

RECEIVED

JUL 14 1992

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

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

Plaintiff

v.

BOARD OF COMMISSIONERS
OF BUTLER COUNTY

Defendant.

CASE NO. CV 91-

Environmental Enforcement Section

JUDGE SAGE

FILED

FILED In Common Pleas Court
BUTLER COUNTY, OHIO

'92 JUL 8 AM 9 44 JUL 8 1992

ENTRY

EDWARD S. ROSS, JR.
CLERK

EDWARD S. ROSS, JR.
CLERK

This matter came before the Court on Defendant's motion seeking a modification to the Consent Order entered in this case on November 18, 1991, and seeking a temporary restraining order preventing the Director of Ohio EPA from issuing findings and orders imposing a connection ban upon Defendant. An oral argument on the sole issue of whether a TRO should issue from this Court was held on June 23, 1992. Based upon the pleadings and affidavits submitted by counsel and the oral argument presented on June 23rd, the Court finds Defendant's instant motion not well taken.

The sole issue in this matter is whether this Court has the jurisdiction to enjoin the Director of Ohio EPA ("Director") from issuing an administrative order that imposes a connection ban upon Defendant. Defendant asserts that pursuant to Paragraph 20 of the Consent Order, only this Court has jurisdiction to issue any order necessary to enforce the terms of the Consent Order. According to Defendant, Paragraph 20 was intended by the parties to encompass findings and orders issued by the Director which impose a connection ban. Consequently,

argues Defendant, any connection ban which is issued in this case is necessary to carry out the terms of and ensure compliance with the Consent Order. Therefore, Defendant argues that only the Court can issue a connection ban in this case, and that the Director has waived his authority to issue a connection ban in this case by agreeing to the continuing jurisdiction of this Court as set forth in Paragraph 20 of the Consent Order.

Plaintiff State of Ohio, however, argues that Paragraph 20 of the Consent Order does not encompass acts or actions taken by the Director of Ohio EPA, since a connection ban order of the Director is not necessary to carry out the terms of the Consent Order. The Court finds merit with this argument. The only means by which the State of Ohio may enforce the terms of the Consent Order through this Court is by filing written charges in contempt. Thus, any action taken by the Director of Ohio EPA would have no effect on the enforcement of the Consent Order.

Thus, the Court finds that Paragraph 20 of the Consent Order, as it pertains to continuing jurisdiction, does not confer exclusive jurisdiction over claims or conditions related to the Consent Order, and does not encompass the Court issuing orders which are within the exclusive authority of the Director of Ohio EPA under O.R.C. Section 6111.03(H).

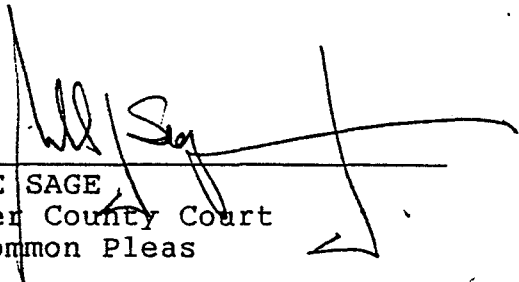
This finding is consistent with the exclusive, original statutory scheme created by O.R.C. Chapter 3745. and the holdings of the Ohio Supreme Court interpreting that Chapter.

Courts of Common Pleas, including this Court, are without inherent or express subject matter jurisdiction to entertain requests for injunctive or declaratory relief arising out of actions of the Director of Ohio EPA. State ex rel. Miller v. Keefe, 168 Ohio St. 234 (1958); City of Cincinnati ex rel. Crotty v. City of Cincinnati, 50 Ohio St. 2d 27 (1977); State ex rel. Williams v. Bozarth, 55 Ohio St. 2d 34 (1978); Warren Molded Plastics, Inc. v. Williams, 56 Ohio St. 2d 352 (1978); State ex rel. Maynard v. Whitfield, 12 Ohio St. 3d 49 (1984); State ex rel. Tyler v. McMonagle, 25 St. 3d 13 (1986). Thus, this Court lacks subject matter jurisdiction to enjoin the Director from issuing a connection ban order, regardless of the fact that this Court has continuing jurisdiction to enforce a Consent Order addressing violations of Ohio's environmental laws and regulations committed by the same entity who is the subject of the connection ban. The relief Defendant seeks is more properly justiciable before the Environmental Board of Review as provided by O.R.C. Chapter 3745. The EBR has original, exclusive jurisdiction over any matter which may be brought before it.

Accordingly, this Court holds that it lacks subject matter jurisdiction to issue a temporary restraining order restraining the Director of Ohio EPA from issuing an order imposing a connection ban upon Defendant. The Court is withholding its ruling on the issues raised by Defendant's instant motion on whether the Consent Order should be modified, or on whether Defendant should be relieved, completely or partially, from

paying stipulated penalties in accordance with the terms of the Consent Order. The merits of these two issues will be decided at a hearing scheduled for July 21st at 9:00 a.m.

Defendant's motion for a temporary restraining order is hereby DENIED.


JUDGE SAGE
Butler County Court
Of Common Pleas

FILED In Common Pleas Court
BUTLER COUNTY, OHIO

JUL 8 1992

EDWARD S. ROSS, JR.
CLERK

2102E.32-35



Attorney General
Lee Fisher

July 1, 1992

The Honorable Michael Sage
Butler County Court of Common Pleas
Butler County Courthouse
Hamilton, OH 45011

RE: State of Ohio v. Butler County

Dear Judge Sage:

Please find enclosed an original and three copies of a proposed entry drafted by this office at your request concerning your denial of Butler County's motion for a temporary restraining order. The proposed entry was read to opposing counsel over the telephone, and opposing counsel expressly objects to, and does not agree with, the proposed entry. If the proposed entry is acceptable to you, I would ask that you have it filed with the clerk of courts over your signature, and instruct the clerk to return extra time-stamped copies to the undersigned in the enclosed return envelope.

With respect to the settlement conference, we will see you at 1:30 p.m. on Tuesday, July 7th in your chambers. Looking forward to hearing from you soon, I remain,

Respectfully,

David G. Cox dae

DAVID G. COX
Assistant Attorney General
Environmental Enforcement
Section, 25th Floor
30 E. Broad Street
Columbus, Ohio 43266-0410
(614) 466-2766

DGC:dae
ENCLOSURE
1438E.72



Attorney General
Lee Fisher

M E M O R A N D U M

TO: All EES Attorneys

FROM: DAVID G. COX *D.G.C.*
Assistant Attorney General
Environmental Enforcement Section

DATE: July 14, 1992

RE: ~~Exclusive Jurisdiction of EBR~~ Over Connection Ban
orders of the Director

Defendant Butler County was operating a WWTP under the terms of a consent order, which provided interim effluent limits. Butler County was in chronic violation of the interim limits, and the Director threatened a connection ban order in order to enable the WWTP to come back into compliance with the interim limits. Butler County, however, argued that the "Continuing Jurisdiction" clause of the consent order conferred exclusive jurisdiction upon the Common Pleas Court in determining whether a connection ban was warranted. Accordingly, Butler County filed a motion for a TRO with the Court, seeking to prevent the Director from issuing findings & orders imposing a connection ban order.

After pleadings and oral argument, the Court held that although it has continuing jurisdiction over the consent order, this jurisdiction does not extend to review of actions of the Director, including a connection ban order. Thus, any order by the Director imposing a connection ban was reviewable only by the EBR in accordance with O.R.C. Chapter 3745. Accordingly, the County's motion for a TRO was denied.

Again, the exclusive scheme of O.R.C. Chapter 3745. was upheld. This includes situations where a Court has continuing jurisdiction over a consent order.

1437E:81