

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO, *ex rel.*,
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

Plaintiff,

v.

CITY OF COLUMBUS,

Defendant.

Case No. 02-CVH-05-5768

Judge ~~Crawford~~ McIntosh

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.

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2011 JAN 19 PM 4:37
CLERK OF COURTS-CY

Respectfully submitted,

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IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

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| STATE OF OHIO, <i>ex rel.</i> , | : | |
| BETTY D. MONTGOMERY | : | Case No. 02-CVH-05-5768 |
| ATTORNEY GENERAL OF OHIO | : | |
| | : | Judge Crawford |
| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| CITY OF COLUMBUS, | : | |
| | : | |
| Defendant. | : | |

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 August 1, 2002; 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 August 1, 2002, shall be amended only as follows. All terms used in this First Amendment to the Consent Order shall remain as defined in the Consent Order.

Paragraphs 27 and 32 of the Consent Order shall be amended as follows:

27. In addition to the civil penalty set forth above 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

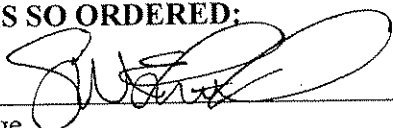
and is hereby ordered to expend funds in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000) on a Supplemental Environmental Project ("SEP") which is acceptable to both the City of Columbus and Ohio EPA. The SEP offered by the City of Columbus is the Fifth Avenue Dam Project. The purpose 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 shall solicit input from the community and stakeholders as part of its evaluation of this project. 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. Payments due under paragraph 30 of the Consent Order that accrued prior to September 3, 2009 shall be made within forty-five (45) days from the date of the failure to meet the applicable deadline and shall be accompanied by a written explanation of the deadline missed. Payments due under paragraph 30 of the Consent Order that accrued on or after September 3, 2009 may be used in furtherance of the Supplemental Environmental Project required by paragraph 27 of the Consent Order for costs beyond \$250,000.00 until such time as the funds for the construction portion of the supplemental environmental project are secured. Further expenditure of the accrued payments under paragraph 30 of the Consent Order shall only be made with approval of the Ohio EPA. Stipulated penalties incurred under paragraph 30 of the Consent Order after the deadline for completion of the SEP as provided in paragraph 27 of the First Amendment to the Consent Order shall be paid to the OEPA Surface Water Improvement Fund. Payments due under paragraph 31 of the Consent Order that accrued prior to January 1, 2004 or after the deadline for completion of the SEP as provided in paragraph 27, shall be made by March 1 of each year for the preceding year's SSO(s). Any payment required to be made under this paragraph to the State of Ohio shall be made by delivering to Karen Pierson, or her successor, at the address set forth in Section IX, paragraph 26, a certified check or checks for the appropriate amounts, made payable to "Treasurer, State of Ohio." Stipulated penalties incurred under paragraph 31 that accrued on or after January 1, 2004 shall be applied by the Defendant to the SEP required by paragraph 27 of this First Amendment to the Consent Order until such time as funds for the construction of the SEP are awarded. Any further expenditure of stipulated penalties incurred

under paragraph 31 of the Consent Order on or after January 1, 2004 towards the SEP shall require prior approval of Ohio EPA. Stipulated penalties incurred under paragraph 31 after the deadline for completion of the SEP as provided in paragraph 27 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 incurred under paragraph 31, 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 Ohio EPA upon demand. Funding in the amounts recorded shall be made available for the purpose of providing additional funding for the SEP.

All other provisions of the August 1, 2002 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

January 12, 2011
Date

APPROVED:

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

CITY OF COLUMBUS

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