

Coyne
 IN THE COURT OF COMMON PLEAS
 HAMILTON COUNTY, OHIO

STATE OF OHIO, ex rel.
 ATTORNEY GENERAL OF OHIO

CASE NO. A9308739

Plaintiff,

JUDGE THOMAS C. NURRE

vs.

JAMES T. MEYERS dba ICON

Defendant.



CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Betty D. Montgomery (hereinafter "Plaintiff") and Defendant James T. Meyers dba Icon (hereinafter "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

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 under Chapter 6111 of the Ohio Revised Code, and venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply to 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 shall provide a copy of this Consent Order to each contractor it employs to perform work itemized herein, and each general contractor shall 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 has operated a disposal system in violation of the water pollution laws of the State of Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims under such laws alleged in the Complaint. Nothing in this 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

4. Defendant is hereby permanently enjoined and ordered to comply with the requirements of Chapter 6111 of the Ohio Revised Code and the terms and conditions of the rules and regulations adopted under that Chapter upon the entry of this Consent Order. Defendant upon the entry of this Consent Order is hereby permanently enjoined and ordered to immediately cease any and all discharges from his disposal system and any associated equipment and structures he now uses.

V. CONSTRUCTION SCHEDULE

5. Defendant is enjoined and ordered to complete upgrades to his present disposal system necessary to convert his system into a temporary holding tank with appropriate safety devices to designed and adequate to prevent any and all overflows

and/or discharges in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Submittal of a Permit to Install application which encompasses tasks (b) through (e).	<u>August 1, 1995</u>
(b) Installation of high flow alarm system with manual shut-off which will sound when wastewater reaches the tank flow line.	<u>December 31, 1995</u>
(c) Installation of a timer system to regulate and achieve regular aeration of wastewater within the tank.	<u>December 31, 1995</u>
(d) Removal of actual discharge flow lines and close concrete the outlet.	<u>December 31, 1995</u>
(e) Permanently secure the upflow filter to prevent overflow releases from the tank.	<u>December 31, 1995</u>
(f) Completion of tasks (a) through (e) necessary to convert the disposal system to a temporary holding tank and have said tank operational.	<u>December 31, 1995</u>

Within seven (7) days from each completion date listed above, Defendant shall submit a written report stating whether or not he has performed the action set forth therein to Ohio EPA's Southwest District Office.

6. Defendant is enjoined and ordered to make arrangements to have wastewater hauled away for treatment and disposal. Defendant shall also provide the Ohio EPA with a copy of the contract within fourteen (14) days of execution of this Order and provide the name and address of the facility to which the wastewater will be hauled by the contractor and a written commitment by the facility to accept

the waste.

7. Defendant is enjoined and ordered to abandon his upgraded temporary holding tank system and connect his facility to a sanitary sewer system when such system becomes available for connection.

8. 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 Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations. Any changes impacting the amount and/or type of flows directed to and received by the temporary holding tank shall require prior approval of the Director of Environmental Protection. Defendant shall not implement any such changes until a Permit to Install is issued by the Director.

VI. CIVIL PENALTY

9. Defendant shall pay to the State of Ohio a civil penalty of Ten Thousand Dollars (\$10,000.00). The penalty shall be paid by delivering a certified check for that amount, payable to the order of "Treasurer, State of Ohio" to Matthew A. Sanders, Administrative Assistant, or other person subsequently designated by the State, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428. The civil penalty shall be paid according to the following schedule:

1. \$2,500.00 on or before August 1, 1995;
2. \$1,875.00 on or before November 1, 1995;
3. \$1,875.00 on or before February 1, 1996;
4. \$1,875.00 on or before May 1, 1996;
5. \$1,875.00 on or before August 1, 1996.

VII. STIPULATED PENALTIES

10. In the event that Defendant fails to meet the requirements of this Consent Order set forth in Paragraphs 4, 5, 6 and 7, the Defendant shall, immediately and automatically, be liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of failure to meet a requirement, up to thirty (30) days - Five Hundred Dollars (\$500.00) per day for each requirement not met. For each day of failure to meet a requirement, from thirty-one (31) to sixty (60) days - One Thousand Dollars (\$1,000.00) per day for each requirement not met. For each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days - Four Thousand Dollars (\$4,000.00) per day for each requirement not met. For each day of failure to meet a requirement, over ninety (90) days - Eight Thousand Five Hundred Dollars (\$8,500.00) per day for each requirement not met.

11. For each discharge or overflow event occurring after the date upon which the temporary holding tank is to become operational, Defendant shall be immediately and automatically liable for stipulated penalties in accordance with the

schedule contained in Paragraph 10. In calculating the number of discharge or overflow events and the corresponding penalty, each twenty-four (24) hour period constitutes a single discharge or overflow event.

12. Any payment required to be made under the provisions of Paragraphs 10 and 11 of this Order shall be made by delivering a certified check or checks for the appropriate amounts, within thirty (30) days from the date of the failure to meet the requirement of the Consent Order, made payable to "Treasurer, State of Ohio" to Matthew A. Sanders, Administrative Assistant, or other person subsequently designated by the State, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

VIII. POTENTIAL FORCE MAJEURE

13. If any event occurs which causes or may cause a delay of any requirement of this Consent Order applicable to Defendant, Defendant shall notify the Ohio EPA in writing within fourteen (14) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of delay, the measures taken and to be taken by Defendant to prevent or minimize the delay and the timetable by which those measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

14. In any action by the State of Ohio to enforce any of the provisions of this Consent Order, Defendant may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons entirely beyond its

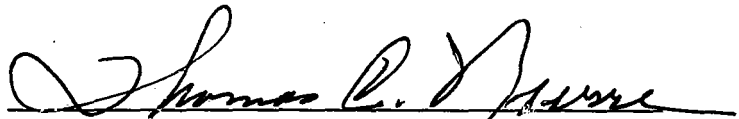
control, such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While the State of Ohio does not agree that such a defense exists, it is , however, hereby agreed upon by Defendant and the State of Ohio that it is premature at this time to raise and adjudicate 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, it ever, that the proceeding to enforce this Consent Order is commenced by the State. At that time the burden of proving that any delay was or will be caused by circumstances beyond the control of Defendant shall rest with Defendant. Failure by Defendant to comply with the notice requirements of the preceding paragraph of this Consent Order shall constitute a waiver by Defendant of any right it may have to raise such a defense. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances shall not in any event constitute circumstances entirely beyond the control of Defendant, or serve as a basis for an extension of time under this Consent Order.

IX. RETENTION OF JURISDICTION

15. The Court will retain jurisdiction of this action for the purpose of overseeing the implementation of this Consent Order by the Defendant.


X. COSTS

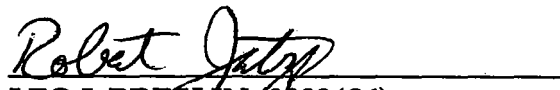
16. Defendant is hereby ordered to pay the costs of this action.


THOMAS C. NURRE, JUDGE
HAMILTON COUNTY COURT OF COMMON PLEAS

APPROVED:

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


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