



IN THE COURT OF COMMON PLEAS
AUGLAIZE COUNTY, OHIO

AUGLAIZE COUNTY
COMMON PLEAS COURT
FILED

2021 JAN 14 PM 12:18

I. JEAN NECKSTROTH
CLERK OF COURTS

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

Plaintiff,

v.

AIP LOGISTICS, INC., et al.

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CASE NO. 2019-00113

JUDGE PEPPL

PARTIAL CONSENT ORDER
RESOLVING COUNTS 1-7

The State of Ohio, by its Attorney General (“Plaintiff”/“the State”) and at the written request of the Director of the Ohio Environmental Protection Agency (“the Director”), has filed a Complaint seeking civil penalties injunctive relief against Defendants for violations of Ohio’s surface water pollution control laws under R.C. Chapter 6111 and the rules adopted under that chapter. The Parties have consented to the entry of this Partial Consent Order, which resolves the alleged violations related to water pollution control laws in Counts 1 through 7 of the State’s Complaint.

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:

I. DEFINITIONS

1. As used in this Order, the following terms are defined:
 - a. “Defendants” means AIP Logistics, Inc., Kantrade Ltd., AIP Services, Inc., AIP Specialties, LLC, AIP Logistics, Ltd., and Charles Kantner.
 - b. “Director” means the Director of the Ohio Environmental Protection Agency (“Ohio EPA”) or her designee.

- c. "Effective Date" means the date the Auglaize County Clerk of Courts files this Order.
- d. "Parties" means Plaintiff, the State of Ohio, and Defendants, as defined in Section I.1.a.
- e. "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.
- f. "State" means Plaintiff State of Ohio, by and through its Attorney General, Dave Yost, at the written request of the Director of Environmental Protection.
- g. "Order" refers to this Order.

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 AIP Logistics, Inc. is an Ohio corporation for profit with a mailing address of 16075 Wapakoneta Fisher Road, Wapakoneta, Ohio 45895.

4. Defendant AIP Logistics, Ltd. is an Ohio limited liability company with a mailing address of 100 S. Main Ave., Suite 300, Sidney, Ohio 45365.

5. Defendant AIP Services, Inc. is an Ohio corporation for profit with a mailing address of 100 S. Main Ave., Suite 300, Sidney, Ohio 45365.
6. Defendant AIP Specialties, LLC is an Ohio limited liability company with a mailing address of P.O. Box 407, Wapakoneta, Ohio 45895.
7. Defendant Kantrade, Ltd. is an Ohio limited liability company with a mailing address of 100 S. Main Ave., Suite 300, Sidney, Ohio 45365.
8. Defendant Charles Kantner is an Ohio resident with a mailing address of 711 Gibbs Avenue, Wapakoneta, Ohio 45895.
9. 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.
10. If insolvency, bankruptcy, or other failure occurs, Defendants must pay the remaining unpaid balance of the total civil penalty.

IV. SATISFACTION OF CLAIMS AND RESERVATION OF RIGHTS

11. The Plaintiff alleges that Defendants are responsible for violations of the water pollution control laws of the State of Ohio under R.C. Chapter 6111. Defendants deny all such allegations. Compliance with this Order shall constitute full satisfaction of any civil liability of Defendants to Plaintiff for Counts 1 through 7, inclusive, alleged in Plaintiff's Complaint.
12. 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 or civil penalties from Defendants 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 Defendants 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 action against any appropriate person, including Defendants, to eliminate or mitigate conditions at Defendants' property located at 5 Krein Avenue, Wapakoneta, Ohio 45895; 501 Krein Avenue, Wapakoneta, Ohio 45895, 400 Geissel Street, Wapakoneta, Ohio 45895; and 302 Geissel Street, Wapakoneta, Ohio 45895; that may present a threat to public health or welfare or to the environment in derogation of applicable laws and rules, which State of Ohio has the authority to enforce.
- e. Nothing in this Section shall be interpreted as an admission or recognition by Defendants of the validity or existence of any claims reserved herein.

13. 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, including the State of Ohio's claims against Defendants other than Counts 1 through 7.

14. 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.

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

16. Nothing herein shall restrict the right of Defendants to raise any administrative, legal, or equitable defense 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.

17. Defendants agree that each is jointly and severally liable for the obligations and requirements in this Order.

V. PERMANENT INJUNCTION

18. The Defendants are ordered and permanently enjoined to comply fully with R.C. Chapter 6111, the rules adopted thereunder, and any permits issued by Ohio EPA's Division of Surface Water.

19. February 15, 2021: Defendants will submit to Ohio EPA a complete Storm Water Pollution Prevention Plan ("SWP3") and Notice of Intent ("NOI") for coverage under Ohio EPA's NPDES general permit for storm water discharges associated with construction activity. To be considered complete, the SWP3 must include the Operation and Maintenance Plan for the post construction storm water Best Management Practices ("BMPs") and already be sanctioned by the City of Wapakoneta ("City").

20. February 28, 2021: Defendants will complete and record an Easement of Access for the City to access stormwater facilities constructed on AIP property. Defendants will complete and record an Easement of Access which allow the City to cross AIP property for purposes of inspection and maintenance of post construction storm water BMPs installed on City property.

Defendants will provide written confirmation to Ohio EPA within 7 days of recording the easements.

21. April 30, 2021: Defendants will initiate construction of approved stormwater facilities.

Defendants will provide written notification to Ohio EPA within 7 days of construction initiation.

22. June 30, 2021: Defendants will complete construction of approved stormwater facilities.

23. July 14, 2021: Defendants will submit written certification to OEPA that storm water facilities have been constructed per approved plans.

24. All documents required to be submitted to Ohio EPA pursuant to this Consent Order shall be submitted to the following email address and relevant mailing addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio Environmental Protection Agency
Division of Surface Water
Attn: Lynette Hablitzel
347 North Dunbridge Road
Bowling Green, OH 43402
Lynette.Hablitzel@epa.ohio.gov

and

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Surface Water
Attn: Manager, Storm Water Enforcement Section
50 West Town Street, Suite 700
[P.O. Box 1049]
Columbus, Ohio 43215 [43216-1049]

[For mailings, use the post office box number and zip code in brackets.]

25. Defendants shall inform Ohio EPA of any change in the business addresses or telephone numbers, or the cessation of the business that is the subject of this action within fourteen (14) days of such a change.

VI. POTENTIAL FORCE MAJEURE CLAUSE

26. If any event occurs that causes or may cause a delay of any requirements of this Consent Order, Defendants shall notify the Ohio EPA in writing within fourteen (14) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by the Defendants to prevent or minimize the delay, and the timetable by which measures will be implemented. Defendants shall adopt all reasonable measures to avoid or minimize any such delay.

27. In any action by Plaintiff to enforce any provision of this Consent Order, Defendants may raise that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitations, acts of God, strikes, acts of war or civil disturbances. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendants and Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate time at which to adjudicate the existence of such a defense is when an enforcement action, if any, is commenced by the Plaintiff. If such action is commenced, Defendants shall bear the burden of proving that any delay was caused by circumstances entirely beyond its control. Unanticipated or increased costs associated with the implementation of any requirement of this Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Defendants or serve as a basis for an extension of time under this Consent Order. Failure by Defendants to comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved. It shall be at the option of Plaintiff to construe the failure as a waiver of Defendants' right to request an extension of its obligations under this Consent Order based on such incident. An extension of one date based on a particular incident does not mean that

Defendants qualify for an extension of a subsequent date or dates. Defendants must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order with a Potential Force Majeure Clause does not constitute a waiver by Defendants of any rights or defenses it may have under applicable law.

VII. CIVIL PENALTY

28. Under R.C. 6111.09, Defendants are ordered to jointly and severally pay a civil penalty of \$30,000.00, subject to the provisions in the Section. Full payment shall be made within thirty (30) days of entering this Order. Such payment shall be made by delivering to Sandra Finan, Paralegal, or her successor, Office of the Attorney General, 30 E. Broad St., 25th Floor, Columbus, Ohio 43215, a certified check or checks for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

29. If full payment of the civil penalty and any other amount due under this Partial Consent Order is not received by the State in accordance with the terms of this Partial Consent Order, the remaining unpaid balance of the total civil penalty and any other amount due, plus applicable interest under R.C. 131.02(D), shall become immediately due and owing. The remaining unpaid balance delinquent payments shall accrue interest at the rate per annum required by R.C. 5703.47 calculated from the Effective Date of this Order.

30. Nonpayment will also subject Defendants to the stipulated penalties provided for in Section VIII.

31. If any amount is not paid in accordance with the terms of this Partial Consent Order, the Attorney General may collect that amount under R.C. 131.02. Pursuant to R.C. 109.081, in addition to the outstanding balance due under this Partial Consent Order, collection costs of ten

percent shall be owing and fully recoverable from the Defendants to be paid into the State Treasury to the credit of the Attorney General Claims Fund.

32. 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 and collection costs, if the full civil penalty payment is not paid according to the schedule in 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.

33. If any Defendant 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

34. If Defendants fail to comply with any of the requirements of this Order, Defendants shall immediately and automatically be jointly and severally liable for and shall pay stipulated penalties under the following schedule for each failure to comply:

- a. Defendants shall pay three hundred dollars (\$300.00) per day for each day any requirement of this Order is violated up to the first thirty (30) days of violation;
- b. For each day any requirement of this Order is violated between thirty (30) days and ninety (90) days of violation, Defendants shall pay six hundred dollars (\$600.00) per day;
- c. For each day any requirement of this Order is violated greater than (90) days of violation, Defendants shall pay one thousand dollars (\$1,000.00) per day.

35. Stipulated penalties due under this Order shall be immediately due and owing without demand by the State and shall be paid by check or money order, payable to "Treasurer, State of Ohio" and delivered to Sandra Finan, Paralegal, or her successor at the Office of the Attorney

General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

36. 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. 6111.99; 2) judicial enforcement of this Order for the same violations for which a stipulated penalty was paid; or 3) sanctions for additional remedies, civil, criminal, or administrative, for 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

37. Performance of the terms of this Order by Defendants 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. MODIFICATION

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

XI. MISCELLANEOUS

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

40. 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.

XII. RETENTION OF JURISDICTION

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

XIII. ENTRY OF ORDER AND FINAL JUDGMENT BY CLERK

42. 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.

XIV. COURT COSTS

43. Defendants are ordered to pay all court costs of this action incurred prior to the entry of this Partial Consent Order.

XV. AUTHORITY TO ENTER INTO THE ORDER

44. 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.

IT IS SO ORDERED.

/s/ FREDERICK D. PEPPE

JUDGE PEPPE

1/14/2021

DATE

APPROVED AND AGREED TO BY:


for AIP Logistics, Inc.



for AIP Services, Inc.


for Kantrade Ltd.



for AIP Specialties, LLC


for AIP Logistics, Ltd.


Charles Kantner, *in his personal capacity*

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