

FILED  
COURT OF COMMON PLEAS  
98 OCT 16 AM 10:36

CLERK OF COURTS  
MONTGOMERY CO., OHIO

IN THE COURT OF COMMON PLEAS  
MONTGOMERY COUNTY, OHIO

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

Plaintiff,

vs.

CIRCUIT CENTER, INC.,

Defendant.

CASE NO.

98CV3854

JUDGE \_\_\_\_\_

**CONSENT ORDER**

The Complaint in the above-captioned matter having been filed herein, and State of Ohio, by its Attorney General Betty D. Montgomery (Plaintiff), and Circuit Center, Inc. (Defendant) hereby consent 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 Ohio Revised Code (O.R.C.) Chapter 6111. 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, Defendant's agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them. Defendant is ordered to provide a copy of this Consent Order to each contractor it employs to perform the work itemized herein. Defendant is further ordered to require each general contractor to 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 its pretreatment system in violation of pretreatment requirements and in violation of O.R.C. Chapter 6111. and the rules adopted thereunder. Defendant denies these allegations.

4. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims alleged in the Complaint. Nothing in this Consent Order shall apply to claims or conditions not alleged in the Complaint, to new conditions at or new information about the site, or to any violations arising out of acts or omissions first occurring after the effective date of this Consent Order. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief against other appropriate persons for claims or conditions alleged in the Complaint. Similarly, nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to undertake any action against any person, including Defendant, to eliminate or mitigate conditions which may present a threat to the public health, welfare, or the environment.

#### **IV. PERMANENT INJUNCTION.**

5. Defendant is permanently enjoined and ordered to immediately comply with the requirements of O.R.C. Chapter 6111. and the rules adopted thereunder, including all State and local pretreatment requirements. Defendant's current pretreatment permit No. 98-350 is hereby incorporated by reference as if rewritten in full and made an enforceable part of this Consent Order. All renewals, modifications, or changes to Defendant's pretreatment permit effective after the entry of this Consent Order shall be deemed to be incorporated in full and made an enforceable part of this Consent Order.

#### **V. CIVIL PENALTY**

6. Defendant is ordered, pursuant to O.R.C. Section 6111.09, to pay to the State of Ohio a civil penalty of Thirty-Six Thousand Dollars (\$36,000.00). This amount shall be paid to Plaintiff within thirty (30) days from the Court's entry of this Consent Order by delivering a certified check for that amount to:

Jena Suhadolnik  
Administrative Assistant  
Attorney General's Office  
Environmental Enforcement Section  
30 East Broad Street, 25th Fl.  
Columbus, Ohio 43215-3428

payable to the order of "Treasurer, State of Ohio".

#### **VI. STIPULATED PENALTIES**

7. In the event that Defendant violates any State and/or local pretreatment requirement, Defendant shall be liable for a stipulated penalty according to the following payment schedule:

First 30 violations which occur after the effective date of this Consent Order,

Two-hundred fifty dollars (\$250.00) per violation;

From the 31st to the 60th violation which occurs after the effective date of this Consent Order,

Five-hundred dollars (\$500.00) per violation;

From the 61st to the last violation which occurs after the effective date of Consent Order,

Seven-hundred and fifty dollars (\$750.00) per violation.

8. For the purpose of calculating stipulated penalties for 4-day and monthly limitation violations under the provisions of this Consent Order, Plaintiff agrees to treat such limitation violations as one violation.

9. Any payment required to be made under the provisions of this Section shall be made in the same manner detailed in Section V., Paragraph 6. of this Consent Order.

**VII. TERMINATION OF STIPULATED PENALTIES**

10. The provisions of this Consent Order, set forth in Section VI., requiring payment of stipulated penalties, shall terminate if Defendant has:

(1) achieved and maintained compliance with the pretreatment limitations contained in its currently effective pretreatment permit or any renewals or modifications thereof for (a) the period from February, 1997 through June, 1999 or (b) a continuous period of one (1) year after the date of entry of this Consent Order;

(2) conducted all required monitoring and sent all required monitoring reports to Montgomery County for (a) the period from February, 1997 through June, 1999 or (b) a continuous period of one (1) year after the date of entry of this Consent Order; and

(3) paid all penalties, both civil and stipulated, required to be paid pursuant to this Consent Order.

11. The provisions of this Consent Order requiring payment of stipulated penalties, set forth in Section VI., shall be terminated when appropriate either by:

(1) order of the Court, upon application by any Party, upon a determination of the Court that all three (3) provisions required under paragraph 10. have been satisfied; or

(2) upon the filing of a Joint Motion for Termination of Stipulated Penalties by the Parties

**VIII. COSTS**

12. Defendant is ordered to pay the costs of this action.

**IX. RETENTION OF JURISDICTION**

13. The Court will retain jurisdiction of this action for the purpose of administering or enforcing Defendant's compliance with this Consent Order.

**X. CLERK'S ENTRY OF PARTIAL CONSENT ORDER AND FINAL JUDGMENT**

14. The Parties agree and acknowledge that final approval by the Plaintiff and the Defendant and entry of this Consent Order is subject to the requirements of 40 C.F.R. 123.27(d)(1)(iii), which provides for notice of the lodging of the Consent Order, opportunity for public comment, and the consideration of any public comments. Both Plaintiff and the Defendant reserves the right to withdraw this Consent Order based upon comments received during the public comment period. Defendant shall pay the costs of public notice associated with this Consent Order.

15. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon the signing of this 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 all 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:**

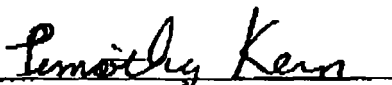
Entered this \_\_\_\_\_ day of \_\_\_\_\_:


  
JUDGE, MONTGOMERY COUNTY, OHIO  
COURT OF COMMON PLEAS

**APPROVED:**

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

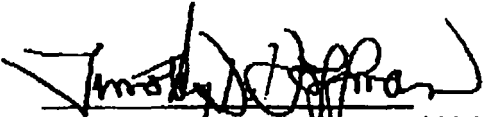
CIRCUIT CENTER, INC.

BY:   
TIMOTHY J. KERN (0034629)  
Environmental Enforcement Section  
30 East Broad Street, 25th Fl.  
Columbus, Ohio 43215-3428  
Telephone: (614) 466-2766

BY:   
NAME: RONALD C. UNDERWOOD  
(type or print)  
TITLE: PRESIDENT/CEO

Attorney for Plaintiff State of Ohio

Authorized Representative of  
Circuit Center, Inc.



**TIMOTHY D. HOFFMAN (0006311)**  
**COOLIDGE WALL WOMSELY & LOMBARD**  
Suite 600  
33 West First Street  
Dayton, Ohio 45402-1289  
(937) 449-5540

Attorney for Defendant Circuit Center, Inc.

\\streettalk\data\service2@server13@aglcclskern\cc\cci62598.doc