

IN THE COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO

2012 CV 05 0460
CASE NO.

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

2012 MAY 21 PM 5 17

JEANNE M. STEPHEN
CLERK OF COURTS

JUDGE
ELIZABETH L. THOMAKOS, JUDGE

Plaintiff,

v.

THE GINGER ROOT, LLC, et al.

Defendants.

CONSENT ORDER

WHEREAS, Plaintiff State of Ohio, by its Attorney General Michael DeWine ("Plaintiff" or "State"), has filed the Complaint in this action against Defendants The Ginger Root, LLC, Jerry T. Meeder; and Virginia A. Meeder (collectively, "Defendants") to enforce the State of Ohio's safe drinking water laws and the rules promulgated thereunder, concerning the Defendants' operation of the "public water system" (hereinafter "PWS") ID Number: OH7935612 at The Ginger Root Restaurant ("Ginger Root"), located at 9788 State Route 250 NW, City of Strasburg, Tuscarawas County, Ohio.

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the Plaintiff and Defendants, it is hereby **ORDERED** as follows:

I. JURISDICTION AND VENUE

1. The Court has both personal and subject matter jurisdiction over the parties. The Complaint states a claim upon which relief can be granted against Defendants under Chapter 6109 of the Ohio Revised Code. Venue is proper in this Court.

II. PERSONS BOUND

2. All terms and provisions of this Consent Order shall apply to and be binding upon Defendants, their assigns, successors in interest, and others bound by Rule 65(D) of the Ohio Rules of Civil Procedure, who are or will be acting in concert and/or in privity with the 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 she or he 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.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

3. Plaintiff alleges in its Complaint that Defendants have operated a PWS at Ginger Root in such a manner as to result in numerous violations of the safe drinking water laws of the State of Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims under such laws alleged in the Complaint filed contemporaneously with this Consent Order.

4. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief against Defendants or other appropriate persons for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint, nor shall anything in this Consent Order limit the right of Defendants to any defenses it may have for such claims including that Defendants no longer operate a public water system. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief against other appropriate persons, not covered by this Consent Order, for claims or conditions alleged in the Complaint. Similarly, nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to undertake any

action against any person, including Defendants, to eliminate or mitigate conditions that may present a threat to the public health, welfare or the environment.

IV. PERMANENT INJUNCTION

5. Defendants are permanently enjoined from violating R.C. Chapter 6109 and the rules promulgated and adopted under those laws.

6. Defendants are permanently enjoined and ordered to comply with the current and all future monitoring schedules provided by the Director, including, but not limited to, monitoring for total coliform bacteria and nitrate.

7. Defendants are permanently enjoined and ordered to provide public notice of any outstanding violations of R.C. Chapter 6109 and the rules promulgated thereunder, and to do so continuously until they have come into compliance, in accordance with O.A.C. 3745-81-32.

8. Defendants are permanently enjoined and ordered to comply with all PWS license to operate requirements, including maintaining a valid license and timely renewing their license.

V. EFFECT OF CONSENT ORDER

9. This Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing PWS where a permit is required. 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.

VI . CIVIL PENALTY

10. Defendants shall pay to the State of Ohio a civil penalty of seven hundred dollars (\$700.00) for violations of Ohio's safe drinking water laws in installments according to the following schedule:

- (a) By May 31, 2012, Defendants shall pay the first one hundred seventy-five dollars (\$175.00) of the civil penalty.

- (b) By September 30, 2012, Defendants shall pay one hundred seventy-five dollars (\$175.00) of the civil penalty.
- (c) By January 31, 2013, Defendants shall pay one hundred seventy-five dollars (\$175.00) of the civil penalty.
- (d) By May 31, 2013, Defendants shall pay the final one hundred seventy-five dollars (\$175.00) of the civil penalty.

11. 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 Martha Sexton, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

12. If Defendants miss any of the scheduled payments as set forth in Paragraph 10, above, all remaining payments, along with 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. STIPULATED PENALTIES

13. In the event that Defendants fail to comply with any requirement of this Consent Order other than the payment of the Civil Penalty, which shall be sanctioned in accordance with paragraph twelve (12) above, 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 – two hundred dollars (\$200.00) 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 – four hundred dollars (\$400.00) 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 – six hundred dollars (\$600.00) per day per requirement not met.

14. Any payment required to be made under the provisions of Paragraph 13 of this Consent Order shall be made by delivering a certified check or checks, made payable to "Treasurer, State of Ohio", for the appropriate amounts, within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, by mail, or otherwise, to Martha Sexton, Environmental Enforcement Section, Ohio Attorney General's Office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

15. The payment of stipulated penalties by Defendants and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to Section VII 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 Defendants shall not be considered an admission of liability on the part of Defendants.

VIII. REPORTING REQUIREMENT

16. Documents or reports with regard to the PWS that are required to be submitted to Ohio EPA's Southeast District Office pursuant to this Consent Order shall be sent to: Ohio Environmental Protection Agency, Southeast District Office, Division of Drinking and Ground Waters, ATTN: Russell Flagg, at 2195 Front Street, Logan, Ohio 43138. Documents with regard to the PWS that are required to be submitted to Ohio EPA's Central Office shall be sent to: Ohio Environmental Protection Agency, Division of Drinking and Ground Waters, ATTN: Julie Gillenwater, at P.O. Box 1049, Columbus, OH 43216.

IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

17. Performance of the terms of this Consent Order by Defendants is not conditioned on the receipt of any federal or state grant funds or loans. In addition, Defendants' performance is not excused

by the failure to obtain or shortfall of any federal or state grant funds or loans, or by the processing of any applications for the same.

X. MODIFICATION

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

XI. RETENTION OF JURISDICTION

19. The Court will retain jurisdiction of this action for the purposes of overseeing that Defendants comply with this Consent Order and making any order or decree that it deems appropriate to carry out this Consent Order.

XII. COURT COSTS

20. Defendants are hereby ordered to pay the court costs of this action.

XIII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

21. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon 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 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.

/s/ Judge Elizabeth Lehig Thomakos

DATE

JUDGE

APPROVED:

MICHAEL DEWINE
OHIO ATTORNEY GENERAL

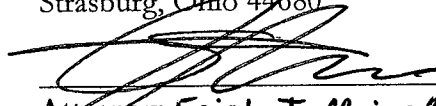


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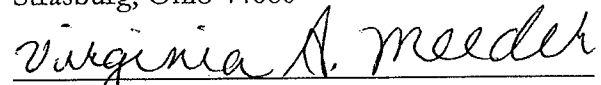
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