

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

FILED

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STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

BOARD OF COMMISSIONERS OF
LAKE COUNTY, OHIO,

Defendant.

Case No. 89-CIV-0877
Judge James W. Jackson

ANDY J. TOTIN
CLERK OF COURT

Modified Consent Order
as to Defendant and
Third-Party Plaintiff the
Board of Commissioners of
Lake County, Ohio

Plaintiff, the State of Ohio (hereinafter "State") filed a complaint against Defendant, the Board of Commissioners of Lake County (hereinafter "Lake County" or "Defendant") for violations of Ohio's water pollution control laws and the regulations adopted thereunder. On January 7, 1992, Judge Jackson approved and signed the Consent Order that the State and Lake County had filed with the Court.

Since November 1992, Defendant has violated the 1992 Consent Order by violating the interim and final effluent limitations of NPDES permit Nos. 3PK00033*GD and 3PK00033*HD which govern the discharge from Lake County's Greater Mentor wastewater treatment facility located at 8471 Lakeshore Boulevard, Mentor, Ohio.

The parties have agreed to file this Modified Consent Order to purge the Defendant's contempt of the 1992 Consent Order. The requirements and provisions of this Modified Consent Order supersede and replace the requirements of the Consent Order previously entered in this matter on January 7, 1992.

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. Relation to 1992 Consent Order

1. This Modified Consent Order supersedes and replaces the Consent Order entered in this matter on January 7, 1992. Defendant Lake County has eliminated the discharges from the Sleepy Hollow and Green Ridge wastewater treatment plants by tying those plants into sanitary sewer systems.

II. Jurisdiction and Venue

2. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Defendant Lake County under Chapter 6111 of the Ohio Revised Code ("R.C."), and venue is proper in this Court.

III. Parties

3. The provisions of this Modified Consent Order shall apply to and be binding upon Defendant Lake County, its agents, officers, employees, assigns, representatives, successors in interest and any person acting in concert or privity with it. Defendant Lake County is ordered to provide a copy of this Modified Consent Order to each key employee, consultant or contractor employed to perform work referenced herein.

IV. Satisfaction of Lawsuit

4.A. Plaintiff alleges in its Complaint that Defendant Lake County has operated its Sleepy Hollow, Green Ridge and Greater Mentor Sewer District wastewater treatment plants and sewage systems in such a manner as to result in numerous violations of the discharge limitations and monitoring requirements of its National Pollution Discharge Elimination System ("NPDES") permits issued to it by the Director of Environmental Protection, and in violation of the water pollution laws of the State of Ohio, *i.e.*, R.C. Chapter 6111 and the rules adopted thereunder.

B. Defendant Lake County has operated the Greater Mentor Plant in violation of the 1992 Consent Order.

C. Compliance with the terms of this Modified Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims under such laws as alleged in the

Complaint. In addition, compliance with the terms of this Modified Consent Order shall serve as full satisfaction of any liability by Defendant for violation of the requirements of the 1992 Consent Order which have occurred prior to the entry of this Modified Consent Order.

D. Nothing in this Modified Consent Order shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint, including violations which occur after the filing of this Modified Consent Order.

V. Permanent Injunction

Greater Mentor Wastewater Treatment Plant

5. Except as otherwise expressly provided by paragraph 6, Defendant Lake County is permanently enjoined and ordered to operate and maintain the Greater Mentor Wastewater Treatment Plant in full compliance with the requirements of R.C. Chapter 6111, the regulations adopted under that Chapter, the terms and conditions of its currently effective NPDES permit No. 3PK00033*HD, and the terms and conditions of any permit renewals or modifications thereof. Once an NPDES permit has expired and been replaced by a renewal NPDES permit, the Defendant is permanently enjoined and ordered to comply with the terms and conditions of the renewal NPDES permit, not expired terms and conditions of the expired NPDES permit. If any term or condition of an NPDES permit is modified, the Defendant is permanently enjoined and ordered to comply with the terms and conditions of the NPDES permit as modified, and not the terms and conditions of the NPDES permit prior to modification, on and after the effective date of any applicable NPDES permit modification.

6. Between the effective date of this Modified Consent Order and August 1, 1997, Defendant is enjoined and ordered to comply with the final effluent limitations set forth in NPDES Permit No. 3PK00033*HD, and any renewals or modifications thereof, except with the final effluent limitations for suspended solids and phosphorous. For those parameters, Defendant is enjoined and ordered to comply with the interim effluent limitations set forth in Appendix A, which is attached and incorporated by reference as if fully rewritten herein and is an enforceable part of

this Modified Consent Order. The loading limits contained in Appendix A may be reviewed and adjusted consistent with expansion of the Greater Mentor Wastewater Treatment Plant, and in accordance with the applicable laws and regulations.

7. The interim effluent limits contained in Appendix A do not constitute an NPDES permit or modification of any existing permit.

8. After August 1, 1997, Defendant Lake County is enjoined and ordered to meet the final effluent standards set forth in NPDES permit No. 3PK00033*HD, and any renewals or modifications thereof. Defendant Lake County is further enjoined and ordered to properly operate and maintain its Greater Mentor Wastewater Treatment Plant and any associated equipment and structures.

VI. Pretreatment and NPDES Compliance

Greater Mentor Wastewater Treatment Plant

9. Defendant Lake County is enjoined and ordered to attain compliance with the final effluent limitations of NPDES permit No. 3PK00033*HD and any modifications or renewals thereof in accordance with the following schedule:

Pretreatment Compliance Plan

- A. By August 1, 1996, Defendant Lake County shall submit to Ohio EPA, Central Office, a permit modification with its technical justification for all new local industrial users limits.
- B. By October 1, 1996, Defendant Lake County shall incorporate revised local industrial users limits in all industrial user control documents.

NPDES Compliance

- C. By August 1, 1997, Defendant Lake County shall attain and maintain compliance with final effluent limitations of its effective NPDES permit No. 3PK00033*HD and any modifications or renewals.

VII. Reporting Requirement

10. Within seven (7) days from the completion date of each milestone listed in Article

VI, Defendant Lake County is ordered to submit a written report stating whether it has performed the action set forth therein to the Ohio Environmental Protection Agency, Northeast District Office, Division of Surface Water at 2110 East Aurora Road, Twinsburg, Ohio 44087; with additional copies to the Division of Surface Water/Water Resources Management Section of Ohio EPA at 1800 WaterMark Drive, Columbus, Ohio 43216-1049.

VIII. Compliance Not Dependent on Grants or Loans

11. Performance of the terms of this Modified Consent Order by Defendant Lake County is not conditioned on the receipt of any federal or state grant or loan funds. In addition, Defendant's performance is not excused by the failure to obtain or a shortfall of any federal or state grant or loan funds, or by the processing of any applications for the same.

IX. Effect of Consent Order

12. This Modified Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Approval for any such construction or modification shall be by permit issued by the Director of Environmental Protection or other such permits as may be required by applicable federal, state or local laws, rules or regulations.

X. Potential Force Majeure

13. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Defendant Lake County shall notify the Ohio EPA in writing within ten (10) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendant Lake County to prevent or minimize the delay, and the timetable by which measures will be implemented. Defendant Lake County will adopt all reasonable measures to avoid or minimize any such delay.

14. In any action by the Plaintiff to enforce any of the provisions of this Modified Consent Order, Defendant Lake County may raise at that time the question of whether it is entitled to a defense that its noncompliance was caused by reasons beyond its control such as, by way of

example and not limitation, act of God, unusually severe weather conditions, strikes, acts of war or civil disturbances, or orders of any regulatory agency. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by the parties that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an enforcement action, if any, is commenced. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant Lake County shall rest with Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Modified Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Defendant, or serve as a basis for an extension of time under this Modified Consent Order. Failure by Defendant Lake County to comply with the notice requirements of Paragraph 13 shall render this Paragraph void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendant's right to request an extension of its obligations under this Modified Consent Order based on such incident. An extension of one compliance date based on a particular incident does not mean that Defendant Lake County qualifies for an extension of a subsequent compliance date or dates. Defendant Lake County must make an individual showing or proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Modified Consent Order without a force majeure clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

XI. Civil Penalty

15. Defendant Lake County is ordered to pay to the State of Ohio a civil penalty of Sixty Thousand, Two Hundred and Ninety-Five Dollars (\$60,295). The penalty shall be paid by delivering to Matthew Sanders, or his successor, Administrative Assistant, Environmental Enforcement Section, at 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within forty-five

(45) days from the Court's entry of this Modified Consent Order.

XII. Stipulated Penalties

16. In the event that Defendant Lake County fails to meet any of the requirements of this Modified Consent Order, as set forth in Articles V, VI, VII and XI, prior to August 1, 1997, Defendant shall be liable for payment of a stipulated penalty according to the following payment schedule:

- A. For each day of each failure to meet a requirement or a deadline, up to thirty (30) days--one hundred dollars (\$100.00) per day for each requirement or deadline not met;
- B. For each day of each failure to meet a requirement or a deadline, from thirty-one (31) to sixty days (60)--two hundred dollars (\$200.00) per day for each requirement or deadline not met;
- C. For each day of each failure to meet a requirement or a deadline, from sixty-one (61) to ninety (90) days--three hundred dollars (\$300.00) per day for each requirement or deadline not met;
- D. For each day of each failure to meet a requirement or a deadline, over ninety days (90) days--four hundred dollars (\$400.00) per day for each requirement or deadline not met.

17. In the event that Defendant Lake County fails to meet any of the requirements of this Modified Consent Order, as set forth in Articles V, VI, VII and XI, after July 31, 1997, Defendant shall be liable for payment of a stipulated penalty according to the following payment schedule:

- A. For each day of each failure to meet a requirement or a deadline, up to thirty (30) days--two hundred and fifty dollars (\$250.00) per day for each requirement or deadline not met;
- B. For each day of each failure to meet a requirement or a deadline, from thirty-one (31) to sixty days (60)--five hundred dollars (\$500.00) per day for each requirement or deadline not met;
- C. For each day of each failure to meet a requirement or a deadline, from sixty-one (61) to ninety (90) days--one thousand dollars (\$1,000.00) per day for each requirement

or deadline not met;

- D. For each day of each failure to meet a requirement or a deadline, over ninety days (90) days—one thousand five hundred dollars (\$1,500.00) per day for each requirement or deadline not met.

18. Any payment required to be made under the provisions of Article XII shall be made by delivering to Matthew Sanders, or his successor, Administrative Assistant, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check or checks for the appropriate amounts, payable to the order of "Treasurer, State of Ohio" within thirty (30) days from the date of the failure to meet the specified requirements of this Modified Consent Order.

XIII. Termination of Stipulated Penalties

19. The provisions of this Modified Consent Order set forth in Article XII requiring the payment of stipulated penalties may be terminated upon a demonstration by Defendant Lake County that: 1) it has completed the requirements outlined in Article VI; 2) it has paid all penalties required by this Modified Consent Order; and 3) it has achieved and maintained compliance with the final effluent limitations contained in its currently effective NPDES permit No. 3PK00033*HD, along with the other terms and conditions of said permit, and any renewals or modifications thereof for a period of twelve consecutive months.

20. If during the one (1) year period (twelve consecutive months) set forth in Paragraph 19, Defendant fails to comply with its currently effective NPDES permit No. 3PK00033*HD, and any renewals or modifications thereof, the one (1) year period (twelve consecutive months) will begin anew on the first date after such failure that the Defendant is back into compliance with the final effluent limitations contained in its currently effective NPDES permit No. 3PK00033*HD, along with the other terms and conditions of said permit, and any renewals or modifications thereof. Any of Defendant's subsequent failures to maintain compliance with the final effluent limitations contained in its currently effective NPDES permit No. 3PK00033*HD, along with the

other terms and conditions of said permit, and any renewals or modifications thereof, shall be treated in the same manner, with the one (1) year period (twelve consecutive months) beginning anew from the date Defendant comes back into compliance. If the limitations contained in the applicable NPDES permit(s) are to become more stringent, it is expressly agreed and understood that Lake County shall have the right to review the Draft Permit and recommend extended compliance schedules prior to the incorporation of more stringent limitations into new or modified limits.

21. Termination of the stipulated penalty section of this Modified Consent Order shall only be by order of the Court upon application by any party, and a demonstration that the conditions outlined in Paragraph 19 have been met.

XIV. Retention of Jurisdiction

22. The Court will retain jurisdiction of this action for the purpose of enforcing the Defendant's compliance with the terms and provisions of this Modified Consent Order.

XV. Costs

23. Defendant Lake County is hereby ordered to pay the costs of this action.

XVI. Entry of Consent Order and Final Judgment by Clerk

24. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Modified Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

IT IS SO ORDERED:

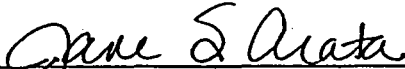
DATE

JUDGE JAMES W. JACKSON
LAKE COUNTY

APPROVED:

STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY

ATTORNEY GENERAL OF OHIO



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Attorney for Defendant and Third-
Party Plaintiff The Board of
Commissioners of Lake County, Ohio

DATE




JOHN F. PLATZ, County Commissioner,
Board of Commissioners of Lake County, Ohio

DATE



MILDRED M. TEUSCHER, County Commissioner,
Board of Commissioners of Lake County, Ohio

DATE



ROBERT A. GARDNER, County Commissioner,
Board of Commissioners of Lake County, Ohio

APPENDIX "A"

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS
FOR THE GREATER MENTOR WASTEWATER TREATMENT PLANT

1. Effluent limitations and monitoring requirements from outfall: 3PK00033001.

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
Reporting Code	Units	Parameter	Concentration Specified Units		Loading* kg/day		Meas. Freq.	Sample Type
			30 day	7 day	30 day	7 day		
00010	°C	Temperature	-	-	-	-	Daily	Max. Ind. Therm.
00530	mg/l	Suspended Solids	45	67.5	2419	3629	Daily	Composite
00550	mg/l	Oil and Grease, Total	Not to exceed 10 at any time				2/Week	Grab
00610	mg/l	Ammonia (N)	-	-	-	-	Daily	Composite
00665	mg/l	Phosphorus, Total (P)	2.0	3.0	107	161	Daily	Composite
31616	#/100ml	Fecal Coliform (Summer Only)	1000	2000	-	-	Daily	Grab
50050	MGD	Flow Rate	-	-	-	-	Daily	Continuous
80082	mg/l	CBOD ₅	15	23	806	1236	Daily	Composite

2. The pH (Reporting Code 00402 (minimum) and 00401 (maximum) shall not be less than 6.5 S.U. nor greater than 9.0 S.U. and shall be monitored continuously and reported daily. The critical values (minimum and maximum) shall be reported.

3. If the entity uses chlorine for disinfection, the Chlorine Residual (Reporting Code 50060) shall be maintained at a level not to exceed 0.038 mg/l and shall be monitored by multiple grab sample and reported daily (Summer Only). The critical (high) value shall be reported.

4. The Dissolved Oxygen (Reporting Code 00300) shall be monitored daily by grab sample.

* The average effluent loading limitations are established using the following flow value: 14.2 MGD.

Appendix "A" (cont.)

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont.)

6. Effluent limitations and monitoring requirements from outfall: 3PK00033091.*

EFFLUENT CHARACTERISTIC			DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS	
Reporting Code	Units	Parameter	Concentration Specified Units		Loading kg/day		Meas. Freq.	Sample Type
			30 day	Daily Max.	30 day	Daily Max.		
00981	µg/l	Selenium, Total Recoverable	-	-	-	-	1/Quarter	Composite
01079	µg/l	Silver, Total Recoverable	-	-	-	-	1/Quarter	Composite
34351	µg/l	Endosulfan Sulfate	-	-	-	-	1/Quarter	Composite
34361	µg/l	Endosulfan, Alpha	-	-	-	-	1/Quarter	Composite
50050	MGD	Flow Rate	-	-	-	-	Daily	Continuous

* This is not a separate discharge point. It is a continuation of reporting for outfall 3PK00033001. See Part II, OTHER REQUIREMENTS, for locations of effluent sampling.