

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

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

Plaintiff,

v.

CITY OF COLUMBUS,

Defendant.

Case No. 04-CVH-05-5336

Judge Reece

JOINT MOTION TO AMEND CONSENT ORDER

The undersigned parties hereby jointly move the Court to amend the consent order in
the above-captioned matter in the form agreed to by the parties and attached hereto.

Respectfully submitted,

L. Scott Helkowski 1/2/11

L. Scott Helkowski (0068622)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
Tele: (614) 466-2766
Fax: (614) 644-1926
Attorney for State of Ohio

Sarah L. Harrell 1-10-11

Sarah L. Harrell (0080554)
Assistant City Attorney
90 West Broad Street
Columbus, Ohio 43215
Tele: (614) 645-7385
Fax: (614) 645-6949
Attorney for City of Columbus

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2011 JAN 19 PM 1:36
CLERK OF COURTS-CV

6

Am

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

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

Plaintiff,

v.

CITY OF COLUMBUS,

Defendant.

Case No. 04-CVH-05-5336

Judge Reece

FIRST AMENDMENT TO THE CONSENT ORDER

Whereas, the Complaint in the above-captioned matter having been filed, and Plaintiff, State of Ohio by its Attorney General and Defendant City of Columbus having consented to the original Consent Order, filed with this Court on September 17, 2004; and

Whereas, the parties seek to amend a portion of the Consent Order with this First Amendment to the Consent Order;

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** that the Consent Order in this matter, entered on September 17, 2004, shall be amended only as follows. All terms in this First Amendment to the Consent Order shall remain as defined in the Consent Order.

Paragraphs 26 and 32 of the Consent Order shall be amended as follows:

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 environmental and water quality in Central Ohio, the City of Columbus agrees and is hereby ordered to expend funds in the amount of One Hundred and Fifty

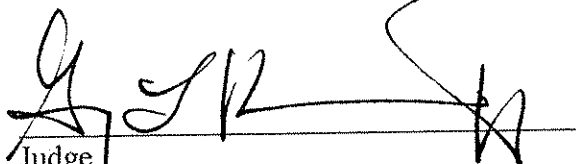
Thousand Dollars (\$150,000) on a Supplemental Environmental Project ("SEP") which is acceptable to both the City of Columbus and Ohio EPA. Pursuant to the SSO Consent Order, the City of Columbus is pursuing as a SEP the Fifth Avenue Dam Project. The purpose of the Fifth Avenue Dam Project is to provide funding for the study, modification and/or removal of the dam, and for 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 allow Ohio EPA to approve the scope of work for the Fifth Avenue Dam Project. 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 and Amendments thereto. In the event that the Fifth Avenue Dam Project is not viable for any reason, the City of Columbus shall submit an alternative Supplemental Environmental Project proposal to the Ohio EPA for its review and approval. This SEP, or any Ohio EPA-approved alternative, shall be completed by September 30, 2012 unless an alternate schedule is approved in writing by the Director. Any monies not disbursed for the SEP, or any Ohio EPA approved-alternative, shall be paid to the State by delivering to the Attorney General's Office, Environmental Enforcement Section, ATTN: Karen Pierson, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, a certified or cashier's check payable to the order of the "Treasurer State of Ohio," in the amount of the unused money, within thirty (30) days of the SEP completion date as stated in this paragraph or as stated in an approved alternate schedule and shall be deposited pursuant to R.C. 6111.09.

32. Stipulated penalties due 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 due under paragraph 29 shall be paid within forty-five (45) days after the quarterly report required by paragraph 21 is due. Stipulated penalties due under paragraph 30 shall be paid within forty-five (45) days from the date of the dry weather CSO event. Stipulated penalties due under paragraph 31 shall be paid within forty-five (45) days from the date of the bypass. Payments required to be made under paragraphs 28, 29, and 30 of the Consent Order that accrued on or after September 3, 2009 until the deadline completion of the SEP as provided in paragraph 26 of this First Amendment to the Consent Order shall be applied by the Defendant to the SEP required by paragraph 26 until such time as funds for construction of the SEP are awarded. Any expenditure of accrued payments required under paragraphs 28, 29, and 30 of the Consent Order towards the SEP shall only be with the prior approval of Ohio EPA. Payments required to be made under paragraph 31 of the Consent Order for stipulated penalties incurred March 1, 2005 through February 28, 2006 and September 3, 2009 until the deadline for completion of the SEP shall be applied by the Defendant to the SEP required by paragraph 26 of this First Amendment to the Consent Order until such time as funds for construction of the SEP are awarded. Any expenditure of accrued payments required under paragraph 31 towards the SEP shall only be with the prior approval of Ohio EPA. Stipulated penalties incurred after the deadline for completion of the SEP as provided in paragraph 26 of this First

Amendment to the Consent Order shall be paid to the Ohio EPA Surface Water Improvement Fund. Defendant shall accurately track stipulated penalties to be applied to the SEP by entering the date the penalty was incurred, the amount of the penalty, and the reason for the penalty in a record created for this purpose. Such record shall be made available to OEPA upon demand. Funding in the amounts recorded shall be made available for the purpose of providing additional funding for the SEP. Payments required to be made under this paragraph for stipulated penalties incurred March 1, 2006 through September 2, 2009 and after the date for completion of the SEP as provided in paragraph 26 of this First Amendment to the Consent Order shall be made by delivering to Karen Pierson, 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 shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of the Consent Order or this First Amendment to the Consent Order. Further, payment by Defendant shall not be considered an admission of liability on the part of the Defendant.

All other provisions of the September 17, 2004 Consent Order are not affected by this Amendment and remain binding on the parties.

IT IS SO ORDERED:


Judge
Franklin County Court of Common Pleas

11 Jan 11
Date

APPROVED:

**RICHARD CORDRAY
OHIO ATTORNEY GENERAL**

CITY OF COLUMBUS

By: L. Scott Helkowski 1/7/11
L. Scott Helkowski (0068622)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
Tele: (614) 466-2766
Fax: (614) 644-1926

Attorney for State of Ohio

By: Tatyana Arsh
Tatyana Arsh, Director *b4SLH*
Department of Public Utilities
910 Dublin Road
Columbus, Ohio 43215
Tele: (614) 645-6141
Authorized Representative
City of Columbus

Richard C. Pfeiffer Jr.
Richard C. Pfeiffer, Jr. *by SLH*
City Attorney