

IN THE COURT OF COMMON PLEAS
PICKAWAY COUNTY, OHIO

STATE OF OHIO, *ex rel.*
MICHAEL DEWINE
OHIO ATTORNEY GENERAL,

Plaintiff,

v.

CITY OF CIRCLEVILLE,

Defendant.

CASE NO.

2014 CI 167

JUDGE:

Knecc

JAMES V. DEWINE
CLERK OF COURTS
PICKAWAY COUNTY

2014 JUL 16 P 1:36

FILED-COMMON PLEAS

CONSENT ORDER FOR INJUNCTIVE RELIEF AND CIVIL PENALTY

Plaintiff State of Ohio, by its Attorney General Michael DeWine (hereinafter "State" or "Plaintiff"), filed a Complaint in this action against Defendant City of Circleville (hereinafter "Defendant") alleging violations of the State of Ohio's drinking water laws and the rules promulgated thereunder. The allegations relate to the Defendant's operation of the "public water system" (hereinafter "PWS") ID Number: 6500412 located at 663 Island Road, Pickaway County, Circleville, Ohio 43113. This Consent Order constitutes a resolution of claims in that Complaint.

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

I. JURISDICTION AND VENUE

1. The Court has both personal and subject matter jurisdiction over the parties. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 6109 of the Ohio Revised Code. Venue is proper in this Court.

II. PERSONS BOUND

2. All terms and provisions of this Consent Order shall apply to and be binding upon Defendant, its officers, assigns, successors in interest, and others bound by Rule 65(D) of the Ohio Rules of Civil Procedure, who are or will be acting in concert and/or in privity with the Defendant. The undersigned representative of each party to this Consent Order certifies that he or she is fully authorized by the party or parties whom she or he represents to enter into the terms and conditions of the Consent Order and execute and legally bind that party or parties to it. 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. Plaintiff alleges in its Complaint that Defendant has operated a PWS at 663 Island Road, Pickaway County, Circleville, Ohio 43113 in such a manner as to result in numerous violations of the safe drinking water laws of the State of Ohio. Defendant specifically disputes Plaintiff's allegations. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims under such laws alleged in the Complaint filed in this case.

4. Compliance with the terms of this Consent Order shall also constitute full satisfaction of all requirements set forth in the November 18, 2008 Director's Final Findings and Orders and the January 27, 2011 Director's Final Findings and Orders issued to the City of Circleville.

5. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief against Defendant or other appropriate persons for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief

against other appropriate persons, not covered by this Consent Order, for claims or conditions alleged in the Complaint. Similarly, nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to undertake any action against any person, including Defendant, to eliminate or mitigate conditions that may present a threat to the public health, welfare or the environment.

IV. PERMANENT INJUNCTION

6. Defendant is permanently enjoined and ordered to immediately comply with the requirements of R.C. Chapter 6109 and the rules adopted thereunder.

7. Defendant is permanently enjoined and ordered to comply with their contaminant monitoring schedule for the 2014 calendar year and all subsequent monitoring schedules issued by the Director.

8. Defendant is permanently enjoined and ordered to implement a backflow prevention inspection program in accordance with Ohio Administrative Code 3745-85-04 through 3745-95-06. Defendant will assess the remaining commercial accounts as well as the residential accounts by March 31, 2015. Defendants shall dedicate an average of 5 hours a week per month towards implementing the backflow program, and providing Ohio EPA with quarterly progress reports on the status of the backflow prevention inspection program, including documentation demonstrating the number of weekly hours dedicated to the program and the percentage of backflow accounts addressed each month. Defendant shall continue providing Ohio EPA with the quarterly progress reports until the remaining outstanding commercial and residential accounts have been addressed.

V. EFFECT OF CONSENT ORDER

9. This Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing public water system where a

permit is required. 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.

VI. CIVIL PENALTY

10. Pursuant to R.C. 6109.33 it is hereby ordered that Defendant shall pay to the State of Ohio a cash civil penalty of five thousand dollars (\$5,000.00). The penalty shall be without interest provided that payment is made by within 30 days of entry of this Order. Payment beyond 30 days shall be subject to interest as applicable by R.C. 131.02(D) and R.C. 5703.47.

11. The civil penalty payment shall be made by delivering to Scott Hainer, Paralegal, or his successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215, a certified check, made payable to the order of the "Treasurer, State of Ohio," for the appropriate amount.

VII. STIPULATED PENALTIES

12. In the event that Defendant fails to meet any of the requirements of this Consent Order set forth in paragraphs 6 through 8, the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty of two hundred dollars (\$200.00) per day for each requirement not met, for the first sixty (60) days of noncompliance. The Defendant shall be liable for an additional stipulated penalty of four hundred dollars (\$400.00) per day for each requirement not met if the failure to comply continues for more than sixty (60) days but less than one hundred twenty (120) days. In the event that failure to comply continues more than one hundred twenty (120) days, Defendant shall be liable for an additional stipulated penalty of six hundred dollars (\$600.00) per day for each requirement not met.

13. Any payment required to be made under the provisions of paragraph 12 of this Consent Order shall be made by delivering a certified check or checks, made payable to "Treasurer, State of Ohio", for the appropriate amounts, 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 address set forth in paragraph 11.

14. 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.

VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

15. Performance of the terms of this Consent Order by Defendant is not conditioned on the receipt of any federal or state grant funds or loans. In addition, 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.

IX. MODIFICATION

16. No modification shall be made to this Consent Order without the written agreement of the parties.

X. POTENTIAL FORCE MAJEURE

17. 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 Defendant to prevent or minimize the delay, and the timetable by which such measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

18. In any action by Plaintiff to enforce any of the provisions of this Consent Order, Defendant may claim a defense that its conduct was caused by reasons entirely beyond its control, such as, by way of example and not limitation, acts of God, acts of war, or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by the parties that the appropriate point at which to adjudicate the existence of such a defense is at the time that an action to enforce the terms and conditions of this Consent Order, if any, is commenced by Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant shall rest with 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 Paragraph 17 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 rights 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 compliance date or dates. Defendant must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought.

XI. TERMINATION OF CONSENT ORDER

19. After Defendant has paid all civil penalties and stipulated penalties, if any, that are or may be due, and completed all the injunctive relief contained in Paragraphs 6, 7, and 8 of this Consent Order, Defendant may move the Court, pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure, to terminate this Consent Order, including, the Court's retention of jurisdiction set forth in Section XI. Plaintiff takes no position with regard to such motion at this time, and reserves its right to oppose the motion. Termination of any or all of the provisions of this Consent Order may also be granted upon joint motion of the parties.

XII. RETENTION OF JURISDICTION

20. The Court will retain jurisdiction of this action for the purposes of overseeing that Defendant complies with this Consent Order and making any order or decree that it deems appropriate to carry out this Consent Order.

XIII. COURT COSTS

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

XIV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

22. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon 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.

DATE

JUDGE

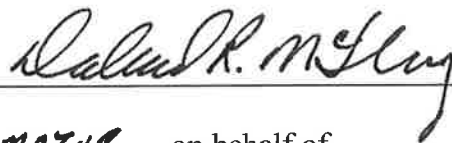
APPROVED:

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Defendant



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