COPY

IN THE COURT OF COMMON PLEAS
ERIE COUNTY, OHIO

STATE OF OHIO, *ex rel.*,	:	**CASE NO. 2005-CV-424**
MARC DANN	:	
ATTORNEY GENERAL OF OHIO,	:	**JUDGE BINETTE**
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
RICHARD E. RENCH	:	
	:	
Defendant.	:	

FILED
COMMON PLEAS COURT
ERIE COUNTY, OHIO
2007 JUL 24 PM 2:07
BARBARA J. JOHNSON
CLERK OF COURTS

CONSENT ORDER FOR INJUNCTIVE RELIEF AND CIVIL PENALTY

Plaintiff State of Ohio by its Attorney General Marc Dann, (hereinafter "State" or "Plaintiff"), having filed the Complaint in this action against Defendant Richard Rench, dba Rench Diversified, to enforce the State of Ohio's water pollution control and drinking water laws and the rules promulgated thereunder, concerning the Defendant's operation of Defendant's wastewater treatment plant, including the collection system (hereinafter "WWTP") and "public water system" (hereinafter "PWS")/ "community water system" (hereinafter CWS") ID#2201312 at Defendant's Riverview Manor Apartments (hereinafter "Riverview") located at 10414 State Route 13, Milan Township, County of Erie, Ohio 44839, Erie County Tax ID#5000573000, and Plaintiff and Defendant Rench having consented to the entry of this Consent Order;

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

J536/980 8/15/07

I. JURISDICTION AND VENUE

1. The Court has both personal and subject matter jurisdiction over the Parties. The Complaint states a claim upon which relief can be granted against Defendant Rench under Chapters 6109 and 6111 of the Ohio Revised Code. Venue is proper in this Court.

II. PERSONS BOUND

2. All terms and provisions of this Consent Order shall apply to and be binding upon Defendant Rench and his assigns, successors in interest and others bound by Rule 65(D) of the Ohio Rules of Civil Procedure, who are or will be acting in concert and/or in privity with the Defendant. The Defendant shall provide a copy of this Consent Order to each contractor and/or consultant employed to perform any and all work itemized herein and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant Rench has operated a WWTP and a PWS/CWS at Riverview in such a manner as to result in numerous violations of water pollution control and safe drinking water laws of the State of Ohio. Defendant specifically disputes Plaintiff's allegations. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant Rench for all claims under such laws alleged 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 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 it may have for such claims. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief against other appropriate persons, not covered by this Consent Order for claims or conditions alleged in 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 Defendant, to eliminate or mitigate conditions that may present a threat to the public health, welfare or the environment.

IV. PERMANENT INJUNCTION

A. Defendant's Wastewater Treatment Plant

5. Defendant Rench 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 his National Pollutant Discharge Elimination System, (hereinafter "NPDES") Permit, number 2PW00012 and any renewals or modifications thereof for the WWTP at Riverview.

B. Defendant's Drinking Water System

6. Defendant Rench is permanently enjoined and ordered to immediately comply with the requirements of R.C. Chapter 6109 and the rules adopted thereunder.

7. By July 31, 2007, Defendant Rench shall connect his Riverview Manor Apartments to the Northern Ohio Rural Water system. By August 31, 2007, Defendant Rench shall decommission the existing drinking water system at Riverview Manor Apartments, except for those parts of the water distribution system necessary to supply water to the Apartments after the connection to the Northern Ohio Rural Water system. Upon connection of Riverview Manor

Apartments to the Northern Ohio Rural Water system, Defendant Rench shall return his license for PWS ID#2201312 to the Ohio Environmental Protection Agency ("Ohio EPA").

V. EFFECT OF CONSENT ORDER

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 public water system or wastewater treatment plant. Approval for any such construction or modification shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

VI. CIVIL PENALTY

9. Pursuant to R.C. Sections 6109.33 and 6111.09, it is hereby ordered that Defendant Rench shall pay to the State of Ohio a cash civil penalty of ten thousand dollars ($10,000.00). Defendant shall make payments of this civil penalty to the State of Ohio according to the following schedule;

a. No later than August 1, 2007, the amount of one thousand dollars ($1000.00);

b. No later than September 1, 2007, the amount of one thousand dollars ($1000.00);

c. No later than October 1, 2007, the amount of one thousand dollars ($1000.00);

d. No later than November 1, 2007, the amount of one thousand dollars ($1000.00);

e. No later than December 1, 2007, the amount of one thousand dollars ($1000.00);

f. No later than January 1, 2008, the amount of one thousand dollars ($1000.00);

g. No later than February 1, 2008, the amount of one thousand dollars ($1000.00);

h. No later than March 1, 2008, the amount of one thousand dollars ($1000.00);

i. No later than April 1, 2008, the amount of one thousand dollars ($1000.00);

j. No later than May 1, 2008, the amount of one thousand dollars ($1000.00);

10. If the Defendant fails to make any one of the civil penalty payments on or before the date specified by paragraph 9 this Consent Order for such payment, the total civil penalty of ten thousand ($10,000.00) ordered to be paid by the Defendant becomes immediately due and payable to the State of Ohio. The Defendant shall pay the ten thousand dollars ($10,000.00) civil penalty less any amount of civil penalty that has already been paid to the State of Ohio pursuant to paragraph 9 of this Consent Order.

11. The civil penalty payments shall be made by delivering to Martha Sexton, Paralegal, 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, made payable to the order of the "Treasurer, State of Ohio," for the appropriate amount.

VII. STIPULATED PENALTIES

12. In the event that Defendant Rench fails to meet any of the requirements of this Consent Order set forth in paragraph 7, the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty of two hundred dollars ($200.00) per day for each requirement not met, for the first sixty (60) days of noncompliance. The Defendant shall be liable for an additional stipulated penalty of four hundred dollars ($400.00) 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. In the event that failure to comply continues more than one hundred twenty (120) days, Defendant shall be liable for an additional six hundred dollars ($600.00) per day for each requirement not met.

13. Any payment required to be made under the provisions of paragraph 12 of this Consent Order shall be made by delivering a certified check or checks, made payable to "Treasurer, State of Ohio", for the appropriate amounts, within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, by mail, or otherwise, to Martha Sexton, Paralegal or her successor, at the address set forth in paragraph 11.

14. If Defendant Rench fails to meet any of the daily effluent limits of any of his NPDES Permits, the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

(a) For each day of each failure to comply with the daily effluent limits in its NPDES Permit from one (1) day to thirty (30) days – two hundred fifty dollars ($250.00) per day per violation not met;

(b) For each day of each failure to comply with the daily effluent limits in its NPDES Permit from thirty-one (31) days to sixty (60) days – five hundred dollars ($500.00) per day per violation not met;

(c) For each day of each failure to comply with the daily effluent limits in its NPDES Permit from sixty-one (61) days to ninety (90) days– seven hundred fifty dollars ($750.00) per day per violation not met.

(d) For each day of each failure to comply with the daily effluent limits in its NPDES Permit over ninety (90) days – one thousand dollars ($1000.00) per day per violation not met.

15. For the purpose of calculating stipulated penalties under the provisions of this paragraph, each 7-day period of violations of a specific 7-day average effluent limitation shall be calculated as a single violation. If Defendant fails to meet any of the 7-day average effluent limits of any of his NPDES Permits, the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

(a) For each first through fourth consecutive failure to meet any 7-day average effluent limitation, five hundred dollars ($500.00) for each 7-day period during which each failure occurs;

(b) For each fifth through eight consecutive failure to meet any 7-day average effluent limitation, one thousand dollars ($1,000.00) for each 7-day period during which each such failure occurs;

(c) For each ninth through eleventh consecutive failure to meet any 7-day average effluent limitation, one thousand two hundred fifty dollars ($1,250.00) for each 7-day period during which each such failure occurs;

(d) For each failure beyond the eleventh consecutive failure to meet any 7-day average effluent limitation, one thousand five hundred dollars ($1,500.00) for each 7-day period during which each such failure occurs.

16. For the purpose of calculating stipulated penalties under the provisions of this paragraph, each 30-day period of violation of a specific 30-day average effluent limitation shall be calculated as a single violation. If Defendant fails to meet any of the 30-day average effluent

limits of any of his NPDES Permits, the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

(a) For each failure to meet any 30-day average effluent limitation, one thousand dollars ($1000.00) for each 30-day period during which each such failure occurs;

(b) For each second consecutive failure to meet any 30-day average effluent limitation, one thousand five hundred dollars ($1,500) for each 30-day period during which each such consecutive failure occurs;

(c) For each third consecutive failure to meet any 30-day average effluent limitation, two thousand dollars ($2,000.00) for each 30-day period during which each such consecutive failure occurs;

(d) For each failure beyond the third consecutive failure to meet any 30-day average effluent limitation, two thousand five hundred dollars ($2,500.00) for each 30-day period during which each such consecutive failure occurs.

17. Payments due under paragraphs 14, 15 and 16 shall be made within forty-five (45) days from the date of the failure to meet the applicable deadline or knowledge of the effluent limitation violation. Payments shall be accompanied by a written explanation of the effluent violation(s). Any payment required to be made under this paragraph shall be made by delivering to Martha Sexton, or her successor, at the address set forth in paragraph 11, a certified check or checks for the appropriate amounts, made payable to "Treasurer, State of Ohio".

18. 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 Defendants shall not be considered an admission of liability on the part of Defendants.

19. The stipulated penalties imposed by paragraphs 14, 15 and 16 of this Consent Order may be terminated as to each specific paragraph of this Consent Order, for which stipulated penalties are imposed, only after Defendant has achieved and maintained compliance with all the requirements of that paragraph for a period of twelve consecutive months and has paid all stipulated penalties incurred related to that paragraph. Termination of one paragraph subject to stipulated penalties under this Consent Order shall not terminate the accrual of or the liability for payment of stipulated penalties under any other paragraph. Termination of stipulated penalties under this Consent Order shall only be upon written application by any party, and by order of the Court after the Court has made a determination that the requirements of this paragraph have been satisfied.

VIII. POTENTIAL FORCE MAJEURE

20. In any action to enforce any of the provisions of this Consent Order, Defendant Rench may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons beyond its control such as, by way of example and not limitation, act of God, unusually severe weather conditions, strikes, acts of war or civil disturbances, or orders of any regulatory agency. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by the parties 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 that an enforcement action, if any, is commenced. 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.

IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

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

X. RETENTION OF JURISDICTION

22 The Court will retain jurisdiction of this action for the purposes of overseeing that Defendant Rench complies with this Consent Order and making any order or decree that it deems appropriate to carry out this Consent Order.

XI. COURT COSTS

23. Defendant Rench is hereby ordered to pay the court costs of this action.

XII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

24. This Consent Order is subject to the requirements of 40 C.F.R. 123.27(d)(2)(iii), which provides for notice of the lodging of the Consent Order, opportunity for public comment, and the consideration of any public comments. The Consent Order has been subject to a public comment period, during which no comments were received except from the Court. The parties agree that the Consent Order can now be considered by the Court. Defendant shall pay the costs of public notice associated with this Consent Order.

25. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon 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 the 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:

ENTERED THIS 24th DAY OF July 2007

JUDGE ROGER E. BINETTE
ERIE COUNTY COURT OF COMMON PLEAS

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