

IN THE COURT OF COMMON PLEAS
HOCKING COUNTY, OHIO

STATE OF OHIO, ex rel.
ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

CITY OF LOGAN, et al.,

Defendants.

87-CIV-99

FILED MAXINE DALTON CLERK
HOCKING COUNTY, OHIO
CONSENT JUDGMENT

'87 APR 10 A 9:16

The Complaint having been filed under Chapter 6111 of the Ohio Revised Code (hereinafter "O.R.C.") to enforce Ohio's water pollution laws and Plaintiff and Defendants by their respective attorneys having consented to the entry of this Consent Judgment:

Therefore, before the taking of any testimony, upon the pleadings and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

JURISDICTION

1. The Court has jurisdiction over the parties and the subject matter of this action. The Complaint states a claim upon which relief can be granted against Defendants under O.R.C. Sections 6111.07 and 6111.09.

PERSONS BOUND

2. The provisions of this Consent Judgment shall apply to and be binding upon the parties to this action, their agents, servants, employees, assigns and successors in interest.

SATISFACTION OF LAWSUIT

3. WHEREAS, Defendant, City of Logan (hereinafter "Logan") owns and operates a wastewater treatment facility (hereinafter "Treatment Facility") or "Treatment Plant") located on Old Townyard Road in Logan, Ohio; and

WHEREAS, Defendant Mayor of the City of Logan (hereinafter "Mayor") is the duly elected mayor of Logan; and

WHEREAS, Defendant Logan City Council consists of the duly elected members of the City Council of Logan; and

WHEREAS, Defendant Charles R. Frasure, Jr. (hereinafter "Frasure"), is the Utilities Director for the City of Logan; and

WHEREAS, Defendant Harry Burgess (hereinafter "Burgess is the Chief Operator of the Treatment Facilities for the City of Logan.

4. As described in the Complaint, Plaintiff alleges that Defendant Logan violated Section 6111.07 of the Ohio Revised Code by failing to monitor and report as required by Logan's

National Pollution Discharge Elimination System (hereinafter "NPDES") Permit Number OPD 00009 (hereinafter "Permit"); by violation the discharge limitations of the Permit; by allowing, and failing to report and monitor as required by Permit, unauthorized discharges from the South Logan Lift Station and Treatment Plant; by not submitting an approvable facilities plan as required by Final Findings and Orders issued by the Director; and by not submitting and obtaining approval of detail plans for sludge management as required by Ohio Administrative Code Section 3745-31-02(C). Plaintiff alleges that the Defendants Logan City Council and Mayor violated Section 6111.07 of the Ohio Revised Code by not submitting an approvable facilities plan as required by Final Findings and Orders issued by the Director. Plaintiff alleges that Defendants Frasure and Burgess violated Section 6111.07 of the Ohio Revised Code by allowing, and failing to monitor and report as required, unauthorized discharges from the South Logan Lift Station and the Treatment Plant.

Defendants deny these allegations, and aver: (1) that any violations alleged are of a technical nature and are de minimus in significance and duration; (2) that an approvable facilities plan and sludge management plan were submitted to the Ohio EPA prior to the filing of the Complaint and consent Decree herein; (3) and that the primary liability for the construction and operation of the City of Logan Wastewater Treatment Facility

rests with the City of Logan, and its legislative authority pursuant to Section 6111.032 of the Ohio Revised Code.

Compliance with the terms of this Consent Judgment shall be in full satisfaction of the Defendants' liability for the foregoing alleged violations of law which violations have occurred prior to the date of the entry of this Consent Judgment.

INJUNCTIVE RELIEF

5. Defendants are enjoined to upgrade Logan's wastewater treatment works and sewer system. In order to achieve the required upgrade, Defendants are enjoined to take the action set forth below, by the corresponding milestone dates set forth below:

<u>Action</u>	<u>Milestone Dates</u>
a. Submit approvable detail plans for treatment works and sewer system improvements that will ensure compliance with the effluent discharge limitations set forth in Logan's NPDES Permit and elimination of bypasses and overflows.	February 1, 1987

b. Initiate on-site construction for treatment works and sewer system improvements.

May 1, 1987

c. Complete construction of all wet stream processes and sewer system improvements necessary to eliminate bypasses and overflows.

June 1, 1988

d. Institute complete operation of treatment works and sewer system improvements and achieve final compliance with Logan's then effective NPDES permit.

July 1, 1988

6. Defendants shall forward a written report which indicates their progress in completing the required milestone to the Ohio EPA Southeast District Office no later than two (2) weeks after each milestone date.

7. It is ordered that after July 1, 1988 Defendants, their agents, servants, employees, assigns and successors in interest are permanently enjoined from violating Sections 6111.04 and 6111.07 of the Ohio Revised Code, as well as the terms and conditions of Defendant Logan's then existing NPDES permit.

CIVIL PENALTY

8. (A) Defendants agree to and are hereby ordered to pay a civil penalty under Section 6111.09 of the Ohio Revised Code in the amount of Ten Thousand Dollars (\$10,000), which shall be paid within thirty (30) days of entry of this Judgment

by delivering to Plaintiff's counsel, for payment into the State Treasury, a certified check in such amount made to the order of "Treasurer, State of Ohio; provided however, that within thirty (30) days of the entry of this Decree, Defendants may propose, in writing, to the Director of Ohio EPA, \$10,000 of improvements to be added to the City of Logan Wastewater Treatment Plant beyond what is called for by the requirements of this Consent Judgment and any enforceable requirement of Chapter 6111 O.R.C. Such proposal for improvements shall include a schedule for construction of the improvements. If the Defendants make such a proposal, the Director may approve or deny such a request based solely on his discretion. If the Director approves such a proposal the amount of the civil penalty to be paid under this Paragraph shall be \$5,000. This civil penalty of \$5,000 shall be paid within thirty (30) days of the Director's approval by delivering to Plaintiff's counsel, for payment into the State Treasury, a certified check in such amount made to the order of "Treasurer, State of Ohio." If the Director approves such proposal Defendants agree and are hereby ordered to construct such additional improvements in accordance with the schedule as approved by the Director. If the Director denies such a proposal, Defendants shall pay \$10,000 to the State of Ohio within thirty (30) days of the Director's denial, by delivering to Plaintiff's counsel, for payment into the State Treasury, a certified check in the

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amount of ten thousand dollars (\$10,000) made to the order of "Treasurer, State of Ohio."

(B) Defendants agree to and are hereby ordered to pay the following stipulated civil penalties: One Thousand Dollars (\$1,000) per day for each day Defendants fail to meet any deadline set forth in Paragraph 5, items (a) through (c) of this Consent Judgment; Five Thousand Dollars (\$5,000) per day for each day Defendants fail to meet the deadline set forth in Paragraph 5, item (d) of this Consent Judgment. These stipulated penalties, shall be paid to the order of "Treasurer, State of Ohio" and sent to the counsel for the Plaintiff within sixty (60) days of any violation of any of the deadlines in Paragraph 5 of this Consent Judgment. The amounts of stipulated civil penalties required by Paragraph 8(B) shall not be modified in whole or in part by the Court.

ENFORCEMENT OF THIS DECREE

9. (A) If Defendants discover they will be unable to meet any milestone deadline in this Consent Judgment for any reason, including circumstances beyond their control, they may notify Plaintiff of the anticipated delay and reasons therefore. Upon receipt of such notice Plaintiff may agree to waive or defer one or more milestone deadlines herein or the enforcement thereof. Plaintiff will promptly inform Defendants

of its decision in writing. Plaintiff is not bound by oral representations of Ohio EPA personnel concerning the validity of Defendants' reason for delay. A decision by Plaintiff to waive or defer any milestone deadline of this Consent Judgment shall not be a bar to any enforcement action for Defendants' failure to meet the date of the milestone as deferred. A decision by Plaintiff to defer enforcement of any milestone deadline or stipulated penalties set forth in this Consent Judgment shall not constitute a waiver of enforcement action with regard to the terms of this Consent Judgment unless the Plaintiff expressly so agrees.

(B) In any action for enforcement of this Consent Judgment, the Defendants may raise at that time the question of whether they are entitled to a defense that the alleged violations resulted from causes beyond their control such as, but not limited to, fire, flood, riot, strike, acts of God, acts of public enemies, conflicting orders of any entity having police power jurisdiction over Defendants or impossibility of the Defendants in the performance of the terms of this Consent Judgment. While Plaintiff disagrees that such a defense exists, the parties do, however, agree and stipulate that it is premature at this time to raise and adjudicate the existence of such a defense, that the appropriate time to adjudicate the existence of such defense is at such future time at which Plaintiff may seek to enforce the provisions of this Consent Judgment.

(C) If operation of the Treatment Plant terminates as a result of the applicable federal, state, or local law, regulations, or ordinance or the issuance of an administrative order or court order or decree, or if the operation of the Plant terminates for any other reason, all obligations of Defendants pursuant to this Consent Judgment except those set forth in Paragraph 8 shall cease unless otherwise required by law or regulation. If operation of the Treatment Plant is thereafter resumed, Defendants' obligations shall be reinstated as if operation has not ceased consistent with applicable state and federal law. Should Defendants cease operation of the Treatment Plant, they shall not thereafter renew operation of the Treatment Plant unless they are in compliance with all obligations required by this Consent Judgment to have been achieved on or before the date of renewed operation.

MISCELLANEOUS

10. The Court retains jurisdiction of this case for the purpose of making any order or decree which it may deem at any time to be necessary to carry out this judgment.

11. The costs of this action are hereby assessed against the Defendants.

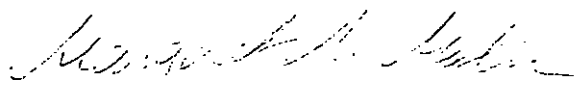
12. Defendants Charles K. Frasure, Jr. and Harry Burgess are signing this Consent Judgment in their official capacities, respectively, as Utilities Director and Chief Operator of the City of Logan Wastewater Treatment Facility. In so doing, it is agreed that Defendants Charles K. Frasure and Harry Burgess do not assume personal liability for either the performance of any obligation set forth in this Consent Judgment or the payment of any penalty set forth herein.



JUDGE


APPROVED:

ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO

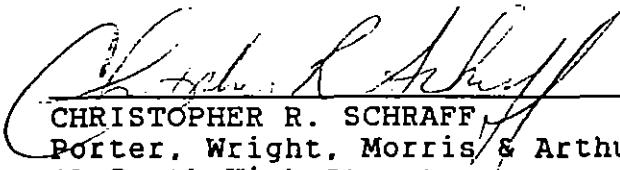


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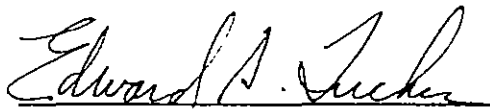
CITY OF LOGAN



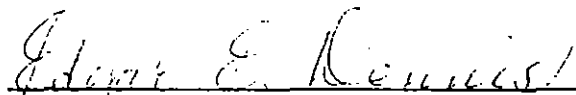
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City of Logan
Law Director
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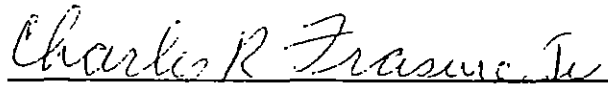
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Special Counsel for
The City of Logan



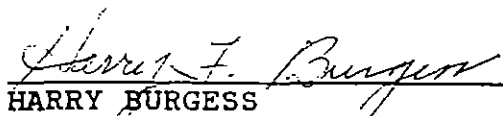
EDWARD G. TUCKER
Mayor, City of Logan



PRESIDENT
City Council
City of Logan



CHARLES K. FRASURE, JR.
Utilities Director, City of Logan



HARRY BURGESS
Chief Operator
City of Logan Treatment Facility

2780E

ORDINANCE NO. 9, 1987

CITY OF LOGAN, OHIO

AN ORDINANCE AUTHORIZING APPROVAL OF CONSENT JUDGMENT, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LOGAN, STATE OF OHIO:

SECTION 1. That the Law Director, Attorney Christopher R. Schraff, the Mayor, the President of Council, Charles K. Frasure, Jr. (Utilities Director) and Harry Burgess (Chief Operator Treatment Facility) be, and they hereby are, authorized and directed to approve with their signatures a Consent Judgment, a copy of which is attached hereto as "Exhibit A," with the Attorney General of the State of Ohio, to settle any complaints which may be filed against the City under Section 6111 of the Ohio Revised Code.

SECTION 2. That this Ordinance is to be an emergency measure necessary for the preservation of the health, welfare, and safety of the residents of the City of Logan, Ohio, in that it is necessary to provide immediate adoption of said Consent Judgment to avoid unnecessary litigation and improve the City's waste water disposal system, and that it shall be in full force and effect immediately upon its passage and approval by the Mayor, provided it receives the affirmative vote of two-thirds of the members elected to the legislative authority; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

Passed: March 10, 1987

Edgar E. Dennis
Edgar E. Dennis, President of Council

Attest: Albert Elick
Albert Elick, Clerk

Edward G. Tucker
Approved: Edward G. Tucker, Mayor

APPROVED AS TO FORM:

Date of Approval: 3/10/87

Michael L. Barr
Michael L. Barr

PUBLISH