

FILED
IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

2014 DEC 15 AM 11:34

STATE OF OHIO ex rel.

CASE NO. 13 CV 001446

MAUREEN G. KELLY
LAKE CO. CLERK OF COURT

: JUDGE VINCENT A. CULOTTA

PLAINTIFF,

v.

TROIS AMIS, INC., et al.,

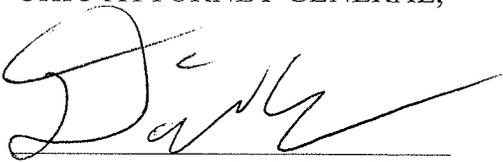
DEFENDANTS.

JOINT MOTION FOR ENTRY OF CONSENT ORDER

Plaintiff, State of Ohio (“the State”), by its Attorney General Michael DeWine, and Defendants Trois Amis, Inc., Michael Hutter, Maureen McNiece-Hutter, and Deborah Loughner, hereby move this Court to enter this Partial Consent Order to settle the above-captioned case between Plaintiff, State of Ohio and Trois Amis, Inc., Michael Hutter, and Maureen McNiece-Hutter. The purpose of the Partial Consent Order is to provide for injunctive relief and civil penalties in this action filed on July 2, 2013.

Previously, through letter dated October 3, 2014, the State requested that this honorable Court lodge the Consent Order for approximately thirty days pending the public notice and comment period. The public notice and comment period has passed with no comments received. Consequently, the parties are now requesting this honorable Court to enter the Consent Order. A copy of the original Partial Consent Order is attached.

Respectfully submitted,

<p><u>/s/ Cory Hinton</u> (per email authorization) CORY R. HINTON (0085668) 8570 Mentor Avenue Mentor, OH 44060</p> <p><i>Attorney for Defendant, Deborah Loughner</i></p>	<p>MICHAEL DEWINE OHIO ATTORNEY GENERAL,</p>  <p>DAVID E. EMERMAN (0089348) Assistant Attorney General Environmental Enforcement Section 615 W. Superior Ave., 11th Floor Cleveland, Ohio 44113 Telephone: 216-777-8025 Facsimile: 614-644-1926</p>
<p><u>/s/ Tom Sacerich</u> (per email authorization) THOMAS J. SACERICH (0010196) 8302 Yellowbrick Rd Mentor, OH 44060.</p> <p><i>Attorney for Defendants, Trios Amis Inc., Michael Hutter, Timothy Painter, Maureen McNeice-Hutter</i></p>	<p>ALANA R. SHOCKEY (0085234) Assistant Attorney General Environmental Enforcement Section 30 East Broad Street, 25th Floor Columbus, Ohio 43215-3400 Telephone: 614-466-2766 Facsimile: 614-644-1926 <i>Counsel for Plaintiff, State of Ohio</i></p>

APPENDIX A

**IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO**

STATE OF OHIO ex rel. DEWINE	:	CASE NO. 13 CV 001446
	:	
PLAINTIFF,	:	JUDGE VINCENT A. CULOTTA
	:	
v.	:	
	:	
TROIS AMIS, INC., et al.,	:	
	:	
DEFENDANTS.	:	

PARTIAL CONSENT ORDER

WHEREAS, Plaintiff, the State of Ohio, by and through its counsel, Ohio Attorney General Michael DeWine, filed a Complaint against Trois Amis, Inc., Michael Hutter, Maureen McNeice-Hutter, and Deborah Loughner (collectively, "Defendants") alleging violations of Ohio's Water Pollution Control laws, Ohio Revised Code ("R.C.") Chapter 6111 at the Kirtland City Tavern, located at 10015 Chillicothe Rd., Kirtland, Lake County, Ohio ("the Site");

WHEREAS, Plaintiff's Complaint seeks injunctive relief and civil penalties for Defendants' alleged violations of R.C. Chapter 6111, and its associated rules and permits;

WHEREAS, Defendants **Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter** have agreed to enter into this Partial Consent Order to resolve Plaintiff's claims as they pertain to Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter;

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. 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 Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter under R.C. Chapter 6111. Venue is proper in this Court.

II. PERSONS BOUND

2. All terms and provisions of this Partial Consent Order shall apply to and be binding upon the Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter, their agents, employees, assigns, successors in interest, and others bound by Ohio Civil Rule 65(D), who are acting in concert, privity or participation with Trois Amis, Inc., Michael Hutter, or Maureen McNeice-Hutter. The undersigned representative of each party to this Partial 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 Partial Consent Order and execute and legally bind that party or parties to it. This Partial Consent Order is in settlement and compromise of disputed claims. Nothing in this Partial Consent Order is to be construed as an admission of any facts or liability.

3. Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter shall provide a copy of this Partial Consent Order to any lessee or successor in interest and each employee, consultant or contractor employed to perform work referenced herein or operate the wastewater treatment plant, disposal system, or treatment works located on the Site.

4. In the event of the insolvency, bankruptcy, or other failure of Trois Amis, Inc., Michael Hutter, or Maureen McNeice-Hutter, Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter will be required to pay any remaining amount as set forth by this Partial Consent Order.

III. SATISFACTION OF LAWSUIT

5. In its Complaint, Plaintiff alleges that Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter have operated the Kirtland City Tavern's wastewater treatment plant in violation of Defendant Trois Amis's National Pollutant Discharge Elimination System ("NPDES") Permit No. 3PR00238*BD. Specifically, Plaintiff alleges in its Complaint that Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter, failed to timely submit a permit to install application, failed to install required units onto the wastewater treatment plant, failed to keep the wastewater treatment plant in good working order, failed to modify the wastewater treatment plant in accordance with a 2008 permit to install, failed to properly report flow estimates, failed to maintain adequate maintenance records, failed to meet effluent limitations, and failed to properly test for fecal coliform. Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter deny these allegations.

6. Compliance with the terms of this Partial Consent Order shall constitute full satisfaction of any civil liability by Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter for all claims alleged in the State's Complaint. Nothing in this Partial Consent Order absolves Defendant Deborah Loughner or any other party not identified in this Partial Consent Order of any liability or in any way affects Plaintiff's ability to pursue its claims against Deborah Loughner or others related to this case.

IV. RESERVATION OF RIGHTS

7. Nothing in this Partial Consent Order, including the imposition of stipulated civil penalties for violations of this Partial Consent Order, shall limit the authority of the State of Ohio to:

- (a) Seek any legal or equitable relief from Defendants Trois Amis, Inc., Michael Hutter, or Maureen McNeice-Hutter or any other appropriate person for claims or conditions not alleged in the Complaint, including violations that occurred after the filing of the Complaint;

- (b) Seek any legal or equitable relief from Defendants Trois Amis, Inc., Michael Hutter, or Maureen McNeice-Hutter 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 Partial Consent Order;
- (c) Enforce this Consent Order through a contempt action or otherwise seek relief for violations of this Partial Consent Order;
- (d) Take any action authorized by law against any appropriate person, including Defendants Trois Amis, Inc., Michael Hutter, or Maureen McNeice-Hutter to eliminate or mitigate conditions at the wastewater treatment plant 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 Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter for any violation of applicable laws. For the purposes of this Partial 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

8. Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter are permanently enjoined and ordered to comply immediately with all applicable provisions of R.C. Chapter 6111 and its associated rules.

9. Within 30 days of the entry of this Partial Consent Order, Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter are enjoined and ordered to submit to the Ohio EPA an approvable permit to install application with detailed plans for upgrading the Kirtland City Tavern's wastewater treatment plant. These plans must include the following at a minimum: surface sand filters; a disinfection unit; a flow equalization tank; a dosing chamber; a sludge holding tank; and a sampling port after the disinfection unit. These detailed plans must also include the removal of the portable pump in the trash trap and flexible hose running between the trash trap and aeration tank. An acceptable plumbing alternative to the flexible hose must be included in the detailed plans.

10. Within 90 days of receiving a permit to install from the Ohio EPA, Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter are enjoined and ordered to, complete construction of the wastewater treatment plant upgrades consistent with the permit to install. This construction must include at a minimum the installation of the following: surface sand filters; a disinfection unit; a flow equalization tank; a dosing chamber; a sludge holding tank; and a sampling port after the disinfection unit. This construction must also include the removal of the portable pump in the trash trap and the removal of the flexible hose running between the trash trap and aeration tank. The new plumbing must be installed consistently with the approved design plans. Construction must also include replacing the cracked covers on the grease traps and fencing in the wastewater treatment plant.

11. Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter are immediately enjoined and ordered to, report flow estimates consistent with the requirements under NPDES Permit No. 3PR00238*BD and any future permits issued by the Ohio EPA relating to the Kirtland City Tavern.

12. Subject to the schedules set forth in this Partial Consent Order, Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter are immediately enjoined and ordered to comply with all other terms and conditions of NPDES Permit No. 3PR00238*BD and any future NPDES permits issued by the Ohio EPA relating to the Kirtland City Tavern.

VI. SUBMITTAL OF DOCUMENTS

13. Documents required to be submitted to Ohio EPA's Northeast District Office pursuant to this Partial Consent Order shall be sent to: Environmental Protection Agency, Northeast District Office, Division of Surface Water (ATTN: Marie Underwood or her successor) at 2110 East Aurora Road Twinsburg, Ohio 44087.

VII. CIVIL PENALTY

14. Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter shall pay to the State of Ohio a civil penalty of fifty thousand dollars (\$50,000) in installments according to the following schedule:

- (a) No later than ninety (90) days after entry of this Partial Consent Order, Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter shall pay a first payment of seven thousand five hundred dollars (\$7,500);
- (b) No later than one hundred eighty (180) days after entry of this Partial Consent Order, Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter shall pay a second payment of seven thousand five hundred dollars (\$7,500);
- (c) No later than two hundred seventy (270) days after entry of this Partial Consent Order, Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter shall pay a third payment of seven thousand five hundred dollars (\$7,500);
- (d) No later than three hundred sixty-five (365) days after entry of this Partial Consent Order, Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter shall pay a fourth payment of seven thousand five hundred dollars (\$7,500);
- (e) No later than four hundred fifty-five (455) days after entry of this Partial Consent Order, Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter shall pay a fifth payment of five thousand dollars (\$5,000);
- (f) No later than five hundred forty-five (545) days after entry of this Partial Consent Order, Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter shall pay a sixth payment of five thousand dollars (\$5,000);
- (g) No later than six hundred thirty-five (635) days after entry of this Partial Consent Order, Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter shall pay a seventh payment of five thousand dollars (\$5,000);
- (h) No later than seven hundred thirty 730 days after entry of this Partial Consent Order, Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter shall pay an eight payment of five thousand dollars (\$5,000);

15. Penalty payments shall be made by certified checks for the amounts 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.

16. If Trois Amis, Inc., Michael Hutter, or Maureen McNeice-Hutter misses any of the scheduled payments as set forth in Paragraphs 13 and 14, by more than 15 days, all remaining payments, along with interest as set forth in R.C. 5703.47 accruing from the date of entry of this Partial Consent Order, shall become due and owing immediately.

VIII. STIPULATED PENALTIES

17. In the event that Trois Amis, Inc., Michael Hutter, or Maureen McNeice-Hutter fails to comply with any requirement contained in Section V. of this Partial Consent Order, Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter 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 – two hundred fifty dollars (\$250.00) per day per requirement not met;
- (b) For each day of each failure to comply with a requirement or meet a deadline over thirty-one (31) days to sixty (60) days – five hundred dollars (\$500.00) per day per requirement not met; and
- (c) For each day of each failure to comply with a requirement or meet a deadline over sixty-one (61) days – seven hundred fifty dollars (\$750.00) per day per requirement not met.

18. Payments due under Paragraph 17 shall be made within forty-five (45) days from the date of the failure to meet the applicable deadline without further demand by Plaintiff. Payments shall be accompanied by a written explanation of the deadline missed and/or the effluent 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 the attention of Scott Hainer, Environmental Enforcement Section, Ohio Attorney General's Office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. The payment of stipulated penalties by Defendants Trois Amis, Inc., Michael Hutter, or Maureen McNeice-Hutter and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to Section VIII shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Partial Consent Order. Further, payment by Defendants Trois Amis, Inc., Michael Hutter, or Maureen McNeice-Hutter shall not be considered an admission of liability on the part of Defendants Trois Amis, Inc., Michael Hutter, and Maureen McNeice-Hutter.

IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

19. Performance of the terms of this Partial Consent Order by Defendants Trois Amis, Inc., Michael Hutter, or Maureen McNeice-Hutter is not conditioned on the receipt of any private, Federal or State grants, loans and/or funds. In addition, Defendants Trois Amis, Inc.'s, Michael Hutter's, or Maureen McNeice-Hutter's performance is not excused by the failure to obtain or any shortfall of any private, Federal or State grants, loans and/or funds or by the processing of any applications for the same.

X. EFFECT OF PARTIAL CONSENT ORDER

20. This Partial Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities not previously approved by Ohio EPA. 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.

21. This Partial Consent Order does not constitute approval that any part of the Kirtland City Tavern's wastewater treatment plant that is not addressed in the Partial Consent

Order is acceptable or is operating properly. Defendants are responsible for having their own engineer evaluate the effectiveness of portions of their disposal system that were not addressed in this Partial Consent Order.

XI. MISCELLANEOUS

22. Nothing in this Partial Consent Order shall affect Defendants Trois Amis, Inc.'s, Michael Hutter's, or Maureen McNeice-Hutter's obligation 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 Partial Consent Order shall not relieve Defendants Trois Amis, Inc., Michael Hutter, or Maureen McNeice-Hutter from the obligations created by this Partial Consent Order.

24. Defendant Trois Amis, Inc. shall inform the Ohio EPA of any change of its Registered Agent's address and business addresses or telephone numbers, or the cessation of the business that is the subject of this action.

25. Defendants Michael Hutter and Maureen McNeice-Hutter shall inform the Ohio EPA of any change of address or telephone numbers.

26. Defendants Trois Amis, Inc., Michael Hutter and Maureen McNeice-Hutter shall inform the Ohio EPA of any sale of the Kirtland City Tavern.

XII. COSTS

27. Defendants Trois Amis, Inc., Michael Hutter and Maureen McNeice-Hutter shall be responsible for their relative shares of the court costs as of the date of the entry of this Partial Consent Order.

28. Defendants Trois Amis, Inc., Michael Hutter and Maureen McNeice-Hutter are hereby ordered to pay the costs incurred by the Ohio EPA for the publication of this Partial

Consent Order in Ohio EPA's Weekly Review and a newspaper of general circulation. Defendants Trois Amis, Inc., Michael Hutter and Maureen McNeice-Hutter 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 they receive notice of the costs from Ohio EPA.

XIII. CONTINUING JURISDICTION

29. This Court shall retain jurisdiction over this action for the purpose of enforcing and administering Defendants Trois Amis, Inc.'s, Michael Hutter's and Maureen McNeice-Hutter's compliance with this Partial Consent Order.

XIV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

30. The parties agree and acknowledge that final approval by the Plaintiff and the Defendants Trois Amis, Inc., Michael Hutter and Maureen McNeice-Hutter and entry of this Partial 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 Partial Consent Order, opportunity for public comment, and the consideration of any public comments. Both the State of Ohio and Defendants Trois Amis, Inc., Michael Hutter and Maureen McNeice-Hutter reserve the right to withdraw this Partial Consent Order based on comments received during the public comment period.

31. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon the signing of this Partial 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.

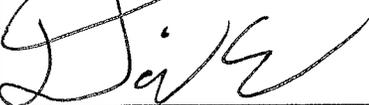
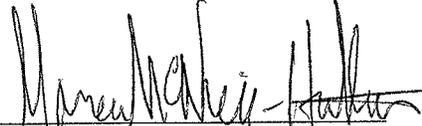
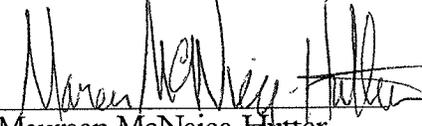
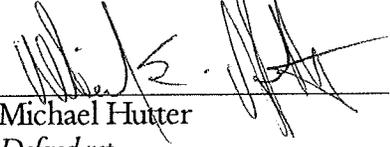
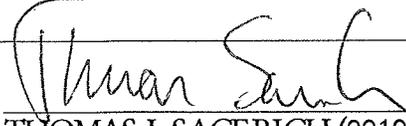
FILED

DATE

2014 DEC 18 P 1:19 JUDGE CULOTTA

MAUREEN G. KELLY COURT OF COMMON PLEAS
LAKE CO. CLERK OF COUR LAKE COUNTY

APPROVED:

<p>MICHAEL DEWINE OHIO ATTORNEY GENERAL</p>  <p>9/26/14 DATE</p> <p>David E. Emerman (0089348) Alana R. Shockey (0085234) Assistant Attorneys General Environmental Enforcement Section 30 East Broad Street, 25th Floor Columbus, Ohio 43215 Telephone: 614-466-2766 Facsimile: 614-644-1926 <i>Counsel for Plaintiff, State of Ohio</i></p>	 <p>9-26-14 DATE</p> <p>President, Trois Amis, Inc. <i>Defendant</i></p>  <p>9-26-14 DATE</p> <p>Maureen McNeice-Hutter <i>Defendant</i></p>  <p>9/26/14 DATE</p> <p>Michael Hutter <i>Defendant</i></p>
 <p>9/26/14 DATE</p> <p>THOMAS J. SACERICH (0010196) 8302 Yellowbrick Rd Mentor, OH 44060.</p> <p><i>Attorney for Defendants, Trois Amis, Inc., Michael Hutter, Maureen McNeice-Hutter</i></p>	