

IN THE COURT OF COMMON PLEAS  
JACKSON COUNTY, OHIO

STATE OF OHIO ex rel.  
MARC DANN,  
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

CITY OF JACKSON, OHIO

Defendant.

CASE NO. 07CIV190

JUDGE \_\_\_\_\_

FILED  
Common Pleas Court  
Jackson Oh

SEP 19 2007

SETH I. MICHAEL, CLERK  
\_\_\_\_\_Dep.

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CONSENT ORDER

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The Plaintiff, State of Ohio, by its Attorney General Marc Dann (hereinafter "**Plaintiff**") and Defendant, the City of Jackson, Ohio (hereinafter "**Defendant**"), having consented to the entry of this Order,

**NOW THEREFORE**, without trial of any issue of fact or law 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 Plaintiff and Defendant and the subject matter of this case pursuant to Ohio Revised Code (hereinafter "**R.C.**") Chapter 6111. The Complaint states a claim upon which relief can be granted against Defendant and venue is proper in this Court.

**II. PARTIES**

2. The provisions of this Consent Order shall apply to and be binding upon Plaintiff, Defendant, Defendant's agents, officers, employees, assigns, 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 general contractor and consultant it employs to perform the 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 alleges that Defendant has operated its wastewater treatment works (hereinafter “WWTW”) and sewer system in such a manner as to result in violations of the requirements of the National Pollution Discharge Elimination System (hereinafter “NPDES”) Permits issued to it by the Director of the Ohio Environmental Protection Agency (hereinafter “Director” and “Ohio EPA” respectively) and/or in violation of the water pollution laws of the State of Ohio. Plaintiff’s allegations include but are not limited to allegations that Defendant has had unpermitted discharges from its sewerage system and its WWTW, and that Defendant failed to identify or investigate instances of industrial user noncompliance with federal, state, and local pretreatment standards and requirements, and has failed to take appropriate, timely and effective enforcement action when industrial user violations were identified. Full compliance by Defendant with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims of violations alleged in the Complaint, as well as the claims for injunctive relief and civil penalties in the Complaint.

4. Nothing in this Consent Order shall be construed to limit Plaintiff’s authority to seek relief against other appropriate persons for claims or conditions alleged in the Complaint. Nothing in this Consent Order shall be construed to limit Plaintiff’s authority to seek relief against Defendant or other appropriate persons for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint. Nothing in this Consent Order shall be construed to limit Plaintiff’s authority to undertake any action against any

person, including Defendant, to eliminate or mitigate conditions which may present a threat to public health, public welfare or the environment.

#### **IV. DEFINITIONS**

##### 5. Definitions:

(a). "Jackson sewer system" refers to all parts of the collection system that the City of Jackson owns or over which it has operational control.

(b). "Satellite collection systems" refers to areas that are under contract with the City of Jackson such that the City of Jackson must accept and treat the sanitary flow from those communities.

(c). "Downtown area" refers to the area in the City of Jackson that is bounded in triangular fashion by Water Street on the East (running Southeast to Northwest), South Street on the South (running East to West) and by Portsmouth Street on the West (running Southwest to Northeast).

(d). "Wastewater" refers to water containing "sewage," as that term is defined in R.C. 6111.01(B), "industrial waste," as that term is defined in R.C. 6111.01(C), and/or "other wastes," as that term is defined in R.C. 6111.01(D).

(e). "Water in Basement" (hereinafter "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 wastewater caused by a blockage or other malfunction in the affected building's lateral sewer.

(f). "Sanitary Sewer Overflow" (hereinafter "SSO") refers to an overflow, spill, release, or diversion of wastewater from a sanitary sewer system. SSO(s) do not include WIBs unless the wastewater is discharged or otherwise released from the affected building to the street.

#### **V. PERMANENT INJUNCTIVE RELIEF**

6. Defendant is hereby permanently enjoined and immediately ordered to comply with the requirements of R.C. Chapter 6111 and the rules adopted thereunder, and the terms and conditions of its currently effective NPDES Permit, Permit No. OPD0008\*HD, and any renewals or modifications thereof. Defendant shall properly operate and maintain its WWTW, collection system, sewer system, and any associated equipment and structures.

## **VI. PRETREATMENT - Program Upgrades And Enforcement**

7. As soon as possible, but no later than two (2) months after the effective date of this Consent Order, Defendant shall issue effective court-enforceable compliance orders, or shall initiate administrative or judicial enforcement action which addresses non-compliance with pretreatment standards, against Luigino's, Inc. and other appropriate entities involved in the operation of that facility. Within six (6) months after the effective date of this Consent Order, Defendant shall issue effective court-enforceable compliance orders, or shall initiate administrative or judicial enforcement action which addresses non-compliance with pretreatment standards, against Ohio Precious Metals, Inc. and/or Ohio Precious Metals, LLC and other appropriate entities involved in the operation of that facility. If Defendant issues compliance orders, the orders shall include: a compliance schedule that contains milestone dates requiring the industrial user to come into compliance (or an order to remain in compliance) with all applicable federal, state and local pretreatment standards and requirements within the shortest possible period of time; the payment of an appropriate and significant penalty; and a mechanism to escalate enforcement of the orders should the industrial user fail to meet the schedules, maintain compliance, or to make timely payments. If Defendant initiates an administrative or judicial enforcement action, Defendant shall seek, through the administrative body or Court, the imposition of: a compliance schedule that contains milestone dates requiring the industrial user to come into compliance (or an order to remain in compliance) with all applicable federal, state and local pretreatment standards and requirements within the shortest possible period of time; the payment of an appropriate and significant penalty; and a mechanism to escalate enforcement of the administrative or Court orders should the industrial user fail to meet the schedules, maintain compliance, or make timely payments.

8. Beginning on the effective date of this Consent Order and continuing until the actions described in Paragraph 7 have been completed, Defendant shall submit reports to the Ohio EPA on a monthly basis describing the progress achieved in completing Paragraph 7. Defendant shall provide copies of all signed compliance orders or evidence of administrative or judicial actions as a part of these reports.

9. Effective immediately, Defendant shall investigate any and all instances of noncompliance with all applicable federal, state and local pretreatment standards and requirements and take timely, appropriate, and effective enforcement action to resolve the noncompliance in accordance with Defendant's currently approved enforcement response plan. As soon as possible, but no later than two (2) months after Defendant knows or should know that any industrial user is in significant noncompliance, as defined in O.A.C. 3745-3-03(C)(2)(G), Defendant shall issue effective and court-enforceable Compliance Orders, or shall initiate administrative or judicial enforcement action, against the non-compliant industrial user. Nothing herein shall prevent Defendant from reaching an agreed to court-enforceable settlement agreement with any industrial user that Defendant initiates enforcement action against pursuant to Paragraphs 7 and 9 of this Consent Order. Plaintiff hereby reserves the right to initiate its own lawsuit.

10. On or before the 15<sup>th</sup> day of January, April, July and October of each year, Defendant shall report the names of the industrial users that are/were in violation of any applicable federal, state and/or local pretreatment standards and requirements during the previous quarter. This report shall be prepared in accordance with *Pretreatment Program Reporting Guidance*, issued by the Ohio EPA in September, 1989, or any updates thereto, and shall include a description of all industrial user violations and corrective actions taken to resolve the violations.

11. On or before the 15<sup>th</sup> day of January of each year, Defendant shall submit an annual report on the effectiveness of the pretreatment program, prepared in accordance with *Pretreatment Program Reporting Guidance*, issued by the Ohio EPA in September, 1989, or any updates thereto. The report shall include, but not be limited to: a discussion of program effectiveness; an industrial user inventory; a description of Defendant's monitoring program; a description of any pass through or interference incidents; a copy of the annual publication of industries in Significant Noncompliance; and all priority pollutant monitoring results.

12. On or before the 15<sup>th</sup> of January of each year, Defendant shall publish, in the newspaper with the largest circulation in Jackson County at the time, a list of industrial users which, during the previous 12 months, have been in Significant Noncompliance, as defined by O.A.C. 3745-3-03(C)(2)(g), with applicable pretreatment standards or requirements.

13. All records of pretreatment activities including, but not limited to, industrial inventory data, monitoring results, enforcement actions, and reports submitted by industrial users, must be maintained for a minimum of three (3) years. This period of retention shall be extended during the course of any unresolved litigation with the Ohio EPA or with any industrial user served by Defendant. Records must be made available to the Ohio EPA and to the U.S. EPA upon request.

14. Any proposed modifications of the approved pretreatment program must be submitted to the Director for his review, on forms available in and in accordance with *Pretreatment Program Modification Guidance*, issued by the Ohio EPA in September, 1989, or any updates thereto. If the modification is deemed to be substantial in the sole discretion of the Director, prior approval must be obtained before implementation; otherwise, the modification is considered to be effective 45 days after the date of application. Substantial program

modifications include, among other things, changes to the legal authority of Defendant's WWTW, changes to Defendant's control mechanism, local limits, confidentiality procedures, or monitoring frequencies.

#### **VII. WWTW - Upgrade And Bypass Elimination**

15. By no later than the effective date of this Consent Order, Defendant shall submit a complete and approvable Permit to Install application to the Director for plant improvements to its WWTW to enable it to provide full treatment for all wastewater, to bring it into compliance with the final effluent limitations contained in its currently effective NPDES Permit (or any modifications or renewals thereof), and to eliminate all bypasses of any portion of the treatment.

16. By no later than June 1, 2007, Defendant shall commence construction of the WWTW improvements in accordance with the approved Permit to Install referenced in Paragraph 15.

17. By no later than June 1, 2009, Defendant shall complete construction of the WWTW improvements in accordance with the approved Permit to Install referenced in Paragraph 15.

18. By no later than October 1, 2009, Defendant shall have attained compliance with the final effluent limitations contained in its currently effective NPDES Permit or any modifications or renewals thereof.

19. By no later than October 1, 2010, Defendant shall submit an Operation & Maintenance Manual to the Ohio EPA that reflects improvements made to the WWTW.

20. By no later than October 1, 2009, Defendant shall have eliminated all bypasses associated with the WWTW, including any bypasses at the WWTW, and shall have eliminated all SSOs in the downtown area. By no later than October 2, 2009, all wastewater reaching the WWTW shall be fully treated.

### **VIII. SEWER SYSTEM – Capacity, Management, And Operation & Maintenance**

21. Defendant shall properly manage, operate and maintain all parts of the Jackson sewer system at all times. This shall include, but is not limited to:

- (a). providing adequate capacity to convey base flows and peak flows for all parts of the sewer system;
- (b). taking all feasible steps to stop and to mitigate the impact of SSO(s) and WIB(s) from the Jackson sewer system; and
- (c). providing notification to all persons with a reasonable potential for exposure to pollutants associated with the overflow event within eight (8) hours of each event.

22. By December 31, 2008, Defendant shall develop and implement a program to address the capacity, management, and operation and maintenance (hereinafter “**CMOM**”) of its sewer system. This program shall include but will not be limited to:

- (a). the establishment of goals to achieve the elements set forth in Paragraph 21(a)-(c) above;
- (b). identification of all administrative and maintenance positions responsible for implementing measures to achieve the goals established in Paragraph 21;
- (c). identification of the chain of communication for reporting SSO(s) and WIB(s) as defined in Paragraph 5(e) and (f) from receipt of a complaint or other information to the person responsible for reporting to the Ohio EPA, the Director or, where necessary, to the public;
- (d). the establishment of the legal authority through sewer use ordinances, service agreements or other legally binding documents, to:
  - i). control infiltration and connections from inflow sources;
  - ii). require that sewers and connections be properly designed and constructed;
  - iii). ensure proper installation, testing and inspection of new and rehabilitated sewers (such as new or rehabilitated collector sewers and new or rehabilitated service laterals);
  - iv). address flows from satellite collection systems and maintenance contract areas;

- v). implement the general and specific prohibitions of Defendant's pretreatment program;
- (e). the provision of adequate maintenance facilities and equipment for its sewers and its maintenance contract areas;
- (f). maintenance of a map of the Jackson sewer system, which shall be stored at the WWTW and available to the Ohio EPA and to the U.S. EPA upon request;
- (g). the establishment of the proper management of information and the use of timely, relevant information to establish and prioritize appropriate capacity, management, operation and maintenance activities (such as the immediate elimination of dry weather overflows or overflows into sensitive waters such as public drinking water supplies and their source waters, waters where swimming or public contact occurs, waters within state, or local parks as well as water containing threatened or endangered species or their habitat), and identify and illustrate trends in overflows, such as frequency and volume;
- (h). conducting routine preventative operation and maintenance activities for the Jackson sewer system and maintenance contract areas;
- (i). the development and utilization of a program to assess the current capacity of the Jackson sewer system and treatment facilities;
- (j). a system for the identification and prioritization of structural deficiencies and the identification and implementation of short and long term rehabilitation actions to address each deficiency;
- (k). the provision of all appropriate and necessary training to staff, including staff responsible for the maintenance contract areas, on a regular basis;
- (l). the establishment of inventories for all equipment and replacement parts including, but not limited to, identification of critical replacement parts;
- (m). the establishment and implementation of requirements and standards for the installation of new sewers, pumps and other appurtenances, and rehabilitation and repair projects;
- (n). the establishment and implementation of procedures and specifications for inspecting and testing the installation of new sewers, pumps, and other appurtenances for rehabilitation and repair projects;
- (o). monitoring the implementation of and, where appropriate, measuring the effectiveness of each element of the program;
- (p). the establishment and implementation of a system for updating the program elements as appropriate based on monitoring or performance evaluations;

(q). the establishment of communication on a regular basis with interested persons regarding the implementation and performance of this program. The communication system should allow interested persons to provide input to Defendant as this program is developed and implemented; and

(r). the utilization of Defendant's existing numeric identification system for all of Defendant's SSOs. Defendant shall provide periodic updates of the numeric identification system as necessary, or as required by the Director in his sole discretion.

23. By January 1, 2009, Defendant shall submit to the Director for his approval in his sole discretion, a written summary of the CMOM program it has developed in accordance with Paragraph 22 above. Defendant shall modify the summary as appropriate or as required by the Director in his sole discretion to keep it updated and accurate.

24. By May 1, 2009, Defendant shall submit to the Ohio EPA a complete audit of the CMOM program as set forth in Paragraph 22. This report shall include, but not be limited to, evaluating Defendant's compliance with the CMOM program elements. Defendant shall identify any deficiencies in how it manages, operates and maintains any or all parts of the Jackson sewer system and all steps that have been or will be taken to correct these deficiencies. The audit shall include an implementation schedule to correct the identified deficiencies. Defendant shall correct these deficiencies in accordance with the implementation schedule.

#### **IX. SEWER SYSTEM - Overflow Emergency Response Plan**

25. By no later than July 1, 2008, Defendant shall submit to Director for his approval, in his sole discretion, an Overflow Emergency Response Plan that identifies measures to protect public health and the environment. This plan shall include but is not limited to:

(a). a mechanism to ensure that Defendant is made aware of all SSO(s) and WIB(s) from Defendant's sewer system (to the greatest extent possible);

(b). the establishment and implementation of procedures to ensure that SSO(s) are appropriately responded to, including ensuring that reports of overflows are immediately dispatched to appropriate personnel for investigation and appropriate response;

(c). the establishment and implementation of procedures to ensure that appropriate personnel are aware of and follow the Overflow Emergency Response Plan and are appropriately trained;

(d). the establishment and implementation of emergency operations; and

(e). the establishment and implementation of procedures to ensure immediate appropriate notification to the public, the appropriate Board of Health, and the Ohio EPA as required by Paragraph 21(c). These procedures shall be developed in consultation with potentially affected entities.

26. Defendant shall have implemented the Overflow Emergency Response Plan within six months of its approval.

27. Defendant shall notify the public of SSO(s) from its sewers and from its maintenance contract areas, if any, in areas where an overflow has the potential to affect human health. The notification shall be in accordance with the Overflow Emergency Response Plan approved by the Director, as referenced in Paragraph 25.

**X. SEWER SYSTEM - Downtown Area Sanitary and Storm Sewer Project**

28. Defendant has identified the City of Jackson's downtown area as an area where the sanitary and storm sewers have likely been cross-connected and/or where stormwater and wastewater likely co-mingle. Defendant has made a determination that alleviation of this situation is a priority project. By no later than July 1, 2007, Defendant shall submit a General Plan to the Director for his review and approval, at his sole discretion, identifying the location of any and all cross-connections, areas of co-mingling and any other area where other problems have been identified. This General Plan shall also include any and all solutions Defendant proposes to resolve these identified problem areas.

29. By no later than August 1, 2007, Defendant shall submit a Permit to Install application(s), if required by Ohio law, to the Director for his review and approval, to conduct the project identified in the General Plan described in Paragraph 28.

30. By no later than April 1, 2009, Defendant shall have fully separated any and all co-mingled storm and sewer lines in its downtown area and shall have completely eliminated any and all cross-connections in its downtown area, pursuant to the terms and conditions of the PTI(s) issued by the Director authorizing such projects and/or the General Plan described in Paragraph 28 as approved by the Director.

31. Upon completion of the project(s) described in Paragraphs 28-30, Defendant shall commence a one (1) year evaluation of: the location of any and all SSOs and WIBs in Jackson's sewer system; when the located SSOs and WIBs discharge, under what conditions they discharge, and the amount and duration of their average discharge; and the effect, if any, completion of the projects described in Paragraphs 28-30 had on eliminating SSOs and WIBs. At the end of the one (1) year evaluation period, but by no later than April 30, 2010, Defendant shall submit a *Downtown Area Sanitary and Storm Sewer Project Impact Report* to the Director evaluating the effect, if any, completion of the projects described in Paragraphs 28-30 had on eliminating SSOs and WIBs. This Report shall also contain the location of any and all SSOs and WIBs, when the located SSOs and WIBs discharge, under what conditions they discharge, and the amount and duration of their average discharge.

#### **XI. SEWER SYSTEM – SECAP**

32. The Director will review the *Downtown Area Sanitary and Storm Sewer Project Impact Report* identified in Paragraphs 31 to determine if additional work is necessary. If the Director determines, in his sole discretion, that the SSOs, WIBs, and all bypasses from the

WWTW have not been eliminated by the project, Defendant shall submit to the Director for his review and approval, at his sole discretion, by no later than April 1, 2011, a System Evaluation and Capacity Assurance Plan (hereinafter "SECAP") with implementation schedule. The goals of the SECAP are to provide adequate capacity to convey and treat base flows and peak flows for all parts of the Jackson sewer system and the satellite collection systems, if any, and to take all feasible steps to stop, and to mitigate the impact of SSO(s) and WIB(s). The SECAP shall include, but will not be limited to:

- (a). an evaluation of the portions of Defendant's sewer system and/or WWTW that are experiencing or contributing to an SSO discharge caused by hydraulic deficiency or contributing to noncompliance at a WWTW. The evaluation must provide estimates of peak flows (including flows from SSO(s) that escape from the system) associated with conditions similar to those causing overflow events, estimates of the capacity of key system components, identification of hydraulic deficiencies (including components of the system with limiting capacity) and identification of the major sources that contribute to the peak flows associated with overflow events; and
- (b). the establishment of short and long term actions to address each hydraulic deficiency including prioritization, alternatives analysis (including costs), and a schedule for implementation of all recommended projects described in the SECAP. If a project is not recommended, or if an implementation schedule is impacted due solely to the affordability of the project, the Defendant shall submit an affordability analysis, including impacts on user rates, to the Director for his review and approval.

The SECAP shall be updated whenever there is a significant change in proposed actions and/or the implementation schedule and to reflect current information on the performance measures that have been implemented, and/or at the sole discretion of the Director.

33. The SECAP implementation schedule shall be submitted to the Director for his review and approval, at his sole discretion, by no later than April 1, 2011. The implementation schedule shall include a fixed end date which provides for completion of implementation within thirty-five months of submission of the SECAP. The implementation schedule, as approved by the Director, shall be incorporated into this Consent Order and shall become an enforceable part

of this Consent Order. Defendant shall comply with the schedule and shall perform all of the projects identified in the schedule. Defendant shall achieve the goals set forth in Paragraph 32 in accordance with the approved schedule for SECAP implementation. Defendant shall provide the Ohio EPA with annual reports on the progress of the projects set forth in the implementation schedule. The reports shall be due on February 15 of each year.

## **XII. CERTIFIED WASTEWATER TREATMENT WORKS OPERATOR**

34. By no later than June 1, 2007, Defendant shall have fully complied with Ohio Administrative Code Chapter 3745-7, effective December 21, 2006, and any subsequent modifications thereof.

## **XIII. SUBMITTAL OF DOCUMENTS**

35. All documents required to be submitted to the Ohio EPA or to the Director pursuant to this Consent Order shall be submitted to the following address, or to such addresses as Ohio EPA or the Director may hereafter designate in writing:

Ohio EPA, Southeast District Office  
Division of Surface Water  
2195 Front Street  
Logan, Ohio 43138  
Attn: Enforcement Coordinator

## **XIV. REVIEW OF SUBMITTALS**

36. Upon the submission of any PTI application and/or upon the submission of any other documents by Defendant to the Director pursuant to this Consent Order, if the Director determines, that the PTI application or other documents are incomplete, unapprovable and/or do not meet the requirements of R.C. Chapter 6111, O.A.C. Chapters 3745-1, 3745-33 and/or 3745-42, the Director shall promptly inform Defendant of the nature of the deficiencies. Thereafter, Defendant shall submit any and all corrections, additions or deletions necessary to address the

deficiencies noted by the Director in order for the applications/documents to be complete and/or approvable. Any and all required corrections, additions or deletions shall be submitted to the Director within thirty-one (31) days from the Director's mailing of notice to Defendant that the PTI application or other document(s) are incomplete and/or do not meet the requirements of the Rules and Regulations cited within this paragraph. The Director may issue an approval of the PTI application or other documents, in his sole discretion, with additional terms and conditions as authorized by R.C. Rule 6111.03(J).

**XV. DUTY TO COMPLY AND COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS**

37. Nothing in this Consent Order shall affect Defendant's obligation to comply with all applicable federal, state or local laws, regulations, rules or ordinances. Defendant shall obtain any and all federal, state or local permits necessary to comply with this Consent Order. Performance with the terms of this Consent Order by Defendant is not conditioned on the receipt of any federal or state grant, loan or funds. In addition, Defendant's performance is not excused by the failure to obtain any federal or state grant or loan funds, or by the processing of any application for the same.

**XVI. CIVIL PENALTY**

38. Within thirty (30) days of the effective date of this Consent Order, it is hereby ordered that Defendant shall pay to Plaintiff State of Ohio a civil penalty of one-hundred ninety thousand dollars (\$190,000.00). The civil penalty shall be paid by delivering a certified check for the appropriate amount payable to "Treasurer, State of Ohio" to:

Ohio Attorney General's Office  
Environmental Enforcement Section  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, Ohio 43215

Attn: Martha Sexton or her successor

## **XVII. STIPULATED PENALTIES**

39. In the event that any wastewater is bypassed from Jackson's WWTW during a period of 24 hours or less, Defendant shall immediately and automatically be liable for, and shall pay a stipulated penalty according to the following payment schedule:

(a). two thousand dollars (\$2000.00) for each 24 hour or less event at each location, that occurs on or after October 1, 2009.

40. In the event that an overflow, spill, release, or diversion of wastewater occurs from any of Jackson's SSOs during a period of 24 hours or less, during dry weather flow conditions, Defendant shall immediately and automatically be liable for, and shall pay a stipulated penalty of two thousand dollars (\$2000.00) for each 24 hour or less event during dry weather flow conditions at each location.

41. In the event that an overflow, spill, release, or diversion of wastewater occurs from any of Jackson's SSOs in the downtown area during a period of 24 hours or less, during wet weather flow conditions, Defendant shall immediately and automatically be liable for, and shall pay a stipulated penalty according to the following payment schedule:

(a). Fifteen-hundred (\$1500.00) for each 24 hour or less event at each location, that occurs on or after April 1, 2009.

42. In the event that an overflow, spill, release, or diversion of wastewater occurs from any of Jackson's SSOs other than in the downtown area during a period of 24 hours or less, during wet weather flow conditions, Defendant shall immediately and automatically be liable for, and shall pay a stipulated penalty according to the following payment schedule:

(a). five-hundred dollars (\$500.00) for each 24 hour or less event at each location, that occurs after April 1, 2009 but before March 1, 2014;

(b). fifteen-hundred (\$1500.00) for each 24 hour or less event at each location, that occurs on or after March 1, 2014.

43. For purposes of Paragraphs 40, 41, and 42 of this Consent Order only, “dry weather flow conditions,” “wet weather flow conditions,” and “precipitation events” shall have the following meanings:

(a). “Dry Weather Flow Conditions” refers to hydraulic flow conditions within the sewer system resulting from flows of domestic sewage, ground water infiltration, commercial and industrial wastewaters, and any other non-precipitation event related flows.

(b). “Wet Weather Flow Conditions” refers to hydraulic flow conditions within the sewer system resulting from (or exacerbated by) a precipitation event.

(c). “Precipitation Event” refers to any measurable amount of rainfall or snowmelt occurring during the preceding 24-hour period, as measured at any point within the sewer shed at a U.S.G.S. rain gauge or at the WWTW.

44. In the event that Defendant fails to meet any requirement contained in Paragraphs 6-8, 10-12, 14-17, 19, 21, 23-25, 27-29, 31, 32, and/or 38 of this Consent Order, Defendant shall immediately and automatically be liable for, and shall pay a stipulated penalty according to the following payment schedule:

For each day of failure to meet a specified deadline or requirement, up to sixty days, two hundred fifty dollars (\$250.00) per day for each deadline missed or requirement not met;

For each day of failure to meet a specified deadline or requirement, from sixty-one (61) days to one hundred twenty days, five hundred dollars (\$500.00) per day for each deadline missed or requirement not met;

For each day of failure to meet a specified deadline or requirement, from one hundred twenty-one (121) days to one hundred eighty (180) days, seven hundred fifty dollars (\$750.00) per day for each deadline missed or requirement not met;

For each day of failure to meet a specified deadline or requirement, from one hundred eighty-one (181) days and over, one thousand dollars (\$1,000.00) per day for each deadline missed or requirement not met.

45. In the event that Defendant fails to meet any requirement contained in Paragraphs 9, 13, 18, 22, 26, 30, 34, and/or 36 of this Consent Order, or fails to meet any of the dates contained in the schedule to be incorporated into this Consent Order pursuant to the terms of Paragraph 33, Defendant shall immediately and automatically be liable for, and shall pay a stipulated penalty according to the following payment schedule:

For each day of failure to meet a specified deadline or requirement, up to sixty days, two hundred fifty dollars (\$250.00) per day for each deadline missed or requirement not met;

For each day of failure to meet a specified deadline or requirement, from sixty-one (61) days to one hundred twenty days, five hundred dollars (\$500.00) per day for each deadline missed or requirement not met;

For each day of failure to meet a specified deadline or requirement, from one hundred twenty-one (121) days to one hundred eighty (180) days, seven hundred fifty dollars (\$750.00) per day for each deadline missed or requirement not met;

For each day of failure to meet a specified deadline or requirement, from one hundred eighty-one (181) days and over, one thousand dollars (\$1,000.00) per day for each deadline missed or requirement not met.

46. Payments due under Paragraphs 39 - 45 shall be made within forty-five (45) days from the date of the failure to meet the applicable deadline, and shall be accompanied by a written explanation of the deadline missed. Any payment required to be made under this paragraph shall be made by delivering to Martha Sexton or her successor, at the address set forth in Paragraph 38, a certified check or checks for the appropriate amounts, made payable to "Treasurer, State of Ohio." The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to Paragraphs 39 - 45 shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order.

### **XVIII. POTENTIAL FORCE MAJEURE**

47. If any event occurs which causes or may cause a delay of any requirements of this Consent Order, Defendant 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 Defendant to prevent or minimize the delay and the timetable by which measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

48. In any action by Plaintiff to enforce any of the provisions of this Consent Order, Defendant 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 limitation, acts of God, strikes, acts of war or civil disturbances. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and 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 Plaintiff. At that time, Defendant will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant. 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 Defendant or serve as a basis for an extension of time under this Consent Order. Failure by Defendant 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 Defendant'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

Defendant qualifies for an extension of a subsequent date or dates. Defendant 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 Defendant of any rights or defenses it may have under applicable law.

#### **XIX. RETENTION OF JURISDICTION**

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

#### **XX. COSTS**

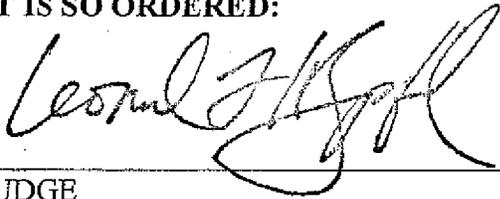
50. Defendant is hereby immediately ordered to pay the court costs of this action.

#### **XXI. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK**

51. Plaintiff and Defendant agree and acknowledge that final approval by Plaintiff and Defendant and entry of this Consent Order is subject to the requirement of 40 C.F.R. Section 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. Plaintiff and Defendant reserve the right to withdraw consent to this Consent Order based on comments received during the public comment period. Defendant shall pay the cost of publishing the public notice within thirty (30) days of receipt of a bill or notice from the Ohio EPA.

52. Upon the 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 Plaintiff and Defendant notices 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:**



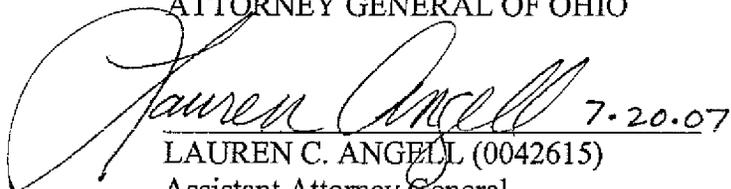
JUDGE  
JACKSON COUNTY COURT OF COMMON PLEAS

9-12-07

Date

**APPROVED:**

STATE OF OHIO, ex rel. MARC DANN  
ATTORNEY GENERAL OF OHIO

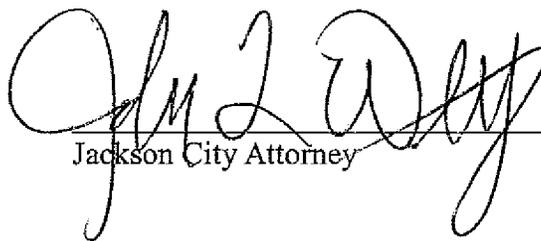


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Mayor of the City of Jackson



Jackson City Attorney