

IN THE COURT OF COMMON PLEAS  
DELAWARE COUNTY, OHIO

STATE OF OHIO ex rel.  
MICHAEL DeWINE  
OHIO ATTORNEY GENERAL

CASE NO. 13-CV-H-06-0517

JUDGE KRUEGER

PLAINTIFF,

v.

RIVER RUN OF POWELL, LLC

DEFENDANT.

468  
346-355

JAN ANTONIOPLOS  
CLERK

2014 NOV 25 AM 8:57

COMMON PLEAS COURT  
DELAWARE COUNTY, OHIO  
FILED

CONSENT ORDER

Plaintiff, the State of Ohio ("Plaintiff"/"State"), by and through its counsel Attorney General Michael DeWine, filed a Complaint against Defendant River Run of Powell, LLC ("Defendant River Run") alleging violations of Ohio's Water Pollution Control laws, Ohio Revised Code ("R.C.") Chapter 6111, occurring at a residential subdivision site which is a development approximately twenty-five (25) acres in size located off of Jewett Road, near State Route 315, Powell, in Delaware County, Ohio, ("the Site"), and which was owned or operated by Defendant River Run at all times relevant to the Complaint. This Consent Order constitutes a resolution of disputed claims.

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

Judicial Order  
NPDES  
Delaware County  
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TERMINATION CODE

## I. JURISDICTION AND VENUE

1. The Court has jurisdiction over both the parties and the subject matter of this action pursuant to R.C. Chapter 6111. The Complaint states a claim upon which relief can be granted against Defendant River Run under R.C. Chapter 6111. 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 the Defendant River Run, its sole member Cugini & Capoccia Builders, Inc. ("CCBI") (collectively, "Bound Parties"), the Bound Parties' agents, employees, assigns, successors in interest and any person acting in concert, privity or participation with the Bound Parties.

## III. SATISFACTION OF LAWSUIT

3. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by the Bound Parties for all claims alleged in the State's Complaint and in the State's proposed Amended Complaint for which the State sought leave to file (the "Amended Complaint," and together with the State's Complaint, the "Complaints").

## IV. RESERVATION OF RIGHTS

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

- (a) Seek any legal or equitable relief from the Bound Parties or any other appropriate person for claims or conditions not alleged in the Complaints, including violations that occur after the filing of the Complaint. Notwithstanding the preceding sentence, Plaintiff acknowledges the allegations in the Complaints allege all believed conditions and/or violations related to the Site;

- (b) Seek any legal or equitable relief from the Bound Parties or any other appropriate person for claims or conditions alleged in the Complaints that occur or exist on the date of or 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;
- (d) Take any action authorized by law against any appropriate person, including the Bound Parties, to eliminate or mitigate conditions at the Site that may present a threat to the public health or welfare, or the environment in derogation of applicable laws and regulations, for which Ohio EPA has the authority to enforce; and/or
- (e) Bring any legal or equitable action against any appropriate person other than the Bound Parties for any violation of applicable laws. For the purposes of this Consent Order, the term "person" includes: an individual, corporation (including, but not limited to, a limited liability corporation), business trust, estate, trust, partnership, association, municipal corporation, interstate body created by compact, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.

#### V. INJUNCTION

5. The Bound Parties are permanently enjoined and ordered to comply immediately with all applicable provisions of R.C. Chapter 6111 and the rules promulgated under that Chapter subject to the terms hereof.

6. The Bound Parties are permanently enjoined and ordered to comply immediately with 2003 General NPDES Permit for Storm Water Discharges Associated with Construction Activities, Permit No. OHC 000002 ("2003 General Permit") as well as any renewals or modifications of the 2003 General Permit.

7. By no later than thirty (30) days following entry of this Consent Order, the Bound Parties shall submit a proposal to Ohio EPA, Division of Surface Water, Central District Office, Attn.: Harry Kallipolitis, Lazarus Government Center, P.O. Box 1049, Columbus, OH 43216-1049

to address the post-construction requirements for the Site in accordance with Part III.G.2.e of the 2003 General Permit. At a minimum, this proposal shall include both of the following components:

- (a) An "As-Built" Certification of the centralized sediment basin at the Site, reflecting current conditions. The "As-Built" must include a survey to determine the amount of accumulated sediment in the impoundment with a comparison to original design capacity.
- (b) A calculation of the Water Quality Volume (WQv) and the associated drawdown of the WQv for the Site.

In the event that Ohio EPA determines that the submitted proposal does not meet the post-construction requirements of the 2003 General Permit, Ohio EPA will inform the Bound Parties in writing of the corrective actions required by no later than thirty (30) days following receipt of the proposal.

8. By no later than sixty (60) days following the later of the submission of the Bound Parties' proposal to Ohio EPA as set forth in Paragraph 7 above *or* Ohio EPA's written notice of the corrective actions required as set forth in Paragraph 7 above, the Bound Parties shall have performed all corrective measures, if any, required to meet the post-construction requirements of the 2003 General Permit and shall submit a complete Notice of Termination Application for the Site to Ohio EPA, Division of Surface Water, Central District Office, Attn.: Harry Kallipolitis, Lazarus Government Center, P.O. Box 1049, Columbus, OH 43216-1049. The parties are permitted to modify the timing required by this Paragraph by agreement should weather or other acts outside of the Bound Parties' control prevent the corrective measures from being reasonably taken, and reasonable modification based on such external factors shall not be unreasonably withheld by the Ohio EPA.

## VI. CIVIL PENALTY

9. The Bound Parties shall pay to the State of Ohio a civil penalty of thirty thousand dollars (\$30,000) for violations of Ohio's water pollution control laws in installments according to the following schedule:

- (a) By no later than thirty (30) days following the entry of this Consent Order, the Bound Parties shall pay ten-thousand dollars (\$10,000.00) of the civil penalty.
- (b) By no later than six (6) months following entry of this Consent Order, the Bound Parties shall pay five-thousand dollars (\$5,000.00) of the civil penalty.
- (c) By no later than twelve (12) months following entry of this Consent Order, the Bound Parties shall pay five-thousand dollars (\$5,000.00) of the civil penalty.
- (d) By no later than eighteen (18) months following entry of this Consent Order, the Bound Parties shall pay five-thousand dollars (\$5,000.00) of the civil penalty.
- (e) By no later than twenty-four (24) months following entry of this Consent Order, the Bound Parties shall pay the remaining five-thousand (\$5,000.00) of the civil penalty.

10. Each penalty payment shall be made by a certified check for the amount as stated above, payable to the order of "Treasurer, State of Ohio" and delivered to Scott Hainer, Paralegal, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

11. If the Bound Parties miss any of the scheduled payments as set forth above, all remaining payments, along with interest as set forth in R.C. 5703.47 accruing from the date of entry of this Consent Order, shall become immediately due and owing.

## VII. STIPULATED PENALTIES

12. In the event that the Bound Parties fail to comply with any requirement of Section V of this Consent Order, the Bound Parties are liable for and shall immediately pay stipulated penalties in accordance with the following schedule for each failure to comply:

- (a) For each day of each failure to comply with a requirement from one (1) day to thirty (30) days – one hundred fifty dollars (\$150.00) per day per requirement not met;
- (b) For each day of each failure to comply with a requirement from thirty-one (31) days to sixty (60) days – three hundred dollars (\$300.00) per day per requirement not met;
- (c) For each day of each failure to comply with a requirement over sixty-one (61) days – four hundred fifty dollars (\$450.00) per day per requirement not met.

13. Payments due under Paragraph 12 shall be made without demand within forty-five (45) days from the date of the failure to meet the applicable deadline. Payments shall be accompanied by a written explanation of the deadline missed. Any payment required to be made under this paragraph shall be made by delivering a certified check or checks for the appropriate amount(s), made payable to "Treasurer, State of Ohio," to Scott Hainer, Paralegal, Environmental Enforcement Section, Ohio Attorney General's Office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. The payment of stipulated penalties by the Bound Parties and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant this Section 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 the Bound Parties shall not be considered an admission of liability on the part of the Bound Parties.

14. The stipulated penalties imposed by Paragraph 12 of this Consent Order may be terminated as to each specific paragraph of this Consent Order, for which stipulated penalties are imposed, only after the Bound Parties has achieved and maintained compliance with all the requirements of that paragraph for a period of twelve (12) consecutive months and has paid any and all stipulated penalties incurred related to that paragraph. Termination of one paragraph subject to stipulated penalties under this Consent Order shall not terminate the accrual of or the liability for payment of stipulated penalties under any other paragraph. Termination of stipulated penalties under this Consent Order shall only be upon written application by any party, and by order of the Court after the Court has made a determination that the requirements of this paragraph have been satisfied.

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

15. Performance of the terms of this Consent Order by the Bound Parties is not conditioned on the receipt of any Federal or State grants, loans and/or funds. In addition, the Bound Parties' performance is not excused by the failure to obtain or any shortfall of any Federal or State grants, loans and/or funds or by the processing of any applications for the same.

#### **IX. MISCELLANEOUS**

16. Nothing in this Consent Order shall affect the Bound Parties' obligations to comply with all applicable federal, state or local laws, regulations, rules or ordinances.

17. Any acceptance by the State of Ohio of any payment, document or other work due hereunder subsequent to the time that the obligation is due under this Consent Order shall not relieve the Bound Parties from the obligations created by this Consent Order.

18. The Bound Parties shall inform the Ohio EPA of any change or cessation of the business that is the subject of this action.

#### **X. COSTS**

19. The Bound Parties shall pay the court costs of this action.

20. The Bound Parties are hereby ordered to pay the costs incurred by the Ohio EPA for the publication of the Consent Order in Ohio EPA's Weekly Review and a newspaper of general circulation as required in Paragraph 22, below. The Bound Parties shall pay the costs associated with publication by delivering a certified check payable to: "Treasurer, State of Ohio" and with a notation indicating that the funds are going to "Fund 699" on it, in the amount of the costs, to the Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, within thirty (30) days from the date the Bound Parties receive notice of the costs from Ohio EPA.

#### **XI. CONTINUING JURISDICTION**

21. This Court shall retain jurisdiction over this action for the purpose of enforcing and administering the Bound Parties' compliance with this Consent Order.

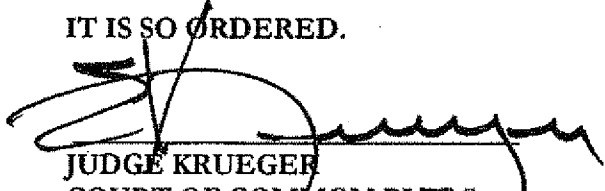
#### **XII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK**

22. The parties agree and acknowledge that final approval by Plaintiff and Defendant River Run and entry of this Consent Order is subject to the requirements of 40 C.F.R. 123(d)(1)(iii), which provides for notice of the lodging of the Consent Order, opportunity for public comment, and the consideration of any public comments. Both Plaintiff and Defendant River Run reserve the right to withdraw this Consent Order based on comments received during the public comment period.



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

  
JUDGE KRUEGER  
COURT OF COMMON PLEAS  
DELAWARE COUNTY


11/24/14  
DATE

The Clerk of the Court is hereby ORDERED to serve a copy of the Judgment Entry upon all parties or counsel by:

- Regular U.S. Mail
- Attorney mailbox at the Delaware County Courthouse

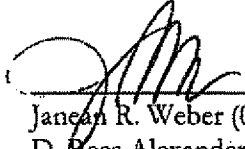
Facsimile transmission sent to each attorney/party by:

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| <input type="checkbox"/> fax                      |
| <input type="checkbox"/> attorney mailbox         |
| <input type="checkbox"/> certified mail           |

Date: 11/25/14 By: 

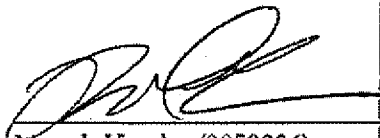
**APPROVED:**

MICHAEL DeWINE  
OHIO ATTORNEY GENERAL



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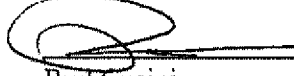


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*Bound Parties*