

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

FILED
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TAMI BENICK
CLERK OF COURTS
COMMON PLEAS COURT
ASHTABULA CO. OH

STATE OF OHIO, *ex rel.*
DAVE YOST
OHIO ATTORNEY GENERAL,

: CASE NO. 2018 CV00444
: 1993 CV00563

Plaintiff,

: JUDGE MARIANNE SEZON

v.

RESERVE ENVIRONMENTAL
SERVICES, INC., *et al.*,

: CONSENT ORDER

Defendants.

COPY

The State of Ohio, by its Attorney General (“Plaintiff”/“the State”) and at the written request of the Ohio Environmental Protection Agency, has filed a Complaint seeking injunctive relief and stipulated penalties against Reserve Environmental Services, Inc. and Defendant Donald Koski (“Defendant”/ “Koski”) for violations of Ohio’s solid waste and water pollution laws under R.C. Chapters 3734 and 6111, and the rules adopted thereunder concerning Defendant’s alleged operation of an industrial wastewater treatment facility and an industrial solid waste landfill facility at 4633 Middle Road, Ashtabula, Ashtabula County, Ohio 44004. The State has also filed charges in contempt for Defendant’s alleged failure to comply with an October 28, 2003 Modified Consent Order.

The Parties wish to settle the Complaint’s allegation against Donald Koski and thus, have consented to the entry of this Order settling the claims against Donald Koski.

Therefore, without trial, admission, or determination of any issue of fact or law and with the consent of the Parties hereto, it is ORDERED, ADJUDGED, AND DECREED:

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MAR 3 2020
Attorney General
Environmental Enforcement

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I. DEFINITIONS

1. As used in this Order, the following terms are defined:
 - a. "Complaint" means the Complaint filed in Case Number 2018 CV 00444 on June 26, 2018.
 - b. "Defendant" means Donald Koski.
 - c. "Director" means the Director of the Ohio Environmental Protection Agency ("Ohio EPA") or her designee.
 - d. "Effective Date" means the date the Ashtabula County Clerk of Courts files this Order.
 - e. "Parties" means Plaintiff, the State of Ohio, and Defendant Donald Koski.
 - f. "Person" means an individual, public or private corporation, business trust, estate, trust, partnership, association, federal government or any agency thereof, municipal corporation or any agency thereof, political subdivision or any agency thereof, public agency, interstate body created by compact, any other entity, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.
 - g. "Site" means the property identified in the Complaint as defined above, which is also known as 4633 Middle Road, Ashtabula, Ohio 44004.
 - h. "State" means Plaintiff, the State of Ohio, including the Director, Ohio Environmental Protection Agency, or the Ohio Attorney General on behalf of the State, or any State entity named in the Complaint.
 - i. "Order" refers to this Order.
 - j. "Written" means a paper copy or a saved or stored electronic copy.

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II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the Parties and the subject matter of this action under R.C. Chapters 3734 and 6111. The Complaint states a claim upon which relief can be granted. Venue is proper in this Court. Defendant shall not challenge the Court's jurisdiction to enter or enforce this Order.

III. PARTIES BOUND

3. Defendant Donald Koski is an individual with a former business address of 4633 Middle Road, Ashtabula, Ohio 44004.

4. This Order shall apply to and be binding only upon Defendant, and, to the extent consistent with Civ. R. 65(D), on his agents, officers, employees, contractors, assigns, successors in interest, and those persons acting in concert, privity, or participation with Defendant who receive actual notice of this Order whether by personal service, by public record filed in the county land record, or otherwise.

5. This Order is in settlement and compromise of disputed claims, and nothing in this Order is to be construed as an admission of any facts or liability.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

6. The Plaintiff alleges that Defendant is responsible for violations of the solid waste laws and water pollution control laws of the State of Ohio under R.C. Chapters 3734 and 6111 and in contempt of the Consent Order dated October 14, 1993 and Modified on October 28, 2003 and any personal Guaranty provided in connection with the Consent Orders (hereinafter "Consent Orders"). Defendant denies all such allegations. Compliance with this Order shall constitute full settlement and satisfaction of any civil liability of Defendant to the State for the claims alleged in the Complaint as defined above and shall supersede all obligations for Defendant Koski under

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the Consent Orders after the date of this Order. Compliance with this Order shall also constitute full settlement and satisfaction of any civil liability of Defendant to the State for the Court's October 14, 1993, February 7, 1995 and October 28, 2003 Judgment Entries and Orders and for Plaintiff's Charges in Contempt in case numbers 1993 CV00563 and 2018 CV00444. Any personal Guaranty previously provided by Defendant Koski in connection with these cases is terminated.

7. The Parties believe that this Order resolves all outstanding claims in this case. If any claims remain, Defendant requests they be dismissed with prejudice and the State does not object.

8. Nothing in this Order shall limit the authority of the State of Ohio to:

- a. Seek any legal or equitable relief or civil penalties from Defendant that are not satisfied pursuant to paragraph 6 above or any other appropriate person for any claims or violations not alleged in the Complaint;
- b. Seek any legal or equitable relief or civil penalties from Defendant or any other appropriate person for claims, conditions, or violations that occur on or exist after the entry of this Order;
- c. Enforce this Order through a contempt action or otherwise seek relief for violations of this Order; and/or
- d. Take any future legal or equitable against any legally responsible person to eliminate or mitigate conditions at the Site that may present a threat to public health or welfare or to environment in derogation of applicable laws and rules, which State of Ohio has the authority to enforce.

e. Bring any action against Defendant or against any other person, under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. §9601, et seq. and/or Revised Code 3734.20 through 3734.27 to: (1) recover natural resources damages, and/or (2) order the performance of, and/or recover costs for any removal, remedial or corrective activities not conducted pursuant to the terms of this Order.

9. This Order does not waive, abridge, settle, compromise, or otherwise impact any other claims in law or equity that the State of Ohio or other persons may have against Defendant.

10. This settlement is made only between the parties that have executed this Consent Order. Except for the signatories to the Order, nothing in this Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged, against any person not a signatory to this Order for any liability such non-signatory may have arising out of matters alleged in the Complaint. The State of Ohio also specifically reserves its right to sue any entity that is not a signatory to this Order.

11. Nothing in this Order shall relieve Defendant of his obligation to comply with any applicable federal, state, or local statutes, regulations, rules, or ordinances.

12. Nothing herein shall restrict the right of Defendant to raise any administrative, legal, or equitable defense with respect to such further actions reserved by the State in this Order. However, with respect to the actions reserved by the State, Defendant shall not assert and/or maintain, any defense or claim of waiver, *res judicata*, collateral estoppel, issue preclusion, claim splitting, or other defenses based on any contention that Plaintiff's claims in any subsequent judicial or administrative proceeding could or should have been brought in this case.

13. Defendant agrees that he is liable for the obligations and requirements in this Order.

V. PERMANENT INJUNCTION

14. Defendant Mr. Koski is not currently in control of compliance or operations at Reserve Environmental Services; however, to the extent he is or may in the future be in such control, Defendant is ordered and permanently enjoined to comply fully with R.C. Chapters 3734 and 6111 and the rules thereunder, and to the extent he is in control of compliance with the terms and conditions of any permits, licenses, or orders issued to Defendant pursuant to those statutes, and any renewals or modifications thereof.

15. Defendant is ordered and permanently enjoined to pay the State of Ohio, within thirty (30) days of the Effective Date, monies in the amount of one hundred thousand (\$100,000.00) dollars. The monies required to be paid under this Order shall be paid by delivering to Plaintiff, c/o Sandra Finan, or her successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, a cashiers' check payable to the order of "Treasurer, State of Ohio." These monies shall be deposited into the Environmental Protection Remediation Fund created by R.C. 3734.281.

VI. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

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

VII. SITE ACCESS

17. As of the Effective Date, the Ohio EPA and its representatives and contractors shall have access at reasonable times to the Site, and to the extent Mr. Koski has control or ability to grant access, he shall provide access to any other property controlled by or available to Defendant to

which access is necessary to effectuate the actions required by this Order. Access controlled by Mr. Koski shall be allowed for the purposes of conducting activities related to this Order including but not limited to:

- a. Monitoring the work or any other activities taking place at the Site;
- b. Verifying any data or information submitted to Ohio EPA;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Defendant or his agents, consistent with this Order and applicable law;
- g. Assessing Defendant's compliance with this Order; or
- h. Performing hazardous waste or solid waste closure or post-closure activities or management of onsite soils.

18. Nothing in this Order shall be construed to limit the statutory authority of the Director or his authorized representatives to enter at reasonable times upon the Site or any other private or public property, real or personal, to inspect or investigate, obtain samples and examine or copy any records to determine compliance with R.C. Chapters 3734 and/or 6111.

VIII. EFFECT OF ORDER

19. This Order does not constitute authorization, certification, or approval of the construction, installation, modification, or operation of any solid waste or hazardous waste facility, or any building, structure, facility, facility component, operation, installation, disposal or

storage site, other physical facility, or real or personal property that stores, discharges, or otherwise manages solid waste or hazardous waste not previously approved by Ohio EPA. Approval for any such construction, installation, modification, or operation 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.

20. This Order does not constitute authorization, certification, or approval of the construction, installation, modification, or operation of any water pollution source under R.C. Chapter 6111. Approval for any such certification, construction, installation, modification, or operation 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.

IX. MODIFICATION

21. No modification shall be made to this Order without the written agreement of the parties and the Court.

X. MISCELLANEOUS

22. Nothing in this Order shall affect Defendant's obligation to comply with all applicable federal, state or local laws, regulations, rules, ordinances, or orders.

23. Any acceptance by the State of Ohio of any payment, document, or other work due subsequent to the time that the obligation is due under this Order shall not relieve Defendant from any other obligations created by this Order.

24. Defendant, Mr. Donald Koski, shall inform the Ohio EPA of any change of his personal address or telephone numbers.

XI. RETENTION OF JURISDICTION

25. This Court shall retain jurisdiction for the purpose of administering and enforcing this Order.

XII. EFFECTIVE DATE

26. This Order shall be effective upon the date of its entry by the Court.

XIII. COURT COSTS

27. Defendant is ordered to pay all court costs of this action.

XIV. AUTHORITY TO ENTER INTO THE ORDER

32. Each signatory represents and warrants he has been duly authorized to sign this document and is fully authorized to agree to its terms and conditions, and, in the case of a person signing on behalf of a corporate entity, may so legally bind the corporate entity to all terms and conditions in this document. By signing this Order, each signatory waives all rights of service of process for the underlying Complaint.

XV. ENTRY OF ORDER AND FINAL JUDGMENT BY CLERK

33. Under Rule 58 of the Ohio Rules of Civil Procedure, upon signing this Order by the Court, the Clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the Clerk is directed to serve upon all Parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Civ.R. 5(B) and note the service in the appearance docket. The failure of the Clerk to serve notice does not affect the validity of this Order.

34. The parties agree and acknowledge that final approval by Plaintiff and Defendant and entry of this Order is subject to the requirements of 40 C.F.R. 123.27 (d)(2)(iii), which provides for notice of the lodging of the Order, opportunity for public comment, and the consideration of

any public comments. Both Plaintiff and Defendant reserve the right to withdraw this Order based on comments received during the public comment period.

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IT IS SO ORDERED.

JUDGE MARIANNE SEZON

JUDGE

DATE

APPROVED AND AGREED TO BY:



ROBERT CASARONA (0036715)
Casarona Legal Services, LLC
The Falls Building
57 East Washington Street
Cleveland, OH 44022
Telephone: (440) 337-9083
cas@casaronalaw.com

Counsel for Defendant Donald Koski



AMBER WOOTTON HERTLEIN (0083858)
JANEAN WEBER (0083960)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
Telephone: (614) 466-2766
amber.hertlein@ohioattorneygeneral.gov
janean.weber@ohioattorneygeneral.gov

Counsel for Plaintiff, the State of Ohio



DONALD KOSKI
Individually