

THE STATE OF OHIO)
(SS.)
COUNTY OF CUYAHOGA)

IN THE COURT OF COMMON PLEAS
CASE NO. 886,594
(Consolidated)

OHIO WATER POLLUTION CONTROL BOARD,)
Plaintiff,)

-vs-

CITY OF CLEVELAND,)
Defendant,)

-vs-

BEDFORD HEIGHTS, ET AL,)
Third-Party Defendants:)

AND

CITY OF BEACHWOOD, ET AL,)
Plaintiffs,)

-vs-

CITY OF CLEVELAND, ET AL,)
Defendants.)

JUDGMENT ENTRY

CASE NO. 892,711

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For the reasons stated in the Memorandum of Opinion filed herein,
It is hereby found, ordered, adjudged and decreed

(1) That Exhibit "A", which is attached hereto, be and it is hereby
incorporated into this Judgment Entry and all of the provisions, conditions,
restrictions and requirements contained therein with respect to The Cleveland
Regional Sewer District, including, but not limited to, its name, place of
its principal office, its necessity, purpose and ultimate goal, plan for its
operation, construction of facilities, operation of facilities, financing,
sewer rates, provisions and conditions for transfer of the Cleveland sewage
treatment and disposal plants and interceptors, the contract dated August 11,
1916 between Cleveland and the Village of Rawlough Heights, territory, Board

of Trustees, and preliminary financing, be and constitute findings and judgments of the Court herein binding upon all parties hereto and their officials, officers, agents, servants, employees and representatives.

(2) That the establishment of the Cleveland Regional Sewer District in accordance with the provisions of Chapter 6119 of the Ohio Revised Code and subject to and in accordance with all of the provisions, conditions, restrictions and requirements pertaining to said District contained in said "Exhibit A", are necessary for the protection of the public health and safety.

(3) That the defendant Board of Commissioners of Cuyahoga County, Ohio, be and is hereby mandatorily enjoined to forthwith, and not later than April 18, 1972 --

(a) Duly authorize the filing of the petition for the establishment of the Cleveland Regional Sewer District as set forth in said Exhibit "A"; and

(b) Sign the said Petition and file it with the Clerk of the Cuyahoga County Common Pleas Court.

(4) The defendant, The City of Cleveland, is mandatorily enjoined to forthwith, and not later than the date set for the final hearing on the said petition being filed by the Board of County Commissioners for the establishment of the Cleveland Regional Sewer System, take all necessary steps by ordinance or otherwise to authorize and direct designated and appropriate officials of the City of Cleveland, to transfer by good and sufficient deed or other instrument of conveyance all of the facilities and land constituting the sewage treatment and disposal facilities, including the working capital thereof, of the City of Cleveland to the Cleveland Regional Sewer District free and clear of all indebtedness, bonded or otherwise, upon execution of a contract by the Board of Trustees of the Cleveland Regional Sewer District wherein the District agrees that the amount of \$29,859,250.00 as of May 1, 1972, together with interest thereon at 5-1/4 percent per annum computed quarterly, will be charged by it to the suburban (Subdistrict No. 2) users by an increment in their rates for water billed as sewage spread over a period of twenty-five (25) years and which amount will be credited to the Cleveland (Subdistrict No. 1) users over the same period.

time by a like reduction in their rates as that so charged to the rates of Subdistrict No. 2 users.

(5) That the rates for water billed as sewage established by the City of Cleveland by Ordinance No. 2147-69 effective January 1, 1970 and by Ordinance No. 1676-71 effective February 1, 1972 are fair and reasonable rates and are proper rates to be charged by the City of Cleveland for the sewage services supplied to the various municipalities during the time periods covered thereby, subject, however, to any rates that may hereafter be duly established by the Board of Trustees of the Cleveland Regional Sewer District after it has become a political subdivision and has had the sewage treatment and disposal facilities of the City of Cleveland, including the interceptor sewers, transferred to it; that there has been no overcharge for sewerage services by the City of Cleveland since January 1, 1970 for which Cleveland may be held liable to the various defendant municipalities; that the defendant municipalities receiving sewerage services from the City of Cleveland and the citizen users of said municipalities pay the said sewerage service charges currently applicable to them; that the judgment entry heretofore entered herein regarding partial payments to the City of Cleveland by East Cleveland and Cleveland Heights is hereby modified and said municipalities are hereby ordered to forthwith pay to the City of Cleveland all sums withheld pursuant to the aforesaid order, together with interest at the rate of six percent (6%) per annum on the amount of the funds so withheld by said defendants; and all of the sewer service charges currently applicable to said defendants; that the payments of such sums shall constitute full payment for all sums due and owing to the City of Cleveland for sewer service charges from January 1, 1970 to date.

(6) The defendant City of Cleveland and the third-party defendants named in the Third-Party Complaint filed herein by the City of Cleveland, their officers, employees and agents are, subject to further order of this Court, enjoined and restrained from -

(i) allowing any new or additional pollution arising within their limits to be discharged into the waters of the State from either new, enlarged or converted construction and

operations;

(11) Issuing any sewer permits or making any new sewer connections or extensions to any sewage system within their limits flowing into the City of Cleveland sewer system, provided however that the defendants, The City of Lakewood, The City of Euclid, The City of Middleburg Heights, The City of Bedford Heights and The City of Warrensville Heights whose sewage is chiefly disposed of by other than the Cleveland Sewage system shall not be bound by this Injunctive order as it pertains to waste water arising from any construction or operations in said defendant cities where the waste waters entering the sewer connections or extensions into their sewage systems do not flow into the Cleveland Sewage Treatment System.

(7) That the contract dated August 11, 1916 between the City of Cleveland and the Village of Newburgh Heights is, in accordance with prior adjudications, a valid and existing contract binding upon the City of Cleveland and the Village of Cuyahoga Heights, Ohio; that the Cleveland Regional Sewer District shall assume and become bound by said contract and all rights, powers, responsibilities, duties and obligations presently binding thereunder upon the City of Cleveland; that the District shall hold harmless the City of Cleveland from any claims, demands, rights of action or causes of action which may arise in connection with the said contract from and after the time the said Cleveland facilities are transferred to the District.

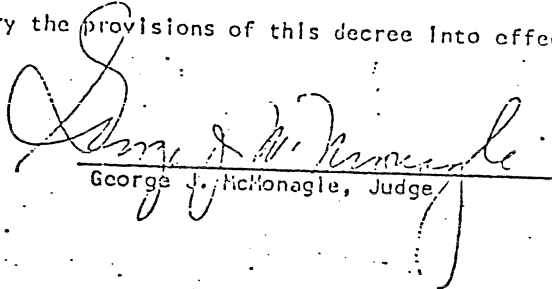
(8) All parties hereto are further hereby mandatorily enjoined to take all steps and perform all acts necessary to bring about the establishment of the said Cleveland Regional Sewer District and the transfer into it of the sewer treatment and disposal facilities and interceptor sewers of the City of Cleveland in accordance herewith.

(9) The plaintiff and all defendants and all officers, agents, servants, employees and representatives of said parties, and all those acting in concert or in participation with them upon receiving actual notice of this

Judgment Entry, are hereby enjoined from taking any step or action and from permitting, engaging in, giving consent or approval to or supporting any policy, procedure or action which is inconsistent with the orders contained herein or which may delay the creation or establishment of the aforesaid Cleveland Regional Sewer District.

(10) The Judgment for all costs hereof is hereby entered against the defendant, The City of Cleveland, to be paid from the funds collected for or allocated to The Division of Water Pollution Control.

(11) Jurisdiction of the within action is retained by this Court for the implementation of orders entered herein and for such further proceedings as the Court deems necessary to carry the provisions of this decree into effect.


George J. McDonaghe, Judge

4 April 1972

SERVICE

A copy of the within Judgment Entry was mailed the 4th day of April, 1972, to all counsel for the parties herein, by Certified Mail.

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STATE OF OHIO)
) SS
COUNTY OF CUYAHOGA)

CASE NO.

IN RE: ESTABLISHMENT OF THE CLEVELAND)
 REGIONAL SEWER DISTRICT)

PETITION

In accordance with the authorization duly adopted by the Board of County Commissioners of Cuyahoga County, Ohio, the said Board does hereby petition the Common Pleas Court of Cuyahoga County for an order organizing and creating a Regional Sewer District pursuant to the provisions of Chapter 6119 of the Ohio Revised Code, and in accordance with and subject to the provisions and conditions hereinafter set forth:

A. NAME. The proposed name of the district shall be "The Cleveland Regional Sewer District".

B. PLACE. The place in which the principal office of the district is to be located is 1825 Lakeside Avenue, Cleveland, Ohio, or such other place as the Board of Trustees as hereinafter designated shall establish.

C. NECESSITY FOR THE PROPOSED DISTRICT. The increase in the amount of waste water 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 metropolitan 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.

D. The purpose and ultimate goal of the District shall be the establishment of a total waste water control system for the collection, treatment and disposal of waste water within and without the District.

1. Serving the metropolitan Cleveland area;
2. With uniform metropolitan rates;
3. With control, administration and financing by a Board of Trustees;
4. Capable of being expanded in the future to include additional areas;

5. With overall control of all waste water collection systems in the area through rules and regulations for the purpose of obtaining uniform construction and inspection of facilities and for the purpose of regulating discharges into the system, but with local sewage collection facilities under local jurisdiction for planning, construction, financing and maintenance purposes unless the local municipality desires to contract with the District for such services;

6. With the following being the plan for the 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 following:

(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 upon being so transferred the Board of Trustees shall commence the operation of the District subject to and in accordance with all of the provisions contained herein.

(c) Construction of Facilities.

1. The District will plan, finance, construct, operate and control waste water treatment and disposal facilities, major interceptor sewers and other water pollution control facilities.

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 any longer period mutually agreed upon between the District and the City of Cleveland.

2. The construction and financing of local sewerage collection systems will be the responsibility of the individual municipalities or political subdivisions, although the District has statutory authority in this area.

The cost of constructing such collection facilities will be borne by the users in the territory served by such collection facilities although 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 sub-district served by such trunk sewers.

(d) Operation of Facilities.

1. For the first four years, or any longer period mutually agreed upon, the District shall employ the City of Cleveland to operate and maintain all major interceptor sewers and treatment facilities over which the Cleveland Regional Sewer District has jurisdiction. If, at any time during the period of this operating agreement, the City fails to operate the facilities in accordance with standards imposed by State and Federal regulatory agencies, the District may terminate the operating agreement.

2. Local sewerage collection systems will be operated by the individual municipalities unless they contract with the District for such service. In either case, the cost of operating the collection systems would be borne by the municipality and not by the District.

3. The District will exercise over-all control of all waste water collection systems, through rules and regulations, for the purpose of obtaining uniform construction and inspection of facilities and regulation of discharges to the total system.

(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 waste water 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 Hills (Hilltop) Interceptor.

2. It is contemplated that the major interceptor sewers, waste water treatment facilities and the other water pollution control facilities will be eligible for financing under the program of the Ohio Water Development Authority. Under that program, the construction funds will be provided by the Ohio Water Development Authority and 70% of the costs of these projects will be repaid by the District to the Authority, with interest, over a twenty-five year period. The remaining 30% constitutes a subsidy from the Authority and need not be repaid. Should the Federal Government or the State increase its expenditures during the five years of the OWDA Program in excess of 30% of all Ohio project costs, the amount of such excess will be considered in establishing rates.

3. Other financing of District Projects. Any projects not financed through the Ohio Water Development Authority would be financed by the issuance of revenue bonds or from available revenues as 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 Develop-

ment 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 to serve unsewered areas.

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. It shall be credited with the amount of the suburban subdistrict (Subdistrict No. 2) rate charged for the suburban share of the sewage treatment and disposal facilities owned and constructed by the City of Cleveland, in accordance with the Order of the Court in Case No. 886,594.

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

(a) Debt service charges for the presently planned Southwest, 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 Hills (Hilltop) Interceptor.

(b) An increment for the suburban share of the sewage treatment and disposal facilities transferred to the District by the City of Cleveland in accordance with the Order of the Cuyahoga County Common Pleas Court, Case No. 886,594.

4. 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.

(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 Contract dated August 11, 1916, between the City of Cleveland and the Village of Newburgh Heights, which is referred to in the Answer of the Village of Cuyahoga Heights in said Case No. 886,594 is, in accordance with prior adjudications, a valid and existing contract binding upon the City of Cleveland and the Village of Cuyahoga Heights, Ohio; that the said District assumes and is bound by all rights, powers, responsibilities, duties and obligations presently binding upon the City of Cleveland thereunder, and the District will hold harmless the City of Cleveland from any claims, demands, rights of action or causes of action which may arise in connection with the said Contract from and after the date the said Cleveland facilities are transferred to the District.

(i) When the District assumes the ownership of any existing interceptors or treatment works, other than those of the City of Cleveland which is herein provided for in D 6(b), any determination of the value of such facilities shall be pro-rated in accordance with each subdistrict's use of those facilities; any such value shall not include the cost of facilities already paid for by a suburban community, other than the owner of such facilities, which is a part of the District and such value shall have deducted from it any Federal or State grant monies that have been received for those facilities. The original cost of a facility shall be computed as the total actual project cost, including construction, engineering, legal, administrative and loan costs, less any part paid from State or Federal funds.

(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.

E. GENERAL DESCRIPTION OF THE TERRITORIES TO BE INCLUDED.

1. The District will initially include all political subdivisions in Cuyahoga County, Ohio presently served by Cleveland's waste water 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)".

2. 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.

F. BOARD OF TRUSTEES.

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

1. The Board of Trustees shall consist of seven persons whose regular terms shall be for a period of five years each. Three of the members shall be appointed by the Mayor of the City of Cleveland, Ohio, two by the Board of County Commissioners of Cuyahoga County, Ohio, and two by the Governor of Ohio. Each member appointed by the Mayor of the City of Cleveland, and by the Board of County Commissioners of Cuyahoga County, Ohio 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. The members appointed by the Governor shall be residents and electors of Ohio and shall not be members of the same political party, and

of the members so appointed shall be experienced in the field of Industrial activities, and one shall be experienced in the field of municipal government. The members of the Board of Trustees first appointed by the Mayor of the City of Cleveland shall have terms expiring on March 1, 1974, March 1, 1975 and March 1, 1977; those first appointed by the Board of County Commissioners shall have terms expiring on March 1, 1975 and March 1, 1977; those first appointed by the Governor of Ohio shall have terms expiring on March 1, 1975 and March 1, 1977.

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.

2. The Board shall elect one of its members as President and shall elect another as secretary. Four members of the Board shall constitute a quorum and the affirmative vote of four members shall be necessary for any action taken 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.

3. The annual compensation for the President of the Board shall be \$5,200.00 plus expenses.

4. The annual compensation for its members shall be \$3,600.00 plus expenses.

G. 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 Board of Cuyahoga County Commissioners, as requested by the District and authorized by such Board of County Commissioners, pursuant to an Agreement between the

District and such county providing for the repayment of such sums in accordance with Revised Code Section 6119.04(D).

II. WHEREFORE, the Board of County Commissioners of Cuyahoga County, Ohio, prays that the presiding judge of the Cuyahoga County Common Pleas Court forthwith assign one of the judges of the said Court to sit as judge of the Common Pleas Court to exercise the jurisdiction conferred by Chapter 6119 of the Revised Code; that upon being so assigned, said judge shall,

1. Determine whether the within Petition complies with requirements of Chapter 6119 as to form and content;
2. Fix the time and place of a final hearing on the Petition for the establishment of the proposed regional sewer district;
3. Direct the Clerk of the Cuyahoga County Common Pleas Court to give notice of the time and place of such hearing by publication once each week for four consecutive weeks in a paper having a general circulation in Cuyahoga County, Ohio, including a notice that any person or any political subdivision residing or lying within the area affected by the organization of the District may file an objection to the granting of the request made in the prayer of the Petition prior to the date of the hearing;
4. That at said final hearing, the Court shall dispose of all objections that have been filed as justice and equity require, and it shall find, adjudge and decree that the Cleveland Regional Sewer District is necessary, that it and the plan for the operation of the District is conducive to the public health, safety, convenience and welfare, that the plan for the operation of the District is economical, feasible, fair and reasonable and the Court shall by its findings, entered of record, declare the District finally and completely organized and to be a political subdivision.

The territory to be included in the Cleveland Metropolitan 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/capable of being served mainly 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 Cleveland Metropolitan Regional Sewer District are the following:

1. Beachwood, City of (all)
2. Bratenahl, Village of (all)
3. Brecksville, City of (all)
4. Broadview Heights, City of
(all except that portion located south of the Ohio Turnpike)
5. 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)
6. Brooklyn, City of (all)
7. Brooklyn Heights, Village of (all)
8. 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)
9. Cleveland Heights, City of (all)
10. Cuyahoga Heights, Village of (all)

EXHIBIT "A(1)"