

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No. 107-9-15 Vtec

SECRETARY, VERMONT
AGENCY OF NATURAL RESOURCES,
Plaintiff

v.

CHRISTOPHER E. DENIO, LLC,
EAST MOUNTAIN MOBILE HOME PARK, LLC,
CHRISTOPHER E. DENIO, AND
DAWN DENIO,
Respondents

Revised CONTEMPT ORDER¹

A show cause hearing was convened in the above-entitled matter on August 7, 2019 in Bennington, VT, with Randy Joe Miller, II, Esq., attorney for the Petitioner, Agency of Natural Resources (Agency). The Respondents failed to appear, and the Agency presented evidence during the one day of this hearing on Petitioner's post-judgment motion for contempt. The Agency's witnesses, Megan M. Cousino and Benjamin Montross, provided the Court with testimony establishing that the Respondents failed to comply with paragraphs 4 and 5 of the June 7, 2016 Judgment Order (Order).

Paragraph 4(A) of the Order requires the Respondents to pay a penalty of \$27,000.00 no later than thirty (30) consecutive calendar days following the effective date of the Order. Paragraph 4(B) requires the Respondents to reimburse the Agency \$1,497.40 for its actual costs of enforcement no later than thirty (30) consecutive calendar days following the effective date of the Order. The deadline to comply with paragraph 4 of the Order was therefore July 7, 2016. Respondents have failed to submit any payment or reimbursement to the Agency. Failure to submit the penalty payment is a violation of paragraph 4(A) of the Order. Failure to reimburse the Agency for its actual costs of enforcement is a violation of paragraph 4(B) of the Order.

Paragraph 5 requires the Respondents comply with paragraphs B through J of the Administrative Order (AO), signed July 13, 2015 and filed with this Court on August 26, 2015.

Paragraph B of the AO requires the Respondents to submit an administratively complete application for a permit to operate the system to the Agency's Drinking Water

¹ This Revised Contempt Order is issued pursuant to an Entry order of this same date, granting the Agency's Motion to Amend or Alter the Court's Contempt Order of August 27, 2019. This Revised Order supersedes the prior Order.

and Groundwater Protection Division (DWGPD) no later than thirty (30) consecutive calendar days following the effective date of the Order. The deadline to comply with paragraph B was therefore July 7, 2016. Respondents have failed to submit an administratively complete application for a permit to operate the system to the DWGPD. Failure to comply with the conditions of paragraph B of the AO is a violation of paragraph 5 of the Order.

Paragraph C of the AO requires the Respondents to submit a bacteriological sampling plan to the DWGPD and, pending approval, follow the plan for all future required monthly bacteriological samples. Respondents failed to sample in accordance with the plan. Failure to comply with the conditions of paragraph C of the AO is a violation of paragraph 5 of the Order.

Paragraph D of the AO requires the Respondents to issue all past Consumer Confidence Reports (CCR) to system users and submit copies to the DWGPD no later than thirty (30) consecutive calendar days following the effective date of the Order. The deadline to comply with paragraph D was therefore July 7, 2016. Respondents have failed to submit all past CCRs. Failure to comply with the conditions of paragraph D of the AO is a violation of paragraph 5 of the Order.

Paragraph E of the AO requires the Respondents to retain a certified operator for the system and submit a completed Water System Officials Contact Form to the DWGPD no later than fifteen (15) consecutive calendar days following the effective date of the Order. Respondents have failed to retain a certified operator for the system. Failure to comply with the conditions of paragraph E of the AO is a violation of paragraph 5 of the Order.

Paragraph F of the AO requires the Respondents to sample for Stage 2 Disinfection Byproduct (DBP) and submit the results to the DWGPD in accordance with the its DBP monitoring plan. Respondents have failed to submit results of DBP representative monitoring for the required monitoring periods to the DWGPD. Failure to comply with the conditions of paragraph F of the AO is a violation of paragraph 5 of the Order.

Paragraph H of the AO requires the Respondents to submit a complete Operation and Maintenance (O&M) Manual to the DWGPD for review and approval, no later than thirty (30) consecutive calendar days following the effective date of the Order. The deadline to comply with paragraph D was therefore July 7, 2016. Respondents have failed to submit a complete O&M Manual to the DWGPD. Failure to comply with the conditions of paragraph H of the AO is a violation of paragraph 5 of the Order.

Paragraph I of the AO requires the Respondents to submit monthly operating reports in accordance with the Vermont Water Supply Rule (VWSR). Respondents have failed to submit monthly operating reports. Failure to comply with the conditions of paragraph I of the AO is a violation of paragraph 5 of the Order.

Paragraph J of the AO requires the Respondents to comply with the VWSRs in the operation of its Water Supply System. The Respondents have received three (3) Notice of Alleged Violations (NOAV) from the Agency regarding additional violations of the VWSR. Failure to comply with the conditions of paragraph J of the AO is a violation of paragraph 5 of the Order.

Respondents are therefore in contempt of the Order.

The Agency provided its costs in this contempt action, which totaled \$1,051.20.

12 V.S.A. §122 provides for the initiation of contempt proceedings against any party that violates a court order, regardless of whether the case is currently active. This section does not limit the parties against whom contempt proceedings may be initiated, nor does it limit the person that may be punished for their actions that are in contempt of a court order. Vt. Women's Health Ctr. v. Operation Rescue, 159 Vt. 141, 145 (1992); Horton v. Chamberlain, 152 Vt. 351, 354 (1989).

Compensatory fines and coercive sanctions may be imposed on a civil contemnor; however, these must be purgeable, or avoidable, by adhering to the court's order. Mann v. Levin, 2004 VT 100, ¶ 32, 177 Vt. 261 (citing Vt. Women's Health Ctr., 159 Vt. at 151); see 12 V.S.A. §122; State v. Pownal Tanning Co., 142 Vt. 601, 603-604 (1983). Further, imprisonment can be inflicted as a means to compel the party to do some act ordered by the court. In re Sage, 115 Vt. 516, 517 (1949); see 12 V.S.A. §123. This Court is prepared to impose such imprisonment sanctions where a respondent is ignoring a court order.

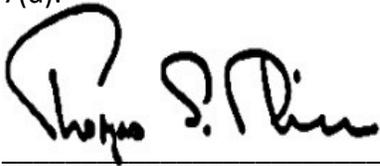
Based upon the foregoing, it is ORDERED that:

1. On or before December 16, 2019, Respondents shall complete all activities in paragraphs B through F and H through J identified in the August 26, 2015 Administrative Order. Respondents are hereby sanctioned \$100.00 per week, beginning upon the effective date of this Order, accumulating until full compliance with the August 26, 2015 Administrative Order is achieved. This amount is fully purgeable upon compliance with the August 26, 2015 Administrative Order. Should Respondents fail to comply with the August 26, 2015 Administrative Order, the additional fine will become due on December 16, 2019, payable to "Treasurer, State of Vermont."
2. Respondents are hereby sanctioned \$17,051.20 as an additional fine, which includes the Agency's costs to pursue and participate in this show cause hearing. This amount is fully purgeable upon timely compliance; meaning for the fine to be purged, the August 26, 2015 Administrative Order must be complied with on or before December 16, 2019. Should Respondents fail to comply with the August 26, 2015 Administrative Order, the additional fine will become due on December 16, 2019, payable to "Treasurer, State of Vermont."

3. All other provisions of the June 7, 2016 Judgment Order and August 26, 2015 Administrative Order, unless modified by this Contempt Order, remain in full force and effect.

The Court further directs that, if Respondents fail to comply with this Order and the Agency seeks further sanctions in this matter, the Agency should consider requesting a day warrant to assure that one or more of the Respondents appear at any future contempt hearing. The Court discussed this option, together with further sanctions, including an order directing the ceasing of operations at Respondents' mobile home park, as a means by which to encourage Respondents to address the serious health risks that continue to exist at that facility.

Electronically signed on November 7, 2019 at Burlington, Vermont, pursuant to V.R.E.F. 7(d).

A handwritten signature in black ink, appearing to read "Thomas S. Durkin". The signature is written in a cursive style with a large initial "T" and "D".

Thomas S. Durkin, Superior Judge
Environmental Division