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COMMON PLEAS COURT
MUSKINGUM COUNTY, OHIO
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TODD A. BICKLE
CLERK

IN THE COURT OF COMMON PLEAS
MUSKINGUM COUNTY, OHIO

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

Plaintiff,

vs.

VILLAGE OF ROSEVILLE,

Defendant.

CASE NO. CH93-547

HON. JUDGE WOLFE

MODIFIED CONSENT ORDER

On July 29, 1993, a Complaint in the above-captioned matter was filed, and Plaintiff State of Ohio by its Attorney General ("Plaintiff" or "State of Ohio") and Defendant Village of Roseville ("Defendant" or "Roseville"), consented to the entry of a Consent Order. Also on July 29, 1993, the Court entered a Consent Order for injunctive relief in the above-captioned case enjoining Roseville to operate its wastewater treatment plant ("WWTP") and sewer system in compliance with Ohio Revised Code ("ORC") Chapter 6111. and the rules promulgated thereunder. Following the filing of the Consent Order, Roseville has failed to comply with, and is in contempt of, the Consent Order of this Court. In order to purge this contempt, Roseville shall comply with the terms of this Modified Consent Order.

The terms of this Modified Consent Order shall supersede and replace the July 29, 1993 Consent Order of this Court. The State of Ohio, the Village of Roseville, the Mayor of the Village of Roseville and the Village of Roseville's Board of Public Affairs and their successors have consented to the entry of this Modified Consent 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 Roseville under ORC Chapter 6111., and venue is proper in this Court.

II. PARTIES

2. The provisions of this Modified Consent Order shall apply to and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest, contractors, consultants and any person acting in concert or privity with any of them. Defendant Roseville shall provide a copy of this Modified Consent Order to each contractor it employs to perform work itemized herein, and each general contractor shall provide a copy of this Modified Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleged in its Complaint, filed July 29, 1993, that Defendant had operated its wastewater treatment plant and sewer system in such a manner as to result in numerous violations of the requirements of the National Pollutant Discharge Elimination System ("NPDES") permits issued to it by the Director of the Ohio Environmental Protection Agency ("Ohio EPA") and in violation of the water pollution laws of the State of Ohio.

4. Compliance with the terms of this Modified Consent Order constitutes full satisfaction of any civil liability by Defendant Village of Roseville for all claims under such laws alleged in the July 29, 1993 Complaint, for the overflows from Defendant's sewer system which were reported to Ohio EPA in accordance with the terms and conditions of defendant's effective NPDES permit which occurred subsequent to the filing of the July 29, 1993 Complaint up through the date of entry of this Modified Consent Order and any civil liability resulting from these violations. Nothing in this Modified Consent Order shall be construed to limit the authority of the State of Ohio to seek relief from Defendant or any other person for claims or conditions not alleged in the Complaint, including violations which occur after the filing of this Modified Consent Order.

IV. PERMANENT INJUNCTION

5. Defendant Roseville is hereby permanently enjoined and ordered to immediately comply with the requirements of ORC Chapter 6111. and the terms and

conditions of the rules and regulations adopted under that Chapter, and with the terms and conditions of Roseville's currently effective NPDES permit No. OPC00020*CD, and any renewals or modifications thereof.

6. Defendant Roseville is enjoined and ordered to properly operate and maintain its wastewater treatment plant, sanitary sewer system and any associated equipment and structures.

V. COMPLIANCE SCHEDULE

7. As an interim measure, Defendant Roseville is enjoined and ordered to complete construction of improvements to its sanitary sewer system and its "old" Village of Roseville WWTP so as to allow for the utilization of an existing Imhoff settling tank for the storage of sanitary sewer system water during overflow events, thereby substantially reducing the number and volume of its sewer system overflows. Said improvements shall be completed in accordance with the following schedule:

<u>Task</u>	<u>Completion Date</u>
(a) Initiation of construction of improvements to the "old" Village of Roseville WWTP and the current sanitary sewer system.	<u>Completed</u>
(b) Completion of construction improvements to the "old" Village of Roseville WWTP and the current sanitary sewer system.	<u>September 23, 1996</u>

8. As a permanent measure, Defendant Roseville is enjoined and ordered to complete construction of the improvements to its wastewater treatment plant and sanitary sewer system so as to eliminate discharges from overflows and bypasses from its sanitary sewer system and to attain compliance with NPDES permit No. OPC00020*CD and any modifications or renewals thereof, in accordance with the following schedule:

<u>Task</u>	<u>Completion Date</u>
(a) <u>SYSTEM INVESTIGATION AND IMPROVEMENT DESIGN</u>	
(i) Review of contractor quotes for a video/television	<u>Completed</u>

- investigation of the WWTP and sewer system.
- (ii) Award of a contract for the video/television investigation of the WWTP and sewer system. Completed
 - (iii) Completion of a WWTP and sewer system video/television investigation and initial evaluation of the investigation findings. Completed
 - (iv) Completion of a flow monitoring investigation and the obtainment of pump station run time versus precipitation event data. Completed
 - (v) Village of Roseville's Receipt of Follow-up Report from contractor. Completed
- (b) PERMIT TO INSTALL ("PTI") SUBMITTAL PROCESS
- (i) Meeting between Village of Roseville and Muskingum County Sanitary Engineer to review sewer system investigation/evaluation findings and data. Completed
 - (ii) Completion of a detailed engineering plan with findings and recommendations for improvements to the sanitary sewer system. May 29, 1997
 - (iii) Submittal of a complete Permit To Install application and approvable detail plans for improvements to the sanitary sewer system. June 10, 1997
- (c) INITIATION OF CONSTRUCTION
- (i) Acquire construction funding. July 15, 1997
 - (ii) Advertisement of construction bids. March 17, 1998
 - (iii) Award of construction contract. May 26, 1998
 - (iv) Initiation of construction of improvements to the sanitary sewer system. June 16, 1998

(d) CONSTRUCTION COMPLETION

(i) Completion of construction of improvements to the sanitary sewer system. December 21, 1998

(e) FINAL COMPLIANCE

(i) Achievement of compliance with NPDES permit for the sanitary sewer system. February 18, 1999

(ii) Submittal of Statement of Final Compliance to the Ohio EPA. February 25, 1999

9. By no later than February 18, 1999, the date the construction project is to be completed, Defendant Roseville shall cease discharges from overflows and bypasses from its sanitary sewer system and wastewater treatment plant.

VI. REPORTING REQUIREMENT

10. Within seven (7) days from the completion date of each task listed in Section V., Defendant Roseville is ordered to submit a written report stating whether it has performed the actions set forth therein to the following address:

Ohio EPA
Southeast District Office
2195 Front Street
Logan, Ohio 43138
Attn: Kathy Gruver (or her successor), Division of Surface Water

VII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

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

VIII. STIPULATED PENALTIES

12. In the event that Defendant Roseville fails to meet any of the compliance deadlines set forth in Section V, paragraphs 7, 8 and 9 of this Modified

Consent Order, Defendant Roseville 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 – one hundred dollars (\$100.00) per day per requirement not met;
- (b) For each day of each failure to meet a requirement, from thirty-one (31) to sixty days (60) – two hundred and fifty dollars (\$250.00) per day per requirement not met;
- (c) For each day of each failure to meet a requirement, from sixty-one (61) days to ninety (90) days – five hundred dollars (\$500.00) per day per requirement not met;
- (d) For each day of each failure to meet a requirement, over ninety (90) days – one thousand dollars (\$1,000.00) per day per requirement not met.

13. For violation of any other requirement in NPDES permit No. OPC00020*CD, and any renewals or modifications thereof, including but not limited to monitoring and reporting requirements, Defendant Roseville shall immediately and automatically be liable for a stipulated penalty of two hundred dollars (\$200.00) for each day each requirement is not met.

14. Any payment required to be made under the provisions of Section VIII of this Modified Consent Order shall be made by delivering to Matt Sanders, Administrative Assistant (or his successor), Environmental Enforcement Section, Ohio Attorney General, State Office Tower, 25th Floor, 30 E. Broad Street, Columbus, Ohio, 43215-3428, a certified check or checks, for the appropriate amounts within thirty (30) days from the date of the failure to meet the requirement of this Modified Consent Order, made payable to "Treasurer, State of Ohio." The payment of stipulated penalties by Defendant Roseville and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to Section VIII shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to ORC

Chapter 6111. or to otherwise seek judicial enforcement of this Modified Consent Order.

IX. TERMINATION OF STIPULATED PENALTIES

15. The provisions of this Modified Consent Order set forth in Section VIII requiring the payment of stipulated penalties may be terminated upon a demonstration by the Village of Roseville that it has:

- (a) completed all construction to its wastewater treatment plant and sewer system as required under Section V of this Modified Consent Order;
- (b) eliminated any and all sewer system overflows and treatment plant bypasses for a period of twelve consecutive months;
- (c) achieved and maintained compliance with the final effluent limitations contained in its currently effective NPDES permit No. 0PC00020*CD, along with the other terms and conditions of said permit, and any renewals or modifications thereof for a period of twelve consecutive months;
- (d) paid all stipulated penalties required to be paid pursuant to this Modified Consent Order.

16. If Defendant fails to comply with the provisions set forth in Paragraph 15(b) and (c) at any time during the one (1) year period (twelve consecutive months), the one (1) year period (twelve consecutive months) will begin anew on the first date after such failure has been corrected and eliminated.

17. Termination of the stipulated penalty section of this Modified Consent Order shall only be by order of the Court upon application by any party and a demonstration that the conditions outlined in Paragraph 15 have been met.

X. POTENTIAL FORCE MAJEURE

18. In any action to enforce any of the provisions of this Modified Consent Order, the Village of Roseville may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons beyond its control such as, by way of example and not limitation, act of God, unusually severe weather conditions, strikes, acts of war or civil disturbances. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by the parties that it is

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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 enforcement action, if any, is commenced. Acceptance of this Consent Order without a force majeure clause does not constitute a waiver by the Village of Roseville of any rights or defenses it may have under applicable law.

XI. EFFECT OF MODIFIED CONSENT ORDER

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

XII. RETENTION OF JURISDICTION

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

XIII. COSTS

21. Defendant Roseville is hereby ordered to pay the costs of this action.

XIV. MODIFIED CONSENT ORDER

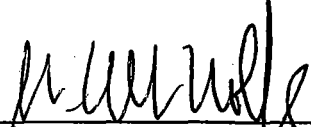
22. This Modified Consent Order entered into between the Parties represents the entire understandings between the Parties and supersedes any earlier verbal or written communications regarding same. This Modified Consent Order will supersede the Consent Order entered into and filed on July 29, 1993.

**XV. ENTRY OF MODIFIED CONSENT ORDER
AND FINAL JUDGMENT BY CLERK**

23. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Modified 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

Entered this 19th day of September, 1996.

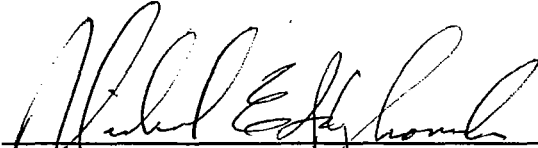


JUDGE WOLFE
MUSKINGUM COUNTY, OHIO
COURT OF COMMON PLEAS

APPROVED:

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

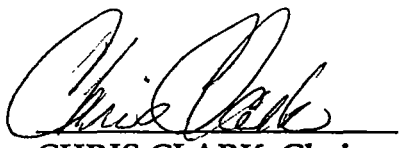
VILLAGE OF ROSEVILLE



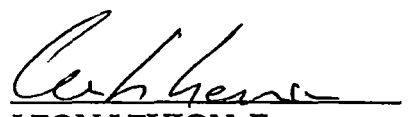
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