

*2016-06-30*

**IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO**

STATE OF OHIO, ex rel.	:	CASE NO. 12 CV 2178
MICHAEL DEWINE	:	
OHIO ATTORNEY GENERAL	:	JUDGE D'APOLITO
	:	
Plaintiff,	:	MAGISTRATE DASCENZO
	:	
v.	:	
	:	
ENDC & COMPANY, LLC, et al.,	:	
	:	
Defendants.	:	

CLERK OF COURTS  
MAHONING COUNTY, OHIO  
JUN 30 2016  
FILED  
ANTHONY VIVO, CLERK

**CONSENT ORDER FOR CIVIL PENALTY**

WHEREAS, Plaintiff, the State of Ohio, by and through its counsel, Ohio Attorney General Michael DeWine, filed a Second Amended Complaint ("Complaint") against ENDC & Company, LLC, The Acme Company, Acme Resources, Inc., and Daniel Zarlenga (collectively, "Defendants") under Case No. 12 CV 2178 alleging violations of Ohio's Water Pollution Control laws, Ohio Revised Code ("R.C.") Chapter 6111 at 11600 Mahoning Ave., North Jackson, Mahoning County, Ohio ("the Site");

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

WHEREAS, Defendants have agreed to enter into this Consent Order for Civil Penalties ("Consent Order") to resolve the 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:

Entity: ENDC & Company, LLC et. al  
 Doc Type: Judicial Order  
 Doc Subtype: Consent Order  
 Program: NPDES  
 County: Mahoning  
 Secondary ID: 2016 00102

**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 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 Defendants and their agents, employees, assigns, successors in interest and any person acting in concert, privity or participation with the 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 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 Defendants to pay any required amount and/or implement any requirement, the other 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 Defendants' activities resulted in violations of Ohio Water Pollution Control Laws, R.C. Chapter 6111 and rules promulgated thereunder.

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

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

6. Nothing in this Consent Order shall limit the authority of the State of Ohio to:
- (a) Seek any legal or equitable relief from the 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 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 any of the 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 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 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 Defendants shall pay a civil penalty of \$150,000 in installments as follows:

- (a) Defendants shall pay the first payment of \$15,000 by no later than September 1, 2016;
- (b) Defendants shall pay the second payment of \$30,000 by no later than September 1, 2017;
- (c) Defendants shall pay the third payment of \$45,000 by no later than September 1, 2018;
- (d) Defendants shall pay the fourth payment of \$60,000 by no later than September 1, 2019, subject to Paragraph 9, below.

9. If the Defendants timely pay the first three payments totaling \$90,000 under Subsections (a) – (c) of Paragraph 8, above, Defendants shall be released from paying the fourth payment of \$60,000 as otherwise provided by Paragraph 8(d).

10. 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 Defendants fail to make a required payment, the Plaintiff will enter judgment liens upon the Defendants' property in the amount of the full judgment (less any payments made) plus applicable interest.

11. Civil penalty payments shall be made by certified check for the amounts 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**

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

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

## **VIII. COSTS**

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

15. The 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 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 Defendants receive notice of the costs from Ohio EPA.

## **IX. CONTINUING JURISDICTION**

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


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

17. The parties agree and acknowledge that final approval by the Plaintiff and the 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 Defendants reserve the right to withdraw this Consent Order based on comments received during the public comment period.

18. 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.**

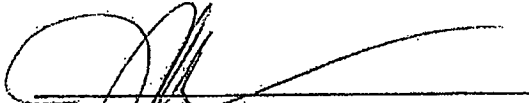
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DATE

  
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HON. JUDGE D'APOLITO  
COURT OF COMMON PLEAS  
MAHONING COUNTY

**APPROVED:**

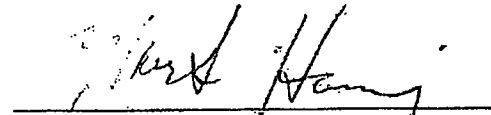
Respectfully submitted,

**MICHAEL DEWINE**  
**OHIO ATTORNEY GENERAL**



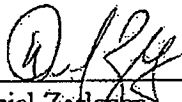
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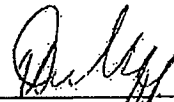


Mark Hanni, Esq.  
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Youngstown, Ohio 44514

*Attorney for Defendants*



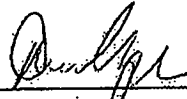
Daniel Zarlenga  
9495 Harvard Boulevard  
Youngstown, Ohio 44514



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Youngstown, Ohio 44514



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