

COPY

IN THE COURT OF COMMON PLEAS
FAYETTE COUNTY, OHIO

FILED
FAYETTE COUNTY

STATE OF OHIO, *ex rel.*,
BETTY D. MONTGOMERY,
ATTORNEY GENERAL OF OHIO,

: CASE NO.
:
: JUDGE

NOV 14 1997

Plaintiff,

L. J. ...
Clerk of Courts

vs.

CITY OF WASHINGTON
COURT HOUSE

: CONSENT ORDER
:
:
:

Defendant.

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff, State of Ohio by its Attorney General (hereinafter "Plaintiff" or "State of Ohio") and Defendant, City of Washington Court House (hereinafter "Defendant" or "Washington CH") having consented to the entry of this Consent Order.

NOW THEREFORE, without trial or admission of any issue of law or of fact, and upon the 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 Washington CH under Chapter 6111 of the Ohio Revised Code (hereinafter "RC"). Venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply and be binding upon the Plaintiff and Defendant to this action, the Defendants agents, officers, employees, assigns, successors in interest and any persons acting in concert or privity with any of them. Washington CH shall provide a copy of this Consent Order to each contractor and consultant it employs to perform the work itemized herein. Washington CH shall require each general contractor to provide a copy of this Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

3. Plaintiff alleged in its Complaint, that Defendant had operated its wastewater treatment plant and sewer system in such a manner as to result in violations of the requirements of the National Pollution Discharge Elimination System ("NPDES") Permits issued to it by the Director of Ohio EPA and in violation of the water pollution 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 under such laws alleged in the Complaint.

4. Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against other appropriate persons, for claims or conditions alleged in the complaint. Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against Washington CH or other appropriate persons, for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint, nor shall anything in this Consent Order limit the right of Washington CH to any defenses it may have for such claims. Similarly, nothing in this Consent Order shall be construed so as to limit the

authority of the State of Ohio to undertake any action against any person, including Washington CH, to eliminate or mitigate conditions which may present a threat to the public health, welfare or the environment.

IV. PERMANENT INJUNCTION

5. Except as otherwise provided for in Washington CH's NPDES permit, Washington CH is hereby permanently enjoined and immediately ordered to comply with the requirements of RC Chapter 6111 and the rules adopted thereunder, and the terms and conditions of its currently effective NPDES Permit No. 4PD000002, and any renewals or modifications thereof, except as otherwise provided in Section V of this Consent Order. Washington CH shall prevent wet weather bypasses and overflows from its wastewater treatment plant and sanitary sewer system (except as otherwise provided for in Washington CH's NPDES permit and Section V of this Consent Order) and Washington CH shall properly operate and maintain its wastewater treatment plant, sewer system and any associated equipment and structures. NPDES Permit No. 4PD000002 is hereby incorporated herein by reference as if rewritten in full.

V. COMPLIANCE SCHEDULES FOR NPDES PERMIT REQUIREMENTS

6. Washington CH is permanently enjoined and ordered to commence and complete construction of the improvements to its wastewater treatment system so as to attain compliance of its NPDES Permit No. 4PD000002*KD, and any modifications or renewals thereof. During the first eighteen (18) months of this agreement, Washington CH is prohibited from allowing any raw water bypass discharge or overflow from its sanitary sewer system located prior to the wastewater

treatment plant influent unless the total instantaneous flow gathered from the lift station at the front of the bypass in the WWTP collection system exceeds five (5) million gallons per day and there was no feasible alternative to the bypass or overflow. As expeditiously as possible, but no later than eighteen (18) months of the effective date of this agreement, Washington CH shall eliminate any and all raw water bypass discharges and overflows from its sanitary sewer system located prior to the wastewater treatment plant influent.

6.1 (A) Within six (6) months after the effective date of this Consent Order, Washington CH shall submit to the Ohio EPA for review and comment, a comprehensive plan to reduce infiltration and inflow ("I&I Plan"). In the event that Ohio EPA has comments on the I&I Plan, Washington CH shall modify the I&I Plan within one (1) month of, and in accordance with, Ohio EPA comments and resubmit the I&I Plan to the Ohio EPA for acceptance. If Ohio EPA does not find it necessary to comment on the original plan, or after Washington CH has modified the "I&I Plan" in accordance with Ohio EPA comments, Washington CH shall implement the plan after Ohio EPA issues its acceptance of the plan, as set forth in subparagraph (C) below. The I&I Plan shall address, at a minimum, the following:

1. Sanitary sewer map;
2. System flow diagram;
3. Dry vs. wet weather flow determinations;
4. Field survey, physical survey and flow tests;
5. Determination of approximate quantity of excessive infiltration/inflow;
6. Pipe inspection (television).

(B) Within twelve (12) months of the effective date of this Consent Order Washington CH shall submit a storm sewer map to Ohio EPA as part of the I&I Plan.

(C) Within five (5) months after the acceptance of the I&I Plan outlined in Section 6.1(A), Washington CH shall implement all I&I improvements as required by and within the time

frame established in the "I&I Plan" set forth in paragraph (A) above.

(D) In addition, to the I&I Plan referenced in 6.1(A) & (B), Washington CH will continue the ongoing SSES improvements to reduce "I&I" pursuant to the May 1995 Director's Final Findings and Orders, (Orders paragraph 1,b), issued by Ohio EPA. (The Director's Final Findings and Orders is attached hereto as Exhibit A and Orders paragraph 1,b shall be deemed to be incorporated in and made an enforceable part of this Consent Order.)

6.2 Within one (1) month of the effective date of this Consent Order, Washington CH shall comply with the staffing level of 11 operational employees as set forth in the Washington CH's Wastewater Treatment Plant Approved Operation and Maintenance manual. Ohio EPA agrees that the 12th employee required by the O&M manual is satisfied by the combination of four (4) off-site personnel (i.e., clerical secretary, two (2) facility maintenance personnel, and electrician) who contribute to the operation of the plant. Thereafter, Washington CH shall comply with any and all personnel staffing requirements of its then currently approved Operation and Maintenance manuals.

6.3 Within six (6) months of the effective date of this Consent Order, Washington CH shall provide alarms at all lift stations to alert the entity to equipment malfunction. The alarms must be telemetered in accordance with the Ten State Standards. (The only remaining lift station not complying at this time is the lift station serving the Doanne Industrial plant.) Washington CH agrees to provide any and all future lift stations with alarms required by this provision.

6.4 Washington CH shall achieve compliance with the final effluent limitations in its effective NPDES permit in accordance with the following schedule:

(A) Within twelve (12) months of the effective date of this Consent Order,

Washington CH shall submit to the Ohio EPA an approvable and complete PTI application for those items listed below including approvable detailed plans for any additional improvements to the POTW:

1. Replace screen on existing mechanical bar screen to provide smaller openings.
2. Construct two new vortex-type grit tanks.
3. Modify the existing Grit Building to accommodate new grit pumps and grit handling equipment.
4. Construct an aeration tank splitter box and convert preaeration tank No. 1 to a hydraulic wasting tank.
5. Convert two existing equalization tanks to aeration tanks and install fine bubble diffusers.
6. Construct two new secondary clarifiers including splitter box and RAS piping.
7. Expand the channels from grit tanks to primary clarifiers and from grit tanks to equalization basins.
8. Construct and extend a channel to the aeration tank splitter box from the existing primary effluent channel and install RAS pump discharge piping to a splitter box.
9. Construct effluent piping from new secondary clarifiers to existing chlorine tanks.
10. Convert existing 2nd stage aeration tanks to aerobic digesters and install sludge pumping equipment.
11. Construct and extend piping from existing EQ transfer pump well to aeration tanks and install additional EQ transfer pump.
12. Construct two new primary clarifiers including new primary sludge pumps.

(B) Within twenty-four (24) months of the Ohio EPA's approval of the PTI(s) listed in subparagraph 6.4(A) above, Washington CH shall complete construction.

6.5 (A) Within twelve (12) months of the effective date of this Consent Order, Washington CH shall initiate construction to expand and upgrade the sludge handling facility at the WWTP. To comply with this Order, Washington CH shall prepare detailed plans for further expanded sludge handling capacity and submit a complete PTI application to the Ohio EPA for approval.

(B) Within twenty-four (24) months of the effective date of this Consent

Order, Washington CH shall complete construction of the PTI described in subparagraph 6.5 (A) above.

(C) During the period set forth in 6.5 (B) above, the Washington CH wastewater treatment supervisor has the authority to implement, as needed, temporary measures to remove excess sludge. Such temporary measures shall comply with the effective NPDES permit and sludge management plan.

6.6 (A) Within three (3) months of the effective date of this Consent Order, Washington CH shall submit to the Ohio EPA for approval, a plan addressing improvements in equipment for pretreatment and designate a pretreatment coordinator for Washington CH's approved Pretreatment Program. The required equipment, available to the pretreatment coordinator, shall include a vehicle (van), a twenty-four (24) hour sampler, a flow meter and confined space entry equipment

(B) Within six (6) months of the effective date of this Consent Order, Washington CH shall implement and complete the plan improvements, as accepted by the Ohio EPA and as described in subparagraph 6.6 (A) above.

6.7 (A) To the extent required by OAC Chapter 3745-31, Washington CH is hereby prohibited from allowing the installation or connection of any extension to its sewerage system by Washington CH or any other person, unless and until a PTI for such extension is approved by the Ohio EPA. Washington CH shall promptly inform the Ohio EPA of any instance of construction, installation or connection to its sewerage system without an approved PTI, as required by OAC Chapter 3745-31. To the extent such construction or installation is still ongoing, Defendant shall cease such construction until such time as a PTI is properly

obtained from the Ohio EPA.

(B) Washington CH recognizes that approval and connection of newly expanded or installed collection systems, may result in additional flows entering the existing Washington CH sewer system and wastewater treatment plant. Washington CH also recognizes that these additional flows could result in violation of Washington CH's NPDES permit and this Consent Order thus subjecting Washington CH to stipulated penalties as set forth in paragraph 13 or possible contempt of court proceedings.

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, modification or expansion shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

VI. REPORTING REQUIREMENT

8. Within twenty (20) days from the completion date of each task listed in Section V, Defendant is immediately ordered to submit a written report stating whether it has performed the actions set forth therein to the following address, unless otherwise notified in writing of different name or address:

Ohio EPA
Central District Office
Division of Surface Water
3232 Alum Creek Drive
Columbus, Ohio 43207
ATTN: Sheree' Gossett-Johnson (or her successor)

I. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

9. Performance with the terms of this Consent Order by Defendant is not conditioned on the receipt of any federal or state grants, loans or funds. In addition, Washington CH's performance is not excused by the failure to obtain or shortfall of any federal or state grants, loans or funds, or by the processing of any applications for the same.

VIII. CIVIL PENALTY

10. Within thirty (30) days of the effective date of this Consent Order, it is hereby ordered that Defendant shall pay to the State of Ohio a civil penalty of Fifteen Thousand dollars (\$15,000). The civil penalty payment shall be paid by delivering a certified check for the appropriate amount, made payable to "Treasurer, State of Ohio", to c/o Jena Suhadolnik, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428. In lieu of paying additional penalties in the amount of Twenty Thousand dollars (\$20,000), the Defendant may complete the I&I project set forth in paragraph 11 and the supplemental environmental project set forth in Section IX.

11. Washington CH has identified two sources of I&I that will require repair and/or replacement at Eyman Drive and Main Street. Completion of this project should reduce I&I by a combined 15,000 gallons per day. Accordingly, in lieu of paying additional penalties and in furtherance of the mutual objectives of Ohio EPA and the Defendant, within 30 days of the effective date of this Consent Order Washington CH shall complete the replacement and repair of the sewer main trunk line at Eyman Drive and Main Street. Washington CH shall provide Ohio EPA with written notice of completion of the project within fourteen (14) days of

completion. Should Washington CH elect not to complete or fail to fully complete this repair project within thirty (30) days of the effective date of this Consent Order, Washington CH shall pay an additional civil penalty in the amount of Five Thousand Dollars (\$5,000.00) to the plaintiff, with a certified check, no later than one (1) month from the date the project was required to be completed or one (1) month of the effective date of this Consent Order if Defendant elects not to complete this project.

IX. SUPPLEMENTAL ENVIRONMENTAL PROJECT

12. In lieu of paying an additional civil penalty of Fifteen Thousand dollars (\$15,000) and in furtherance of the mutual objectives of Ohio EPA and the Defendant, and improving the environment and reducing impacts to the waters to the State of Ohio, Defendant agrees to and is hereby ordered to conduct the following supplemental environmental project:

(A) Within eighteen (18) months after the effective date of this Consent Order, Washington CH may elect to complete a program of I&I reduction which eliminates the flow of storm water from roof top drains, sump pumps, down-spouts and from parking lots in the Belle Aire and Millwood Subdivisions into Washington CH's sanitary sewer collection system. Within Forty Eight (48) months after the effective date of this Consent Order, Washington CH may elect to complete a program of I&I reduction which eliminates the flow of storm water from all roof top drains, down-spouts and from parking lots into Washington CH's sanitary sewer collection system. Washington CH shall provide written notification to Ohio EPA within fourteen (14) days of completion of each street in the I&I reduction program. The notice shall be in writing and include a list of addresses completed. Should Washington CH elect not to

complete or fail to fully complete this repair project within the time frame set forth above, Washington CH shall pay an additional civil penalty in the amount of Fifteen Thousand Dollars (\$15,000.00) to the plaintiff, with a certified check, no later than one (1) month from the date the project was required to be completed or one (1) month of the effective date of this Consent Order if Defendant elects not to complete this project.

X. STIPULATED PENALTIES

13. In the event that Defendant fails to meet any of the compliance deadlines set forth in Section V, (Paragraphs 6 and 7 of this Consent Order) and/or any failure to comply with Defendant's NPDES permit terms or conditions, Defendant shall pay a stipulated penalty according to the following schedule:

(1) For each day of each failure to meet a requirement and/or failure to comply with Section V or Defendant's NPDES permit term or condition up to thirty (30) consecutive days--five hundred dollars (\$500.00) per day per violation;

(2) For each day of each failure to meet a requirement and/or failure to comply with Section V or Defendant's NPDES permit term or condition from thirty-one (31) to sixty consecutive days (60) -- one thousand dollars (\$1000.00) per day per violation; and

(3) For each day of each failure to meet a requirement and/or failure to comply with Section V or Defendant's NPDES permit term or condition over (61) consecutive days--one thousand five hundred dollars (\$1,500.00) per day per violation.

[For purposes of this section, a "day" is defined as a consecutive twenty-four hour period.]

14. Any payment required to be made under the provisions of Section X of this Consent Order shall be made by delivering to Jena Suhadolnik at the address set forth in Section VIII, Paragraph 10, 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 Section V this Consent Order or Defendant's NPDES permit terms or conditions, made payable to "Treasurer, State of Ohio". Defendant shall also state in writing the failure to comply with the Consent Order and/or NPDES permit term and condition and the date(s) of non-compliance. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to Section X shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order.

XI. MISCELLANEOUS

15. Nothing in this Consent Order shall affect Washington CH's obligation to comply with all applicable federal, state or local law, regulation, rule or ordinance. Washington CH shall obtain any and all federal, state, or local permits necessary to comply with this Consent Order.

16. Any acceptance by the State of Ohio of any payment, document or other work due hereunder subsequent to the time that the obligation is due under this Consent Order shall not relieve Washington CH of the obligation created by the Consent Order.

XII. POTENTIAL FORCE MAJEURE

17. If any event occurs which causes or may cause a delay of any requirements of this Consent Order, Washington CH shall notify the Ohio EPA in writing within ten (10) days 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 the Defendant to prevent or minimize the delay and the timetable by which measures will be implemented. Washington CH 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, Washington CH 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 limitations, 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 Washington CH 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 a proceeding to enforce this Consent Order, if any, is commenced by the Plaintiff. At that time, Washington CH will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Washington CH. 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 Washington CH or serve as a basis for an extension of time under this Consent Order. Failure by Washington CH to comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved and shall constitute a waiver of Washington CH's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one date based on a particular incident does not mean that Washington CH qualifies for an extension of a subsequent date or dates. Washington CH 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 Washington CH of any rights or defenses it may have under applicable law.

XIII. TERMINATION OF STIPULATED PENALTIES

19. The provisions of this Consent Order set forth in Section X requiring the payment of stipulated penalties may be terminated upon a demonstration by Defendant Washington CH that: 1) it has completed the requirements outlined in Section IV, V, VIII and IX; 2) it has paid all penalties required by this Consent Order; and 3) for a period of twelve consecutive months, it has achieved and maintained compliance with the final effluent limitations contained in its currently effective NPDES permit No. 4PD00002, along with the other terms and conditions of said permit, and any renewals or modifications thereof.

20. If during the one (1) year period (twelve consecutive months) set forth in Paragraph 19, Defendant fails to comply with its currently effective NPDES permit No. 4PD00002, and any renewals or modifications thereof, the one (1) year period (twelve consecutive months) will begin anew on the first date after such failure that the Defendant is back into compliance with the final effluent limitations contained in its currently effective NPDES permit No. 4PD00002, along with the other terms and conditions of said permit, and any renewals or modifications thereof. Any of Defendant's subsequent failures to maintain compliance with the final effluent limitations contained in its currently effective NPDES permit No. 4PD00002, along with the other terms and conditions of said permit, and any renewals or modifications thereof, shall be treated in the same manner, with the one (1) year period (twelve consecutive months) beginning anew from the date Defendant comes

back into compliance.

21. Termination of the stipulated penalty section of this Consent Order shall only be by order of the Court upon application by any party, and a demonstration that the conditions outlined in Paragraph 19 have been met.

XIV. RETENTION OF JURISDICTION

22. The Court will retain jurisdiction of this action for the purpose of administering or enforcing Washington CH's compliance with this Consent Order.

XV. COSTS

23. Defendant is hereby immediately ordered to pay the costs of this action.

XVI. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

24. The parties agree and acknowledge that this Consent Order is being made available for public comment and final approval by the Plaintiff and Defendant, and entry of this Consent Order is subject to the requirement of 40 C.F.R. § 123.27 (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. The State and Defendant, reserve the right to withdraw consent to this Consent Order based on comments received during the public comment period.

25. Defendant is hereby ordered to pay the costs incurred by the Ohio EPA for the publication of the Proposed Consent Order in a newspaper of general circulation. Defendant shall pay the costs associated with publication by delivering a certified check for the amount to Ohio EPA,

within 30 days from the date they receive notice of the costs from Ohio EPA.

26. 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 judgment upon the journal, the clerk is hereby directed to serve upon all parties notice of the judgment 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.

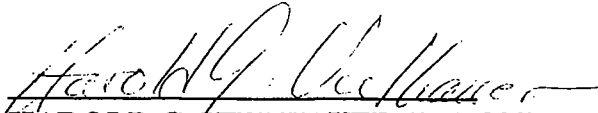
IT IS SO ORDERED:

JUDGE, FAYETTE COUNTY
COURT OF COMMON PLEAS

DATE

APPROVED:

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO



HAROLD G. VIELHAUER (0040800)

ROBERT J. KARL (0042292)

Assistant Attorneys General

Environmental Enforcement Section

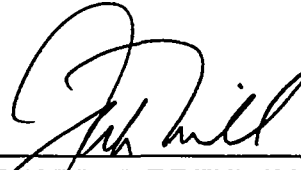
30 East Broad Street, 25th Floor

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*Attorney for Washington Court House
Ohio*

CITY OF WASHINGTON COURT
HOUSE, OHIO



Authorized Representative

City of Washington Court House

COPY

LARRY L. LONG
CLERK OF COURTS
FAYETTE COUNTY
WASHINGTON C.H. OHIO

2003 OCT -6 PM 2:00

**IN THE COURT OF COMMON PLEAS
FAYETTE COUNTY, OHIO**

STATE OF OHIO, *ex rel.*,
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

CITY OF WASHINGTON
COURT HOUSE,

Defendant.

Case No. 970267

Judge Pontious

ENTRY

Upon the motion of Defendant to modify the November 14, 1997 Consent Order entered in this action and for good cause shown, the provisions of Section X of the Consent Order are hereby terminated.

/s/ VICTOR D. PONTIOUS, JR.

Judge Pontious

Approved by:

JIM PETRO
ATTORNEY GENERAL OF OHIO

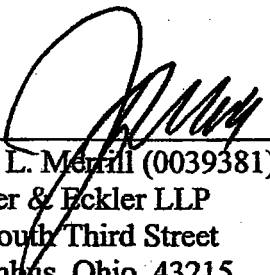
Kristina Erlewine per authorization

Kristina L. Erlewine (0071469)

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