

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

STATE OF OHIO, ex rel.	:	CASE NO. CV 92 10 3905
BETTY D. MONTGOMERY	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE SCHNEIDERMAN
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
HUDSON	:	<u>MODIFIED CONSENT ORDER</u>
	:	
Defendant.	:	

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Betty D. Montgomery (hereinafter "Plaintiff") and Defendant Hudson (hereinafter "Hudson") having consented to the entry of a prior Consent Order entered on October 22, 1992 (hereinafter "the '92 Order"), and

WHEREAS, the '92 Order was entered to resolve Hudson's violations of O.R.C. Chapter 6111. and the regulations adopted thereunder and which required the payment of a \$30,000 civil penalty, which penalty was paid by Hudson, and

WHEREAS, paragraph number 5 of the '92 Order requiring the elimination of all dry weather bypasses and overflows has been violated by Defendant Hudson, thereby rendering Hudson in contempt of court, and

WHEREAS, Defendant Hudson has agreed to abandon its existing wastewater treatment plant in order to connect to the Cuyahoga Valley Interceptor (hereinafter "CVI"), and

WHEREAS, certain provisions of the '92 Order need to be modified to accommodate construction of the improvements necessary to eliminate all

discharges from and to result in the abandonment of Hudson's wastewater treatment plant in order to connect with the CVI,

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

II. PARTIES

2. The provisions of this Modified 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 Hudson shall provide a copy of this Modified Consent Order to each contractor and/or consultant it employs to perform work itemized herein, and each general contractor shall provide a copy of this Modified Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant Hudson has operated its wastewater treatment plant and sewer system in such a manner as to result in violations of the discharge limitations and monitoring requirements of the

National Pollutant Discharge Elimination System ("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 Hudson, however, denies the allegations in the complaint and does not admit liability for the violations alleged in the complaint. Compliance with the terms of this Modified Consent Order shall constitute full satisfaction of any civil liability by Defendant Hudson for all claims under such laws alleged in the Complaint, and shall constitute full satisfaction for Hudson's contempt of court for violating the prior '92 Order. 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 the Complaint.

IV. COMPLIANCE SCHEDULE

4. Defendant Hudson is hereby enjoined and ordered to immediately comply with the requirements of Chapter 6111 of the Ohio Revised Code and the terms and conditions of the rules and regulations adopted under that Chapter and 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 Modified Consent Order and June 17, 1998, Defendant Hudson is enjoined and ordered to comply with the interim effluent limitations set forth in Appendix "A" attached hereto and incorporated as if rewritten herein and made an enforceable part of this Modified Consent Order. The interim effluent limits contained in Appendix "A" do not constitute an NPDES permit or a modification of

any existing permit. After June 17, 1998, Defendant Hudson is enjoined and ordered to cease all discharge from its wastewater treatment plant and to abandon its wastewater treatment plant and collection system. From the effective date of this Modified Consent Order and continuing until June 17, 1998, Hudson is hereby enjoined and ordered to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

5. Defendant Hudson is enjoined and ordered to abandon its wastewater treatment plant, connect into the CVI, and cease all discharge into waters of the State in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Submit General Plan	complete
(b) Initiation of Project Design	complete
(c) Submittal of Approvable PTI Application Including Detailed Plans and Specifications to Ohio EPA	complete
(d) Advertisement of Building Bids	complete
(e) Execution of Building Contracts	complete
(f) Initiation of Construction	August 31, 1996
(g) Completion of Construction	May 6, 1998
(h) Elimination of discharge and all overflows & bypasses	June 17, 1998

6. Within seven (7) days from the completion date of each milestone listed in paragraph 5 above, Defendant Hudson shall submit to Ohio EPA's

Northeast District Office, 2110 E. Aurora Road, Twinsburg, Ohio 44087, attn: Keith Riley, Division of Surface Water, a written report stating whether Defendant has performed the action set forth therein.

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

VI. CIVIL PENALTY

8. For violating the requirements of the '92 Order, Defendant Hudson shall pay to the State of Ohio a civil penalty of thirty thousand dollars (\$30,000.00). The penalty shall be paid by delivering to Matthew Sanders, Administrative Assistant, Environmental Enforcement Section of the Attorney General's office, 30 E. Broad St., 25th floor, Columbus, Ohio 43215-3428, a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within thirty days from the date of entry of this Modified Consent Order.

VII. STIPULATED PENALTIES

9. In the event that Defendant Hudson fails to meet any of the requirements of this Modified Consent Order set forth in Paragraphs 4, 5(a), 5(b), 5(c), 5(d), 5(e), 5(f), 5(g), 6 and 8 including any scheduled milestone requirement, the Defendant Hudson 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 and/or deadline, up to thirty days - \$500.00 per day per requirement and/or deadline not met. For each day of each failure to meet a requirement and/or deadline, from thirty one to sixty days -\$1,000.00 per day per requirement and/or deadline not met. For each day of each failure to meet a requirement and/or deadline, from sixty-one to ninety days - \$2,500.00 per day per requirement and/or deadline not met. For each day of each failure to meet a requirement and/or deadline after ninety days - \$3,500.00 per day per requirement and/or deadline not met.

10. In the event that Defendant Hudson fails to meet any of the requirements and/or deadline of this Modified Consent Order set forth in Paragraph 5(h), the Defendant Hudson shall immediately and automatically be liable for payment of a stipulated penalty of \$5,000.00 per day of violation of said requirement and/or deadline. Defendant Hudson shall be liable for an additional stipulated penalty of one thousand dollars (\$1,000.00) per day of violation if the failure to comply continues for more than thirty (30) days, i.e. six thousand dollars (\$6,000.00) per day of violation. In the event that failure to comply with the requirements and/or deadline of Paragraph 5(h) continues more than sixty (60) days, Defendant Hudson shall be liable for an additional four thousand dollars (\$4,000.00) per day of violation, i.e., ten thousand dollars (\$10,000.00) per day of violation.

11. Any payment required to be made under the provisions of Paragraphs 9 or 10 of this Modified Consent Order shall be made by delivering to the same

Matthew Sanders, identified in paragraph 8, a certified check or checks for the appropriate amounts, within forty-five days from the date of the failure to meet the requirement and/or deadline of the Modified Consent Order, made payable to "Treasurer, State of Ohio."

VIII. POTENTIAL FORCE MAJEURE

12. If any event occurs which causes or may cause a delay of any requirement of this Modified Consent Order, Defendant Hudson shall notify the Ohio EPA, Northeast District Office, 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 to prevent or minimize the delay and the timetable by which measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

13. In any action by the Plaintiff to enforce any of the provisions of this Modified Consent Order, Defendant may raise that 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, strikes, acts of war or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and the Plaintiff 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 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 to comply with the notice requirements of Paragraph 12 shall render this Paragraph 13 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 qualifies for an extension of a subsequent compliance date or dates. Defendant must make an individual showing of 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.

IX. RETENTION OF JURISDICTION

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

X. EFFECT OF MODIFIED CONSENT ORDER

15. The parties agree that with the modifications contained herein, this Modified Consent Order shall supersede and replace the Consent Order filed in this

matter on October 22, 1992.

XI. COSTS

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

XII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

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

IT IS SO ORDERED.

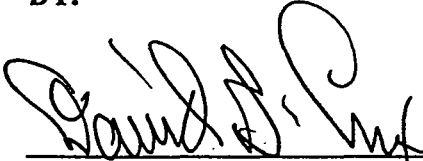
DATE

JUDGE, COURT OF COMMON PLEAS
SUMMIT COUNTY

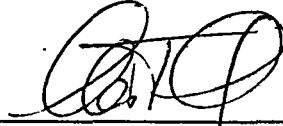
APPROVED:

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

BY:



DAVID G. COX (0042724)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410
(614) 466-2766



CHARLES RIEHL (0010971)
City Solicitor
Walter and Haverfeld
1300 Terminal Tower
Cleveland, Ohio 44113
(216) 781-1212



JAMES C. SMITH
City Manager
Authorized Representative
of Hudson

Appendix A

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

REPORTING Code	Units	EFFLUENT CHARACTERISTIC Parameter	DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS Meas. Sample Freq. Type
			Other Units 30 day	Concentration (Specify) 7 day	Concentration (Specify) 30 day	Loading* kg/day 7 day	
50050	MGD	Flow	--	--	--	--	Daily Cont.
00010	°C	Temperature	--	--	--	--	Daily Max. Ind. Therm.
00530	mg/l	Suspended Solids	30	45	114	195	2/Week Composite
31616	Count	Fecal Coliform /100ml	1000	2000	--	--	2/week Grab
00610	mg/l	Ammonia (N)	--	--	--	--	1 month composite
00665	mg/l	Phos., Total	--	--	--	--	1/month Grab
00550	mg/l	Oil & Grease	not to exceed 10				1/Qtr. Grab
80082	mg/l	CBOD ₅	15	40	95	152	2/week Composite

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 daily by grab sample.
3. The Chlorine Residual (Reporting Code 50050) shall be maintained at a level not to exceed 0.5 mg/l. Chlorine Residual shall be monitored daily by grab sample.
4. The Dissolved Oxygen (Reporting Code 00300) shall be maintained at a level not less than 5.0 mg/l and shall be monitored daily by grab sample.

*The average effluent loading limitations are established using the following flow value: 1.0 MGD

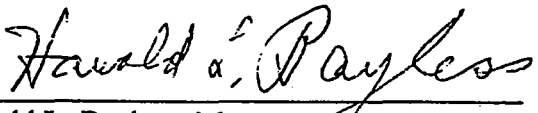
A RESOLUTION AUTHORIZING THE LAW DIRECTOR TO
ENTER INTO A REVISED CONSENT ORDER IN STATE,
EX REL. MONTGOMERY v. CITY OF HUDSON

BE IT RESOLVED by the Council of Hudson, Summit County, State of Ohio:

SECTION 1. That the Law Director be, and he hereby is, authorized and directed to enter into a Revised Consent Order in *State, ex rel. Montgomery v. City of Hudson*, being Summit County Common Pleas Court Case No. CV-92-10-3905, a copy of which Revised Consent Order is attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

SECTION 2. This Resolution shall take effect and be in force from and after the earliest period allowed by law.

PASSED: July 24, 1996



Harold L. Bayless, Mayor

ATTEST:




Mary L. Moser, Clerk of Council Pro Tempore

I certify that the foregoing Resolution was duly passed by the Council of said Municipality on July 24, 1996.



Mary L. Moser, Clerk of Council Pro Tempore

I certify that the foregoing is a true and accurate copy of Resolution No. 96-138 which was passed by the Council of the City of Hudson on July 24, 1996.



Mary Ann George, Clerk of Council

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

CASE NUMBER : CV-1992-10-3905

STATE OF OHIO, EX REL.

JUDGE : TED SCHNEIDERMAN

(Plaintiff)

- VS -

ORDER FILED: 08/09/96

CITY OF HUDSON VILLAGE

(Defendant)

N O T I C E

TO: DAVID G. COX
ENVIRONMENTAL ENFORCEMENT SECT
30 E. BROAD ST. 25TH FLOOR
COLUMBUS, OH 43266-0410

PURSUANT TO CIVIL RULE 58(B), THE CLERK OF COURTS IS REQUIRED TO
NOTIFY YOU THAT THE FOLLOWING ORDER HAS BEEN FILED WITH OUR OFFICE:

JE 1983-710 MODIFIED CONSENT ORDER. COSTS TO DEFENDANT HUDSON. SEE
TS

DIANA ZALESKI
Summit County Clerk Of Courts

CONNIE GEORGE
Chief Deputy