

IN THE COURT OF COMMON PLEAS
GEAUGA COUNTY, OHIO

FILED
IN COMMON PLEAS COURT

2018 MAR 20 PM 3:26

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

CASE NO. 16M000805

JUDGE FORREST W. BURTON

DENISE H. KAMINSKI
CLERK OF COURTS
GEAUGA COUNTY

Plaintiff,

v.

SKEETER'S 19th HOLE, INC., et al.,

Defendants.

- A7 -

CONSENT ORDER

Plaintiff, the State of Ohio, by its Attorney General Michael DeWine ("Plaintiff"/"the State"), has filed the Complaint seeking injunctive relief and civil penalties against Defendants Michael Good, Cabanas Island Restaurant, LLC, and Skeeter's 19th Hole, Inc. to enforce the State of Ohio's Water Pollution Control Laws under R.C. Chapter 6111 and the rules promulgated thereunder for their failure to comply with the terms and conditions of their National Pollutant Discharge Elimination System ("NPDES") permit and their failure to upgrade the wastewater treatment plant serving the Cabanas Island Restaurant located at 12719 Mayfield Road, Chardon, Ohio 44024. The Parties have consented to the entry of this Consent Order.

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

I. DEFINITIONS

1. As used in this Consent Order, the following terms are defined:

- a. "Defendants" means Michael Good, Cabanas Island Restaurant, LLC, and Skeeter's 19th Hole, Inc. Defendant Skeeter's 19th Hole, Inc. was joined to the action as a Civ. R. 19 defendant.
- b. "Director" means the Director of the Ohio Environmental Protection Agency ("Ohio EPA") or his designee.
- c. "Parties" means Plaintiff, the State of Ohio, and Defendants, Michael Good, and Cabanas Island Restaurant, LLC.
- d. "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.
- e. "Property" means the real property and the Cabanas Island Restaurant located at 12719 Mayfield Road, Chardon, Geauga County, Ohio 44024.
- f. "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.
- g. "Order" means this Consent Order.
- h. "Written" means a paper copy or a saved or stored electronic copy.
- i. "WWTW" means wastewater treatment plant or treatment works as defined in R.C. 6111.01 and Ohio Adm.Code 3745-33-01, and the treatment plant located at 12719 Mayfield Road, Chardon, Geauga County, Ohio 44024.

II. JURISDICTION AND VENUE

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

III. PARTIES BOUND

3. Defendant Michael Good is an individual with a business address of 12719 Mayfield Road, Chardon, Ohio 44024.

4. Defendant Cabanas Island Restaurant, LLC is an Ohio limited liability company with its principal place of business at 12719 Mayfield Road, Chardon, Ohio 44024.

5. Defendant Skeeter's 19th Hole, Inc. ("Skeeter's") is an Ohio corporation with a principal place of business at 12719 Mayfield Road, Chardon, Ohio 44024. Defendant Skeeter's is the owner of the Property and was joined to this action as a Civ. R. 19 defendant.

6. This Order shall apply to and be binding only upon Defendants Michael Good and Cabanas Island Restaurant, LLC, and to the extent consistent with Civ. R. 65(D), on their agents, officers, employees, contractors, assigns, successors in interest, and those acting in concert, in privity, or participation with Defendants who receive actual notice of this Order whether by personal service, by public record filed in the county land record, or otherwise. Defendants Michael Good and Cabanas Island Restaurant shall provide a copy of this Order to any successor in interest and to each key employee, consultant, or contractor employed to perform work referenced herein or to operate the Site.

7. This 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.

8. If insolvency, bankruptcy, or other failure occurs, Defendants Michael Good and Cabanas Island Restaurant, LLC must immediately pay the remaining unpaid balance of the total civil penalty in Section VII of this Order.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

9. Plaintiff alleges in its Complaint that Defendants Michael Good and Cabanas

Island Restaurant, LLC are responsible for violations of Ohio's water pollution control laws as codified at R.C. Chapter 6111. Defendants deny all such allegations. Compliance with the terms of this Order shall constitute full satisfaction of any civil liability of Defendants to Plaintiff for the claims alleged in Plaintiff's Complaint.

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

- (a) Seek any legal or equitable relief from the Defendants or any other appropriate person for claims or conditions not alleged in the Complaint, including violations that occur on the date of or after the filing of the Complaint;
- (b) Seek any legal or equitable relief from the Defendants or any other appropriate person for claims, conditions, or violations that occur on or exist after the entry of this Consent Order;
- (c) Enforce this Consent Order through a contempt action or otherwise seek relief for violations of this Consent Order; and/or
- (d) Take any future legal or equitable action against any appropriate person, including Defendants, to eliminate or mitigate conditions at the Property that may present a threat to public health or welfare or to the environment in derogation of applicable laws and rules, which the State of Ohio has the authority to enforce. This Order in no way waives any defenses which Defendants or any other entity may have to such claims, demands, rights or causes of action.

11. 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 Defendants.

12. 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 specifically reserves its right to sue any entity that is not a signatory to this Order.

13. Nothing in this Order shall relieve Defendants of their obligations to comply with applicable federal, state or local statutes, regulations or ordinances.

14. Nothing herein shall restrict the right of Defendants to raise any administrative, legal, or equitable defenses with respect to such further actions reserved by the State in this Section. However, with respect to the actions reserved by the State in this Section, Defendants 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.

V. PERMANENT INJUNCTION

15. Defendants Michael Good and Cabanas Island Restaurant, LLC are hereby enjoined and ordered to immediately and permanently comply with the requirements of R.C. Chapter 6111 and the rules and regulations adopted thereunder, and the terms and conditions of its NPDES permit and any renewals or modifications thereof.

VI. INJUNCTIVE RELIEF AND COMPLIANCE

16. Defendants Michael Good and Cabanas Island Restaurant, LLC are hereby permanently enjoined and ordered to comply with the following conditions:

- A. Defendants shall submit a new application for an NPDES permit to the Ohio EPA **(Completed)**;
- B. Defendants shall submit a new and approvable Permit to Install ("PTI") application and detailed plans to upgrade the treatment plant at the Property **(Completed—PTI issued on December 4, 2017)**;

- C. Not later than ninety (90) days after the entry of this Consent Order, Defendants shall initiate construction of the upgrades to the treatment plant;
- D. Not later than one-hundred and eighty (180) days after entry of this Consent Order, Defendants shall complete construction of the treatment plant upgrades;
- E. Within seven days of the completing the requirements listed in Paragraphs 16(C) – (D) of Section VI, Defendants shall submit written verification of completion to: Joseph Trocchio, Ohio Environmental Protection Agency, DSW-Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio 44087.

17. Defendants Michael Good and Cabanas Island Restaurant, LLC are hereby permanently enjoined and ordered to immediately comply with the NPDES permit monitoring and reporting requirements in accordance with Ohio Administrative Code (“Ohio. Adm.Code”) 3745-33-08.

18. Defendants Michael Good and Cabanas Island Restaurant, LLC are hereby permanently enjoined and ordered to employ and maintain a Class A certified operator to oversee the technical operation of the treatment plant at the Property in compliance with Ohio Adm.Code 3745-7-02 within 10 days after entry of the Consent Order.

19. Defendants Michael Good and Cabanas Island Restaurant, LLC are hereby permanently enjoined and ordered to submit an Operator of Record Notification Form to the Ohio EPA in compliance with Ohio Adm.Code 3745-7-02 within 7 days of hiring a certified operator. Defendants shall submit notification to the Director within 7 days following termination of service of the Operator of Record.

20. Defendant Skeeter’s 19th Hole, Inc., shall grant access to the Property to allow Defendants Michael Good and Cabanas Island Restaurant, LLC to perform the required alterations or upgrades to the treatment plant located on the Property as set forth in this Order.

21. Defendant Skeeter’s 19th Hole, Inc. shall allow the Ohio EPA staff access to the

Property to inspect and monitor the treatment plant upgrades and compliance with R.C. 6111 until the sale of the Property to Defendant Michael Good is completed.

VII. CIVIL PENALTY

22. Pursuant to R.C. 6111.09, it is hereby ordered that Defendants Michael Good and Cabanas Island Restaurant, LLC shall pay a civil penalty in the amount of Twelve Thousand Three Hundred Dollars (\$12,300.00) to the State of Ohio. Defendants shall pay the total civil penalty in four (4) equal installments of Three Thousand Seventy-Five Dollars (\$3,075) as follows:

- i. Thirty (30) days after entry of this Consent Order, Defendants shall pay the first installment of three thousand seventy-five dollars (\$3,075);
- ii. On or before November 1, 2018, Defendants shall pay the second installment of three thousand seventy-five dollars (\$3,075);
- iii. On or before May 1, 2019, Defendants shall pay the third installment of three thousand seventy-five dollars (\$3,075); and
- iv. On or before November 1, 2019, Defendants shall pay the fourth installment of three thousand seventy-five dollars (\$3,075).

23. The civil penalty payments shall be made by certified check for the amount as stated above, payable to the order of "Treasurer, State of Ohio," and delivered to Scott Hainer, Paralegal, or his successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 25th Floor, 30 East Broad Street, Columbus, Ohio 43215.

24. In the event Defendants Michael Good and Cabanas Island Restaurant, LLC fails to make any one of the civil penalty payments on or before the date specified by Paragraph 22 of this Order, any remaining balance of the total civil penalty, plus applicable interest under R.C.

131.02(D), less any amount already paid under this Order, shall become immediately due and owing to the State in its entirety. Any delinquent payments shall accrue interest at the maximum statutory rate under R.C. 5703.47 calculated from the Effective Date of this Order.

25. The State reserves the right to file a certificate of judgment lien against Defendants for the remaining unpaid balance of the total civil penalty, plus applicable statutory interest, if the full civil penalty payment is not paid according to the payment schedule in Paragraph 22 of this Order. Defendants shall not be permitted to claim a force majeure as an excuse for any untimely payment or partial payment of an amount less than the full civil penalty as specified in this Order.

26. If Defendants Michael Good or Cabanas Island Restaurant, LLC files a petition for bankruptcy, the State of Ohio reserves the right to file a certificate of judgment lien against the other, non-filing Defendant for the remaining unpaid balance of the total civil penalty, plus applicable statutory interest.

VIII. STIPULATED PENALTIES

27. In the event that Defendants Michael Good and Cabanas Island Restaurant, LLC fails to comply with the requirements of Section VI this Order, Defendants shall pay a stipulated penalty for each day of noncompliance according to the following payment schedule:

- a) Defendants shall pay (\$100.00) per day for each day of violation up to the first thirty (30) days;
- b) For each day of violation between thirty (30) days and ninety (90) days, Defendants shall pay (\$150.00) per day;
- c) For each day of violation greater than (90) days, Defendants shall pay (\$200.00) per day.

28. Stipulated penalties due under this Order shall be immediately due and owing without demand by the State and shall be paid by delivering a certified check made payable to the order of "Treasurer, State of Ohio" to Scott Hainer, Paralegal, or his successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 25th Floor, 30 East Broad Street, Columbus, Ohio 43215.

29. Defendants' payment and Plaintiff's acceptance of such stipulated penalties under this Section shall not be construed to limit Plaintiff's authority, without exception, to seek: 1) additional relief under R.C. Chapter 6111, including civil penalties under R.C. 6111.09, for violations not resolved by this Order; 2) judicial enforcement of this Order for the violations for which a stipulated penalty was paid; or 3) sanctions for additional remedies, civil, criminal, or administrative, for new violations of applicable laws. Further, payment of stipulated penalties by Defendants shall not be an admission of liability by Defendants.

IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

30. Performance of the terms of this Order by Defendants Michael Good and Cabanas Island Restaurant, LLC is not conditioned on the receipt of any private, Federal or State grants, loans, and/or funds. In addition, Defendants' 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.

X. FACILITY ACCESS

31. As of the Effective Date, the Ohio EPA and its representatives and contractors shall have access at reasonable times to the Property, and shall have access to any other property controlled by or available to Defendants to which access is necessary to effectuate the actions

required by this Order. Access 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 Property;
- b. Verifying any data or information submitted to Ohio EPA;
- c. Conducting investigations relating to contamination at or near the Property;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Property;
- f. Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Defendants or their agents, consistent with this Order and applicable law; or
- g. Assessing Defendants' compliance with this Order.

32. 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 Facility 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. Chapter 6111.

XI. EFFECT OF ORDER

33. 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.

XII. MODIFICATION

34. No modification shall be made to this Order without the written agreement of the

parties and the Court.

XIII. MISCELLANEOUS

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

36. 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 Defendants from the obligations created by this Order.

XIV. RETENTION OF JURISDICTION

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

XV. EFFECTIVE DATE

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

XVI. COURT COSTS

39. Defendants Michael Good and Cabanas Island Restaurant, LLC are ordered to pay all court costs of this action.

XVII. AUTHORITY TO ENTER INTO THE ORDER

40. Each signatory represents and warrants he or she 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.

XVIII. ENTRY OF ORDER AND FINAL JUDGMENT BY CLERK

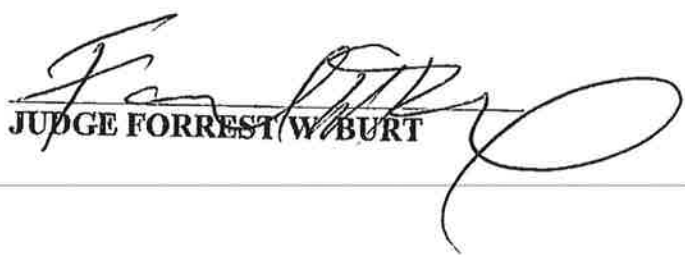
41. Under Rule 58 of the Ohio Rules of Civil Procedure, upon signing this Order by

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.

42. 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.

IT IS SO ORDERED.

DATE



JUDGE FORREST W. BURT

APPROVED:

MICHAEL DEWINE
OHIO ATTORNEY GENERAL



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*Attorney for Defendants, Skeeter's 19th
Hole, Inc., et al.*



Cabanas Island Restaurant, LLC

By: Michael R. Good, Member



Michael R. Good

Individually



Skeeter's 19th Hole, Inc.

By: Russell P. Bliss, Owner

Defendants