

IN THE COURT OF COMMON PLEAS
ERIE COUNTY, OHIO

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

Plaintiff

v.

CITY OF SANDUSKY

Defendant.

CASE NO. 95-CV-053

JUDGE

CONSENT ORDER

ERIE COUNTY
COMMON PLEAS COURT

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FILED

The Complaint in the above captioned matter having been filed herein, and Plaintiff State of Ohio, by its Attorney General Lee Fisher, and Defendant City of Sandusky (hereinafter referred to as "Sandusky") 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 Sandusky under Chapter 6111. of the Ohio Revised Code ("RC"), and venue is proper in this Court.

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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 Sandusky is ordered to provide a copy of this Consent Order to each contractor it employs to perform the work itemized herein. Defendant Sandusky 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 Sandusky has operated its wastewater treatment plant and sewer system in such a manner as to result in numerous violations of the discharge limitations and monitoring requirements of its National Pollutant Discharge Elimination System ("NPDES") permit issued by the Director of Environmental Protection and in violation of the water pollution control laws of the State of Ohio, i.e., RC Chapter 6111. and the rules adopted thereunder.

4. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant Sandusky for all claims alleged in the Complaint.

5. Nothing in this 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. PERMANENT INJUNCTION

6. Defendant Sandusky is hereby permanently enjoined and ordered to immediately comply with the requirements of RC Chapter 6111. and the rules adopted thereunder, and its currently effective National Pollutant Discharge Elimination System ("NPDES") permit No. 2PF00001*ID, and any renewals or modifications thereof, except for the following:

Until the final compliance date in the approved General Plan (see Section V., paragraph 8 (c)), Defendant Sandusky shall not be required to comply with Loading Discharge Limitations.

Until the currently effective NPDES permit No. 2PF00001*ID, is renewed:

- (a) Defendant Sandusky shall not be required to monitor overflows during the first 30 minutes of discharge but shall monitor overflows pursuant to the timeframes set forth in the Work Plan, required by Section V., paragraph 8 (b), as approved by Ohio EPA on June 29, 1994, and pursuant to the comments in the June 29, 1994 approval letter.
- (b) Defendant Sandusky shall be authorized to discharge from the Fulton Street overflow, station number 2PF00001020, only during wet weather periods when the flow in the sewer system exceeds the capacity of the sewer system.
- (c) All overflows, stations 2PF00001004 through 2PF00001020, shall be monitored for the parameters set forth in the Work Plan, as approved on June 29, 1994, and the parameters added by the June 29, 1994 and November 8, 1994 approval letters.

Once the permit is renewed Defendant Sandusky shall monitor the overflows in

accordance with the provisions of the NPDES permit as renewed.

7. Defendant Sandusky is enjoined and ordered to properly operate and maintain its wastewater treatment plant, sewer system and any associated equipment and structures.

V. COMPLIANCE SCHEDULE

8. Defendant Sandusky is enjoined and ordered to undertake such construction to adequately treat all sanitary sewage flows and to eliminate the water quality impacts of all combined sewer overflows, which includes the 16 overflows identified in Part II, paragraph D, page 7 of NPDES Permit No. 2PF00001*ID, the Fulton Street overflow identified in paragraph 6 (b), and any additional overflows which Defendant Sandusky may discover, in its wastewater collection and treatment system in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Submittal of Work Plan which at a minimum provides for (i) characterization of the sewage flow generated by Erie County and (ii) characterization of all combined sewer overflows.	<u>(completed)</u>
(b) Completion of work in the approved Work Plan.	<u>January 17, 1996</u>
(c) Submittal of General Plan with recommendations, which shall include implementation schedules and a final compliance date, for the adequate treatment of all sanitary sewer flows and the elimination of water quality impacts of all combined sewers.	<u>January 15, 1997</u>

Ohio EPA will then review the General Plan. If Ohio EPA determines that the Final Report is deficient, Defendant Sandusky shall submit a revised General Plan to Ohio

EPA which corrects all stated deficiencies within twenty (20) days of written notice from Ohio EPA. Defendant Sandusky shall implement the General Plan as approved by Ohio EPA. Furthermore, all work required by the approved General Plan shall be completed by the dates set forth in the approved implementation schedules and the approved final compliance date.

9. The approved General Plan is an enforceable part of this Consent Order. The approved General Plan, which includes the implementation schedules and final compliance date, is incorporated into this Order as if fully set forth herein. Furthermore, noncompliance with the implementation schedules and final compliance date in the approved General Plan shall subject Defendant Sandusky to stipulated penalties as set forth in Section XII., paragraphs 20 and 21.

VI. OTHER INJUNCTIVE RELIEF

10. Defendant Sandusky is order and enjoined to conduct the following requirements:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Police the areas surrounding all seventeen (17) combined sewer overflows identified in (i) NPDES Permit No. 2PF00001*ID or any renewals of such permit and (ii) in Attachment A. Policing the areas shall include at a minimum collecting all debris resulting from the overflow discharge. A written report of this policing shall be included in the remarks section of the Monthly Operating Report.	<u>immediately</u>
(b) Complete installation of permanent warning signs at all (17) combined sewer overflow areas.	<u>(completed)</u>

- (c) Submit written strategy regarding actions to be implemented to address, on an interim basis, excessive peak and average sanitary flows from Erie County. (completed)
- (d) Implement Ohio EPA approved written strategy. December 1, 1994
- (e) Submit a combined sewer operational plan. June 1, 1995

If Ohio EPA determines that the operational plan is deficient, Defendant Sandusky shall submit a revised operational plan to Ohio EPA which corrects all stated deficiencies within twenty (20) days of written notice from Ohio EPA. Defendant Sandusky shall implement the operational plan as approved by Ohio EPA.

VII. REPORTING REQUIREMENT

11. Within seven (7) days from the completion date of each task listed in Sections V. and VI., Defendant Sandusky is ordered to submit a written report stating whether it has performed the actions set forth therein to the Ohio EPA's Northwest District Office, Division of Surface Water.

VIII. NOTIFICATION AND LOGS

12. Sandusky shall notify Ohio EPA Northwest District Office, at (419) 352-8461 during weekdays from 7:00 a.m. to 5:00 p.m., and Ohio EPA at 1-800-282-9378 during other times, within seven (7) days upon discovery of combined sewer station overflows. Sandusky shall also provide a detailed written description of the length of time of overflow and the estimated amount of overflow. This letter shall be sent to Ohio EPA, Northwest District Office.

13. Within one (1) hour of discovery of a combined sewer station overflow,

Defendant Sandusky shall provide notice to the public of such release by erecting a temporary warning sign, in addition to the permanent sign required by paragraph 10 (b) of this Consent Order, at the overflowing combined sewer station and all marinas, boat docks and boat fueling stations within a one-half mile radius of the overflowing combined sewer station. The temporary sign shall be yellow with red letters. The red lettering shall be at least one inch in size for the signs to be placed at the marinas, boat docks and boat fueling stations and least five inches in size for the signs to be placed at the overflowing combined sewer location. The warning on the temporary sign to be placed at the marinas, boat docks, and boat fueling stations shall be the following:

WARNING

RAW SEWAGE IS OR HAS BEEN DISCHARGED INTO SANDUSKY BAY/MILLS CREEK/PIPE CREEK FROM ONE OR MORE CITY OF SANDUSKY COMBINED SEWER OVERFLOWS LOCATED ALONG THE BAYSHORE. DIRECT BODY CONTACT IN THAT AREA MAY RESULT IN ADVERSE HEALTH EFFECTS. FOR FURTHER INFORMATION CONTACT THE CITY OF SANDUSKY AT 419-627-5844 OR 419-627-5863.

The warning on the temporary sign to be placed at overflowing combined sewer location shall be the following:

WARNING

RAW SEWAGE IS OR HAS BEEN DISCHARGED INTO SANDUSKY BAY/MILLS CREEK/PIPE CREEK FROM A CITY OF SANDUSKY COMBINED SEWER OVERFLOW LOCATED HERE. DIRECT BODY CONTACT IN THIS AREA MAY RESULT IN ADVERSE HEALTH EFFECTS. FOR FURTHER INFORMATION CONTACT THE CITY OF SANDUSKY AT 419-627-5844 OR 419-627-5863.

14. Sandusky shall inspect the combined sewer overflow stations for debris accumulation, during the periods of operation at each outfall and will promptly remove such accumulations as they are discovered, or as reported to City officials. A written log shall be kept of all inspections. This log shall include such items as: a) date and time of inspection and individual performing inspection, b) active status of the CSO station, c) any evidence of overflows, (any overflow occurring at the time of the inspection or evidence of occurrence of overflows since previous inspection), d) odors detected since previous inspection of the CSO station, e) any observations of unusual conditions.

IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

15. Performance of the terms of this Consent Order by Defendant Sandusky is not conditioned on the receipt of any federal or state grant loans or funds. In addition, Defendant Sandusky's performance is not excused by the failure to obtain or shortfall of any federal or state grant loans or funds, or by the processing of any applications for the same.

X. CIVIL PENALTY

16. Defendant Sandusky is ordered, pursuant to RC Section 6111.09, to pay to the State of Ohio a civil penalty of \$30,000, Thirty Thousand Dollars. The penalty shall be paid by delivering to Matt Sanders, Administrative Assistant, Environmental Enforcement Section, Ohio Attorney General, State Office Tower-

25th floor, 30 E. Broad Street, Columbus, Ohio 42366-0410 a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within thirty (30) days from the Court's entry of this Consent Order.

XI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

17. In addition to the civil penalty set forth in Section X. of this Consent Order, and in furtherance of the mutual objectives of the State of Ohio and the City of Sandusky in improving the environment, Defendant Sandusky agrees to and is ordered to contribute \$20,000, Twenty Thousand Dollars to the Ohio Division of Wildlife Wetlands Habitat Fund. This contribution shall finance the Bald Eagle Research and Management Project. This Project is an ongoing study of the bald eagle population in the western Lake Erie basin.

18. The \$20,000, Twenty Thousand Dollar contribution shall be paid by delivering to David Risley, Ohio Division of Wildlife, 1840 Belcher Drive, Columbus, Ohio 43224 certified checks for that amount, payable to the order of "Ohio Division of Wildlife" according to the following payment schedule:

- a \$5,000, Five Thousand Dollar payment by January 31, 1995
- a \$5,000, Five Thousand Dollar payment by February 1, 1995
- a \$5,000, Five Thousand Dollar payment by June 1, 1995
- a \$5,000, Five Thousand Dollar payment by October 1, 1995

The City of Sandusky shall submit a copy of each check to Ohio EPA's Northwest District Office, Division of Surface Water within ten (10) days of payment.

19. In the event that Defendant Sandusky does not contribute the full

\$20,000, Twenty Thousand Dollars to the Ohio Division of Wildlife by December 1, 1995 the remaining balance shall be paid to State of Ohio as a civil penalty. This remaining balance shall be paid as set forth in Section X. and shall be paid by January 1, 1996.

XII. STIPULATED PENALTIES

20. In the event that Defendant Sandusky fails to meet any of the compliance deadlines set forth in Sections V, including the interim implementation schedules set forth in the approved General Plan, VI, VII, and VIII of this Order, Defendant Sandusky shall be liable for and shall pay a stipulated penalty according to the following payment schedule:

- (a) For each day of each failure to meet a requirement up to thirty (30) days--five hundred dollars (\$500.00) per day per violation;
- (b) For each day of each failure to meet a requirement from thirty-one (31) to sixty days (60) --one thousand dollars (\$1000.00) per day per violation;
- (c) For each day of each failure to meet a requirement from sixty-one (61) days to ninety (90) days--two thousand dollars (\$2000.00) per day per violation;
- (d) For each day of each failure to meet a requirement over ninety (90) days--three thousand five hundred dollars (\$3,500.00) per day per violation.

21. In the event that Defendant Sandusky fails to meet the final

compliance date set forth in the approved General Plan, Defendant Sandusky shall be liable for and shall pay a stipulated penalty according to the following payment schedule:

- (a) For each day of each failure to meet a requirement up to thirty (30) days--fifteen hundred (\$1500.00) per day per violation;
- (b) For each day of each failure to meet a requirement from thirty-one (31) to sixty (60) twenty-five hundred dollars (\$2500.00) per day per violation;
- (c) For each day of each failure to meet a requirement over sixty (60) days five thousand dollars (\$5000.00) per day per violation.

22. Except as provided by paragraph 6 regarding Loading Discharge Limitations, in the event that Defendant Sandusky fails to maintain compliance with the effluent limitations in its then effective NPDES permit, Defendant Sandusky shall immediately and automatically be liable for a stipulated penalty according to the following schedule:

- (a) For each 30 day effluent limitation that is violated, \$1,500.00 dollars for each violation. If the same 30 day effluent limitation is violated a second time, \$3,500.00 for the second violation. If the same 30 day effluent limitation is violated a third time, \$5,500.00 for the third violation. For the same 30 day effluent limitation that is violated thereafter, \$7,500.00 for each violation;
- (b) For each 7 day or daily effluent limitation that is violated \$500.00 dollars for each violation. If the same 7 day or daily effluent limitation is violated

in a second month, \$2,000.00 for each violation in the second month. If the same 7 day or daily effluent limitation is violated in a third month, \$3,500.00 for each violation in the third month. For the same 7 day or daily effluent limitation that is violated thereafter, \$5,500.00 for each violation.

For purposes of computing these stipulated penalties, each separate 30 day effluent discharge violation shall be considered one violation and each separate 7 day effluent discharge violation shall be considered one violation.

23. For violation of any other requirement in NPDES Permit No.2PF00001*ID, and any renewals or modifications thereof, including but not limited to monitoring and reporting requirements \$500.00 for each day each requirement is not met.

24. Any payment required to be made under the provisions of Section XII. of this Consent Order shall be made by delivering to Matt Sanders at the address set forth in paragraph 16, a certified check or checks, for the appropriate amounts within thirty (30) days from the date of the failure to meet the requirement of this Consent Order, made payable to "Treasurer, State of Ohio".

XIII. RETENTION OF JURISDICTION

25. The Court will retain jurisdiction of this action for the purpose of enforcing the terms and provisions of this Consent Order.

XIV. COSTS

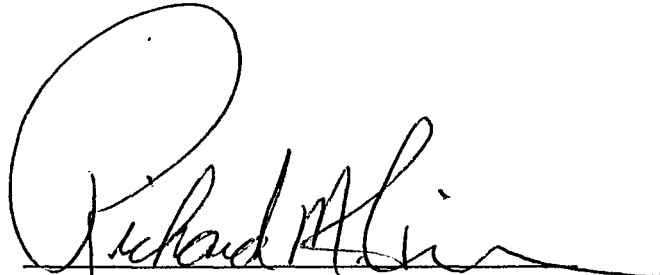
26. Defendant Sandusky is hereby ordered to pay the costs of this action.


Entered this _____ day of _____, 199 .

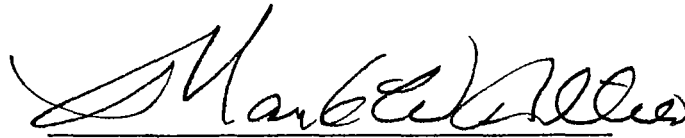

JUDGE, ERIE COUNTY, OHIO
COURT OF COMMON PLEAS

APPROVED:

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


AUTHORIZED REPRESENTATIVE
CITY OF SANDUSKY


TIMOTHY J. KERN (0034629)
Assistant Attorneys General
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MARK REPP
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IN THE COURT OF COMMON PLEAS
ERIE COUNTY, OHIO

FILED
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ERIE COUNTY
COMMON PLEAS COURT

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

Plaintiff,

vs.

CITY OF SANDUSKY,

Defendant.

: CASE NO. 95-CV-053

: JUDGE BEVERLY MCGOOKEY

: CONSENT ORDER AMENDMENT

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General (hereinafter "Plaintiff") and Defendant City of Sandusky (hereinafter "Sandusky") consented to the entry of this Order by the Court on February 27, 1995.

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the parties to this Consent Order Amendment, it is hereby ORDERED, ADJUDGED AND DECREED that the Consent Order entered by the Court on February 27, 1995 shall be amended by deleting paragraph 13.; adding paragraphs 13. (a), 13. (b), and 13. (c); adding paragraph 16. (a); and adding paragraph 17. (a).

VIII. NOTIFICATION AND LOGS

13. (a) As required by paragraph 10 (b) of this Consent Order, Defendant Sandusky has erected 17 permanent warning signs. At the location of these signs, Defendant Sandusky has erected 17 additional warning signs which face outward towards Sandusky Bay, Mills Creek, and Pipe Creek. These additional 17 signs shall be maintained.

13. (b) Defendant Sandusky has: (1) submitted a copy of a warning letter and warning sign to marinas, boat docks and boat fueling stations; and, (2) posted a warning sign at or near public/patron access areas, with unobstructed view at the following locations, Sandusky Boat Launch and Sandusky Sailing Club.

13. (c) Within one (1) hour of discovery of a combined sewer station overflow during the period of May 1st through October 31st, Defendant Sandusky shall provide notice to the public of such release by attaching a metal plate containing the word "ACTIVE" to both sides of the permanent signs at the location of the discharge. The word "ACTIVE" shall be at least 6 inch letters and shall be in red on a white background. The metal plates shall remain attached and visible until the discharge has ceased. If a combined sewer overflow is discovered during night time hours, the above notice shall be provided by 7:30 a.m. the next day.

X. CIVIL PENALTY

16. (a) Defendant Sandusky is ordered, pursuant to O.R.C. Section 6111.09, to pay to the State of Ohio an additional civil penalty of Two Thousand Dollars (\$2,000.00). The penalty shall be paid by delivering to Jena Suhadolnik, Administrative Assistant, Environmental Enforcement Section, Ohio Attorney General, State Office Tower-25th floor, 30 E. Broad Street, Columbus, Ohio 42366-0410 a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within fifteen (15) days from the Court's entry of this Consent Order

Amendment. Payment of this civil penalty and the supplemental environmental project shall satisfy the stipulated penalties, from February 27, 1995 until entry of this Consent Order Amendment, for violation of the notification requirements set forth in Section VIII., paragraph 13.

XI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

17. (a) Defendant Sandusky agrees to and is ordered to contribute an additional Two Thousand Five Hundred Dollars (\$2,500.00) to the Ohio Department of Natural Resources- Division of Wildlife. This contribution shall help finance the Unit C Valve Replacement/ Dike Repairs in the Pipe Creek Wildlife Area. This contribution shall be paid by delivering to Bill Roshak, Assistant Wildlife Management Supervisor, Wildlife District Two, 952-A Lima Avenue, Findlay, Ohio 45840 a certified check for that amount, payable to the order of "Ohio Division of Wildlife" within fifteen (15) days from the Court's entry of this Consent Order Amendment. Defendant Sandusky shall submit a copy of the canceled check to Ohio EPA's Northwest District office, Division of Surface Water within forty-five (45) days of payment.

IT IS SO ORDERED.

Entered this ____ day of _____, 1997.

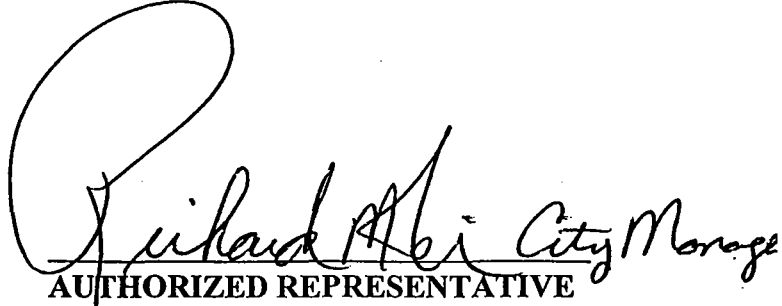
**JUDGE BEVERLY MCGOOKEY
ERIE COUNTY COURT OF
COMMON PLEAS**

APPROVED:

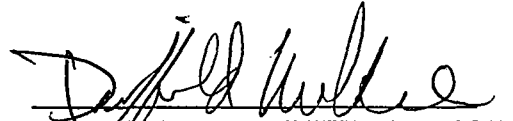
STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO


TIMOTHY J. KERN (0034629)

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RICHARD A. CITY MANAGER
AUTHORIZED REPRESENTATIVE
CITY OF SANDUSKY

CITY OF SANDUSKY
LAW DIRECTOR


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IN THE COURT OF COMMON PLEAS
ERIE COUNTY, OHIO

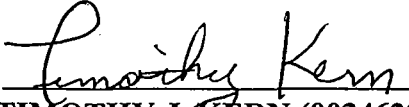
STATE OF OHIO, ex rel. : CASE NO. 95-CV-053
BETTY D. MONTGOMERY, ATTORNEY :
GENERAL OF OHIO : JUDGE BEVERLY MCGOOKEY
:
Plaintiff, :
:
vs. :
:
CITY OF SANDUSKY :
:
Defendant. :

JOINT MOTION FOR ENTRY OF CONSENT ORDER AMENDMENT

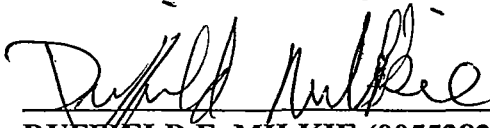
Plaintiff, State of Ohio, and Defendant, City of Sandusky, request this Court to enter the Consent Order Amendment attached hereto. The Parties request this Court to enter the Consent Order Amendment as executed by the State of Ohio and the City of Sandusky in December, 1997.

Respectfully submitted,

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


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