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COMMON PLEAS COURT
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IN THE
COURT OF COMMON PLEAS
MEDINA COUNTY, OHIO

FILED
KATHY FEATNEY
CLERK OF COURTS

State Of Ohio, *ex rel*
Betty D. Montgomery
Attorney General Of Ohio,

Plaintiff,

v.

Village of Westfield Center,

Defendant.

Case No. 97CV1034

Judge James L. Kimbler

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and Plaintiff the State of Ohio ("State") by its Attorney General, Betty D. Montgomery, and Defendant Village of Westfield Center, Ohio (hereinafter referred to as "Westfield Center") 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

I. 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 Westfield Center under Chapter 6111 of the Ohio Revised Code (hereinafter referred to as "R.C.") and venue is

MEDINA COUNTY COURT OF COMMON PLEAS-STATE OF OHIO, MEDINA COUNTY, SS
I hereby certify that this is a true copy of the original on file at said Court:
WITNESS my hand and the seal of said Court at Medina, Ohio this 3rd day of Feb, 1998.
Kathy Featney, Clerk of Courts
By Bono Bickel Deputy

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.

III. SATISFACTION OF LAWSUIT

3. The State alleges in its Complaint that Defendant Westfield Center operated its wastewater treatment plant in such a manner as to result in numerous violations of the discharge limitations and monitoring requirements of the National Pollutant Discharge Elimination System ("NPDES") permit issued by the Director of Environmental Protection ("Director") to Westfield Center and in violation of the water pollution control laws of the State of Ohio, R.C. Chapter 6111 and the rules adopted thereunder. 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 Consent Order shall be construed to limit the authority of the State to seek relief for claims or conditions not alleged in the Complaint, including violations which occur after the filing of this Consent Order.

IV. PERMANENT INJUNCTION

4. Defendant Westfield Center agrees to and is hereby permanently enjoined and ordered to immediately comply with the requirements of R.C. Chapter 6111 and the rules adopted thereunder, and its currently effective NPDES permit No. 3PB00023*BD and any renewals or modifications thereof except as provided in Articles V and VI of this Consent Order. Defendant Westfield Center is further enjoined and ordered to properly operate and maintain its

wastewater treatment plant, sewer system, and any associated equipment and structures.

V. CONSTRUCTION SCHEDULES

5. Defendant Westfield Center is enjoined and ordered to eliminate discharges from overflows and bypasses from their wastewater treatment plant, to complete construction of the improvements to this plant, to attain compliance with the final effluent limitations of NPDES Permit No. 3PB00023*BD and any modifications or renewals thereof in accordance with the following schedule:

Task	Completion Date
(a) Completion of Construction	<u>January 10, 1999</u>
(b) Attain Compliance with Final Effluent Limitations, and Eliminate Overflows and Bypasses	<u>January 10, 1999</u>

Defendant Westfield Center shall comply with Interim limits for Total Suspended Solids and CBOD₅ set forth in Attachment "A" for the period of construction up to January 10, 1999. After completion of construction on January 10, 1999, Defendant Westfield Center shall be in compliance with final effluent limitations contained within its NPDES Permit No. 3PB00023*BD, and any renewals or modifications thereof.

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

VI. EFFECT OF CONSENT ORDER

6. 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 disposal system. Approval for any such construction or modification shall be by permit issued by the Director or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

VII. CIVIL PENALTY

7. Defendant Westfield Center is ordered, pursuant to R.C. §6111.09, to pay to the State a civil penalty of five thousand dollars (\$5,000.00). The penalty shall be paid by delivering to the Administrative Assistant, Environmental Enforcement, 30 East Broad Street, 25th fl., Columbus, Ohio 43215-3428, a certified check for that amount, payable to the order of *"Treasurer, State of Ohio"*.

VIII. STIPULATED PENALTIES

8. In the event Defendant Westfield Center fails to meet any one of the requirements of this Consent Order, its NPDES permit, including the Interim limits set forth in Attachment "A", DFFOs, and any renewals or modifications thereof, Defendant shall immediately and automatically be liable for payment of 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, two hundred fifty dollars (\$250.00) per day for each requirement not met.
- b. For each day of each failure to meet a requirement, from thirty-one (31) to sixty (60) days, five hundred dollars (\$500.00) per day for each requirement not met.

- c. For each day of each failure to meet a requirement, from sixty-one (61) to ninety (90) days, seven hundred fifty dollars (\$750.00) per day for each requirement not met.
- d. For each day of each failure to meet a requirement, over ninety days, one thousand dollars (\$1,000.00) per day for each requirement not met.

The provisions of this paragraph apply per each separate failure to meet a requirement as set forth in this Consent Order, its NPDES permit, including the Interim limits set forth in Attachment "A", DFFOs, and any renewals or modifications thereof.

9. Any payment required to be made under the provisions of Paragraphs 8 through 9 of this Article shall be made by delivering to the Administrative Assistant, Environmental Enforcement, 30 East Broad Street, 25th fl., Columbus, Ohio 43215-3428, a certified check, or checks, for the appropriate amounts made payable to "*Treasurer, State of Ohio*" within forty-five (45) days from the date of the failure to meet the requirement of this Consent Order. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to this Article shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order.

IX. TERMINATION OF STIPULATED PENALTIES

10. The stipulated penalties imposed by Article VIII, Paragraph 8 of this Order may be terminated Defendant has achieved and maintained upon demonstration by Defendant that 1) it has achieved continuous compliance with the final effluent limitations contained in its NPDES permit and the Interim limits set forth in Attachment "A" for a period of twelve consecutive

months, without the occurrence of any bypasses or overflows; 2) it has completed all construction requirements of Article V ; and 3) it has paid all penalties required by this Consent Order. Termination of stipulated penalties under this Consent Order shall only occur after payment of all outstanding penalties. Termination of stipulated penalties under this Consent Order shall only be upon written application and by order of the Court after the Court has made a determination that the requirements of this paragraph have been satisfied.

11. For purposes of calculating the period of compliance Defendant shall begin so calculating from the date of the last violation after completion of construction as required by Article V, Paragraph 5. If Defendant incurs a violation any time during that period, it must use that date as the new date of compliance and recalculate its period of compliance accordingly.

X. POTENTIAL FORCE MAJEURE

12. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Defendant shall notify the Ohio EPA, Northeast District Office, in writing within ten (10) days of when Defendant knows or should have known 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 Defendant to prevent or minimize the delay and the timetable by which measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

13. 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 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 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 action to enforce the terms of this Consent Order, if any, is commenced 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 shall rest with Defendant. 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 or serve as a basis for an extension of time under this Consent Order. Failure by Defendant to comply with the notice requirements of Paragraph 12 shall render this Paragraph 13 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 compliance date based on a particular incident does not mean that Defendant qualifies for an extension of a subsequent compliance 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 Defendant of any rights or defenses it may have under applicable law.

XI. MISCELLANEOUS

14. This Order shall be effective upon the date of entry of the Court.

15. All documents, plans, studies or other specifications required by this Consent Order shall be submitted to:

Ohio EPA
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: DSW Enforcement Group Leader

16. Defendant Westfield Center shall, within thirty days of receipt, respond in writing to Ohio EPA to all comments made by Ohio EPA, unless otherwise provided within this Consent Order, NPDES permits, DFFOs, renewals or modifications thereof.

17. Nothing in this Order shall release Defendant of its obligation to comply with applicable Federal, State or local statutes, rules or ordinances, including the requirement of obtaining any and all permits necessary for the construction or upgrade of its wastewater facilities.

XII. RETENTION OF JURISDICTION

18. The Court will retain jurisdiction of this action for the purpose of enforcing and administering Defendant's compliance with the terms and provisions of this Consent Order

XIII. COSTS

19. Defendant Westfield Center is hereby ordered to pay the costs of this action.

20. 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(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. Both the State and Defendant, reserve the right to withdraw this Consent Order based on comments received during the public comment period.

21. 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 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 appearance docket.

Entered this _____ day of _____ 1997.

IT IS SO ORDERED

**COURT OF COMMON PLEAS
MEDINA COUNTY, OHIO**


151 James L. Kimmel
Judge

Approved:

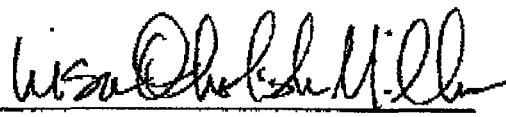
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Attorney for Defendant Village of Westfield
Center

Attachment A. - INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning on the effective date of this Consent Order and lasting for the period of construction, the permittee is authorized to discharge in accordance with the following limitations and monitoring requirements.

EFFLUENT CHARACTERISTIC			DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS	
Reporting Code	Units	Parameter	Concentration Specified Units		Loading* kg/day		Meas. Freq.	Sample Type
			30 day	7 day	30 day	7 day		
00010	°C	Water Temperature	-	-	-	-	Daily	Grab
00530	mg/l	Total Suspended Solids	30	45	26.3	39.3	2/week	Composite
00556	mg/l	Oil and Grease	Not to exceed 10 at any time				1/Month	Grab
00610	mg/l	Nitrogen, Ammonia (NH ₃)						
		(Summer)	1.5	2.3	1.3	2.0	2/week	Composite
		(Winter)	-	-	-	-	2/week	Composite
80082	mg/l	CO ₂	25	40	21.8	35.0	2/week	Composite

2. 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 daily by grab sample.
3. If the entity uses chlorine for disinfection, the Chlorine Residual (Reporting Code 50060) shall be maintained at a level not to exceed 0.030 mg/l and shall be monitored daily by grab sample. (Summer only)**
4. The Dissolved Oxygen (Reporting Code 00300) shall be maintained at a level of not less than 5.0mg/l and shall be monitored daily by grab sample.

* The average effluent loading limitations are established using the following flow value: 0.230 MGD.