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TIMOTHY J. WOLLENBERG
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
PERRY COUNTY, OHIO

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

Plaintiff,

v.

PERRY COUNTY
BOARD OF COMMISSIONERS,

Defendant.

CASE NO. 06-CV-00137

JUDGE HIXSON

CONSENT ORDER

The Plaintiff, State of Ohio, by its Attorney General (hereinafter "Plaintiff" or "State of Ohio") and Defendant, Perry County Board of Commissioners (hereinafter "Defendant" or "Perry County"), hereby consent to the entry of this Consent Order in order to resolve the allegations in this matter and pursuant to Chapter 6111 of the Ohio Revised Code ("R.C.").

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. Perry County shall provide a copy of this Consent Order to each general contractor and consultant it employs to perform the work itemized herein. Perry County 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 failed to comply with the terms of the agreed to Director's Final Findings and Orders issued June 2, 1998 concerning providing sewers to unsewered areas of Perry County in the vicinity of Buckeye Lake, has violated Defendant's National Pollutant Discharge Elimination System ("NPDES") permit for the Crown Wherle Estates Wastewater Treatment Plant ("WWTP"), and has 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 Perry County 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 so as to limit the authority of the State of Ohio to undertake any action against any person, including Defendants, to eliminate or mitigate conditions, which may present a threat to the public health, welfare or the environment.

5. Defendant Perry County agrees to dismiss its counterclaim for damages against Plaintiff State of Ohio with prejudice.

IV. 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, and the terms and conditions of the Directors Final Findings and Orders issued on June 2, 1998, the terms and conditions of NPDES permit No. 0PG00023*FD for the Crown Wherle Estates WWTP and any renewal or modification thereof.

A. Buckeye Lake Unsewered Area

7. Defendant shall construct sanitary sewers to serve the areas of Perry County in the vicinity of Buckeye Lake known as Holiday Harbor Subdivision and Fireman's Park, as shown on exhibit A, as expeditiously as practicable, but not later than the dates in the following schedule:

- a. As soon as possible, but by no later than April 1, 2007, Defendant shall initiate construction of the sanitary sewers to serve the approximate 300 existing homes in the Holiday Harbor Subdivision and Fireman's Park ("existing homes") through issuance of a notice-to-proceed to Defendant's contractor(s). The sanitary sewers shall be constructed in compliance with an Ohio EPA approved Permit-to-Install ("PTI") for this project and any subsequent Ohio EPA approved modifications to the PTI. Construction shall be completed no later than May 31, 2008.
- b. No later than ninety days after completion of the construction described in subparagraph 7(a), or August 31, 2008, whichever is

earlier, Defendant shall connect at least 200 of the existing homes to sanitary sewers.

- c. No later than ninety days after the connection of the 200 existing homes pursuant to subparagraph 7(b), or November 30, 2008, whichever is earlier, Defendant shall evaluate whether wastewater treatment capacity exists to allow for the connection of the remaining existing homes to the sanitary sewer and report the results of this evaluation to Ohio EPA for Ohio EPA review and concurrence.
- d. To the extent that additional wastewater treatment capacity is available and Ohio EPA concurs, Defendant shall proceed to connect the remaining existing homes to the sanitary sewer system within ninety days of the evaluation.
- e. If the evaluation determines that additional wastewater treatment capacity is not available to serve all of the remaining homes, Defendant shall submit PTI application(s) to Ohio EPA to provide for necessary wastewater treatment capacity for the remaining existing homes within ninety days of the evaluation. The PTI application(s) shall include a schedule for any necessary construction. Defendant shall complete construction of all improvements, including any necessary sewers and treatment works, and connect any remaining existing homes to the sanitary sewer system no later than March 1, 2010.
- f. The Defendant shall notify Ohio EPA when all existing homes in Holiday Harbor Subdivision are connected to the Defendant's sewer system and when all existing homes in the Fireman's Park area are connected to the Defendant's sewer system.

B. Crown Wherle Estates WWTP

8. Defendant has prepared and submitted to Ohio EPA for review and approval an Operation and Maintenance Manual ("O&M Manual") for the Crown Wherle Estates WWTP. Defendant shall follow the O&M Manual, as approved, and any modifications to the Manual which may be subsequently approved by Ohio EPA.

9. Defendant shall ensure that there is adequate staffing maintained at the Crown Wherle Estates WWTP, which at minimum shall include having a Class 3 Wastewater Plant Operator at this WWTP at least three non-consecutive days each week for a minimum total of 1

hour per day, and another wastewater operator of at least a Class 1 certification for a minimum total of 20 hours per week. Defendant shall maintain records documenting the staffing of this WWTP and provide these records to Ohio EPA upon request.

C. Compliance Audit

10. Starting on March 1, 2008 and at least once every two years thereafter for a ten year period, Perry County shall certify in writing to Ohio EPA that Perry County has conducted an audit of the prior two calendar years to evaluate its compliance with its NPDES permits and the effectiveness of its operation and maintenance plans for its system.

11. Perry County shall develop each audit report using an outside consultant with expertise in wastewater treatment plant operations. The audit should be based on an evaluation of interviews with facility personnel, inspection of equipment and other resources, and review of pertinent records and information management systems. At a minimum the audit report must address:

- (a) The findings of the audit, including deficiencies;
- (b) Documentation of steps taken to respond to each finding in the report, including steps taken to correct each deficiency; and
- (c) A schedule for additional steps to respond to findings of the report.

12. Perry County Board of Commissioners shall certify in writing to Ohio EPA that the Board has received the audit results from its consultant, and indicate to Ohio EPA what recommendations of the consultant are to be implemented and the Board's schedule for implementation. For any recommendation not accepted by the Board, the Board shall explain to Ohio EPA why the recommendation was not accepted. Along with this certification the Board shall provide Ohio EPA a copy of the current audit.

13. Perry County shall retain the two most recent compliance audits.

V. SUBMISSIONS TO OHIO EPA

14. Within 14 days of each milestone date set out in paragraphs 6 through 12 of this Order, Defendant shall submit written notification stating whether it has performed the action required of this Order to Ohio EPA.

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

Ohio EPA
Southeast District Office
2195 Front Street
Logan, Ohio 43138
Attn. DSW Enforcement Supervisor

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

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

VII. CIVIL PENALTY

17. It is hereby ordered that Defendant shall pay to the State of Ohio a civil penalty of thirty thousand dollars (\$30,000.00). Defendant shall make payments of this civil penalty to the State of Ohio according to the following schedule;

- a. No later than November 1, 2007, the amount of ten thousand dollars (\$10,000.00);
- b. No later than November 1, 2008, the amount of ten thousand dollars (\$10,000.00);
- c. No later than November 1, 2009, the amount of ten thousand dollars (\$10,000.00);

18. If the Defendant fails to make any one of the civil penalty payments on or before the date specified by paragraph 17 this Consent Order for such payment, the total civil penalty of thirty thousand (\$30,000.00) ordered to be paid by the Defendant becomes immediately due and payable to the State of Ohio. The Defendant shall pay the thirty thousand dollars (\$30,000.00) civil penalty less any amount of civil penalty that has already been paid to the State of Ohio pursuant to paragraph 17 of this Consent Order.

19. The civil penalty payments shall be made by delivering to Martha Sexton, Paralegal, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215-3400, a certified check or checks, made payable to the order of the "Treasurer, State of Ohio," for the appropriate amount.

VIII. STIPULATED PENALTIES

20. In the event that Defendant fails to meet any of the deadlines listed in paragraphs 6 through 14, the Defendant shall be immediately and automatically liable for and pay a stipulated penalty according to the following schedule:

- a) For each day of 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 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 failure to meet a specified deadline from sixty-one (61) days and over – Seven Hundred and Fifty Dollars (\$750.00) per each day the deadline is not met.

21. If Defendant fails to meet any effluent limit in its NPDES permit from the date of the entry of this Consent Order until 90 days after Defendant has connected all existing homes to the sanitary sewer system or March 1, 2010, whichever date is earlier, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty of one hundred dollars per day per each effluent violation. 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. 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.

22. Ninety (90) days after Defendant has connected all existing homes to the sanitary sewer system or March 1, 2010, whichever date is earlier, if Defendant fails to meet any of the daily effluent limits of in its NPDES Permit, the Defendant shall be immediately and automatically 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;
- (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;
- (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;
- (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 (\$1,000.00) per day per violation.

The provisions of this paragraph shall apply per each separate daily effluent limitation.

23. 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. Ninety (90) days after Defendant has connected all existing homes to the sanitary sewer system or March 1, 2010, whichever date is earlier, if Defendant fails to meet any of the 7-day average effluent limits of its NPDES Permit, the Defendant shall be immediately and automatically 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.

The provisions of this paragraph shall apply per each separate 7-day average effluent limitation.

24. 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. Ninety (90) days after Defendant has connected all existing homes to the sanitary sewer system or March 1, 2010, whichever date is earlier, if Defendant fails to meet any of the 30-day average effluent limits of its NPDES Permit, the Defendant shall be immediately and automatically 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, five hundred dollars (\$500.00) 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.

The provisions of this paragraph shall apply per each separate 30-day average effluent limitation.

25. Payments due under paragraphs 18 through 22 shall be made within forty-five (45) days from the date of the failure to meet the applicable deadline or effluent limitation, and

shall be accompanied by a written explanation of the deadline missed or effluent violation. 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 VII, paragraph 19, 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 VII 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 Defendant shall not be considered an admission of liability on the part of Defendant.

26. The stipulated penalties imposed by paragraphs 20, 21, 22, 23 and 24 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 of 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 does 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.

IX. POTENTIAL FORCE MAJEURE

27. 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.

28. 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.

X. RETENTION OF JURISDICTION

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

XI. COSTS

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

XII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

31. 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.

32. 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 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 Richard D. Hixson
Perry County Court of Common Pleas

10-5-07

Date

APPROVED:

MARC DANN
ATTORNEY GENERAL OF OHIO

By:



Thomas P. Behlen (0042721)

Jessica B. Atleson (0077871)

Assistant Attorneys General
Environmental Enforcement Section

Public Protection Division

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Columbus, Ohio 43215-3400

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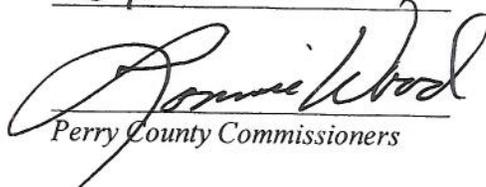
Facsimile: (614) 644-1926

*Attorneys for Plaintiff
State of Ohio*

By:

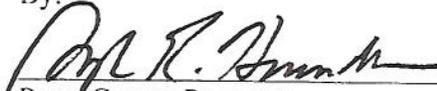


Fred Shiner



Perry County Commissioners

By:



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