

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

STATE OF OHIO ex rel.	:	CASE NO. <u>2014 CV 02142</u>
MICHAEL DeWINE	:	
OHIO ATTORNEY GENERAL	:	JUDGE <u>LANGER</u>
Environmental Enforcement Section	:	
30 East Broad St., 25th Floor	:	
Columbus, Ohio 43215,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CITY OF GERMANTOWN	:	
c/o Stephen Boeder, Mayor	:	
75 North Walnut Street	:	
Germantown, Ohio 45327	:	
	:	
Defendant.	:	

CONSENT ORDER

WHEREAS, the State of Ohio, by and through its counsel Attorney General Michael DeWine, ("State" or "Plaintiff") has filed a Complaint in this action against Defendant City of Germantown ("Defendant" or "Germantown") based on Defendant's violation of Ohio's water pollution control laws and rules by failing to comply with its Municipal Separate Storm Sewer System ("MS4") Permit;

WHEREAS, Plaintiff's Complaint seeks injunctive relief and civil penalties for Defendant's alleged violations of R.C. Chapter 6111, Ohio's Water Pollution Control Laws, and the rules promulgated and permits issued thereunder; and

WHEREAS, Defendant has agreed to enter into this Consent Order;

NOW THEREFORE, without the trial of any issue of fact or law, and upon the consent of the parties hereto, it is hereby **ORDERED**, as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over both the parties and the subject matter of this action pursuant to R.C. Chapter 6111. The Complaint states a claim upon which relief can be granted against Defendant under R.C. Chapter 6111. Venue is proper in this Court for the purposes and duration of this Consent Order.

II. PERSONS BOUND

2. The provisions of this Consent Order shall apply to and be binding upon Defendant, as well as Defendant's agents, officers, employees, assigns, successors in interest and others bound by Rule 65(D) of the Ohio Rules of Civil Procedure who are acting in concert and/or privity with Defendant. Defendant shall provide a copy of this Consent Order to each employee and/or consultant it employs to perform work itemized herein.

III. SATISFACTION OF LAWSUIT

3. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims alleged in the State's Complaint.

IV. INJUNCTION AND COMPLIANCE

4. Defendant is permanently enjoined and ordered to comply immediately with all applicable provisions of R.C. Chapter 6111 and the rules promulgated under that chapter, except as otherwise provided in this Consent Order.

5. Defendant is enjoined and ordered to do the following:

- a. As required under the Defendant's MS4 Permit, submit the required annual report for 2013 by April 1, 2014. Within this annual report, include information required for the years 2007, 2008, 2009, 2010, 2011, and 2012, to the extent such information exists.

- b. In accordance with the comments Ohio EPA provided to Defendant's August 11, 2011 stormwater management program plan, attached as **Exhibit A**, provide a revised stormwater management program plan to Ohio EPA within 45 days of entry of this Consent Order.

V. CIVIL PENALTY

6. Defendant agrees to pay a civil penalty totaling \$2,000.00 to the State of Ohio within 30 days following the entry of this Consent Order.

7. Defendant shall make this payment by certified check for the amount as stated above, payable to the order of "Treasurer, State of Ohio" and delivered to Scott Hainer, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, or his successor.

8. If Defendant misses the scheduled payment as set forth in Paragraph 6, above, payment as well as interest as set forth in R.C. 5703.47 accruing from the date of entry of this Consent Order, shall become due and owing immediately.

VI. REPORTING REQUIREMENT

9. Documents or reports that are required to be submitted to Ohio EPA's Southwest District Office pursuant to this Consent Order shall be sent to: Ohio Environmental Protection Agency, Southwest District Office, Division of Surface Water, ATTN: Chris Cotton, at 401 East Fifth Street, Dayton, Ohio 45402.

VII. STIPULATED PENALTIES

10. Except as outlined above, in the event that Defendant fails to meet the requirements of this Consent Order set forth in Paragraphs 4 through 6, Defendant shall be liable for stipulated penalties as follows:

- a. Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty of two hundred and fifty dollars (\$250.00) per day for each requirement not met, for the first sixty (60) days of noncompliance.

- b. Defendant shall be liable for an additional stipulated penalty of five hundred dollars (\$500.00) 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.
- c. In the event Defendant fails to comply for one hundred twenty (120) days or more, Defendant shall be liable for an additional one thousand dollars (\$1000.00) per day for each requirement not met.

11. Notwithstanding the foregoing, Plaintiff reserves the right to pursue any other action to enforce all terms of this Consent Order, including, but not limited to, filing charges in contempt with this Court.

12. Any payment required to be made under the provisions of Paragraph 10 of this Consent Order shall be made 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, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215.

VIII. RESERVATION OF RIGHTS

13. Plaintiff reserves the right to seek further relief from this or any other Court including, but not limited to, further preliminary and/or permanent injunctive relief and civil penalties.

14. Plaintiff reserves, and this Consent Order shall be without prejudice to, any claims, demands, rights or causes of action, judicial or administrative, that Plaintiff may have or which may in the future accrue against Defendant or others, regardless of whether such claim, demand, right or cause of action was asserted in the Complaint.

15. Nothing herein shall limit the authority of Plaintiff to undertake any action against any entity, including Defendant, to eliminate or to control conditions which may present a threat

to the public health, safety, welfare, or environment and to seek cost reimbursement for any such action. This Consent Order in no way waives any defenses which Defendant or any other entity may have to such claims, demands, rights or causes of action.

16. Nothing herein shall be construed to relieve Defendant of its obligation to comply with applicable federal, state or local statutes, regulations or ordinances, including, but not limited to, permit requirements. Nothing in this Consent Order shall be construed as an admission of any fact or violation of any federal, state or local statute or regulation.

IX. TERMINATION

17. This Consent Order shall terminate upon Order of this Court or upon Joint Motion of the parties that all activities required or contemplated under this Consent Order have been completed. Nothing herein shall preclude Plaintiff from seeking further investigatory work in connection with implementation of this Consent Order or to address an imminent threat of harm to the public health or the environment.

X. MODIFICATION

18. No modification shall be made to this Consent Order without either the written agreement of the parties or approval of the Court.

XI. RETENTION OF JURISDICTION

19. The Court will retain jurisdiction of this action for the purpose of administering and enforcing compliance with this Consent Order.

XIII. COSTS

20. Defendant shall pay the court costs of this action.

21. Defendant is hereby 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 as required in Paragraph 22, below. 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 he receives notice of the costs from Ohio EPA.

XIV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

22. The Parties agree and acknowledge that final approval by Plaintiff and Defendant and entry of this Consent Order is subject to the requirements of 40 C.F.R. 123(d)(1)(iii), which provides for notice of the lodging of the Consent Order, opportunity for public comment, and the consideration of any public comments. Both Plaintiff and Defendant reserve the right to withdraw this Consent Order based on comments received during the public comment period.

23. 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 days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the parties a 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**

APPROVED BY:

MICHAEL DEWINE
OHIO ATTORNEY GENERAL

s/s _____

CASEY L. CHAPMAN (0086286)

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Counsel for Plaintiff, State of Ohio

s/s _____

THOMAS SCHIFF

Law Director, City of Germantown

Hochwalt & Schiff, LLC

500 Lincoln Park Blvd., Suite 216

Kettering, OH 75429-6412

s/s _____

Stephen Boeder

Mayor of Germantown

Cotton, Chris

From: Cotton, Chris
Sent: Thursday, August 18, 2011 5:33 PM
To: asizemore@donet.com
Cc: Shapiro, Michael; Mann, Mark; Fyffe, Jason; Burt, Martyn
Subject: Comments on Germantown's preliminary stormwater plan

Ms. Sizemore,

Following a quick read through the preliminary stormwater mgmt plan (SWMP) received by OEPA/SWDO on 8/11/11, I offer the following feedback:

1. SWMPs should be written in a way that allows for the average person to get a basic understanding about the activities of a given MS4's program. For each of the 6 MCMs, a brief narrative is expected that summarizes what is being done to meet the requirements of that MCM. Details about particular activities (numbers of people reached, construction site inspections conducted, etc) are to be provided in the appropriate year's annual reports. OEPA believes that comprehensive, reader-friendly plans can be prepared that accurately reflect general MS4 activities several years in the future. The small MS4 general permit serves as a good starting point for developing these plans, but this permit is overly complicated in many ways, which in turn forces MS4s to overcomplicate their own plans.
2. What's been submitted for each of the MCMs consists of tables of organization showing which village official is responsible for particular activities that will occur under a given MCM. Each MCM also contains a separate table consisting of best management practices, measureable goals, start and end dates, the responsible party and the rationale for undertaking a particular BMP. Key information that should be contained in the narrative about each MCM is lacking, however, which means the plan will not be as informative as it could be. For example, for MCM 1, how will stormwater information be provided to residents? Why will it be provided 6 times a year? What relevance is a used oil dropoff center to stormwater management? Who will be responsible for maintaining the hotline that is going to be set up? Is it really necessary to set up a separate hotline when a system for taking complaints (about other issues) may already be in place? What is the Miami Conservancy District's role in assisting with public education and outreach? Can the village provide a letter from MCD to verify its willingness to assist Germantown with educational outreach activities? What does a volunteer water quality monitoring program have to do with stormwater management? Why would the village seek to establish a local stormwater citizens committee? This latter effort has proven ineffective elsewhere because of a general lack of interest in stormwater issues on the part of the public, at least in areas where chronic flooding is not a problem. If chronic drainage problems exist in Germantown, then a citizens committee would be more likely to form.

When all's said and done, Germantown's SWMP needs to hone in on the most common ways MS4s provide stormwater info to their respective residents – through articles contained in utility mailings, periodic village newsletters, and via the internet. The rest of the options listed sound good but will probably not be viable. If the village thinks some of these ideas will work out, then they should be included in the revised SWMP. But the plan should only contain activities the village is reasonably sure can be carried out.

3. The preliminary plan does not contain a listing of homes in the village that rely on septic systems for waste treatment. If no such systems are present in the village, then the SWMP needs to state this. As homes get sewered, those specific addresses can be provided in annual reports, and a revised listing of unsewered homes remaining in the village can be provided in the next version of Germantown's SWMP.

4. The preliminary plan does not explain the process the village will follow to determine if an observed discharge from one of its storm sewer outfalls warrants sampling and lab analysis. SWMPs should explain the general approach that will be taken to identify discharges that are determined to be anything other than water.
5. The construction ordinance contained in the preliminary plan appears to be very thorough. But the plan itself should contain the basic outline of the village's program, why some sites require stormwater runoff plans instead of just site development plans, and which particular village department will oversee plan review and site inspections. The ordinance seems to describe this process, so language can be borrowed for the narrative section of the plan. The ordinance itself can be included as an attachment or appendix to the plan.
6. References to Ohio EPA's construction permit for stormwater discharges should be to "the most current version", as opposed to a particular general permit number, such as OHC000002. Because this permit is revised every 5 years and gets a different number, the village's ordinance also would have to be changed to be accurate.
7. It's not clear how the village intends to address post-construction stormwater runoff requirements for new development. The intent is for applicable sites to treat the "water quality volume", or the amount of runoff created from a three quarter inch rain event. After looking through Chapter 1195 fairly closely, I don't see any reference to specific post-construction practices that are intended to address the water quality volume.
8. 1195.03(r) states that "permanent stormwater management measures" will be accessible via easements for inspection and maintenance. It's not clear if these measures include post-construction best management practices such as detention/retention basins, constructed wetlands, or others listed in OEPA's construction general permit.
9. 1195.06(h) also seems to speak to post-construction issues, particularly who's responsible for maintenance of "stormwater facilities". As mentioned above, the revised SWMP should summarize the village's post-construction program, then make reference to specific sections of the ordinance as needed.
10. The preliminary plan provides no information about the types of training the village will provide to its employees regarding materials management and usage. The plan does not discuss what steps the village is taking to reduce its use of pesticides, herbicides and fertilizers (assuming these are even used at all), as well as how it is maximizing its use of deicing salt on village streets during the winter. The revised plan must also explain how street sweepings collected by the village are managed prior to disposal.

If you have questions about how best to incorporate these suggestions into a finalized stormwater management plan, please let me know.



General Division
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Type: Consent Judgment Entry

Case Number: 2014 CV 02142

Case Title: STATE OF OHIO EX REL. MICHAEL DEWINE vs CITY OF GERMANTOWN

So Ordered