

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 McGuffey shall provide a copy of this Consent Order to each general 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 McGuffey has operated its wastewater treatment plant and sewer system in such a manner as to result in numerous violations of the discharge limitations and monitoring requirements of its NPDES permit issued by the Director of Environmental Protection 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 any civil liability by Defendant for all claims 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. COMPLIANCE SCHEDULE

4. Defendant McGuffey is hereby enjoined and ordered to immediately comply with the requirements of Chapter 6111 of the Ohio Revised Code and the terms and conditions of the rules adopted under that Chapter and its currently effective NPDES permit and any renewals or modifications thereof, except for the final effluent limitations set forth in said permit.

Between the effective date of this Consent Order and April 15, 1993, Defendant is enjoined to comply with the interim effluent limitations set forth in Appendix "A" attached hereto. The interim effluent limits contained in Appendix "A" do not constitute an NPDES permit or a modification of any existing permit. After April 15, 1993, Defendant is enjoined to meet the final effluent limitations set forth in its NPDES permit No. A706*AD and any renewals or modifications thereof.

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

V. CONSTRUCTION SCHEDULE

5. Defendant McGuffey is enjoined and ordered to eliminate discharges from overflows and bypasses from its sanitary sewer system and to complete construction of the improvements to its wastewater treatment plant to attain compliance with the final effluent limitations of NPDES permit No. A706*AD, and any modifications or renewals thereof, in accordance with the following schedules:

Wastewater Treatment Plant

TASK

COMPLETION DATE

- | | |
|--|--------------------|
| (a) Hiring of a full-time Class I Operator in the situation where sand filters are not employed in completing the construction referenced in paragraph 5(g) below. | Dec. 30, 1992 |
| (b) Hiring of a full-time Class II Operator in the situation where sand filters are employed in completing the construction referenced in paragraph 5(g) below. | Dec. 30, 1992 |
| (c) Submittal of Approvable Plans and Specifications to Ohio EPA. | March 2, 1990 |
| (d) Advertisement of Building Bids. | September 30, 1990 |
| (e) Execution of Building Contracts. | November 14, 1990 |
| (f) Initiation of Construction. | February 14, 1991 |
| (g) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits and the elimination of bypasses and overflows. | December 30, 1992 |
| (h) Attain and maintain compliance with final effluent limitations, and eliminate overflows and bypasses. | April 15, 1993 |

VI. REPORTING REQUIREMENT

6. Within seven (7) days from the completion date of each milestone listed above, Defendant McGuffey shall submit a written report stating whether it has performed the action set forth therein to Ohio EPA's Northwest District Office, Division of Water Pollution Control at 1035 Devlac Grove Drive, Bowling

Green, Ohio 43402 with a copy to Ohio EPA's Central Office,
Division of Water Pollution Control/Enforcement Section at 1800
Watermark Drive, Columbus, Ohio 43266-0149.

VII. EFFECT OF CONSENT ORDER

7. 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 of Environmental Protection or other such permits as may be required by applicable federal, state or local laws, rules or regulations.

VIII. POTENTIAL FORCE MAJEURE

8. In any action to enforce any of the provisions of this Consent Order, Defendant McGuffey 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, act of God, unusually severe weather conditions, strikes, acts of war or civil disturbances or orders of any regulatory agency. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by the parties 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. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant will rest with Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order shall not constitute circumstances entirely beyond the control of Defendant. 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.

IX. STIPULATED PENALTIES

9. In the event that Defendant McGuffey fails to meet any of the requirements of this Consent Order set forth in Paragraph 4 and Subparagraphs 5(a) through 5(f), including any schedule milestone requirement, Defendant 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 forty-five (45) days--three hundred dollars (\$300.00) per day;
- b. For each day of each failure to meet a requirement from forty-six (46) to ninety (90) days--four hundred dollars (\$400.00) per day;
- c. For each day of each failure to meet a requirement from ninety-one (91) to one hundred thirty-five (135) days--eight hundred dollars (\$800.00) per day;
- d. For each day of each failure to meet a requirement over one hundred thirty-six (136) days -- one thousand dollars (\$1,000.00) per day;

10. In the event that Defendant McGuffey fails to meet any of the requirements of this Consent Order set forth in Subparagraphs 5(g), Defendant shall be liable for and shall pay a stipulated penalty in accordance with the following payment schedule:

- a. For each day of each failure to meet a requirement up to forty-five (45) days--one thousand dollars (\$1,000.00) per day;
- b. For each day of each failure to meet a requirement from forty-six (46) to ninety (90) days--one thousand five hundred dollars (\$1,500.00) per day;
- c. For each day of each failure to meet a requirement from ninety-one (91) to one hundred eighty (180) days--two thousand dollars (\$2,000.00) per day;
- d. For each day of each failure to meet a requirement over one hundred eighty (180) days--ten thousand (\$10,000.00) per day.

11. For the purpose of the imposition of stipulated penalties pursuant to this Consent Order alone, a violation of a seven-day average effluent limitation is considered one violation.

12. Any payment required to be made under the provisions of Paragraphs 9 or 10 of this Order shall be made by delivering to Plaintiff's counsel 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 the Consent Order, made payable to "Treasurer, State of Ohio".

13. The provisions of this paragraph providing for the payment of stipulated penalties shall terminate after a

determination by order of this Court that all construction required by the Consent Order has been performed, the wastewater treatment plant has been in total compliance with all of the final effluent limitations in its effective permit for a period of twelve consecutive months, and all stipulated penalties that have accrued pursuant to Section IX of this Consent Order have been paid to the State of Ohio in accordance with the provisions of paragraph 12 of this Consent Order.

XI. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

14. Performance of the terms of this Consent Order by Defendant McGuffey is not conditioned on the receipt of any federal or state grant or loan funds. In addition, Defendant's performance is not excused by the failure to obtain or shortfall of any federal or state grant or loan funds or by the processing of any applications for the same.

XII. RETENTION OF JURISDICTION

15. The Court will retain jurisdiction of this action for the purpose of making any order or decree which it deems appropriate to carry out this Consent Order.

XIII. COSTS

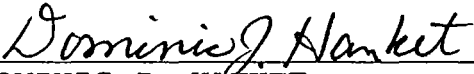
16. Defendant McGuffey is hereby ordered to pay the costs of this action.

JUDGE, COURT OF COMMON PLEAS


Date

APPROVED:

ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO



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MAYOR OF MCGUFFEY
The Village of McGuffey, Ohio

7811E

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS for outfall 2PA00006001

<u>EFFLUENT CHARACTERISTIC</u>		<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
Reporting Code	UNITS PARAMETER	Concentration		Loading*		Meas. Freq.	Sample Type
		Other Units (Specify)		kg/day			
		30 day	7 day	30 day	7 day		
00010	°C Temperature	-	-	-	-	Daily	Grab
00530	mg/l Suspended Solids	-	148	-	77	2/Week	Composite
00550	mg/l Oil & Grease	-	-	-	-	1/Qtr.	Grab
00610	mg/l Ammonia (N)	-	-	-	-	2/Month	Composite
00665	mg/l Phos., Total	-	-	-	-	1/Month	Composite
31616	Count Fecal Coliform #/100ml (Summer Only)	-	-	-	-	1/Week	Grab
50050	MGD Flow	-	-	-	-	Daily	24 Hr. Tot
80082	mg/l CBOD ₅	-	162	-	84	2/Week	Composite

1. The pH (Reporting Code 00400) shall not be less than 6.0 S.U. nor greater than 9.0 S.U. and shall be monitored daily by grab sample.
2. If the entity uses chlorine for disinfection, the Chlorine Residual (Reporting Code 50060) shall be monitored daily by grab sample. (Summer Only)
3. The Dissolved Oxygen (Reporting Code 00300) shall be monitored daily by grab sample.

* The average effluent loading limitations are established using the following flow value: .137 MGD