

Resolution No. 0700-23

September 18, 2023

**Resolution approving the settlement of legal claims and authorizing the County Administrator to execute a Settlement Agreement and Release and to take additional actions necessary to effectuate the agreement not inconsistent with this Resolution.
(Special Counsel/Prosecutor) (\$630,000.00)**

WHEREAS, the Franklin County Board of Commissioners is a Defendant in a lawsuit brought by Jeffery E. Cox (deceased) in the United States District Court, Southern District of Ohio Case No. 2:18-cv-1631 ("District Court Action") and pending in the United States Court of Appeals for the Sixth Circuit, Appeal No. 21-3680 with a motion for substitution of party Karen Cox, as the widow and personal representative of Jeffrey E. Cox ("Cox I Litigation"); and

WHEREAS, on February 24, 2022, Jeffery E. Cox (deceased), the Ohio Environmental Council, and the Buckeye Environmental Network issued a notice of intent to file a Citizen Suit Under Clean Water Act Section 505 to the Franklin County Board of Commissioners and the Franklin County Engineer, alleging ongoing violations of the Clean Water Act ("Cox II Matter"); and

WHEREAS, the parties to the Cox I litigation and the parties to the Cox II Matter wish to avoid the time and expense of further pending or threatened litigation and have reached a resolution of all matters in dispute, pending approval of the Board of Commissioners; and

WHEREAS, the parties have reached a proposed settlement in the amount of Six Hundred and Thirty Thousand Dollars (\$630,000.00), which would include the dismissal of all claims asserted by all parties; and

WHEREAS, this settlement is in no way an admission of liability on the part of the Franklin County Board of Commissioners; and

WHEREAS, the parties have agreed upon and partially executed a Settlement Agreement and Release document, attached to this Resolution, prepared and approved to form by the Franklin County Prosecutor's Office to memorialize and finalize the settlement; and

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WHEREAS, the above described proposed settlement, recommended by the office of the Franklin County Prosecuting Attorney and Franklin County's retained outside legal counsel, would be in the best interest of the Franklin County Board of Commissioners; now, therefore,

BE IT RESOLVED BY THE BOARD OF COMMISSIONERS, FRANKLIN COUNTY, OHIO;

1. That the Board of Commissioners, Franklin County, Ohio hereby approve the attached Settlement Agreement and Release and authorize the County Administrator, pursuant to section 305.30 of the Revised Code, to execute the Settlement Agreement and Release, in the total amount of Six Hundred and Thirty Thousand Dollars (\$630,000.00).
2. That the Board of Commissioners, Franklin County, Ohio hereby find that the settlement is in the best interest of the County and the environment.
3. That the Board of Commissioners, Franklin County, Ohio, hereby authorize the County Administrator, pursuant to Section 305.30 of the Ohio Revised Code, to take all additional actions necessary, including the execution of additional documents, to effectuate and implement the settlement that are not substantially inconsistent with this Resolution.
4. That the Board of Commissioners, Franklin County, Ohio, hereby direct that the warrants be issued for the purpose of electronic fund transfer upon receiving proper documentation, one payable to the estate of Jeffery E. Cox in the amount of \$55,000.00 made payable to the AltmanNewman Co., LPA Trust Account; (2) to Karen Cox, individually, \$100,000.00 made payable to the AltmanNewman Co., LPA Trust Account; and (3) to AltmanNewman Co., LPA in the amount of \$475,000.00 made payable to AltmanNewman Co., LPA as full

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payment for Clean Water Act attorneys' fees, as a full and final payment to settle the Cox I Litigation and the Cox II Matter.

- 5. That the attached Purchase Order in the amount of Six Hundred and Thirty Thousand Dollars (\$630,000.00) that is individually described on the accompanying Purchase Order Proof List is hereby approved.
- 6. That a supplemental appropriation in the amount of \$630,000 is hereby authorized from the unappropriated cash balance as follows and allocated per the attached document (Journal #2819):

	AMOUNT
Commissioners/Risk Management/Materials & Services Fund 1005	\$630,000

Prepared by: Joseph R. Durham, Special Counsel

SIGNATURE SHEET

Resolution No. 700-23

September 18, 2023

RESOLUTION APPROVING THE SETTLEMENT OF LEGAL CLAIMS AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE A SETTLEMENT AGREEMENT AND RELEASE AND TO TAKE ADDITIONAL ACTIONS NECESSARY TO EFFECTUATE THE AGREEMENT NOT INCONSISTENT WITH THIS RESOLUTION.

(PRAT - Prosecuting Attorney)

Upon the motion of Commissioner Erica C. Crawley, seconded by Commissioner Kevin L. Boyce:

Voting:

John O'Grady, President	Aye
Kevin L. Boyce	Aye
Erica C. Crawley	Aye

Board of County Commissioners
Franklin County, Ohio

CERTIFICATE OF CLERK

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution acted upon by the Board of County Commissioners, Franklin County, Ohio on the date noted above.



Brittany Razek, Clerk
Board of County Commissioners
Franklin County, Ohio

Resolution Summary

Resolution approving the settlement of legal claims and authorizing the County Administrator to execute a Settlement Agreement and Release and authorizing the County Administrator to take additional actions necessary to effectuate the agreement not inconsistent with this Resolution.

This Resolution approves the settlement of legal claims and authorizes the County Administrator to execute a Settlement Agreement and Release and take additional actions necessary to effectuate the agreement not inconsistent with this Resolution.

Jeffery E. Cox filed a Clean Water Act Citizen Suit action in the United States District Court, Southern District of Ohio Case No. 2:18-cv-1631 ("District Court Action") on December 10, 2018. The County prevailed on 99% of the claims, however, the Plaintiff's claims for attorney fees under the Clean Water Act is unresolved. The merits of the matter are on appeal and pending in the United States Court of Appeals for the Sixth Circuit, Appeal No. 21-3680. During the appeal, Mr. Cox passed and a motion for substitution of party Karen Cox, as the widow and personal representative of Jeffrey E. Cox, is pending ("Cox I Litigation").

Prior to his death, Mr. Cox, on February 24, 2022, and the Ohio Environmental Council, and the Buckeye Environmental Network issued a notice of intent to file a Citizen Suit Under Clean Water Act to the Franklin County Board of Commissioners and the Franklin County Engineer, alleging ongoing violations of the Clean Water Act ("Cox II Matter"); and

This settlement addresses the County's associated risks and resolves: the Cox I Litigation; the Plaintiff's claims for attorney fees under the Clean Water Act which survive even a favorable decision by the Sixth Circuit Court of Appeals; an adverse decision by the Court of Appeals, remand to the District Court and additional litigation defending alleged Clean Water Act violations, including statutory civil penalties and additional attorney fees; and the filing of a new lawsuit relating to the Cox II Matter and additional allegations of Clean Water Act violations, potential civil penalties and additional attorney fees.

The monetary terms of the settlement include payment of a total of \$630,000.00 with payments of \$55,000.00 to the Estate of Mr. Cox, \$100,000.00 to Mrs. Cox, and \$475,000.00 payable to AltmanNewman Co., LPA for attorney fees under the Clean Water Act. The non-monetary terms of the settlement agreement require the County to: (a) comply with the Consent Order entered into with Ohio EPA on January 15, 2020 and filed in Franklin County Court of Common Pleas Case No. 18CV008695; (b) make best efforts to secure grants and/or other public funding to assist property owners with elimination, upgrades, or replacements of Household Sewage Treatment Systems ("HSTSs"), including costs of connecting to sanitary sewers; (c) provide annual reports to Plaintiff's counsel on progress on

implementation of (a) and (b), above, including copies of all written plans, permits, schedules, and reports submitted by FCBOC (and/or its agents) to Ohio EPA relating to the Consent Decree; and (d) notice provisions in event the ownership or operation of the County's MS4 (regulated NPDES storm sewer system only, not sanitary sewer systems) is transferred with notices to the Plaintiffs and any proposed transferees.

This settlement addresses the environmental concerns associated with the HSTSS which the County has already agreed to and is obligated to address pursuant to the terms of the Consent Order with the Ohio EPA. Finally, the oral argument before the Sixth Circuit Court of Appeals was held on October 26, 2022, but the Court has agreed to hold off on issuing any decision if the parties confirm by October 1, 2023 that a settlement has been reached.

Joseph R. Durham
Special Counsel

SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** (the “Agreement”), dated September 18, 2023, is entered into by and between the Franklin County Board of Commissioners (“FCBOC” or “County”), organized and existing under the Constitution and laws of the State of Ohio, with offices located at 373 South High Street, 26th Floor, Columbus, Ohio 43215 and the estate of Jeffery E. Cox (“Plaintiff/Appellant”) Karen Cox, 251 Graceland Blvd. # 104, Columbus, Ohio 43214, Ohio Citizen Action, and the Buckeye Environmental Network (collectively “Cox II Plaintiffs”). These parties are sometimes herein referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, on August 20, 2018, Plaintiff/Appellant issued to the County a sixty day notice of intent to file a citizen suit under the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (“the Clean Water Act”);

WHEREAS, on October 17, 2018, the State of Ohio filed a Complaint for Injunctive Relief and Civil Penalties against the FCBOC alleging violations of Ohio Revised Code Chapter 6111 (Water Pollution Control Act) in Franklin County Court of Common Pleas Case No. 18CV008695;

WHEREAS, on November 9, 2018, the Ohio EPA issued Public Notice in the Columbus Dispatch of a Proposed Consent Decree in Franklin County Court of Common Pleas Case No. 18CV008695 inviting public comment. On December 10, 2018, Plaintiff/Appellant, through his attorneys, submitted public comment to the Ohio EPA on the proposed Consent Decree;

WHEREAS, Plaintiff/Appellant filed a Complaint for Injunctive Relief and Civil Penalties under the citizen suit enforcement provision of the Clean Water Act on December 10, 2018 in the United States District Court, Southern District of Ohio Case No. 2:18-cv-1631 (“District Court Action”);

WHEREAS, the Ohio Environmental Protection Agency (“Ohio EPA”) issued the National Pollutant Discharge Elimination System (“NPDES”) permit governing the Franklin County’s municipal separate storm sewer system (“MS4”) on December 30, 2014 as Permit 4GQ10009*CG (and renewed the Permit 4GQ10009*DG on April 19, 2021). Franklin County, as contemplated by the MS4 NPDES permit, has developed a Stormwater Management Program (“SWMP”), including the following required six minimum measures: public education and outreach; public participation/ involvement; illicit discharge detection and elimination (“IDDE”); construction site runoff control; post-construction runoff control; and pollution prevention/good housekeeping for municipal operations. The NPDES permit requires the “stormwater program includes best management practices (BMPs) for each minimum measure”;

WHEREAS, Plaintiff/Appellant alleged in the District Court Action that the FCBOC was in violation of the Clean Water Act and the NPDES permit (Counts 1-9: failure to trace and locate sources of non-storm water discharged from outfalls and failure to eliminate those sources; failure to eliminate known illicit discharges to the MS4, including the 2,000 home sewage systems that are the primary subject of this Agreement; unpermitted discharges of non- storm water from MS4 outfalls; failure to develop a legally mandated map; failure to effectively prohibit illicit discharges into the MS4 through ordinance or other regulatory mechanisms; failure to create and submit to Ohio EPA a list on all on-site household sewage treatment systems (“HSTS”) connected to

discharge to the MS4 system; failure to reduce pollutants to the maximum extent practicable; programmatic violations related to the SWMP; and programmatic violations related to the IDDE program) and claimed that the FCBOC was negligent in maintaining and operating its MS4 (Count 10);

WHEREAS, on January 15, 2020, a Consent Order was filed in Franklin County Court of Common Pleas Case No. 18CV008695;

WHEREAS, the Federal District Court denied FCBOC's motion to dismiss most counts, but granted it Counts 4 and 6 on January 31, 2020;

WHEREAS, on May 21, 2021, the Federal District Court granted and denied in part each party's motion for summary judgment;

WHEREAS, the Court held that the Plaintiff/Appellant's Counts 1-4, 6, 7, 8 (items 1 6, 8, 9, 11) and 9 were barred under the diligent prosecution doctrine. Further, the Court granted summary judgment in favor of FCBOC on Counts 5, 8 (items 7, 12, and 13), and 10;

WHEREAS, the Federal Court granted summary judgment in favor of Plaintiff/Appellant on Count 8 (item 10) finding that the FCBOC's NPDES Permit, Part III.B.6, requires "the County to submit a list of industrial facilities owned or operated by the County and that are subject to Ohio [EPA's] Industrial Storm Water General Permit or individual NPDES permits for discharges of storm water associated with industrial activity that ultimately discharge to [the] MS4" and ordered the County to propose a revision to its SWMP within 30 days;

WHEREAS, on June 18, 2021, FCBOC submitted a response indicating that "the County does not currently own or operate any facilities, and has not owned or operated any facilities during the course of this litigation, that are subject to Ohio [EPA's] Industrial Storm Water General Permit or individual NPDES permits for discharges of storm water associated with industrial activity that ultimately discharge to its MS4." The County proposed a revision to its SWMP to reflect this;

WHEREAS, on July 27, 2021, Plaintiff/Appellant appealed the Federal District Court's ruling to the United States Court of Appeals for the Sixth Circuit in Case No. 21-3680 ("Sixth Circuit Appeal");

WHEREAS, under paragraph 14(d) of the Consent Decree with the State of Ohio, in Franklin County Court of Common Pleas Case No. 18CV008695, the FCBOC submitted an application for a Permit-to-Install to Ohio EPA for certain sewer projects;

WHEREAS, on February 24, 2022, the Cox II Plaintiffs issued a notice of intent to file a Citizen Suit Under Clean Water Act Section 505 to the FCBOC and the Franklin County Engineer, alleging ongoing violations of the Clean Water Act ("Cox II Action"); WHEREAS, on September 18, 2022, Plaintiff/Appellant died, and on September 30, 2022, a suggestion of death of Plaintiff/Appellant was filed in the Sixth Circuit Appeal;

WHEREAS, the FCBOC has recognized, as a result of Cox I, Cox II Action and the Consent Decree, the need to continue to increase the investigation efforts for the elimination of illicit HSTS discharging to the MS4;

WHEREAS, in recognition of that need, the FCBOC has urged the Franklin County Board of Health to dedicate employees and resources toward investigating and eliminating discharging HSTS;

WHEREAS, the Franklin County Board of Health has approved new positions and is in the process of hiring additional employees who will be dedicated to investigating and eliminating illicit HSTS discharging to the MS4;

WHEREAS, the merits of the appeal, a motion to dismiss the appeal, and a motion for substitution of party (Karen Cox, as the widow and personal representative of Plaintiff/Appellant) are pending before the Sixth Circuit; and

WHEREAS, the Parties wish to fully and finally resolve the disagreements, disputes and actual or potential claims raised in the litigation discussed above.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt of which is hereby mutually acknowledged, the Parties hereby agree as follows:

1. **Definitions.** As used in this Agreement, the following terms have the meanings set forth below:

“*Consent Order*” means the Consent Order filed in Franklin County Court of Common Pleas Case No. 18CV008695, attached hereto as Exhibit A.

2. **Settlement Payment by FCBOC.** Within twenty-one (21) days after the Effective Date and upon receipt of proper documentation (W-9s, wiring instructions), FCBOC will tender three separate payments as follows: (1) to the estate of Plaintiff/Appellant in the amount of \$55,000.00 in immediately available US funds made payable to the AltmanNewman Co., LPA Trust Account; (2) to Karen Cox, individually, \$100,000.00 in immediately US funds made payable to the AltmanNewman Co., LPA Trust Account; and (3) to AltmanNewman Co., LPA in the amount of \$475,000.00 in immediately available US funds made payable to AltmanNewman Co., LPA as full payment for Clean Water Act attorneys’ fees. Such payments shall represent full compensation for resolving the disputes covered by this Agreement.

3. **Mutual Release and Acknowledgement of Conflict of Interest.** Effective upon dismissal of the litigation, the Cox II Plaintiffs and FCBOC each fully and finally release, remise, acquit, and forever discharge one another from any and all still pending claims, demands, obligations, actions, causes of action, damages, attorneys’ fees, costs, and expenses, or obligations or other matters of whatever nature, whether based in contract, tort, statute, regulation, common law, equity or other law, whether asserted or not, accrued or not, whether known or unknown, which they ever had or may in the future have for any act, event, omission or statement, that: (i) is set forth and still pending in the District Court Action; (ii) could have been asserted in the District Court Action; (iii) is set forth and still pending in the Sixth Circuit Appeal; or (iv) could have been asserted in the Cox II Action.

4. **Agreed Injunctive Relief.** The Parties agree that from and after the Effective Date:
 - a. FCBOC will comply with the Consent Order, attached as Exhibit A and incorporated as if fully restated herein.
 - b. FCBOC shall make best efforts to secure grants and/or other public funding to assist property owners with elimination, upgrades, or replacements of HSTS, including costs of connecting to sanitary sewers.
 - c. FCBOC shall submit to Plaintiff's counsel an annual report, during each year of this Agreement, documenting FCBOC's progress made during each calendar year on implementing each injunctive relief element above. The annual report shall be submitted in accordance with Paragraph 15 (Notices) and shall be due by August 31 each year. Plaintiff's counsel shall also receive copies of all written plans, permits, schedules and reports submitted by FCBOC (and/or its agents) to Ohio EPA relating to the Consent Decree.
5. **Term.** The term of this agreement shall be ten years from the date of execution.
6. **Dismissal of Pending Actions.** Within 14 days following the payments described in Paragraph 2, above, the Parties shall take such steps as are reasonably necessary to cause dismissal of the Sixth Circuit Appeal and return of jurisdiction to the district court, without imposition of costs to either Party. Plaintiff and FCBOC will file a signed dismissal agreement in accordance with Federal Rule of Appellate Procedure 42. Within 7 days following the return of jurisdiction to the district court, Plaintiff and FCBOC shall take such steps as are reasonably necessary to cause a final order of dismissal to be entered that causes all claims asserted in the District Court Action and Sixth Circuit Appeal to be dismissed with prejudice and without costs to either Party. The stipulated final order of dismissal shall state: "In accordance with the terms of the Settlement Agreement as of the effective date, as executed by the Parties and pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, Plaintiff and Defendant hereby stipulate and agree that all claims raised in this case are hereby dismissed with prejudice."
7. **Inadmissibility Except as Necessary to Enforce its Terms.** The Parties agree that neither this Agreement nor any of its terms (including but not limited to the provisions relating to the Settlement Payment) may be admissible as evidence in any action, suit, adjudication, hearing or other proceeding, whether judicial, administrative, regulatory or local in nature, except as necessary to enforce its terms.
8. **Effective Date.** The Effective Date of this Agreement shall be the date as of which this Agreement has been fully executed by all Parties' respective legally authorized representatives.
9. **Governing Law.** This Agreement shall be construed according to and governed by the laws of the State of Ohio and applicable federal law. This Agreement shall be construed as if jointly drafted by their respective counsel.
10. **Parties Bound.** This Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the Parties hereto and their respective successors, assigns, agents,

fiduciaries, employees and/or other legally authorized representatives. FCBOC shall provide a copy of this Agreement to all employees and agents whose duties might reasonably include compliance with any provision of this Agreement, as well as to any contractor retained to perform work required under this Agreement. FCBOC shall condition any such contract upon performance of the work in conformity with the terms of this Agreement.

11. Transfer of MS4. No transfer of ownership or responsibility for the operation of all or any portion of the MS4, whether in compliance with the procedures of this paragraph or otherwise, shall relieve FCBOC of its obligation to ensure that the terms of this Agreement are implemented. At least 30 days prior to any such transfer, FCBOC shall provide a copy of this Agreement to any proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written transfer agreement, to the Cox II Plaintiffs, in accordance with Paragraph 15 (Notices).

12. No Oral Modification. This Agreement may not be modified or amended except by a writing that has been approved and signed by all Parties.

13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

14. Authorization. Each undersigned representative of a Party certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this Agreement.

15. Notice. Notices or tenders sent or made in connection with this Agreement shall be made by: (a) e-mail with a copy by First Class Mail, or (b) by hand delivery, or (c) by Federal Express, United Parcel Service, or Certified Mail (return receipt requested) addressed as follows:

IF TO COX II PLAINTIFFS:

Justin D. Newman
AltmanNewman Co. LPA
15 East Eighth St., Suite 200W
Cincinnati, Ohio 45202
jnewman@environlaw.com

or to such other individual as may be designated in writing by the Cox II Plaintiffs.

IF TO FCBOC:

Franklin County Prosecuting Attorney
First Assistant Prosecuting Attorney and Chief Counsel Civil Division
373 S. High Street, 13th Floor
Columbus, OH 43215

IN WITNESS WHEREOF, the Parties hereto have entered into and executed this Agreement as evidenced by their authorized signatures below.

**THE BOARD OF COMMISSIONERS
FRANKLIN COUNTY, OHIO**

By: *Kenneth P. Wilson*
County Administrator

Date: 9/18/2023

PLAINTIFF/APPELLANT

By: *Karen Cox*
On behalf of the Estate of Jeffrey Cox

Date: *09-18-2023*

By: *Karen Cox*
Karen Cox in her individual capacity

Date: *09-18-2023*

THE BUCKEYE ENVIRONMENTAL NETWORK

By: _____

Date: _____

OHIO CITIZEN ACTION

By: _____

Date: _____

APPROVED AS TO FORM:

GARY G. TYACK
Prosecuting Attorney Franklin County, Ohio

By: *Joseph R. Perham*
Assistant Prosecuting Attorney *Special Counsel*

Date: 09-18-2023

IN WITNESS WHEREOF, the Parties hereto have entered into and executed this Agreement as evidenced by their authorized signatures below.

**THE BOARD OF COMMISSIONERS
FRANKLIN COUNTY, OHIO**

By: *Kenneth D. Wilson*
County Administrator

Date: 9/18/2023

PLAINTIFF/APPELLANT

By: _____
On behalf of the Estate of Jeffrey Cox

Date: _____

By: _____
Karen Cox in her individual capacity

Date: _____

THE BUCKEYE ENVIRONMENTAL NETWORK

By: *Stephan Bellman*

Date: 9-11-23

OHIO CITIZEN ACTION

By: _____

Date: _____

APPROVED AS TO FORM:

GARY G. TYACK
Prosecuting Attorney Franklin County, Ohio

By: *[Signature]* *Joseph R. Perham*
Assistant Prosecuting Attorney *Special Counsel*

Date: 09-18-2023

IN WITNESS WHEREOF, the Parties hereto have entered into and executed this Agreement as evidenced by their authorized signatures below.

**THE BOARD OF COMMISSIONERS
FRANKLIN COUNTY, OHIO**

By: *Renneth N. Wilson*
County Administrator

Date: 9/18/2023

PLAINTIFF/APPELLANT

By: _____
On behalf of the Estate of Jeffrey Cox

Date: _____

By: _____
Karen Cox in her individual capacity

Date: _____

THE BUCKEYE ENVIRONMENTAL NETWORK

By: _____

Date: _____

OHIO CITIZEN ACTION

By: *Rachael Big*

Date: 9/11/23

APPROVED AS TO FORM:

GARY G. TYACK
Prosecuting Attorney Franklin County, Ohio

By: *Joseph R. Durham*
Assistant Prosecuting Attorney *Special Counsel*

Date: 09-18-2023

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

STATE OF OHIO, <i>ex rel.</i>	:	CASE NO. 18CV008695
DAVE YOST	:	
OHIO ATTORNEY GENERAL,	:	
30 East Broad Street	:	
Columbus, Ohio 43215	:	
Plaintiff,	:	JUDGE O'DONNELL
	:	
v.	:	
	:	
FRANKLIN COUNTY BOARD OF	:	CONSENT ORDER
COMMISSIONERS	:	
373 South High Street	:	
Columbus, Ohio 43215	:	
Defendant.	:	

The State of Ohio, by its Attorney General (“Plaintiff”/“the State”) and at the written request of the Director of the Ohio Environmental Protection Agency (“Ohio EPA”), has filed a Complaint seeking injunctive relief and civil penalties against Defendant Franklin County Board of County Commissioners for violations of Ohio’s water pollution control laws under R.C. Chapter 6111 and the rules adopted thereunder concerning the violations of its NPDES Permit. The Parties have consented to the entry of this Order.

Therefore, without trial, admission, or determination of any issue of fact or law and with the consent of the Parties hereto, it is ORDERED, ADJUDGED, AND DECREED:

I. DEFINITIONS

1. As used in this Order, the following terms are defined:
 - a. “Defendant” means Franklin County Board of County Commissioners.

- b. “Director” means the Director of the Ohio Environmental Protection Agency (“Ohio EPA”) or her designee.
- c. “Parties” means Plaintiff, the State of Ohio, and Defendant, Franklin County Board of County Commissioners.
- d. “Person” means an individual, public or private corporation, business trust, estate, trust, partnership, association, federal government or any agency thereof, municipal corporation or any agency thereof, political subdivision or any agency thereof, public agency, interstate body created by compact, any other entity, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.
- e. “State” means Plaintiff, the State of Ohio, including the Director, Ohio Environmental Protection Agency, or the Ohio Attorney General on behalf of the State, or any State entity named in the Complaint.
- f. “Order” refers to this Order.
- g. “Written” means a paper copy or a saved or stored electronic copy.
- h. “MS4” means all storm water structures, appurtenances, and areas subject to Defendant’s Small Municipal Separate Storm Sewer System Permit No. 4GQ10009*CG, including but not limited to the provisions set forth in Ohio Adm.Code 3745-39-01(B)9).

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the Parties and the subject matter of this action under R.C. Chapter 6111. The Complaint states a claim upon which relief can be granted. Venue is

proper in this Court. Defendant shall not challenge the Court's jurisdiction to enter or enforce this Order.

III. PARTIES BOUND

3. Defendant, Board of Commissioners of Franklin County, Ohio, is an Ohio Board of County Commissioners organized under R.C. Chapter 305 and is vested with the authority given under R.C. Chapter 307 to conduct the governmental affairs of Franklin County.

4. This Order shall apply to and be binding only upon the Defendant, and, to the extent consistent with Civ. R. 65(D), on its agents, officers, employees, contractors, assigns, successors in interest, and those persons acting in concert, privity, or participation with the Defendant who receive actual notice of this Order whether by personal service, by public record filed in the county land record, or otherwise. The Defendant shall provide a copy of this Order to any successor in interest and to each key employee, consultant, or contractor employed to perform work referenced herein.

5. This Order is in settlement and compromise of disputed claims, and nothing in this Order is to be construed as an admission of any facts or liability.

6. If insolvency, bankruptcy, or other failure occurs, Defendant must pay the remaining unpaid balance of the total civil penalty.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

7. The Plaintiff alleges that the Defendant is responsible for violations of the water pollution control laws of the State of Ohio under R.C. Chapter 6111. Defendant denies all such allegations. Compliance with this Order shall constitute full satisfaction of any civil liability of the Defendant to Plaintiff for the claims alleged in Plaintiff's Complaint.

8. Nothing in this Order, including the imposition of stipulated civil penalties for violations of this Order, shall limit the authority of the State of Ohio to:

- a. Seek any legal or equitable relief or civil penalties from the Defendant or any other appropriate person for any claims or violations not alleged in the Complaint;
- b. Seek any legal or equitable relief or civil penalties from the Defendant or any other appropriate person for claims, conditions, or violations that occur on or exist after the entry of this Order;
- c. Enforce this Order through a contempt action or otherwise seek relief for violations of this Order; and/or
- d. Take any future legal or equitable against any appropriate person, including the Defendant, to eliminate or mitigate conditions that may present a threat to public health or welfare or the environment in derogation of applicable laws and rules, which the State of Ohio has the authority to enforce.

9. This Order does not waive, abridge, settle, compromise, or otherwise impact any other claims in law or equity that the State of Ohio or other persons may have against the Defendant.

10. Except for the signatories to the Order, nothing in this Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged, against any person not a signatory to this Order for any liability such non-signatory may have arising out of matters alleged in the Complaint. The State of Ohio also specifically reserves its right to sue any entity that is not a signatory to this Order.

11. Nothing in this Order shall relieve the Defendant of its obligations to comply with applicable federal, state, or local statutes, regulations, rules, or ordinances.

12. Nothing herein shall restrict the right of the Defendant to raise any administrative, legal, or equitable defense with respect to such further actions reserved by the State in this Order. However, with respect to the actions reserved by the State in this Section, the Defendant shall not assert and/or maintain, any defense or claim of waiver, *res judicata*, collateral estoppel, issue preclusion, claim splitting, or other defenses based on any contention that Plaintiff's claims in any subsequent judicial or administrative proceeding could or should have been brought in this case.

V. PERMANENT INJUNCTION

13. Defendant is ordered and permanently enjoined to comply fully with R.C. Chapter 6111, the rules adopted thereunder, and NPDES Storm Water Permit No. 4GQ10009*CG.

14. Beginning on the Effective Date of this Consent Order the Defendant is ordered and enjoined to conduct the following actions:

- a. Within twelve (12) months, Defendant shall update its comprehensive storm sewer system map and provide it to Ohio EPA. The comprehensive storm sewer system map shall also include Defendant's municipal separate storm sewer system (MS4) (owned and/or operated by Defendant), including catch basins, pipes, ditches, flood control facilities (retention/detention ponds), post-construction water quality best management practices (BMPs) and private post-construction water quality BMPs which have been installed to satisfy Ohio EPA's NPDES Construction Storm Water general permit and/or Defendant's local post-construction water quality BMP requirements.
- b. Within six (6) months, Defendant shall submit to Ohio EPA for review and concurrence a plan and schedule to identify and address all discharging and

failing on-lot home sewage treatment systems (HSTSs) that discharge to the MS4, including those that Defendant does not have records for. This plan shall include (i) an updated list of all on-site sewage disposal systems discharging to Defendant's MS4 (a.k.a., home sewage treatment systems (HSTSs)) including the addresses; and (ii) an updated storm sewer map showing the location of all HSTSs discharging to Defendant's MS4. This map shall include details on the type and size of conduits/ditches in Defendant's MS4 that receive discharges from HSTSs, as well as the water bodies receiving the discharges from Defendant's MS4.

- c. Within six (6) months, Defendant shall submit to Ohio EPA for review and concurrence a plan and schedule to evaluate areas served by sanitary sewers to verify if all homes are connected to a sanitary sewer where it is available to them, and a plan and schedule for connecting to sanitary sewers all homes served by discharging and failing on-lot HSTSs in areas where sanitary sewers are available.
- d. Within twelve (12) months, Defendant shall submit an application for a Permit-to-Install to Ohio EPA for installation of a sanitary sewer for connecting to Defendant's sanitary sewer collection system any un-sewered areas of Kanawha Avenue consisting of the houses from 523-321, Rosslyn Avenue consisting of the houses from 323 through 537-545 and parcel 251-151635, Olentangy Blvd. from house number 5460 through 5282, Riverside Drive from house number 5340 through 5250, and Westview Ave. from house number 365 through 310. Within six (6) months, Defendant shall submit to Ohio EPA for review and concurrence a plan and schedule to determine if any additional areas within the MS4 can be

legally, feasibly and economically connected to sanitary sewers, and a schedule for connecting all such areas to sanitary sewers.

- e. Within six (6) months, Defendant shall submit to Ohio EPA for review and concurrence a plan and schedule to include the HSTSs not able to connect to sanitary sewers identified above in Paragraphs 14(b), 14(c) and 14(d) in Defendant's operation and maintenance program. For any replacement discharging HSTSs that cannot be eliminated through connection to sanitary sewers or installation of soil absorption systems, the plan and schedule shall require Defendant to notify the property owners of the requirement to pursue coverage under the Ohio EPA's General Permit to Discharge Wastewater from Household Sewage Treatment Systems under the National Pollutant Discharge Elimination System.
- f. Within ninety (90) days, Defendant shall remove from Section 4.0 Public Health Nuisance in its Storm Water Management Plan and Illicit Discharge, Detection and Elimination Plan the following language: *"It is important to note that while various HSTS discharge effluent, these discharges may or may not be illicit discharges. As a general rule of thumb, if the HSTS discharging effluent is operating as intended, the resulting discharge is NOT an illicit discharge. These determinations are undertaken by FCPH."*
- g. Within thirty (30) days, Defendant shall perform the following actions at the Franklin County Engineer East Maintenance Facility located at 4801 Hendron Road in Groveport: (1) install labels to identify the spill kits located at the fueling

island and (2) install lids on the dumpsters located at the Southwest corner of facility.

- h. Defendant shall work with Brown Township, Pleasant Township, and Jackson Township to develop and implement Storm Water Pollution Prevention Plans (SWP3) for their township maintenance facilities within thirty (30) days.
- i. Defendant shall work with Brown Township to develop and implement an employee training program for the Brown Township maintenance facility within thirty (30) days.
- j. Defendant shall update the list of all illicit connections to the MS4 that have been identified but have yet to be eliminated, including estimated schedules for elimination, with the 2019 Small MS4 annual report and all subsequent annual reports thereafter.
- k. Within thirty (30) days of receipt of notification from Ohio EPA, or at a date agreed upon by the parties, Defendant shall provide Ohio EPA with a response addressing any comments or deficiencies in any of the plans or schedules required by Paragraphs 14(b), 14(c), 14(d), and 14(e).
- l. Defendant shall implement the plans in accordance with the schedules, upon concurrence by Ohio EPA.

VI. CIVIL PENALTIES

15. Under R.C. 6111.07, Defendant is ordered and enjoined to pay a civil penalty of Ten Thousand dollars (\$10,000.00). Payment shall be made not later than thirty (30) days after the date of entry of this Consent Order.

16. All civil penalty payments shall be made by delivering to Sandra Finan, Paralegal, or her successor, Office of the Attorney General, 30 E. Broad St., 25th Floor, Columbus, Ohio 43215, a certified check or checks for the appropriate amount, payable to the order of “Treasurer, State of Ohio.”

17. If payment is not paid as required in Paragraph 15 above, the remaining unpaid balance of the total civil penalty, plus applicable interest under R.C. 131.02(D), less any amount already paid under this Order, shall become immediately due and owing. Any delinquent payments shall accrue interest at the maximum statutory rate under R.C. 5703.47 calculated from the Effective Date of this Order.

VII. STIPULATED PENALTIES

18. If Defendant fails to comply with any of the requirements of this Order, Defendant shall immediately and automatically be liable for and shall pay stipulated penalties under the following schedule for each failure to comply:

- i. Defendant shall pay three hundred dollars (\$300.00) per day for each day any requirement of this Order is violated up to the first thirty (30) days of violation;
- ii. For each day any requirement of this Order is violated between thirty (30) days and ninety (90) days of violation, Defendant shall pay six hundred dollars (\$600.00) per day;
- iii. For each day any requirement of this Order is violated greater than (90) days of violation, Defendant shall pay one thousand dollars (\$1,000.00) per day.

19. Stipulated penalties due under this Order shall be immediately due and owing without demand by the State and shall be paid by check or money order, payable to “Treasurer, State of Ohio” and delivered to Sandra Finan, Paralegal, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

20. Defendant's payment and Plaintiff's acceptance of such stipulated penalties under this Section shall not be construed to limit Plaintiff's authority, without exception, to seek: 1) additional relief under R.C. Chapter 6111, including civil penalties under R.C. 6111.09; 2) judicial enforcement of this Order for the same violations for which a stipulated penalty was paid; or 3) sanctions for additional remedies, civil, criminal, or administrative, for violations of applicable laws. Further, payment of stipulated penalties by Defendant shall not be an admission of liability by Defendant.

VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

21. Performance of the terms of this Order by Defendant is not conditioned on the receipt of any private, Federal or State grants, loans, and/or funds. In addition, Defendant's performance is not excused by failing to obtain or any shortfall of any private, Federal or State grants, loans and/or funds or by the processing of any applications for the same.

IX. SUBMITTAL OF DOCUMENTS

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

Ohio EPA
Division of Surface Water
50 West Town Street, Suite 700
Columbus, Ohio 43215
Attn: Surface Water Program Compliance Manager

Ohio EPA
Central District Office
Division of Surface Water
50 West Town Street
Columbus, Ohio 43215
Attn: Surface Water Program Manager

X. EFFECT OF ORDER

23. This Order does not constitute authorization, certification, or approval of the construction, installation, modification, or operation of any water pollution source under R.C. Chapter 6111. Approval for any such certification, construction, installation, modification, or operation 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.

XI. MODIFICATION

24. No modification shall be made to this Order without the written agreement of the parties and the Court.

XII. MISCELLANEOUS

25. Nothing in this Order shall affect the Defendant's obligation to comply with all applicable federal, state or local laws, regulations, rules, ordinances, or orders.

26. Any acceptance by the State of Ohio of any payment, document, or other work due subsequent to the time that the obligation is due under this Order shall not relieve Defendant from the obligations created by this Order.

27. Defendant shall inform the Ohio EPA of any change in its business addresses or telephone numbers.

XIII. RETENTION OF JURISDICTION

28. This Court shall retain jurisdiction for the purpose of administering and enforcing this Order.

XIV. EFFECTIVE DATE

29. This Order shall be effective upon the date of its entry by the Court.

XV. COURT COSTS

30. Defendant is ordered to pay all court costs of this action.

XVI. AUTHORITY TO ENTER INTO THE ORDER

31. Each signatory represents and warrants he or she has been duly authorized to sign this document and is fully authorized to agree to its terms and conditions, and, in the case of a person signing on behalf of a corporate entity, may so legally bind the corporate entity to all terms and conditions in this document. Franklin County authorizes this order pursuant to Resolution 720-18, which Resolution was passed in open session by the Board of Commissioners of Franklin County, Ohio. By signing this Order, each signatory waives all rights of service of process for the underlying Complaint.

XVII. ENTRY OF ORDER AND FINAL JUDGMENT BY CLERK

32. Under Rule 58 of the Ohio Rules of Civil Procedure, upon signing this 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 Civ.R. 5(B) and note the service in the appearance docket. The failure of the Clerk to serve notice does not affect the validity of this Order.

33. The parties agree and acknowledge that final approval by Plaintiff and Defendant and entry of this 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 Order, opportunity for public comment, and the consideration of any public comments. Both Plaintiff and Defendant reserve the right to withdraw this Order based on comments received during the public comment period.

IT IS SO ORDERED.

JUDGE

DATE

APPROVED AND AGREED TO BY:

**FRANKLIN COUNTY
BOARD OF COUNTY COMMISSIONERS**

**DAVE YOST
OHIO ATTORNEY GENERAL**

/s/ Harold J. Anderson

/s/ Lawrence S. Helkowski

HAROLD J. ANDERSON III (0059777)
Assistant Prosecuting Attorney
Ronald J. O'Brien
Franklin County Prosecuting Attorney
373 South High Street, 13th Floor
Columbus, OH 43215
(614) 525-7589
*Counsel for Defendant, Board of
Commissioners Franklin County, Ohio*

LAWRENCE S. HELKOWSKI (0068622)
AMANDA M. FERGUSON (0089576)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
(614) 466-2766
Counsel for Plaintiff, the State of Ohio

/s/ Kenneth N. Wilson

**KENNETH N. WILSON,
FRANKLIN COUNTY ADMINISTRATOR**

Submitted by:

/s/ Amanda M. Ferguson

Franklin County Court of Common Pleas

Date: 01-15-2020
Case Title: OHIO STATE -VS- FRANKLIN COUNTY COMMISSIONERS BOARD
Case Number: 18CV008695
Type: AGREED ORDER

It Is So Ordered.

A handwritten signature in black ink, "Colleen O'Donnell", is written over a blue circular official seal. The seal contains the text "OHIO PLEAS COURT" at the top and "ALL THINGS ARE" at the bottom.

/s/ Judge Colleen O'Donnell

Court Disposition

Case Number: 18CV008695

Case Style: OHIO STATE -VS- FRANKLIN COUNTY
COMMISSIONERS BOARD

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 18CV0086952019-09-2499980000
Document Title: 09-24-2019-MOTION - PLAINTIFF: OHIO STATE
- TO ENTER THE CONSENT DECREE
Disposition: MOTION GRANTED

FRANKLIN COUNTY



BUDGET AMENDMENTS JOURNAL ENTRY PROOF

LN	ORG	OBJECT	PROJ	ORG DESCRIPTION	ACCOUNT DESCRIPTION	EFF DATE	PREV BUDGET	BUDGET CHANGE	AMENDED BUDGET	ERR
YEAR-PER	JOURNAL	EFF-DATE	REF 1	REF 2	SRC JNL-DESC	ENTITY	AMEND			
2023	09	2819	09/18/2023	2819	BUA RES#	1	3			
1	05012800	529005		01-A6-1005-RESERVES	LEGAL SETTLEMENTS		3,500,000.00	630,000.00	4,130,000.00	
	1005-01-A6-28-00-01-0000-01-5290-05-				Resolution#		09/18/2023			
					** JOURNAL TOTAL			630,000.00		Z

FRANKLIN COUNTY



PURCHASE ORDER PROOF LIST

Batch Code: s92601 Clerk: 807sasabree

PO #	VENDOR NAME	PO DATE	DUE DATE	YEAR	PP	ACCOUNT	ENCUMBRANCE	PO TOTAL
30120012-00	999999 MULTIPLE VENDOR - VENDOR TO B	09/12/23	09/26/23	2023	09			
LN# 001	For the United States District Court, Southern District of Ohio Case No. 2:18-cv-1631 ("District Court Action") and pending in the United States Court of Appeals for the Sixth Circuit, Appeal No. 21-3680.		1.0 EACH			630000.00		
						E 05012800-529005-	630000.00	
						-----	-----	-----
						630000.00	630000.00	630000.00
PURCHASE ORDERS LISTED FOR BATCH: s92601						ENCUMBRANCE TOTAL:	630000.00	