

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

Establishment of
Cleveland Regional
Sewer District

Case No. SD 69411
Case Nos. 886,594 and 892,711
Consolidated

Honorable George J. McMonagle

JOURNAL ENTRY

This cause came on for hearing on the 27th day of April, 1979 upon the Petition of the Cleveland Regional Sewer District, filed on March 19, 1979, pursuant to Section 6119.051 of the Ohio Revised Code, for an order amending certain portions of the Petition and Plan of Operation of said District as set forth in Exhibit "A" to the Judgment Entry of this Court dated June 15, 1972 ("original Exhibit A") as amended by the Judgment Entry of this Court dated August 11, 1975 ("amended Exhibit A"). The hearing was held after publication of notice thereof in accordance with Section 6119.051 of the Ohio Revised Code. Notice was also given by certified mail to all member communities through their chief officials. No objections were filed to the granting of the District's Petition.

The Court, upon due consideration of said Petition, the testimony thereon, the evidence, and the argument and brief of counsel with reference thereto, finds that the Petition of the Cleveland Regional Sewer District filed on March 19, 1979 requesting certain amendments to the original Petition and Plan of Operation of said District entered herein on June 15, 1972, as amended on August 11, 1975, is conducive to the public health and welfare and will not adversely affect the continued operation of the District and that therefore said Petition is granted as and to the extent hereinafter provided.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The amendments to and deletions from the amended Exhibit "A" regarding the name of the District, the inclusion of additional member political subdivisions, the establishment of the position of Vice

President of the Board of Trustees, and the compensation of the District's Board of Trustees shall be as reflected in the revised Exhibit "A" attached hereto and made a part hereof.

2. The revised Exhibit "A" shall, effective on the date of this Judgment, become the Petition and Plan of Operation of the Cleveland Regional Sewer District replacing amended Exhibit "A" in its entirety, but subject to paragraphs 3 and 4 below.

3. The change of the name of the District to the Northeast Ohio Regional Sewer District shall be effective June 15, 1979.

4. The effective date for the change in compensation of the Members of the Board of Trustees shall be March 19, 1979, the date of filing of the District's Petition.

5. This Court retains jurisdiction over Case No. SD 69411 in accordance with Ohio Revised Code Section 6119.051, and retains jurisdiction in Case Nos. 886,594 and 892,711 consolidated.


JUDGE

5/25/79
DATE

APPROVED:

CLEVELAND REGIONAL SEWER DISTRICT

By: 

General Counsel

EXHIBIT "A"
THE NORTHEAST OHIO REGIONAL SEWER DISTRICT

1. Name - The name of the District shall be "The Northeast Ohio Regional Sewer District".

2. Place - The principal office of the District shall be located at 801 Rockwell Avenue, Cleveland, Ohio 44114, or such other location within the District as the Board of Trustees may from time to time determine.

3. NECESSITY FOR THE PROPOSED DISTRICT - The increase in the amount of wastewater in the Metropolitan Cleveland area resulting from the increase in population and the expansion of industry in the many political subdivisions outside of the City of Cleveland without the existence of a single governmental agency with authority to control, plan, finance, establish rates, maintain, operate, adopt, establish and enforce rules and regulations for the purpose of uniform construction procedure, materials, inspection and controls of discharge into the system, has caused recurring litigation, has caused, in part, the necessity for the issuance of injunctive orders which have had the effect of practically eliminating new construction in Cleveland and most of Cuyahoga County, Ohio, has contributed to the polluted state of Lake Erie and the waters tributary to it and has endangered the public health and safety.

The establishment of a Regional Sewer District under the provisions of Chapter 6119 of the Ohio Revised Code is necessary and the establishment of said District will be conducive to the public health, safety, convenience and welfare.

4. The purpose of the District shall be the establishment of a total wastewater control system for the collection, treatment and disposal of wastewater within and without the District:

- (a) Serving the Metropolitan Cleveland Area;
- (b) With uniform metropolitan rates;
- (c) With control, administration and financing by a Board of Trustees;

(d) Capable of being expanded in the future to include additional areas;

(e) With regulatory authority over all wastewater collection facilities and systems within the District.

5. Plan for Operation of the District

(a) The District shall be operated by the Board of Trustees; it shall appoint a general manager who will administer the District and employ the personnel required to implement the District's program; the operation of the District shall be in accordance with Chapter 6119 of the Ohio Revised Code and subject to and in accordance with the terms and conditions hereinafter contained.

(b) The sewage treatment and disposal facilities of the City of Cleveland shall be transferred to the District in accordance with the order of the Cuyahoga County Common Pleas Court in Case No. 886,594 (Consolidated), and the Board of Trustees shall commence the operation of the District upon their appointment and qualification as members, and the election of a president and secretary of said Board.

(c) Construction of Facilities

1. The District will plan, finance, construct, operate and control wastewater treatment and disposal facilities, major interceptor sewers, all sewer regulator systems and devices, weirs, retaining basins, storm water handling facilities, and all other water pollution control facilities of the District. All construction and expansion of sewage treatment facilities, not including presently planned interceptors, after May 1, 1972, will be the responsibility of the District and the costs shall be borne by all users of the District.

2. In order to avoid any delay in the construction of presently planned facilities upon their approval by the State, the District shall employ the City of Cleveland to continue detailed planning of such facilities for the first four years of the District's existence or such period of time deemed practicable by the Board of Trustees of the District in order that the District assume its planning operations in an orderly

fashion; such planning procedure includes the sewer regulator program presently planned by Cleveland and which program shall become a District program with the cost thereof borne by all District users.

3. Except as otherwise provided in Chapter 6119 and paragraph 5(m) hereof, the construction and financing of local sewerage collection systems will be the responsibility of the individual municipalities or political subdivisions; provided, however, that the District may participate in the financing of trunk sewers constituting a part of such collection systems through a rotary fund which would be reimbursed from tap-in charges and/or sewer surcharges collected from users in the subdistrict served by such trunk sewers.

(d) Operation of Facilities

The District has heretofore entered into operating agreements with the City of Cleveland to assure the orderly transfer of treatment facilities. The District may continue to employ the City for such services as may be mutually agreeable; provided, however, that the City shall provide for collection, billing, and distribution of sewage charges upon mutually agreeable terms.

(e) Financing

1. As an interim requirement, the Cleveland Subdistrict (Subdistrict No. 1), will pay for presently planned interceptor sewer facilities that serve Cleveland users and the Suburban Subdistrict (Subdistrict No. 2) will pay for presently planned interceptor sewer facilities that serve suburban users. The presently planned interceptor sewer facilities to serve Cleveland users are the Northwest Interceptor and other wastewater handling facilities in Cleveland's westerly district and the presently planned interceptor sewer facilities to serve suburban users are the Southwest Interceptor, Cuyahoga Valley Interceptor, Broadway (Southeast) Interceptor, Heights Interceptor (including branch to serve Richmond Heights and Highland Heights) and improvements to the pumping stations and comminutor on the Wilson Mills (Hilltop) Interceptor.

2. It is contemplated that the major interceptor sewer, wastewater treatment facilities and the other water pollution control facilities will be eligible for financing under the programs of the Ohio Water Development Authority, the State of Ohio or the Federal Government. The District shall endeavor to utilize said programs to the fullest extent feasible, particularly where local contributions can be thereby minimized.

3. Other financing of District projects. Any projects not financed through the Ohio Water Development Authority, State of Ohio or Federal Government would be financed in such a manner as may be deemed appropriate by the Board of Trustees.

(f) Sewer Rates

The rates for sewage treatment and disposal shall be determined by the Board of Trustees and shall be in accordance with the following:

1. Regional Sewer Rate - the Regional Sewer Rate will include increments for the following factors:

(a) Planning expenses for the Regional Sewer District facilities to the extent such expenses are not included in construction costs.

(b) Operation and maintenance expenses for the Regional Sewer District facilities.

(c) Payment of new capital costs incurred by the District, including debt service charges on bonds and payments to the Ohio Water Development Authority, for the three wastewater treatment plants and other water pollution control facilities of the Regional Sewer District handling wastewaters of Cleveland and the suburbs, and for facilities of the Regional Sewer District beyond those presently planned.

(d) A rotary fund account to be used to assist in the financing of trunk sewers.

2. Cleveland (Subdistrict No. 1) Rate:

The Cleveland Subdistrict rate will include increments for debt service charges on Cleveland's outstanding Bonds which are presently being paid from sewer revenues; payments to the Ohio Water Development Authority incurred by Cleveland for improvements which have been installed at the

three wastewater treatment plants; debt service charges for the Northwest Interceptor and other wastewater handling facilities in Cleveland's westerly district.

3. The Suburban (Subdistrict No. 2) Rate will include:

(a) Debt service charges for the presently planned Southwest, Southeast (Broadway), Cuyahoga Valley and Heights Express Interceptors, including the branch of the Heights Express to serve Richmond Heights and Highland Heights, and improvements to the pumping stations and comminutor on the Wilson Mills (Hilltop) Interceptor.

(b) An increment for the Equitable Equalization and reimbursement of design costs payable to the City of Cleveland in accordance with the Order of the Cuyahoga County Common Pleas Court, Case No. 886,594 (Consolidated).

4. Interim Sewer Rates:

(a) It is anticipated that the Equitable Equalization ordered by the Court in Cuyahoga County Common Pleas Court, Case No. 886,594 (Consolidated) will be paid to Cleveland by the issuance of notes in anticipation of bonds. For so long as notes are outstanding in lieu of bonds, the existing sewerage service rates established by ordinance of the Cleveland City Council will be maintained by the Board of Trustees with the following modifications:

1. Added to the suburban (Subdistrict No. 2) rate will be an increment for interest on the notes outstanding.

2. The Board of Trustees may from time to time add specific increments to either or both subdistrict rates for:

(a) increased costs of operations and maintenance.

(b) financing of new construction of specific water pollution control facilities not otherwise provided for herein.

(b) At such time as the Board issues bonds to retire all or a substantial portion of the notes, the Board shall re-establish rates according to any method it may deem fair and equitable but shall include

therein the increments delineated in subparagraph (f) 1, 2 and 3 above. These re-established rates, however, shall include a credit in the suburban (Subdistrict No. 2) rate and an overcharge in the Cleveland (Subdistrict No. 1) rate for the purpose of repaying to the suburbs any amounts paid by them under subparagraph (f) 4(a) above as a return on Cleveland's invested capital, plus interest on the total amount to be credited at a rate equal to the average rate of interest on the bonds, such credit to be repaid over the average maturity life of the bonds.

5. The allocation of the entire cost of amortizing the Northwest Interceptor to Cleveland and the entire cost of amortizing the aforementioned suburban interceptors to the suburbs is predicated on the assumption that these interceptors will be used exclusively for either Cleveland or suburban wastewaters. Should it develop that a substantial amount of wastewater (over 5%) is being discharged into these Interceptors by the other party, an adjustment in the subdistrict rates will be made to reflect such use.

6. Nothing herein contained shall be deemed to preclude the Board of Trustees from establishing industrial sewerage service rates in accordance with Cleveland's presently planned industrial rate program.

(g) Existing sewer service agreements between the City of Cleveland and certain suburban municipalities which will be assigned to the District will necessitate adjustments in the rates to those municipalities.

(h) The Cleveland Regional Sewer District shall assume all duties and obligations under the contract dated July 29, 1965 between the City of Cleveland and the City of Lakewood.

(i) Assumption by the District of the ownership of any existing interceptors, treatment plants, or other facilities other than those of the City of Cleveland which is provided for in the Judgment Entry herein shall be accomplished in accordance with Chapter 6119 of the Ohio Revised Code.

(j) Ownership of facilities. The District will own all facilities transferred to it and all facilities it purchases in the future.

(k) Individual suburban communities will retain ownership of

all local suburban facilities, subject to the provisions of subsection "m" below.

(1) All non-self supporting municipal functions of the City of Cleveland shall continue to receive sewage service free of charge and the Board of Trustees shall afford the same treatment to similar non-self supporting municipal functions of the suburban municipalities as soon as possible after it commences operation of the system.

(m) Local Sewerage Collection Facilities and Systems

The District shall have authority pursuant to Chapter 6119 of the Ohio Revised Code to plan, finance, construct, maintain, operate, and regulate local sewerage collection facilities and systems within the District, including both storm and sanitary sewer systems. The District shall not assume ownership of any local sewerage collection facilities and systems nor shall the District assume responsibility or incur any liability for the planning, financing, construction, operation, maintenance, or repair of any local sewerage collection facilities and systems unless the assumption of such ownership, responsibility, or liability is specifically provided for in a written agreement between the District and the respective local community.

1. Regulation

The District shall have regulatory authority over all local sewerage collection facilities and systems in the District, including both storm and sanitary sewer systems. This authority shall be exercised by the District through rules and regulations adopted by the Board of Trustees pursuant to Chapter 6119 of the Ohio Revised Code. Such rules and regulations may include, without limitation, rules and regulations governing planning, construction, inspection, operation, maintenance, and repair of local sewerage collection facilities and systems and governing connections to, discharges into, and infiltration/inflow into such facilities and systems. All rules and regulations shall be implemented and enforced by the District in accordance with Chapter 6119 of the Ohio Revised Code. Whenever the Board of Trustees shall propose to adopt or amend any such rule or regulation, it shall first

notify all communities within the District of the nature and content of the proposed rule, regulation, or amendment.

2. Operation, Maintenance, and Repair

The District shall have authority to operate, maintain, and repair local sewerage collection facilities and systems pursuant to Chapter 6119 of the Ohio Revised Code. The District may assume the responsibility for operating, maintaining, and repairing local sewerage collection facilities when requested to do so by a local community and upon mutually agreeable terms.

3. Planning

The District shall have authority to plan local sewerage collection facilities and systems pursuant to Chapter 6119 of the Ohio Revised Code. The District shall develop a detailed integrated capital improvement plan for regional management of wastewater collection and storm drainage designed to identify a capital improvement program for the solution of all intercommunity drainage problems (both storm and sanitary) in the District.

4. Construction

The District shall have authority to construct local sewerage collection facilities and systems pursuant to Chapter 6119 of the Ohio Revised Code. The District may construct local sewerage collection facilities and systems when requested to do so by a local community and upon mutually agreeable terms.

5. Financing

The District shall have authority to finance the planning, construction, operation, maintenance, and repair of local sewerage collection facilities and systems as provided for in Chapter 6119 of the Ohio Revised Code and in this Order. The method of financing particular projects shall be agreed to between the District and the respective local communities at the time the project is undertaken by the District.

6. GENERAL DESCRIPTION OF THE TERRITORIES TO BE INCLUDED.

(a) The District will initially include all political subdivisions in Cuyahoga County, Ohio, presently served by Cleveland's wastewater treatment facilities and those presently planned to be served, i.e. the municipalities to be served by the Cuyahoga Valley Interceptor and the branch of the Heights Express Interceptor to serve Richmond Heights and Highland Heights. A more detailed description of such area is attached hereto and made a part hereof and marked Exhibit "A" (1).

(b) The District will initially be composed of two subdistricts, one consisting of the City of Cleveland (Subdistrict No. 1), and the other consisting of the areas outside of the City of Cleveland in Cuyahoga County, Ohio, (Subdistrict No. 2). Other subdistricts may be created at the Board's discretion.

7. BOARD OF TRUSTEES

The governing body of the District shall be called the Board of Trustees.

(a) The Board of Trustees shall consist of seven persons whose regular term shall be for a period of five years each.

Two of the members shall be appointed by the Mayor of the City of Cleveland who shall at all times be the Appointing Authority for members of the Board of Trustees allocable to Subdistrict No. 1.

Two members shall be appointed by a Council of Governments comprised of all municipalities included within Subdistrict No. 2, which Council shall at all times be the Appointing Authority for members of the Board of Trustees allocable to Subdistrict No. 2. The Council of Governments shall be established pursuant to Chapter 167 of the Ohio Revised Code no later than June 26, 1972.

One member shall be appointed by the Cuyahoga County Board of County Commissioners, which member shall be representative of all municipalities within the Three Rivers Watershed District.

One member shall be designated as a member appointed on the basis of sewage flow. The initial appointment, therefore, shall be made by the Appointing Authority of Subdistrict No. 1 and thereafter such appointment shall be made by the Appointing Authority of the subdistrict

having the greatest sewage flow as determined at the end of each five-year term. This member shall not be a municipal employee.

One member shall be designated as a member appointed upon the basis of population. The initial appointment, therefore, shall be made by the Appointing Authority of Subdistrict No. 1 and thereafter such appointment shall be made by the Appointing Authority of the Subdistrict having the greatest population as determined on the basis of the United States Decennial Census next preceding the end of each five-year term. This member shall not be a municipal employee.

(b) Each member appointed by the Mayor of the City of Cleveland shall be a resident of the State of Ohio and shall have been a qualified elector of Cuyahoga County, Ohio, for a period of at least three years next preceding his appointment. Each member appointed by the Suburban Council of Governments shall be a resident of the State of Ohio and shall have been a qualified elector of his county of residence for a period of at least three years next preceding his appointment. The member appointed by the Board of County Commissioners of Cuyahoga County, Ohio, shall have been a resident and qualified elector of the State of Ohio for a period of at least three years next preceding his appointment.

(c) The members first appointed by the Mayor of Cleveland shall have terms expiring on March 1, 1974, and March 1, 1975; the members first appointed by the Suburban Council of Governments shall have terms expiring March 1, 1974 and March 1, 1975; the member first appointed by the Board of County Commissioners shall have a term expiring March 1, 1977; the member first appointed on the basis of sewage flow shall have a term expiring March 1, 1977; the member first appointed on the basis of population shall have a term expiring March 1, 1977.

(d) The successor of each such member shall be appointed for a term of five years, except that any person appointed to fill a vacancy shall be appointed to serve only for the unexpired term. A member of the Board of Trustees is eligible for reappointment. Each appointed member before entering upon his duties shall take an oath as provided by Section 7 of Article XV Ohio Constitution.

(e) The Board shall elect one of its members as President, shall elect another as Vice President, and shall elect a third member as Secretary. Four members of the Board shall constitute a quorum and the affirmative vote of four members shall be necessary for any action by vote of the Board. No vacancy in the membership shall impair the rights of a quorum to exercise all the rights and perform all the duties of the Board of Trustees.

(f) The annual compensation for the President of the Board shall be \$9,600 plus expenses.

(g) The annual compensation for the Vice President of the Board shall be \$8,000 plus expenses.

(h) The annual compensation for the Secretary of the Board shall be \$8,600 plus expenses.

(i) The annual compensation for its members shall be \$8,000 plus expenses.

8. PRELIMINARY FINANCING

The financing of the cost of the operations of the District, until it is in receipt of revenue from its operations or proceeds from the sale of bonds, shall consist of such sums of money as are advanced to it by the City of Cleveland, pursuant to an Agreement between the District and the City providing for the repayment of such sums in accordance with Revised Code Section 6119.04(D).

"EXHIBIT A (1)"

The territory to be included in the Northeast Ohio Regional Sewer District shall include all the territory located within the boundaries outlined on the attached map, which territory is that portion of Cuyahoga County presently served, or mainly capable of being served by gravity, by sewers leading to the three wastewater treatment plants of the City of Cleveland plus the territory in Cuyahoga County to be served initially by the proposed Cuyahoga Valley Interceptor Sewer. The political subdivisions to be included in whole or in part in the Northeast Ohio Regional Sewer District are the following:

Beachwood, City of (all)

Bratenahl, Village of (all)

Brecksville, City of (all)

Broadview Heights, City of (all except that portion located south of the Ohio Turnpike)

Brook Park, City of (only that portion north of Five Points Road between the Berea Freeway and Interstate Route 71; north of Holland Road between Interstate Route 71 and Smith Road; and north of the southerly corporation line between Smith Road and West 130th Street)

Brooklyn, City of (all)

Brooklyn Heights, Village of (all)

Cleveland, City of (all except that portion in the extreme northeast part of the City which is served by sewers connected to the Euclid Wastewater Treatment Plant and except that portion in the western part of the City which is served by sewers connected to the Lakewood Wastewater Treatment Plant)

Cleveland Heights, City of (all)

Cuyahoga Heights, Village of (all)

East Cleveland, City of (all)

Euclid, City of (only that portion in the western part of the City served by sewers connected to the Cleveland Easterly Wastewater Treatment Plant)

Garfield Heights, City of (all)

Gates Mills, Village of (only that portion on the east side of S.O.M. Center Road south of Mayfield Road)

Highland Heights, City of (all)

Independence, City of (all)

Lakewood, City of (only that portion on the northwest side of Berea Road served by sewers connected to the Cleveland Westerly Wastewater Treatment Plant)

Linndale, Village of (all)

Lyndhurst, City of (all)

Maple Heights, City of (all)

Mayfield, Village of (all)

Mayfield Heights, City of (all)

Middleburg Heights, City of (only that portion in the northeastern part of the City served by sewers connected to the Cleveland Southerly Wastewater Treatment Plant)

Newburgh Heights, Village of (all)

North Randall, Village of (all)

North Royalton, City of (only that portion in the northeastern part of the City served by sewers connected to the Cleveland Southerly Wastewater Treatment Plant)

Oakwood, Village of (all except that portion of the Village located north of Forbes Road)

Parma, City of (all except that portion in the extreme southwest corner of the City which is served by sewers connected to the North Royalton Wastewater Treatment Plant)

Parma Heights, City of (all)

Richmond Heights, City of (all except that portion in the western part of the City served by sewers connected to the Euclid Wastewater Treatment Plant)

Riveredge Township (all)

Seven Hills, City of (all)

Shaker Heights, City of (all)

South Euclid, City of (all except that portion in the north central part of the City served by sewers connected to the Euclid Wastewater Treatment Plant)

University Heights, City of (all)

Valley View, Village of (all)

Walton Hills, Village of (all)

Warrensville Township (all)

Warrensville Heights, City of (all)

Northfield, Village of (all) (per Cleveland Regional Sewer District Resolution No. 22-75 adopted March 7, 1975 and the Village of Northfield Ordinance No. 1975-14 passed February 12, 1975)

Macedonia (all) (per Cleveland Regional Sewer District Resolution No. 160-77, adopted May 5, 1977, and City of Macedonia Ordinance No. 16-1977, passed April 14, 1977)

Sagamore Hills Township (all) (per Cleveland Regional Sewer District Resolution No. 359-76, adopted November 4, 1976, and Sagamore Hills Township Resolution No. 34-76, passed October 4, 1976)

Strongsville (all) (per Cleveland Regional Sewer District Resolution No. 255-76, adopted August 5, 1976, and City of Strongsville Ordinance No. 1976-176, passed July 6, 1976)