DANIEL M. HORRIGAN

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SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

STATE OF OHIO, ex rel NANCY ROGERS, ATTORNEY GENERAL Plaintiff -vs- JOEL HELMS, dba COUNTRYVIEW SOUTH APARTMENTS, et al. Defendants	)))))))))))	CASE NOS. CV 2007 07 4993 CV 2000 07 3102 JUDGE GIPPIN **JUDGMENT** (Resolving Liability, Injunctions and Partial Civil Penalties)

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This matter was tried to the Court on August 26-29 and September 2, 2008, with a further evidentiary hearing on December 3, 2008. Defendants stipulated factual matters pertaining to their liability for Drinking Water violations during the trial. The issue of civil penalties for the violations was reserved for further hearing. They entered into an agreement at the same time resolving Plaintiff's demand for injunctive relief as to the Drinking Water. The issues concerning Water Pollution violations were fully tried on the merits, including Plaintiff's request for injunctive relief and civil penalties.

Judgment will be entered for Plaintiff as to Defendants' liability for both Drinking Water and Water Pollution violations. Injunctions will be issued requiring Defendants to connect to the adjacent public water and sewer systems. A civil penalty for the Water Pollution violations will be assessed in the amount of $500,000, subject to partial abatement

if a timely connection to the public sewer system is made and other of the Court's orders are followed. Trial of the issue of civil penalties for the Drinking Water violations and enforcement of the Consent Decree in the earlier matter will be conducted on January 8, 2009, as previously scheduled.

I. PROCEDURAL STATUS

There have been two lawsuits in this Court involving these parties. *State of Ohio v. Joel A. Helms d/b/a/ Countryview Apartments et al.,* Case No. CV 2000-07-3102, concerned alleged Water Pollution violations and was resolved by a Consent Decree entered on April 12, 2002. The parties dispute whether or not Defendants have complied with the Consent Decree and evidence on that issue was offered in the present lawsuit, for fuller consideration at the hearing on January 8, 2009.

This lawsuit was filed on July 17, 2007, alleging both Drinking Water violations and Water Pollution violations not resolved by the Consent Decree. Plaintiff sought a determination of liability on all issues, civil penalties and injunctions requiring Defendants to connect to public drinking water and sewer systems. Factual matters concerning Drinking Water violations were stipulated by Defendants during the present trial, along with their agreement to tie into the public drinking water system within 90 days, although they apparently now seek relief from the agreement. The issue of civil penalties for Drinking Water violations was reserved for a resumption of the trial on January 8, 2009. All other issues were tried and submitted on the merits.

Plaintiff filed a Motion for Preliminary Injunction on November 12, 2008, seeking to require Defendants to comply with their agreement to connect to the public drinking water system and to preclude connection of the North well to the drinking water distribution

system. An evidentiary hearing was held on the motion on December 3, 2008, at which time the Court gave notice pursuant to Civ. R. 65(B)(2) that the hearing on the merits would be advanced and consolidated with the hearing on the motion.

II. FINDINGS OF FACT

Defendants are collectively the owners of CountryView South Apartments ("CVSA"), an apartment complex located at 5001 Massillon Road in the City of Green, Summit County, Ohio. Defendants have owned and operated CVSA since 1988, including its drinking water and sewage treatment facilities. There are 34 individual units in the complex, which is a two-story building having a U-shaped configuration, with a firewall between two sections of the building. The population living in the complex has exceeded 25 people at all relevant times and has averaged 42 people.

A. DRINKING WATER

Drinking water has been provided by the Defendants to the CVSA residents from one or another of two wells on the property, what are called the North and South wells. While the previous evidence was inconsistent, the testimony received on December 3 clarified that the North well has only been used to supply water for the fire sprinklers and other non-consumption purposes in CVSA.

The drinking water is directed from the operating well through a single pipe to be treated. It then flows through separate pipes to each apartment unit. An external public drinking water system was available to CVSA as of the time of trial and remains available. Plaintiff's stipulated evidence established 25,797 days of violations of State law pertaining to Safe Drinking Water, as detailed in the Complaint.

The nature of the violations went far beyond mere technical issues. The drinking water provided to the residents of CVSA was contaminated on occasions between 2000 and 2006.[1] This was particularly true during a period of over two years from August 2004 through September 2006, when acute total coliform bacteria contamination was sometimes reported far outside permitted parameters. This was the result of an unpermitted, unreported discontinuation of the chlorination system, in and of itself the source of several violations.

The evidence further showed no record of testing by Defendants for various contaminants at times in the years 1999-2006.[2] Defendants also did not always retest as frequently as required when total coliform bacteria contamination was found.[3] Defendants moreover failed to give required notices to the residents, both as to the periodic condition of the water, the failure to test and when the contamination occurred. Some of the notices Defendants did issue were polemical attacks on EPA rather than objective bulletins.[4] Certain required monitoring, sampling and other plans and reports have not been submitted to date,

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[1] June 7 and 30, September and December, 2000; September 30, 2003; March 30 and August 31, 2004; May 31, June 30 and July 31, 2006.

[2] Lead and Copper, June-September 1998-2002 and 2004, 2006 and 2007; Nitrates, 2001-2003 and 2005; Inorganic Chemicals, July-December 2001; VOCs, July-December 2001 and 2004; SOCs, April-June 2001 and 2004; TTHM and HAA5, July-September 2004 and 2005; Radionuclide Contaminants, July-December 2001, January-December 2004 and January-September 2005.

[3] September 30, 2003; March 30 and August 31, 2004, May 31 and July, 2006.

[4] Consumer Confidence Reports for 2004, 2005-6 and 2007, Defendants' Exhibits E-7, 8 and 9, were not offered into evidence after the State truncated its Drinking Water case pursuant to the agreement to tie-in to the public water system. Testimony concerning the documents was received, however, in the course of which the Court reviewed them. Presumably the documents themselves will become part of the record at the January 8, 2009, penalty phase hearing.

or not at the required frequency.[5] The residents of CVSA were placed at substantial risk by Defendants' conduct.

At the December 3, 2008 hearing, the evidence demonstrated that Defendants have failed to take any steps to connect to the public drinking water system. They claimed a belief that they were not required to do so until 90 days from the entry of a judgment by the Court. The agreement was recited into the record on August 28, 2008. It contains no suggestion of any delayed trigger date for the 90 days to begin to run. The agreement was referred to by Defendant's counsel at one point as a "consent decree," but the parties did not disagree with the Court's stated understanding on the record that no entry would be needed to carry the agreement into effect. The parties were invited to submit an entry if they believed one to be necessary, but that was never done.

Defendants' stated intentions at the December 3 hearing were ambiguous. There was no clear commitment given to connect to the public system, notwithstanding the previous agreement to do so. Connection was expressed only as a possibility, if Defendants so chose. Evidence was presented that Defendants have recently sought a variance from EPA concerning monitoring requirements, implying an intention to continue to use the well water.

There was also undisputed evidence that Defendants stated an intention on November 12, 2008, to connect the North well to the water distribution system, to serve 17 units of the CVSA complex, and a further intention to reduce the population under 25 persons. The purpose would have been to drop below the EPA regulatory threshold, as Defendants

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[5] Total Coliform Bacteria, November 1999, February 2000 and March 2001; Consumer Confidence Report for 2005; Sample Siting Written Contingency Plans, October 1998-present; TTHM and HAA5 Sample Monitoring Plan, January 2004-present; Disinfectant Residual Monitoring Plan, January 2002-present; Drinking Water Monthly Operation Reports, October 2006-March 2007.

interpret the threshold. (The connection was not made as of the time of the hearing and Defendants committed not to do so pending the issuance of this Judgment.)

Defendants further argued that the Court lacks jurisdiction over the Drinking Water issues because of an insufficient number of "service connections" and because there was said to be an absence of proof that the Director of Ohio EPA had authorized the lawsuit. Evidence of the authorization letter was presented at the hearing, with agreement that the document itself would be transmitted after the hearing and placed into the record as an additional exhibit. That was done.

Defendants offered no evidence that connection to the public system would not be feasible. Indeed, Joel Helms characterized it as a "good system," although he said, without elaboration, that he considered it "precarious" in its ability to maintain quality in the long run. There was uncontroverted evidence that the connection could be completed at this time of year within 90 days, without the need for any EPA permits.

B. WATER POLLUTION

Sewage treatment for the CVSA complex has been provided by Defendants on-site using a "package plant," pursuant to a Permit to Install issued by Ohio EPA on February 12, 1974. A condition of the Permit was that, "The treatment plant shall be abandoned and the sanitary sewers connected to the public sanitary sewer system whenever such system becomes available." This condition is currently also contained in OAC 3745-33-08(C), with the additional provision that the public system must also be "accessible."

Less than twenty-five thousand gallons per day of sewage has been treated at the CVSA facility. The evidence showed that the package plant has operated at most at 5% of a

36,000 gallon per day capacity. It is accordingly a "semi-public disposal system" within the meaning of OAC 3745-33-01(KK).

Since the Summer of 2007, a new sewer line leading to a publicly-owned treatment plant has been in place along Massillon Road adjacent to the CVSA property. The evidence showed that there are no physical or other impediments to Defendants' tying in to the line and that the connection can be made at any time. The sewer line is 150 feet from the nearest part of the CVSA building (the southwest corner) and is as much as 430 feet from the point at the rear of the building where the effluent now exits.

The evidence was undisputed that Defendants have never had a permit to discharge to the wetlands on the CVSA property. It was further undisputed that the sewage treatment system has at all relevant times discharged effluent that has not been fully treated into the wetlands. Indeed, the Defendants freely admit that they have discharged partially treated sewage there intentionally, with the asserted benign purpose to create wetlands where there had been none and then to nurture them by providing the latter stages of treatment to the sewage in that manner. They have installed pipes, deposited fill, dredged and constructed berms for that purpose, all without permits to do so. The record of Defendants' conduct concerning the wetlands was not controverted.

As one defense, it was contended that the wetlands have never been "waters of the state" subject to regulation. The Court finds, however, that the State provided convincing evidence that the wetlands at issue are "waters of the state" that have existed continually from at least as early as 1938 and that the Defendants' activities have affected the wetlands detrimentally. The expert testimony of Mick Micacchion, with the exhibits he used, was

fully persuasive concerning the history and status of the wetlands and the impact of Defendants' activities on them.

The testimony of Cynthia Paschke[6] that the wetlands were constructed in recent years depended largely upon the credibility of Joel Helms' testimony about the history of the area, specifically that the wetlands had not existed before a pipe was cut. The basis for her testimony otherwise did not reflect the more complete fieldwork and historical analysis that Mr. Micacchion performed. The Court found Mr. Micacchion's opinion that the wetlands are both natural and very old to be clearly more credible.[7]

Joel Helms and Carrie Paulus lack any expertise in the evaluation of wetlands, especially as to their historical development. The Court moreover found Mr. Helms' testimony not to be credible, as to this and other matters. That was true of his testimony on its face, especially as revealed on cross-examination. His testimony must also be evaluated in the context of his obvious personal and ideological hostility to the State and the very large financial stake he and the other Defendants have in the outcome of the litigation.

In saying this, the Court must also acknowledge its personal respect for Mr. Helms, whose high intelligence is evident, along with the genuineness with which he holds his beliefs and has fought for them zealously for many years. But those beliefs (evidently shared by the other Defendants as well) at their core come down to rejection of any EPA involvement in Defendants' operation of CVSA, regardless of what the law may require.

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[6] Her testimony and that of John Zampino was given at the EPA administrative proceedings in November 2005 and was incorporated by agreement into this record.

[7] Mr. Zampino's testimony that there is no vertical connection between the wetlands and the aquifer was too derivative of data from others who did not testify to be given much weight. It is not determinative of the issue of whether the wetlands are waters of the state, in any event. Mr. Macacchion's testimony as to the aquifer connection, based on his own analysis, was more credible in this respect as well.

Defendants demonstrated their strong desire to have complete liberty to proceed only as they themselves see fit.

All of this taken together demonstrates Mr. Helms strong bias and motivation to defeat the State by any possible means, including the shaping of his testimony to be less than fully candid. His testimony so appeared to the Court as to history of the wetlands (including the uncorroborated cut pipe story), his stated purposes in discharging to the wetlands and other key matters of evidence. His evident intention (with his co-Defendants) now to avoid compliance with the Drinking Water agreement they made in open court confirms his lack of credibility.

As a further equitable defense to the Water Pollution violations, Defendants contend that they should not be held responsible for violations occurring after the submission of their NPDES/PTI Permit applications pursuant to the Consent Decree in the first lawsuit, because it was "complete and approvable" as submitted and supplemented and should have been granted.

The Consent Decree required the submission of "complete and approvable" permit applications by May 14, 2002. It further required that, "In the event that Ohio EPA has comments on the PTI and/or NPDES applications, Defendants shall modify the PTI and/or NDPES (sic) applications in accordance with Ohio EPA comments and immediately resubmit the PTI and/or NPDES applications in accordance with Ohio EPA comments."

Defendants submitted an application on July 16, 2002, providing for the wetlands to be used for tertiary treatment. A detailed comment letter was sent in response by OEPA on August 13, 2002, including requests for an engineering report and an alternative method of treatment in the event of wetlands failure, as well as other very extensive information.

Neither the engineering report nor most of the other requested information was ever provided.

OEPA accordingly denied the application on March 9, 2004. An administrative appeal was taken from the denial on April 8, 2004, resulting in an initial affirmance, from which a second-level administrative appeal was taken that remains pending. The application review process will now be mooted, however, by the Court's requirement that Defendants connect to the new sewer.

This Court must accordingly evaluate the evidence concerning the application *de novo*, notwithstanding the lack of administrative finality. This is for the purpose of considering Defendants' contention that their unpermitted discharges into the wetlands were the unavoidable consequence of OEPA's arbitrary and unreasonable failure to approve the applications when they were submitted. Defendants contend that their conduct could not then be considered violations.

The Court finds that Defendants did not have an expectation that the permit applications would be approved. Only limited information was submitted to support a very atypical, even experimental proposal that could have a potentially adverse impact on wetlands. Defendants' consulting engineer had done no other work involving the use of wetlands for wastewater treatment, even as of the time of trial, and based the proposal only on research and study, rather than actual experience. Any expectation that EPA would accept the applications as submitted plainly would have been unreasonable. The Court must also consider the applications in the context of the entire record, very much including Defendants' unrelenting resistance to EPA regulation. It can only be concluded that the applications were not submitted and pursued in good faith.

This is especially made clear by the Defendants' April 8, 2004, Request for Adjudication Hearing, which acknowledged an express refusal to provide the requested engineering report and other information. It illustrates Defendants' combative stance. The Defendants' plain purpose was to continue the battle with EPA, creating the further delay that has in fact occurred. They did not seek to bring about final resolution of the long controversy contemplated by the Consent Decree, other than by gaining EPA's surrender to Defendants' positions. Nor do they intend to do otherwise now.

While not directly at issue in the proceedings in the new case, Defendants thus also clearly violated the requirements of the Consent Decree by failing to submit "complete and approvable" applications and then to supplement them as OEPA reasonably requested. They perpetuated the litigation, rather than concluding it by good faith compliance with the Consent Decree. The Court will consider the implications of that further at the January 8, 2009 hearing.

The Water Pollution violations concern the discharge into the wetlands. Plaintiff established a clear factual basis for 19,040 days of Water Pollution violations, as alleged in the Complaint. The evidence was not refuted. While the Water Pollution violations did not create the level of risk to public health and safety of the Drinking Water violations, the actual impact on the wetlands was greatly detrimental, as shown by the comparison to the adjacent unpolluted wetlands and the other evidence. The polluted area of the natural wetlands is moreover openly accessible to children living in the CVSA complex and others.

The evidence demonstrated that this long battle has been exceptionally difficult for Ohio EPA, requiring far more resources than in most cases. There was no direct evidence presented concerning Defendants' cost savings for non-compliance, but the indirect evidence

demonstrated that such savings were substantial. Clearly, Defendants have expended very large sums for litigation, which was presumably considered economically justified by them, even if they were also ideologically motivated. No evidence concerning Defendants' financial condition was presented.

III. APPLICABLE LAW

This Court derives its jurisdiction from Ohio Const. Art. 4, §4. It is a court of general jurisdiction. There are no specific grants or limitations of jurisdiction in the statutes pertaining to environmental matters.

Revised Code Chapter 6109 sets forth the statutory requirements pertaining to Safe Drinking Water provided by public water systems. A "public water system" is defined in R.C. 6109.01 as one that has at least fifteen service connections or regularly serves at least twenty-five individuals. Violations of the chapter, rules adopted under it, or orders or terms or conditions of licences, licence renewals, variations or exemptions granted by the Director of Environmental Protection are prohibited by R.C. 6109.31. Each day of noncompliance is a separate violation. Civil penalties for violations may be assessed up to $25,000 per day of violation pursuant to R.C. 6109.33.

Regulations applicable to Safe Drinking Water are contained in OAC Chapters 3745-81, -83 and -84. "Service connection" is defined in OAC 3745-84-01(A)(3) as the "pipes, [etc.] connecting a water main to any building outlet." The definition of "public water system" is further stated in OAC 3745-81-01(FFF), consistent with the statutory definition, to mean regular service to an average of at least twenty-five individuals at least sixty days out of the year. Regulations applicable to chlorination are contained in OAC 3745-83-01. Other

testing, monitoring and reporting requirements concerning contamination and other aspects of system operation are found in OAC 3745-81 and -83.

Revised Code Chapter 6111 concerns Water Pollution Control. The corresponding regulations applicable here are in Ohio Administrative Code Chapters 3745-1, -32, -33, and -42. R.C. 6111.04(A)(1) prohibits acts of pollution of waters of the state, which constitutes a public nuisance under subdivision (2). "Waters of the state" are defined in R.C. 6111.01(H). "Wetlands" and certain terms pertaining to them are defined in R.C. 6111.02. Violations of the requirements of Chapter 6111, including orders, rules or terms or conditions of permits adopted or issued by the Director, are prohibited by R.C. 6111.07. Each day of violation constitutes a separate offense. R.C. 6111.09(A) requires the assessment of civil penalties for such violations, up to $10,000 per day of violation.

Civil penalties are mandatory where a violation has occurred, but the Court possesses broad discretion as to the amount of the penalties, following four criteria plus consideration of mitigation factors, as set forth in *State v. Dayton Malleable* (2nd Dist.), 1981 Ohio App. LEXIS 12103, *8-9, *rev'd. on other grounds, State v. Dayton Malleable* (1982), 1 Ohio St. 3d 151:

> Step 1 - Factors comprising Penalty . . .
>
> [1] the sum appropriate to redress the harm or risk of harm to public health or the environment,
>
> [2] the sum appropriate to remove the economic benefit gained or to be gained from delayed compliance,
>
> [3] the sum appropriate as a penalty for violator's degree of recalcitrance, defiance, or indifference to requirements of the law, and
>
> [4] the sum appropriate to recover unusual or extraordinary enforcement costs thrust upon the public.

Step 2 - Reduction for Mitigating Factors . . .

[1] the sum, if any, to reflect any part of the non-compliance attributable to the government itself,

[2] the sum appropriate to reflect any part of the non-compliance caused by factors completely beyond violator's control (floods, fires, etc.)

State v. Tri-State Group, Inc. (7th Dist. App.), 2004 Ohio 4441, ¶104; *State ex rel. Petro v. Maurer Mobile Home Court, Inc.* (6th Dist. App.), 2007 Ohio 2262 ¶¶55-61; *State ex rel. Dann v. Meadowlake Corp.* (5th Dist. App.), 2007 Ohio 6798, ¶51. The penalty is intended to deter and must be large enough to hurt the offender. *Tri-State, loc. cit.*

The term "availability and accessibility" of a sewer has not been construed as it is used in OAC 3745-33-08(C). However, the term appears in R.C. 6117.51, concerning sewer connections that may be required by a county government. There is an exemption under division (D) of the statute, "when both the foundation wall of the structure from which the sewage or other waste originates and the common sewage collection system are more than two hundred feet from the nearest boundary of the right-of-way within which the public sewer is located." The exemption has been held not to apply to structures that have *any* foundation wall within two hundred feet of the right-of-way. *Fry v. Hildebrant* (12th Dist., 1985), 26 Ohio App. 3d 126, 128; *State v. Simon* (Hamilton Mun., 2000), 108 Ohio Misc. 2d 56, 60.

The Courts are empowered to issue injunctions to enforce R.C. Chapters 6109 and 6111. The State need not satisfy the requirements of traditional equity if an injunction is otherwise warranted to remedy a regulatory violation involving public health, safety or welfare. *Ackerman v. Tri-City Geriatric & Health Care, Inc.* (1978), 55 Ohio St. 2d 51, 57;

Mid-America Tire, Inc. v. PTZ Trading Ltd. (S.Ct.) 2002 Ohio 2427; *City of Wooster v. Entm't One, Inc.* (9th Dist. App.), 2004 Ohio 3846. This principle has been extended to environmental matters. *State ex rel. Celebrezze v. Ohio Oil Field Service* (7th Dist.), 1984 Ohio App. LEXIS 10812, *6.

IV. ANALYSIS

The Court has jurisdiction over this matter. The litigation was properly authorized, but this Court's jurisdiction is not controlled by the Ohio EPA Director's actions, in any event. Neither is the issue concerning the number of "service connections" that might impact EPA's regulatory authority jurisdictional as to this Court.

Defendants' water distribution system is a "public water system." CVSA is a single building for this purpose, notwithstanding the firewall between two sections. It is served by a single water distribution system, whether one or two wells feed the system at any given time. The population of the complex has always exceeded twenty-five persons. And there are thirty-four "service connections," the piping to each apartment unit constituting a separate connection. Likewise, the sewage treatment system is a "semi-public disposal system."

The wetlands here are in fact "wetlands" qualifying as "waters of the state," within the meaning of the applicable statutes and rules. Partially treated sewage cannot be discharged into them without a permit, as Defendants have done.

Defendants are required to connect to the public sewer system by both the conditions of the permit under which they operate the package plant and the present regulations. The public sewer is "available and accessible," even using the statutory standard for county-required connection that is not directly applicable here. The Court is moreover empowered to order such connection as a remedy for Defendants' Water Pollution violations.

Similarly, Defendants are required to connect to the public water system and to disable the wells from use by the CVSA complex, by their express agreement and pursuant to the Court's power to order an injunctive remedy for the Drinking Water violations.

The State easily met its burden to establish the alleged number of days of violations as to both Safe Drinking Water (19,040) and Water Pollution (25,797). The Water Pollution violations created a public nuisance. Injunctions to remedy the violations and against future violations are fully warranted.

Civil penalties must also be imposed. As to the Water Pollution penalty to be decided now, the maximum statutory amount of $190,400,000 does not provide useful guidance, even as a starting point. Indeed, the State itself has asked for a penalty of only $500,000. The Court cannot establish the appropriate penalty mechanically in this case, rather it must consider what will do substantial justice under all of the circumstances, looking to the established criteria and precedent for guidance.

Following the *Dayton Malleable* criteria, a penalty in the amount sought by the State is clearly warranted by the evidence. 1) The harm to the environment was significant; 2) Defendants gained substantial economic benefit from their delay in compliance; 3) Defendants' recalcitrance, defiance, and indifference to requirements of the law have been extreme; and 4) unusual and extraordinary enforcement costs have been thrust upon the public. There are no mitigating factors. Defendants' non-compliance was entirely the product of their own decisions. Defendants presented no evidence that they would be unable to pay such a penalty.

The recent decision in *Meadowlake, supra,* provides the most useful guidance to the present aspect of this case, even though it was a Drinking Water case without Water

Pollution allegations. There, a penalty of $300,000 was affirmed in Stark County, very near CVSA, for approximately 1000 days of violation, with findings of intentional misconduct analogous to but less far reaching than that of Defendants here. There was no evidence of direct harm to the public. The record in the present case demonstrates far more egregious circumstances than those in *Meadowlake.*

A penalty of $493,500 was assessed by the trial court in *Dayton Malleable, supra*, for 564 days of violation, including a deduction for mitigating factors. The Court of Appeals took no issue with the trial court's method of analysis, including the penalties assessed per day, but remanded because it did not find the evidence supported the number of days of violation from which the trial court had calculated the penalty amount. In *Tri-State, supra,* a penalty of $362,185 was affirmed for 3,774 days of violation. In *Maurer, supra,* a penalty of $62,902 was affirmed for approximately 4000 days of violation, but taking into account various mitigation factors and the violator's ability to pay. A penalty of $500,000 for the present Defendants' Water Pollution violations would thus be entirely consistent with Ohio precedent and would do substantial justice.

Under the circumstances of the present case, however, the Court believes that a conditional abatement of the penalty would best serve the public interest, in order to attain compliance and a genuinely final conclusion to this long controversy. Consequently, the Court will impose a civil penalty of $500,000 upon the Defendants, jointly and severally. But all but $150,000 of the penalty will be abated if the Defendants complete connection to the public sewer system, as the Court has ordered, within 120 days of the date of this Judgment. A further $100,000 will be abated, in two parts, if Defendants remedy their past Water Pollution violations as ordered within a satisfactory time.

The remaining cash penalty is large enough to avoid rewarding Defendants for their misconduct, coupled as it is with the requirement of compliance that they have fought against for so long.

V. CONCLUSION, INCLUDING PARTIAL JUDGMENTS

A. Plaintiff's demand for a permanent injunction is **GRANTED**, as follows:

1. Within 90 days of the date of this Judgment, Defendants shall abandon their public water system and shall connect to the water main located in the street on Massillon Road in front of CVSA that is owned by Aqua Ohio Water Company.

2. Within 120 days of the date of this Judgment, Defendants shall abandon their present wastewater treatment works and connect to publicly owned treatment works, by tying-in to the sewer line located in the street on Massillon Road in front of CVSA (the Akron-Canton Regional Airport Runway 5/23 Safety Area Improvement, PTI number 565037).

3. Immediately upon complying with Paragraph 2 of this Judgment, Defendants shall decommission their present sewage disposal system and without delay clean it up, properly dispose of remaining sludge and waste, and render it safe, inaccessible to the public, inoperable and incapable of receiving, discharging and leaking any sewage, waste or other material.

4. Immediately upon complying with Paragraph 2 of this Judgment, Defendants shall cease discharging sewage into the wetlands and shall submit to Ohio EPA for approval a wetland restoration and enhancement plan. Defendants shall without delay modify the plan as EPA directs and then shall implement it immediately upon its approval by EPA.

5. Defendants are permanently enjoined from violating Ohio Revised Code Chapters 6109 and 6111 and the rules promulgated and adopted under those laws, as they shall be in effect from time to time.

B. Plaintiff's demand for judgment for civil penalties and costs for violation of R.C. Chapter 6111 is **GRANTED**, as follows:

1. Defendants are jointly and severally liable for a civil penalty of $500,000.00 for 19,040 days of violations of R.C. Chapter 6111, for which the State of Ohio is granted judgment, to bear interest as provided by law.

2. The civil penalty shall be abated as follows:

A. $350,000.00 of the civil penalty shall be abated by further Order of the Court if Defendants comply with Paragraph 2 of the injunction granted above.

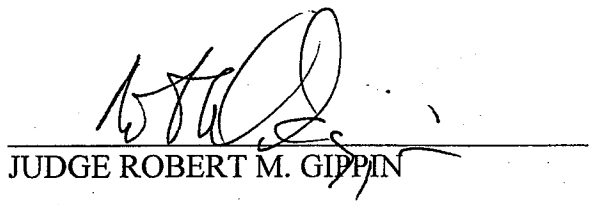
B. A further $50,000.00 of the civil penalty shall be abated by further Order of the Court if Defendants comply with Paragraph 3 of the injunction granted above.

C. A further $50,000.00 of the civil penalty shall be abated by further Order of the Court if Defendants comply with Paragraph 4 of the injunction granted above.

3. Defendants shall pay the costs of this action and are jointly and severally responsible for doing so. Plaintiff's demand for attorney fees and expenses is denied.

IT IS SO ORDERED.

December 8, 2008



JUDGE ROBERT M. GIPPIN

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