

IN THE COURT OF COMMON PLEAS
HOLMES COUNTY, OHIO

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

Plaintiff,

vs.

HOLMES COUNTY BOARD OF
COMMISSIONERS, *et al.*,

Defendants.

: CASE NO. 97CV049
:
: JUDGE THOMAS D. WHITE
:
:

: **CONSENT ORDER**
: nunc pro tunc
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FILED
'98 DEC 15 PM 1 08
DOCKETED
COMM. PLEAS COURT
HOLMES COUNTY, OHIO

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio, by its Attorney General (hereinafter "Plaintiff" or "State of Ohio") and Defendant, Holmes County Board of Commissioners (hereinafter "Defendant" or "Holmes County"), hereby agree to the entry of this Consent Order in order to resolve the allegations contained in the Complaint filed in this matter and pursuant to Chapter 6111 of the Ohio Revised Code (hereinafter "R.C.").

NOW THEREFORE, in acknowledgment of those violations in the Complaint which Holmes County has admitted and without trial 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 case. The Complaint states a claim upon which relief is granted against Holmes County under R.C. Chapter 6111. Venue is proper in this Court.

II. PARTIES BOUND

2.1 The provisions of this Consent Order shall apply to and be binding upon the Plaintiff and Defendant Holmes County. Pursuant to Ohio Civil Rule 65(D), the provisions of this Consent Order shall also apply to and be binding upon the Commissioners of the Board of County Commissioners in their representative capacity as Commissioners of the Board, as well as their successors and assigns, officers, agents, servants, employees, attorneys and those persons acting in concert or participating with them who receive actual notice of this Consent Order whether by personal service or otherwise. Nothing herein is intended to expand or limit the scope of Ohio Civil Rule 65(D). Defendant shall provide a copy of this Consent Order to each contractor hired to complete any plans, reports, construction, remedial maintenance, or other obligations in this Consent Order and/or resulting from the activities required by this Consent Order. Defendant shall condition all contracts entered into, for purposes of completing activities and/or improvements required under this Consent Order with a third party, that such contract shall be performed in conformity with the terms of this Consent Order and R.C. Chapter 6111. Defendant shall ensure that its contractors also provide written notice of this Consent Order to all subcontractors hired to perform any portion of the activities or improvements required by this Consent Order and R.C.

Chapter 6111. The Defendant shall remain responsible for insuring that its contractors and subcontractors perform the activities or improvements required hereunder in accordance with this Consent Order and R.C. Chapter 6111.

2.2 Defendant shall provide a copy of this Consent Order to all persons responsible for the operation of its wastewater treatment plant ("WWTP"), and to any successor owner or operator of the WWTP's prior to transfer of any ownership or operational interest. In the event Defendant proposes to sell or transfer real property or operations otherwise subject to this Consent Order, it shall advise the proposed purchaser or transferee of the existence of this Consent Order and shall notify the Ohio EPA of such proposed sale or transfer not later than thirty (30) days prior to transfer of ownership, operation, or other interest. Defendant shall condition the transfer of ownership, operation, or other interest related to the performance of activities under this Consent Order upon compliance with the terms and conditions of this Consent Order and R.C. Chapter 6111.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

3.1 Plaintiff alleged in its Complaint and Defendant has admitted that it has operated its wastewater treatment plants and sewer system (except for the Winesburg WWTP) in such a manner as to result in violations of various requirements of Defendant's National Pollution Discharge Elimination System ("NPDES") permits issued to Holmes County by the Director of Ohio EPA and in violation of the water pollution control laws of the State of Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of (1) the civil claims of the

Ohio EPA against Defendant as set forth in the Complaint, including the claims for injunctive relief and civil penalties, and (2) any additional civil claims for violations of Defendant's NPDES permits reported to the Ohio EPA's Division of Surface Water in Defendant's Monthly Operating Reports from 1990 through the date of entry of this Consent Order. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief for violations not properly reported to Ohio EPA in its monthly operating reports stated above.

3.2 Nothing in this Consent Order shall be construed so as to limit the authority of Plaintiff to seek relief against other appropriate persons for claims or conditions alleged in the Complaint. Except as noted above in paragraph 3.1, nothing in this Consent Order shall be construed so as to limit the authority of the Plaintiff to seek relief against Defendant or other appropriate persons for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint, nor shall anything in this Consent Order limit the right of Defendant to raise any defenses it may have for such claims. Similarly, nothing in this Consent Order shall be construed so as to limit the authority of the Plaintiff 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

4. Defendant is hereby permanently enjoined and immediately ordered to comply with the requirements of R.C. Chapter 6111 and the rules adopted thereunder, and the terms and conditions of its NPDES permits in effect at the time of entry of this Consent Order, and any

renewals or modifications thereof, except as otherwise provided in Section V of this Consent Order. Except as authorized in its NPDES permits, Holmes County shall prevent bypasses of any treatment processes in its wastewater treatment plants, and Holmes County shall properly operate and maintain its wastewater treatment plants, sewerage systems and any associated equipment and structures. All of Defendant's NPDES permits (except for the permit for the Winesburg WWTP) are hereby incorporated herein by reference as if rewritten in full. All renewals, modifications or changes to Holmes County's NPDES permits approved by the Director of Ohio EPA and/or 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. COMPLIANCE SCHEDULES FOR NPDES PERMIT REQUIREMENTS AND OTHER IMPROVEMENTS TO THE PUBLIC SEWER SYSTEM

5.1 Defendant is enjoined and ordered to immediately commence and complete construction of the following improvements to its wastewater treatment plants and sewerage system in order to attain and maintain compliance with all requirements of its NPDES permits in effect at the time of entry of this Consent Order, and any modifications or renewals thereof; to otherwise comply with the requirements of the water pollution control laws of the State of Ohio; and to improve the efficiency and performance of the overall sewerage system in Holmes County in accordance with the following schedule:

(A) BERLIN WWTP

TASK

- (1) Defendant shall submit a complete PTI application and approvable detail plans for upgrade and expansion of the WWTP once the influent flows to the WWTP exceed two hundred twenty-five thousand (225,000) gallons as a 30-day monthly average reported in the monthly operating reports for six (6) out of any twelve (12) month period. Defendants submittal shall be submitted within ninety (90) days after the requirements of this subparagraph are met.
- (2) Within ninety (90) days after receipt of PTI approval from Ohio EPA, Defendant shall commence construction in accordance with the approved PTI.
- (3) Within eight (8) months after commencement of construction, Defendant shall complete construction in accordance with the approved PTI.
- (4) Within forty-five (45) days after completion of construction, Defendant shall attain operational status of capital improvements in accordance with the approved PTI and be in full compliance with the effluent limits of Defendant's then current effective NPDES permit.

(B) MT. HOPE WWTP

TASK

- (1) Submit a complete PTI application and approvable detail plans for an equalization basin and fine bubble diffuser and any other improvements necessary to attain compliance with the NPDES permit, R.C. Chapter 6111 the rules promulgated thereunder and, if applicable, Defendant shall also submit a NPDES permit modification request with the PTI application.
- (2) Commence construction of the improvements in accordance with the approved PTI.
- (3) Complete construction of the improvements in accordance with the approved PTI.

COMPLETION DATE

- (1) Within six (6) months of the date of the entry of this Consent Order.
- (2) Within three (3) months after the PTI approval by Ohio EPA.
- (3) Within six (6) months after Initiation of construction.

- (4) Within forty-five (45) days after completion of construction, Defendant shall attain operational status of capital improvements in accordance with the approved PTI and be in full compliance with the effluent limits of Defendant's then current effective NPDES permit.
- (5) Defendant shall comply with the interim limits of Attachment A from the date of entry of this Consent Order until subparagraph (4) is achieved. After the requirements in subparagraph (4) are met, Defendant shall be in compliance with all final effluent limitations contained within its then-current effective NPDES permit, and any renewals or modification thereof.

(C) WALNUT CREEK WWTP

TASK

COMPLETION DATE

- | | |
|---|--|
| <ul style="list-style-type: none"> (1) Submit a complete PTI application and approvable detail plans for an equalization basin and any necessary improvements to achieve compliance with Defendant's then-current effective NPDES permit, and any renewals or modifications thereof. Along with the PTI, Defendant shall also submit a NPDES permit modification request if applicable. (2) Commence construction of the improvements in accordance with the approved PTI. (3) Complete construction of the improvements in accordance with the approved PTI.. | <ul style="list-style-type: none"> (1) Within nine (9) months of the date of the entry of this Consent Order. (2) Within three (3) months after the PTI approval by Ohio EPA. (3) Within six (6) months after initiation. |
|---|--|

5.2 Within ninety (90) days of the date of entry of this Consent Order, Defendant shall submit a permit modification request for a zero (0) discharging NPDES permit for the October Hill WWTP.

5.3 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 sewerage system. Approval for any such construction or modification or expansion 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. DEFENDANT'S PROGRESS REPORTS AND REPORTING REQUIREMENT

6. Unless otherwise directed by Ohio EPA, beginning at the end of the first quarter after the date of entry of this Consent Order, Defendant shall submit a written progress report to Ohio EPA quarterly at a minimum, each progress report shall:

- A. Identify the site and activity;
- B. Describe the status of the work and actions taken towards achieving compliance with the Consent Order during the reporting period, and activities which are scheduled for the next quarter;
- C. Describe difficulties encountered during the reporting period and actions taken to rectify any deficiencies;
- D. Describe activities planned for the next reporting period;
- E. Identify any changes in key personnel;
- F. List target and actual completion dates for each element of activity, including project completion;
- G. Provide an explanation for any deviation from any applicable schedules; and
- H. Provide a statement of all requirements or improvements listed in Section V of the Consent Order which Defendant has completed during the reporting period.

Defendant shall send the quarterly progress report to:

Ohio EPA
Northeast District Office
Division of Surface Water
2110 East Aurora Road
Twinsburg, Ohio 44087
Attention: John Fritz (or his successor)

Any general plan, other submittal required by the Consent Order, PTI or NPDES permit application(s) or request for revision(s) shall also be sent to the same address above, and the reporting contact person is to the Attention of: John Fritz (or his successor).

VII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

7. Performance with the terms of this Consent Order by Defendants is not conditioned on the receipt of any federal or state grant, loan or funds. In addition, unless the failure to meet an applicable deadline qualifies for an extension under Section XIII or is otherwise extended by agreement of the parties, or by order of the Court, Defendant's performance is not excused by the failure to obtain or shortfall of any federal or state grant, loan or funds, or by the processing of any applications for the same.

VIII. CIVIL PENALTY

8. Within sixty (60) days of the date of entry of this Consent Order, it is hereby ordered that Holmes County shall pay to the State of Ohio a civil penalty of thirty-seven thousand five hundred (\$37,500.00) dollars. The civil penalty payment shall be paid by delivering a certified check for the appropriate amount, made payable to "Treasurer, State of Ohio", to Jena Suhadolnik, or her successor,

at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

IX. SUPPLEMENTAL ENVIRONMENTAL PROJECT

9. In lieu of paying an additional civil penalty in the amount of one hundred thousand (\$100,000.00) dollars, and in furtherance of the mutual objectives of Ohio EPA and Holmes County to improve the environment and reduce the impacts to waters of the State of Ohio, Holmes County shall submit a PTI application and approvable detail plans to Ohio EPA, and after receiving approval of the PTI, Holmes County shall then commence and complete construction of a sewer line(s) to eliminate actual or threatened water quality standard exceedences in residential areas of Holmes County. The sewer project(s) shall cost a total of no less than three hundred thousand (\$300,000.00) dollars and shall be installed and operational within four (4) years after the date of entry of this Consent Order. After receipt of the PTI application(s) and detail plans, Ohio EPA will determine whether the sewer project(s) qualifies as a sewer project(s) to eliminate actual or threatened water quality standard exceedences in residential areas, and evaluate the cost of that project to determine what portion thereof apply to the three hundred thousand (\$300,000.00) dollars of agreed projects. If Holmes County and Ohio EPA cannot agree on whether the sewer project(s) will eliminate actual or threatened water quality standards exceedences in residential areas or cannot agree on the cost of the project, then either party may request that the Court resolve the conflict. Holmes County shall be responsible for timely providing to Ohio EPA all information necessary to demonstrate the appropriateness of the sewer project(s). If a proposed project involves a mix of sewers for non-

residential and residential areas (as described above), Holmes County shall receive credit toward the three hundred thousand dollars (\$300,000.00) for the portion of the sewer(s) which address the residential areas. In the event, Holmes County does not install and have the operational the sewer line(s) described in this paragraph within four (4) years after the date of entry of this Consent Order, Holmes County shall pay to the State of Ohio an additional civil penalty based upon the percentage of the three hundred thousand dollars (\$300,000.00) of acceptable sewer projects(s) not installed within the four (4) year time period, multiplied by one hundred thousand dollars (\$100,000) up to a maximum additional civil penalty of one hundred thousand dollars (\$100,000.00). Such payment shall be made within four (4) years and sixty (60) days after the entry date of this Consent Order in the same manner described in paragraph 8 of this Consent Order.

X. STIPULATED PENALTIES

10. In the event that the Holmes County fails to meet any of the compliance deadlines set forth in paragraphs 5.1 and 5.2 (and its subparts of this Consent Order), the requirements of paragraphs 2.1, 2.2, 6, 8 and 9, and/or any failure to comply with Holmes County's NPDES permit terms or conditions (excluding the Winesburg, County Jail and October Hills WWTPs), Holmes County shall pay a stipulated penalty according to the following schedule:

- (1) For each day of each failure to meet the applicable requirement of this Consent Order and/or failure to comply with the applicable NPDES permit term or condition up to fifteen (15) days - two hundred dollars (\$200.00) per day per requirement not met and/or other failure;
- (2) For each day of each failure to meet the applicable requirement of this Consent Order and/or

failure to comply with the applicable NPDES permit term or condition over sixteen (16) to thirty (30) days - four hundred dollars (\$400.00) per day per requirement not met and/or other failure;

(3) For each day of each failure to meet the applicable requirement of this Consent Order and/or failure to comply with the applicable NPDES permit term or condition from thirty-one (31) to sixty days (60) - seven hundred and fifty dollars (\$750.00) per day per requirement not met and/or other failure; and

(4) For each day of each failure to meet the applicable requirement of this Consent Order and/or failure to comply with the applicable NPDES permit term or condition over (61) days - one thousand dollars (\$1,000.00) per day per requirement not met and/or other failure.

For purposes of calculating stipulated penalties for seven (7) day and thirty (30) day effluent limitation violations under this provision of this Consent Order, Plaintiff agrees to treat each seven (7) day and thirty (30) day effluent limitation violation as a single day of violation, respectively.

11. Any payment required to be made under the provisions of Section IX of this Consent Order shall be made by delivering to Jena Suhadolnik, or her successor, at the address set forth in Section VIII, paragraph 8, 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 or NPDES permit violation, made payable to "Treasurer, State of Ohio". Defendant shall also state in writing the specific failure of the Consent Order and/or NPDES permit effluent or monitoring requirement term or condition which was not complied with, and the date(s) of non-compliance. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff for specific failures or violations pursuant to Section IX shall not be construed to limit

Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order.

XI. TERMINATION OF STIPULATED PENALTIES

12. The provisions set forth in Article IX of this Consent Order requiring the payment of stipulated penalties may be terminated on an individual basis for each of Defendant Holmes County's Walnut Creek, Mt. Hope and Berlin WWTPs upon a demonstration by Defendant that: (1) the individual WWTP has successfully completed all applicable requirements outlined in Section V; (2) Holmes County has paid all penalties and costs required by this Consent Order; and (3) the individual WWTP has achieved and maintained consistent compliance with the final effluent limitations contained in its currently effective NPDES permit, along with the other terms and conditions of said permit, and any renewals or modifications thereof for a period of twelve (12) consecutive months after the date of entry of this Consent Order.

13. Termination of the stipulated penalty section of this Consent Order shall only be by order of the Court upon application by any party, and a demonstration that the conditions outlined in paragraph 12 have been met.

XII. MISCELLANEOUS

14. Nothing in this Consent 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.

XIII. POTENTIAL FORCE MAJEURE

15. If any event occurs which causes or may cause a delay in Defendant's compliance with any requirement of this Consent Order, Defendant shall notify the Ohio EPA in writing within ten (10) days from when the Defendant knew, or by the exercise of due diligence should have known, of the event. The notification to Ohio EPA shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by the Defendant to prevent or minimize the delay, and the timetable by which those measures will be implemented. Defendant shall adopt all reasonable measures to avoid or minimize any such delay.

16. 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 limitations, 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, if ever, that a court proceeding to enforce this Consent Order is commenced by the Plaintiff. At that time, Defendant will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or a change in Holmes County's 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 timely comply with the notice requirements of this Section shall render this Section 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 date based on a particular incident does not mean that Defendant qualifies for an extension of a subsequent 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 Defendants of any rights or defenses it may have under applicable law.

XIV. RETENTION OF JURISDICTION

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

XV. COSTS

18. Holmes County is hereby immediately ordered to pay the court costs of this action.

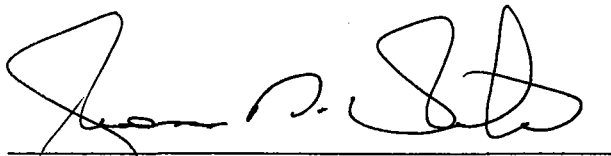
XVI. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

19. 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. §123.27 (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. The Plaintiff and Defendant, reserve the right to withdraw consent to this Consent Order based on comments received during the public comment period. Defendant shall pay the cost of publishing the public notice.

20. Upon the signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three 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:

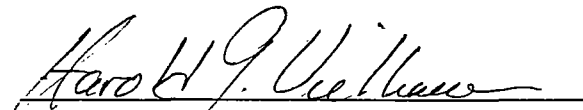


**JUDGE THOMAS D. WHITE
HOLMES COUNTY
COURT OF COMMON PLEAS**

12/15/96
DATE

APPROVED:

**BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO**



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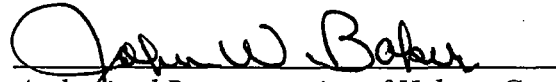
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*Attorneys for Holmes County Board of
Commissioners*


*Authorized Representative of Holmes County,
President of Commissioners*

(NAME)

With approval by Resolution

Dated Dec 14, 1998

ATTACHMENT A

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS for outfall 3PG00135001:

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
Reporting Code	Units	Parameter	Concentration		Loading*		Meas. Freq.	Sample Type
			Specified	Units	30 day	7 day		
00010	°C	Temperature	-	-	-	-	Daily	Grab
00083	Units	Color, Severity (1)	-	-	-	-	Daily	Observation
00530	mg/l	Total Suspended Solids	121	-	-	-	1/2weeks	Grab
00610	mg/l	Nitrogen, Ammonia (NH ₃)						
		(Summer)	3.6	5.4	0.3	0.45	1/2weeks	Grab
		(Winter)	13.1	-	-	-	1/2weeks	Grab
01330	Units	Odor, Severity (1)	-	-	-	-	Daily	Observation
01350	Units	Turbidity, Severity (1)	-	-	-	-	Daily	Observation
31616	#/100ml	Fecal Coliform (Summer Only)	1000	2000	-	-	1 / month	Grab
50050	MGD	Flow	-	-	-	-	Daily	Continuous
80082	mg/l	CBOD ₅	13.2	-	-	-	1/2weeks	Grab

1. 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 1/2 weeks by grab sample.
2. If the entity uses chlorine for disinfection, the Chlorine Residual (Reporting Code 50060) shall be maintained at a level not to exceed 0.5 mg/l and shall be monitored 1/2 weeks by grab sample.**
3. The Dissolved Oxygen (Reporting Code 00300) shall be maintained at a level of not less than 4.0 mg/l and shall be monitored 1/2 weeks by grab sample.

* The average effluent loading limitations are established using the following flow value: 0.015 MGD.

** See Part II, Item H of NPDES permit 3PG00135.

(1) See Part II, Item D of NPDES permit 3PG00135.