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FILED
MONTGOMERY
COUNTY

IN THE COURT OF COMMON PLEAS
MEDINA COUNTY, OHIO

96 CIV 0791

STATE OF OHIO, et al.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

CASE NO.

JUDGE JUDITH A CROSS

Plaintiff

v.

VILLAGE OF LODI

CONSENT ORDER

Defendant.

The Complaint in the above captioned matter having been filed herein, and Plaintiff State of Ohio, by its Attorney General Betty D. Montgomery, and Defendant Village of Lodi (Lodi) having agreed to the entry of this Consent 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 Lodi under Chapter 6111. of the Ohio Revised Code ("ORC"), and venue is proper in this Court.

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 Lodi is ordered to provide a copy of this Consent Order to each contractor it employs to perform the work itemized herein. Defendant Lodi 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 alleged in its Complaint that Defendant Lodi operated its wastewater treatment plant and sewer system in such a manner as to result in numerous violations of the requirements of the NPDES Permits issued to it by the Director of Ohio EPA and in violation of

the water pollution laws of the State of Ohio.

4. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant Lodi, for all claims under such laws alleged in the Complaint. 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 or to seek relief for violation of the types of claims alleged in the Complaint which occur after the filing of this Consent Order.

IV. PERMANENT INJUNCTION

5. Defendant Lodi 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. 3PB00027*CD and any renewals or modifications thereof, except for the final effluent limitations set forth in said permit.

6. Defendant Lodi is ordered and enjoined to comply with the final effluent requirements in its NPDES permit No.3PB00027*CD and any modifications or renewals thereof in accord with the date set forth at paragraph 8 (f) infra.

7. Defendant Lodi 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 Lodi is enjoined and ordered to complete construction of the improvements to its wastewater treatment system so as to maintain compliance with the final effluent limitations of NPDES permit No.3PB00027*CD and any modifications or renewals thereof, and to eliminate discharges from overflows and bypasses from its sanitary sewer system in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Submittal of Detailed Plans and Specifications to Ohio EPA	January 1, 1997.
(b) Advertisement of Building Bids	March 10, 1997
(c) Execution of Building Contracts	May 1, 1997
(d) Initiation of Construction	June 1, 1997
(e) Completion of Construction of sufficient wet stream treatment facilities to insure compliance with final effluent limitations and the elimination of bypasses and overflows	October 1, 1997
(f) Attain compliance with final	

effluent limitations and eliminate
overflows and bypasses

March 1, 1998

9. This Consent Order does not constitute authorization nor approval of the construction of any physical structure or facilities, nor 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.

VI. REPORTING REQUIREMENT

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

VII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

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

12. Defendant Lodi is ordered, pursuant to RC Section 6111.09, to pay to the State of Ohio a civil penalty of Fifty-thousand dollars (\$50,000.00). This penalty is to be structured as follows:

Five-thousand dollars (\$5,000.00) is to be paid within ten (10) days of the Court's entry of this Consent Order 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";

AND

The remaining forty-five thousand dollars (\$45,000.00) may be satisfied though a Supplemental Environmental Project (SEP) completed within eighteen (18) months from the Court's entry of this Consent Order. The SEP may only satisfy this portion of Lodi's civil penalty if, from inception through completion, the Supplemental Environmental Project is approved by the Ohio EPA. Defendant Lodi shall submit its written SEP proposal to Ohio EPA within (120) days from the Court's entry of this Consent Order. Ohio EPA will provide written response to Defendant Lodi's SEP

proposal within (90) days of receipt of same. In the event (18) months transpire from the Court's entry of this Consent Order and the SEP is not completed, or the Ohio EPA has declined approval of SEP, then the forty-five thousand dollar (\$45,000.00) portion of this civil 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.

IX. STIPULATED PENALTIES

13. In the event that Defendant Lodi fails to meet any of the compliance deadlines set forth in Section V, paragraphs 8 (b) through 8 (e) of this Order, Defendant Lodi 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 five hundred dollars (\$2,500.00) 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.

14. In the event that Defendant Lodi fails to meet the final compliance date set forth in Section V., paragraph 8 (f), Defendant Lodi 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 thousand dollars (\$5,000.00) per day per violation;
- (b) For each day of each failure to meet a requirement from thirty-one (31) to sixty (60) six thousand

dollars (\$6,000.00) per day per violation;

- (c) For each day of each failure to meet a requirement over sixty (60) days ten thousand dollars (\$10,000.00) per day per violation.

15. In the event that Defendant Lodi fails to maintain compliance with the interim effluent limitations in its currently effective NPDES permit or when required by paragraph 8 (f) of this Consent Order, Defendant Lodi 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, two thousand five hundred dollars (\$2,500.00) for each violation. If the same 30 day effluent limitation is violated a second time, five thousand (\$5,000.00) for the second violation. If the same 30 day effluent limitation is violated a third time, seven thousand five hundred dollars (\$7,500.00) for the third violation. For the same 30 day effluent limitation that is violated thereafter, ten thousand dollars (\$10,000.00) for each violation;

- (b) For each 7 day or daily effluent limitation that is violated one thousand dollars (\$1,000.00) for each violation. If the same 7 day or daily effluent limitation is violated in a second month, two thousand five hundred dollars (\$2,500.00) for each violation in the second month. If the same 7 day or daily effluent limitation is violated in a third month, four thousand dollars \$4,000.00 for each violation in the third month. For the same 7 day or daily effluent limitation that is violated thereafter, seven thousand five hundred (\$7,500.00) for each violation.

16. *Provided however*, Defendant Lodi, for the period June 1, 1995 through June 1, 1997, shall not immediately and automatically be liable for a stipulated penalty in accord with paragraphs 15 (a) and (b) above, regarding compliance with the interim effluent limitations in its currently effective NPDES permit, if Defendant Lodi immediately submits a Flow Control Plan (FCP) to Ohio EPA specifying that:

- a) Defendant Lodi will remove from its sewer system, at a ratio of not less than 3:1, three (3) gallons of Infiltration and Inflow (I&I) for every gallon of wastewater put into its sewer system;

- b) That the flow control plan as outlined below will result in the implementation of the following:

- i) Lodi agrees that the anticipated waste water inflow to the Defendant Lodi's WWTP from phase I of a to be built outlet mall,

located at State Route 83 and Interstate 71 in Lodi, is 16,000 gallons per day. And accordingly Defendant Lodi represents it will remove I&I from its sewer system in a ratio of 3:1 proportionate to that inflow; i.e., 16,000 gallons per day of waste water will come into Lodi's sewer system from the new mall, therefor 48,000 gallons of I&I will be removed from Defendant Lodi's sewer system. This will be accomplished through reduction of I&I sources identified from data contained in the 1987 Sewer System Evaluation Survey prepared for the Village of Lodi by its consultant and through the determination of Ohio EPA ;

ii) Correction of I&I sources identified in the 1987 Sewer System Evaluation Survey and by Ohio EPA still remaining after the I&I reduction mentioned at paragraph 16 (b) (i) above. (To Begin July 1, 1996- Completion by July 1, 1998);

iii) Identify illegal drain connections not detected in the 1987 Sewer System Evaluation Survey. (To Begin July 1, 1996- Completion July 1, 1998);

iv) Installation of storm sewers in the Western portion of Lodi allowing alternate means of foundation drain water disposal [projected dates and costs must be submitted to Ohio EPA by July 1, 1996] (To Begin July 1, 1997- Completion September 1, 2002);

v) Correction of all illegal drain connections :

- that are not within the area proposed to have storm sewers (Completion within one (1) year after identification).
- that are within the area proposed for storm sewers (Completion six months after installation of storm sewers)

17. If Defendant Lodi fails to satisfy any material aspect of its flow control plan, including but not limited to, submission, obtaining Ohio EPA approval, follow through and completion, Defendant Lodi shall be immediately and automatically liable for a stipulated penalty in accord with paragraphs 15 (a) and (b) above regarding violations of interim limits in its currently effective NPDES permit occurring in the period June 1, 1995 through June 1, 1997.

18. In the event that Defendant Lodi fails to maintain compliance with the final effluent limitations when required by paragraph 8 (f) of this Consent Order, in its then effective NPDES permit, Defendant Lodi 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, two thousand five hundred dollars (\$2,500.00) for each violation. If the same 30 day effluent limitation is violated a second time, five thousand (\$5,000.00) for the second violation. If the same 30 day effluent limitation is violated a third time, seven thousand five hundred dollars (\$7,500.00) for the third violation. For the same 30 day effluent limitation that is violated thereafter, ten thousand dollars (\$10,000.00) for each violation;

(b) For each 7 day or daily effluent limitation that is violated one thousand dollars (\$1,000.00) for each violation. If the same 7 day or daily effluent limitation is violated in a second month, two thousand five hundred dollars (\$2,500.00) for each violation in the second month. If the same 7 day or daily effluent limitation is violated in a third month, four thousand dollars \$4,000.00 for each violation in the third month. For the same 7 day or daily effluent limitation that is violated thereafter, seven thousand five hundred (\$7,500.00) for each violation.

19. For violation of any other requirement in NPDES permit No.3PB00027*CD and any renewals or modifications thereof, including but not limited to unauthorized bypasses, monitoring and reporting requirements Defendant Lodi shall be liable for such penalty amounts as are authorized by Chapter 6111 of the Revised Code, not to exceed ten-thousand dollars (\$10,000.00) for each day each requirement is not met.

20. Any payment required to be made under the provisions of Section VIII and IX. of this Consent Order shall be made by delivering to Matt Sanders at the address set forth in paragraph 12, 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".

X. POTENTIAL FORCE MAJEURE

21. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendant Lodi 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 the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant Lodi 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 recommended by the Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant

Lodi shall rest with Defendant Lodi. 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 Lodi. Acceptance of this Consent order without a Force Majeure Clause does not constitute a waiver by Defendant Lodi of any rights or defenses it may have under applicable law.

XI. PLAINTIFF'S LITIGATION COSTS

22. For Plaintiff's litigation costs in investigating and prosecuting this case, Defendant Lodi is ordered and enjoined to reimburse the Attorney General's Office in the amount of Dollars 0 _____. This reimbursement shall be paid by delivering a certified check for that amount payable to the order of "Treasurer, State of Ohio" within thirty (30) days of entry of this Order to the address set forth in Section VIII., paragraph 12.

XII. RETENTION OF JURISDICTION

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

XIII. COSTS


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

Entered this _____ day of _____.

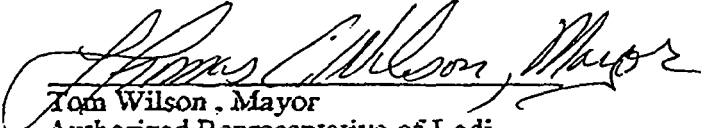
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JUDGE, MEDINA COUNTY, OHIO
COURT OF COMMON PLEAS

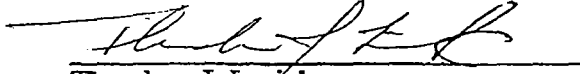
APPROVED:

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


Margaret A. Malone (0021770)
Robert M. Fowler (0025123)
Assistant Attorneys General
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410
(614) 466-2766

VILLAGE OF LODI


Tom Wilson, Mayor
Authorized Representative of Lodi


Theodore J. Lesiak
Law Director, Village of Lodi
John C. Oberholtzer
Assistant Law Director, Village of Lodi

RECORD OF ORDINANCES

Ordinance No. 1973

Passed July 15, 19 96

AN ORDINANCE OF THE COUNCIL OF THE VILLAGE OF LODI, MEDINA COUNTY, OHIO, AMENDING ORDINANCE NOS. 1971 AND 1972 ACCEPTING THE TERMS OF A CERTAIN CONSENT ORDER WITH THE STATE OF OHIO TO MEET CERTAIN REQUIREMENTS OF THE OHIO ENVIRONMENTAL PROTECTION AGENCY WITH REGARD TO THE VILLAGE'S WASTEWATER TREATMENT PLANT AND SEWER SYSTEM AND DECLARING AN EMERGENCY.

WHEREAS, the State of Ohio through the Ohio Environmental Protection Agency has determined that the Village's wastewater treatment plant and sewer system is in violation of Ohio Revised Code Chapter 6111, the rules adopted thereunder, and it's National Pollutant Discharge Elimination System Permit; and

WHEREAS, the State of Ohio through the Ohio Environmental Protection Agency will be filing a Complaint in the Court of Common Pleas of Medina County, Ohio seeking compliance with the above; and

WHEREAS, the State of Ohio through the Ohio Environmental Protection Agency has requested that Village Council approve a Consent Order of Compliance prior to the issuance of a permit to install (PTI) for the Medina County sanitary sewer extension to the Prime Retail Outlet Mall Project.

WHEREAS, Council of the Village of Lodi now desires to Amend Ordinance Nos. ^{1971 +} 1972 to revise additional terms.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF LODI, MEDINA COUNTY, OHIO, THAT:

1. Ordinance Nos. 1971 and 1972 are hereby amended as follows:

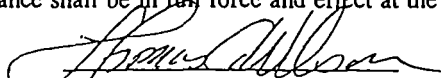
The Mayor and Clerk are hereby authorized to enter into consent order attached hereto and made a part hereof and marked Exhibit A, requiring compliance with the terms therein by the Village of Lodi, Medina County, Ohio. Provided, however, the following items are revised and/or stricken from the consent decree:

a. Paragraph 16(b) (iii) and (v) shall be as follows:

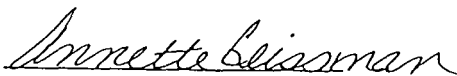
The term "foundation" should be stricken from the paragraphs.

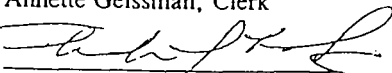
2. The Council of the Village of Lodi, Medina County, Ohio agree to do all things necessary to comply with the terms and specifications of said consent order within the time frame dictated therein as amended.

3. This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety and welfare of the Village of Lodi and it's inhabitants; and further to avoid litigation and various potential fines and to allow for the continuance of the operation of the Village wastewater treatment and sewer system and also permit the extension of the Medina county sanitary sewer to the Prime Retail Outlet Mall Project as soon as possible, and therefore this Ordinance shall be in full force and effect at the earliest time permitted by law.


Thomas Wilson, Mayor

ATTEST:


Annette Geissman, Clerk


Theodore J. Lesiak, Solicitor

RECORD OF ORDINANCES

HARRETT BROTHERS, PUBLISHERS, SPRINGFIELD, OHIO

Form 6220

Ordinance No. _____

Passed _____, 19 _____

I, Annette Geissman, Clerk-Treasurer of the Village of Lodi, certify that this is a true and exact copy of Ordinance No. 1973, passed July 15, 1996, in Village Council Chambers.

Annette Geissman

Annette Geissman
Clerk/Treasurer
Village of Lodi