

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30755
LANSING, MICHIGAN 48909

BILL SCHUETTE
ATTORNEY GENERAL

May 28, 2015

Clerk of the Court
Genesee County Circuit Court
900 S. Saginaw Street #204
Flint, MI 48502

Re: *MDEQ v October Capital Group, LLC*
Genesee County Circuit Court No. 13-101127-CE

Dear Clerk:

Enclosed for filing is a Proof of Service showing service of a true copy of the Consent Judgment upon counsel of record.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian J. Negele".

Brian J. Negele (P41846)
Assistant Attorney General
Environment, Natural Resources,
and Agriculture Division
6th Floor, Williams Building
525 West Ottawa Street
P.O. Box 30755
Lansing, MI 48909
(517) 373-7540
negeleb@michigan.gov

BJN/wjc
Enclosure

cc: Karen Boase, MDEQ Water Bureau (w/enclosure, via email)
Richard S. Baron (w/enclosure)

STATE OF MICHIGAN
IN THE 7TH JUDICIAL CIRCUIT
COUNTY OF GENESEE

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY

Plaintiff,

Docket No.: 13-101127-CE

v

Honorable Richard B. Yuille

OCTOBER CAPITAL GROUP, LLC,

Defendant.

Brian J. Negele (P41846)
Attorney for the Plaintiff
Assistant Attorney General
Environmental, Natural Resources,
and Agriculture Division
6th Floor, G. Mennen Williams Building
525 West Ottawa Street
Lansing, MI 48933
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negeleb@michigan.gov

Richard S. Baron (P33798)
Benjamin L. Fruchey (P71945)
Foley, Baron, Metzger & Juip, PLLC
Attorneys for Defendant
38777 Six Mile Road, Suite 300
Livonia, MI 48152
734-742-1855
rbaron@fbmjlaw.com
bfruchey@fbmjlaw.com

PROOF OF SERVICE

On May 28, 2015, I sent by first class mail a true copy of the Consent Judgment signed by Judge Yuille on May 19, 2015 to:

Richard S. Baron
Foley, Baron, Metzger & Juip, PLLC
38777 Six Mile road, Suite 300
Livonia, MI 48152

I declare that the statements above are true to the best of my information, knowledge, and belief.


Wendy J. Cadwell
Legal Secretary

STATE OF MICHIGAN
IN THE 7TH JUDICIAL CIRCUIT
COUNTY OF GENESEE

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY

Plaintiff,

Docket No.: 13-101127-CE

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Honorable Richard B. Yuille

OCTOBER CAPITAL GROUP, LLC,

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A TRUE COPY
Genesee County Clerk

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CONSENT JUDGMENT

In the 7th Judicial Circuit Court
In the State of Michigan, on the
19th day of May, 2015.

Present: Honorable Richard B. Yuille, Circuit Court Judge

Plaintiff Michigan Department of Environmental Quality (MDEQ) and
Defendant October Capital Group, LLC agree that settlement of this action is in the
public interest and consent to the entry of this Judgment, without further litigation,
as the most appropriate means of resolving the allegations raised by Plaintiff in the

Complaint filed with the Court on August 28, 2013. As evidenced by the signatures below, the Parties agree to, and shall be bound by, the terms and findings of this Judgment.

The entry of this Judgment by Defendant is neither an admission or a denial of liability with respect to any issue dealt with in this Judgment, nor an admission or denial of any factual allegations or legal conclusions stated or implied herein.

NOW, THEREFORE, before taking any testimony, without trial of any issue of fact or law, and upon the consent of the Parties, by their attorneys, it is hereby ORDERED, ADJUDGED and DECREED:

I. JURISDICTION AND VENUE

A. This Court has jurisdiction over the subject matter of this action pursuant to MCL 324.3115(1), MCL 324.9113(1), MCL 324.30112, MCL 324.30316, and Section 605 of the Revised Judicature Act (RJA), MCL 600.605. This Court also has personal jurisdiction over the Defendant. Defendant waives all objections and defenses that Defendant may have with respect to the jurisdiction of the Court.

B. Venue is proper in this circuit pursuant to MCL 324.3115(1), MCL 324.9113(1), MCL 324.30112, and MCL 324.30316.

C. The Court determines that the terms and conditions of this Judgment are reasonable, adequately resolve the environmental issues raised in the Complaint, and properly protect the interests of the people of the State of Michigan.

II. PARTIES BOUND

A. Plaintiff MDEQ is a principal department within the Executive Branch of the State of Michigan. MDEQ is the state agency mandated to provide for the protection of the natural resources of the state from pollution, impairment, and destruction. MCL 324.501 and Executive Order 2011-1.

B. Defendant was the developer of certain real property commonly known as the Liberty Shores Site Condominium located in Fenton Township, Genesee County, Michigan. The allegations in the Complaint pertain to this property as designated in the Complaint and herein referred to as the "Property." The Shiawassee River, Tupper Lake and Lake Ponemah abut the Property and wetlands are present on the Property. As described in the Complaint, Defendant was the owner or developer of the Property at the time when and on which DEQ identified alleged violations of Part 31 (Water Resources Protection), Part 91 (Soil Erosion and Sedimentation Control), Part 301 (Inland Lakes and Streams), and Part 303 (Wetlands Protection) of the Natural Resources and Environmental Protection Act (NREPA), respectively, MCL 324.3101 *et seq.*, 324.9101 *et seq.*, 324.30101 *et seq.*, and 324.30301 *et seq.* Defendant is no longer the owner or developer of the Property and has no control over the portions of the Property subject to the violations alleged in the Complaint.

C. The provisions of this Judgment shall be binding on the Parties, their agents, successors, and assigns.

III. STATEMENT OF PURPOSE

A. In entering into this Judgment, it is the mutual intent of the Parties that Defendant will do the following:

1. Partially reimburse Plaintiff for costs of surveillance and enforcement; and
2. Pay a civil fine commensurate with the violations alleged in the Complaint.

IV. DEFINITIONS

A. "Defendant" means October Capital Group, LLC and any and all of its members, employees, managers, and owners, as might be applicable, past and/or present, and specifically including, but not limited to, Stephen Munkres and Bret Keefe.

B. "Effective Date" means the date that the Court enters this Judgment.

C. "Judgment" means this Consent Judgment and any attachment hereto, including any future modifications, any reports, plans, specifications, and schedules required by this Consent Judgment which, upon approval of the MDEQ, shall be incorporated into and become an enforceable part of this Consent Judgment.

D. Water Resources Division or "WRD" means the Division of the MDEQ and any successor entities charged with implementing Part 31, Part 91, Part 301, and Part 303 of the NREPA.

E. "Party" means the Plaintiff or Defendant. "Parties" means the Plaintiff and Defendant.

G. Unless otherwise defined herein, all terms used in this document, which are defined in pertinent parts of the NREPA and associated administrative rules and/or permits or the federal Clean Water Act, shall have the same meaning in this document as in those pertinent parts, rules, and/or permits.

V. NOTICES

A. Except where this Judgment already identifies the persons to whom a document or information is to be submitted, any submittal, notice, report, documentation, or recitation required by this Judgment shall be submitted to the attention of:

For Plaintiffs:

Barry Selden
Water Enforcement Unit Chief
525 West Allegan Street
P.O. Box 30458
Lansing, Michigan 48909-7958
517-284-5490

For Defendant:

Richard Baron
Foley, Baron, Metzger & Juip, PLLC
38777 Six Mile Road
Suite 300
Livonia, MI 48152

Either Party may substitute others for those designated to receive such notices by providing written notice to the other Party.

VI. REIMBURSEMENT OF COSTS AND PAYMENT OF AGREED CIVIL FINES

A. Defendant agrees to pay the total amount of \$ 13,000.00 as full settlement of enforcement costs and civil liabilities alleged by Plaintiff in its Complaint in this matter for MDEQ-alleged violations of Part 31, Part 91, Part 301, and Part 303 of the NREPA, of which the total amount of \$5,000 is allocated by agreement of the Parties to Plaintiff's alleged enforcement costs.

B. Defendant shall pay said amount by certified or cashier's check made payable to the State of Michigan and delivered to the MDEQ, Revenue Control Unit, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to the MDEQ, Revenue Control Unit, 1st Floor, Van Wagoner Building, 425 W. Ottawa St., Lansing, Michigan 48933. Such payment shall be made within ten (10) days after entry of this Judgment. To ensure proper credit, the payment made pursuant to this Judgment must include the Payment Identification Number **WRD-40097** on the face of the check, or in the cover letter with the payment.

VII. RESERVATION OF RIGHTS

A. With respect to any violations not expressly addressed and resolved by this Judgment, the MDEQ reserves the right to pursue any other remedies to which it is entitled for any failure to comply with the requirements of any state or federal law, including the NREPA and its rules.

B. This Judgment does not limit the rights of the Defendant or the State of Michigan against any third parties.

VIII. GENERAL PROVISIONS

A. Severability.

Should a court of competent jurisdiction declare any provision of this Judgment to be unenforceable, the remaining provisions shall remain in effect.

B. Other Laws.

This Judgment does not affect Defendant's responsibility to comply with any other applicable state, federal, or local laws or regulations including the procurement of required permits and/or approvals; or with any order of this or any other court, including, without limitation, any requirements under Part 31, Part 91, Part 301, and Part 303 of the NREPA or its rules or any amendments thereto.

C. Settlement.

This Judgment is in settlement and satisfaction of all civil claims against Defendant alleged by the MDEQ in the Complaint.

IX. TERMINATION

This Judgment shall terminate upon written request of Defendant and written approval from the MDEQ along with approval of this Court through the issuance of a Satisfaction of Judgment. The written request of Defendant shall include a certification by Defendant that it has paid in full all fines and costs owed to the State of Michigan under this Judgment. Provided that such certification is made and not reasonably disputed, the MDEQ will not withhold agreement to terminate this Judgment.

X. FINAL JUDGMENT

Entry of this Judgment resolves the last pending claim and closes this case, pursuant to MCR 2.602(A)(3).

XI. SEPARATE DOCUMENTS

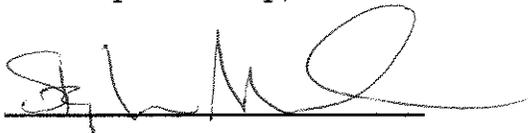
This Judgment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Judgment may be executed in duplicate original form.

XII. SIGNATORIES

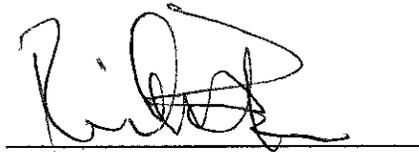
The signatories to this Judgment certify that they are authorized to execute this Judgment and to legally bind the Parties they represent to the requirements of this Judgment.

FOR DEFENDANT:

October Capital Group, LLC

By: 

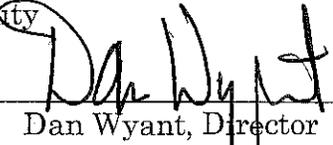
Dated: 4-8-15

By: 
Richard S. Baron (P33798)
Attorney for Defendant

4-9-15

FOR PLAINTIFF:

Michigan Department of Environmental
Quality

By: 
Dan Wyant, Director

Dated: 5.11.15

By: 
Brian J. Negele (P41846)
Attorney for Plaintiff

Dated: 04-31-2015

IT IS SO ORDERED and ADJUDGED this 19th day of May, 2015.

RICHARD B. YUILLE
P-22664

Honorable Richard B. Yuille
Circuit Court Judge