

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

STATE OF OHIO, ex rel.	:	CASE NO. 07 CV 02514
NANCY H. ROGERS	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE MAUREEN A. SWEENEY
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
BOARD OF COUNTY COMMISSIONERS OF MAHONING COUNTY,	:	
	:	
Defendant.	:	<u>CONSENT ORDER</u>

WHEREAS, the Plaintiff State of Ohio ("Plaintiff"), by its Attorney General, at the written request of the Director of the Ohio Environmental Protection Agency ("Ohio EPA"), having filed a Complaint seeking injunctive relief and civil penalties from Defendant, Board of Commissioners for Mahoning County ("Mahoning County" or "Defendant"), for violations of R.C. Chapter 6111 and the rules promulgated thereunder, and both parties having consented to the entry of this Order,

NOW, THEREFORE, without trial, admission, or determination of any issue of fact or law, without admission of liability by Mahoning County 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 Defendant under Chapter 6111 of the Ohio Revised Code and the rules promulgated thereunder. Venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply and be binding upon Plaintiff and Defendant Mahoning County, and their agents, officials, employees, assigns, representatives, servants, successors in interest and any person acting in concert or privity with any of them. Defendant shall provide a copy of this Consent Order to each contractor and consultant it employs to perform work itemized herein. Defendant 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 has operated its wastewater treatment plants and sewer system in such a manner as to result in numerous violations of the discharge limitations, monitoring requirements and permit conditions of the National Pollutant 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 of Defendant to Plaintiff for all allegations in the Complaint and for all violations of Ohio Revised Code Chapter 6111 and

the rules adopted thereunder known to Plaintiff up to the time of signing of this Consent Order by the State.

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, who are not parties to this Order, 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 Mahoning County or other appropriate persons for claims or conditions not alleged in the Complaint, or violations of Ohio Revised Code Chapter 6111 and the rules adopted thereunder not known to the State at the time this Order is signed by the State, nor shall anything in this Consent Order limit the right of Mahoning County 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 Mahoning County, to eliminate or mitigate conditions that may present a threat to the public health, welfare, or the environment.

IV. DEFINITIONS

5. a. "Sanitary sewer system" refers to all parts of the collection system that Mahoning County owns or over which it has operational control.

b. "Sanitary Sewer Overflow" or "SSO" refers to an overflow, spill or release of wastewater from the sanitary sewer system. An overflow, spill or release of wastewater from a sanitary sewer system that occurs on a public street has the potential to reach waters of the state without treatment, and therefore meets the definition of an SSO. SSO(s) do not include WIB(s) unless the wastewater is released to the street or otherwise discharged to waters of the state.

c. "Water in Basement" or "WIB" refers to wastewater backups into buildings that are caused by blockages or flow conditions in a sanitary sewer other than a building lateral. WIB(s) do not include the backup of sewage caused by a blockage or other malfunction in the building's lateral sewer.

V. PERMANENT INJUNCTION

6. Defendant Mahoning County is hereby permanently enjoined and immediately ordered to comply with the requirements of Chapter 6111 of the Ohio Revised Code and the rules adopted thereunder, and the terms and conditions of its currently effective NPDES Permits for the Boardman Wastewater Treatment Plant (WWTP), Permit No. 3PK00002*JD, the Campbell WWTP, Permit No. 3PD00008*KD, the Meander Creek WWTP Permit No. 3PK00011*HD and any renewals or modifications thereof. Mahoning County shall properly operate and maintain its wastewater treatment plants, sanitary sewer system and any associated equipment and structures. All renewals, modifications or changes to Mahoning County's NPDES Permits approved by the Director of Ohio EPA and/or effective after the entry of this Consent Order shall be deemed to be incorporated in full and made an enforceable part of this Consent Order.

VI. MEANDER CREEK WWTP AMMONIA ISSUES

7. Within 60 days of entry of this Consent Order, Mahoning County shall submit to Ohio EPA a study evaluating the grit removal system at the Meander Creek WWTP, which shall include an evaluation of whether the existing system can be made operational or needs to be replaced, and whether there is a need to remove grit built up in the influent clear well. Along

with this study, Mahoning County shall submit a time schedule by which the County will implement work necessary so that the grit removal system at the Meander Creek WWTP is either restored or replaced no later than December 31, 2009.

8. By August 31, 2008, Mahoning County shall conduct all needed work to rehabilitate the Stage Two aeration tank and clarifier at the Meander Creek WWTP, including but not limited to the removal of any build up of grit in that tank and the replacement of the clarifier flights and chains.

VII. INFLOW AND INFILTRATION

9. As soon as possible, but not later than July 1, 2008, Mahoning County shall require that Calex / ProFab, located at 2415 Wilson Ave., Campbell, Ohio, to eliminate all known inflow and infiltration (I&I) from its facility tributary to the Campbell WWTP. Mahoning County shall report to Ohio EPA the results of Calex / ProFab's efforts to eliminate I&I from its facility by September 30, 2008.

10. Mahoning County shall prepare a report and plan for the Campbell WWTP specifically identifying actions necessary to address the Wilson Avenue overflow, located at 4200 Wilson Ave., Campbell, Ohio. The report and plan shall be implemented by July 1, 2009, with the work completed by June 30, 2012. Mahoning County shall provide notice to Ohio EPA of the completion of each work element contained in the plan within thirty days of completion of that element. The Wilson Avenue overflow shall be physically eliminated no later than June 30, 2013.

11. Commencing with the year 2008 and continuing until and including year 2016, Defendant shall yearly prepare a written report assessing the effectiveness of Mahoning

County's programs to reduce and eliminate inflow and infiltration ("I & I") of storm and ground water to Mahoning County's sanitary sewer system. The report shall include descriptions of the various programs used by the Mahoning County during the previous year and expected to be used in the current year, including any voluntary and/or mandatory programs adopted by Mahoning County. The report shall also include, but not be limited to, a listing of SSOs and WIBs for the previous year including location, date and estimated amount of flow for each SSO and WIB, a listing of the number of inspections conducted, manholes and sewers replaced, rebuilt and/or reconditioned, storm water sources to the sanitary sewers eliminated (i.e. drain tiles and downspouts disconnected, clean-out caps replaced or repaired), and an estimation as to the remaining number of I & I sources tributary to the Mahoning County's sanitary sewer system. A copy of each year's report shall be provided by March 31 of the following year to Ohio EPA at the address provided in paragraph 19 of this Consent Order and shall be made available to the public.

VIII. PRETREATMENT PROGRAM

12. Mahoning County shall employ necessary staffing levels to ensure that all aspects of the County's approved pretreatment program meet the requirements of Ohio Administrative Code ("O.A.C.") 3745-3 and are timely and appropriately performed by the County. These requirements include the timely assessment of all monitoring data to help ensure compliance of the County with its NPDES permit and timely identification and resolution of problems in the County's system. At a minimum, Mahoning County shall assign at least one employee to be designated as the County's Pretreatment Coordinator with at least fifty percent of this employee's time being committed solely to the pretreatment program. Mahoning County shall

notify Ohio EPA of any change of its designation of the County's Pretreatment Coordinator within 30-days of the change.

13. By December 31, 2008, Mahoning County shall reevaluate sources of industrial discharges to its sanitary sewer systems tributary to the Boardman WWTP, Campbell WWTP and Meander WWTP to determine whether all categorical industries are currently subject to County issued indirect discharge permits and whether any other sources should be covered by a County indirect permit. The results of this reevaluation shall be submitted by Mahoning County to Ohio EPA by March 1, 2009 for approval. At a minimum the reevaluation shall include; (1) a listing of all industrial sources discharging to the sanitary sewer system and any other sources whose discharge pose a potential to cause an upset of the County's WWTPs or a pass through of pollutants through the County's WWTPs; (2) an identification of whether each listed industrial source is categorical, significant or insignificant; (3) the current indirect permit status of each listed source; (4) a schedule to either renew or issue new permits to the sources; and (5) the County's justification for not requiring an identified source to have an indirect permit. Mahoning County shall implement the scheduled contained in the reevaluation following its approval by Ohio EPA.

14. By December 31, 2008, Mahoning County shall provide to Ohio EPA, for review and comment, a draft of updated local sewer use ordinances. If the County has by this date already developed proposed new local industrial user limitations, these limits should be included in this draft.

15. Mahoning County shall comply with the provisions concerning the evaluation of local industrial user limitations for mercury and the implementation of any new local mercury limits contained in its NPDES permits for the Boardman WWTP, NPDES Permit No.

3PK00002*JD, Part I, C. 1 and 2, Campbell WWTP NPDES Permit No. 3PD00008*KD, Part I, B. 1 and 2 and Meander Creek WWTP NPDES Permit No. 3PK00011*HD, Part I, C. 1 and 2. The evaluation and implementation of the local mercury limits shall be completed within six (6) months after issuance of the applicable NPDES renewal permit(s).

16. Mahoning County shall comply with the provisions concerning the evaluation of local industrial user limitations, except for mercury and implementation of any new local limits, contained in its NPDES permits for the Boardman WWTP, NPDES Permit No. 3PK00002*JD, Part I, B. 1 and 2, Campbell WWTP NPDES Permit No. 3PD00008*KD, Part I, D. 2, 3 and 4 and Meander Creek WWTP NPDES Permit No. 3PK00011*HD, Part I, B. 1 and 2. The evaluation and implementation of the local limits shall be completed within six (6) months after issuance of the applicable NPDES renewal permit(s).

IX. GENERAL SYSTEM MANAGEMENT

17. Mahoning County shall file its NPDES permits' required Monthly Operating Reports ("MOR") electronically with Ohio EPA. If during a given month, technical problems with the electronic filing system are encountered which interfere with the ability of Mahoning County to timely file its MORs, the Mahoning County may for that month submit paper copies of the MORs to Ohio EPA.

X. CONSTRUCTION OR MODIFICATIONS TO THE WWTPS

18. 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 or modification 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.

XI. REPORTING REQUIREMENT

19. Within thirty (30) days of the completion date of each task listed in Sections VI through IX, Defendant is ordered to submit a written report stating whether it has performed the action set forth therein to the following address, unless otherwise notified in writing of a different name or address:

Ohio EPA Northeast District Office
Division of Surface Water
2110 East Aurora Road
Twinsburg, Ohio 44087
ATTN: DSW Enforcement Group Leader

20. All written notices, requests, or verifications to be sent to Defendant pursuant to this Consent Order shall be sent to and/or delivered to:

Joseph V. Warino P.E., P.S.
Mahoning County Sanitary Engineer
761 Industrial Rd.
Youngstown, Ohio 44509

Mahoning County shall inform the Ohio EPA of any change of its business address, or the cessation of business.

XII. CIVIL PENALTY

21. It is hereby ordered that Defendant shall pay to the State of Ohio a cash civil penalty of one hundred fifty thousand dollars (\$150,000.00). Defendant shall make the payments according to the following schedule;

a. No later than thirty (30) days from the entry of this Consent Order, the amount of thirty-seven thousand five hundred dollars (\$37,500.00); ✓

b. No later than one year from the entry of this Consent Order, a second payment in the amount of thirty-seven thousand five hundred dollars (\$37,500.00); ✓

b. No later than two years from the entry of this Consent Order, a third payment in the amount of thirty-seven thousand five hundred dollars (\$37,500.00); ✓

b. No later than three years from the entry of this Consent Order, a fourth payment in the amount of thirty-seven thousand five hundred dollars (\$37,500.00). ✓

22. If the Defendant fails to make any one of the civil penalty payments on or before the date specified by paragraph 21 of this Consent Order for such payment, the total civil penalty of one hundred fifty thousand dollars (\$150,000.00) ordered to be paid by the Defendant becomes immediately due and payable to the State of Ohio. The Defendant shall pay the one hundred fifty thousand dollars (\$150,000.00) less any amount of the civil penalty that has already been paid to the State of Ohio pursuant to paragraph 21 of this Consent Order.

23. The civil penalty payments shall be made by delivering a certified check or checks, made payable to "Treasurer, State of Ohio", for the appropriate amount to Martha Sexton, Paralegal, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

XIII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

24. In lieu of an additional civil penalty of five hundred thousand dollars (\$500,000.00) and in furtherance of the mutual objectives of the State of Ohio and Mahoning County to improve the waters of the State and the environment, Defendant Mahoning County agrees to construct a sanitary sewer system for the currently unsewered area of the County known as East Alliance identified in Attachment A, figure 3, as the "Public Health Nuisance Area". This new system will provide wastewater collection and treatment for approximately 121 existing housing units. Completion of design of the sanitary sewer system and submission of a complete Permit-to-Install application to the Ohio EPA shall be completed no later than February 1, 2009. Construction of this sanitary sewer system shall be completed by August 1, 2011. In addition, Defendant agrees and is hereby ordered to expend any funds needed to implement this project.

XIV. STIPULATED PENALTIES

25. In the event that Defendant Mahoning County fails to meet any of the schedule milestone or reporting requirements of this Consent Order set forth in Paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15 or 16, or submission of required monitoring data, 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 non-compliance after the scheduled milestone date from one (1) day to thirty (30) days – two hundred dollars (\$200.00) per day not met;
- (b) For each day of non-compliance after the scheduled milestone date from thirty-one (31) days to sixty (60) days – five hundred dollars (\$500.00) per day not met;

- (c) For each day of non-compliance after the scheduled milestone date over sixty-one (61) days – seven hundred fifty dollars (\$750.00) per day not met.

26. For each day of each overflow event at the Wilson Avenue overflow, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty of one thousand dollars (\$1,000.00). For purpose of this paragraph, an overflow event shall mean each day (up to 24 hours) at the Wilson Avenue overflow when there is an overflow, spill or release of wastewater from the sanitary sewer system.

27. If Defendant Mahoning County fails to meet any of the daily effluent limits of its NPDES Permits for Boardman or Meander Creek WWTPs then 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 comply with the daily effluent limits in its NPDES Permit from one (1) day to thirty (30) days – two hundred fifty dollars (\$250.00) per day per violation not met;
- (b) For each day of each failure to comply with the daily effluent limits in its NPDES Permit from thirty-one (31) days to sixty (60) days – five hundred dollars (\$500.00) per day per violation not met;
- (c) For each day of each failure to comply with the daily effluent limits in its NPDES Permit over sixty-one (61) days to ninety (90) days – seven hundred fifty dollars (\$750.00) per day per violation not met.
- (d) For each day of each failure to comply with the daily effluent limits in its NPDES Permit over ninety (90) days – one thousand dollars (\$1,000.00) per day per violation not met.

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

28. For the purpose of calculating stipulated penalties under the provisions of this paragraph, each 7-day period of violations of a specific 7-day average effluent limitation shall be calculated as a single violation. If Defendant Mahoning County fails to meet any of the 7-day average effluent limits of its NPDES Permits for Boardman or Meander Creek WWTPs, then Defendant shall immediately and automatically be liable for and shall pay 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 failure occurs;
- (b) For each fifth through eight 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 separate 7-day average effluent limitation.

29. 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 Mahoning County fails to meet any of the 30-day average effluent limits of its NPDES Permits for Boardman or Meander Creek WWTPs, then Defendant shall immediately and automatically be liable for and shall pay 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) 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 which each such consecutive failure occurs.

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

30. During the rehabilitation of the Stage Two aeration tank and for a period of time of sixty days after this tank and clarifier are returned to service the Defendant will not be subject stipulated penalties for any ammonia violations at the Meander Creek WWTP, provided that the Defendant completes the Work and the equipment is operational by the date established in this Consent Order..

31. Any payment required to be made under the provisions of paragraphs 25, 26, 27, 28 or 29 of this Consent Order shall be made by certified check for the appropriate amount, made payable to "Treasurer, State of Ohio", which check shall be delivered by mail, or otherwise, to Martha Sexton, Paralegal, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, within forty-five ("45") days of the date of the failure to meet the requirement of the Consent Order. Defendant shall include with each payment a statement indicating which

provision(s) of the Consent Order was not complied with along with the date(s) of non-compliance.

32. The stipulated penalties imposed by paragraph 27, 28 or 29 of this Consent Order may be terminated as to each WWTP which is subject to stipulated penalties pursuant to this Consent Order only after Defendant has achieved and maintained compliance with all the requirements of this Consent Order for a period of twelve consecutive months related to that WWTP, and has paid all stipulated penalties incurred related to the specific WWTP, for which termination is being sought by a party. The termination of stipulated penalties under this Consent Order as applied to a specific WWTP, does not terminate the accrual of or the liability for payment of stipulated penalties with regards to the other WWTPs. 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 for this paragraph have been satisfied.

XV. RETENTION OF JURISDICTION

33. The Court will retain jurisdiction of this action for the purpose of making any order or decree that it deems appropriate to carry out this Consent Order, and to resolve any dispute that may arise between the parties regarding the Consent Order.

XVII. POTENTIAL FORCE MAJEURE

34. If any event occurs which causes or may cause a delay of any requirements of this Consent Order, Mahoning County shall notify the Ohio EPA in writing within twenty (20) 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. Mahoning County will adopt all reasonable measures to avoid or minimize any such delay.

35. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Mahoning County 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 Mahoning County 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 enforcement action, if any, is commenced by the Plaintiff. At that time, Mahoning County will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Mahoning County. 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 Mahoning County or serve as a basis for an extension of time under this Consent Order. Failure by Mahoning County 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 Mahoning County'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 Mahoning County qualifies for an extension of a subsequent date or dates. Mahoning County 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 with a Potential Force Majeure Clause does not constitute a waiver by Mahoning County of any rights or defenses it may have under applicable law.

XVIII. COURT COSTS

36. Defendant is hereby ordered to pay the court costs of this action.

XIX. AUTHORITY TO ENTER INTO THE CONSENT ORDER

37. Each signatory for Plaintiff and Defendant represents and warrants that he/she has been duly authorized to sign this document and to so bind the Defendant to all terms and conditions thereof.

XX. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

38. The parties agree and acknowledge that 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)(2)(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 this Consent Order based on comments received during the public comment period. Defendant shall pay the cost of publishing the public notice.

39. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the 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.

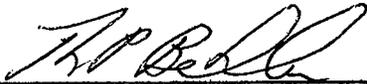
10-22-08
DATE



**JUDGE MAUREEN A. SWEENEY,
COURT OF COMMON PLEAS
for MAHONING COUNTY**

APPROVED:

**NANCY H. ROGERS
ATTORNEY GENERAL OF OHIO**



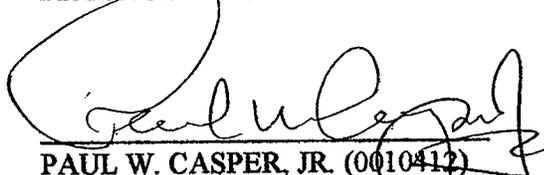
THOMAS P. BEHLEN (0042721)
JESSICA ATLESON (0077871)
Assistant Attorneys General
Environmental Enforcement Section
Public Protection Division
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400
(614) 466-2766

Counsel for Plaintiff State of Ohio

9/2/2008

DATE

**PAUL J. GAINS
MAHONING COUNTY
PROSECUTING ATTORNEY**

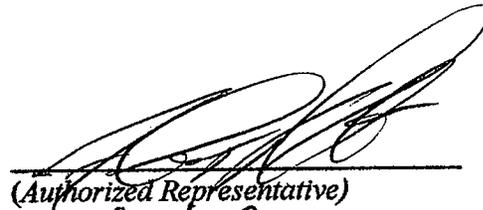


PAUL W. CASPER, JR. (0010412)
STEPHEN N. HAUGHEY (0010459)
FROST BROWN TODD LLC
2200 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202-4182
(513) 651-6800

Counsel for Defendant Mahoning County

8/28/08

DATE

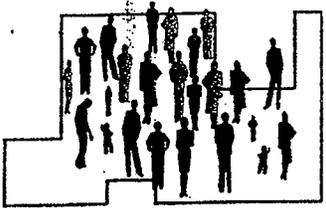


(Authorized Representative)

8-14-08

DATE

ATTACHMENT A



Mahoning County

DISTRICT BOARD OF HEALTH

50 Westchester Drive, Youngstown, Ohio 44515

(330) 270-285
Laboratory Services (330) 270-284
Tuberculosis Clinic (330) 744-424
Nursing FAX (330) 270-286
Environmental FAX (330) 270-285
www.mahoning-health.org

M E M O

TO: Matthew Stefanak, MPH
Health Commissioner

FROM: Wesley J. Vins, RS *WJV*
Director of Wastewater Programs

DATE: August 8, 2008

SUBJECT: East Alliance, Public Health Nuisance Declaration

Based on the recent Public Health Nuisance Investigation (OAC 3745-1-04 (F)&(G)) conducted in the East Alliance area by the Wastewater Program that is summarized in the attached report, I recommend the Board of Health declare the area detailed in Figure 3 a Public Health Nuisance.



Public Health Nuisance Investigation

East Alliance, Smith Township

2008

Background

The District Board of Health, Mahoning County (DBoHMC) has been working for years with residents and community officials regarding the ongoing public health concern of the performance of the septic systems in the East Alliance area of Smith Township. The area was identified in 2007 as one of 14 areas to be “Considered for Sewer” in Mahoning County. Formal and informal complaints have been made local officials and township residents pertaining to strong sewage odors and sewage in the surface water of the community. Repairs have been made to existing septic systems to correct and prevent malfunctions and many systems remain in poor condition or are ineffective in treating wastewater. These conditions are the basis for the initiation of a nuisance investigation of the area by the DBoHMC.

Scope/Methods

The study area which is detailed in figures 1 and 2 includes; Railroad Street, Tank Avenue, Thompson Street, Shady Street, Lake Park Boulevard, Oyster Road, Alden Avenue, Norman Avenue, Price Avenue, Todd Avenue, Violet Boulevard, Harding Street, Attwood Street and Cover Street. The study area adjoins and has limited inclusion of the existing City of Alliance sewer system to the west. A large portion of the area is serviced by the City of Alliance municipal water.

Water samples were collected at 10 locations in the study area that exhibited color and/or odor as detailed in figure 2. These samples were collected by a DBoHMC sanitarian and analyzed for fecal coliform at the DBoHMC laboratory. The sampling methods and standards for determining a public health nuisance established in OAC Rule 3745-1-04 (F) & (G) were followed. A copy of the OAC rule and field notes are attached in Appendix 1 & 2.

Following a thorough street by street evaluation of Harding, Cover and Attwood Streets, samples were not collected in this area due to the absence of color and odor. A sample was collected in the area of Thompson Street in an effort to respond to a residents concern of run-off from a nearby salvage yard.

Results

According to the aforementioned standard, the actual laboratory sample results are included in Appendix 3 and a summary is included in Table 1. The field records for the samples are included in Appendix 2.

As detailed in Appendix 3 and Table 1, 8 of the 10 locations exceed the OAC 3745 standard of 5,000 fecal coliform colonies per 100 ml in 2 or more samples, when 5 or fewer samples are collected. The ninth location, the creek at Lake Park Boulevard, does not meet the standard, but still identifies the presence of fecal coliform in all samples collected. The bacteria count at this location is influenced by upslope discharges as identified at locations B, I, F, G, and H which have been diluted by flow from the south, outside of our study area.

The tenth sample from the ditch along Thompson Street confirms the absence of a sewage based public health nuisance at this location which is currently serviced by the City of Alliance sewer system.

Conclusion

The public health nuisance investigation described here clearly identifies elevated levels of fecal coliform in the surface water of most of the study area. The public health nuisance area detailed in figure 3 has been identified by means and criteria as established in OAC 3745-1-04 (F) & (G).

Public Health Nuisance Investigation
East Alliance, Smith Township
2008

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Scope/Methods

The study area which is detailed in figures 1 and 2 includes; Railroad Street, Tank Avenue, Thompson Street, Shady Street, Lake Park Boulevard, Oyster Road, Alden Avenue, Norman Avenue, Price Avenue, Todd Avenue, Violet Boulevard, Harding Street, Attwood Street and Cover Street. The study area adjoins and has limited inclusion of the existing City of Alliance sewer system to the west. A large portion of the area is serviced by the City of Alliance municipal water.

Water samples were collected at 10 locations in the study area that exhibited color and/or odor as detailed in figure 2. These samples were collected by a DBoHMC sanitarian and analyzed for fecal coliform at the DBoHMC laboratory. The sampling methods and standards for determining a public health nuisance established in OAC Rule 3745-1-04 (F) & (G) were followed. A copy of the OAC rule and field notes are attached in Appendix 1 & 2.

Following a thorough street by street evaluation of Harding, Cover and Attwood Streets, samples were not collected in this area due to the absence of color and odor. A sample was collected in the area of Thompson Street in an effort to respond to a residents concern of run-off from a nearby salvage yard.

Results

According to the aforementioned standard, the actual laboratory sample results are included in Appendix 3 and a summary is included in Table 1. The field records for the samples are included in Appendix 2.

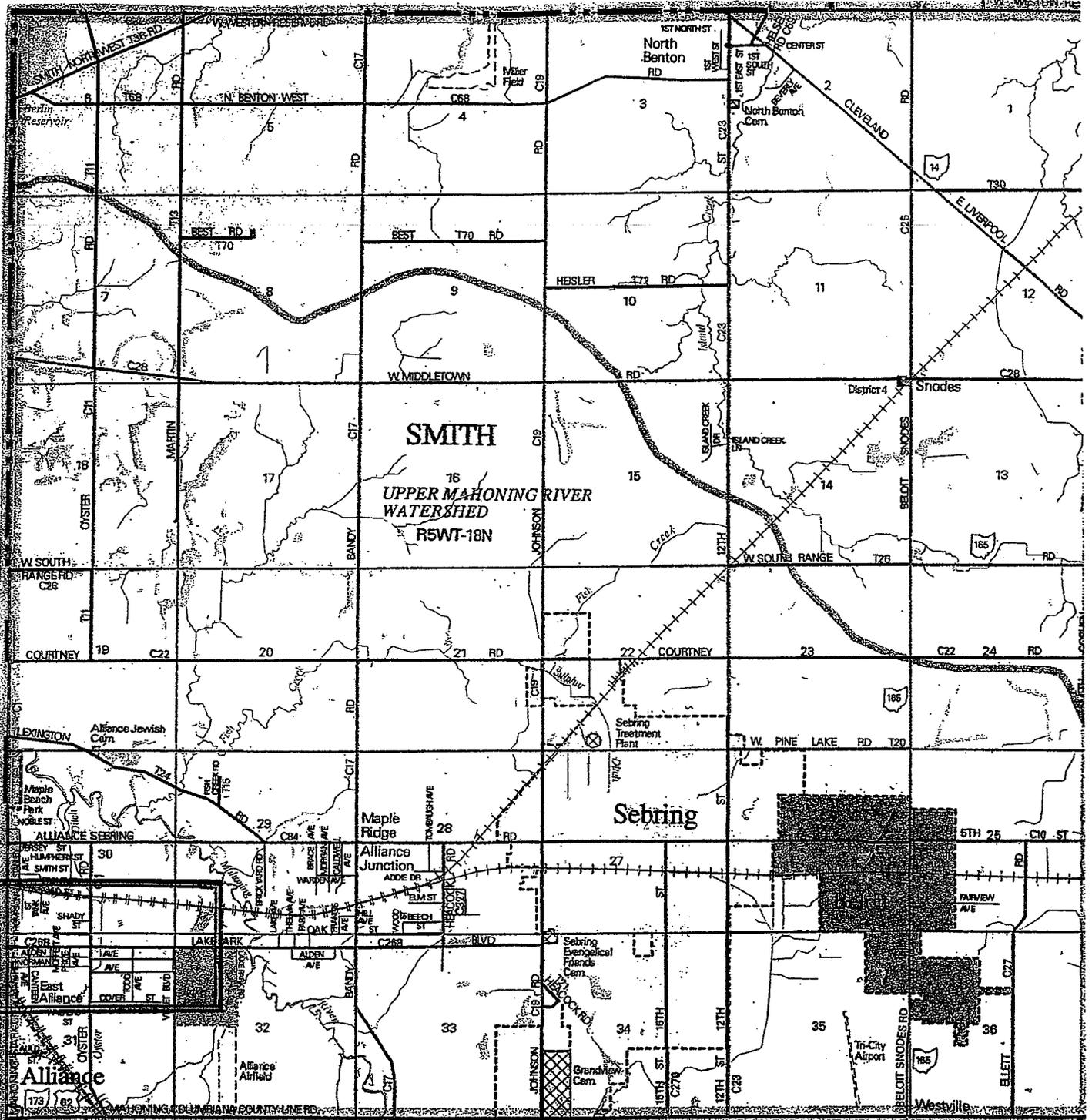
As detailed in Appendix 3 and Table 1, 8 of the 10 locations exceed the OAC 3745 standard of 5,000 fecal coliform colonies per 100 ml in 2 or more samples, when 5 or fewer samples are collected. The ninth location, the creek at Lake Park Boulevard, does not meet the standard, but still identifies the presence of fecal coliform in all samples collected. The bacteria count at this location is influenced by upslope discharges as identified at locations B, I, F, G, and H which have been diluted by flow from the south, outside of our study area.

The tenth sample from the ditch along Thompson Street confirms the absence of a sewage based public health nuisance at this location which is currently serviced by the City of Alliance sewer system.

Conclusion

The public health nuisance investigation described here clearly identifies elevated levels of fecal coliform in the surface water of most of the study area. The public health nuisance area detailed in figure 3 has been identified by means and criteria as established in OAC 3745-1-04 (F) & (G).

Figure 1



STUDY AREA

TABLE 1

**EAST ALLIANCE
PUBLIC HEALTH NUSIANCE INVESTIGATION
WATER QUALITY SUMMARY
JULY 2008**

Fecal Coliform Samples
Colonies/100 ml

LOCATION	7/15/08	7/17/08	7/21/08	7/29/08	8/5/08	
A. Violet Blvd./Norman Ave. 40 54'46.798"N 81 4'12.782"W	>20,000	>20,000				East side road ditch, flow from northwest
B. Alden Ave. east of Oyster 40 54'50.470"N 81 4'39.193"W	>20,000	9,100				North side of Alden, west side of creek, flow from west
C. Lake Park Blvd. 40 54'53.607"N 81 4'38.830"W	400	400	1000			South side at creek, flow from south
D. Tank Ave./Railroad St. 40 55'8.981"N 81 4'59.583"W	1,400	4,400	>20,000	1,200	7,100	Catch basin at SW corner, flow from SW & South
E. Thompson ditch 40 55'6.139"N 81 5'6.692"W	<100	200				West side ditch, flow from west & south
F. Norman Ave./Oyster Rd. 40 54'47.402"N 81 4'41.759"W		2,300	>20,000	>20,000		East side of Oyster at Norman, discharge of culvert to creek, flow from west
G. Norman Ave. west 40 54'48.099"N 81 4'47.460"W		>20,000	10,300			Catch basin south side, west of Oyster, flow from west
H. Alden Ave./Price Ave. 40 54'50.906"N 81 4'49.482"W		12,300	>20,000			Catch basin at SW corner, flow from west
I. Alden Ave. east/creek east 40 54'50.470"N 81 4'39.193"W		5,400	10,000			North side of Alden, east side of creek, flow from east
J. Shady St./Oyster Rd. 40 55'0.135"N 81 4'42.211"W		>20,000	2,500	>20,000		West side of Oyster, 50 ft south of shady where ditch enters culvert, flow from south & west

