

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

STATE OF OHIO, ex rel.  
WILLIAM J. BROWN  
ATTORNEY GENERAL OF OHIO

Plaintiff,

-vs-

CITY OF ██████████

Defendant.

Case No.

88187

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CLERK OF COURT  
LORAIN COUNTY, OHIO

CONSENT DECREE

Upon oral motion of the parties hereto and for good cause shown, the Court finds that the parties hereto have fully resolved this controversy as reflected in this Decree.

It is therefore ORDERED, ADJUDGED and AGREED as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter herein and of the parties consenting hereto. The Complaint states a claim upon which relief can be granted against defendant.

2. The provisions of this Consent Decree shall apply to and be binding upon the parties to this action, their officers, directors, agents, servants, employees, and successors; in addition, the provisions of this Consent Decree shall apply to all persons, firms, corporations, agencies, and other entities having notice of this Consent Decree and who are, or will be, acting in concert and privity with the parties to this action or its officers, directors, agents, servants, employees, successors and assigns.

3. The City of Amherst (hereinafter "City") operates a wastewater treatment works (hereinafter "works") located at North Lake Street, Amherst, Ohio, which discharges pollutants (hereinafter "discharge") into Beaver Creek.

4. On March 27, 1981, the Director of the Ohio Environmental Protection Agency (hereinafter "OEPA") issued to the City pursuant to Ohio Revised Code Sections 6111.01, et seq., an NPDES Permit No. D801\*CD, a copy of which is attached hereto and incorporated herein by reference for the aforementioned discharge

effective from March 27, 1981 to June 30, 1985. This permit requires compliance with the effluent limitations in the permit by the effective date of the permit.

5. The discharge from the City's works does not currently fully comply with the effluent limitations of said permit.

6. On November 15, 1978, the Director of the OEPA issued to the City, pursuant to Ohio Revised Code Section 6111.01, et seq., an NPDES Permit No. D801BD, for the aforementioned discharge, effective from November 15, 1978 to March 31, 1981.

7. The discharge from the City's works did not fully comply with the effluent limitations of said permit.

8. The City's non-compliance with the effluent limitations of the NPDES Permits referred to in paragraphs 4 and 6 above, constitute violations of Ohio Revised Code Section 6111.04.

9. As a result of the City's violation of Ohio Revised Code Section 6111.04, the City has violated Ohio Revised Code Section 6111.07, and is subject to the penalties prescribed in Ohio Revised Code Section 6111.09.

10. On March 27, 1981 the Director of the OEPA issued to the City Final Findings and Orders which imposed a standard connection ban, as defined in O.A.C. 3745-11.

11. As one of the terms of the NPDES Permit referred to in paragraph 4, the Director required the City to operate its works with a fulltime, Class III Operator in accordance with O.A.C. 3745-7-02.

12. The City appealed the Director's imposition of the standard connection ban and the Class III, fulltime operator requirement to the Environmental Board of Review in the case captioned City of Amherst v. James F. McAVOY, Case No. EBR 81-37, alleging that the Director's actions were unreasonable, unlawful, and arbitrary.

13. The Director of the OEPA, in lieu of seeking statutory and/or common law remedies and penalties against the City for violations of its NPDES Permits which precedes the date of this Entry, and the City, in lieu of pursuing its appeal before the Environmental Board of Review in Case No. EBR 81-37, have agreed to the following ORDERS:

ORDERS

Based upon the Findings set forth herein, the Court makes the following ORDERS:

14. IT IS ORDERED that the City employ a fulltime certified Class III Operator, as defined in O.A.C. Section 3745-7-02, to operate its wastewater treatment works. Said employment shall commence within three (3) months of the date of this decree.

15. IT IS ORDERED that the City, in its operation of the wastewater treatment works, waste sludge at least three times during each twenty-four hour period. The City shall not allow the wastewater treatment works to be operated for longer than a twelve (12) hour period without wasting sludge. "Wasting sludge" means the pumping of sludge from final to primary clarifiers, and from primary clarifiers to the digester.

16. IT IS ORDERED that the Director shall revoke the Findings and Orders referred to in paragraph 10, such revocation to be taken immediately upon the entry of this Consent Decree on the journal of the Court.

17. IT IS ORDERED that the City shall dismiss with prejudice its appeal referred to in paragraph 12 upon the entry of this Consent Decree on the journal of the Court.

18. IT IS ORDERED that the City shall install a flow metering device at the headend of the works which meter shall measure and record the daily flow and peak flow of wastewater into the works and all other data required by the attached NPDES permit. Said meter shall be installed within three (3) months from the date of this agreement, or within thirty (30) days after said meter is delivered by the supplier to the works, whichever occurs later in time. The City shall within thirty (30) days from the date of this Decree provide the Director with a copy of the City's executed and legally binding purchase order for the meter, which order shall provide for the delivery of such meter as promptly as possible.

19. IT IS ORDERED that the City (1) shall daily inspect each of the lift stations in the sewerage system excepting weekends and holidays and (2) shall promptly install all equipment presently on order for the works and shall thereafter maintain such equipment and the remainder of the works in good working order.

20. IT IS ORDERED that the City shall attain compliance with the effluent limitations of the attached NPDES Permit as expeditiously as possible but not later than the schedule set forth below:

- (a) Submit an approvable general plan to the OEPA Northeast District Office ("NEDO") not later than nine (9) months from March 27, 1981. The general plan shall indicate how the final effluent limitations set forth in the City's NPDES Permit will be achieved and the method by which the City shall finance execution of the plan.
- (b) Submit approvable detail plans and specifications on the wastewater treatment works drawn in accordance with approved general plans to the OEPA NEDO not later than twenty-one (21) months from March 27, 1981.
- (c) Commence construction in accordance with detail plans not later than either (a) 28 months from March 27, 1981 (b) 6 months from notification of approval of the detail plans by the OEPA, whichever occurs first.
- (d) Notify the NEDO within seven (7) days of initiation of construction of the treatment works.
- (e) Complete construction in accordance with detail plans within twenty-four (24) months of commencement of construction.
- (f) Notify the NEDO within 7 days of completion of construction of the treatment works.
- (g) Attain operational level of the constructed treatment works and meet the permit effluent limitations not later than three months after completing construction.
- (h) If the OEPA fails to act on (i.e., approve or disapprove) timely submitted general or detail plans within sixty (60) days of receipt, subsequent steps of the compliance schedule shall be extended for the same number of days by which the OEPA exceeds sixty days in acting on the plans. However, the failure by the City to submit approvable plans shall not constitute grounds for an extension. The OEPA shall not unreasonably withhold such approval.

21. IT IS ORDERED that until the date the wastewater treatment works are to attain operational level as specified in the schedule of compliance set forth in paragraph 20, the City shall comply with the effluent limitations and monitoring requirements contained in Attachments 1 and 2 hereto and all terms and conditions of the attached NPDES Permit which are not inconsistent herewith and not otherwise modified by this decree.

22. IT IS ORDERED that the City shall report any non-compliance with Paragraph 18 or Attachments 1 and 2 in accordance with Part III, Paragraph 11 of the attached NPDES Permit.

23. IT IS ORDERED that in the event that the City violates any of the Orders set forth herein, or any term or condition of the attached NPDES Permit or Attachments 1 and 2, the City shall pay a civil penalty pursuant to Revised Code Section 6111.09 of Five Hundred Dollars (\$500.00) per violation for each day that each violation occurs, which penalty shall not be suspended in whole or in part. By its signature herein, the City hereby waives all defenses it may have to the imposition of such penalties except the defenses that (1) the violation was caused by acts or omissions outside the control of the City, its officers, employees, servants, agents, consultants or anyone acting in concert with it and (2) the alleged violation did not in fact occur.

24. IT IS FURTHER ORDERED that, in the event the City fails to timely meet any of the milestones set forth in paragraph 20, where such failure is the result of an act or omission of or within the City, including those of its employees, agents and consultants, the OEPA may reimpose a standard connection ban on the City. If the OEPA does reimpose such a ban, the City agrees to waive all objections it may raise to the imposition of the ban where the basis for such objections arise from acts or omissions by the City, including those of its employees, agents and consultants. Notwithstanding the foregoing sentence, the City does not waive the defense that it did not, in fact, fail to timely meet the compliance schedule milestones. If the normal operation of the wastewater treatment plant is interrupted for a period of more than fifty-four (54) consecutive hours, and such interruption results in the discharge into Beaver Creek of effluent in violation of the City's then effective NPDES Permit, the Director may reimpose the standard connection ban until such time as the wastewater treatment plant resumes its normal operations.

25. IT IS ORDERED that the terms of this Consent Decree shall be effective until such time as the wastewater treatment works have been constructed and placed into operation by the City.

26. IT IS ORDERED that the costs of this action shall be paid by the City.

The effective date of the decree is the \_\_\_\_\_ day of \_\_\_\_\_, 1981.

IT IS SO ORDERED.

DATE \_\_\_\_\_

*3/ Joseph B. Cappiano*  
JUDGE  
*for Judge Adina F. Buttski*

APPROVED:

CARLILE PATCHEN MURPHY & ALLISON

By *Timothy P. Nagy*  
Timothy P. Nagy  
Attorney for City of Amherst  
100 East Broad Street  
Columbus, Ohio 43215  
Phone: (614) 228-6135

By *Thomas Samboin*  
Thomas Samboin  
Law Director for the  
City of Amherst  
215 Church Street  
Amherst, Ohio 44001

STATE OF OHIO  
WILLIAM J. BROWN  
ATTORNEY GENERAL OF OHIO

By *Stephen P. Samuels*  
Stephen P. Samuels  
Assistant Attorney General

By *Joan M. Cummings (SAS)*  
Joan M. Cummings  
Assistant Attorney General  
Environmental Law Section  
30 East Broad Street, 17th Floor  
Columbus, Ohio 43215  
(614) 466-2766

I hereby certify this to be a true and correct  
copy of the original on file in the  
office  
Natale S. Nesson, Clerk  
By *M. J. [Signature]*