

IN THE COURT OF COMMON PLEAS  
COLUMBIANA COUNTY, OHIO

STATE OF OHIO, *ex rel.*  
JIM PETRO,  
ATTORNEY GENERAL  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, Ohio 43215

*Plaintiff,*

v.

CITY OF EAST PALESTINE  
82 Garfield Street  
P.O. Box 231  
East Palestine, Ohio 44413

*Defendant.*

CASE NO: 2004 CV 03

JUDGE C. ASHLEY PIKE

**FILED**  
COLUMBIANA COUNTY  
COURT OF COMMON PLEAS

MAY 12 2004

ANTHONY J. DATTILIO  
CLERK (SIC)

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**CONSENT ORDER FOR PERMANENT INJUNCTION AND CIVIL PENALTY**

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The Plaintiff, State of Ohio, by and through its Attorney General (hereinafter "Plaintiff" or "State of Ohio") and Defendant, City of East Palestine 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 (hereinafter "R.C.").

**NOW THEREFORE**, without trial or admission of any issue of law or of 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 and Defendant, their agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them. Defendant shall provide a copy of this Consent Order to each contractor and consultant that it employs to perform the work itemized herein. Defendant 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. Defendant has operated its wastewater treatment plant (hereinafter "WWTP") and sewer system, located at 220 Park Drive, East Palestine, Columbiana County, Ohio 44413, in violation of its National Pollution Elimination System ("NPDES") Permit as well as the water pollution control laws of the State of Ohio. 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, including the claims for injunctive relief and civil penalties.

4. Nothing in this 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 Consent Order shall be construed so as 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. Nor shall anything in this Consent Order limit the right of Defendant to any defenses that it may have for such claims. 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 Defendant, to eliminate or mitigate conditions, which may present a threat to the public health, welfare or the environment.

**IV. PERMANENT INJUNCTION**

5. Defendant is hereby permanently enjoined and ordered to immediately comply with the requirements of R.C. Chapter 6111 and the rules adopted thereunder.

6. Defendant is enjoined and ordered to comply with the terms and conditions of NPDES Permit No. 3PD00042\*HD, except as otherwise provided in this Consent Order.

**V. CONSTRUCTION SCHEDULE**

7. Defendant is enjoined and ordered to upgrade its wastewater treatment system in accordance with the following schedule:

<b><u>TASK</u></b>	<b><u>COMPLETION DATE</u></b>
(a) Complete construction in accordance with approved Permit to Install ("PTI"); and	December 31, 2004
(b) Attain operational level of the WWTP and meet final effluent limitations as defined in NPDES Permit No. 3P00042*HD.	December 31, 2004

Within seven (7) days from each completion date listed above, Defendant shall submit a written report to Ohio EPA's Northeast District Office stating whether or not the action set forth therein has been performed.

8. This 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 the Director or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

#### **VI. CIVIL PENALTY/SUPPLEMENTAL ENVIRONMENTAL PROJECT**

9. In lieu of a civil penalty, and in furtherance of the mutual objections of Ohio EPA and the City of East Palestine in improving the environment and reducing pollution and other damaging impacts to waters of the State, the City of East Palestine agrees to donate the sum of Five Thousand Dollars (\$5,000.00) to Little Beaver Creek Land Foundation for use in a project or projects to preserve and protect the Little Beaver Creek watershed.

10. Little Beaver Creek Land Foundation, referred to in paragraph 9, shall mean the Little Beaver Creek Land Foundation incorporated as such and as filed at the Secretary of State's Office for the State of Ohio.

11. The donation referred to in paragraph 9 shall be made as follows: Two Thousand Five Hundred Dollars (\$2,500.00) shall be paid before the end of calendar year 2004, and Two Thousand Five Hundred Dollars (\$2,500.00) shall be paid before the end of calendar year 2005.

12. When the City has made its donation to Little Beaver Creek Land Foundation, it shall notify Ohio EPA Northeast District Office within thirty (30) days.

#### **VII. STIPULATED PENALTIES**

13. In the event that the Defendant fails to meet any of the compliance deadlines set forth in Section V, Defendant shall pay a stipulated penalty according to the following schedule:

- (1) For each day of each failure to meet a requirement of this Consent Order up to

thirty (30) days - five hundred dollars (\$500.00) per day per requirement not met;

(2) For each day of each failure to meet a requirement of this Consent Order from thirty-one (31) to sixty days (60) - seven hundred and fifty dollars (\$750.00) per day per requirement not met; and

(3) For each day of each failure to meet a requirement of this Consent Order over (61) days - one thousand dollars (\$1,000.00) per day per requirement not met.

14. In the event that Defendant has a bypass or unauthorized discharge from any location in the WWTP, except as otherwise provided by the NPDES permit, Defendant shall pay an additional stipulated penalty of one thousand and five hundred dollars (\$1,500.00) per day for each day of the violation.

15. Any payment required to be made under the provisions of Section VII of this Consent Order shall be made by delivering to Lyndia Jennings, or her successor, at 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, a certified check or checks, for the appropriate amounts within forty-five (45) days from the date of the failure to meet the requirement of this Consent Order, made payable to "Treasurer, State of Ohio." Defendant shall also state in writing the specific failure of the Consent Order and/or NPDES permit term and condition which was not complied with, and the date(s) of non-compliance. 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.

### **VIII. MISCELLANEOUS**

16. Nothing in this Consent Order shall affect Defendant's obligation to comply with all applicable federal, state or local law, regulation, rule or ordinance. Defendant shall obtain any and all federal, state, or local permits necessary to comply with this Consent Order.

17. Defendant shall inform the Ohio EPA of any change of its business addresses or telephone numbers.

### **IX. POTENTIAL FORCE MAJEURE**

18. If any event occurs which causes or may cause a delay in Defendant's compliance with any requirement of this Consent Order, Defendant shall notify the Ohio EPA in writing within ten (10) days from when the Defendant knew, or by the exercise of due diligence should have known, of the event. The notification to Ohio EPA shall describe 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 those measures will be implemented. Defendant shall adopt all reasonable measures to avoid or minimize any such delay.

19. 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, if ever, that a court proceeding to enforce this Consent Order 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 a change in Defendant's 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 timely 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 qualify 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 without a 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**

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

#### **XI. COSTS**

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

**XII. ORDER AND ENTRY OF CONSENT**  
**FINAL JUDGMENT BY CLERK**

22. 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)(1)(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 Ohio EPA.


23. 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.

**XVI. SIGNATORIES**

24. The undersigned is a representative of Defendant and understands the terms and conditions of this consent order and certifies that he or she is fully authorized to enter into the terms and conditions of this consent order and to execute and legally bind the Defendant to this document.



**IT IS SO ORDERED:**

  
HONORABLE C. ASHLEY PIKE  
Judge, Columbiana County  
Court of Common Pleas

5-12-04  
Date

**APPROVED,**

JIM PETRO  
ATTORNEY GENERAL

CITY OF EAST PALESTINE

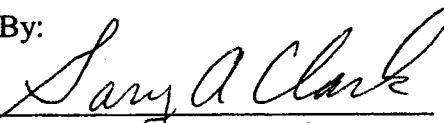
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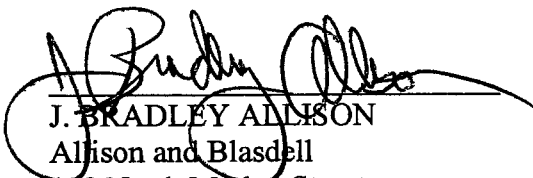


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