

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

STATE OF OHIO ex rel.	:	
DAVE YOST,	:	CASE NO. 2014 CV 00000166
OHIO ATTORNEY GENERAL,	:	
	:	JUDGE O'DONNELL
Plaintiff,	:	
	:	
v.	:	
	:	
OSBORNE CO., LTD., et al.,	:	
	:	
Defendants.	:	
	:	

**AGREED CONSENT DECREE TO RESOLVE THE OUSTANDING INJUNCTIVE
RELIEF FROM THE COURT'S DECEMBER 17, 2018 JUDGMENT**

WHEREAS, on December 17, 2018, the Court entered a judgment, which required Defendants Osborne Co., Ltd. and the Estate of Jerome T. Osborne (“Defendants”) to complete injunctive relief in portions of the East Branch Chagrin River. See Attachment A.

WHEREAS, the State and Defendants have agreed that the injunctive relief shall be resolved by Defendants paying three hundred thousand dollars (\$300,000.00) to Chagrin River Watershed Partners, Inc. Defendants shall make payment in full within thirty (30) days of entry of this Order. Chagrin River Watershed Partners, Inc., will use these funds to complete restoration work of certain portions of the East Branch Chagrin River affected by the Defendants’ violations of R.C. 6111. The State acknowledges and agrees that the three hundred-thousand-dollar (\$300,000.00) payment to Chagrin River Watershed Partners, Inc. is not a civil penalty. Defendants shall make payment to “Chagrin River Watershed Partners, Inc.” The payment and cover letter shall be submitted to Heather Elmer, or his/her successor, at:

Chagrin River Watershed Partners, Inc.
P.O. Box 229
Willoughby, OH 44096-0229

With copies to:

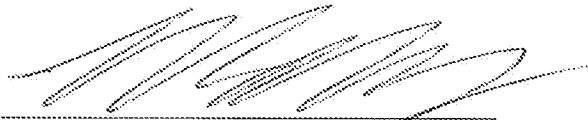
Gregg H. Bachmann or Catherine A. English
Assistant Attorneys General
Environmental Enforcement Section
Ohio Attorney General's Office
30 East Broad Street, 25th Floor
Columbus, OH 43215
Gregg.Bachmann@OhioAGO.gov
Catherine.English@OhioAGO.gov

A Memorandum of Agreement has been finalized between the Ohio EPA and Chagrin River Watershed Partners, Inc. that outlines the scope of the restoration work to be completed. See Attachment B. Performance of the terms of this Consent Decree by Defendants is not conditioned upon Chagrin River Watershed Partners, Inc.'s performance of the Memorandum of Agreement.

Pursuant to this agreement of the parties, and upon entry of this Order, the State and Defendants agree that the Defendants' payment to the Chagrin River Watershed Partners, Inc. shall constitute full satisfaction of any civil or administrative liability (including but not limited to, any and all damages of any kind or description, injunctive relief, civil penalties, and investigative or other costs or expenses) entered against Defendants and their agents, officers, directors, employees, shareholders, members, trustees, executors, attorneys, owners, heirs, beneficiaries, assigns, successors in interest, and any person acting in concert or privity with them, by any Court in this case. The State shall file a satisfaction of judgment with the Court within ten (10) days of confirmation of Defendants' payment as described herein.

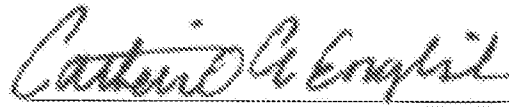
APPROVED AND AGREED TO BY:

DAVE YOST
OHIO ATTORNEY GENERAL



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Counsel for Plaintiff, the State of Ohio

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DEC 27 2018
Attorney General
Department of Public Safety

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

FILED
7010 DEC 17 PM 4:20
HARRIS D. HOLLY
LAKE CO. CLERK OF COURT

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

Plaintiff - Appellee,)

vs.)

EXECUTORS OF ESTATE OF)
JEROME T. OSBORNE, et al.)

Defendants - Appellants.)

CASE NO. 14 CV 000166

OPINION AND JUDGMENT ENTRY

December 17, 2018

This matter is before the court on remand from the Eleventh District Court of Appeals. The Eleventh District Court of Appeals filed its decision upon reconsideration on August 6, 2018. This court's judgment was affirmed with regard to its holding that appellants were jointly and severally liable but was reversed with regard to the finding of liability for activity outside the scope of R.C. 6111.04(A) and R.C. 6111.07(A).

The Eleventh District Court of Appeals held that this court's determination of appellants' liability in part relied improperly on the dredging of the East Branch Chagrin River. It was not a violation of R.C. 6111.04(A) to excavate the East Branch Chagrin River. As pled, appellants cannot be held liable for excavating material out of the river. The Eleventh District Court of Appeals instead held that appellants are liable under R.C. 6111.04(A) for placing dredged material into the river and in any location where it could cause pollution of the river because they did not have valid unexpired permits to do so. It also held that appellants are liable under R.C. 6111.07(A) for violating former OAC 3745-38-06 by failing to submit a notice of intent or by failing to request an individual permit prior to discharging dredged material into the river.

This matter was remanded to make a finding specifically related to the violations alleged in the complaint, to-wit: discharge of materials into East Branch Chagrin River without permits as provided in R.C. 6111.04(A) and R.C. 6111.07(A) and to thereafter limit any civil penalty and injunctive relief to the consequences of that conduct. The decision of the Eleventh District Court

of Appeals was not appealed. In compliance with this trial court's order, the parties submitted Memorandums on Remand on November 16, 2018.

As mandated by the Eleventh District Court of Appeals, this court has considered only the findings made in its Opinion and Judgment Entry filed August 1, 2016, that relate to placing dredged material into the East Branch Chagrin River and any location where it could cause pollution because defendants did not have valid permits to do so, in violation of R.C. 6111.04(A), and failing to submit a notice of intent or request a permit prior to discharging dredged material into the East Branch Chagrin River, in violation of R.C. 6111.07(A). Those findings are incorporated into this Opinion and Judgment Entry.

As mandated by the Eleventh District Court of Appeals, this court has not considered the findings made in its Opinion and Judgment Entry filed August 1, 2016, that relate to dredging and excavating material out of the East Branch Chagrin River.

This court's opinion and judgment entry filed on August 1, 2016, imposed a civil penalty of \$180,000 for 24 days of active dredging of the East Branch Chagrin River with each day being assessed a \$7,500 penalty. Pursuant to the remand from the Eleventh District Court of Appeals, this civil penalty is vacated. The remaining civil penalties for violations of R.C. 6111.04(A) and R.C. 6111.07(A) continue to be valid. Defendants Osborne Co., Ltd and the Estate of Jerome T. Osborne shall pay into the Ohio State treasury a civil penalty of \$184,080 for creating a public nuisance by leaving spoil piles along the river from July 13, 2007 to November 1, 2013 (the date the Village of Kirtland Hills completed its portion of remediation) for a total of 2,301 days at \$80 per day and an additional \$40,160 for creating a public nuisance by allowing the remaining spoil (Oliva) pile to exist from November 2, 2013 to July 29, 2016 for a total of 1,004 days at \$40 per day. The total civil penalty is \$224,240.00.

The injunctive relief ordered by this court in its Opinion and Judgment Entry filed on August 1, 2016, shall be modified as follows: (D), (E), (F), and (G) are vacated and (A), (B), (C), and (H) continue to be valid. Therefore, the court orders injunctive relief as follows:

(1) Defendants Osborne Co., Ltd. and Estate of Jerome T. Osborne are permanently enjoined from discharging any pollution, other wastes, and dredge and fill material into waters of the State on or from the banks of the East Branch Chagrin River except in compliance with Chapter 6111 and any necessary permits and/or Section 401 certifications issued pursuant to Chapter 6111 and the rules adopted thereunder;

(2) Defendants Osborne Co., Ltd and Estate of Jerome T. Osborne shall submit a plan to the Ohio EPA to redistribute and/or remove the remaining pile (Oliva) in the East Branch Chagrin River within ninety (90) days from the date of this Opinion and Judgment Entry;

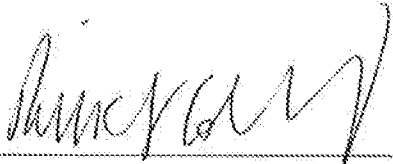
(3) Defendants Osborne Co., Ltd. And Estate of Jerome T. Osborne shall implement and execute the approved redistribution and /or removal plan;

(4) Defendants Osborne Co., Ltd. And Estate of Jerome T. Osborne shall submit a post-construction report to the Ohio EPA after completion of the redistribution and/or removal work.

The court retains jurisdiction of this case for the purpose of making any order or decree that this court deems necessary at any time to enforce and administer defendants Osborne Co., Ltd. and the Estate of Jerome T. Osborne's compliance with the terms and provision of this court's orders or decrees.

Costs are assessed against defendants.

IT IS SO ORDERED.



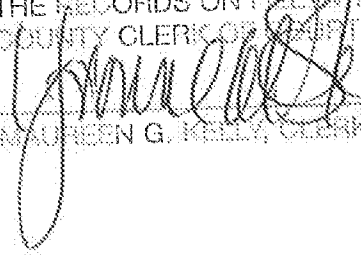
RICHARD L. COLLINS, JR.
Judge of the Court of Common Pleas

Copies:

Gregg H. Bachmann, Esq., Assistant Attorneys General, Environment Enforcement Section.
Richard N. Selby, II, Esq.

Final Appealable Order
Clerk to serve
pursuant to
Civ.R. 58(B).

I CERTIFY THIS TO BE A TRUE COPY OF
THE RECORDS ON FILE IN THE LAKE
COUNTY CLERK OF COURTS OFFICE.



MAUREEN G. KELLY, CLERK OF COURTS

MEMORANDUM OF AGREEMENT

BETWEEN

THE OHIO ENVIRONMENTAL PROTECTION AGENCY AND CHAGRIN RIVER WATERSHED PARTNERS

Purpose

This Agreement is for the purpose of completion of restoration activities on the East Branch of the Chagrin River located between River Mile 4.3 and 6.2 through funds paid by the Estate of Jerome T. Osborne to the Chagrin River Watershed Partners pursuant to a Consent Decree resolving disputed claims in *State of Ohio v. Osborne Co., LTD., et al.*, Case No 14 CV 000166 in furtherance of these restoration activities. Funds received by the Chagrin River Watershed Partners will be used for restoration activities.

Project Implementation

The Chagrin River Watershed Partners have agreed to maintain the funds paid received in order to accomplish this project in a separate account which will be subject to annual audits provided to Ohio EPA and to use the funds to implement the project.

Chagrin River Watershed Partners agrees to the following uses of the monies for restoration activities in the East Branch of the Chagrin River to address stream erosion issues caused by activities that were the subject of Case No 14 CV 000166 as specified herein, assuming landowner permission to access and restore the sites is obtained:

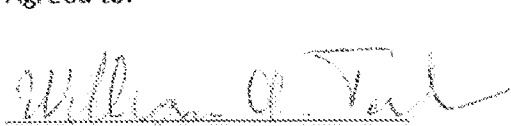
1. Removal and restoration in the area known as the Oliva Pile. The activity is a first priority. It is located in the vicinity of St. Huberts Chapel on Baldwin Road. This is the upper bound of the project area near River Mile 6.2.
2. Restoration of accelerated erosion and deposition area near River Mile 4.6. The area is experiencing accelerated erosion initially caused by placement of excavated material in the stream channel. This area is a second priority and completion of this work will be contingent on sufficient funding.
3. Evaluation of remaining areas between River Miles 4.3 and 6.2 for restoration potential, implementation dependent upon adequate funding.

Prior to the expenditure of funds, Chagrin River Watershed Partners shall receive approval to expend the funds from both its Board of Directors and from the Ohio's Division of Surface Water, Northeast District Office.

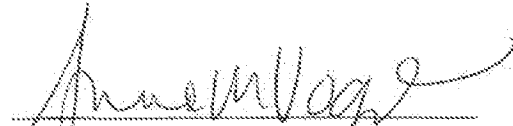
Substantial completion of restoration activities shall be done within five years following the date of this agreement unless an extension is agreed upon in writing by both parties. If any of

the funds remain after the project has been completed, such funds will be paid to the Ohio EPA for deposit into the Surface Water Improvement Fund.

Agreed to:



Chagrin River Watershed Partners, Inc.



Ohio Environmental Protection Agency

12/21/2023

Date

12/21/23

Date