

IN THE COURT OF COMMON PLEAS
HOLMES COUNTY, OHIO

STATE OF OHIO, ex. Rel.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO
PLAINTIFF

CASE NO. 97 CV 049 (PART B)

JUDGE THOMAS D. WHITE

CONSENT ORDER

VS.

THE HOLMES COUNTY GENERAL
HEALTH DISTRICT

And

DR. MAURICE MULLET
DEFENDANTS

FILED
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DOUGLAS L. MULLEN, CLERK
COMMON 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 (herein after "Plaintiff" or "State of Ohio") and Defendants, the Holmes County General Health District and Dr. Maurice Mullet (herein after the "Defendants") hereby consent to entry of this Consent Order in order to resolve the allegations contained in the Complaint filed in this matter which the Court has designated as Part B (Counts Twenty Three and Twenty Four of the Twenty Four of the First Amended Complaint) and pursuant to Chapter 6111 of the Ohio Revised Code (herein after "R.C.").

NOW THEREFORE, without trial of any issue of law or of fact, and upon the consent of the parties hereto, it is **ORDERED, ADJUDGED** and **DECREED**:

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 the Defendants under R.C. Chapter 6111. Venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply and be binding upon the Plaintiff and Defendants, Defendants' agents, officers, employees, assigns, successors in interest and any person acting in concert or private with any of them. Defendants shall provide a copy of this Consent Order to each agent or consultant and employee to perform the work itemized herein.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

3. Plaintiff alleged in its Complaint that Defendants usurped the Director of the Ohio Environmental Protection Agency's ("Ohio EPA") authority by granting unauthorized wastewater discharge permits, variances, plan approvals, permits to install ("PTI") and permits to operate ("PTO") for commercial and semi-public wastewater disposal systems in violation of R.C. Chapter 6111 and the rules promulgated thereunder. The Complaint further alleges that the Defendants' issuance of unauthorized discharge permits, variances, plan approvals, PTIs and PTOs for commercial and semi-public wastewater discharge disposal systems violated Ohio's water quality criteria set forth in Ohio Administrative Code ("O.A.C.") Chapter 3745-1. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by the Defendants for all claims of violations alleged in the Complaint, including the claims for Injunctive Relief and Civil Penalties.

4. Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against other appropriate persons for claims or conditions alleged in the Complaint. Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against Defendants or other appropriate persons for claims or conditions not alleged in the Complaint, including violations which occur after the filing of this Consent Order, nor shall anything in this Consent Order limit the right of the Defendants to any defenses they may have for such claims. Similarly, nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to undertake any action against any person, including the Defendants, to eliminate or mitigate conditions which may present a threat to the public health, welfare or the environment.

IV. PERMANENT INJUNCTION

5. The Defendants are hereby permanently enjoined and immediately ordered to comply with the requirements of R.C. Chapter 6111 and the rules adopted thereunder. Moreover, this Consent Order prohibits the Holmes County General Health District through the Board of Health, and Dr. Mullet from issuing any discharge permits, variance, plan approvals, PTIs and PTOs for "commercial and semi-public" wastewater disposal systems; including but not limited to variances for holding tanks, discharging and non-discharging wastewater disposal systems.

6. Within ninety (90) days of the effective date of this Consent Order, the Defendants, Holmes County General Health District and Dr. Maurice Mullet will, exercising due diligence, provide to the Ohio Environmental Protection Agency, Northeast District Office, an accurate list of all discharging permits, variances, plan approvals, PTIs and PTOs for commercial and semi-public wastewater disposal systems, and permits to install wastewater holding tanks for commercial and semi-public facilities issued by the Defendants on behalf of the Holmes County Board of Health from May 1984 through the date of this Consent Order. This list shall provide the name of the owner of the system, the location (address and political subdivision), type of system (i.e., septic tank or holding tank) and the installation date.

7. Within ninety (90) days of the effective date of the Consent Order, Defendant Dr. Maurice Mullet, the Holmes County Health Commissioner, on behalf of the Holmes County Board of Health and the Holmes County General Health District shall write a letter to all persons who received a discharge permit, variance, plan approval, PTI or PTO from the Holmes County Board of Health or Holmes County General Health District for the period from May, 1984, through the date of the Consent Order stating that the permits received from the Holmes County Board of Health and/or the Holmes County General Health District were insufficient, under Ohio law R.C. Chapter 6111, to grant legal authority to install and operate the wastewater disposal system installed by persons of Holmes County. The letter shall inform and advise these individuals that in order to operate their wastewater disposal system in a lawful manner, they must now obtain a permit to install and/or an NPDES permit, whichever is applicable, from the Ohio EPA. The letter shall also inform these individuals that an escrow account, as established by paragraph 8, has been established to partially cover

their costs of the Ohio EPA application fee. A copy of the letter is attached hereto as Attachment A. The Holmes County Board of Health, on behalf of the Defendant Holmes County General Health District, will also cause a notice to be published in a newspaper of general circulation in the Holmes County General Health District restating the information contained in the above described letter. A copy of this notice is attached as Attachment B. Within forty-five (45) days of the effective date of this Consent Order, Defendants shall submit to Ohio EPA copies of the public notice published in the newspaper.

8. Within one hundred twenty (120) days of the effective date of this Consent Order, the Holmes County Board of Health, on behalf of the Defendant, Holmes County General Health District, will establish an escrow account in the amount of Fifteen Thousand Dollars (\$15,000.00). Within sixty (60) days of the effective date of this Consent Order, Defendants shall submit to Ohio EPA copies of the resolution establishing the escrow account. The amount of the escrow account estimates the fees received by the Holmes County Board of Health and Defendant, Holmes County General Health District for discharge permits, variances, plan approvals, PTIs and PTOs for commercial and semi-public wastewater disposal systems issued during the period from May, 1984, through the date of the Consent Order. Persons who obtained discharge permits, variances, plan approvals, PTIs and PTOs for commercial and semi-public wastewater disposal systems from the Defendants during the period described above but who failed to obtain the necessary plan approval and/or PTI and/or National Pollution Discharge Elimination System ("NPDES") permit from Ohio EPA, may receive refunds from this account to partially cover the cost of their Ohio EPA PTI or NPDES permit application fee.

9. All persons who by March 31, 1999 received a discharge permit, variance, plan approval, PTI and/or PTO for commercial and semi-public wastewater disposal systems from Defendants, and submits an application with the appropriate fee to Ohio EPA for a plan approval, PTI and/or NPDES Permit, where applicable, shall be reimbursed their prorated share of the escrow account established pursuant to Paragraph 8. The applicant is responsible for the initial Ohio EPA application fee of Two Hundred Dollars (\$200.00) per application plus .065% of the project cost. After March 31, 1999, the Fifteen Thousand Dollars (\$15,000.00) escrow account will be equally divided between the number of applicants (prorated share) who applied prior to March 31, 1999 to cover the Ohio EPA application fee

costs. The amount paid to each applicant shall not exceed the application fee paid to Ohio EPA. Any and all money remaining in the escrow account on May 31, 1999 shall be paid to the Ohio EPA on or before June 30, 1999 to cover any additional costs of processing permits under this Consent Order.

10. Within six (6) months of the effective date of this Consent Order the Defendant, Holmes County General Health District, through the Holmes County Board of Health shall enter into a contract with Ohio EPA pursuant to H.B. 110, (R.C. 3709.085) to assist Ohio EPA with the inspection of semi-public and commercial sewage disposal systems serving commercial operations within the Holmes County General Health District and authorize the collection of a fee for such inspection program.

11. Defendant Holmes County General Health District through the staff of the Holmes County Board of Health will act as a liaison between the Ohio EPA and persons seeking a PTI from Ohio EPA for semi-public and commercial sewage disposal systems in the Holmes County General Health District. The Holmes County Board of Health staff will advise all persons proposing new or expanded commercial or semi-public operations, that a PTI from Ohio EPA is required prior to the start of construction; receive the application and fee from the applicant for the Ohio EPA PTI and forward each to the Ohio EPA, Northeast District Office; schedule site evaluations with the appropriate Ohio EPA district staff and the applicant; and participate in site evaluations. As part of H.B. 110 contract, identified in Paragraph 10 above, the Ohio EPA will place a condition on all plan approvals and PTIs for semi-public and commercial sewage disposal systems in the Holmes County General Health District requiring the applicant to obtain a "Certificate of Installation" from the Holmes County Board of Health and pay any fee required by the Holmes County Board of Health for such certification. The certificate of installation will document that the sewage disposal system was installed in accordance with the approved Ohio EPA plans and/or PTI. In addition, the staff of the Holmes County General Health District will cooperate with Ohio EPA, Northeast District office staff in identifying all semi-public and commercial facilities which shall tie into a sewer system; upgrade the existing system or allow the existing system to remain with certain conditions set out by Ohio EPA.

12. The Defendant, Holmes County General Health District shall not issue a license or plan approval for any sludge site operators or equipment.

13. The Holmes County General Health district through the Holmes County Board of Health will revise Holmes County Board of Health Regulation 801 in order to comply with R.C. 6111, the regulations promulgated thereunder and this Consent Order. The Defendant, Holmes County General Health District, through the Holmes County Board of Health will submit the revised Regulation 801 to Ohio EPA, Northeast District Office for review and comment before adopting the revised regulation.

V. REPORTING REQUIREMENTS

14. All reporting and/or review requirements of Section IV requiring Ohio EPA approval, consent or acceptance shall be sent to the following address: Ohio EPA Northeast District Office, Division of Surface Water, 2110 E. Aurora Road, Twinsburg, Ohio 44087 attention: John Fritz (or his successor).

VI. COMPLIANCE NOT DEPENDENT ON LOANS OR GRANTS

15. Performance with the terms of this Consent Order by the Defendants is not conditioned on the receipt of any Federal or State grant, loan or funds. In addition, the Defendants performance is not excused by failure to obtain or shortfall of any Federal or State grant, loan or funds, or by processing of any applications for the same.

VII. CIVIL PENALTY

16. Within thirty (30) days of the effective date of this Consent Order, it is hereby ordered that the Defendants, the Holmes County General Health District and Dr. Maurice Mullet shall collectively pay to the State of Ohio a civil penalty of Ten Thousand Dollars (\$10,000.00). 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.

VIII. STIPULATED PENALTIES

17. Except as set forth below in Paragraph 18, in the event that the Defendants fail to meet any of the compliance deadlines set forth in Section IV (Paragraphs 5 through 13 of this Consent Order), Defendants shall pay a stipulated penalty according to the following schedule:

1. For each day of each failure to meet a requirement of Section IV of this Consent Order up to thirty (30) days – Five Hundred Dollars (\$500.00) per day per requirement not met;
2. For each day of each failure to meet a requirement of Section IV of this Consent Order from thirty-one (31) to sixty (60) days – Seven Hundred Fifty Dollars (\$750.00) per day per requirement not met;
3. For each day of each failure to meet a requirement of Section IV of this Consent Order over sixty-one (61) days – One Thousand Dollars (\$1,000.00) per day per requirement not met.

18. Stipulated penalties will not apply for failure to meet the compliance deadlines set forth in Paragraph 10. However, the Holmes County Board of Health is prohibited from issuing the Certificate of Installation identified in Paragraph 11 until the Holmes County Board of Health executes the H.B. 110 contract.

19. Any payment required to be made under the provisions of Section VIII of this Consent Order shall be made by delivering to Jena Suhadolnik or her successor, at the address set forth in Section VII, a certified check or checks for the appropriate amounts within forty-five (45) days from the date of failure to meet the requirement of this Consent Order made payable to "Treasurer, State of Ohio". Defendants shall also state in writing the specific failure of the Consent Order which was not complied with, and the date(s) of non-compliance. The payment of stipulated penalties by the Defendants and the acceptance of such stipulated penalties by the Plaintiff for specific violations pursuant to Section VIII shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order.

IX. MISCELLANEOUS

20. Nothing in this Consent Order shall effect the Defendants' obligation to comply with all Federal, State or Local law, regulation, rule or ordinance.

21. Defendant Holmes County General Health District shall inform Ohio EPA of any changes of its business address or telephone number or succession of business.

X. RETENTION OF JURISDICTION

22. The Court shall retain jurisdiction of this action for the purpose of administering or enforcing the Defendants' compliance with this Consent Order.

XL COST

23. Defendants are hereby immediately ordered to pay the discovery costs incurred by Ohio EPA for the prosecution of this case. Those costs shall include depositions of Dr. Maurice Mullet, Dennis Murray, John Croupe and the Holmes County Board of Health members. This amount is Three Thousand Eight Hundred Dollars (\$3,800.00). The Defendants shall submit a certified check, payable to "Treasurer, State of Ohio", Attn: Jena Suhadolnik, Administrative Assistant, Ohio Attorney General's Office, 30 East Broad Street - 25th Floor, Columbus, Ohio 43215. Holmes County Health Department will also pay other costs associated with the filing of the Complaint including the filing fees of the Complaint and public notice of the Consent Order.

XII. POTENTIAL FORCE MAJEURE

24. If an event occurs which causes or may cause a delay of any requirements of this Consent Order, Defendants shall notify the Ohio EPA 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 the Defendants to prevent or minimize the delay and the timetable by which measures will be implemented. Defendants will adopt all reasonable measures to avoid or minimize any such delay.

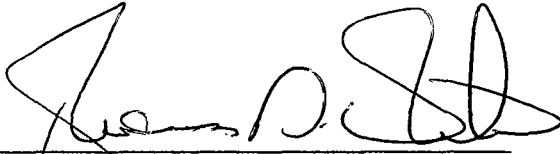
25. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendants may raise that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitations, acts of God, strikes, acts of war or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendants 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, Defendants will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendants. 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 Defendants or serve as a basis for an extension of time under this Consent Order. Failure by Defendants to 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 Defendants' rights to request an extension of any obligations under this Consent Order based on such incident. An extension of one date based on a particular incident does not mean that Defendants qualify for an extension of a subsequent date or dates. Defendants 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.

XIII. ENTRY OF CONSENT ORDER AND FINAL JUDGEMENT BY CLERK

26. The parties agree and acknowledge the final approval by the Plaintiff and the Defendants, and entry of this Consent Order subject to the requirement of 40 C.F.R. Section 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 Defendants reserve the right to withdraw consent to this Consent Order based on comments received during the public comment period.

27. Upon the 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 judgement upon the journal, the Clerk is hereby directed to serve upon all parties notice of the Judgement 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 appropriate docket.



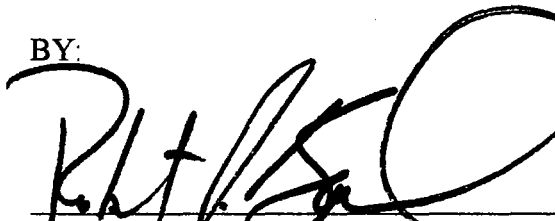
JUDGE THOMAS D. WHITE
Holmes County Court of Common Pleas

22 Oct 98
Date

APPROVED:

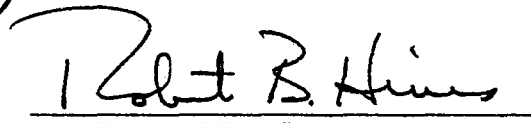
STATE OF OHIO, ex. rel
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

BY:



ROBERT J. KARL (0042292)
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Counsel for State of Ohio



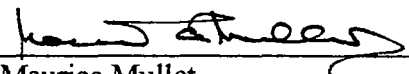
ROBERT B. HINES, Esq. (0003239)
19 West Jackson Street
P.O. Box 256
Millersburg, Ohio 44654

Counsel for Holmes County General Health
District and Dr. Maurice Mullet

Holmes County General Health District

BY: 

Dale Lahm, Chairman of the Holmes
County Board of Health



Dr. Maurice Mullet

Attachment A

Date

Dear

A review of Board of Health files indicates you received a permit from the Board to install a sewage disposal system. As you were advised when you obtained the permit, Ohio law also requires any source of wastewater from other than one, two, or three-family dwellings to obtain a permit from the Ohio Environmental Protection Agency (OEPA) to install the disposal system and an NPDES permit for any system that discharges wastewater.

In March 1997, the State of Ohio, through the OEPA, filed a complaint against the Holmes County General Health District. The complaint alleges that the Board of Health exceeded its authority by issuing permits and variances for sewage disposal systems which served entities other than one, two, or three family dwellings, i.e. businesses, churches, and schools.

As noted above, our records indicate that you received a permit from the Board of Health, but the OEPA has no record of receiving your application for a permit from the OEPA. By this letter you are again advised, that to be in compliance with Ohio law, you must submit an application to the OEPA for your sewage disposal system (includes holding tanks) for the appropriate permit(s).

To resolve the claims alleged by the State of Ohio, the Board of Health has entered into a consent agreement with the State of Ohio. Under the Consent Order, the Board of Health agreed to establish a \$15,000.00 fund which will be placed in escrow and made available to yourself and other property owners who received a permit to install and operate a sewage disposal system from the Board of Health and who also failed to obtain the required permits from the OEPA. This fund will be used to partially reimburse the application and permit fees charged by the OEPA. Eligibility for reimbursement from this fund is dependent upon your submittal of the required application(s) to the OEPA by March 31, 1999. Reimbursement will be prorated among all property owners who submit applications to the OEPA by that date. Reimbursement will be made during April, 1999. You may contact this office for instructions and assistance on how to obtain the necessary applications and permits from the OEPA.

Please keep in mind that under Ohio law, discharge of treated or untreated wastewater without a permit from the OEPA is illegal and subject to fines of up to \$10,000.00 per day. Accordingly, your prompt attention to this matter is warranted.

Respectfully,

Maurice Mullet, M.D.
Health Commissioner

Attachment B

OEPA vs. Holmes County, et al
Public Notice re: Settlement

In March 1997, the State of Ohio, by and through the Ohio Environmental Protection Agency (OEPA) filed a Complaint against the Holmes County General Health District. In general, Ohio law requires persons with sewage treatment systems serving buildings other than one, two or three-family dwellings to obtain permits from the OEPA to install treatment systems and an NPDES permit for systems that discharge wastewater. The Complaint alleges that the Board of Health exceeded its authority by issuing permits and variances to about 200 properties which were not one, two, or three-family dwellings without requiring the facility to first obtain a permit from the OEPA. The permits and variances alleged in the complaint include wastewater treatment facilities such as septic tanks, aeration systems, filters, etc. which serve businesses, schools, churches and dwellings greater than three-family dwellings.

To resolve the claims alleged in the Complaint, the Holmes County Board of Health has entered into a Consent Agreement with the State of Ohio Attorney General's Office and the OEPA. The terms of the Consent Order require the Holmes County General Health District to pay a civil penalty of \$10,000.00. In addition, the Consent Order will require the Board of Health to revise Board of Health Regulations governing the installation and operation of sewage disposal systems in the Health District so that the regulation is in full compliance with both the Ohio Revised Code and the Ohio Administrative Code. The Board also agreed to establish a \$15,000.00 fund which will be placed in escrow and used to partially reimburse the OEPA application and permit fees to those property owners who received a permit from the Board of Health, but failed to obtain the required permit from the OEPA. Property owners who submit the required applications to the OEPA by March 31, 1999 will be eligible for a prorated reimbursement for the OEPA fees from this escrow fund.

The discharge of treated or untreated wastewater without a permit from the OEPA is a violation of Ohio law and subject to fines of up to \$10,000.00 per day. Property owners with permits issued by the Board of Health after 1984 will receive notices from the Board advising them to obtain the required permits from the OEPA. However, any semi-public sewage disposal system, no matter when installed, that is currently in operation, needs to obtain the required permits from the OEPA.

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HOLMES COUNTY, OHIO

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

Plaintiff,

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and

DR. MAURICE MULLET

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SPECIAL ENTRY

Plaintiff and Defendants have agreed to the attached Consent Order and the Court having reviewed said Consent Order finds it to be a fair and reasonable settlement between the parties, it is hereby ordered that the Consent Order constitutes a final judgment, provided that no comments are received under Section XIII of the Consent Order which could void the settlement.

Therefore, this Consent Order shall go final after the expiration of the thirty (30) public notice provision of Section XIII, unless the Court is notified by counsel that public comments were received which would effect this Order.

10/22/98

DATE



JUDGE, THOMAS D. WHITE