

*Judgment file*

RICHLAND COUNTY  
CLERK OF COURTS  
FILED

94 JAN -5 PM 12:12

HAROLD SCOTT  
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS  
RICHLAND COUNTY, OHIO

STATE OF OHIO, ex rel.  
LEE FISHER  
ATTORNEY GENERAL OF OHIO

CASE NO. 93-728-D

JUDGE DeWeese

Plaintiff, -

vs.

BOARD OF COMMISSIONERS  
OF RICHLAND  
COUNTY, OHIO

CONSENT ORDER

Defendant.

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Lee Fisher (hereinafter "Plaintiff") and Defendant Board of Commissioners of Richland County, Ohio (hereinafter "Richland County") having consented to the entry of this Order,

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. JURISDICTION AND VENUE

1. 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 under Chapter 6111 of the Ohio Revised Code, and venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply and be binding upon the parties to this action, their agents,

officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them. Defendant Richland County shall provide a copy of this Consent Order to each contractor it employs to perform work itemized herein, and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work.

### III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant has operated Hillsdale Waste Water Treatment plant and sewer system in such a manner as to result in numerous violations of the discharge limitations and monitoring requirements of the NPDES Permit issued to it by the Director of Ohio EPA and in violation of the water pollution laws of the State of Ohio. Defendant denies these allegations and nothing herein shall be construed as an admission by Defendant of the truth of any of the allegations of fact or law in the Complaint. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims under such laws alleged in the Complaint as to the Hillsdale plant. Nothing in this 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 the Complaint.

### IV. COMPLIANCE SCHEDULE

4. Defendant Richland County is hereby enjoined and ordered to immediately comply with the requirements of Chapter 6111 of the Ohio Revised Code, the rules and regulations

adopted under that Chapter and the terms and conditions of its currently effective NPDES Permit, and any renewals or modifications thereof, except for the final effluent limitations set forth in said permit.

Between the effective date of this Consent Order and until such time as Hillsdale Waste Water Treatment plant is abandoned, Defendant is enjoined to comply with the interim effluent limits set forth in Appendix "A" attached hereto. The interim effluent limits contained in Appendix "A" do not constitute an NPDES permit or a modification of any existing permit. After August 31, 1996, Defendant shall meet final effluent limits to be established for the Hillsdale wastewater treatment plant, or Defendant shall cease discharging effluent from the Hillsdale wastewater treatment plant to waters of the state.

Richland County is hereby enjoined and ordered to properly operate and maintain the Hillsdale wastewater treatment plant and any associated equipment and structures until such time as it is abandoned.

#### V. CONSTRUCTION SCHEDULE

5. Defendant Richland County is enjoined and ordered to eliminate discharges from overflows and bypasses from its sanitary sewer system and to abandon the Hillsdale wastewater treatment plant in accordance with the following schedule:

TASK

COMPLETION DATE

- |  |                   |
|--|-------------------|
| (a) Submittal of Approvable Detailed Plans and PTI application to Ohio EPA   | Completed         |
| (b) Advertisement of Building Bids   | February 28, 1994 |
| (c) Execution of Building Contracts and Initiation of Construction   | August 31, 1994   |
| (d) Hillsdale Wastewater Treatment Plant abandoned; no further discharges to waters of the state. All overflows and bypasses from Hillsdale Wastewater Treatment Plant and sewer system eliminated | August 31, 1996   |

Within seven days from each completion date listed above, Defendant Richland County shall submit a written report stating whether or not Richland County has performed the action set forth therein to Ohio EPA's Northwest District Office.

This 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 Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

VI. CIVIL PENALTY

6. Defendant Richland County shall pay to the State of Ohio a civil penalty of Six Thousand Dollars (\$6,000.00). The penalty shall be paid by delivering to Janis Miller, or her successor, Administrative Assistant, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410 a certified check for that amount, payable to the

order of "Treasurer, State of Ohio" within forty-five (45) days from the date of entry of this Consent Order.

VII. STIPULATED PENALTIES

7. In the event that Defendant Richland County fails to meet any of the requirements of this Consent Order set forth in Paragraphs 4, and 5(a), 5(b), or 5(c) including any scheduled milestone requirement, the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of each failure to meet a requirement, up to thirty (30) days - Two Hundred and Fifty Dollars (\$250.00) per day. For each day of each failure to meet a requirement, from thirty-one (31) to sixty days (60) - Five Hundred Dollars (\$500.00) per day. For each day of each failure to meet a requirement, from sixty-one (61) to ninety (90) days - Seven Hundred and Fifty Dollars (\$750.00) per day. For each day of each failure to meet a requirement, over ninety days (90) days - One Thousand Dollars (\$1,000.00) per day.

8. In the event that Defendant Richland County fails to meet the requirements of this Consent Order set forth in Paragraphs 5(d), the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of each failure to meet a requirement of 5(d) up to forty-five (45) days - two thousand eight hundred dollars (\$2,800.00) per day. For each day of each failure to meet a requirement of 5(d) from forty-six (46) to ninety (90) days - three thousand

six hundred dollars (\$3,600.00) per day. For each day of each failure to meet a requirement of 5(d) from ninety (90) to one hundred and twenty days - four thousand eight hundred dollars (\$4,800.00) per day. For each day of each failure to meet a requirement of 5(d) over one-hundred twenty days - six thousand four hundred dollars (\$6,400.00) per day.

9. Any payment required to be made under the provisions of Paragraphs 7 or 8 of this Order shall be made by delivering to Janis Miller or her successor, Administrative Assistant, Environmental Enforcement Section, 30 East Broad Street-25th Floor, Columbus, OH 43266-0410 a certified check or checks for the appropriate amounts, within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, made payable to "Treasurer, State of Ohio."

#### VIII. POTENTIAL FORCE MAJEURE

10. In any action to enforce any of the provisions of this Consent Order Defendant Richland County may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitation, acts of God, unusually severe weather conditions, strikes, acts of war or civil disturbances, or orders of any regulatory agency. Changes in the cost of compliance do not constitute a force majeure. 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 by the Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant shall rest with Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances shall not constitute circumstances entirely beyond the control of Defendant. Acceptance of this 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.

IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

11. Performance of the terms of this Consent Order by Richland County is not conditioned on the receipt of any Federal or State grant funds or loans. In addition, Richland County's performance is not excused by the failure to obtain or shortfall of any Federal or State grant funds or loans, or by the processing of any applications for the same.

X. RETENTION OF JURISDICTION

12. The Court will retain jurisdiction of this action for the purpose of making any order or decree which it deems appropriate to carry out this Consent Order.

XI. TERMINATION OF STIPULATED PENALTIES

13. This Consent Order shall terminate only as to Paragraphs 7 and 8 of Section VII of this Consent Order after Richland County has (1) completed construction and fully satisfied all requirements of Section V of this Consent Order, (2) eliminated all discharges to waters of the state from the Hillsdale Wastewater Treatment Plant for a period of at least twelve (12) consecutive months, (3) eliminated all bypasses and overflows from the Hillsdale Wastewater Treatment Plant and/or sewers for a period of at least twelve (12) consecutive months, and (4) has paid all penalties required pursuant to this Consent Order. Termination of these provisions of this Consent Order shall be by Order of the Court, upon application of any party, and upon a finding by the Court that the provisions of this paragraph set forth above have been satisfied.

XII. RESERVATION OF RIGHTS

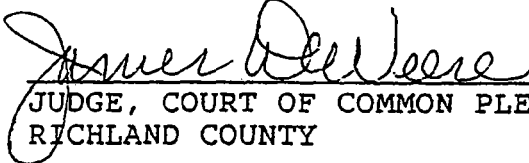
14. Plaintiff does not waive any rights or remedies available for any violations by Richland County of any law, rule and/or NPDES Permit term or condition.

15. Defendant reserves and does not waive any defenses that it may legally raise with regard to violations of this Consent Order. Nothing in this Consent Order is to be construed to restrict or limit the right of Defendant Richland County to raise any and all defenses available under its NPDES Permit. Nothing in this Consent Order is to be construed to restrict or limit the rights of Defendant Richland County provided under Chapter 3745. of the Ohio Revised Code.



XIII. COSTS

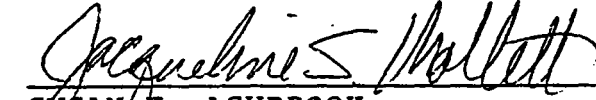
16. Defendant Richland County is hereby ordered to pay the costs of this action.

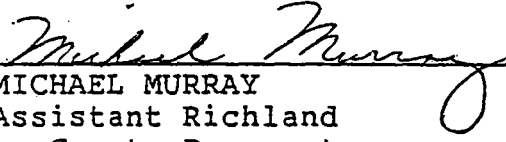
  
\_\_\_\_\_  
JUDGE, COURT OF COMMON PLEAS  
RICHLAND COUNTY

APPROVED:

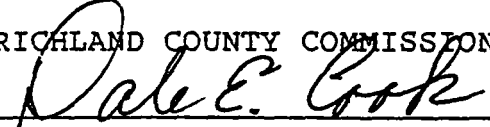
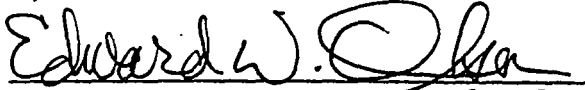

STATE OF OHIO, ex rel.  
LEE FISHER  
ATTORNEY GENERAL OF OHIO

BY:

  
\_\_\_\_\_  
SUSAN E. ASHBROOK  
JACQUELINE S. MALLETT  
Assistant Attorney General  
30 East Broad Street  
Columbus, Ohio 43266-0410

  
\_\_\_\_\_  
MICHAEL MURRAY  
Assistant Richland  
County Prosecutor

RICHLAND COUNTY COMMISSIONERS

  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

ATTACHMENT A

1. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS FOR OUTFALL 2PG00007001:

| <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 |                                |                 |
| 50050                          | MGD     | Flow Rate                       | -                             | -     | -              | -     | Daily                          | Continuous      |
| 00010                          | °C      | Water Temperature               | -                             | -     | -              | -     | Daily                          | Max. Ind. Therm |
| 00530                          | mg/l    | Total Suspended Solids          | 92                            | -     | -              | -     | 1/Week                         | Composite       |
| 00310                          | mg/l    | Biochemical Oxygen Demand, 5day | 52                            | -     | -              | -     | 1/Week                         | Composite       |
| 31616                          | #/100ml | Fecal Coliform (Summer Only)    | 1000                          | 2000  | -              | -     | 1/Week                         | Grab            |

2. The pH (Reporting Code 00400) shall not be less than 6.5 S.U. nor greater than 9.0 S.U. and shall be monitored 1/week by grab sample.
3. If the entity uses chlorine for disinfection, the Chlorine Residual (Reporting Code 50060) shall be maintained at a level not to exceed 0.5 mg/l and shall be monitored 1/week by grab sample (Summer only).
4. The Dissolved Oxygen (Reporting Code 00300) shall be monitored 1/week by grab sample.

\* The average effluent loading limitations are established using the following flow value: 0.060 MGD.

\*\* See Part II, OTHER REQUIREMENTS, of effective NPDES permit for locations of effluent sampling.