

2004 OCT - 8 PM 2:50
ANNETT
CLERK OF
ASHLAND
0
TS
AW

IN

IN THE COURT OF COMMON PLEAS
ASHLAND COUNTY, OHIO

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

CASE NO. 33912

JUDGE _____

Plaintiff,

MODIFIED CONSENT ORDER

v.
CITY OF ASHLAND

Defendant.

WHEREAS, the Plaintiff State of Ohio, on relation of its Attorney General ("State" or "Plaintiff"), having filed a complaint in this matter against Defendant, City of Ashland ("Ashland" or "Defendant"), on behalf of the Director of the Environmental Protection Agency, to enforce the State of Ohio's water pollution control laws and rules thereunder; and

WHEREAS, the Plaintiff and Defendant having consented to entry of a Consent Order on February 27, 1989; and

WHEREAS, the Plaintiff and Defendant hereby consent to the entry of this Modified Consent Order, which will supersede and completely replace the 1989 Consent Order previously entered in this action.

NOW THEREFORE, without trial or admission of any issue of fact or of law, upon the consent of the parties hereto, and pursuant to the decree of the Court, it is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 6111 of the Ohio Revised Code and the rules promulgated thereunder. Venue is proper in this Court.

II. PARTIES

2. The provisions of this Modified Consent Order shall apply and be binding upon Defendant Ashland, its agents, officials, employees, assigns, representatives, servants, successors in interest and any person acting in concert or privity with any of them. Defendant Ashland shall provide a copy of this Modified Consent Order to each contractor and consultant it employs to perform work itemized herein. Ashland shall require each general contractor to provide a copy of this Modified Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

3. Plaintiff alleged in its Complaint that Defendant has operated its wastewater treatment plant and sewer system in such a manner as to result in numerous violations of the discharge limitations and monitoring requirements of the National Pollutant Discharge Elimination System ("NPDES") Permit issued to it by the Director of Ohio EPA and in violation of the water pollution laws of the State of Ohio. In response to that Complaint, the parties negotiated and entered into a Consent Order, which was filed with this Court on February 28, 1989. The 1989 Consent Order included a construction schedule for improvements to the Ashland Wastewater Treatment Plant ("WWTP"), the elimination of overflows and bypasses,

and compliance with the final effluent limits in Ashland's NPDES Permit. The State alleges that Defendant has violated the 1989 Consent Order. Compliance with the terms of this Modified Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims of violations alleged in the Complaint and violations of the 1989 Consent Order, including the claims for injunctive relief and civil penalties.

4. Nothing in this Modified Consent Order shall be construed so as 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 Modified Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against Ashland or other appropriate persons for claims or conditions not alleged in the Complaint, including violations that occur after the filing of the Complaint (but not including violations of the 1989 Consent Order), nor shall anything in this Modified Consent Order limit the right of Ashland to any defenses it may have for such claims. Similarly, nothing in this Modified Consent Order shall be construed so as to limit the authority of the State of Ohio to undertake any action against any person, including Ashland, to eliminate or mitigate conditions that may present a threat to the public health, welfare or the environment.

IV. PERMANENT INJUNCTION

5. Ashland is hereby permanently enjoined and immediately ordered to comply with the requirements of Chapter 6111 of the Ohio Revised Code and the rules adopted thereunder, and the terms and conditions of its currently effective NPDES Permit No. 2PD00010*JD, and any renewals or modifications thereof, except as otherwise provided in Section V of this

Modified Consent Order. Ashland shall prevent bypasses and overflows from its wastewater treatment plant and sanitary sewer system, except as otherwise provided by its NPDES Permit, and Ashland shall properly operate and maintain its wastewater treatment plant, sewer system and any associated equipment and structures. All renewals, modifications or changes to Ashland's NPDES Permit approved by the Director of Ohio EPA and/or effective after the entry of this Modified Consent Order shall be deemed to be incorporated in full and made an enforceable part of this Modified Consent Order.

V. CONSTRUCTION SCHEDULE/INFILTRATION AND INFLOW REDUCTION

6. Defendant Ashland is enjoined and ordered to complete construction of the improvements to its wastewater treatment system so as to attain compliance with all requirements of NPDES Permit No. 2PD00010*JD, and any modification or renewals thereof, in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
a. Installation of a new medium screen	Completed
b. Small equalization basin improvements	Completed
c. Replaced one final clarifier, two effluent pumps and one return and waste activated sludge pump	Completed
d. Septic receiving equipment installed	Completed
e. Replace second final clarifier and the remaining return and waste activated sludge pumps, and install remaining two effluent pumps	Completed
f. Install and test ultraviolet disinfection equipment	Completed

- g. Comply with final effluent limits in NPDES Permit No. 2PD00010*JD By date of entry of modified consent order

7. Defendant Ashland is enjoined and ordered to eliminate infiltration and inflow (“I&I”) from its sanitary sewer system and to complete construction of the improvements to its wastewater treatment system so as to reduce and eliminate I&I and so as to eliminate overflows and bypasses from Outfall 002, in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
a. Completion of the I&I study conducted by URS	April 30, 2004
b. Submit to Ohio EPA for approval a general plan to reduce and eliminate I&I from Ashland’s sanitary sewer system	September 1, 2004
c. Completion of improvements to sanitary sewer system as required by I&I plan	July 31, 2005
d. Eliminate discharges from overflow and bypass at Outfall 002	April 30, 2006

The I&I plan submitted by Ashland to Ohio EPA as required by paragraph 7.b., above, shall be incorporated into this Modified Consent Order as if fully written herein.

8. This Modified Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Approval for any such construction or modification shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

9. This Modified Consent Order does not constitute authorization or approval by Ohio EPA of discharge from the overflow and bypass from Ashland's sanitary sewer at Outfall 002. Between the effective date of this Modified Consent Order and the time for elimination of the discharge from the overflow and bypass from its sanitary sewer system at Outfall 002 as required in paragraph 7.d. of this Modified Consent Order, Ashland is enjoined to monitor its wastewater treatment system's bypass and overflow at Outfall 002 in accordance with Part I.B.5. "BYPASS MONITORING LIMITATIONS AND MONITORING REQUIREMENTS" in Ashland's NPDES Permit No. 2PD00010*JD.

10. Nothing in this Modified Consent Order is intended to abridge any available defenses provided by Permit No. 2PD00010*JD or any renewals or modifications thereof.

VI. REPORTING REQUIREMENT

11. Within seven (7) days from the completion date of each task listed in Section V, Defendant is immediately ordered to submit a written report stating whether it has performed the action set forth therein to the following address, unless otherwise notified in writing of a different name or address:

Ohio EPA
Northwest District Office
Division of Surface Water
347 North Dunbridge Road
Bowling Green, Ohio 43402
ATTN: Elizabeth Wick (or her successor)

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

Bruce Wisner
Director
Division of Waste Water Treatment
206 Claremont Avenue
Ashland, Ohio 44805

copy to: Richard Wolfe, Esq.
Law Director
City of Ashland
1213 E. Main St.
Ashland, Ohio 44805

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

VII. CIVIL PENALTY

13. It is hereby ordered that Defendant shall pay to the State of Ohio a civil penalty of seventeen thousand five hundred dollars (\$ 17,500.00) within thirty (30) days of the entry of this Modified Consent Order. The civil penalty payment shall be paid by certified check for the appropriate amount, made payable to "Treasurer, State of Ohio", which check shall be delivered by mail, or otherwise, to Amy Laws, Paralegal, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

14. In lieu of additional civil penalty, and in furtherance of the mutual objectives of the State of Ohio and City of Ashland in improving the waters of the State and the environment, Defendant agrees to reconstruct the City of Ashland reservoir, as the proposed work is described in Exhibit A to this Modified Consent Order. Work on this project shall be done in compliance

with all applicable laws. This project shall be completed by April 1, 2006.

IX. STIPULATED PENALTIES

15. In the event that Defendant Ashland fails to meet any of the schedule milestone requirements of this Modified Consent Order set forth in Paragraphs 6, 7 and 14, except Sub-Paragraph 6.g. or Sub-Paragraph 7.d., Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

- (a) For each day of non-compliance after the schedule milestone date from one (1) day to thirty (30) days – two hundred fifty dollars (\$250.00) per day not met;
- (b) For each day of non-compliance after the schedule milestone date from thirty-one (31) days to sixty (60) days – five hundred dollars (\$500.00) per day not met;
- (c) For each day of non-compliance after the schedule milestone date over sixty-one (61) days – one thousand dollars (\$1,000.00) per day not met.

16. In the event that Defendant Ashland fails to eliminate the overflow and bypass at Outfall 002 by April 30, 2006, as required by Sub-Paragraph 7.d. of this Modified Consent Order, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty of Two Thousand Dollars (\$2,000.00) for each day of each overflow at Outfall 002.

For purposes of this Paragraph 16, “day” shall be equivalent to one (1) twenty-four hour period. For example, if an overflow begins at 3:00 p.m. on Monday and continues until 10:00 a.m. of Tuesday, this shall be considered as one (1) day. If an overflow begins at 3:00 p.m. on Monday and continues until 5:00 p.m. of Tuesday, this shall be considered as two (2) days.

7. In the event that Defendant Ashland violates the final effluent limits in its NPDES Permit No. 2PD00010*JD, or any renewals and/or modifications thereof, after the deadline

established in Sub-Paragraph 6.g., 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 final 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;

For each day of each failure to comply with the final 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;

For each day of each failure to comply with the final effluent limits in its NPDES Permit over sixty-one (61) days – one thousand dollars (\$1,000.00) per day per violation not met.

18. Any payment required to be made under the provisions of Paragraph 14, 15, or 16 of this Modified Consent Order shall be made by certified check for the appropriate amount, made payable to “Treasurer, State of Ohio”, which check shall be delivered by mail, or otherwise, to Amy Laws, Paralegal,, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

X. RETENTION OF JURISDICTION

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

XI. POTENTIAL FORCE MAJEURE

20. If any event occurs which causes or may cause a delay of any requirements of this Modified Consent Order, Ashland 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. Ashland will adopt all reasonable measures to avoid or minimize any such delay.

21. In any action by the Plaintiff to enforce any of the provisions of this Modified Consent Order, Ashland 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 Ashland 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, Ashland will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Ashland. Unanticipated or increased costs associated with the implementation of any action required by this Modified Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Ashland or serve as a basis for an extension of time under this Modified Consent Order. Failure by Ashland 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 Ashland's right to request an extension of its

obligations under this Modified Consent Order based on such incident. An extension of one date based on a particular incident does not mean that Ashland qualifies for an extension of a subsequent date or dates. Ashland must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Modified Consent Order with a Potential Force Majeure Clause does not constitute a waiver by Ashland of any rights or defenses it may have under applicable law.

XII. COURT COSTS

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

XIII. ENTRY OF MODIFIED CONSENT ORDER AND FINAL JUDGEMENT BY CLERK

23. The parties agree and acknowledge that final approval by the Plaintiff and Defendant, and entry of this Modified 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 Modified Consent Order, opportunity for public comment, and the consideration of any public comment. The State and Defendant reserve the right to withdraw this Modified Consent Order based on comments received during the public comment period. Defendant shall pay the cost of publishing the public notice.

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

serve upon the parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

IT IS SO ORDERED.

DATE


JUDGE, COURT OF COMMON PLEAS
ASHLAND COUNTY

APPROVED:

JIM PETRO
ATTORNEY GENERAL OF OHIO


THOMAS P. BEHLEN (0042721)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
(614) 466-2766

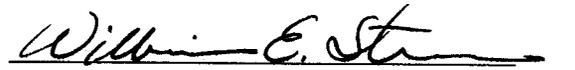
Counsel for Plaintiff State of Ohio

8/13/2004
DATE


RICHARD P. WOLFE (0014063)
Law Director, City of Ashland
1213 E. Main Street
Ashland, OH 44805
(419) 289-7777

Counsel for Defendant City of Ashland

8/10/04
DATE


(Authorized Representative) *WES*

8/10/04
DATE

2004 RECONSTRUCTION OF THE CITY RESERVOIR

The City of Ashland is rebuilding the reservoir. The primary reason for the renovations is to reestablish the reservoir as a source of raw water feed to the Water Treatment Plant. A brief explanation of the proposed work is provided below:

- The existing dike will be reused as much as feasible. The geotechnical evaluation indicates that much of the southern and eastern dike areas are intact (except in the breach area); they are to be renovated. The renovation includes removal and replacement of the top 3-feet of soil from the dike, removal of all trees in their entirety, decreasing interior and exterior slopes and repair or replacement of existing intake structures.
- All remaining embankment in the area of the breach will be removed and replaced with fresh borrow soil. If possible, the existing sheet piling will be left in place. However, a partial or full cutoff trench is proposed to be constructed in this area. Bedrock may be up to forty or more feet below grade in this area.
- Stripped soils will be replaced with soil brought in from on site borrow areas located onsite within 500 feet of the dike area. Interior dike slopes will be reduced to 4:1 from 2:1. Exterior slopes will be reduced to 3:1. A 2-foot thick rip-rap layer will be placed on the interior slopes. Dam crest elevation is proposed to be set at 1023.0 feet amsl. The elevation of the crest is six (6) feet higher than the normal pool elevation of 1017.0 feet amsl and thus meets ODNR free board criteria for Class II dams (5-feet of free board).
- The design consists of a rectangular inlet structure (42-feet of weir), three 48" diameter pipelines leading to an energy dissipation structure and a riprap lined discharge channel. The overflow is set at an elevation of 1017.0' amsl. Both spillways discharge into rock-lined channels.
- The outlet works are to include a 36-inch sluice gate located at the bottom of the structure to allow the reservoir to be partially drained. The water transmission pipe can also be used as a reservoir drain. The existing intakes will be renovated and reused, if possible.
- As mentioned earlier, borrow material will be taken from an upstream area. The borrow needed for dam repairs and new construction is estimated to be 130,000 cubic yards.
- Use of borrow from onsite sources will create a larger capacity reservoir than existed in 1969. The nominal capacity of the reservoir (the difference between the primary overflow elevation (1017.0' amsl) and the lower intake structure elevation (999.0' amsl) is estimated to be 123 million gallons.
- The Engineering Cost Estimate for the design and construction of this project is 1.3 to 1.5 million dollars.