply to and be binding upon Defendants, as well as Defendants' agents, officers, employees, assigns, successors in interest and others bound by Rule 65(D) of the Ohio Rules of Civil Procedure who are acting in concert and/or privity with Mr. Geho, Mr. Branham, and/or Northridge Music Center, Ltd. Defendants shall provide a copy of this Consent Order to each general contractor and/or consultant they employ to perform work itemized herein and each general contractor shall provide a copy of this Consent Order to each of their subcontractors for such work.

III. SATISFACTION OF LAWSUIT

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

IV. RESERVATION OF RIGHTS

4. 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 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.

Notwithstanding the preceding Section, Plaintiff acknowledges the allegations in the Complaint allege all believed conditions and/or violations related to the Site;

- (b) Seek any legal or equitable relief from 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, to the extent that those claims or conditions are not addressed by 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 Defendants, to eliminate or mitigate conditions at the Site that may present a threat to the public health or welfare, or the environment in derogation of applicable laws and regulations, for which Ohio EPA has the authority to enforce; and/or,
- (e) Bring any legal or equitable action against any appropriate person other than 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 AND COMPLIANCE

5. Defendants are permanently enjoined and ordered to comply immediately with all applicable provisions of R.C. Chapter 6111 and the rules promulgated under that chapter, except as otherwise provided in this Consent Order.

6. Beginning immediately and continuing until further order of the Court, Defendants are enjoined and ordered to do the following with regard to the wastewater treatment system located at 4795 Northridge Road, Geneva, Ohio ("the Property"):

- a) Immediately submit proof of the installation of an Ohio EPA approved high level alarm on the septic tank located at the Property. The alarm must be set to indicate

- when 750 gallons are reached. The tank shall be pumped within 3 days of the alarm being activated and pumping records shall be produced to Ohio EPA staff within 3 days of pumping occurring. No discharge is authorized from this system.
- b) Defendants agree that the Property will no longer be used for any purpose other than exclusively residential. No commercial or home based business will be conducted from the Property unless or until a commercial grade wastewater treatment system is approved and installed.
 - c) Should the Defendants choose to install a wastewater treatment system as indicated in Paragraph b above, jurisdiction over the approval of the design and installation of the wastewater treatment system at the property will be transferred from Ohio EPA to the Ashtabula County Health Department.
 - d) If Defendants must install a discharging on-site wastewater system, Defendants must first apply for and receive a residential National Pollution Discharge Elimination System Permit from Ohio EPA.

VI. CIVIL PENALTY

- 7. Defendant Geho agrees to pay a civil penalty totaling **six thousand two hundred and fifty dollars (\$6,250.00)** to the State of Ohio by no later than thirty (30) days following the entry of this Consent Order.
- 8. Defendant Branham agrees to pay a civil penalty totaling **six thousand two hundred and fifty dollars (\$6,250.00)** to the State of Ohio as follows:
 - a) Within thirty (30) days following the entry of this Consent Order, Defendant Branham shall pay the first installment of one hundred dollars (\$100.00).

- b) Defendant Branham shall make payments of one hundred dollars (\$100.00) every thirty (30) days thereafter until the Property is sold. When the Property does sell, the remaining balance of the penalty shall be due at closing.
- c) If the Property has not sold within one year (12 months) following the entry of this Consent Order, the remaining balance of the \$6,250.00 becomes due and owing immediately.

9. Penalty payments 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, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

10. If either Defendant Geho or Branham misses any of the scheduled payments as set forth in Paragraph 7 and 8, above, full payment, as well as 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.

VII. REPORTING REQUIREMENT

11. Documents or reports with the regard to the waste water treatment system that are required to be submitted to Ohio EPA's Northeast District Office pursuant to this Consent Order shall be sent to: Ohio Environmental Protection Agency, Northeast District Office, Division of Surface Water, ATTN: John Schmidt, at 2110 East Aurora Road, Twinsburg, Ohio 44087.

VIII. STIPULATED PENALTIES

12. Except as outlined above, in the event that Defendants fail to meet the requirements of this Consent Order set forth in paragraphs 5 and 6, Defendants shall immediately and automatically be jointly and severally liable for and shall pay a stipulated penalty of two

hundred fifty dollars (\$250.00) 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 five hundred dollars (\$500.00) 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 Defendants fail to comply for one hundred twenty (120) days or more, Defendants shall be liable for an additional one thousand dollars (\$1,000.00) per day for each requirement not met.

13. Notwithstanding the foregoing, Plaintiff reserves the right to pursue any other action to enforce all terms of this Consent Order, including, but not limited to, filing charges in contempt with this Court.

14. Any payment required to be made under the provisions of paragraph 12 of this Consent Order shall be made 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.

IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

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

16. This Consent Order shall terminate upon Order of this Court, upon Joint Motion of the parties that all activities required or contemplated under this Consent Order have been

completed, or upon entry of final judgment in this action. Nothing herein shall preclude Plaintiff from seeking further investigatory work in connection with implementation of this Consent Order or to address an imminent threat of harm to the public health or the environment. This Section, as well as the Section of this Consent Order on Reservation of Rights, shall survive this termination provision, however, nothing in this Consent Order will survive the entry of final judgment in this action, except as reflected in a final decree.

XI. MODIFICATION

17. No modification shall be made to this Consent Order without either the written agreement of the parties and/or approval of the Court.

XII. MISCELLANEOUS

18. Nothing in this Consent Order shall affect Defendants' obligation to comply with all applicable federal, State or local laws, regulations, rules or ordinances.

19. 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 Defendants from the obligations created by this Consent Order.

20. Defendants shall inform the Ohio EPA of any change or cessation of the business that is the subject of this action.

XIII. COSTS

21. Defendants shall pay the court costs of this action.

XIV. CONTINUING JURISDICTION

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

XV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

23. The Parties agree and acknowledge that final approval by Plaintiff and 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 Plaintiff and Defendants 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 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.

JUDGE ALFRED W. MACKEY

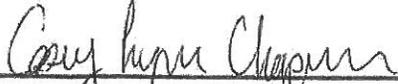
DATE

**JUDGE MACKEY
COURT OF COMMON PLEAS**

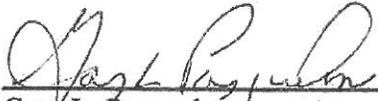
APPROVED BY:

APPROVED BY:

**MICHAEL DEWINE
OHIO ATTORNEY GENERAL**



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~~Northridge Music Center, LTD~~

By: 
Northridge Music Center by
Richard Branham
Its: Owner


Richard Branham, Individually


Steven Geho, Individually

