



Mike DeWine, Governor
Jon Husted, Lt. Governor
Anne M. Vogel, Director

April 14, 2023

R & B Real Estate Investments, LLC
1113 S. Cleveland Massillon Road
Copley, OH 44321

RE: Director's Final Findings & Orders
NPDES
Portage County
8DU00662

Ladies and Gentlemen:

Transmitted herewith is one copy of the Director's Final Findings & Orders in the referenced matter.

Sincerely,

Cole Miller, Environmental Manager
NPDES Industrial Permits and Processing
Division of Surface Water

CMM/dks
Enclosure

CERTIFIED MAIL

cc: L. Reeder, DSW
R. Demuth, DSW
B. Palmer, DSW
J. Martin, DSW
Fiscal
B. Fischbein, Legal
Journal Room
File



Mike DeWine, Governor
Jon Husted, Lt. Governor
Anne M. Vogel, Director

Ohio EPA Invoice

Date Printed: April 14, 2023

Copley Chiropractic Clinic-R&B Real Estate LLC
1113 S Cleveland Massillon Rd
Akron, OH 44321

Receivable ID: 1562525
Please include this Receivable ID with all correspondence

Due Date:
Amount Due:
Effective Date: April 14, 2023

Revenue Description: DSW- Findings and Orders-Civil Penalties (FOSW)
Program Name: Surface Water Programs
Reason: Findings & Orders for R&B Real Estate Investments LLC 8DU00662

How to Pay Fee Online:

1. Go to Ohio EPA's homepage: <https://epa.ohio.gov/>
2. In the "Featured Content" section locate the tile for the eBusiness Center and click.
3. On the right side of the screen click the blue "Launch" tile to enter the eBusiness Center.
4. To use the eBusiness center you will need an account. If you have an account, click the OH|ID icon in the light blue section on the left of the screen to log in.
5. If you do not have an account, the light blue section on the right of the screen has eBiz Help Wizard to assist with creating an account.
6. If you are paying your receivable with a credit card no PIN is required. If you plan to pay using a bank account and routing information you will need to request a PIN.

CUT OFF THIS STUB AND MAIL IT WITH YOUR CHECK. DO NOT MAIL TOP PORTION.

Pay to: Treasurer, State of Ohio. Please write the Revenue ID on your check. Please send this stub with your check. DO NOT SEND LETTERS OR OTHER FORMS.

Ohio EPA
PO Box 77005
Cleveland, OH 44194-7005

| | |
|-----------------|------------|
| Due Date: | 4/5/2023 |
| Revenue ID: | 1562525 |
| Amount Due | \$7,000.00 |
| Type Code: | FOSW |
| Transaction ID: | |



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Date Printed: April 14, 2023

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1113 S Cleveland Massillon Rd
Akron, OH 44321

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Please include this Receivable ID with all correspondence

Due Date:
Amount Due:
Effective Date: April 14, 2023

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Program Name: Surface Water Programs
Reason: Findings & Orders for R&B Real Estate Investments LLC 8DU00662

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Ohio EPA
PO Box 77005
Cleveland, OH 44194-7005

| | |
|-----------------|------------|
| Due Date: | 6/1/2023 |
| Revenue ID: | 1562526 |
| Amount Due | \$7,000.00 |
| Type Code: | FOSW |
| Transaction ID: | |



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Jon Husted, Lt. Governor
Anne M. Vogel, Director

Ohio EPA Invoice

Date Printed: April 14, 2023

Copley Chiropractic Clinic-R&B Real Estate LLC
1113 S Cleveland Massillon Rd
Akron, OH 44321

Receivable ID: 1562527
Please include this Receivable ID with all correspondence

Due Date:

| |
|------------------|
| December 1, 2023 |
|------------------|

Amount Due:

| |
|------------|
| \$7,000.00 |
|------------|

Effective Date: April 14, 2023

Revenue Description: DSW- Findings and Orders-Civil Penalties (FOSW)
Program Name: Surface Water Programs
Reason: Findings & Orders for R&B Real Estate Investments LLC 8DU00662

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Ohio EPA
PO Box 77005
Cleveland, OH 44194-7005

| | |
|-----------------|------------|
| Due Date: | 12/1/2023 |
| Revenue ID: | 1562527 |
| Amount Due | \$7,000.00 |
| Type Code: | FOSW |
| Transaction ID: | |

Ohio EPA 04/14/2023

Entered Director's Journal

**IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT**

| | | |
|------------------------------|---|---------------------------|
| STATE OF OHIO ATTORNEY |) | CASE NO.: CV-2023-02-0374 |
| GENERAL |) | |
| |) | JUDGE TAMMY O'BRIEN |
| Plaintiff |) | |
| -vs- |) | |
| |) | <u>ORDER</u> |
| R&B REAL ESTATE INVESTMENTS, |) | |
| LLC, et al. |) | |
| Defendant |) | |

- - -

The State of Ohio, by and through its Attorney General (“Plaintiff”/”the State”) and at the written request of the Director of the Ohio Environmental Protection Agency (“Ohio EPA”), has filed a Complaint seeking injunctive relief and civil penalties against Defendant Richard Army (“Army”) and Defendant R&B Real Estate Investments, LLC (“the Company”) (collectively “the Defendants”) for violations of Ohio’s water pollution control laws under R.C. Chapter 6111 and the rules adopted thereunder concerning Defendants’ operation of an on-site wastewater treatment system at the Copley Chiropractic Clinic located at 1113 S. Cleveland Massillon Rd., Akron, Ohio 44321. The Parties have consented to the entry of this Order.

Therefore, without trial, admission, or determination of any issue of fact or law and with the consent of the Parties hereto, it is **ORDERED, ADJUDGED, AND DECREED:**

I. DEFINITIONS

1. As used in this Order, the following terms are defined:
 - A. “Army” means Defendant Richard Army.
 - B. The “Company” means Defendant R&B Real Estate Investments, LLC.
 - C. “Defendants” means Army and the Company, collectively.
 - D. “Director” means the Director of the Ohio Environmental Protection Agency (“Ohio EPA”) or her designee.

- E. "Parties" means Plaintiff, the State of Ohio, and the Defendants.
- F. "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.
- G. "Site" means the property owned by the Company located at 1113 S. Cleveland Massillon Rd., Akron, Ohio 44321.
- H. "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 named in the Complaint.
- I. "Treatment System" means the on-site wastewater treatment system located at 1113 S. Cleveland Massillon Rd., Akron, Ohio 44321 that provides treatment for the wastewater generated at Copley Chiropractic Clinic.
- J. "Order" refers to this Order.
- K. "Written" means a paper copy or a saved or stored electronic copy.

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. The Defendants shall not challenge the Court's jurisdiction to enter or enforce this Order.

III. PARTIES BOUND

3. Army operates the Copley Chiropractic Clinic, which has a business address of 1113 S. Cleveland Massillon Rd., Copley, Ohio 44321.
4. The Company is a limited liability company, in good standing and organized under the laws of the State of Ohio, with a business address of 1113 S. Cleveland Massillon Rd., Copley, Ohio 44321.
5. This Order shall apply to and be binding upon the Defendants, and, to the extent consistent with Civ.R.56(D), on their agents, officers, employees, contractors, assigns, successors in interest, and those persons acting in concert, privity, or participation with the Defendants who receive actual notice of this Order whether by personal service, by public record filed in the county land records, or otherwise. The Defendants 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.
6. This Order is in settlement and compromise of disputed claims, and nothing in this Order is to be construed as an admission of any facts or liability.
7. If insolvency, bankruptcy, or other failure occurs, the Defendants must pay the remaining unpaid balance of the total civil penalty.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

8. The Plaintiff alleges that the Defendants are responsible for violations of the water pollution control laws of the State of Ohio under R.C. 6111. The Defendants deny all such allegations. Compliance with this Order shall construe full satisfaction of any civil liability of the Defendants to the State for the claims alleged in the State's Complaint.
9. Nothing in this Order, including the imposition of stipulated civil penalties for violations of this Order, shall limit the authority of the State to:

- A. Seek any legal or equitable relief or civil penalties from the Defendants or any other appropriate person for any claims or violations not alleged in the Complaint;
 - B. Seek any legal or equitable relief or civil penalties from the Defendants or any other appropriate person for claims, conditions, or violations that occur on or exist after the entry of this Order;
 - C. Enforce this Order through a contempt action or otherwise seek relief for violations of this Order; and/or
 - D. Take any future legal or equitable action against any appropriate person, including the Defendants, to eliminate or mitigate conditions at the Site that may present a threat to public health or welfare or to the environment in derogation of applicable laws and rules, which the State has the authority to enforce.
10. This Order does not waive, abridge, settle, compromise, or otherwise impact any other claims in law or equity that the State or other persons may have against the Defendants.
11. 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 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 also specifically reserves its right to sue an entity that is not a signatory to this Order.
12. Nothing in this Order shall relieve the Defendants of their obligations to comply with applicable federal, state, or local statutes, regulations, rules or ordinances.
13. Nothing herein shall restrict the right of Defendants to raise any administrative, legal, or equitable defenses with respect to such further actions reserved by the State in this Order. However, with respect to the actions reserved by the State in this Section, the Defendants 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 the State's claims in any subsequent judicial or administrative proceeding could or should have been brought in this case.

V. PERMANENT INJUNCTION

14. The Defendants are ordered and permanently enjoined to comply fully with R.C. Chapter 6111 and the rules promulgated thereunder.
15. The Defendants are ordered and enjoined to conduct the following:

A. CONNECTION TO THE PUBLIC SEWER LINE

In accordance with Ohio Adm.Code 3745-42-07(D)(5), the Defendants shall connect to the City of Akron's public sewer line within ninety (90) days of entry of this Order.

During the time until the Defendants connect to the City of Akron's public sewer line, the Defendants shall use the current treatment system as a holding tank and prevent sewage from surfacing on the ground by pumping the treatment system septic tank as needed.

B. ABANDONMENT OF THE ON-SITE TREATMENT SYSTEM

Within thirty (30) days of connection to the City of Akron's public sewer line, the Defendants shall properly abandon the treatment system in accordance with Ohio Adm.Code 3701-29-21.

VI. CIVIL PENALTY

16. Under R.C. 6111.09(A), the Defendants are jointly and severally ordered to pay a civil penalty of \$21,000.00, subject to the provisions in this Order, in accordance with the following schedule:
- A. \$7,000.00 upon entry of this Order.
- B. \$7,000.00 by June 1, 2023.

C. \$7,000.00 by December 1, 2023.

17. Civil penalty payment shall be made by delivery to Sandra Finan, Paralegal, or her successor, Office of the Attorney General, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215, a certified check or checks for the appropriate amount, payable to the order of "Treasurer, State of Ohio."
18. If full payment of the civil penalty and any other amount due under this Order is not received by the State in accordance with the terms of this Order, the remaining unpaid balance of the total civil penalty and any other amount due, plus applicable interest under R.C. 131.02(D), shall become immediately due and owing. The remaining unpaid balance delinquent payments shall accrue interest at the rate per annum required by R.C. 5703.47 calculated from the Effective Date of this Order.
19. If any amount is not paid in accordance with the terms of this Consent Order, the Attorney General may collect that amount under R.C. 131.02. Pursuant to R.C. 109.081, in addition to the outstanding balance due under this Order, collection costs of ten percent shall be owing and fully recoverable from the Defendants to be paid unto the State Treasury to the credit of the Attorney General Claims Fund.
20. The State reserves the right to file a certificate of judgment lien against the Defendants for the remaining unpaid balance of the total civil penalty, plus applicable statutory interests and collection costs, if the full civil penalty payment is not paid according to the schedule in this Order. The Defendants 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.

VII. STIPULATED PENALTIES

21. If the Defendants fail to comply with any of the requirements of this Order, the Defendants shall immediately and automatically be jointly and severally liable for and shall pay stipulated penalties under the following schedule for each failure to comply:
- A. The Defendants shall pay \$300.00 per day for each day any requirement of this Order is violated up to the first thirty (30) days of violation;
 - B. For each day any requirement of this Order is violated between thirty (30) days and ninety (90) days of violation, the Defendants shall pay \$600.00 per day;
 - C. For each day any requirement of this Order is violated greater than ninety (90) days of violation, the Defendants shall pay \$1,000.00 per day.
22. Stipulated penalties due under this Order shall be immediately due and owing without demand by the State. The Company shall deliver to Sandra Finan, Paralegal, or her successor, Office of the Attorney General, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, a certified check or checks for the appropriate amount, payable to the order of "Treasurer, State of Ohio."
23. The Defendants' payment and the State's acceptance of such stipulated penalties under this Section shall not be construed to limit the State's authority, without exception, to seek: 1) additional relief under R.C. Chapter 6109, including civil penalties under R.C. 6109.33; 2) judicial enforcement of this Order for the same violations for which a stipulated penalty was paid; or 3) sanctions for additional remedies, civil, criminal, or administrative, for violations of applicable laws. Further, payment of stipulated penalties by the Defendants shall not be an admission of liability by the Defendants.

VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

24. Performance of the terms of this Order by the Defendants are not conditioned on the receipt of any private, Federal or State grants, loans, and/or funds. In addition, the Defendants'

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.

IX. SITE ACCESS

25. As of the Effective Date of this Order, the Ohio EPA and its representatives and contractors shall have access at reasonable times to the Site, and shall have access to any other property controlled by or available to the Defendants 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 Site;
- B. Verifying any date or information submitted to Ohio EPA;
- C. Conducting investigations relating to contamination at or near the Site;
- D. Obtaining samples;
- E. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- F. Inspecting and copying records, operating logs, contracts or other documents maintained or generated by the Company or its agents, consistent with this Order and applicable law; or
- G. Assessing the Defendants' compliance with this Order.

26. Nothing in this Order shall be construed to limit the statutory authority of the Director or her authorized representatives to enter at reasonable times upon the Site 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.

X. SUBMITTAL OF DOCUMENTS

27. All documents required to be submitted to Ohio EPA pursuant to this Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio EPA
Division of Surface Water
50 West Town Street, Suite 700
Columbus, Ohio 43215
Attn: Surface Water Program Compliance Manager

Ohio EPA
Northeast District Office
Division of Surface Waters
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: Surface Waters Program Manager

XI. EFFECT OF ORDER

28. This Order does not constitute authorization or approval of the construction, installation, modification, or operation of any public water system under R.C. Chapter 6111 not previously approved by Ohio EPA. Approval for any such construction, modification, installation, 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

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

XIII. MISCELLANEOUS

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

31. Any acceptance by the State of any payment, document, or other work due subsequent to the time that the obligation is due under this Order shall not relieve the Defendants from their obligations created by this Order.
32. The Defendants shall provide the Ohio EPA with current telephone numbers and email addresses by which the Ohio EPA may contact the Defendants. The Defendants shall timely inform the Ohio EPA of any change to their statutory agent, his telephone number, email address, or the Defendants' business address.

XIV. RETENTION OF JURISDICTION

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

XV. 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.

XVI. EFFECTIVE DATE

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

XVII. COURT COSTS

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

XVIII. ENTRY OF ORDER

37. Each signatory represents and warrants he had 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

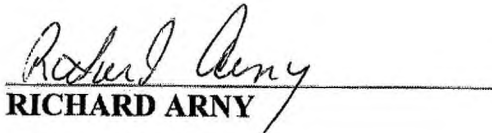
in this document. By signing this Order, each signatory waives all rights of service of process for the underlying Complaint.

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

IT IS SO ORDERED.



JUDGE TAMMY O'BRIEN




RICHARD ARMY

In his individual capacity



**R&B REAL ESTATE INVESTMENTS,
LLC**

By: 
Richard Army, Manager



**NICOLE L. DIVITTORIO (101501)
JOSEPH T. WAMBAUGH (098546)**
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
Tele: (614) 466-2766
Fax: (866) 422-9187
Nicole.DiVittorio@OhioAGO.gov
Joe.Wambaugh@OhioAGO.gov

Counsel for Plaintiff, the State of Ohio

CC: ALL COUNSEL OF RECORD

SNB