

FILED
CLERK OF COMMON PLEAS

2007 MAR -5 PM 2:56 THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

CLERK OF COURTS
MONTGOMERY CO., OHIO

STATE OF OHIO, *ex rel.*,
JIM PETRO
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

VILLAGE OF FARMERSVILLE, OHIO :

Defendant. :

CASE NO. 2006-CV-10292

JUDGE KESSLER

CONSENT ORDER

Plaintiff State of Ohio ("Plaintiff"), by its Attorney General Jim Petro, at the written request of Christopher Jones, the Director of the Ohio Environmental Protection Agency ("Ohio EPA"), having filed a Complaint seeking injunctive relief and civil penalties from Defendant, the Village of Farmersville ("Farmersville" 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 of any issue of law or fact, and upon the consent of the parties hereto, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the Parties and the subject matter of this case pursuant to R.C. Chapter 6111. The Complaint states a claim upon which relief can be granted against the Defendant and venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply and be binding upon the Plaintiff, Defendant and Defendant's agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them. Farmersville shall provide a copy of this Consent Order to each general contractor and consultant it employs to perform the work itemized herein. Farmersville 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 violated Defendant's National Pollutant Discharge Elimination System ("NPDES") permit for the Village of Farmersville Wastewater Treatment Plant ("WWTP"), and violated other provisions of R.C. Chapter 6111. Plaintiff further alleges that Defendant's failure to comply has caused pollution to be placed into waters of the state in violation of the water pollution laws of the State of Ohio. Defendant denies the allegations of the Complaint. Compliance 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 the authority of the State of Ohio to seek relief against other appropriate persons for claims or conditions alleged in the complaint. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief against Farmersville or other appropriate persons for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the complaint. Similarly, nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to undertake any action against any person, including Defendant, to eliminate or mitigate conditions, which 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 Defendant Village of Farmersville 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 SSO(s) that occurs on a village 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. INJUNCTION

6. Defendant is hereby permanently enjoined and immediately ordered to comply with the requirements of R.C. Chapter 6111 and the rules adopted thereunder, the terms and conditions of NPDES permit No. 1PB00010*GD for the Village of Farmersville WWTP and any renewal or modification thereof.

A. **Walnut Street Improvement Project**

7. The Defendant shall proceed with the Walnut Street Improvement Project in accordance with the following schedule:

a. Phase I:

(i) By September 1, 2006, Defendant shall initiate construction of Phase I, which includes in part the repair or replacement of the sewer and wastewater laterals, as needed, for 23 homes on Walnut Street between Elm Street and Taylor Street;

(ii) By March 1, 2007 Defendant shall complete construction of Phase I.

b. Phase II:

(i) By September 1, 2007, Defendant shall initiate construction of Phase II, which includes in part the repair or replacement of the sewer and wastewater laterals, as needed, for 18 homes on Walnut Street between Taylor Street and Maple Street;

(ii) By March 1, 2008 Defendant shall complete construction of Phase II.

B. Sanitary Sewer System Evaluation and Plan

8. Following the completion of Phase I and II of the Walnut Street Reconstruction Project, Defendant shall conduct a new smoke test of its sanitary sewer system. This test shall be completed no later than March 1, 2010.

9. By March 1, 2011, Defendant shall assess the data from the smoke test and develop a plan to eliminate surface water/ground water inflow and infiltration identified requiring the replacement and/or reconditioning of its sanitary sewer system. This plan shall include an implementation schedule for any work needed to be performed under the plan. This plan shall be submitted to Ohio EPA for review and approval. Defendant shall implement the plan as approved by Ohio EPA.

C. Drain Tiles and Clean-Out Caps

10. No later than March 1, 2007, Defendant shall have commenced a program to identify all drain tiles and building downspouts that drain storm water and/or ground water into the Defendant's sanitary sewer system. Where the Defendant owns or is in control of these drain tiles or building downspouts, Defendant shall reroute the flow away from the sanitary sewer system. Where the Defendant does not own or control the drain tile or building downspout, Defendant shall take all actions necessary, including but not limited to legislative actions, administrative orders and judicial relief, to cause the responsible party to reroute the flow away from the sanitary sewer system.

11. No later than March 1, 2007, Defendant shall have commenced a program to identify broken or missing cleanout caps on building laterals that drain to Defendant's sanitary sewer system. Where the Defendant owns or is in control of the cleanout cap, Defendant shall replace or repair the cleanout cap. Where the Defendant does not own or have control of the cleanout cap, Defendant shall take all actions necessary, including but

not limited to legislative actions, administrative orders and judicial relief, to cause the responsible party to repair or replace the cleanout cap.

D. Evaluation I & I Reduction Programs

12. Commencing with the year 2007, Defendant shall yearly prepare a written report assessing the effectiveness of the Defendant's programs to reduce and eliminate inflow and infiltration ("I & I") of storm and ground water to Defendant's sanitary sewer system. The report shall include descriptions of the various programs used by the Defendant during the previous year and expected to be used in the current year, including any voluntary and/or mandatory programs adopted by the Defendant. 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, sewers replaced 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 Defendant's sanitary sewer system.. A copy of this report shall be provided by March 31 of each year to Ohio EPA as provided in paragraph 14 of this Consent Order and shall be made available to the public.

VI. SUBMISSIONS TO OHIO EPA

13. Within 30 days of each milestone date set out in paragraphs 7 through 11 of this Order, Defendant shall submit written notification stating whether it has performed the action required of this Order to Ohio EPA.

14. All documents, applications, and notifications required under this Order, unless specified otherwise, shall be submitted to:

Ohio EPA
Southwest District Office
401 East Fifth Street
Dayton, Ohio 45402-2911
Attn. DSW Enforcement Supervisor

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

15. Nothing in this Consent Order shall affect Defendant's obligation to comply with all applicable federal, state or local law, regulations, rule or ordinance. 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 Decree 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.

VIII. CIVIL PENALTY

16. It is hereby ordered that Defendant shall pay to the State of Ohio a civil penalty of fourteen thousand dollars (\$14,000.00). The Defendant shall pay the State half of this amount within thirty (30) days of the effective date of this Consent Order, with the remaining balance to be paid to the State no later than one year after the effective date of this Consent Order. The civil penalty payments shall be paid by delivering certified checks for the appropriate amount, made payable to "Treasurer, State of Ohio," to Martha Sexton, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215-3400.

IX. STIPULATED PENALTIES

17. In the event that Defendant fails to meet any of the deadlines listed in paragraphs 7 through 13, the Defendant shall be immediately and automatically liable for and pay a stipulated penalty according to the following schedule:

- a) For each day of each failure to meet a specified deadline up to thirty (30) days - two hundred dollars (\$200.00) per each day the deadline is not met.
- b) For each day of each failure to meet a specified deadline from thirty-one (31) to sixty days (60) – five hundred dollars (\$500.00) per each day the deadline is not met.
- c) For each day of each failure to meet a specified deadline or requirement, from sixty-one (61) and over – seven hundred fifty dollars (\$750.00) per each day the deadline is not met.

18. For each SSO event that occurs, Defendant shall pay a stipulated penalty of one thousand dollars (\$1000.00). For purposes of this paragraph, an SSO event shall mean each day (up to 24 hours) for each location where an overflow, spill or release of wastewater from the sanitary sewer system occurred.

19. If Defendant fails to meet any of the daily effluent limits of any of its NPDES Permits, the 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 from 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 (\$1000.00) per day per violation not met.

20. 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 fails to meet any of the 7-day average effluent limits of any of its NPDES Permits, the 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, five hundred dollars (\$500.00) 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.

21. 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 fails to meet any of the

30-day average effluent limits of any of its NPDES Permits, the 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 (\$1000.00) 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 during which each such consecutive failure occurs.

22. Payments due under paragraphs 17, 18, 19, 20, and 21 shall be made within forty-five (45) days from the date of the failure to meet the applicable deadline or knowledge of the effluent limitation violation. Payments shall be accompanied by a written explanation of the deadline missed, the effluent violation and/or SSO event(s). 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 Section VIII, paragraph 16, 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 Section IX shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order. Further, payment by Defendants shall not be considered an admission of liability on the part of Defendants.

23. The stipulated penalties imposed by paragraphs 17, 18, 19, 20, and 21 of this Consent Order may be terminated as to each specific paragraph of this Consent Order, for which stipulated penalties are imposed, only after Defendant has achieved and maintained compliance with all the requirements of that paragraph for a period of twelve consecutive months and has paid all stipulated penalties incurred related to that paragraph. Termination of one paragraph subject to stipulated penalties under this Consent Order shall not terminate the accrual of or the liability for payment of stipulated penalties under any other paragraph. 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 of this paragraph have been satisfied.

X. POTENTIAL FORCE MAJEURE

24. 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 ten (10) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by the Defendant to prevent or minimize the delay and the timetable by which measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

25. In any action by the 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 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 Defendant 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, 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.

XI. RETENTION OF JURISDICTION

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

XII. COSTS

27. Defendants are hereby immediately ordered to pay the court costs of this action.

XIII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

28. 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 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.

29. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, 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 all parties 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:

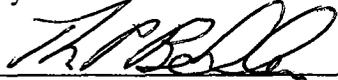
Judge
Montgomery Court of Common Pleas

Date

APPROVED:

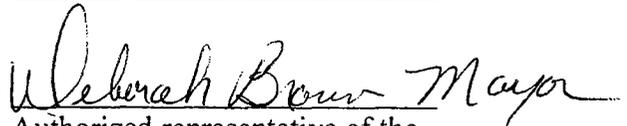
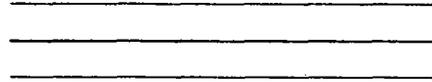
JIM PETRO
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Authorized representative of the
Village of Farmersville

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