

DIANA ZALESKI
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 SUMMIT COUNTY
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ORIGINAL ✓

IN THE COURT OF COMMON PLEAS
 SUMMIT COUNTY, OHIO

CV 95 11 3831

ASSIGNED TO JUDGE MORGAN

STATE OF OHIO, ex rel.
 BETTY D. MONTGOMERY
 ATTORNEY GENERAL OF OHIO

: CASE NO. _____
 :
 : JUDGE _____
 :

Plaintiff,

vs.

: CONSENT ORDER
 :
 :
 :
 :
 :

DALTON SMITH d/b/a
 OHIO MOTEL

Defendant.

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The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Betty D. Montgomery (hereinafter "Plaintiff") and Defendant Dalton Smith having consented to the entry of this Order,

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 6111 of the Ohio Revised Code, and venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them. Defendant Dalton Smith shall provide a copy of this Consent Order to each contractor he employs to perform work itemized herein, and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant Smith has operated his wastewater disposal system consisting of a septic system and leach field in such a manner as to result in numerous violations of the water pollution laws of the State of Ohio. The Complaint further alleges that Defendant Smith has failed to obtain a National Pollutant Discharge Elimination System (NPDES) permit authorizing the discharge of sewage, industrial waste or other waste, into the waters of the State. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims under such laws alleged in the Complaint. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint.

IV. PERMANENT INJUNCTION

4. Defendant Smith is hereby Enjoined and Ordered to immediately comply with the requirements of Chapter 6111 of the Ohio Revised Code and the terms and conditions of the rules and regulations adopted under that Chapter. Defendant Smith is hereby enjoined to obtain an NPDES permit in accordance with the schedule set forth in Section V.

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5. Between the effective date of this Consent order and April 15, 1996, Defendant is enjoined to comply with the interim effluent monitoring requirements set forth in Appendix "A" attached hereto. The interim effluent monitoring requirements contained in Appendix "A" do not constitute a NPDES permit or a modification of any existing permit. After August 1, 1996, Defendant Smith is enjoined and ordered to meet the final effluent standards set forth in its NPDES permit and any renewals or modifications thereof.

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6. Defendant Smith is hereby Enjoined and Ordered to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

7. Defendant Smith is enjoined and ordered to obtain a NPDES permit and to obtain a permit to install for and to complete construction of a wastewater treatment plant which will enable Ohio Motel to comply with the final effluent limitations of NPDES permit and any modifications or renewals thereof in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Initiation of Construction of treatment facility.	May 1, 1996
(b) Completion of construction of treatment facility to ensure compliance with final Effluent limits contained in NPDES permit(s).	July 1, 1996
(c) Attain and maintain compliance with with final effluent limitations contained in NPDES permit(s).	August 1, 1996

8. Within seven (7) days from each completion date listed above, Defendant Smith shall submit a written report stating whether or not he has performed the action set forth therein to Ohio EPA's Northeast District Office.

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 treatment works or sewer system. 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. ELIMINATION OF DISCHARGE

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10. As an alternative to section V. above, Defendant may choose to eliminate the discharge altogether. If Defendant chooses to eliminate the discharge, such action must be taken in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Notify Ohio EPA of intent to eliminate Discharge	Upon execution of this Consent Order
(b) Eliminate Discharge	Within 120 days of entry of this Consent Order

VII. CIVIL PENALTY

11. Defendant Smith shall pay to the State of Ohio a civil penalty of One Thousand Dollars (\$1000.00). The penalty shall be paid by delivering to 30 East Broad Street, 25th Floor, Columbus, OH 43266-0410, ATTN: Administrative Assistant, a certified check for that amount, payable to the order of "Treasurer, State of Ohio," within forty-five (45) days from the date of entry of this Consent Order.

VIII. STIPULATED PENALTIES

12. In the event that Defendant Smith fails to meet any of the requirements of this Consent Order set forth in Paragraphs 5, 7(a), and 7(b), including any scheduled milestone requirement, the Defendant shall, immediately and automatically, be liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of failure to meet a requirement, up to thirty (30) days - Five Hundred Dollars (\$500.00) per day for each requirement not met. For each day of failure to meet a requirement, from thirty-one (31) to sixty (60) days - One Thousand Dollars (\$1,000.00) per day for each requirement not met. For each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days - Two Thousand Five Hundred Dollars (\$2,500.00) per day for each requirement not met. For each day of failure to meet a requirement, over ninety (90) days - Three Thousand Five Hundred Dollars (\$3,500.00) per day for each requirement not met.

13. In the event that Defendant Smith fails to meet the requirements of this Consent Order set forth in Subparagraph 7(c), or if the defendant chooses to comply with Section VI of this consent order, and Defendant fails to comply with the deadlines found in Subparagraph 7(c), the Defendant shall immediately and automatically be liable for payment of a stipulated penalty of Five Thousand Dollars (\$5,000.00) per day of each violations of said requirement. The Defendant shall be liable for an additional stipulated penalty of One Thousand Dollars (\$1,000.00) per day of each violation if the failure to comply continues for more than thirty (30) days, i.e. Six Thousand Dollars (\$6,000.00) per day of each violation. In the event that failure to comply with the requirements of Subparagraph 7(c) continues more than sixty (60) days, Defendant shall be liable for an additional Four Thousand Dollars (\$4,000.00) per day of each violation, i.e., Ten Thousand Dollars (\$10,000.00) per day of each violation.

14. Any payment required to be made under the provisions of Paragraphs 7 or 8 of this Order shall be made by delivering to 30 East Broad Street, 25th Floor, Columbus, OH 43266-0410, ATTN: Administrative Assistant, a certified check or checks for the appropriate amounts, within forty-five (45) days from the date of failure to meet the requirement of the Consent Order, made payable to "Treasurer, State of Ohio".

IX. RETENTION OF JURISDICTION

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15. The Court will retain jurisdiction of this action for the purpose of making an order or decree which it deems appropriate to carry out this Consent Order.

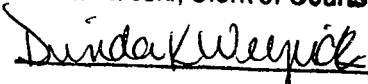
X. COSTS

16. Defendant Smith is hereby ordered to pay the costs of this action.


JUDGE, COURT OF COMMON PLEAS

11-2-95
Date

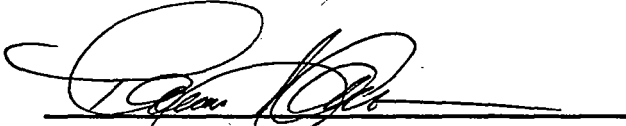
I certify this to be a true copy of the original
Diana Zaleski, Clerk of Courts

 Deputy

APPROVED:

STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

BY:



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Attorneys for Plaintiff



DALTON SMITH
Owner, OHIO MOTEL

Defendant

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APPENDIX A

INTERIM EFFLUENT MONITORING REQUIREMENTS

<u>Effluent Characteristic</u>			<u>Monitoring Requirement</u>	
Reporting Code	Units	Parameter	Measuring Frequency	Sample Type
00010	°C	Water Temperature	1/week	grab
00530	mg/l	Total Suspended Solids	1/month	grab
00610	mg/l	Nitrogen, Ammonia (NH ₃)	1/month	grab
50050	MGD	Flow Rate	Daily	Estimate
80082	mg/l	CBOD ₅	1/month	grab

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