

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

<p>DISTRICT OF COLUMBIA,</p> <p style="text-align:center">Plaintiff,</p> <p>v.</p> <p>ANDREW SCHAEFFER, et al.,</p> <p style="text-align:center">Defendants.</p>	<p>Case No.: 2018 CA 006161 B</p>
--	-----------------------------------

CONSENT ORDER

WHEREAS, Plaintiff, the District of Columbia (“District”), by and through the Attorney General, filed a Complaint on or about September 9, 2018 against Andrew Schaeffer, 2201 Channing St., LLC, Right Hour Auto Sales Inc., Wave Rides Company and Capitol Hill Auto Repair Inc. for violations of the District’s Water Pollution Control Act of 1984 (“WPCA”), D.C. Code § 8-103.01 *et seq.*, and Hazardous Waste Management Act of 1977 (“HWMA”), D.C. Code § 8–1301, *et seq.*;

WHEREAS, on February 5, 2019, the Court granted the District’s Motion for Leave to File its Amended Complaint;

WHEREAS, the Amended Complaint contains three (3) counts, only the first two of which allege that Defendants Andrew Schaeffer and 2201 Channing St., LLC (collectively, “Owner Defendants”) committed multiple violations of the WPCA and the HWMA, along with the relevant implementing regulations, between June 2017 and July 2018 on the property located at and surrounding 2201 Channing Street, NE, Washington, DC 20018;

WHEREAS, on April 24, 2020, the Court entered its Order granting the District's Motion for Summary Judgment against all Defendants on Counts One and Two in the District's Amended Complaint and by Order dated July 27, 2020, denied each Defendant's Motion for Reconsideration of the Court's previous Order;

WHEREAS, pursuant to D.C. Code § 8-103.18(b)(2)(A), the WPCA proscribes that each discharge constitutes a separate violation and each violation is subject to a maximum civil penalty of \$50,000;

WHEREAS, pursuant to D.C. Code § 8-1311(b), the HWMA proscribes that each violation is subject to a maximum civil penalty of up to \$25,000;

WHEREAS, subsequent to the Court's July 27, 2020 Order, the District and Owner Defendants, agreed to settle the District's claims against the Owner Defendants upon the terms and conditions set forth in this Consent Order;

WHEREAS, despite the Owner Defendants' not admitting guilt, in recognition of the Court's Orders, the District and the Owner Defendants further agree that this Consent Order constitutes a settlement of the civil penalties, which are the only remaining issues in this matter;

NOW, THEREFORE, upon consent and agreement of the District and the Owner Defendants, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

TERMS AND CONDITIONS

1. **Parties Bound.** The Parties agree that the terms and conditions of this Consent Order shall apply to, and be binding upon, the District and the Owner Defendants and their respective successors, agents and assigns, subject to the terms in Paragraph 3 herein.

2. **Jurisdiction.** This Court has subject matter jurisdiction over Owner Defendants pursuant to D.C. Code § 8-103.08(b), D.C. Code § 8-1310, and D.C. Code

§ 8–1311(a)(2)(B). This Court has personal jurisdiction over the Owner Defendants pursuant to D.C. Code § 13–423(a)(1) and (3). Solely for purposes of this Consent Order and the underlying Complaint, including any further action to enforce the terms of this Consent Order, the Owner Defendants waive any and all objections and defenses they may have as to subject matter or personal jurisdiction of this Court.

3. Sale, Transfer or Assignment. In the event that the Owner Defendants, at any time prior to termination of this Consent Order, propose to sell, transfer or assign any interest in real property that is expressly subject to this Consent Order, the Owner Defendants shall notify the District pursuant to Paragraph 18 (Notice) of the expected date of the transaction and the name(s) and address(es) of such purchaser(s), transferee(s), or assignee(s). Following the Effective Date and prior to any transfer of a real property with outstanding obligations under this Consent Order, the Owner Defendants shall advise the proposed purchaser(s), transferee(s), or assignee(s), prior to such transaction of the existence of this Consent Order and, if there are outstanding obligations remaining on the specific real property subject to the transaction, shall simultaneously provide them a copy of the Consent Order. The Owner Defendants may assign the rights and obligations of this Consent Order (“Assignment”) to said purchaser(s), transferee(s) or assignee(s) provided, however, no change in ownership, transfer or assignment of the real estate expressly subject to this Consent Order shall in any way alter the Owner Defendants’ obligations under this Consent Order in the event of default by the purchaser(s), transferee(s) or assignee(s) of any or all of the assigned obligations under this Consent Order outstanding at the time of the transaction effectuating the transfer of the real property at issue. Notwithstanding the foregoing, the Owner Defendants may not

assign the obligation to pay civil penalties pursuant to Paragraph 5 or stipulated penalties pursuant to Paragraph 6.

4. Settlement Obligations. In consideration for a reduced civil penalty along with the release and resolution of all claims set forth in Counts 1 and 2 of the Amended Complaint, the Owner Defendants must retain an environmental consultant licensed in the District of Columbia and qualified to perform environmental assessments, and agree to perform the following settlement obligations:

- a. **Property at 2201 Channing St., NE.** This property, owned and managed by the Owner Defendants and the underlying subject matter in the District's Amended Complaint, is currently subject to corrective action under the District's Leaking Underground Storage Tank ("LUST") Program, D.C. Official Code §§ 8-113.01 *et seq.*, and 20 DCMR §§ 6200 *et seq.* (LUST Case No. 2019020). The Owner Defendants agree to ensure compliance with the LUST program by completing the corrective action and obtain a case closure or no further action letter from District's Department of Energy and Environment ("DOEE") in accordance with 20 DCMR § 6210 and within sixty (60) days after entry of this Consent Order, such period not to include time during which the District has documentation under review.
- b. **Properties located at 1013-1015, 1075, 1155, 1215, 1235, and 1239 Kenilworth Ave. NE ("Kenilworth Properties").** The Kenilworth Properties are owned and managed by companies in which Defendant Andrew Schaeffer is the sole or primary principal, managing member or officer. In further consideration of a reduced civil penalty, Owner

Defendants have agreed to include the Kenilworth Properties within the scope of this Consent Order. Owner Defendants agree that:

- i. Within sixty (60) days after entry of this Consent Order, Owner Defendants shall perform and provide the written results in a report to the District of each Phase I environmental site assessment ("Phase I") performed on each of the Kenilworth Properties in accordance with ASTM E1527-13, Standard Practice for Environmental Site Assessments, or comparable recognized industry standard. Each Phase I will be used to determine any environmental issues that require remediation under this Consent Order. In accordance with ASTM E1527-13, each Phase I shall identify all Recognized Environmental Conditions on the Kenilworth Properties, including but not limited to conditions caused or associated with: 1) hazardous waste and used oil management; 2) automobile tire storage and accumulation; 3) leaking oil and automotive fluids; 4) pollutants, such as oil, automotive fluids, soil, and sediment migrating from Kenilworth Properties to nearby storm drains; 5) the inspection and maintenance of on-site stormwater best management practices; 6) current Kenilworth Properties' operators or tenants' use of public space adjacent to the Kenilworth Properties for temporary storage of automotive vehicles during operators' or tenants' storage, service, repair, or tune-up of vehicles on the

Kenilworth Properties; and 7) current and historical above ground and underground storage tanks. Each Phase I is subject to the District's review to ensure compliance with the Consent Order and conformance with the relevant industry standard, and the District will endeavor to complete its review of each Phase I within twenty (20) days of receipt.

- ii. Within ninety (90) days after the District notifies Owner Defendants that the District has completed its review of each Phase I, the Owner Defendants further agree that, for any Kenilworth Property identified by its Phase I as having one or more Recognized Environmental Conditions so requiring, the Owner Defendants shall perform a Phase II environmental site assessment in accordance with ASTM E1903-19, Standard Practice for Phase II Environmental Site Assessments, or comparable recognized industry standard ("Phase II"). Each Phase II will be used to determine the environmental issues that must be addressed under this Consent Order. The Owner Defendants agree to provide the District with the results of each Phase II within thirty (30) days after completion of the Phase II. Each Phase II is subject to the District's review to ensure compliance with the Consent Order and conformance with the relevant industry standard, and the District will endeavor to complete its review of each Phase II within twenty (20) days of receipt.

iii. Within forty-five (45) days after the District notifies Owner Defendants that the District approves of each Phase II, Owner Defendants shall prepare and submit to the District a corrective action work plan for any actions necessary to bring operations back into compliance and remediation on each property with Recognized Environmental Conditions for which the Phase II recommends doing so. For any Recognized Environmental Condition identified in each Phase II, including but not limited to the presence of any underground storage tank or release of any hazardous or petroleum substance, where sampling in the Phase II demonstrates exceedances of United States Environmental Protection Agency composite worker regional screening values for soil, District Tier 0 Underground Storage Tank standards for soil, groundwater, or surface water, or otherwise exceed District legal or regulatory standards, the Owner Defendants shall complete corrective action for the necessary remediation on any Kenilworth Property within six (6) months thereafter, unless the corrective action is under a District program, then the time frame shall be established by that program. Within forty-five (45) days after completion of any corrective action, Owner Defendants shall submit a corrective action completion report, describing the work done to address each Recognized

Environmental Condition and the dates when the work took place, for review and approval by the District.

5. Civil Penalty. In consideration of Paragraphs 1 through 4, the District agrees to reduce the civil fine from the maximum daily amounts allowed under the law to \$350,000. The Owner Defendants agree to pay the civil penalty according to the following schedule: (1) \$150,000 to the District within thirty (30) days after execution of this Consent Order; (2) \$100,000 within sixty (60) days after execution of this Consent Order; and (3) \$100,000 within ninety (90) days after execution of this Consent Order. Payment of the civil penalty, and any applicable stipulated penalties as set forth in Paragraph 6, shall be made by certified check or ACH wire transfer consistent with instructions to be provided by the District at the time of the execution of this Consent Order.

6. Stipulated Penalties. If the Owner Defendants fail to comply with the terms, conditions or obligations of this Consent Order, the Owner Defendants shall be liable for stipulated penalties as set forth in this Paragraph. A violation of this Consent Order includes failing to perform any obligation required by the terms of this Consent Order, including any schedule and applicable requirements set forth or approved hereunder. For failure to meet each performance obligation, Owner Defendants shall pay stipulated penalties as set forth in the following table:

Term or Condition	Non-Compliance Event	Stipulated Penalty
Par. 4.a.	Failure to complete the LUST Program requirements on the 2201 Channing St., NE property within sixty (60) days after entry of this Consent Order.	\$500/day for Days 1-30; \$1000/day for any day beyond Days 1-30
Par. 4.b.i.	Failure to complete a Phase I on each of the Kenilworth Properties within sixty (60) days after entry of this Consent Order.	\$500/day for Days 1-30; \$1000/day for any day beyond Days 1-30
Par. 4.b.ii.	Failure to complete a Phase II on each Kenilworth Property where a Phase I recommended performance of a Phase II within ninety (90) days after District approval of Phase I.	\$500/day for Days 1-30; \$1000/day for any day beyond Days 1-30
Par. 4.b.iii.	Failure to complete corrective action on any Kenilworth Property with an identified environmental hazard or compliance issue within six (6) months, unless the identified hazard or compliance issue falls under a District regulatory program, in which case the time frame shall be established by that program.	\$500/day for Days 1-30; \$1000/day for any day beyond Days 1-30
Par. 4.b.iii.	Failure to submit a corrective action work plan within forty-five (45) days after the District notifies the Owner Defendants that the District approves of each Phase II	\$500/day
Par. 4.b.iii.	Failure to submit a corrective action completion report within forty-five (45) days after completion of the corrective action.	\$500/day
Pars. 5 & 6	Failure to pay civil penalties or stipulated penalties when due.	\$500/day

Unless stated otherwise in this Consent Order, the Owner Defendants shall pay any stipulated penalty within fifteen (15) days after receipt of written demand by the District to Counsel for Owner Defendants for such penalties. Method of payment shall be in accordance with Paragraph 5. The District may, in its unreviewable exercise of discretion, reduce or waive stipulated penalties otherwise due under this Consent Order.

7. No Credit or Deduction. The Owner Defendants represent that they have not received and shall not seek credit for, or receive credit for, the settlement obligations set forth in Paragraph 4 against any obligations in any other enforcement action under any federal, state or local regulation. The Owner Defendants represent that they are not required to pay for or perform any of the settlement obligations by any other order or agreement. The Owner Defendants further represent that they have not received and shall not in the future seek to receive credit for the settlement obligations or civil penalty specified in Paragraphs 4 and 5, respectively, against any obligations in any other enforcement action under any federal, state or local law or regulation. The Owner Defendants further represent that they are not required to perform or develop or pay for these settlement obligations by any other agreement, grant, order or injunction.

8. Compliance Obligations. This Consent Order is not a permit, a modification of a permit or authorization to operate any regulated business under any federal or District law or regulation. The Owner Defendants remain responsible for achieving and maintaining compliance with applicable federal and District laws, regulations and permits on their properties. The Owner Defendants' compliance with this Consent Order shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as specifically set forth in this Consent Order.

9. Record Retention. Authorized representatives of the District, upon presentation of appropriate credentials, shall have the right of entry upon the 2201 Channing St. NE property during normal weekday business hours for purposes of determining completion of the required corrective action at this property, and upon the Kenilworth Properties during normal weekday business hours at any time while this Consent Order is in effect for the purpose of:

- a. Monitoring the progress of settlement obligations under this Decree;
- b. Verifying any data or information submitted by the Owner Defendants pursuant to this Decree; and
- c. Assessing the Owner Defendants' compliance with this Decree.

The Owner Defendants shall retain, preserve and instruct their contractors to retain and preserve all data and records that relate directly to Owner Defendants' performance of their obligations under this Consent Order, notwithstanding any corporate document retention policy to the contrary and provide those documents within ten (10) days after receipt of a written request by the District.

10. Public Statements. Any public statement, oral or written, in any media, made by any official acting in an official capacity on behalf of the Owner Defendants referencing any of the settlement obligations specified in Paragraph 4 herein shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action initiated by the District of Columbia Department of Energy and Environment."

11. Computation of Time. All references to "days" in this Consent Order shall mean consecutive calendar days unless otherwise specified. In the event circumstances beyond the Owner Defendants' control render them unable to meet the

aforementioned compliance deadlines, the Owner Defendants shall, immediately upon learning of the issue, give the District written notice and provide a proposed revised schedule for compliance. Upon receiving the written notice, the District shall determine if the circumstances justify revising the schedule for compliance. If so, the Owner Defendants will work collaboratively with the District to establish a mutually agreeable revised schedule. If the District determines the circumstances do not warrant revising the schedule for compliance, the District shall inform the Owner Defendants within seven (7) days after receipt of written notice.

12. Effective Date. The effective date of this Consent Decree shall be the date upon which this Consent Order is entered by the Court or a motion to enter this Consent Order is granted, whichever occurs first, as recorded on the Court's Docket.

13. Reservation of Rights. The District reserves all legal and equitable rights and remedies available to enforce the provisions of this Consent Order. This Consent Order shall not be construed to limit the rights of the District to obtain penalties or injunctive relief under the District's laws or regulations, except as set forth in this Consent Order. Nothing in this Consent Order is intended nor shall it be construed to operate in any way to limit or otherwise preclude the District from taking additional enforcement action with regard to the Owner Defendants or any other person who has violated or violates hereinafter the District's laws, regulations, or other legal requirements, by reason of acts or omissions other than those encompassed by this Consent Order.

14. Covenant Not to Sue. Except as set forth in Paragraph 13 (Reservation of Rights), the District covenants not to take any other form of administrative or judicial enforcement against the Owner Defendants and their successors, as well as their officers, directors, and employees, with respect to any of the acts, omissions, or

other matters alleged in or encompassed by the Amended Complaint, through the effective date of this Consent Order and the Amended Complaint. If the Owner Defendants breach or fail to cure any material breach of this Consent Order within sixty (60) days after notification to the District of the breach, unless extended by the District, the District may take such action as it deems necessary, including but not limited to, a motion to compel or a motion for contempt or any other action the District deems just and appropriate.

15. Resolution and Release of Civil Claims. Upon satisfaction and completion of all terms and conditions of this Consent Order, the District agrees to resolve and release all civil claims against Owner Defendants that the District asserted or could have asserted pursuant to the District's Water Pollution Control Act and the Hazardous Waste Management or implementing regulations based on the facts alleged in the Amended Complaint.

16. Modification. There shall be no material modification of this Consent Order without the prior written approval of the Parties and the approval of the Court. All non-material modifications, such as a change to the person or persons to receive notice under this Consent Order, may be made by written agreement of the Parties.

17. Termination. The Owner Defendants may seek the District's consent, such consent not to be unreasonably withheld, to terminate the obligations of this Consent Order applicable to 2201 Channing St, NE or any of the Kenilworth Properties upon completion of the following:

- a. Payment of the Penalty and any accrued stipulated penalties required under this Consent Order that may be due and owing at the time of request for termination; and

b. Satisfactorily completing each aspect of the settlement obligations in Paragraph 4 for that specific property where the Owner Defendants seek termination.

Ultimately, upon a determination by the District that the foregoing conditions in this Paragraph have been completed satisfactorily for all properties, including documentation reasonably requested by the District to determine satisfactory completion of those conditions, the Owner Defendants shall prepare, on behalf of the Owner Defendants and the District, a joint motion to have the Court terminate this Consent Order. The District shall not unreasonably withhold its agreement to the joint filing of such motion. Upon approval of the motion by the Court, the Owner Defendants shall be released of all obligations under this Consent Order.

18. Notice. Unless otherwise specified, notifications, submissions or communications required by this Consent Order shall be in writing and addressed as follows, unless the listed individuals or their successors give written notice of change(s):

To the District of Columbia:

Office of the Attorney General:

Contact: Wesley Rosenfeld
Assistant Attorney General

Mailing Address: 400 6th St. NW, 10th Floor
Washington, D.C. 20001

Phone: (202) 368-2569

Email: Wesley.rosenfeld1@dc.gov

Department of Energy and Environment:

Contact: Natalie Baughman
Assistant General Counsel

Mailing Address: Office of the General Counsel
Department of Energy & Environment
1200 First Street, NE, 5th Floor
Washington, D.C. 20002

Phone: (202) 299-3346

Email: Natalie.baughman@dc.gov

To Owner Defendants:

Contact: Andrew Schaeffer

Mailing Address: Metropolitan Investment Company
1801 Bladensburg Road, NE
Washington, D.C. 20002-1857

Phone: (202) 281-8333

Email: ASchaeffer@metroinvestment.net

and

Contact: Andrew Cooper

Mailing Address: Van Ness Feldman
1050 Thomas Jefferson St. NW,
Suite 700
Washington, D.C. 20007

Phone: (202) 298-1917

Email: ACooper@vnf.com

26. Final Judgment. Approval and entry of this Consent Order by the Court shall constitute a final judgment between the District and the Owner Defendants for all claims set forth in the Amended Complaint.

Dated and entered on this 7th day of January, 2021.

For Plaintiff, the District of Columbia:

KARL A. RACINE

Attorney General for the
District of Columbia

KATHLEEN KONOPKA

Deputy Attorney General
Public Advocacy Division

/s/ David S. Hoffmann

WESLEY ROSENFELD [1002428]

DAVID S. HOFFMANN [983129]

Assistant Attorney Generals
400 6th St., NW
Washington, D.C. 20001

Date: January 7, 2021

**For Defendants, Andrew Schaeffer and
2201 Channing St. LLC:**

/s/ Andrew Cooper

ANDREW COOPER

Van Ness Feldman LLP

1050 Thomas Jefferson St., NW

Suite 700

Washington, D.C. 20007

Date: January 7, 2021

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA,

Plaintiff,

v.

ANDREW SCHAEFFER, *et al.*

Defendants.

Case No.: 2018 CA 006161 B

ORDER

Upon consideration of the District of Columbia and Defendants Andrew Schaeffer and 2201 Channing St. LLC's Joint Motion for Entry of Consent Order and the record in this case, on this day of _____, 2021, it is hereby:

ORDERED that the Joint Motion for Entry of Consent Order is **GRANTED**;

SO ORDERED.

Robert R. Rigsby, Associate Judge

COPIES TO:

Brian D. Riger, Esq.
Counsel for Andrew Schaeffer and 2201 Channing St. LLC

Anthony Rachal, Esq.
Counsel for Right Hour Auto Sales, Inc.

Sean M. Riley, Esq.
Harry Tun, Esq.
Counsel for Capitol Hill Auto Repair, Inc. and Wave Rides Company