

COPY

IN THE
COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

94CV127

State Of Ohio, *ex rel.*
Lee Fisher
Attorney General Of Ohio,

FILED Case No.
COURT OF COMMON PLEAS

SEP 29 1994

Judge

Plaintiff,

JUDGE GEORGE E. MARTIN

DELORES REED, Clerk
PORTAGE COUNTY, OHIO

v.

The Board Of County Commissioners
Of Portage County, Ohio,

:
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:
:
:
:

CONSENT ORDER

Defendant.

The Complaint in the above-captioned matter having been filed herein, and Plaintiff the State of Ohio ("State") by its Attorney General, Lee Fisher, and Defendant The Board of County Commissioners of Portage County, Ohio (hereinafter referred to as "Portage County") 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 Portage County under Chapter 6111 of the Ohio Revised Code (hereinafter referred to as "R.C."), 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.

III. SATISFACTION OF LAWSUIT

3. The State alleges in its Complaint that Defendant Portage County operated nine (9) of its wastewater treatment plants, set forth in paragraph four (4) of this consent order, 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") permits issued by the Director of Environmental Protection ("Director") to Portage County and in violation of the water pollution control law of the State of Ohio, i.e., 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 Portage County 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 permits, No. 3PH00033, (Atwater); 3PH00035 (Bolingbrook); 3PG00096 (Fairlane); 3PH00037 (Red Fox); 3PG00127 (Rivermoor); 3PG00120 (West Branch); 3PK00015 (Franklin Hills) and any renewals or modifications thereof. Defendant Portage County is further enjoined and ordered to properly operate and maintain its wastewater treatment plants, sewer system, and any associated equipment and structures.

V. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

5. Performance of the terms of this Consent Order by Defendant Portage County is not conditioned on the receipt of any federal or state grant loans or funds. In addition, Defendant'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.

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 Portage County is ordered, pursuant to R.C. §6111.09, to pay to the State a civil penalty of ninety thousand dollars (\$90,000.00). The penalty shall be paid quarterly, in four equal payments of ~~twenty~~^{two} thousand five hundred dollars (\$22,500.00), the first of which is due within forty-five (45) days from the Court's entry of this consent Order. The penalty shall be paid by delivering to the Matthew Sanders, Administrative Assistant, or his successor, 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. ATTORNEY GENERAL ENFORCEMENT COSTS

8. Defendant Portage County is ordered to pay to the Attorney General of Ohio five thousand dollars (\$5,000.00). These enforcement costs shall be paid by delivering to Matt Sanders, Administrative Assistant, or his successor, a separate certified check for the above-stated amount, payable to the order of the "*Treasurer, State of Ohio*", to be deposited into the Ohio Attorney General's Special Reimbursement Fund, No. 612, Program No. 5718, within forty-five (45) days of the Court's entry of this Consent Order.

9. Any check submitted by Defendant in compliance with Article VIII, Paragraph A shall be in addition to and separate from any check submitted pursuant to any other Article of this Consent Order.

IX. STIPULATED PENALTIES

10. If Defendant Portage County fails to meet any of the daily effluent limitations of its NPDES permits issued for the wastewater treatment plants set forth in paragraph four (4) of this Consent Order, excluding Rivermoor and Sandy Lake, then Defendant shall immediately and automatically be liable for payment of a stipulated penalty according to the following payment schedule:

- a. For each day of failure to meet a daily effluent limitation, up to thirty (30) days, two hundred fifty dollars (\$250.00) per day for each limitation not met.
- b. For each day of failure to meet a daily effluent limitation, from thirty-one (31) to sixty (60) days, five hundred dollars (\$500.00) per day for each limitation not met.
- c. For each day of failure to meet a daily effluent limitation, from sixty-one (61) to ninety (90) days, seven hundred fifty dollars (\$750.00) per day for each limitation not met.
- d. For each day of failure to meet a daily effluent limitation, over ninety days, one thousand dollars (\$1,000.00) per day for each limitation not met.

The provisions of this paragraph apply per each separate daily effluent limitation.

11. For the purpose of calculating stipulated penalties under the provisions of this paragraph, each 7-day period of violation of a specific 7-day average effluent limitation shall be calculated as a single violation. If Defendant Portage County fails to meet any of the 7-day average effluent limitations of its NPDES permits issued for its wastewater treatment plants set forth in paragraph four (4) of this Consent Order, excluding Rivermoor and Sandy Lake, then Defendant shall immediately and automatically be liable for payment of a stipulated penalty according to the following payment schedule:

- a. For each first through fourth consecutive failure to meet any 7-day average effluent limitation, seven hundred fifty dollars (\$750.00) for each 7-day period during which each such failure occurs.
- b. For each fifth through eighth consecutive failure to meet any 7-day average effluent limitation, one thousand dollars (\$1,000.00) for each 7-day period during which each such failure occurs.
- c. For each ninth through eleventh consecutive failure to meet any 7-day average effluent limitation, one thousand two hundred fifty dollars (\$1,250.00) for each 7-day period during which each such failure occurs.
- d. For each failure beyond the eleventh consecutive failure to meet any 7-day average effluent limitation, one thousand five hundred dollars (\$1,500.00) for each 7-day period during which each such failure occurs.

The provisions of this paragraph apply per each 7-day average effluent limitation.

12. For the purpose of calculating stipulated penalties under the provisions of this paragraph, each 30-day period of violation of a specific 30-day average effluent limitation shall be calculated as a single violation. If Defendant Portage County fails to meet any of the 30-day average effluent limitations of its NPDES permits issued for its wastewater treatment plants set forth in paragraph four (4) of this Consent Order,, excluding Rivermoor and Sandy Lake, then Defendant shall immediately and automatically be liable for payment of a stipulated penalty according to the following payment schedule:

- a. For each failure to meet any 30-day average effluent limitation, one thousand dollars (\$1,000.00) for each 30-day period during which each such failure occurs.
- b. For each second consecutive failure to meet any 30-day average effluent limitation, one thousand five hundred dollars (\$1,500.00) for each 30-day period during which each such consecutive failure occurs.
- c. For each third consecutive failure to meet any 30-day average effluent limitation, two thousand dollars (\$2,000.00) for each 30-day period during which each such consecutive failure occurs.

- d. For each failure beyond the third consecutive failure to meet any 30-day average effluent limitation, two thousand five hundred dollars (\$2,500.00) for each 30-day period during which each such consecutive failure occurs.

The provisions of this paragraph apply per each 30-day average effluent limitation.

13. In the event that Defendant Portage County fails to meet any of the terms and conditions of their NPDES permits, DFFOs, renewals and modifications thereof, other than the effluent violations, stipulated penalties are addressed in Paragraphs 10, 11, 12, Defendant shall immediately and automatically 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, 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 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 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 the NPDES permit, DFFOs, and any renewals or modifications thereof.

14. Any payment required to be made under the provisions of Paragraphs 10 through 13 of this Article shall be made by delivering to Matthew Sanders, Administrative Assistant, or his successor, 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.

X. TERMINATION OF STIPULATED PENALTIES

15. The stipulated penalties imposed by paragraphs 10 through 13 of this Order may be terminated as to each WWTP within this Consent Order for which stipulated penalties are imposed only after Defendant has achieved and maintained compliance with Paragraph 5, as to the wastewater plant for which termination is sought, for a period of twelve consecutive months. Termination of one paragraph of the stipulated penalties under this Consent Order does not terminate the accrual of or the liability for payment of stipulated penalties under any other paragraph. Termination of one WWTP subject to stipulated penalties under this Consent Order does not terminate the accrual of or liability for payment of stipulated penalties for any other WWTP subject to stipulated penalties under this Consent Order. Termination of stipulated penalties under this Consent Order shall only be upon payment of all outstanding penalties. Termination of stipulated penalties under this Consent Order shall only be upon written application by any party and by order of the Court after the Court has made a determination that the requirements of this paragraph have been satisfied.

16. For purposes of calculating the period of compliance for each plant, Defendant Portage County shall begin so calculating from the date of the last violation. Such period shall be calculated retroactive to the entry of this Consent Order. If, however, Defendant Portage County 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.

XI. POTENTIAL FORCE MAJEURE

17. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Defendant Mahoning County 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.

18. 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 17 shall render this Paragraph 18 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.

XII. MISCELLANEOUS

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

20. 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

21.. Defendant Portage County 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.

22. 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.

XIII. RETENTION OF JURISDICTION

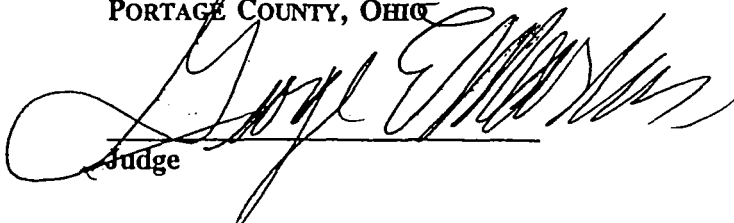
23. The Court will retain jurisdiction of this action for the purpose of enforcing the terms and provisions of this Consent Order.

XIV. COSTS

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

Entered this 29th day of September, 1994.

COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

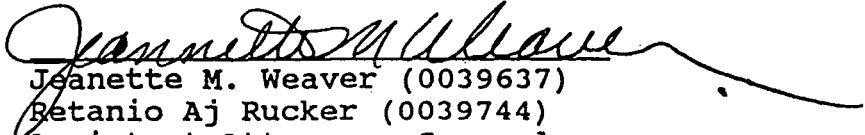


Judge

9PC/CO

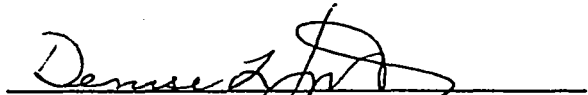
Approved:

Lee Fisher
Attorney General of Ohio

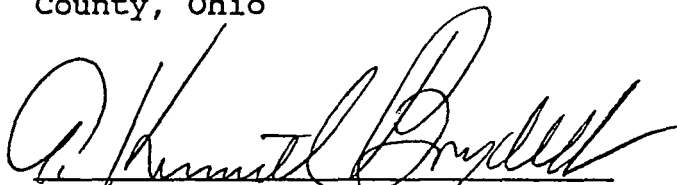


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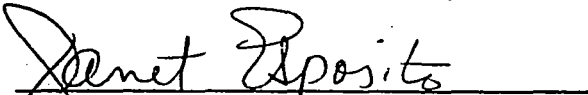
Portage County Prosecuting Attorney



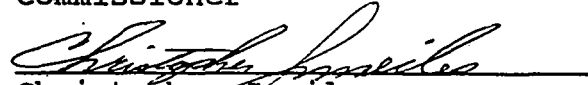
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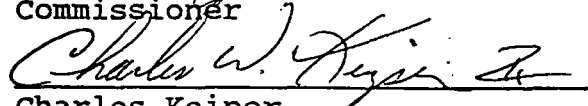
A. Kenneth Boydell, P.E.
Portage County Sanitary Engineer



Janet Esposito
Commissioner



Christopher Smelles,
Commissioner



Charles Keiper
Commissioner