

PHIL G. GIAVASIS  
CLERK OF COURTS  
STARK COUNTY, OHIO

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IN THE COURT OF COMMON PLEAS  
STARK COUNTY, OHIO

STATE OF OHIO, *ex rel.*,  
JIM PETRO,  
ATTORNEY GENERAL,

CASE NO. 2003 CV 03019

JUDGE HAAS

*Plaintiff,*

vs.

CITY OF ALLIANCE,

*Defendant.*

RECEIVED  
OHIO EPA  
2005 JAN 24 AM 10: 57  
LEGAL OFFICE

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CONSENT ORDER

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The Plaintiff, State of Ohio by its Attorney General (hereinafter "Plaintiff" or "State of Ohio") and Defendant, City of Alliance (hereinafter "Defendant" or the "City") hereby consent to the entry of this Consent Order in order to resolve the allegations in this matter pursuant to Chapter 6111 of the Ohio Revised Code ("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. The Complaint states a claim upon which relief can be granted against Defendant under R.C. Chapter 6111, 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, the Defendant's agents, officers, employees, assigns, successors in interest and any persons acting in concert or privity with any of them. Defendant, City of Alliance, shall provide a copy of this Consent Order to each contractor and consultant 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 and sewer system in violation of its National Pollution Discharge Elimination System ("NPDES") permit, issued by the Director of Ohio EPA, and of the water pollution 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 under such laws alleged in the Complaint, including claims for injunctive relief and civil penalties.

4. Nothing in this Consent Order shall be construed as limiting the State of Ohio's authority to seek relief against other appropriate persons for claims or conditions alleged in the Complaint. Nothing in this Consent Order shall be construed as limiting the State of Ohio's authority to seek relief against the City of Alliance 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 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 City of Alliance, 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 immediately ordered to comply with the requirements of R.C. Chapter 6111 and the rules adopted thereunder, and the terms and conditions of NPDES Permit No. 3PD00000\*ID, and any renewals or modifications thereof, except as otherwise provided in Section V of this Consent Order. NPDES Permit No. 3PD00000\*ID, and any renewals or modifications thereof, are incorporated herein by reference as if rewritten in full.

#### **V. COMPLIANCE SCHEDULE FOR BYPASS ELIMINATION**

6. Defendant is permanently enjoined and immediately ordered to make any necessary changes or improvements to its wastewater treatment system so as to attain compliance with NPDES Permit No. 3PD00000\*ID, and any modifications or renewals thereof. Defendant is prohibited from allowing any and all bypasses of wastewater from its wastewater treatment system except as provided by Part III, paragraph 11 of NPDES Permit No. 3PD00000\*ID or any renewals or modifications thereof.

7. As expeditiously as possible, but no later than July 16, 2004, Defendant shall eliminate any and all wastewater bypasses from its wastewater treatment system.

8. Bypasses are subject to stipulated penalties, as specified in Section IX of this Consent Order.

9. Defendant is immediately ordered and permanently enjoined, to the maximum extent practicable, to eliminate the inflow and infiltration of storm water into

its treatment works and sanitary sewer system. More specifically, Defendant is ordered and enjoined to do the following:

**TASK**

**DEADLINE**

(1) Submit to Ohio EPA, for review and comment, a report of Defendant's efforts to reduce infiltration and inflow during the preceding six (6) months. Each report shall provide, but is not limited to, the following:

July 1, 2004, and every six months thereafter

(a) Maps of wastewater treatment system areas investigated;

(b) Dry v. wet weather flow determinations;

(c) Methodologies and results of field surveys, physical surveys, inspections and/or flow tests;

(d) Determination of approximate quantity of excessive infiltration and inflow, or other information indicating storm water inflow and infiltration removal;

(e) Corrective actions taken;

(f) Enforcement action taken;

(g) Remaining corrective actions or enforcement actions needed.

(2) Submit to Ohio EPA for review and comment, a summary report of Defendant's efforts to reduce infiltration and inflow during at least the preceding thirty-six (36) months ("summary report"). The summary report shall include, but not be limited to, the information specified in paragraph (1) of this section of the Consent Order for semi-annual reports, as well as the following:

July 16, 2004

(a) The best estimate of the total percent amount of inflow and infiltration removed to-date;

(b) Recommendations about what action, if any, Defendant would need to take next to eliminate bypasses from its wastewater treatment system, including but not limited to:

(1) Capital improvements to the wastewater treatment works that may be necessary to treat inflow and infiltration;

(2) Cost of performing such capital improvements and any associated assessments or studies;

(3) Proposed schedule for performing such capital improvements and associated assessments or studies; and

(4) Any other information considered relevant or useful by Ohio EPA or Defendant to address bypass elimination.

10. 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 sanitary sewer system. Approval for any such construction, modification or expansion shall be by permit issued by Ohio EPA or other such permits, including but not limited to, permits to install, as may be required by applicable federal, state, or local laws, rules or regulations.

#### **VI. MONITORING OF BYPASSES**

11. For any and all bypasses, Defendant is permanently enjoined and ordered to monitor the flow frequency and duration of and to sample and analyze each bypass for total nonfilterable residue, fecal coliform [only from May 1 through October 31], ammonia (NH<sub>3</sub>) and biological oxygen demand (BOD<sub>5</sub>).

12. Defendant shall submit to Ohio EPA a written report of the results of its monitoring and sample analyses within fifteen (15) days of each bypass occurrence.

## **VII. SUBMITTAL OF DOCUMENTS**

13. All documents required to be submitted to Ohio EPA pursuant to this Consent Order shall be submitted to the following address, unless otherwise notified in writing of different name or address:

Ohio EPA  
Northeast District Office  
Division of Surface Water  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
Attn.: John Kwolek (or his successor)

## **VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS**

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

## **IX. STIPULATED PENALTIES**

15. In the event that Defendant has a bypass in violation of Section V of this Consent Order, Defendant shall pay one thousand five hundred dollars (\$1,500.00) per day per bypass occurrence; Payments shall be made per the requirements of paragraph 17 of this Consent Order; and Defendant shall not be subject to stipulated penalties detailed in paragraphs 15 and 16 of this Consent Order provided that each of the conditions detailed in Part III, paragraph 11, (A) to (E) of NPDES permit no. 3PD00000\*ID, or any renewal thereof, applies.

16. In the event that Defendant violates any term or condition of this consent order or violates any of the Defendant's NPDES permit terms or conditions (other than those terms or conditions associated with a bypass occurrence subject to stipulated

penalties in the preceding paragraph or where Defendant has met its burden of proof demonstrating that there was an upset as provided by 40 CFR 122.41(n)), Defendant shall pay a stipulated penalty according to the following schedule:

- A. For each day of each failure to meet a requirement and/or failure to comply with Sections V or VI or Defendant's NPDES permit term or condition up to thirty (30) days -- two hundred fifty dollars (\$250.00) per day per violation;
- B. For each day of each failure to meet a requirement and/or failure to comply with Sections V or VI or Defendant's NPDES permit term or condition from thirty-one (31) to sixty days (60) -- five hundred dollars (\$500.00) per day per violation; and
- C. For each day of each failure to meet a requirement and/or failure to comply with Sections V or VI or Defendant's NPDES permit term or condition over (61) days -- seven hundred fifty dollars (\$750.00) per day per violation.

[For purposes of this section, a "day" is defined as one (1) consecutive twenty-four hour period.]

17. Any payment required to be made under the provisions of this Section of this Consent Order shall be made by delivering to Amy Laws, 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, for the appropriate amounts within forty-five (45) days from the date of the failure to meet the requirement of Sections V and VI of this Consent Order or Defendant's NPDES permit terms or conditions, made payable to "Treasurer, State of Ohio." Defendant shall also state in writing the nature of the failure to comply with this Consent Order and/or NPDES permit term and condition 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 Sections V, VI or VII shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order.

#### **X. TERMINATION OF STIPULATED PENALTIES**

18. The provisions set forth in Section IX of this Consent Order requiring the payment of stipulated penalties may be terminated upon a demonstration by Defendant that: 1) it has successfully completed the requirements outlined in Sections V and VI; 2) it has paid all penalties and costs required by this Consent Order; and 3) a minimum twelve (12) consecutive month period of time has occurred after Defendant has successfully achieved compliance with NPDES Permit No. 3PD00000\*ID or any renewals or modifications of the permit.

19. Termination of the stipulated penalty section of this Consent Order shall only be by order of the Court upon application by any party, and a demonstration that the conditions outlined in paragraph 18 of this Consent Order have been met.

#### **XI. CIVIL PENALTY**

20. Within thirty (30) days of the effective date of this Consent Order, it is hereby ordered that Defendant shall pay to Plaintiff a civil penalty of Twelve Thousand Five Hundred Dollars (\$12,500.00). The civil penalty payment shall be paid by delivering a certified check for the appropriate amount, made payable to "Treasurer, State of Ohio", c/o Amy Laws, or her successor at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

## **XII. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

21. In lieu of paying a portion of the civil penalty equal to \$100,000 dollars, and in furtherance of the mutual objectives of Ohio EPA and Defendant, and improving the environment and reducing impacts to waters of the State (or other applicable project goals), Defendant agrees to and is hereby ordered to complete a supplemental environmental project (“SEP”) as provided in the following paragraphs.

21a. The City shall complete sewer extension projects for areas currently not served by sewers and located within Smith Township, Mahoning County, Ohio. The cost of these projects shall not be less than One Hundred Thousand Dollars (\$100,000.00), and the costs shall only include the costs of completing the project, not the administrative costs such as the costs associated with eminent domain proceedings. The City of Alliance agrees that annexation will not be a requirement for tap-in to the proposed sewer line. Further, the City agrees that it will commit, in advance, to accepting the waste discharge by the residents of this area at its usual front footage charge and “outside” rates, pursuant to the City’s Rules and Regulations.

21b. The City shall submit a substantially approvable permit to install (“PTI”) application to Ohio EPA. The PTI application shall contain the City’s best estimate of the costs associated with the project, any documents supporting the cost estimates, detail plans, and a detailed description of the precise location of the sewer project.

21c. The sewer projects described in paragraphs 21a and 21b shall be completed and operable on or before June 1, 2009.

22. Any portion of the \$100,000 not spent on the SEP detailed in paragraphs 21a-c, or any Ohio EPA approved alternative, shall be paid to the State by delivering to

the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215, a certified check or cashier's check payable to the order of the "Treasurer of Ohio", in the amount of the unspent money by July 1, 2009 and shall be deposited pursuant to R.C. 6111.09.

### **XIII. POTENTIAL FORCE MAJEURE**

23. If any event occurs which causes or may cause a delay of any requirement(s) 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 each measure will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

24. 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. Act of God includes, but is not limited to, an act, event, happening, occurrence, disaster, an effect due to natural causes, an inevitable accident or disaster, a natural and inevitable necessity, which operates without interference or aid from man: an act which is occasioned by nature. 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 existences 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 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 qualified 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.

#### **XIV. MISCELLANEOUS**

25. 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.

26. Any acceptance by the State of Ohio of any payment, document or other work due under this Consent Order hereunder subsequent to the time that the obligation is

due under this Consent Order shall not relieve Defendant of the obligation created by the Consent Order.

**XV. RETENTION OF JURISDICTION**

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

**XVII. COSTS**

28. Defendant is hereby immediately ordered to pay the Court costs of this action.

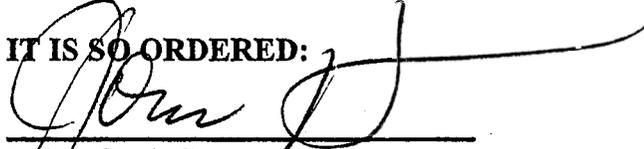
**XVII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK**

29. The parties agree and acknowledge that this Consent Order is being made available for public comment and final approval by the Plaintiff and Defendant, and the Court's 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. Plaintiff and Defendant reserve the right to withdraw consent to this Consent Order based on comments received during the public comment period.

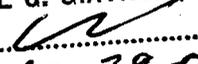
30. Defendant is hereby ordered to pay the costs incurred by Ohio EPA for the publication of the proposed Consent Order in a newspaper of general circulation. Defendant shall pay the costs associated with publication by delivering a certified check for the amount to Ohio EPA, within thirty (30) days from the date Defendant receives notice of the costs from Ohio EPA.

31. Upon the signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the

journal, the clerk is 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, Stark County  
Court of Common Pleas

12/29/04  
Date

**APPROVED:**  
A TRUE COPY TESTE:  
PHIL G. GIAVASIS, CLERK  
By  Deputy  
City of Alliance Date 12-29-04

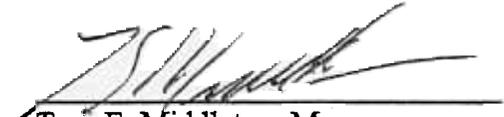
JIM PETRO  
ATTORNEY GENERAL  


  
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*Attorney for Alliance*

*Attorneys for State of Ohio*

  
\_\_\_\_\_  
Tom E. Middleton, Mayor  
City of Alliance  
470 East Market Street  
Alliance, Ohio 44601

*Authorized Representative of  
City of Alliance*