

IN THE COURT OF COMMON PLEAS  
TRUMBULL COUNTY, OHIO

Entity: RAAW, LLC  
 Doc Type: Judicial order  
 Doc Subtype: Consent Decree  
 Program: NPDES  
 County: Trumbull  
 Secondary ID: 80U00020

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

Plaintiff,

v.

RAAW, LLC, *et al.*

Defendants.

CASE NO. 2013 CV 00674

JUDGE KONTOS

**CONSENT ORDER FOR CIVIL PENALTY AS TO  
 DEFENDANTS RAAW, LLC, ROBERT A. WALLEY, SR. AND ROBERT M. WALLEY**

WHEREAS, Plaintiff, the State of Ohio, by and through its counsel Attorney General Michael DeWine ("Plaintiff" / "State"), filed a Complaint against RAAW, LLC; Robert A. Walley, Sr.; Robert M. Walley; Evergreen Environmental Corp.; Tri County Sports Complex, Inc.; Mohammad Fard; and Steve Sicilian (collectively, "Defendants") alleging violations of Ohio's Water Pollution Control laws, Ohio Revised Code ("R.C.") Chapter 6111; and

WHEREAS, Plaintiff's Complaint seeks injunctive relief and civil penalties for Defendants' alleged violations of R.C. Chapter 6111 and the rules and permits promulgated thereunder; and

WHEREAS, Defendants RAAW, LLC, Robert A. Walley, Sr., and Robert M. Walley (collectively, the "RAAW Defendants") have agreed to enter into this Consent Order for Civil Penalties ("Consent Order") to resolve the RAAW Defendants' liability for civil penalties;

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:

## **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 the RAAW Defendants 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 RAAW Defendants and their agents, employees, assigns, successors in interest and any person acting in concert, privity or participation with the RAAW Defendants, pursuant to Rule 65(D) of the Ohio Rules of Civil Procedure. The undersigned representative of each party to this Consent Order certifies that he or she is fully authorized by the party or parties whom he or she 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.

3. The RAAW Defendants' duties set forth in this Consent Order are joint and several. In the event of the insolvency, bankruptcy, or other failure of any of the RAAW Defendants to pay any required amount and/or implement any requirement, the other RAAW Defendants shall pay the amount and/or implement the requirement as required by this Consent Order.

## **III. SATISFACTION OF LAWSUIT**

4. Plaintiff alleges in its Complaint that the RAAW Defendants' activities resulted in violations of Ohio Water Pollution Control Laws, R.C. Chapters 6111 and rules promulgated thereunder.

5. Compliance with the terms of this Consent Order, and the separately filed Consent Order for Permanent Injunction with the RAAW Defendants, shall constitute full satisfaction of any civil liability by the RAAW Defendants for all claims alleged in the State's Complaint.

#### **IV. RESERVATION OF RIGHTS**

6. 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 RAAW Defendants or any other appropriate person for claims or conditions not alleged in the Complaint, including violations that occur after the filing of the Complaint;
- (b) Seek any legal or equitable relief from the RAAW Defendants or any other appropriate person for claims or conditions alleged in the Complaint 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 either of the RAAW Defendants, to eliminate or mitigate conditions on the properties that were the subject of the State's Complaint that may present a threat to the public health or welfare, or the environment; and/or
- (e) Bring any legal or equitable action against any appropriate person other than the RAAW Defendants for any violation of applicable laws. For the purposes of this Consent Order, and in particular the provisions of this paragraph, the term "person" includes: an individual, 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. CIVIL PENALTY**

7. Based upon its economic analysis of the RAAW Defendants' financial condition and taking into consideration their ability to pay a civil penalty within the guidelines set forth by

the Ohio Supreme Court in *State ex rel. Brown v. Dayton Malleable*, the State has agreed to accept a substantially reduced civil penalty.

8. The RAAW Defendants shall pay a civil penalty of **seventy-five thousand dollars (\$75,000)** by no later than sixty (60) days following entry of this Consent Order.

9. If the RAAW Defendants fail to make payment in full within sixty (60) days as required by this section, all remaining civil penalties due shall become immediately due and owing, plus applicable interest pursuant to R.C. 131.02(D). Any delinquent payments shall accrue interest at the maximum statutory rate under R.C. 5703.47, calculated from the date of the entry of this Order. In addition, if the RAAW Defendants fail to make the required payment, the Plaintiff will enter judgment liens upon the RAAW Defendants' property in the amount of the full judgment (less any payments made) plus applicable interest.

10. 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 Scott Hainer, Paralegal, or his successor, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

#### VI. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

11. Performance of the terms of this Consent Order by the RAAW Defendants is not conditioned on the receipt of any Federal or State grants, loans and/or funds. In addition, the RAAW Defendants' 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.

## VII. MISCELLANEOUS

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

## VIII. COSTS

13. The RAAW Defendants shall pay any court costs assessed to the RAAW Defendants by the Clerk of Courts at the conclusion of this action.

14. The RAAW Defendants are hereby ordered to pay the costs incurred by the Ohio EPA for the publication of this Consent Order in Ohio EPA's Weekly Review and a newspaper of general circulation. The RAAW Defendants shall pay the costs associated with publication by delivering a certified check payable to: "Treasurer, State of Ohio" to the Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, within thirty (30) days from the date he receives notice of the costs from Ohio EPA.

## IX. CONTINUING JURISDICTION

15. This Court shall retain jurisdiction over this action for the purpose of enforcing and administering the RAAW Defendants' compliance with this Consent Order.

## X. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

16. The parties agree and acknowledge that final approval by the Plaintiff and the RAAW Defendants 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. The State of Ohio and the

RAAW Defendants reserve the right to withdraw this Consent Order based on comments received during the public comment period.

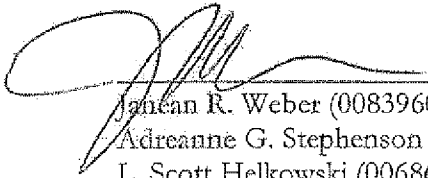
17. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon the signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the parties a notice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

1/15/16  
DATE


APPROVED:

MICHAEL DEWINE  
OHIO ATTORNEY GENERAL

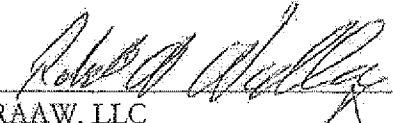
  
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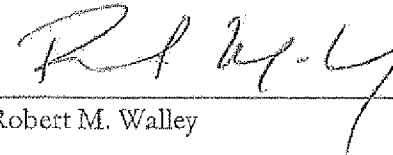
*Counsel for Plaintiff, the State of Ohio*

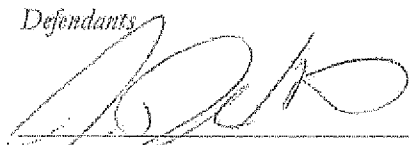
  
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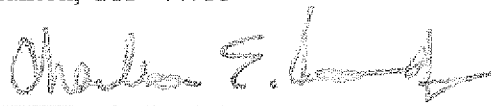
FILED  
COURT OF COMMON PLEAS  
JAN 15 2016  
TRUMBULL COUNTY, OH  
KAREN INSALATE ALLEN, CLERK

  
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RAAW, LLC  
by: Robert A. Walley, Sr., Owner

  
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Robert A. Walley, Sr.

  
\_\_\_\_\_  
Robert M. Walley

*Defendants*  
  
\_\_\_\_\_  
James A. DeSmith  
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\_\_\_\_\_  
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*Counsel for Defendants Robert A. Walley, Sr., Robert M. Walley, and RAAW, LLC*