

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

OHIO WATER POLLUTION
CONTROL BOARD,

Plaintiff,

v.

CITY OF CLEVELAND,

Defendant,

v.

BEDFORD HEIGHTS, et al.,

Third-Party Defendants,

and

CITY OF BEACHWOOD, et al.,

Plaintiffs,

v.

CITY OF CLEVELAND, et al.,

Defendants.

Case No. 886,594
(Consolidated)

O R D E R

WHEREAS, on June 15, 1972, this Court ordered the
establishment of the Cleveland Regional Sewer District; and

WHEREAS, this Court has retained jurisdiction over
this matter; and

WHEREAS, the Cleveland Regional Sewer District has been renamed the Northeast Ohio Regional Sewer District ("NEORS" or "District"); and

WHEREAS, the Ohio Environmental Protection Agency ("Ohio EPA") has succeeded to the powers and duties of the Ohio Water Pollution Control Board; and

WHEREAS, the Defendant Northeast Ohio Regional Sewer District ("NEORS" or "District") has made application pursuant to Title II of the Federal Clean Water Act, 33 U.S.C. §1251 et seq., for federal construction grant funds to assist in the financing of the construction of sewerage systems and wastewater treatment works; and

WHEREAS, one such project for which NEORS seeks grant assistance is the Southwest Interceptor which is designed to transport sewage from Cleveland's southwestern suburbs to NEORS's Southerly Wastewater Treatment Plant (the "Southwest Interceptor"), which will serve a population of approximately 284,000 and is intended, among other things, to eliminate discharges from wastewater treatment plants presently owned and/or operated by the Cities of Middleburg Heights, Strongsville ("A" Plant only), Brook Park and Berea; and

WHEREAS, another such project for which NEORS seeks grant assistance is the Heights/Hilltop Interceptor, which is designed to transport sewage from Cleveland's eastern suburbs to the Easterly Wastewater Treatment Plant (the "Heights/Hilltop Interceptor") which will serve a population of approximately 252,000; and

WHEREAS, the Southwest Interceptor and Heights/Hilltop Interceptor are planned to be constructed in segments, some of which will not be completed until after July 1, 1988; and

WHEREAS, NEORSD cannot yet finally determine the construction schedule for the entire Heights/Hilltop Interceptor project because U.S. EPA has not yet provided all necessary approvals required under the National Environmental Policy Act, 42 U.S.C. §4321 et seq.; and

WHEREAS, the United States Environmental Protection Agency ("U.S. EPA") has developed a "National Municipal Policy" to interpret the Clean Water Act, 33 U.S.C. §1311(1), and has taken the position that any entity seeking the award of sewage construction grant funds for any sewage treatment project, the construction of which will not be completed by July 1, 1988, must be subject to a compliance schedule incorporated into a federal or state judicial order; and

WHEREAS, NEORSD and U.S. EPA entered into grant agreements on September 29, 1984 authorizing to NEORSD federal construction grant funds for the Southwest Interceptor and Heights/Hilltop Interceptor pursuant to 33 U.S.C. §1282(a)(1); and

WHEREAS, on August 28, 1985, Ohio EPA certified NEORSD's construction grant applications for Fiscal Year 1985 for Heights/ Hilltop Interceptor Contract 1B and Southwest Interceptor Contract 3; and

WHEREAS, the objectives of this Order are, among other things, completion of the Southwest Interceptor and the Heights/ Hilltop Interceptor in the shortest time frame practicable; the elimination of discharges by wastewater treatment plants owned and/or operated by the Cities of Middleburg Heights, Brook Park, Berea, and Strongsville "A"; elimination of excessive infiltration and inflow and alleviation of wet weather overflows into the sewer system(s) tributary to the Southwest Interceptor; the elimination of sanitary wet weather overflows in the sewer system(s) tributary to the Heights/Hilltop Interceptor and alleviation of the problem of wet weather wastewater overflow to rivers and streams caused by a lack of capacity in the present system, and the elimination of numerous minor wastewater treatment plants; and compliance with Ohio law and with the Clean Water Act and regulations promulgated thereunder; and

WHEREAS, the parties agree that the schedules for construction of the Southwest Interceptor and Heights/Hilltop Interceptor projects set forth in Exhibits A through C of this Order provide for the completion of these projects by the earliest date(s) practicable; and

WHEREAS, this Court has jurisdiction to make and enter this Order;

NOW THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

I. THE PARTIES

This Order shall apply to and be binding upon the Ohio EPA and NEORS and the successors and assigns of each, as well as any agencies, officers, directors, employees, agents, members, associates, and servants thereof acting in their respective official capacities.

II. SCHEDULE

NEORS is hereby ordered to do the following:

(A) Southwest Interceptor

NEORS shall construct and place into service segments of the Southwest Interceptor according to the schedule which is attached hereto as Exhibit A and incorporated by reference as if fully restated herein.

At the earliest date practicable according to the construction schedule set forth in Exhibit A, NEORS shall connect each of the municipal wastewater treatment plants referred to in Section IV of this Order to the Southwest Interceptor, in accordance with the terms of the contracts for connection executed between such municipalities and NEORS.

(B) Heights/Hilltop Interceptor

NEORS shall construct and place into service segments of the Heights/Hilltop Interceptor according to the schedule which is attached hereto as Exhibit B and incorporated by reference as if fully restated herein.

If and when NEORS has received all necessary approvals required under the National Environmental Policy Act for the "gravity alternative" identified in the Facilities

Plan and Environmental Assessment for the Heights/Hilltop Interceptor, and after any other necessary permits have been obtained and review procedures completed, NEORSD shall construct and place into service segments of the Heights/Hilltop Interceptor according to the schedule which is attached hereto as Exhibit C and incorporated by reference as if fully restated herein. If for any reason U.S. EPA should determine that NEORSD should complete the Heights/Hilltop Interceptor by implementing the "pumping alternative" described in the facilities planning documents for the Heights/Hilltop Interceptor, instead of the "gravity alternative," then within one year of the time such determination is made, NEORSD shall develop and submit to Ohio EPA a schedule providing for design and construction of such alternative within the earliest practicable time, but with completion in no event later than the date specified for completion of all work in Exhibit C, as if the date of submission of such plan to Ohio EPA were the date for "FNSI" specified on Exhibit C. NEORSD shall implement such schedule.

III. REPORTING REQUIREMENTS

Beginning six months after entry of this Order and every six months thereafter, NEORSD is ordered to submit to the Ohio EPA a report on the current status and/or progress of all programs or projects ordered in this Order, including but not limited to identification of any items that might affect scheduled completion. A projection of completion dates for

the work yet to be performed under the terms and conditions of this Order during the next twelve month period shall be included in each semi-annual report.

IV. CIVIL PENALTY

The State of Ohio has determined that NEORSRD (which term for purposes of this paragraph shall include those cities that by July 1, 1986, have executed contracts for connection to NEORSRD's Southwest Interceptor) should be assessed a civil penalty of one million five hundred thousand dollars (\$1,500,000.00) for violations of state law and the Clean Water Act, for failure to meet the July 1, 1988 deadline specified in section 301 of the Clean Water Act, 33 U.S.C. §1331, with respect to the projects that are the subject of this Order.

In lieu of paying the cash penalty ordered in the foregoing paragraph and to offset the entire amount, NEORSRD agrees to do the following:

1. To begin acquisition on or before July 1, 1988, of equipment and appurtenances for a Laboratory and Control Systems Group Building(s) at NEORSRD's Southerly treatment plant site, which will provide analytical assistance for all of NEORSRD's treatment works. NEORSRD presently anticipates that the needs assessment and conceptual design for this project will commence on or before December 31, 1985.
2. To initiate construction on or before July 1, 1988, of a grease unloading facility and modernization and enhancement of the grease disposal facilities at NEORSRD's Easterly treatment plant site. NEORSRD presently anticipates that it will advertise for bids on this project on or before November 30, 1985.
3. To initiate construction on or before July 1, 1988, of improvements to equipment and appurtenances at pump stations at Dille Road, Division Avenue, and Jennings Road in Cleveland, Ohio. NEORSRD presently anticipates that design for this project will commence on or before December 31, 1985.

Said penalty offset shall apply to and inure to the benefit of those cities among Strongsville, Middleburg Heights, Brook Park and Berea that by July 1, 1986, have executed contracts for connection to NEORS'D's Southwest Interceptor, in any legal proceeding alleging such cities' failure to achieve an effluent limit of zero by July 1, 1988.


V. SAVINGS CLAUSE

This Order does not in any way relieve NEORS'D of its obligations to otherwise comply with state and local law. This Order shall not be construed to preclude the State of Ohio from seeking relief for any violation of applicable law occurring after the effective date of this Order or not otherwise within the scope of this Order.


VI. RETENTION OF JURISDICTION

Either Ohio EPA or NEORS'D may apply to this Court for such further relief, orders, and directions as may be appropriate. The Court shall retain jurisdiction of this matter to enforce the terms and conditions hereof and to resolve disputes arising hereunder.

DATE: 9/24/88


GEORGE J. MCMAHON, JUDGE

APPROVED:

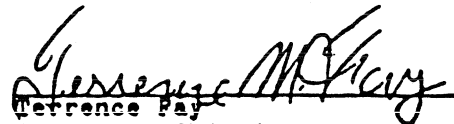


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Southwest Interceptor Schedule

<u>Activity</u>	<u>Complete On Or Before:</u>
Enact Rules And Regulations	January 1, 1986
Construct Contracts 1 & 2	July 31, 1987
Construct Contract 3	June 30, 1989
Construct Contract 4	November 30, 1989
Construct Contract 5	June 30, 1990
Construct Contract 6	June 30, 1992

West Leg

Design	December 31, 1989
Construct Contract 1	November 30, 1992
Construct Contract 2	August 31, 1993
Construct Contract 3	June 30, 1994

Heights/Hilltop Interceptor Schedule

<u>Activity</u>	<u>Complete On Or Before:</u>
Enact Rules and Regulations	January 1, 1986
Construct Contract 1A	September 30, 1987
Construct Contract 1B	October 31, 1988
Construct Contract 2A	October 31, 1989
Construct Contract 3	February 29, 1992
Construct Contract 3N	October 31, 1990
Construct Contract G	October 31, 1992
Construct Contract 2B	June 30, 1996
Construct Contract 6	June 30, 1999
Construct Contract 7	May 31, 2000

Heights/Hilltop Interceptor (Hilltop Leg) - Gravity Plan Schedule

<u>Activity</u>	<u>Notice To Proceed (NTP)</u>	<u>Complete On Or Before:</u>
Design	12 months after FNSI*	60 months after NTP for Design
Construct Contract 4	76 months after FNSI	31 months after NTP for Contract 4
Construct Contract 5	88 months after FNSI	49 months after NTP for Contract 5
Construct Contract F	100 months after FNSI	50 months after NTP for Contract F
Construct Contract H	112 months after FNSI	14 months after NTP for Contract H

*U.S. EPA Finding of No Significant Impact (FNSI) For The Gravity Plan