

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

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

Plaintiff,

CITY OF COLUMBUS,

Defendant.

Case No. 04 CVH 05 5336

Judge Reece

TERMINATION NO. 7  
9-17-04

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2004 SEP 17 AM 10:18  
CLERK OF COURTS

**CONSENT ORDER**

The Plaintiff, State of Ohio, by its Attorney General (hereinafter "Plaintiff" or "State of Ohio") and Defendant, City of Columbus (hereinafter "Defendant" or "Columbus"), 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.

**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, Defendant's agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with the Defendant or the Defendant's officers, agents,

employees, successors, or assigns. Columbus shall provide a copy of this Consent Order to each general contractor and each consultant or engineer that it employs to perform any of the activities or work itemized herein. Columbus 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 operated its combined sewer system in such a manner as to result in violations of the requirements of the National Pollution Discharge Elimination System (hereinafter "NPDES") Permits issued to it by the Director of Ohio EPA and in violation of the water pollution laws of the State of Ohio. The State's allegations of various violations of Columbus' NPDES permits include: the failure to timely complete a Long Term Control Plan; the failure to fully implement the minimum control measures required by the NPDES permits; and the failure to properly operate and manage the combined sewer system. Columbus 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 Columbus 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 to limit the authority of the State of

Ohio to undertake any action against any person, including Columbus, to eliminate or mitigate conditions, which may present a threat to the public health, welfare or the environment.

#### **IV. DEFINITIONS**

5. Definitions:

“Combined Sewer System” or “CSS” shall mean the portions of Defendant’s Sewer System designed to convey both municipal sewage (including sewage, industrial waste and other waste) and stormwater runoff through a single pipe to Defendants’ interceptor sewers, Wastewater Treatment Plants or a Combined Sewer Overflow Outfall, or any area that is tributary to a sewer regulator. Defendant’s CSS is set forth in the map attached hereto as Attachment A. Attachment A is incorporated into this Order as if fully restated herein.

“Combined Sewer Overflow” or “CSO” shall mean any discharge from: (i) any overflow and/or outfall identified as a combined sewer overflow or CSO in Defendant’s Current NPDES Permits, as defined below, (ii) any other overflow and/or outfall listed in Attachment B, or (iii) from any other combined sewer structure within the CSS. Attachment B is incorporated into this Order as if fully restated herein.

“Combined Sewer Overflow Outfall” or “CSO Outfall” shall mean the outfall from which CSOs discharge to waters of the state.

“CSO Policy” shall mean the U.S. Environmental Protection Agency’s “Combined Sewer Overflow Policy” which was published in the Federal Register on April 19, 1994 (59 Fed. Reg. 18688 et seq).

“NPDES Permits” means NPDES Permit 4PF00000\*JD (Jackson Pike WWTP) and Permit 4PF00001\*KD (Columbus Southerly WWTP), and any such NPDES permits that succeed those permits and are in effect at a particular time in question.

“Nine Minimum Controls” shall mean the Nine Minimum Controls set forth in the CSO Policy at 59 Fed. Reg. 18691.

Jackson Pike “outfall 003” is the mechanical bypass at Jackson Pike WWTP, installed pursuant to PTI No. 90-666.

“Sewer System” shall mean the wastewater collection and transmission system owned or operated by Defendant designed to collect and convey municipal sewage (sewage, industrial waste and other waste) to Defendant’s Wastewater Treatment Plants or overflow structures and/or outfall locations. Sewer System includes but is not limited to the CSS.

“SSO consent order” shall mean the Consent Order entered in State of Ohio ex rel Betty D. Montgomery v. City of Columbus, Franklin County Common Pleas Court Case No. 02CVH-05-5768 on August 1, 2002.

“Wastewater Treatment Plant(s) or “WWTP(s)” shall refer to Defendant’s Jackson Pike and Southerly Wastewater Treatment Plants.

“Water Quality Standards” or “WQS” shall mean the water quality standards adopted by Ohio, that are in effect at any particular point in time. These water quality standards may appear in OAC Chapter 3745-1 or elsewhere in the Ohio Administrative Code. Water Quality Standards shall also include any applicable water quality standards promulgated by US EPA for waters of the state pursuant to 33 U.S.C. 1313(c)(4).

#### **V. SPECIFIC INJUNCTIVE RELIEF**

6. Columbus 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 its NPDES Permits, including NPDES Permits No. 4PF00000\*JD and 4PF00001\*KD, and any renewals or modifications thereof.

7. Columbus shall properly operate and maintain its Combined Sewer System and any associated equipment and structures. By April 1, 2005 Columbus shall submit to Ohio EPA, for review and approval, an update of its November 1996 "Combined Sewer Systems Operations and Maintenance Plan" (CSSOMP). The plan shall outline the procedures used to ensure that the collection system is adequately maintained, and the steps taken to ensure that the frequency, duration and volume of flow, and that the pollutant loads discharge from the permittee's combined sewer overflows are minimized in accordance with the Nine Minimum Controls. The CSSOMP shall, *inter alia*, include routine inspection schedules for the following critical components of the CSS: the Whittier Street Storm Tanks, Alum Creek Storm Tank, Dodge Park Combined Pump Station, and the nineteen Regulators listed in Attachment B. In developing the CSSOP, the City may utilize EPA's *Combined Sewer Overflows – Guidance for Nine Minimum Controls* (EPA 832-B-95-003) (May 1995). Upon approval of the updated CSSOMP, Columbus shall thereafter operate and maintain the CSS in accordance with the approved updated CSSOMP. In the event that Ohio EPA later approves further changes to the approved updated CSSOMP, Columbus shall thereafter operate and maintain the CSS in accordance with such changes.

8. No later than October 15, 2004, Columbus shall develop and submit to Ohio EPA, for review and approval, a public notification program that informs the public of the location of any CSO overflow and/or CSO Outfall, the possible health and environmental impacts associated with CSO overflows/ CSO Outfalls, and advises the public against contact or recreation when elevated bacteria levels may endanger public health. This public notification program shall, *inter alia*, include development and maintenance in a form that is accessible to the public via the internet of: (i) a map of the CSO overflows/ CSO outfalls; (ii) a data base showing the date and

volume of each overflow or discharge from a CSO overflow/CSO outfall; and (iii) the Characterization Report required by paragraph 11, or the executive summary from the Characterization Report together with a summary of the sampling data generated for the Characterization Report. This information shall be periodically updated consistent with the terms of the public notification program as approved. Upon approval of the public notification program by Ohio EPA, Columbus shall thereafter implement and comply with the program as approved.

9. By July 1, 2004 Columbus shall submit to Ohio EPA for review and approval, a plan for insuring that there is ample public participation throughout all stages of development of Columbus' Long Term Control Plan. The plan shall, at a minimum, include a description of the measures that Columbus will undertake: (i) to make information Columbus develops in the course of the planning process available to the public for review; (ii) to solicit public opinion on Columbus' development of the Long Term Control Plan. The plan shall also include a schedule for holding public hearings at meaningful times during the planning process in order to provide the public with information developed in the planning process and to solicit information from the public regarding the components of the Long Term Control Plan. The plan shall describe how Columbus will take public opinion and information provided by the public into account as Columbus develops its Long Term Control Plan. Upon approval by Ohio EPA, Columbus shall implement the plan as approved.

10. By July 1, 2005 Columbus shall submit to Ohio EPA, for review and approval, a Long Term Control Plan (LTCP). The goal of the LTCP is to: bring all wet weather CSOs and CSO outfall discharge points into compliance with the technology-based and water-quality based requirements of the Clean Water Act and Ohio Revised Code 6111; to minimize water quality, aquatic biota and human health impacts from CSOs and CSO outfalls; and to minimize the

discharge of pollutants. The LTCP shall comply with the CSO Policy and shall be developed in compliance with the CSO Policy. In developing the LTCP, Columbus may utilize EPA's *Combined Sewer Overflows – Guidance for Long Term Control Plan* (EPA 832—95-002) (September 1995). The development of the LTCP by Columbus shall include but not be limited to the following:

- A. Characterization of the combined sewer system and its impact on the receiving stream, including development and use of both a collection system hydraulic model and a receiving stream water quality model; monitoring to support model(s) development and use; and a water quality study;
- B. public participation;
- C. consideration of sensitive areas;
- D. development and evaluation of alternatives;
- E. any proposed revisions to the approved updated CSSOMP;
- F. maximization of treatment at WWTPs;
- G. an implementation schedule;
- H. post-construction compliance monitoring.

11. Characterization: Defendant shall adequately characterize, through monitoring, modeling and other means as appropriate, for a range of storm events, the response of its sewer system to wet weather events, including the number, location and frequency of CSOs and CSO Outfalls, volume concentration and mass of pollutants discharged and the impacts of the CSOs and CSO Outfalls on the receiving waters and their designated uses. To achieve this

characterization, the City shall develop and utilize a hydraulic model for its Sewer System, which will include CSOs, CSO Outfalls, and the actual and potential hydraulic capacities of its WWTPs. Defendant shall also develop and utilize a water quality model that will adequately characterize the response of the receiving waters to CSO overflow, CSO outfall discharges and discharges from the WWTPs under various scenarios. Columbus shall submit this characterization in a Characterization Report together with the LTCP. The Characterization Report shall include a summary of the monitoring data and modeling that Columbus currently has or develops in the characterization process. It shall also summarize the methodology and findings of the characterization, including the baseline data on the number, volume and duration of CSO overflows and/or CSO Outfall discharges and their impact on the receiving streams as well as the projected impact of the selected controls.

- A. Columbus shall implement a monitoring program that provides adequate data to characterize and model the sewer system and overflows and their impact on the receiving waters; supports development and implementation of the minimum control measures; supports development and implementation of a long-term control plan; and allows the effectiveness of control measures to be evaluated. The monitoring shall include the collection of dissolved oxygen data from sites on the Scioto River, the Olentangy River, Big Walnut and Alum Creek under differing flow and weather scenarios using datasondes. Columbus shall analyze the temporal duration and areal extent of bacteria WQS exceedances in the Big Walnut, Alum Creek, Olentangy, and Scioto River, including but not limited to downstream of the Columbus Southerly WWTP, and the contribution made by CSOs and CSO outfalls, based both on baseline conditions and projected

conditions after implementation of CSO/CSO outfall controls for a typical year.

The monitoring shall include further data collection sufficient to support calibration and verification of the hydraulic model and water quality model and a wet weather evaluation of the water quality model.

- B. Columbus shall perform the receiving water modeling consistent with Defendant's "Long-Term Control Plan Update Receiving Water Modeling Methodology Memorandum", attached hereto as Attachment C. Due to the necessary interaction between the LTCP and the studies being conducted pursuant to the SSO Consent Order, the parties agree that the City may utilize, as necessary, the Third Approximation approach outlined in Attachment C.

12. Development and Evaluation of Alternatives:

- A. Columbus shall develop LTCP alternatives that include, but are not limited to: elimination of all existing CSO overflows/ CSO Outfalls by complete separation of all combined sewers; separation of specific portions of the CSS, construction of additional separate sanitary express sewers to convey additional flows to the WWTPs for treatment; various sizes of storage basins or tunnels for the Combined Sewer System; construction of additional facilities (such as high rate treatment or ballasted flocculation facilities) for providing primary treatment or advanced primary treatment to CSOs and CSO Outfalls; construction of additional facilities for providing disinfection and dechlorination of CSOs and CSO Outfalls; construction of facilities for removing floatables from CSOs and CSO Outfalls; relocation of CSOs and CSO Outfalls; and construction and/or implementation of

combinations of these alternatives. Columbus shall develop and evaluate alternatives that provide for construction of Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) at all existing CSO overflows or CSO Outfall discharge points, including but not limited to a high rate treatment plant for the flows from the Whittier Street storm tanks currently discharged to the Scioto River, and other storage or treatment options.

- B. Columbus' development and evaluation of alternatives in the LTCP shall include an assessment of the costs, effectiveness (in terms of pollutant loading reductions, regardless of water quality impacts) and water quality benefits of a wide range of alternatives for eliminating, reducing and treating any and all of Defendants CSO overflows or CSO Outfalls. The evaluation of each alternative in the LTCP shall include: costs; benefits such as reduction in overflow events, volume, and load as compared to baseline conditions; impact on user rates; affordability; and construction and implementation schedules. In developing this analysis, the U.S. EPA's "Combined Sewer Overflows- Final Guidance for Financial Capability Assessment and Schedule Development", February 1997 (EPA-832-B-97-004) and "Guidance Coordinating CSO Long-Term Planning with Water Quality Standards Reviews"(EPA-833-R-01-002, July 31, 2001) shall be used as tools.
- C. Columbus shall also develop and evaluate alternatives in the LTCP consistent with the CSO Policy and the following:

1). Columbus shall give highest priority to controlling overflows to sensitive areas. Sensitive areas include: State resource waters, Superior high quality waters, Outstanding state waters or Outstanding national resource waters (OAC 3745-1-05, 1-09), Bathing Waters (OAC 3745-1-07(B)(4)), waters with primary contact recreation and all surface waters within 500 yards of an existing public water supply intake. CSOs and CSO Outfalls to these waters shall be eliminated or relocated whenever physically possible and economically achievable, except where elimination or relocation would provide less environmental protection than additional treatment. If elimination or relocation is not physically possible or economically achievable, then treatment must be provided that will result in attainment of Water Quality Standards criteria and designated uses.

2). At a minimum, Columbus shall evaluate alternative control measures based on the number of CSO Events as well as percent Capture. Columbus shall evaluate the level of controls necessary to reduce the number of CSO Events in a typical year to one and four systemwide. Columbus shall evaluate the controls necessary to achieve 90 %, 95%, 99% and 100% Capture. Columbus shall include in its evaluation of percentage Capture, an explanation of the level of treatment being provided.

For purposes of this requirement, the following terms shall have the following definitions. "CSO Event" shall mean one or more overflows from the CSS as the result of a precipitation event that does not receive minimum treatment. "Capture" shall mean the elimination or capture for at least minimum treatment by volume of the combined sewage collected in the CSS during precipitation events on a system-wide annual average basis. "Minimum treatment" shall mean primary clarification, solids and floatables disposal and disinfection.

3). Columbus shall consider ways to reduce public sources of storm water flow into combined sewers. Steps to consider include diverting storm water away from the combined system (e.g, by constructing retention basins;) as well as methods to store and retain stormwater(e.g.; using catch basin flow restriction, stormwater retention basins).

- D. By August 2, 2004, Defendant shall submit to Ohio EPA a "Technologies and Initial Alternatives Report" ("TIA") for review and comment. The TIA shall be developed in accordance with the TIA Workplan, attached hereto as Attachment D. The TIA shall include a description/list of the various technology alternatives to be studied in the alternatives evaluation. If any comments by Ohio EPA

request the inclusion of additional technology alternatives to the evaluation of alternatives, the technology shall be added and fully developed and evaluated by Columbus in the LTCP.

13. Interim Alternatives. In addition to the final alternatives, Columbus shall in the development of the LTCP also investigate interim alternatives that would mitigate the impact of CSOs and/or CSO Outfalls. In determining whether any interim alternatives should be included in the recommended alternative set forth in the LTCP, Columbus shall consider the following factors: the length of time it will take to fully implement a permanent alternative; the relative cost of the interim alternative; the anticipated water quality benefits of the interim alternative and the relationship between the interim and final alternatives. In any case, Columbus shall achieve a substantial reduction, in terms of flows or pollutant loads or both, in the discharges from the Whittier Street Storm Tanks by no later than July 1, 2010.

14. Recommended Alternative: In addition to the evaluation of alternatives in the LTCP, Columbus shall specifically include in the LTCP its recommended permanent alternative, as well as any recommended interim alternatives. The recommended alternative shall comply with the CSO Policy and with the goals set forth in paragraph 10. The recommended alternative for the LTCP shall not increase the use of the bypass at Jackson Pike WWTP, outfall 002 and/or outfall 003, unless the City simultaneously submits a feasibility study that justifies the bypasses consistent with the provisions of 40 CFR 122.41(m).

15. Public Participation: The LTCP shall also include a section describing the public input sought by Columbus in the development of the LTCP. This section shall also include a plan and schedule for soliciting further public participation as needed on the LTCP.

16. Implementation Schedule: Columbus shall include an implementation schedule for the recommended alternative, as well as any interim alternatives, in the LTCP. The implementation schedule for each project shall include proposed milestones for: a) commencement of construction, b) completion of construction, and c) controls fully operational. The LTCP implementation schedule may be developed consistent with U.S. EPA's guidance "Combined Sewer Overflows- Final Guidance for Financial Capability Assessment and Schedule Development", February 1997 (EPA-832-B-97-004) and shall at a minimum provide for the implementation and completion of construction of the recommended alternatives that attain full operation as expeditiously as practicable. In any event the schedule shall be as expeditious as practicable and shall at a minimum provide for completion of implementation and construction of all projects under the LTCP no later than July 1, 2025.

17. Pursuant to the SSO Consent Order, Columbus is required to submit to Ohio EPA a System Evaluation Capacity Assurance Plan ("SECAP") on July 1, 2005. The parties recognize that the capital improvement projects required by the LTCP and the SECAP may have an impact on each other and that some projects may be common to both plans.

18. (a) Ohio EPA Determination of LTCP: If Ohio EPA concludes that the LTCP (including the proposed schedule and/or the recommended interim or final alternatives) is unacceptable, Ohio EPA shall so notify Columbus in writing. If such notice occurs, the parties agree to use good faith efforts to resolve their differences. Within thirty days of the conclusion of this informal negotiation period Ohio EPA will, in writing, either approve, approve with conditions, or disapprove the LTCP. (Each of these forms of approval, approval with conditions, or disapproval shall be known as "the Determination").

(b) Court Retains Jurisdiction to Adjudicate Determination: Columbus shall comply with Ohio EPA's Determination, unless Columbus, within thirty days, moves this Court for relief from the Determination and prevails on its motion. The parties agree that this Court has jurisdiction to consider such a motion for relief from Ohio EPA's Determination of the LTCP. The City shall in its motion set forth a specific proposal for relief. The City shall bear the burden of proving by a preponderance of the evidence that it is entitled to the relief sought and that the relief sought is consistent with this consent order and applicable state and federal law.

(c) Court's Jurisdiction is Limited: The parties agree that, pursuant to R.C. 3745.04, the Court does not have jurisdiction to entertain a petition related to the issuance, renewal, modification, denial or revocation of a permit, or the issuance of orders or other actions of the Director of Environmental Protection. The term "actions" of the Director of Environmental Protection shall be interpreted consistent with the definitions set forth in R.C. 3745.04.

(d) Stay of Implementation Schedule: Submission of a motion to this Court under this subparagraph 18 (b) shall not extend any deadline set forth in the Consent Order or in the schedule of implementation as approved by Ohio EPA. If the City files a motion pursuant to subparagraph 18 (b), the City may also file a motion for a stay of the implementation schedule. The parties agree that the Court may use the standard for issuing a temporary restraining order to determine whether the City is entitled to a stay. If the City obtains a stay of the implementation schedule and its motion for relief is ultimately denied, the City shall be liable for and pay any stipulated penalties that would have accrued if no stay had been issued.

(e) Implementation of the Approved LTCP: The LTCP as approved by Ohio EPA and/or this Court, including the implementation schedule, shall be incorporated into this consent order and become an enforceable part of the order. Columbus shall comply with the LTCP once

it is approved and perform all of the projects identified in the LTCP in accordance with the approved schedule.

19. The parties agree that, notwithstanding any language that might be subject to a different interpretation, the term “Water in Basement” or “WIB” as it is used in the SSO Consent Order is not limited to Columbus’ separate sanitary sewers, but rather expressly includes WIBs that occur in Columbus’ combined sewer system.

20. The City shall provide annual reports on the progress of the projects set forth in the LTCP implementation schedule. The annual reports shall be due on February 15 of the following year, beginning on February 15, 2006. Columbus may combine the LTCP annual report with the annual report required by the SSO Consent Order.

21. For at least three years after the date of the entry of this Consent Order, Defendant shall prepare and submit to Ohio EPA quarterly reports regarding the implementation of the CSSOP. The quarterly reports shall include but not be limited to an analysis whether Columbus followed the routine inspection schedules for the Whittier Street Storm Tanks, Alum Creek Storm Tanks, Dodge Park Pump Station, and the nineteen Regulators listed in Attachment B. The quarterly reports shall be due on April 30, July 31, October 31 and January 31 for the preceding quarter. Columbus shall continue to submit quarterly reports until such time as the stipulated penalties required by paragraph 29 are terminated.

22. Columbus shall fully respond to any comments received from Ohio EPA on the documents submitted pursuant to this Consent Order within 60 days of receiving the comments (or such longer period as agreed upon by the parties); including modification of the LTCP, the alternatives and any related plans as needed to respond to the comments.

## **VI. SUBMITTAL OF DOCUMENTS**

23. All documents required to be submitted to Ohio EPA pursuant to the Consent Order shall be submitted to the following address, or to such addresses as Ohio EPA hereafter may designate in writing:

Ohio EPA  
Central District Office  
Division of Surface Water  
3232 Alum Creek Drive  
Columbus, Ohio 43207

Attn: Enforcement Coordinator

All documents submitted to Columbus pursuant to the Consent Order shall be submitted to

Administrator  
Division of Sewerage and Drainage  
Department of Public Utilities  
910 Dublin Road  
Columbus, Ohio 43215

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

24. Nothing in this Consent Order shall affect Columbus' obligation to comply with all applicable federal, state or local law, regulations, rule or ordinance. Columbus shall obtain any and all federal, state or local permits necessary to comply with this Consent Order. Performance with the terms of this Consent Decree 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.

#### **VIII. CIVIL PENALTY & SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

25. Within thirty (30) days of the effective date of this Consent Order, it is hereby ordered that Defendant shall pay to the State of Ohio a civil penalty of One Hundred Thousand Dollars (\$100,000.00). The penalty shall be paid by delivering a check for the appropriate amount, payable to the "Treasurer, State of Ohio," to Amy Laws, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio, 43215-3400.

26. In lieu of payment of an additional civil penalty and in furtherance of the mutual objectives of the State of Ohio and the City of Columbus in improving the environment and water quality in Central Ohio, the City of Columbus agrees to and is hereby ordered to expend funds in the amount of One Hundred and Fifty Thousand Dollars (\$150,000) on a Supplemental Environmental Project ("SEP") which is acceptable to both the City of Columbus and Ohio EPA. Pursuant to the SSO Consent Order, the City of Columbus is pursuing as a SEP the Fifth Avenue Dam Project. The purpose of the Fifth Avenue Dam Project is to provide funding for the study, modification and/or removal of the dam, and stream restoration in the area of the Fifth Avenue Dam in order to improve and enhance water quality and stream habitat in this area of the Olentangy River. Columbus agrees to spend a further \$150,000 on this project, in addition to the money committed to the project in the SSO Consent Order, under the same terms as set forth in the SSO Consent Order. In the event that the Fifth Avenue Dam Project is determined not viable for any reason, the City of Columbus shall within 45 days of such determination, submit an alternate Supplemental Environmental Project proposal to the Ohio EPA for its review and approval. The Fifth Avenue Dam Project SEP, or any Ohio EPA approved alternative, shall be completed within four (4) years of the entry of this Consent Order; unless an alternate schedule is

approved, in writing, by the Director. The approval of a SEP alternative and/or an alternate schedule shall be within the Director's sole, unreviewable discretion. Any monies not disbursed for the Fifth Avenue Dam Project SEP, or any Ohio EPA approved alternative SEP, shall be paid to the State by delivering to the Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215-3400, to the attention of Amy Laws or her successor, a check payable to the order of the "Treasurer State of Ohio", in the amount of the unexpended money, within thirty (30) days of the end of the 4 year period or within 30 days of the end date in any alternate schedule approved by the Director.

27. Columbus is required, pursuant to the SSO Consent Order, to file quarterly reports with Ohio EPA, summarizing the money it has expended on the Fifth Ave. Dam Project or other approved SEP. The City shall include in those quarterly reports the amounts it expends pursuant to this order on this SEP or an alternate SEP.

## **IX. STIPULATED PENALTIES**

28. For each day the City fails to meet a deadline or milestone established in or pursuant to Section V of this Consent Order or fails to meet a deadline or milestone established in the approved LTCP implementation schedule, the City shall be liable for and shall pay a penalty pursuant to the following schedule: up to thirty (30) days – Five Hundred Dollars (\$500.00) per day per deadline; from thirty-one (31) to sixty days (60) - Seven Hundred and Fifty Dollars (\$750.00) per day per deadline; for more than sixty (60) days– One Thousand Dollars (\$1,000.00) per day per deadline.

For each day that the City fails to conduct an inspection required by the approved CSSOMP of Whittier Street Storm Tanks, Alum Creek Storm Tank, Dodge Park Combined Pump Station, and the nineteen Regulators listed in Attachment B, the City shall be liable for and shall pay a penalty. The City shall pay stipulated penalties pursuant to this paragraph on a quarterly basis and according to the following schedule: If the City misses between one and five inspections in one quarter, the City shall pay a stipulated penalty of \$200.00 per missed inspection. If the City misses between five and ten inspections in one quarter, the City shall pay a stipulated penalty of \$400.00 per missed inspection. If the City misses more than ten inspections in one quarter, the City shall pay a stipulated penalty of \$600.00 per missed inspection. This paragraph will terminate upon the occurrence of three consecutive years during which no stipulated penalties were due pursuant to it.

30. During the term of this Consent Order, Defendant shall pay a stipulated penalty of two thousand dollars (\$2,000) for each dry weather CSO event. For purposes of this paragraph an "event" means each day (up to 24 hours) for each location that an overflow and or discharge occurred from a CSO. This paragraph will terminate upon the occurrence of three consecutive years during which no stipulated penalties were due pursuant to it.

For each calendar day on which there is a bypass from outfall 002 or outfall 003 at Jackson Pike WWTP, the City shall pay a stipulated penalty of \$2,000 per day for each outfall where a bypass occurs.

32. Stipulated penalties under paragraph 28 shall be paid within forty-five (45) days from the date of the failure to meet the applicable deadline or milestone, and, if necessary, monthly thereafter, and shall be accompanied by a written explanation of the deadline or milestone missed. Stipulated penalties under paragraph 29 shall be paid within forty-five (45)

days after the quarterly report required by paragraph 21 is due. Stipulated penalties under paragraph 30 shall be paid within forty-five (45) days from the date of the dry weather CSO event. Stipulated penalties under paragraph 31 shall be paid within forty-five (45) days from the date of the bypass. Any payment required to be made under this paragraph shall be made by delivering to Amy Laws, or her successor, at the address set forth in Section VIII, paragraph 25, a check 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 IX 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.

#### **X. RETENTION OF JURISDICTION**

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

#### **XI. COSTS**

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

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

35. 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

36. 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 notices 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 Guy L. Reece II**

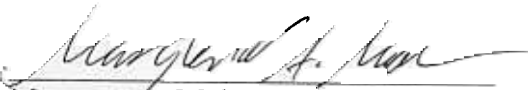
Judge  
Franklin County Court of Common Pleas

Date

**APPROVED:**

**JIM PETRO  
ATTORNEY GENERAL**

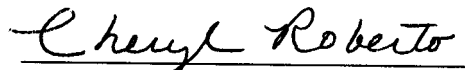
By:



Margaret A. Malone (0021770)  
Teri J. Finfrock (0037903)  
Assistant Attorneys General  
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