

IN THE  
COURT OF COMMON PLEAS  
CHAMPAIGN COUNTY, OHIO

ORIGINAL

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

Plaintiff,

vs.

THE CITY OF URBANA, OHIO,

Defendant.

CASE NO. 97 CV 169

JUDGE \_\_\_\_\_

C-07

CONSENT ORDER

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DIANNE COOPER CLERK  
COMMON PLEAS COURT  
CHAMPAIGN COUNTY, OHIO

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio ("State") by its Attorney General, Betty D. Montgomery, and Defendant, the City of Urbana, Ohio (hereinafter referred to as "Urbana" or "Defendant") 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**

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 Urbana under Chapter 6111 of the Ohio Revised Code ("O.R.C."), and venue is proper in this Court.

**II. PARTIES**

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 Urbana ordered to provide a copy of this Consent Order to each contractor it employs to perform the work itemized herein if said contractor is employed after the entry of this Consent Order. In addition, Defendant is ordered to require each general contractor, employed after the entry of this Consent Order, to provide a copy of this Consent Order to each of its subcontractors for such work.

### III. SATISFACTION OF LAWSUIT

A. The State alleges in its Complaint that Defendant Urbana 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 its National Pollutant Discharge Elimination System ("NPDES") permit issued by the Director of Environmental Protection ("Director") and in violation of the water pollution control law of the State of Ohio, *i.e.*, O.R.C. Chapter 6111 and the rules adopted thereunder.

B. Nothing in this Consent Order or any document incorporated herein by reference shall constitute an admission by Defendant of any legal or factual matter set forth herein or in the Complaint.

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

D. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief for claims or conditions not alleged in the Complaint, including violations which occur after the filing of this Consent Order.

**IV. PERMANENT INJUNCTION**

A. Defendant Urbana is hereby permanently enjoined and ordered to immediately comply with the requirements of O.R.C. Chapter 6111. and the rules adopted thereunder, and its currently effective NPDES permit, No. IPD00011\*JD, and any renewals or modifications thereof.

B. Defendant Urbana is enjoined and ordered to immediately meet the final effluent standards set forth in its NPDES permit, No. IPD00011\*JD, and any renewals or modification thereof.

C. Defendant Urbana is enjoined and ordered to comply with Part II(A) of NPDES Permit No. IPD00011\*JD by having a Class IV Operator maintain its wastewater treatment plant and comply with the requirements of Ohio Administrative Code Rule 3745-7-02

D. Defendant Urbana is further enjoined and ordered to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

E. In the event that Defendant Urbana files an appeal to the Environmental Review Appeals Commission, regarding any term and/or condition of a renewal or modification of its NPDES permits subject to this Consent Order, Defendant shall not be deemed in contempt of the term and/or condition under appeal until the Environmental Review Appeals Commission has issued a final appealable order, Defendant shall comply with the prior effective NPDES permit term and/or condition under appeal. Once a final appealable order is issued by the Board, the State may proceed with any and all appropriate action against Defendant or any other person.

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**V. CONSTRUCTION SCHEDULE INJUNCTION**

Defendant Urbana is enjoined and ordered to complete construction of the improvements

to its wastewater treatment plant as described in the detailed plans approved by Ohio EPA on December 12, 1994 and to immediately attain compliance with the final effluent limitations of its NPDES permit, No. IPD00011\*JD, and any modifications or renewals thereof.

#### **VI. REPORTING REQUIREMENT**

Within seven (7) days from the completion date of each milestone listed above, Defendant Urbana is ordered to submit a written report stating whether it has performed the actions set forth therein to the Ohio EPA's Southwest District Office, Division of Water Pollution Control located at 401 East Fifth Street, Dayton, Ohio 45402.

#### **VII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS**

Performance of the terms of this Consent Order by Defendant Urbana is not conditioned on the receipt of any federal or state grant loans or funds. In addition, Defendant'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.

#### **VIII. EFFECT OF CONSENT ORDER**

This 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 the Director or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

#### **IX. CIVIL PENALTY**

Defendant Urbana is ordered, pursuant to O.R.C. Section 6111.09, to pay to the State a civil penalty of Twenty-five Thousand Dollars (\$25,000.00). The penalty shall be paid by

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delivering a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within forty-five (45) days of the Court's entry of this Consent Order to Jena Suhadolnik, Administrative Assistant, or her successor, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

**X. SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

A. In addition to the civil penalty set forth in Part IX of this Consent Order and in furtherance of the mutual objectives of the State of Ohio and Urbana in improving the environment of the Mad River and other surface waters, Urbana agrees and is hereby ordered to spend at least Forty Thousand Dollars (\$40,000.00) on supplemental environmental projects. The supplemental environmental projects envisioned under this Order and proposed by Urbana shall have a real benefit to the environment and be acceptable to the Ohio EPA. Urbana shall complete the projects that are the subject of this provision within two (2) years of the entry of this Consent Order.

B. In the event that Defendant fails to spend the entire forty thousand dollars upon supplemental environmental projects or fails to complete said projects within two years of the date of entry of this Consent Order, the remainder of the forty thousand dollars either not spent on a project or earmarked for a project that is not completed at the end of two years, shall be paid to the State as a civil penalty pursuant to and in the same manner described in Section IX of this Consent Order.

**XI. STIPULATED PENALTIES**

A. In the event that Defendant Urbana fails to meet any of the requirements of this Consent Order set forth in Article V, Defendant shall be liable for and shall pay a stipulated

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penalty according to the following payment schedule:

1. For each day of each failure to meet a requirement up to thirty (30) days -- two thousand dollars (\$2,000.00) per day per violation;
2. For each day of each failure to meet a requirement from thirty-one (31) to sixty days (60) -- four thousand dollars (\$4,000.00) per day per violation;
3. For each day of each failure to meet a requirement from sixty-one (61) to ninety (90) days -- six thousand dollars' (\$6,000.00) per day per violation;
4. For each day of each failure to meet a requirement from ninety-one (91) to one hundred twenty (120) days -- eight thousand dollars (\$8,000.00);
5. For each day of each failure to meet a requirement for the one hundred twenty-first (121) day and beyond -- ten thousand dollars (\$10,000.00).

B. Any payment required to be made under the provisions of Paragraph A of this

Article shall be made by delivering a certified check, or checks, for the appropriate amounts within forty-five (45) days from the date of the failure to meet the requirement of this Consent Order, made payable to "Treasurer, State of Ohio to the attention of Jena Suhadolnik, Administrative Assistant, or her successor, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Fl., Columbus, Ohio 43215-3428.

## XII. POTENTIAL FORCE MAJEURE

A. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Defendant Urbana shall notify the Ohio EPA in writing within ten (10) days of being on notice 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 Urbana to prevent or minimize the delay, and the timetable by which measures will be implemented. Defendant Urbana will adopt all reasonable measures to avoid or minimize any such delay

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B. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendant Urbana may raise whether 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 Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and 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 Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant Urbana 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 Urbana to comply with the notice requirements of Paragraph A shall render this Paragraph 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 the Defendant Urbana qualifies for an extension of a subsequent compliance date or dates. Defendant Urbana must make an individual showing or proof regarding each incremental step or other requirement of 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.

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**XIII. RETENTION OF JURISDICTION**

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

**XIV. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK**

A. The parties agree and acknowledge that final approval by the Plaintiff and Defendant, and entry of this Consent Order is subject to the requirement of 40 C.F.R. §123(d)(1)(iii), which provides for notice of the lodging of this Consent Order, opportunity for public comment, and the consideration of any public comment. Both the State and Defendant, reserve the right to withdraw this Consent Order based on comments received during the public comment period. Defendant shall pay the cost of publishing the public notice.

B. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is 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.

**XV. AUTHORITY TO ENTER INTO THE CONSENT ORDER**

Each signatory for Defendant represents and warrants that he/she has been duly authorized to sign this document and so bind Defendant to all terms and conditions thereof. Each signatory for Defendant shall submit with this Consent Order an authenticated and certified resolution from Defendant establishing that he/she is so empowered to sign for and bind Defendant.

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**XVI. COSTS**

A. Defendant Urbana is hereby ordered to pay the costs of this action.

B. Defendant is hereby ordered to pay the costs incurred by the Ohio EPA for the publication of the Consent Order in Ohio EPA's Weekly Review and a newspaper of general circulation. Defendant shall pay the costs associated with publication by delivering a certified check payable to: "Treasurer, State of Ohio" and with a notation indicating that the funds are going to "Fund 699" on it, in the amount of the costs, to the Fiscal Officer, Ohio EPA, P. O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43216-1049, within 30 days from the date he receives notice of the costs from Ohio EPA.

Entered this day of \_\_\_\_\_ day of \_\_\_\_\_, 1997.

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*Roger B. McDan*  
\_\_\_\_\_  
JUDGE, COURT OF COMMON PLEAS  
CHAMPAIGN COUNTY, OHIO

Copies by clerk to:

APPROVED:

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

*John Crowley*  
\_\_\_\_\_  
MAYOR  
Authorized Representative of the City  
of Urbana, Ohio

By: *Lori A. Massey*  
\_\_\_\_\_  
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Attorneys for Plaintiff, State of Ohio

Attorney for Defendant, City of Urbana