IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

CONSERVATION LAW FOUNDATION, INC.
Plaintiff,

Case No.

v.

PROPOSED
CONSENT DECREE

MOUNTAIN VIEW YACHT CLUB, INC., AND IRWIN CORPORATION, D/B/A IRWIN MARINE
Defendants.

WHEREAS, Plaintiff Conservation Law Foundation, Inc. ("CLF") filed this action on November 26, 2014, against Defendants Mountain View Yacht Club, Inc. (hereinafter "Mountain View"), as owner of property located at 73 Weirs Road, Gilford NH, and Irwin Corporation, doing business as Irwin Marine (hereinafter "Irwin Marine") as the manager and operator of the facility located at 73 Weirs Road, Gilford NH (Mountain View and Irwin Marine are hereinafter referred to collectively as "Defendants"), alleging violations of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, and seeking declaratory and injunctive relief, civil penalties, and attorneys fees and costs;

WHEREAS, Defendants own and operate a facility located at 73 Weirs Road, Gilford NH 03246 (the "Facility") collectively conducting activities most closely resembling SIC 4493 (NAICS 713930), as primarily engaged in operating a marina, including renting and storing boat slips and cleaning and incidental boat repair;

WHEREAS, the Facility discharges stormwater to Lake Winnipesaukee;

WHEREAS, Defendants have agreed to apply for a stormwater permit for the Facility;

WHEREAS, Defendants have agreed to develop a Stormwater Pollution Prevention Plan and implement control measures and best management practices in support of their stormwater permit application to be prepared in accordance with the requirements for SIC 4493 (sector Q);

WHEREAS, CLF is a regional, nonprofit environmental organization;

WHEREAS, CLF has alleged, in its complaint (the "Complaint") and in a letter (the "Notice Letter") dated September 24, 2014, sent to Defendants and others, that Defendants have violated and continue to violate Section 505 of the Federal Water Pollution Control Act ("Clean Water Act" "CWA" or "Act"), 33 U.S.C. § 1365(a); and

WHEREAS, CLF and Defendants (the "Parties") agree that resolution of this matter without further litigation is in the best interest of the Parties and the public, and that entry of this Decree is the most appropriate means of resolving this action.

NOW, THEREFORE, without the trial of any issue of fact or law, without the admission by Defendants of any of the facts or violations alleged in the Complaint, upon consent of the Parties, and upon consideration of the mutual promises contained herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. Jurisdiction over this action is conferred by 28 U.S.C. § 1331 (federal question) and 33 U.S.C. § 1365(a) (Clean Water Act jurisdiction). An actual, justiciable controversy exists between Plaintiff and Defendant. The requested relief is proper under 28 U.S.C. § 2201, 28 U.S.C. § 2202 and 33 U.S.C. § 1365(a).

2. Venue is properly vested in this Court pursuant to 33 U.S.C. § 1365(c)(1), because the events giving rise to this action occurred at the Defendants' Facility, located at 73 Weirs Road, Gilford NH 03246, and in the Merrimack watershed, which are located within this judicial district.

II. COMPLIANCE PROGRAM

3. Defendants shall not discharge pollutants to waters of the United States from the Facility except in compliance with applicable federal and state statutes, regulations and permits.

4. Defendants will develop a written Stormwater Pollution Prevention Plan ("SWPPP") and shall provide a copy of its SWPPP in electronic format to CLF for review and comment by no later than December 15, 2014. CLF shall respond with comments within twenty-one (21) days of receipt. Within fourteen (14) days of receiving CLF's comments, if any, Defendants shall submit a final SWPPP to CLF, incorporating CLF's comments, or justifying in writing why any comment is not being incorporated. The final SWPPP shall meet the requirements of the most recently issued United States Environmental Protection Agency ("EPA") National Pollutant Discharge Elimination System ("NPDES") Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity ("MSGP"). The most recent MSGP as of the date of the Parties' signatures below is the 2008 MSGP, which expired on September 29, 2013. Defendants will update the SWPPP as necessary to comply with the 2013 MGSP when the 2013 MSGP becomes effective. The MSGP, as it may be updated or reissued from time to time, is incorporated into this Consent Decree by reference. Development of the SWPPP shall include, at minimum, the following steps:

a. Formation of a pollution prevention team of qualified personnel who will be responsible for preparing the plan and assisting the plant manager in implementing practices to comply with the permit.

b. Assessment of potential stormwater pollution sources.

c. Selection of appropriate control measures that minimize the discharge of pollutants during storm events for each of these sources.

d. Development of procedures for conducting required inspection and monitoring activities, as well as regular maintenance of control measures.

5. Defendants will post the final SWPPP online and mail a copy to CLF no later than February 20, 2015.

6. Defendants will select, design, install, and implement control measures, in accordance with the MSGP, to meet numeric and non-numeric effluent limits.

7. Defendants will design, install, and implement control measures that include, at minimum, the following categories of site-specific best management practices ("BMPs"):

a. Good housekeeping practices,
b. Minimizing exposure of potential pollutant sources to precipitation,
c. Erosion and sediment control, and
d. Management of runoff.

8. Defendants will design, install, and implement control measures that include, but are not limited to, the sector-specific BMPs listed in the MSGP. Such BMPs shall include the BMPs described in the EPA fact sheet for water transportation facilities, available at http://www.epa.gov/npdes/pubs/sector_q_watertransportation.pdf.

9. Wherever feasible, Defendants will design, install, and implement control measures that employ a low-impact development (LID) approach. LID is a natural-resource-based alternative approach to site design that incorporates a variety of structural and non-structural techniques, such as vegetated areas that collect, treat and infiltrate stormwater and shallow drainage channels that slow runoff and filter it.

10. Defendants will operate in accordance with the 2008 MSGP and will, within thirty (30) days of the date that EPA issues a new general permit, submit a complete and accurate Notice of Intent ("NOI") to the EPA, and send a copy of the NOI to CLF within fourteen (14) days thereof.

III. MONITORING PROGRAM

11. Defendants will monitor four (4) times per year at all outfalls/discharge points discharging stormwater associated with industrial activity from the Facility for pollutants identified in the MSGP for the Sector Q (i.e., *ALUMINUM, IRON, LEAD AND ZINC*). The inspections must be performed pursuant to the requirements of the MSGP and include, at a minimum, all areas where industrial activities are exposed to either precipitation or stormwater runoff. Defendants will send a copy of each inspection and/or sampling result to CLF no later than ten (10) days after receipt.

12. Defendants will comply with all other monitoring requirements of the MSGP. Defendants will send a copy of each inspection and/or sampling result to CLF no later than ten (10) days after receipt.

13. Defendants may take additional samples of its stormwater discharges. If they do so, Defendants will send a copy of each such inspection and/or sampling result to CLF no later than ten (10) days after receipt.

14. Defendants will not exceed the sector-specific benchmarks identified in the MSGP for Sector Q (i.e., *ALUMINUM, IRON, LEAD AND ZINC*) of the MSGP after one year from the entry by the Court of this Decree (the day that the Court enters this Decree shall be the "Effective Date").

15. Defendants shall not discharge process water, including pressure wash water, to waters of the United States unless such a discharge is covered by, and in compliance with the conditions of, an individual NPDES discharge permit.

16. During the life of the Decree, CLF, through representatives, may conduct up to four (4) yearly site inspections at the Facility. The site inspections shall occur during normal business hours and CLF's representatives shall be accompanied by Defendant's authorized representative during each site visit. During the site inspections, CLF representatives may collect samples of stormwater discharges and take photos at the Facility. CLF shall provide to Defendants copies of any photographs taken during these site visits and shall not publish any of the photographs taken during these site visits without prior written permission from Defendants. Any samples taken by CLF shall be split samples with one half of the sample remaining in the possession of Defendants. CLF will send a copy of each sampling result to Defendants no later than ten (10) days after receipt.

17. During the life of the Decree, Defendants shall copy CLF on all documents related to water quality or Clean Water Act compliance regarding the Facility submitted to any government agency including, but not limited to, the EPA, NHDES, and the Town of Gilford. Such documents shall be provided to CLF concurrently as they are sent to the agencies and/or municipalities.

IV. SUPPLEMENTAL ENVIRONMENTAL PROJECT

18. Within one (1) year of the Effective Date, Defendants shall make a payment of twenty-five thousand dollars ($25,000) to the Lakes Region Conservation Trust, for environmental restoration of or other environmental benefit to Lake Winnipesaukee. Defendants shall notify CLF in writing when the payment is made and provide a copy of the check. Such payment shall be made to the following address:

Don Berry, President
Lakes Region Conservation Trust
156 Dane Road (Route 25B)
PO Box 766
Center Harbor, NH 03226

19. For each exceedance of the MSGP benchmarks described in paragraph 14 of this Decree above for three (3) years from the entry by this Court of the Decree, Defendants shall make an additional payment to the Lakes Region Conservation Trust in the amount of one thousand dollars ($1,000) for environmental restoration of or other environmental benefit to Lake Winnipesaukee. Payment of each such additional amount shall be due fourteen (14) days following each exceedance. Defendants shall notify CLF in writing concurrently each time a payment is made and provide a copy of each check.

20. For each missed deadline included in this Decree, including but not limited to failures to timely conduct quarterly benchmark monitoring and inspections pursuant to Parts 4 and 6 of the MSGP, but not including missed payment deadlines (discussed in paragraph 25 below), Defendants will make an additional payment to the Lakes Region Conservation Trust, in the amount of one thousand dollars ($1,000) for environmental restoration of or other environmental benefit to Lake Winnipesaukee. Payment of each such additional amount shall be due fourteen (14) days following each missed deadline. Defendants shall notify CLF in writing concurrently each time a payment is made and provide a copy of each check.

21. For every day that Defendants discharge process water to waters of the United States without coverage for such discharge under an individual NPDES discharge permit and compliance with the conditions of that individual NPDES discharge permit, Defendants will make an additional payment to the Lakes Region Conservation Trust, in the amount of one thousand dollars ($1,000) for environmental restoration of or other environmental benefit to Lake Winnipesaukee. Payment of each such additional amount shall be due fourteen (14) days following each unauthorized process water discharge. Defendants shall notify CLF in writing concurrently each time a payment is made and provide a copy of each check.

22. None of the SEP payments shall be disbursed to CLF.

V. LIQUIDATED ATTORNEY FEES AND COSTS

23. Defendants shall pay to CLF a sum of twenty thousand dollars ($20,000) in full and complete satisfaction of CLF's fees and costs to date in this matter, including without limitation attorney fees, expert fees, filing fees and other costs. These liquidated fees and costs shall be paid according to the following schedule:

a. $10,000 within fourteen days of the Effective Date of this Decree
b. $10,000 on or before May 29, 2015

24. To help defray CLF's reasonably anticipated costs incurred in conducting compliance monitoring and case management during the term of this Decree, Defendants shall pay CLF an additional sum of five thousand dollars ($5,000) on or before May 29, 2015.

25. In the event that any payment owed by Defendants under the Decree is not made on or before the due date, Defendants shall be deemed in default of its obligations under the Decree. In addition to a continued requirement to make said payment, Defendants shall pay to CLF liquidated attorney fees of one hundred dollars ($100) for each day the payment is late.

VI. EFFECT OF DECREE

26. CLF covenants not to sue and releases Defendants (and their parent corporations, subsidiaries, officers, directors, shareholders, employees, agents, and consultants) from any and all claims, causes of action, or liability under Section 505 of the Clean Water Act, 33 U.S.C. § 1365, for damages, penalties, fines, injunctive relief, or any other claim or relief (i) relating to or resulting from noncompliance with the MSGP at the Facility located at 73 Weirs Road, Gilford NH 03246 occurring prior to the date the Court enters this Decree or (ii) for any past violations alleged in the Complaint. CLF's release in this paragraph does not extend to other facilities that may be owned or operated by one or both defendants at other locations.

27. Defendants release and discharge CLF, its representatives, assigns, agents, employees, officers, and attorneys, including those who have held positions in the past from any and all claims, liability, demands, penalties, costs, and causes of action of every nature which concern or are connected with this action.

28. Neither this Decree, nor terms thereof, nor performance of the terms thereunder by Defendants shall constitute or be construed as an admission or acknowledgment by Defendants of the factual or legal assertions contained in this Decree or in CLF's Complaint, and Defendants retain the right to controvert in any subsequent proceedings, other than proceedings for the purpose of implementing or enforcing this Decree, the validity of the facts or determinations contained in this Decree or the Complaint. Neither this Decree, nor terms thereof, nor performance of the terms thereunder, shall constitute or be construed as an admission or acknowledgment by Defendants of any liability, or an admission of violation of any law, by Defendants or by its officers, directors, employees, agents, successors, or assigns.

29. CLF does not, by consent to the Decree, warrant or aver in any manner that Defendants' compliance with this Decree will constitute or result in compliance with federal or state law or regulation. Nothing in this Decree shall be construed to affect or limit in any way the obligation of Defendants to comply with all federal, state, and local laws and regulations governing any activity required by this Decree.

30. This Decree constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements and understandings, whether oral or written among the Parties.

31. All payments pursuant to this Decree shall be made in form of a business check.

32. Any notice required or permitted under this Decree shall be in writing and sent to:

For CLF:

Zachary Knox Griefen
Conservation Law Foundation
15 East State Street, Suite 4
Montpelier, VT 05602

For Defendants:

Irwin Corporation
c/o Willard G. Martin, Esq., Registered Agent
One Mill Plaza
Laconia, NH 03247

Mountain View Yacht Club, Inc.
c/o Diane Gorrow, Esq.
Soule, Leslie, Kidder, Sayward & Loughman, PLLC
220 Main Street
Salem, NH 03079

33. This Decree shall remain in effect if Defendants relocate the Facility to a different location.

34. Sections I, IV, V, VI, VII, and VIII of this Decree shall remain in effect if Defendants cease to be the owners and/or operators of the Facility, regardless of whether the Facility continues to operate or not.

VII. REVIEW AND TERM OF DECREE

35. The Parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), this Consent Decree cannot be entered until forty-five (45) days after the receipt of a copy of the proposed Consent Decree by the United States Attorney General and the EPA. Therefore, upon signing of this decree by the Parties, CLF shall serve copies of this Decree upon the EPA Administrator, the Regional EPA Administrator, and the Attorney General for review, as required by 40 C.F.R. § 135.5.

36. Upon the expiration of the forty-five-day review period provided by 33 U.S.C. § 1365(c)(3), the Parties will jointly move the Court for entry of this Decree. This Decree shall take effect on the date it is entered by this Court and shall terminate three (3) years from when it is entered by the Court. If for any reason the Court should decline to approve this Decree in the form presented, the Parties agree to continue negotiations in good faith in an attempt to cure any objection raised by the Court to entry of this Decree.

VIII. MODIFICATION AND ENFORCEMENT OF DECREE

37. This Decree may be modified only upon written consent of the Parties and the approval of the Court.

38. This Court shall retain jurisdiction over this matter and allow this action to be reopened for the purpose of enabling the Parties to this Decree to apply to the Court for any further order that may be necessary to construe, carry out, enforce compliance and/or resolve any dispute regarding the terms or conditions of this Decree.

39. This Decree may be executed by the Parties hereto on separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together constitute but one and the same instrument.

40. Each person signing this Decree represents and warrants that s/he has been duly authorized to enter into this Decree by the Party on whose behalf it is indicated that the person is signing.

CONSERVATION LAW FOUNDATION

By: _____ Date: 11/26/14
Christopher M. Kilian
Title: Vice President

MOUNTAIN VIEW YACHT CLUB, INC.

By: _____ Date: 12-2-14
Richard Burpee
Title: Vice President

IRWIN CORPORATION, D/B/A IRWIN MARINE

By: _____ Date: 12/2/14
Bruce A. Wright
Title: Vice President

ENTERED and DATED this ___ day of _____, 201_

_____
Honorable
United States District Judge