

IN THE COURT OF COMMON PLEAS  
LAWRENCE COUNTY, OHIO

FILED  
COMMON PLEAS

MAR 5 1 18 PM '97

STATE OF OHIO, ex rel.  
BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO,  
Environmental Enforcement Section  
30 E. Broad St., 25th Floor  
Columbus, Ohio 43215-3428,

CASE NO.

JUDGE

DALE BURCHAM  
CLERK OF COURTS  
LAWRENCE COUNTY

970C000194

Plaintiff,

v.

CITY OF IRONTON,

Defendant.

CONSENT ORDER

Plaintiff, the State of Ohio, by and through its counsel Attorney General Betty D. Montgomery, and at the written request of the Director of Environmental Protection, filed a Complaint against the City of Ironton (hereinafter "Defendant" or the "City") alleging violations of Chapter 6109 of the Ohio Revised Code, and the regulations promulgated thereunder, associated with the public water system owned and operated by the City of Ironton in Lawrence County (PWS ID# 4400711) (hereinafter the "Water System").

NOW THEREFORE, without the trial or admission of any issue of fact or law, and upon the 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 action pursuant to R. C. Chapter 6109. The State's Complaint ("Complaint") states a claim upon which relief can be granted against the Defendant and venue is proper in this Court.

## **II. PERSONS BOUND**

2. The provisions of this consent order shall apply to and be binding upon Defendant, its agents, officers, employees, assigns, successors in interest and any person acting in concert, privity or participation with it.

3. Defendant shall provide a copy of this consent order to each key employee, consultant or contractor employed to perform work referenced herein.

## **III. SATISFACTION OF LAWSUIT**

4. Except as provided in paragraph 5 below, compliance with the terms of this consent order shall constitute full satisfaction of any civil liability by Defendant for all claims under R. C. Chapter 6109 alleged in the Complaint.

5. Nothing in this consent order, including the imposition of stipulated civil penalties for violations of this consent order, shall limit the authority of the State of Ohio to:

A. Seek any legal or equitable relief against Defendant or any other party for violations not alleged in the Complaint, including any violations that occur after the filing of the Complaint;

B. Seek any legal or equitable relief against Defendant or any other party for claims or conditions alleged in the Complaint which occur or exist after the entry of this consent

order;

C. Enforce this consent order through a contempt action or otherwise for violations of this consent order;

D. Take any action authorized by law against any person, including Defendant, to eliminate or mitigate conditions that may present a threat to the public health or welfare, or the environment; or

E. Bring any legal or equitable action against any person other than Defendant.

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

6. The City is hereby permanently enjoined and immediately ordered as follows:

A. The City is enjoined and ordered to immediately comply with R.C. Chapter 6109 and the regulations promulgated thereunder including, but not limited to, Ohio Administrative Code (hereinafter "OAC") Chapters 3745-07, 3745-09, and 3745-81 through 3745-99.

B. Within thirty (30) days after the Court's entry of this consent order, the City must place and maintain the operation of the Water System under the responsible charge of a certified Class IV operator in accordance with OAC Rule 3745-7-02. The Class IV operator must visit the plant at least five days a week, be available for emergencies, and be responsible for daily plant operations, chemical dosage determinations, monthly reports, and maintenance planning.

C. Within fourteen (14) days of losing the services of the certified Class IV operator, the City shall hire a technical supervisor to oversee the

operation of the Water System until the Water System is placed under the responsible charge of another certified Class IV operator.

D. Within ninety (90) days of losing the services of the certified Class IV operator, the City shall place and maintain the Water System under the responsible charge of another certified Class IV operator.

E. Within seven (7) days after compliance with the deadlines given in Orders B, C, and D above, the City shall submit a copy of a signed contract as verification of compliance to Ohio EPA, Division of Drinking and Ground Waters, Attn: Engineering and Operations Section - Ray Shesky, P.O. Box 1049, Columbus, Ohio 43216-1049.

F. Within ninety (90) days after the Court's entry of this consent order, the City shall submit to Ohio EPA, SEDO, for review an effective backflow prevention plan for the Water System as to be determined by OEPA in accordance with OAC Chapter 3745-95. At a minimum, the backflow prevention program shall include the determination and elimination of all cross-connections, the determination of which customers require backflow devices, the authority to require the installation of backflow prevention devices, the authority to disconnect any service connection which could pose a hazard to human health and the environment due to inadequate backflow prevention, and the authority to ensure the annual inspection of all backflow prevention devices.

G. Within thirty (30) days after the Ohio EPA, SEDO's review of the backflow prevention plan, the City must implement the backflow prevention

program pursuant to the backflow prevention plan and OAC Chapter 3745-95, including the adoption of an ordinance preventing cross-connections.

H. Within seven (7) days after the Court's entry of this consent order, the City shall comply with the turbidity requirements set forth in OAC 3745-81-73(A)(1) and disinfection requirements set forth in OAC 3745-81-72.

I. Within seven (7) days after the Court's entry of this consent order, the City shall comply with the contaminant level requirements for total coliform bacteria set forth in OAC 3745-81-14.

J. Within seven (7) days after the Court's entry of this consent order, the City shall maintain a fluoride content of not less than 0.8 mg/l nor more than 1.3 mg/l and comply with all other requirements of R.C. 6109.20.

K. The City shall issue public notification in accordance with OAC 3745-81-32 for violations of the applicable maximum contaminant levels or treatment techniques established by OAC Chapter 3745-81. The City shall inform the Ohio EPA of any public notifications by complying with the procedures set forth in OAC 3745-81-32(A)(7).

L. Defendant shall operate the Water System according to an approved contingency plan when conditions warrant as required by OAC 3745-85-04, shall maintain copies of the contingency plan as required by OAC 3745-85-03, and shall update the plan as required by ORC 3745-85-05, but at least annually.

M. Documents which are required to be submitted to Ohio EPA under this consent order shall be sent to the following address:

Ohio Environmental Protection Agency  
Southeast District Office  
2195 Front Street  
Logan, Ohio 43138-9031  
Attn: Gary Stellrecht, Division of Drinking and Ground Waters.

**V. CIVIL PENALTY**

7. Defendant shall pay to the State of Ohio a civil penalty of Ten Thousand Dollars (\$10,000.00) pursuant to the following payment schedule: the first payment of Five Thousand Dollars (\$5,000.00) is due on or before Monday, April 7, 1997 and the second payment of Five Thousand Dollars (\$5,000.00) is due on or before Monday, April 6, 1998. Each civil penalty payment shall be paid by delivering to Matt Sanders, or his successor, Administrative Assistant, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check for the amount in accordance with the above payment schedule, payable to the order of "Treasurer, State of Ohio".

**VI. STIPULATED PENALTIES**

8. In the event that Defendant fails to comply with any requirement of this consent order, Defendant is liable for and shall immediately pay stipulated penalties in accordance with the following schedule for each failure to comply:

- A. For each day of each failure to comply with a deadline or requirement, up to and including thirty (30) days -- Two Hundred Dollars (\$200.00) per day per each deadline or requirement not met.
- B. For each day of each failure to comply with a deadline or requirement from thirty-one (31) to sixty (60) days -- Three Hundred Dollars (\$300.00) per day per each deadline or requirement not met.
- C. For each day of failure to comply with a deadline or requirement over sixty (60) days -- Six Hundred Dollars (\$600.00) per day for each deadline or requirement not met.

Payments required by this section shall be paid within thirty (30) days of the occurrence of the violation by delivering a certified check payable to "Treasurer, State of Ohio," to Matt Sanders, or his successor, Administrative Assistant, Environmental Enforcement Section, Ohio Attorney General's Office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, along with a letter summarizing the violations and time periods for which the penalty is paid.

#### **VII. MISCELLANEOUS**

9. Nothing in this Order shall affect Defendant's obligation to comply with all applicable federal, state or local law, regulation, rule or ordinance. Defendant shall obtain any and all federal, state, or local permits necessary to comply with this consent order.

10. Any acceptance by the State of Ohio of any payment, document or other work due hereunder subsequent to the time that the obligation is due under this order shall not relieve Defendant of the obligation created by the consent order.

11. Defendant shall inform Ohio EPA of any change of its business addresses or telephone numbers.

#### **VIII. COSTS**

12. Defendant shall pay the court costs of this action.

#### **IX. POTENTIAL FORCE MAJEURE**

13. If any event occurs which causes or may cause a delay of any requirement of this consent order, Defendant shall notify the Ohio EPA, Southeast 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.

14. In any action by the Plaintiff to enforce any of the provisions of this 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 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 consent order. Failure by Defendant to comply with the notice requirements of Paragraph 13 shall render this Paragraph 14 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 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 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.

**X. CONTINUING JURISDICTION**

15. This Court shall retain jurisdiction over this action for the purpose of enforcing Defendant's compliance with this consent order.

**XI. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK**

16. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon 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 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.

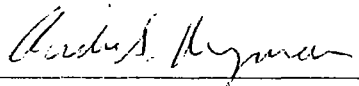
IT IS SO ORDERED.

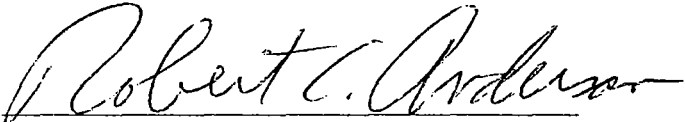
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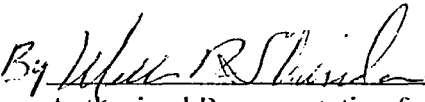
  
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JUDGE  
LAWRENCE COUNTY COURT OF COMMON PLEAS

APPROVED:

BETTY D. MONTGOMERY,  
ATTORNEY GENERAL OF OHIO

  
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By  \_\_\_\_\_ *Mary*  
Authorized Representative for Defendant  
City of Ironton