

IN

02:29 pm, Mar 25, 2015

ANNETTE SHAW

CLERK OF COURTS

ASHLAND COUNTY, OHIO

IN THE COURT OF COMMON PLEAS
ASHLAND COUNTY, OHIO

STATE OF OHIO, <i>ex rel.</i>	:	CASE NO. 14-CIV-053
MICHAEL DeWINE	:	
OHIO ATTORNEY GENERAL,	:	JUDGE FORSTHOEFEL
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CINNAMON LAKE UTILITIES	:	
ASSOCIATION, INC.,	:	
	:	
Defendant.	:	

CONSENT ORDER FOR INJUNCTIVE RELIEF AND CIVIL PENALTY

WHEREAS, Plaintiff, the State of Ohio, by its Attorney General Michael DeWine (“State” or “Plaintiff”), has filed the Complaint in this action against Cinnamon Lake Utilities Association, Inc. (“Defendant”) to enforce Ohio’s Safe Drinking Water Laws, Ohio’s Water Pollution Control Laws, and the rules and orders created under these laws. This Consent Order resolves disputed claims concerning Defendant’s operation of a public drinking water system (“public water system”) and a wastewater treatment plant serving the Cinnamon Lake subdivision. The wastewater treatment plant is located at 1443 Laurel Drive, West Salem, Ashland County, Ohio, and the public water system was located at the same address.

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the Plaintiff and the Defendant, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over both the parties and the subject matter pursuant to R.C. Chapters 6109 and 6111. The Complaint states a claim upon which relief can be granted against the Defendant. Venue is proper in this Court. Defendants shall not challenge the Court's jurisdiction to enter or enforce this Consent Order.

II. PERSONS BOUND

2. All terms and provisions of this Consent Order shall apply to and be binding on the Defendant, the Defendant's agents, employees, assigns, successors in interest, and any person acting in concert, privity, or participation with the Defendant. The undersigned representative of Defendant certifies that he is fully authorized by the party he represents to enter into the terms and conditions of the Consent Order and to execute and legally bind that part and that he submits with this Consent Order an authenticated and certified resolution from that entity establishing that he is so empowered. This Consent Order is in settlement and compromise of disputed claims, and nothing in this Consent Order is to be construed as an admission of any facts or liability.

III. SATISFACTION OF LAWSUIT

3. The Plaintiff alleges in its Complaint that the Defendant owned and operated the public water system and owns and operates the wastewater treatment and disposal systems that served or serve the Cinnamon Lake subdivision in West Salem, Ohio in violation of Ohio's Safe Drinking Water Laws, R.C. Chapter 6109, and Ohio's Water Pollution Control Laws, R.C. Chapter 6111, and the rules and orders created under these laws.

4. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by the Defendant for all claims under such laws alleged in the Complaint that was filed on February 25, 2014.

IV. RESERVATION OF RIGHTS

5. Nothing in this Consent Order, including the imposition of stipulated civil penalties for violations of this Consent Order, shall limit the authority of the Plaintiff to:

- (a) Seek any legal or equitable relief from the Defendant or any other appropriate person for claims or conditions not alleged in the Complaint, including violations that occur after the filing of the Complaint;
- (b) Seek any legal or equitable relief from the Defendant or any other appropriate person for claims or conditions alleged in the Complaint that occur or exist on the date of or after the entry of this Consent Order;
- (c) Enforce this Consent Order through a contempt action or otherwise seek relief for violations of this Consent Order;
- (d) Take any action authorized by law against any appropriate person, including the Defendant, to eliminate or mitigate conditions at the Defendant's public water system and/or wastewater treatment plant that may present a threat to the public health, safety, welfare, or the environment; or
- (e) Bring any legal or equitable action against any appropriate person other than the Defendant for any violation of applicable laws. For the purposes of this Consent Order, and in particular the provisions of this Paragraph, the term "person" includes: an individual, corporation, business trust, estate, trust, partnership, association, municipal corporation, interstate body created by compact, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.
- (f) Accordingly, nothing in this Consent Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged in the Complaint, against any person, firm, trust, joint venture, partnership, corporation, association, or other entity not a signatory to this Consent Order.

6. Nothing in this Consent Order shall be construed to relieve Defendant of its obligations to comply with applicable federal, state, or local statutes, regulations, or ordinances.

7. Nothing in this Consent Order shall restrict the right of the Defendant to raise any administrative, legal, or equitable claim or defense with respect to such further actions reserved by the State in this Section. However, with respect to the actions reserved by the State in this Section, Defendant shall not assert and may not maintain, any defense or claim against the State based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim splitting or other defenses based upon any contention that the claims raised by the State in the subsequent proceeding were, could, or should have been brought in the instant case.

V. INJUNCTION

8. The Defendant is permanently enjoined and ordered to comply immediately with all applicable provisions of R.C. Chapters 6109, 6111, the rules promulgated under these Chapters, and the permits issued pursuant to these Chapters.

9. Beginning on the date of entry of this Consent Order by the Court, the Defendant is enjoined and ordered to inspect the inflow and infiltration into Defendant's sanitary sewer system. Specifically, the Defendant is enjoined to do the following:

- (a) Visually inspect manholes to identify deficiencies related to inflow and infiltration. Repair all manhole deficiencies.
- (b) Clean storm water ditches by removing debris. Although another party may complete this requirement, the Defendant shall have ultimate responsibility for cleaning the storm water ditches.
- (c) Use a closed-circuit television camera to inspect sewer lines, clean the sewer lines as needed to permit this inspection, and create a recording of the inspection, which shall be maintained as a permanent record.

- (d) By no later than February 28, 2015, Defendant shall complete inspections of all homes in the Cinnamon Lake subdivision to determine whether residents are using sump pumps to connect to the sanitary sewer. Defendant shall also submit a report to Ohio EPA indicating whether sump pump connections are currently being used.
- (e) By no later than December 31, 2015, Defendant shall complete all requirements described in paragraphs 9(a) – (c) with respect to Zone 1, which is identified in neon yellow color in the Zone Map, attached as **Exhibit A**.
- (f) By no later than February 28, 2016, Defendant shall submit a report to Ohio EPA summarizing all work completed in 2015. This report shall include a list of identified corrective actions.
- (g) By no later than December 31, 2016, Defendant shall complete all requirements described in paragraphs 9(a) – (c) with respect to Zone 2, which is identified in orange color in the Zone Map, attached as **Exhibit A**.
- (h) By no later than February 28, 2017, Defendant shall submit a report to Ohio EPA summarizing all work completed in 2016. This report shall include a list of identified corrective actions.
- (i) By no later than December 31, 2017, Defendant shall complete all requirements described in paragraphs 9(a) – (c) with respect to Zone 3, which is identified in green color in the Zone Map, attached as **Exhibit A**.
- (j) By no later than February 28, 2018, Defendant shall submit a report to Ohio EPA summarizing all work completed in 2017. This report shall include a list of identified corrective actions.
- (k) By no later than December 31, 2018, Defendant shall complete all requirements described in paragraphs 9(a) – (c) with respect to Zone 4, which is identified in pink color in the Zone Map, attached as **Exhibit A**.
- (l) By no later than February 28, 2019, Defendant shall submit a report to Ohio EPA summarizing all work completed in 2018. This report shall include a list of identified corrective actions.
- (m) By no later than December 31, 2019, Defendant shall complete all requirements described in paragraphs 9(a) – (c) with respect to Zone 5, which is identified in blue color in the Zone Map, attached as **Exhibit A**.

- (n) By no later than February 28, 2020, Defendant shall submit a report to Ohio EPA summarizing all work completed in 2019. This report shall include a list of identified corrective actions.
- (o) Following the completion of the injunctive work described in paragraph 9(a) – (n), Defendant shall submit an approvable plan to complete remaining repairs and to eliminate excessive inflow and infiltration.

VI. REPORTING REQUIREMENT

10. Defendant shall send all documents or reports concerning the wastewater treatment plant that are required to be submitted to Ohio EPA's Northwest District Office under this Consent Order to: Ohio Environmental Protection Agency, Northwest District Office, Division of Surface Water, Attn: Walter Ariss, at 347 Dunbridge Road, Bowling Green, Ohio 43402.

11. Documents or reports concerning the wastewater plant that are required to be submitted to Ohio EPA's Central Office pursuant to this Consent Order shall be sent to: Ohio Environmental Protection Agency, Division of Surface Water, Attn: Larry Reeder, at P.O. Box 1049, Columbus, Ohio 43216.

VII. CIVIL PENALTY

12. The Defendant shall pay a civil penalty totaling \$60,000 to the State of Ohio. This civil penalty shall be paid over a three-year period. The first payment of fifteen thousand dollars (\$15,000) shall be due on or before February 15, 2015. The second payment of fifteen thousand dollars (\$15,000) shall be due within twelve (12) months of the entry of this Consent Order. The remaining payments shall be paid in four equal payments of seven thousand five hundred dollars (\$7,500), due within eighteen (18) months of the entry of this consent Order,

within twenty-four (24) months of the entry of this Consent Order, within thirty (30) months of the entry of this Consent Order, and within thirty-six (36) months of the entry of this Consent Order, respectively.

13. In the event that Defendant fails to timely make any of the civil penalty payments as set forth above, the entire civil penalty shall immediately become due and owing, without further demand by the State, plus interest pursuant to R.C. 131.02(D) and R.C. 5703.47 calculated from the civil penalty payment's due date.

14. Defendant shall make payment by delivering to Scott Hainer, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, a certified check for the applicable amount as stated in Paragraph 12, above, payable to the order of "Treasurer, State of Ohio." The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 410544."

VIII. STIPULATED PENALTIES

15. If the Defendant fails to comply with any injunctive requirement, as set forth in Section V of this Consent Order, the Defendant is liable for and shall immediately pay stipulated penalties in accordance with the following schedule for each failure to comply:

- (a) For each day of each failure to comply with a requirement or meet a deadline from one (1) day to thirty (30) days, two hundred dollars (\$200.00) per day per requirement not met.
- (b) For each day of each failure to comply with a requirement or meet a deadline from thirty-one (31) days to sixty (60) days, four hundred dollars (\$400.00) per day per requirement not met.

- (c) For each day of each failure to comply with a requirement or meet a deadline over sixty-one (61) days to ninety (90) days, six hundred dollars (\$600.00) per day per requirement not met.
- (d) For each day of each failure to comply with a requirement or meet a deadline over ninety (90) days, one thousand dollars (\$1,000.00) per day per requirement not met.

16. Defendant shall submit payment required by Paragraph 15 by delivering a certified check or checks made payable to "Treasurer, State of Ohio," for the appropriate amount(s), within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, by mail, or otherwise, to Scott Hainer, Paralegal, or his successor, at the Ohio Attorney General's Office, The Ohio EPA is not required to notify Defendants of missed deadlines or the corresponding duty to pay stipulated penalties. Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. Each payment shall include a notation in the memorandum portion of the check, or some other prominent location on the transmittal letter or documentation referencing this Consent Order. The payment of stipulated penalties by Defendant and the acceptance of these stipulated penalties by Plaintiff for specific violations under Section VIII shall not limit Plaintiff's authority to seek additional relief or to seek judicial enforcement of this Consent Order.

IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

17. Performance of the terms of this Consent Order by the Defendant is not conditioned on the receipt of any federal or state grant funds or loans. In addition, the Defendant's performance is not excused by the failure to obtain or shortfall of any federal or state grant funds or loans, or by the processing of any applications for the same.

X. MODIFICATION

18. This Consent Order shall not be modified without the written agreement of the parties and this Court.

XI. MISCELLANEOUS

19. Nothing in this Consent Order shall affect the Defendant's obligation to comply with all applicable federal, state, or local laws, regulations, rules or ordinances. The Defendant shall obtain all federal, state, or local permits necessary to comply with this Consent Order.

20. If the State of Ohio accepts any payment, document, or other work due under this Consent Order after the time that the obligation is due under this Consent Order, then this acceptance shall not relieve Defendant from the obligations created by this Consent Order.

21. The Defendant shall inform the Ohio EPA of any change of contact information, or the cessation of the business that is the subject of this action.

XII. COSTS

22. The Defendant shall pay the court costs of this action.

23. The Defendant is ordered to pay the costs incurred by the Ohio EPA for the publication of the Consent Order in Ohio EPA's Weekly Review and a newspaper of general circulation. The Defendant shall pay the costs associated with publication by delivering a certified check payable to: "Treasurer, State of Ohio" and with a notation indicating that the funds are going to "Fund 699" on it, in the amount of the costs, to the Fiscal Officer, Ohio EPA,

P.O. Box 1049, Columbus, Ohio 43216-1049, within thirty (30) days from the date it receives notice of the costs from Ohio EPA.

24. This Court shall retain jurisdiction over this action to enforce and administer the Defendant's compliance with this Consent Order.

XIII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

25. The parties agree and acknowledge that final approval by the Plaintiff and the Defendant and entry of this Consent Order is subject to the requirements of 40 C.F.R. 123.27(d)(2)(iii), which requires that the State of Ohio must provide public notice of the lodging of this Consent Order and an opportunity for the public to comment on this Consent Order. Both the Plaintiff and the Defendant reserve the right to withdraw this Consent Order based on comments received during the public comment period.

26. 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 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.



JUDGE FORSTHOEFEL
COURT OF COMMON PLEAS
ASHLAND COUNTY, OHIO

DATE

APPROVED:

**MICHAEL DEWINE
OHIO ATTORNEY GENERAL**



**D. REES ALEXANDER (0090675)
JANEAN R. WEBER (0083960)**
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400
Telephone: (614) 466-2766
Facsimile: (614) 644-1926
Rees.Alexander@OhioAttorneyGeneral.gov
Janean.Weber@OhioAttorneyGeneral.gov

Counsel for Plaintiff



TIMOTHY D. HOFFMAN (0006311)
1100 Courthouse Plaza, SW
10 North Ludlow Street
Dayton, Ohio 45402
Telephone: (937) 449-2847
Facsimile: (937) 449-2821
tim.hoffman@dinslaw.com

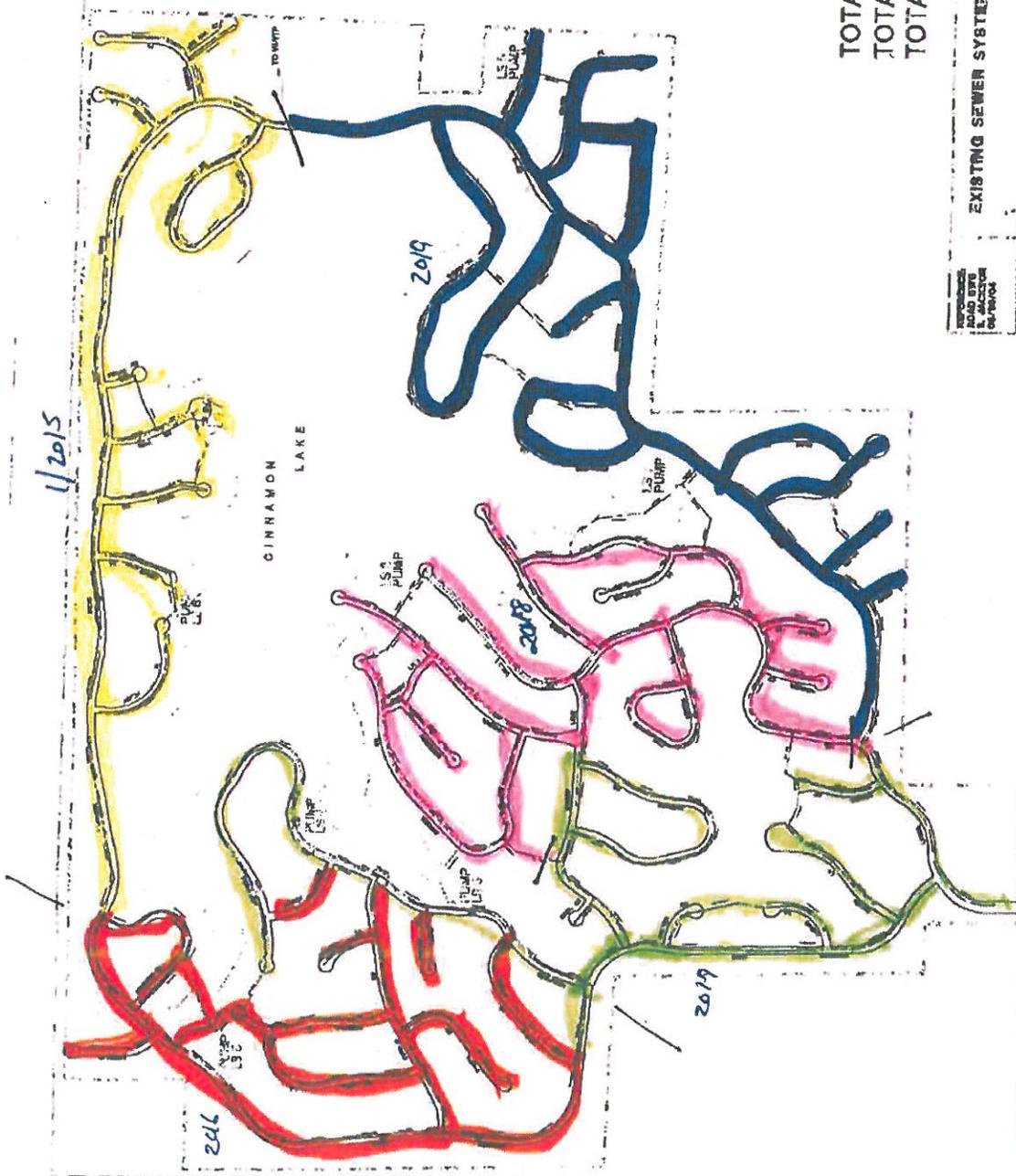
Counsel for Defendant



ROBERT HOMZA
on behalf of Cinnamon Lake Utilities
Association, Inc.
1443 Laurel Drive
West Salem, Ohio 44287

CINNAMON LAKE SEWER MAP

- LEGEND**
- 8" SANITARY SEWER
 - 8" SANITARY SEWER
 - 10" SANITARY SEWER
 - 4" FORCE MAIN
 - 8" FORCE MAIN
 - 8" ALTERNATE SANITARY SEWER
 - MANHOLE
 - PUMP STATION
- HIGH ELEVATION POINT IN SEWER SYSTEM ALLOWS SEWAGE TO FLOW IN EITHER DIRECTION.



TOTAL SEWER = 77,436 L.F.
 TOTAL MANHOLES = 268
 TOTAL TAPS = 515

EXISTING SEWER SYSTEM
 SANITARY SEWER 1/1 STUDY
 CINNAMON LAKE
 PLATE ONE
 P.O. BOX 1000
 JACKSON, MS 39204
 661-363-0000
 P.E. REGISTERED