

FILED

2011 JUN -1 AM 8:43

DEBORAH SHALLEY  
CLERK OF COURTS  
FAIRFIELD CO. OHIO

IN THE COURT OF COMMON PLEAS  
FAIRFIELD COUNTY, OHIO

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

Plaintiff,

v.

ZANE REAL ESTATE, LTD.

Defendant.

CASE NO. '11 CV 539

JUDGE

JUDGE R BERENS

CONSENT ORDER FOR INJUNCTIVE RELIEF AND CIVIL PENALTY

Plaintiff State of Ohio, by its Attorney General Michael DeWine (hereinafter "State" or "Plaintiff"), having filed the Complaint in this action against Defendant Zane Real Estate, Ltd. (hereinafter "Defendant") to enforce the State of Ohio's drinking water laws and the rules promulgated thereunder, concerning the Defendant's operation of Defendant's "public water system" (hereinafter "PWS") ID Number: 2348812 at their facility, Zane Trace Station, located at 4985 Cincinnati-Zanesville Rd., Lancaster, Ohio, Fairfield County.

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

## **I. JURISDICTION AND VENUE**

1. The Court has both personal and subject matter jurisdiction over the parties. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 6109 of the Ohio Revised Code. Venue is proper in this Court.

## **II. PERSONS BOUND**

2. All terms and provisions of this Consent Order shall apply to and be binding upon Defendant, its assigns, successors in interest, and others bound by Rule 65(D) of the Ohio Rules of Civil Procedure, who are or will be acting in concert and/or in privity with the Defendant. The undersigned representative of each party to this Consent Order certifies that he or she is fully authorized by the party or parties whom she or he represents to enter into the terms and conditions of the Consent Order and execute and legally bind that party or parties to it. This Consent 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.

## **III. SATISFACTION OF LAWSUIT**

3. Plaintiff alleges in its Complaint that Defendant has operated a PWS at Zane Trace Station in such a manner as to result in numerous violations of the safe drinking water laws of the State of Ohio. Defendant specifically disputes Plaintiff's allegations. 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 filed contemporaneously with this Consent Order.

4. Compliance with the terms of this Consent Order shall constitute full satisfaction of all requirements set forth in the January 24, 2011 Director's Final Findings and Orders issued to Zane Real Estate, Ltd.

5. Upon entry of this Consent Order, Defendant agrees to dismiss its appeal of the January 24, 2011 Director's Final Findings and Orders, filed with the Environmental Review Appeals Commission and designated Case No. ERAC 236513.

6. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief against Defendant or other appropriate persons for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint, nor shall anything in this Consent Order limit the right of Defendant to any defenses it may have for such claims including that Defendant no longer operates a public water system. Nothing in this Consent Order shall preclude Defendant from initiating an action to determine whether Defendant operates a public water system. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief against other appropriate persons, not covered by this Consent Order, for claims or conditions alleged in the Complaint. Similarly, nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to undertake any action against any person, including Defendant, to eliminate or mitigate conditions that may present a threat to the public health, welfare or the environment.

#### **IV. PERMANENT INJUNCTION**

##### **Defendant's Drinking Water System**

7. Defendant is permanently enjoined and ordered to immediately comply with the requirements of R.C. Chapter 6109 and the rules adopted thereunder.

8. Defendant is permanently enjoined and ordered to prominently display Zane Trace Station's conditioned 2011 License to Operate and all subsequent Licenses to Operate issued by the Director, in accordance with O.A.C. 3745-84-04(D).

9. Defendant is permanently enjoined and ordered to comply with their contaminant monitoring schedule for the 2011 calendar year and all subsequent monitoring schedules issued by the Director.

10. Defendant is permanently enjoined and ordered to comply with the total coliform bacteria routine and repeat monitoring requirements, in accordance with O.A.C. 3745-81-21.

11. Defendant is permanently enjoined and ordered to issue public notice, in accordance with O.A.C. Rule 3745-81-32, for all past violations of R.C. Chapter 6109 and the rules adopted thereunder.

12. Defendant is permanently enjoined and ordered to repair and maintain the well that serves Zane Trace Station, in accordance with O.A.C. 3745-9-05, no later than the date of Defendant's 2011 sanitary survey or May 1, 2011, whichever is earlier.

13. Defendant is permanently enjoined and ordered to eliminate the potential cross-connection at Zane Trace Station located on the softener drain line by installing an air gap no later than the date of Defendant's 2011 sanitary survey or May 1, 2011, whichever is earlier.

14. Defendant is permanently enjoined and ordered to pay unpaid License to Operate fees for 2003, 2009, and 2010, and submit written verification of payment to Ohio EPA no later than June 1, 2011.

#### V. EFFECT OF CONSENT ORDER

15. This Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing public water system where a permit is required. 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. CIVIL PENALTY**

16. Pursuant to R.C. 6109.33 it is hereby ordered that Defendant shall pay to the State of Ohio a cash civil penalty of eight hundred dollars (\$800.00) no later than June 1, 2011.

17. The civil penalty payment shall be made by delivering to Karen Pierson, Paralegal, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio, 43215, a certified check, made payable to the order of the "Treasurer, State of Ohio," for the appropriate amount.

## **VII. STIPULATED PENALTIES**

18. In the event that Defendant fails to meet any of the requirements of this Consent Order set forth in paragraphs 7 through 14, the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty of two hundred dollars (\$200.00) per day for each requirement not met, for the first sixty (60) days of noncompliance. The Defendant shall be liable for an additional stipulated penalty of four hundred dollars (\$400.00) per day for each requirement not met if the failure to comply continues for more than sixty (60) days but less than one hundred twenty (120) days. In the event that failure to comply continues more than one hundred twenty (120) days, Defendant shall be liable for an additional six hundred dollars (\$600.00) per day for each requirement not met.

19. Any payment required to be made under the provisions of paragraph 18 of this Consent Order shall be made by delivering a certified check or checks, made payable to "Treasurer, State of Ohio", for the appropriate amounts, within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, by mail, or otherwise, to Karen Pierson, Paralegal or her successor, at the address set forth in paragraph 17.

20. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to Section VII shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order. Further, payment by Defendant shall not be considered an admission of liability on the part of Defendant.

**VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS**

21. Performance of the terms of this Consent Order by Defendant is not conditioned on the receipt of any federal or state grant funds or loans. In addition, Defendant's performance is not excused by the failure to obtain or shortfall of any federal or state grant funds or loans, or by the processing of any applications for the same.

**IX. MODIFICATION**

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

**X. RETENTION OF JURISDICTION**

23. The Court will retain jurisdiction of this action for the purposes of overseeing that Defendant complies with this Consent Order and making any order or decree that it deems appropriate to carry out this Consent Order.

**XI. COURT COSTS**

24. Defendant is hereby ordered to pay the court costs of this action.

**XII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK**

25. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the parties

notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

**IT IS SO ORDERED.**

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

*Richard E. Berens*  
\_\_\_\_\_  
**JUDGE**

APPROVED:

STATE OF OHIO

Alana R. Shockey

ALANA R. SHOCKEY (0085234)  
DAVID H. DOKKO (0080749)  
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215  
(614) 466-2766  
Counsel for Plaintiff State of Ohio

5/26/11  
DATE

David A. Bugh

DAVID A. BUGH, on behalf of  
ZANE REAL ESTATE, LTD.  
4985 CINCINNATI-ZANESVILLE RD.  
Lancaster, Ohio 43130  
(740)-687-5780

Defendant

5/19/11  
DATE

Mark R. Riegel

MARK R. RIEGEL (0015790)  
144 E. Main Street  
P.O. Box 667  
Lancaster, Ohio 43215  
(740) 652-3003

Counsel for Defendant

5/19/11  
DATE