



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF COASTAL AND LAND USE COMPLIANCE AND ENFORCEMENT

PHILIP D. MURPHY

Governor

SHEILA Y. OLIVER

Lt. Governor

Toms River Office

1510 Hooper Avenue, Suite 140

Toms River, New Jersey 08753

Telephone: (732) 255-0787

www.nj.gov/dep

SHAWN M. LATOURETTI

Commissioner

June 13, 2023

VIA ELECTRONIC MAIL/ REGULAR MAIL

Eric Goldstein, Esq.
Nehmad Davis & Goldstein
4030 Ocean Heights Avenue
Egg Harbor Twp, New Jersey 08234

RE: Final Administrative Consent Order
Louis DiVentura/Ventura's Greenhouse/Yo-Levin Inc.
NJDEP File #: NEA230001 - 0116-07-0006.2
Block 25, Lot 4 Margate City, Atlantic County, New Jersey

Dear Mr. Goldstein:

Please find enclosed a copy of the Final Administrative Consent Order (ACO). The ACO became final on June 12, 2023, and the required actions, including permit application submittal within 45 days, and payment of the penalty settlement are due as indicated in the ACO.

Enclosed with this Final ACO is the check you submitted with the signed ACO which is made out to the NJ Department of Environmental Protection as payee. Please note that this check cannot be accepted as payment. Please ensure that the enclosed invoice for the penalty settlement is included with another check properly made out to: "Treasurer-State of New Jersey" and sent to the address indicated at the bottom of the invoice.

Should you have any questions regarding the enclosed ACO, you may contact Harry Nicol, via email at harry.nicol@dep.nj.gov, or at the address or telephone number at the top of this correspondence.

Sincerely,

Michele S. Kropilak, Manager
Bureau of Coastal and Land Use Compliance and Enforcement

Enclosure

c: Linda Taylor, NJDEP
Ken Mosca, Business Administrator, City of Margate



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IN THE MATTER OF:

Louis DiVentura / Ventura's Greenhouse /
Yo-Leven Inc.
106 South Benson Avenue
Margate City, NJ 08402

ADMINISTRATIVE CONSENT ORDER

NEA230001 - 0116-07-0006.2

The New Jersey Department of Environmental Protection (Department or DEP) is authorized to enter into this Administrative Consent Order (ACO) and Withdrawal of Hearing Request pursuant to the authority vested in the Commissioner of the Department by N.J.S.A. 13:1D-1 et seq., the Coastal Area Facility Review Act N.J.S.A. 13:19 et seq. (CAFRA) and rules promulgated at N.J.A.C. 7:7-1 et seq., and duly delegated to the Assistant Commissioner of Watershed and Land Management and her assignees pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. Margate City owns the property at the South Benson Avenue oceanfront, Block 25, Lot 4, Margate City, Atlantic County, New Jersey, hereinafter the "site". Louis DiVentura/Ventura's Greenhouse/Yo-Leven Inc. own and operate a beach bar and associated structures located on the site. Hereinafter, Louis DiVentura, Ventura's Greenhouse, and Yo-Leven Inc. shall be referred to as the Respondents.
2. As a result of an investigation conducted on June 15, 2020, the Department determined that the Respondents failed to comply with applicable requirements as follows:

Requirement: Pursuant to N.J.A.C. 7:7-2.2, no person shall engage in a regulated activity within a CAFRA area without a coastal permit.

Description of Noncompliance: the performance of unauthorized regulated activities within a CAFRA area. More specifically, the activities involve the construction of an approx. 15' x 30' partially enclosed pole building (tiki-bar) with roof, approximately 3,500 square feet of floating wooden decking placed on grade, and an associated fence enclosure within the regulated CAFRA area.

3. On June 18, 2020, a Notice of Violation (NOV) was issued to both Margate City and Louis Ventura/Ventura's Greenhouse for the above-described noncompliance with CAFRA.

4. On June 19, 2020, the Department received an email response to the NOV from Eric S. Goldstein (Nehmad, Davis & Goldstein, Counselors at Law), indicating that a complete CAFRA permit application would be submitted to the Department within 30 days. The response further indicated an understanding that any regulated activities which do not receive permit approval must be restored.
5. On August 19, 2020, the Department received an application for a CAFRA Individual permit to address the violations cited in the NOV. On August 25, 2020, and September 24, 2020, the permit application was deemed administratively deficient, and the Respondents consultant, Art Ponzio, was notified of the deficiencies. On January 13, 2021, the permit application was administratively closed.
6. Available aerial imagery from February 24, 2021, depicted the structures remained on site. On July 8, 2021, a DEP representative conducted a site visit and determined that the CAFRA noncompliance cited in paragraph 2 remained and had not received CAFRA permit approval.
7. On July 21, 2021, the Department issued a second NOV to both Margate City and Louis Ventura/Ventura's Greenhouse. The second NOV advised that the permit application was deficient and closed and that, "failure to conduct the required corrective actions by August 20, 2021, may result in further enforcement action including the issuance of an Administrative Order and Notice of Civil Administrative Penalty Assessment pursuant to CAFRA".
8. On July 21, 2021, the Department received an email response to the second NOV from Eric S. Goldstein, stating that the Respondents, "continue to understand that any regulated activities that do not obtain permit approval must be restored pursuant to N.J.A.C. 7:7-2" and "Mr. Ponzios's office and I will address the NOV as required by NJ law."
9. Available aerial imagery from February 21, 2022, depicted the structures remained on site. On May 3, 2022, the Department conducted a follow-up site investigation and determined that the CAFRA noncompliance remains as cited in paragraph 2 and has not received CAFRA permit approval.
10. On July 14, 2022, the Department issued an Administrative Order and Notice of Civil Administrative Penalty Assessment, hereinafter "AONOCAPA" or "Order", which required the Respondents to address the violation(s) described above in order to achieve compliance with CAFRA and assessed a civil administrative penalty of \$46,000.00.
11. The Respondents timely requested an administrative hearing for the AONOCAPA.
12. The Signatories wish to resolve this matter without further adjudication and therefore have entered into this ACO to settle the violations referenced in the above Findings without admission of fault or liability according to the terms set forth herein.

**COMPLIANCE REQUIREMENTS AND SCHEDULE
NOW THEREFORE IT IS HEREBY ORDERED AND AGREED THAT RESPONDENTS
SHALL:**

13. Within 45 days of this document becoming final, the Respondent shall submit a complete CAFRA application to the NJDEP, Division of Land Resource Protection, with a copy sent to CLUE, to attempt

to legalize the structures onsite, (OR) the Respondent shall remove all unauthorized structures from the site.

14. Should the Department determine that any portion of the submitted CAFRA application is inadequate or incomplete, then the Department shall provide the Respondent with written comments as to the deficiencies.
15. Within 30 days of receipt of the Department's comments, if any, on the application, the Respondent shall conform to the Department's comments and submit the revised application to the Department. The determination as to whether the revised application, as resubmitted, conforms to the Department's comments shall be made solely by the Department.
16. The result of the CAFRA permit application review may be approval, partial approval, withdrawal or denial. The Respondent may exercise its right to appeal the CAFRA permit partial approval or denial. Within 45 days of this partial approval, withdrawal, denial, or final disposition of this CAFRA appeal, the Respondent is required to submit a restoration plan to CLUE for the full restoration/removal of all structures and all regulated activities not approved via a CAFRA permit or appeal.
17. Within 30 days of receipt of the Department's comments, if any, on the restoration plan, the Respondent shall conform to the Department's comments and submit the revised plan to the Department. The determination as to whether or not the revised restoration plan, as resubmitted, conforms to the Department's comments shall be made solely by the Department.
18. Upon Department approval of the restoration plan, the Respondent shall implement the DEP approved restoration plan in accordance with the approved time schedule, and restoration shall be completed no later than 6 months after restoration plan approval.

PENALTY SETTLEMENT

19. In settlement of the violations identified in the Findings of this ACO, the Respondents, their successors and/or assigns, shall pay the sum of \$23,000.00 to the Department in four equal payments of \$5,750.00. The first payment shall be made immediately upon the date of this ACO becoming final. The second, third, and fourth payments shall be due within 30, 60, and 90 days, respectively from the date of this ACO becoming final. All payments shall be made by certified check payable to the Treasurer, State of New Jersey, and shall be sent with the appropriate invoice to the Department of Treasury, at the address indicated on the invoice.
20. If Respondents fail to pay the above penalty in accordance with the terms and conditions of this ACO, then the AONOCAPA in the amount of \$46,000.00 issued to the Respondents on July 14, 2022, shall become a final order and the full penalty, along with costs and interest calculated pursuant to N.J. Court Rule 4:42, shall be immediately due and owing. The Department may bring a summary action in the Superior Court to collect such penalty pursuant to R. 4:67-6, or file this ACO as a judgment under the Penalty Enforcement Law, N.J.S.A. 2A:58-10 et seq.

WITHDRAWAL OF REQUEST FOR A HEARING

21. Upon signature, any pending administrative hearing request for the above AONOCAPA is hereby withdrawn with prejudice.

STIPULATED PENALTIES

22. Stipulated penalties shall be paid to the Department as set forth below for the failure to comply with any requirement of this ACO, unless the Department has notified the Respondents in writing that a stipulated penalty will not be assessed for the violations pursuant to the force majeure provisions of this ACO. Each deadline or schedule not complied with shall be considered a separate violation. Payment of stipulated penalties shall be made according to the following schedule.

| <u>Calendar Days After Due Date</u> | <u>Stipulated Penalties</u> |
|-------------------------------------|-----------------------------|
| 1 - 7 | \$100.00 per calendar day |
| 8 - 14 | \$200.00 per calendar day |
| 15 – over | \$500.00 per calendar day |

23. Any such penalty for failure to comply with this ACO shall be due and payable thirty (30) calendar days following receipt of a written demand from the Department. Payment of stipulated penalties shall be made by a cashier's or certified check payable to the "Treasurer, State of New Jersey" and shall be submitted to the address on the enclosed payment invoice provided in the demand letter.
24. For the failure to timely pay stipulated penalties pursuant to the preceding paragraphs, the Department may take action to collect same, including, but not limited to, instituting civil proceedings to collect such penalties pursuant to R. 4:67 and R. 4:70 or assess civil administrative penalties for violations of this ACO.
25. The payment of stipulated penalties does not alter the responsibility to complete all the requirements of this ACO.

FORCE MAJEURE

26. If any event occurs which is believed will or may cause delay in the achievement of any provision of this ACO, the Department shall be notified in writing to the contact address below within seven (7) calendar days of the delay or anticipated delay, as appropriate, referencing this paragraph and describing the anticipated length of the delay, the precise cause or causes of the delay, any measures taken or to be taken to minimize or prevent the delay, and the time required to take any such measure to prevent or minimize any such delay. All necessary actions shall be taken to prevent or minimize any such delay.
27. If the Department finds (a) that the notice requirements of the preceding paragraph have been fully complied with and; (b) that any delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circumstances beyond the control of the Respondents; and (c) that all necessary actions to prevent or minimize the delay have been taken, the Department shall extend the time for performance hereunder for a period no longer than the delay resulting from such circumstances. If the Department determines that the above notice requirements of the preceding paragraph have not been complied with, the event causing the delay is not beyond the control of the Respondents, or that all necessary actions to prevent or minimize the delay have not been taken, failure to comply with the provisions of this ACO shall constitute a violation of the requirements of the ACO. The burden of proving that any delay is caused by circumstances beyond the control of the Respondents, that all necessary actions were taken to prevent or minimize the delay, and the length of any such delay attributed to those circumstances, shall rest with the Respondents. Increase in the cost or expenses

incurred in fulfilling the requirements of this ACO shall not be a basis for an extension of time. Delay in an interim requirement shall not automatically justify or excuse delay in the attainment of subsequent requirements. Force majeure shall not automatically include contractor's breach.

RESERVATION OF RIGHTS

28. The Department reserves the right to require that any and all additional measures should the Department determine that such measures are necessary to protect human health and/or the environment. Nothing in this ACO constitutes a waiver of any statutory right or enforcement powers of the Department to require such additional measures should the Department determine that they are necessary nor a waiver of any defenses thereto.
29. The Department reserves the right to unilaterally terminate this ACO in the event its terms are violated. However, before the Department terminates this ACO pursuant to this paragraph, the Department will provide notice in writing of its obligations and shall provide reasonable time under the circumstances as determined by the Department, but not to exceed thirty (30) calendar days, to perform said obligations.

DEPARTMENT CONTACT

30. All submissions of information required by this ACO (except payment of penalty) shall be mailed to:

Bureau of Coastal and Land Use Compliance and Enforcement
Toms River Office
1510 Hooper Avenue, Suite 140
Toms River, New Jersey 08753
Telephone: (732) 255-0787 Fax: (732) 255-0877

GENERAL PROVISIONS

31. This ACO and compliance therewith represents the full and final settlement and resolution of the matters identified in the underlying above NOV's and AONOCAPA.
32. This ACO represents the complete and integrated agreement of, and shall be binding upon, and/or inure to the benefit of, the State of New Jersey, the Department, and their divisions, agencies and respective successors, and the Signatory (ies) and its respective agents, successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity.
33. This ACO shall not relieve the Respondents from obtaining and complying with all applicable federal, state and local permits as well as all applicable statutes, codes, rule, regulations and orders, including but not limited to the statutes and regulations cited herein.
34. The Signatories agree not to contest the terms or conditions of this ACO in any action to enforce its provisions.
35. No obligations of this ACO or penalties imposed by this ACO are intended to constitute a debt or debts that may be limited or discharged in a bankruptcy proceeding. All obligations and penalties are

imposed pursuant to the police powers of the State of New Jersey for the enforcement of the law and the protection of public health, safety, welfare and the environment.

36. Nothing in this ACO shall preclude the Department from taking immediate action or seeking injunctive relief to protect the public health safety or welfare or from taking enforcement action for matters not set forth in the Findings referenced in this ACO.
37. This ACO shall be binding, jointly and severally, on the Signatories, their respective agents, successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or in equity.
38. The Signatories hereby agree to comply with this ACO, which shall be fully enforceable as a final agency order in the Superior Court of New Jersey.
39. In addition to the Department's statutory and regulatory rights to enter and inspect, the Department and its authorized representatives shall be allowed unannounced access to all areas of the site at all reasonable times for the purpose of monitoring compliance with this ACO or other access as permitted by law.
40. If any provision of this ACO is found to be invalid or unenforceable, the remainder of this Administrative Consent Order shall not be affected thereby, and each provision of this Administrative Consent Order shall be valid and enforced to the fullest extent permitted by law. The Department does however retain the right to terminate the remainder of this ACO if after such finding, it determines that the remaining ACO does not serve the purpose for which it was intended.
41. No modification or waiver of this ACO shall be valid except as authorized by the Department or by the Department's modification in writing pursuant to the force majeure provisions herein above.
42. Nothing contained in this ACO restricts the ability of the Department to raise the above Findings in any other proceeding.
43. This ACO shall be governed and interpreted under the laws of the State of New Jersey.
44. This ACO shall become final upon signature of both parties and completion of the Public Participation Process identified herein.
45. The undersigned warrant that they are authorized to sign this ACO and bind themselves, their successors, assignees, and/or trustees to comply with the terms and provisions of this ACO.
46. Written notice of this ACO shall be given to any successor in interest thirty (30) calendar days prior to transfer of ownership or control of the facility or site which is /are the subject of this ACO and shall simultaneously notify the Department that such notice has been given. This requirement shall be in addition to any other statutory or regulatory requirements arising from the transfer of ownership or control of the site, property or facility identified herein. In addition, the parties agree that any contract, lease, deed or any other agreement that enters into to convey the property/facility that is the subject of this ACO shall include a provision which states that the successor, assignee, tenant or purchaser has agreed to assume all the obligations imposed by this ACO.


FOR NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Dated: 6/12/23


Michele S. Kropilak, Manager
Coastal and Land Use Compliance and Enforcement

FOR LOUIS DIVENTURA
VENTURA'S GREENHOUSE
YO-LEVIN INC.

Dated: June 1, 2023


Louis DiVentura



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENFORCEMENT - CAFRA CCMRE FUND

INVOICE NO.
230724000

| Program Interest |
|-------------------------|
| MARGATE CITY |
| BEACH |
| Margate City, NJ. 08402 |
| 0116-07-0006.2 |

| Type of Notice |
|------------------------|
| ORIGINAL (NON-INITIAL) |

| Amount Due |
|--------------|
| \$ 23,000.00 |

| Billing Date |
|--------------|
| 06/12/23 |

| Due Date |
|----------|
| 07/12/23 |

| NJEMS Bill ID |
|-----------------|
| 000000255981900 |

| Summary | |
|--|------------------|
| Total Amount Assessed | 23,000.00 |
| Amount Received Before Creating Installment Plan (if installment plans is allowed) | 0.00 |
| Amount Transferred To Installment Plan | 23,000.00 |
| Installment Amount | 0.00 |
| Total Amount Credited | 0.00 |
| Total Amount Debited (Other Than Amounts Assessed) | 0.00 |
| Total Amount Due | 23,000.00 |

REMINDER:
 MAKE CHECKS PAYABLE TO: TREASURER - STATE OF NEW JERSEY
 WRITE PROGRAM INTEREST ID ON YOUR CHECK (SEE BOTTOM STUB)
 RETURN THE BOTTOM STUB WITH YOUR PAYMENT
 MAIL PAYMENT AND STUB TO NJ DEPARTMENT OF TREASURY (SEE BOTTOM STUB)

See Back Of Page for Billing Inquiries

INVOICE NO.
230724000

D9901F (R 3/14/02)



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENFORCEMENT - CAFRA CCMRE FUND

INVOICE NO.
230724000

| NJEMS Bill ID |
|-----------------|
| 000000255981900 |

| Program Interest ID |
|---------------------|
| 0116-07-0006.2 |

| Type of Notice |
|------------------------|
| ORIGINAL (NON-INITIAL) |

| Billing Date |
|--------------|
| 06/12/23 |

| Due Date |
|----------|
| 07/12/23 |

| Amount Due |
|--------------|
| \$ 23,000.00 |

For name and/or address change, check box and write corrections on the back of this invoice.

DO NOT FOLD, BEND OR MARK

Enter the Amount of your payment → \$

RETURN THIS PORTION

with your check made payable to:

TREASURER - STATE OF NEW JERSEY
and mail to:
NJ DEPARTMENT OF TREASURY
DIVISION OF REVENUE
PO BOX 417
TRENTON, NJ 08646-0417



VENTURAS GREENHOUSE

C0

106 S BENSON AVE
Margate City

NJ 08402-2425

EP100001010610000710000000061002111110023000000000112307240003C03



ENFORCEMENT - CAFRA CCMRE FUND

Program Interest

MARGATE CITY
BEACH
Margate City, NJ. 08402
0116-07-0006.2

Type of Notice

ORIGINAL (NON-INITIAL)

Amount Due

\$ 23,000.00

Billing Date

06/12/23

Due Date

07/12/23

NJEMS Bill ID

000000255981900

Administrative Consent Order (ACO)
Negotiated Enforcement Action

ASSESSMENTS

Start-End Date: 06/12/2023-06/12/2023 Activity: NEA230001

Assessment Type: PENALTY(CAFRA-CCMRE FUND)

Regulatory Basis:

Status: Open (Pending Payment)

Amount: \$ 23000.00

Total Amount Assessed: \$ 23,000.00

YO LEVEN INC.
T/A VENTURA'S GREENHOUSE RESTAURANT

OPERATING ACCOUNT
106 S. BENSON AVENUE
PO BOX 3167
MARGATE, NJ 08402

60-142/313

17758

DATE

6-1-23

SECURED

PAY TO THE ORDER OF NUT Department of Environmental Protection \$ 23,000.00
Twenty Three Thousand ⁰⁰/₁₀₀ DOLLARS

VENTURA'S GREENHOUSE RESTAURANT

Fulton Bank

LISTENING IS JUST THE BEGINNING

FOR Fine

Louis D. Ventura

AUTHORIZED SIGNATURE



Security Features
Detailed on back

⑈0⑆7758⑈ ⑆03⑆30⑆422⑆ 1⑆012⑆55⑆9⑈

FSHG