

IN THE COURT OF COMMON PLEAS  
OTTAWA COUNTY, OHIO

GARY A. KOHLI  
CLERK OF COURTS  
OTTAWA COUNTY, OHIO

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

CASE NO. 2016 CV H 255

2018 APR -3 P 2:48

Plaintiff,

JUDGE WINTERS

v.

HELEN M. ANGEL, INC., et al.,

Defendants.

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CONSENT ORDER AS TO DEFENDANT JANICE KURAS

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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 Defendant Janice Kuras (“Defendant”) to enforce the State of Ohio’s Water Pollution Control Laws under R.C. Chapter 6111 and the rules promulgated thereunder concerning Defendant’s unlawful discharge of pollutants to waters of the state from a wastewater treatment plant at the White Caps Motel and RV Park, located at 2186 West Lakeshore Drive, Port Clinton, Ottawa County, Ohio 43452. 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. "Defendant" means Janice Kuras. The term "Defendant" does not include Helen M. Angel, Inc., and/or Dawn Angel for the purposes of this Order.
- 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 Defendant, Janice Kuras.
- 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 White Caps Motel and RV Park located at 2186 West Lakeshore Drive, Port Clinton, Ottawa County, Ohio, 43452.
- 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" or "Treatment Plant" means wastewater treatment plant or treatment works as defined in R.C. 6111.01 and Ohio Adm.Code 3745-33-01, and the 1,500 gallons per day WWTP located at the White Caps Motel and RV Park.

## **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. Defendant shall not challenge the Court's jurisdiction to enter or enforce this Order.

### **III. PARTIES BOUND**

3. Defendant is an individual with a residential address of 2196 West Lakeshore Drive, Port Clinton, Ohio, 43452.

4. This Order shall apply to and be binding only upon Defendant, and to the extent consistent with Civ. R. 65(D), on Defendant's agents, officers, employees, contractors, assigns, successors in interest, and those acting in concert, in privity, or participation with Defendant who receive actual notice of this Order whether by personal service, by public record filed in the county land record, or otherwise. Defendant 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.

5. 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.

6. If insolvency, bankruptcy, or other failure occurs, Defendant 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**

7. Plaintiff alleges in its Complaint that Defendant is responsible for violations of Ohio's water pollution control laws as codified at R.C. Chapter 6111. Defendant denies all such allegations. Compliance with the terms of this Order shall constitute full satisfaction of any civil liability of Defendant to Plaintiff for the claims alleged in Plaintiff's Complaint.

8. 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 Defendant 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 Defendant 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 Defendant, 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 Defendant or any other entity may have to such claims, demands, rights or causes of action.

9. 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 Defendant.

10. 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.

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

12. Nothing herein shall restrict the right of Defendant 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, Defendant 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.

13. The Parties agree that only Defendant is liable for the obligations and requirements in this Order.

#### V. PERMANENT INJUNCTION

14. Defendant is hereby enjoined and ordered to immediately and permanently comply with the requirements of R.C. Chapter 6111 and the rules adopted thereunder, and any permits issued under that Chapter, except as otherwise provided in this Order.

#### VI. INJUNCTIVE RELIEF AND COMPLIANCE

15. Defendant is hereby permanently enjoined and ordered to comply with the following conditions:

- a) Disconnect from the White Caps WWTW and tie into the City of Port Clinton regional sanitary sewer system in accordance with the following schedule:
  - i. Within **30 days** after entry of this Consent Order, contract with a professional engineer for submittal of a Permit To Install (PTI) application for sewer installation;
  - ii. Within **7 days** of contracting with a professional engineer, Defendant shall notify Ohio EPA;
  - iii. Within **120 days** after entry of this Consent Order, submit an approvable PTI application and detail plans for the sewer installation;
  - iv. Within **14 days** of receipt of notification of comments or deficiencies from Ohio EPA on the PTI application, Defendant shall provide Ohio EPA a revised application and detailed plans addressing the comments or deficiencies;
  - v. Within **7 days** of construction commencement, Defendant shall notify Ohio EPA;
  - vi. Within **240 days** after entry of this Consent Order, complete construction of sewer installation in accordance with the approved PTI;
  - vii. Defendant shall coordinate with Defendants Helen M. Angel, Inc. and Dawn Angel to ensure the continued, uninterrupted use of the White Caps WWTW until completion of the Defendant's sanitary sewer connection to the City of Port Clinton regional sanitary sewer system. The continued,

uninterrupted use of the White Caps WWTW shall not exceed the time specified in Item 15(a)(vi) above.

- viii. Within 7 days of construction completion, Defendant shall notify Ohio EPA.
- ix. Within 30 days of construction completion, Defendant shall properly dispose of all wastewater and residual solids contained in the WWTW and properly demolish the WWTW.
- x. Within 7 days of demolition completion, Defendant shall notify Ohio EPA.

## VII. CIVIL PENALTY

16. Pursuant to R.C. 6111.09, it is hereby ordered that Defendant shall pay a civil penalty in the amount of Ten Thousand Dollars (\$10,000.00) to the State of Ohio. Defendant shall pay the total civil penalty in four (4) equal installments of Two Thousand Five Hundred Dollars (\$2,500) as follows:

- i. Within thirty (30) days after entry of this Consent Order, Defendant shall pay the first installment of two thousand five hundred dollars (\$2,500);
- ii. On or before September 1, 2018, Defendant shall pay the second installment of two thousand five hundred dollars (\$2,500);
- iii. On or before January 1, 2019, Defendant shall pay the third installment of two thousand five hundred dollars (\$2,500);
- iv. On or before May 1, 2019, Defendant shall pay the fourth installment of two thousand five hundred dollars (\$2,500).

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

18. In the event Defendant fails to pay the total civil penalty pursuant to 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.

19. The State reserves the right to file a certificate of judgment lien against Defendant for the remaining unpaid balance of the total civil penalty, plus applicable statutory interest, if the full civil penalty payment is not paid pursuant to this Order. Defendant 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.

#### **VIII. STIPULATED PENALTIES**

20. In the event that Defendant fails to comply with the requirements of Section VI of this Order, Defendant shall pay a stipulated penalty for each day of noncompliance according to the following payment schedule:

- a) Defendant shall pay Two Hundred Fifty Dollars (\$250.00) 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, Defendant shall pay Three Hundred Dollars (\$300.00) per day;
- c) For each day of violation greater than (90) days, Defendant shall pay Three Hundred and Fifty Dollars (\$350.00) per day.

21. 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 Karen Matthews, Paralegal, or his successor, at the

Ohio Attorney General's Office, Environmental Enforcement Section, 25<sup>th</sup> Floor, 30 East Broad Street, Columbus, Ohio 43215.

22. Defendant's payment of 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 Defendant.

#### **IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS**

23. Performance of the terms of this Order by Defendant is not conditioned on the receipt of any private, Federal or State grants, loans, and/or funds. In addition, Defendant's 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**

24. 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 Defendant 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 Defendant or their agents, consistent with this Order and applicable law; or
- g. Assessing Defendant's compliance with this Order.

25. 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**

26. 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**

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

#### **XIII. MISCELLANEOUS**

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

29. 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 Defendant from the obligations created by this Order.

#### **XIV. RETENTION OF JURISDICTION**

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

#### **XV. EFFECTIVE DATE**

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

#### **XVI. COURT COSTS**

32. Defendants are ordered to pay all court costs of this action.

#### **XVII. AUTHORITY TO ENTER INTO THE ORDER**

33. 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.

#### **XVIII. ENTRY OF ORDER AND FINAL JUDGMENT BY CLERK**

34. 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.

35. 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.

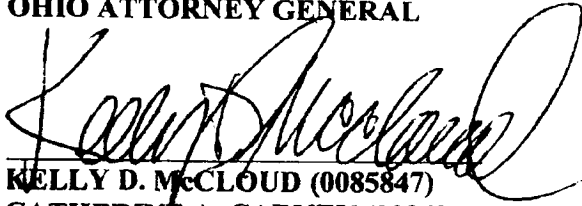
**IT IS SO ORDERED.**

\_\_\_\_\_  
**DATE**

*Bruce Winters*  
04/03/2018  
\_\_\_\_\_  
**JUDGE BRUCE WINTERS**

**APPROVED:**

**MICHAEL DeWINE**  
**OHIO ATTORNEY GENERAL**



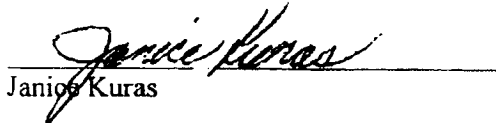
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Janice Kuras

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