

STATE OF OHIO)
COUNTY OF CUYAHOGA) SS

IN THE COURT OF COMMON PLEAS

CASE NO. 886,594
(Consolidated)

PROCESSED BY,
C.S.O.

OHIO WATER POLLUTION CONTROL BOARD)

Plaintiff

vs.

CITY OF CLEVELAND)

Defendant

FILED
APR 28 1972
SMILJA MASGAN
CLERK OF COURTS
CITY OF CLEVELAND, OHIO



vs.

BEDFORD HEIGHTS, ET AL)

Third Party Defendants)

*****)

CITY OF BEACHWOOD, ET AL)

Plaintiffs)

vs.)

CITY OF CLEVELAND, ET AL)

Defendants)



MEMORANDUM OF OPINION

CASE NO. 892,711



The within action is one in which the case of the Ohio Water Pollution Control Board vs. The City of Cleveland, Ohio, Case No. 886,594, has been consolidated with Case No. 892,711, City of Beachwood, et al vs. The City of Cleveland. The parties herein are the Water Pollution Control Board of Ohio, The City of Cleveland, The Board of County Commissioners of Cuyahoga County, Ohio, City of Bedford Heights, Village of Bratenah!, Village of Brooklyn Heights, City of Cleveland Heights, City of East Cleveland, Village of Highland Heights, City of Lakewood, City of Lyndhurst, City of Maple Heights, City of Mayfield Heights, Village of Mayfield, City of Middleburg Heights, Village of North Randall, Village of Oakwood, City of Parma Heights, City of Richmond Heights, City of Seven Hills, City of South Euclid, City of University Heights, City of Warrensville Heights, Village of Woodmere, City of Beachwood, City of Brooklyn, City of Brook Park, City of Euclid, City of Garfield Heights.

Village of Gates Mills, Village of Linndale, Village of Newburgh Heights, City of Parma, City of Shaker Heights, Village of Cuyahoga Heights, Trustees of River Edge Township, and Trustees of Warrensville Township.

Every political subdivision in Cuyahoga County, Ohio whose sewage is treated and disposed of by the City of Cleveland is a party herein and has either appeared herein, or filed a pleading or is in default thereof. Those political subdivisions not parties hereto and presently served or capable of being served by sewers leading to the three waste water treatment plants, will be included in the regional district herein provided for.

Leave was also granted to the Environmental Protection Agency of the United States and the Sierra Club to appear, file a Brief and present oral arguments herein as amicus curiae.

The relief desired and prayed for by the parties hereto is the entry of such judgments and decrees as will terminate the controversies that have existed between and among parties hereto over a period of years in connection with the treatment and disposal of sewage. It is expected that the relief ordered herein will help abate the polluted and poisonous state of the waters of Lake Erie and those tributary to it.

The case of Ohio Water Pollution Control Board vs. The City of Cleveland, being Case No. 886,594, was filed in this Court on September 3, 1970. It was the claim of the Plaintiff that The City of Cleveland was inadequately and improperly treating and disposing of sewage; that this material contributed to the polluted condition of the state waters so as to endanger the public health and safety; that it had issued orders directing Cleveland to remedy the matters complained of; that Cleveland neither obeyed the orders nor appealed them and advised the Water Pollution Control Board it had decided to disregard the Board's orders; the prayer of the Complaint was one asking the Court to enjoin the City of Cleveland from violating orders of the Ohio Water Pollution Control Board; the Board further asked that the Court, "grant such other relief as Plaintiff may be entitled to in law or equity".

Subsequent to the issuance of temporary restraining orders, the parties agreed to the issuance of a preliminary injunction on September 17, 1970 and December 2, 1970, which included the following: "It is further ordered that the hearing set for today with reference to the preliminary Injunctive orders is hereby continued by consent of all parties for hearing before Judge George J. McMonagle on December 1, 1971 at 9:30 A.M."

On October 16, 1970, the City of Cleveland filed its Answer in Case No. 886,594.

On March 8, 1971, twenty-one of the political subdivisions outside of Cleveland whose sewage emptied into and was treated and disposed of by the Cleveland sewage system, filed Case No. 892,711 herein, captioned, City of Beachwood, et al vs. The City of Cleveland, claiming that Cleveland was making unlawful charges against the political subdivisions, or their residents, outside of the City of Cleveland, for sewage treatment and disposal and those Plaintiffs asked that this Court, grant some specific relief and also prayed, "for such other and further relief that the Court may deem proper in law or in equity". The City of Cleveland filed an Answer in this action and also asked the Court to mandatorily enjoin three of the suburban municipalities from withholding payment of charges made against them for sewage treatment and disposal, claiming that without these charges, Cleveland did not have the funds to operate its sewage treatment and disposal facilities; that it was unable to purchase needed chemicals and it did not even have funds to purchase the paper upon which to prepare required reports for the State of Ohio. In the Answer in this action, the City of Cleveland included the following as part of its prayer, "that the costs of this action be assessed against the Plaintiffs and that the Defendants receive any other and further relief which this Court may deem proper in law or in equity".

On December 1, 1971, subsequent to leave therefor being granted by the Court, The City of Cleveland filed in Case No. 886,594, a Third Party Complaint in which it named 35 defendants. It claimed therein that because of the Preliminary Injunction that, neither additional pollution has been discharged resulting from new construction, nor have additional connections or extensions

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slons been made within the City of Cleveland which increased the polluting properties of the effluent from its treatment and disposal plants, but that the continued development without the City of Cleveland and additional pollution discharged from new construction without the City of Cleveland, together with extensions and connections made by the Third Party Defendants into the sewage system, which flows into the Cleveland system, have increased the polluting properties of the effluent and it prayed that the Court make certain requested orders with reference to rates for sewage treatment billed as water; that the Court restrain and enjoin the Third Party Defendants from allowing new or additional pollution to be discharged into the waters of the state resulting from either new, enlarged, or converted construction and operations or allowing new or additional connections or new or additional extensions of any sewage system where the waste waters went into the Cleveland sewage disposal system. The Third Party Complaint further prayed, "that the Court grant such other and further relief as the City of Cleveland may be entitled in law and equity".

Answers were filed by the Third Party Defendants.

A counterclaim was also filed by some Third Party Defendants, asking that a money judgment in the amount of \$100,000,000.00 be entered against the City of Cleveland. The Court, on its own motion, severed this counterclaim and it is being proceeded on in Case No. 886,594A.

On February 1, 1972, Case No. 886,594 and Case No. 892,711 were consolidated into this one action by agreement of all parties.

An order was entered banning the suburbs and the City from making new sewer connections, etc., until further order of Court.

On February 1, 1972, all of the parties to the within consolidated action joined in the following stipulation:

"For the purpose of obtaining a speedy resolution of the subject action, the parties hereto stipulate, without prejudice to their rights in any other proceeding or action, that sufficient evidence has been received in the subject action upon which the Court should grant relief in the nature of that prayed for by the parties herein and/or in accordance with the Court's plenary equity powers."

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The polluted state of Lake Erie and the waters tributary to it has been clearly established. Actually, it is a fact that is so open and notorious that any Court would be warranted in taking judicial notice of it.

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 City of Cleveland and the suburbs, whose sewage is treated and disposed of by Cleveland, have for some time recognized the above stated necessity for the existence of a single governmental agency with authority to plan, control, operate, etc., the sewage treatment facilities, have, in substance, acknowledged such necessity, but have been unable to agree upon all features of such an agency.

The Court finds that the existence of this polluted state of the waters has been caused in part by the lack of a single governmental agency in Metropolitan Cleveland with authority to plan, manage, finance and control sewage collection, treatment and disposal on an area-wide basis and that such polluted state and lack of a proper agency imperils 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.

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On March 23, 1971, the Supreme Court of the United States, in the case of Ohio v. Wyandotte Chemicals Corp., et al, 401 U.S. 493, also reported in 57 Ohio Opinions 2d 351, held that, while it had jurisdiction to entertain an action filed by Ohio against foreign states and corporations to abate an alleged nuisance resulting from the contamination and pollution of Lake Erie, that it declined to do so where the issues were bottomed principally on local law, there were governmental agencies involved in the problem, and the case presented complex, novel and technical factual questions for whose resolution the Supreme Court claimed no expertise. It stated that, while it declined to grant Ohio's Motion for Leave to file its action, that should it do so, that the legal principles it would be called upon to decide in an action whose principal purpose was to abate the nuisance of pollution would be the same legal principals that the courts of Ohio would be called upon to apply, that is, the common law of nuisance. It stated that it was further aware, "that many competent, adjudicatory and conciliatory bodies are actively grappling with on a more practical basis."

57 O.O. 2d, page 355:

"The courts of Ohio, under modern principles of the scope of the subject matter and in personam jurisdiction, . . . would decide it under the same common law of nuisance upon which our determination would have to rest.

page 356:

In view of all this, granting Ohio's motion for leave to file would, in effect, commit this Court's resources to the task of trying to settle a small piece of a much larger problem that many competent, adjudicatory and conciliatory bodies are actively grappling with on a more practical basis."

This Court feels that it has been mandated by the Supreme Court of the United States to settle the phase of the Lake Erie pollution problem which is the subject of this action, on as practical a basis as is possible.

Counsel, of course, are aware of the broad equity powers of the Court, particularly when the public health and safety is imperiled.

The following words of the Supreme Court of the United States in Brown v. Topeka, etc., 349 US 294, 99 LEd 1083, 75 S. Ct 753, are pertinent to the authority-obligation of the Court in this action.

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page 300: "In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs."

Since the parties, although conceding the necessity for the establishment of a proper agency, have been unable to conclude an agreement with reference to its establishment, the Court, in accordance with the prayer for relief of the parties, and in order to help abate a poisonous nuisance which imperils the public health and safety, has become obligated to fashion such orders as will bring about the establishment of a single governmental agency with authority to plan, manage, finance and control sewage collection, treatment and disposal on an area-wide basis in accordance with provisions of Statutes of Ohio.

The Court herein, on December 20, 1971, ordered the City of Cleveland and the political subdivisions whose sewage was treated and disposed of by the Cleveland sewage treatment and disposal system, to prepare and file in Court a plan for a metropolitan sewer system agreeable to each side. The Court further advised the parties that if the parties were unable to agree upon a Metropolitan Sewer System that the Court would be obliged to fashion such orders as would bring about the establishment of such a system. A copy of the plan filed by Cleveland, and satisfactory to it, is attached hereto and marked Exhibit 1. A copy of the plan filed by the suburbs, and agreeable also to them, is also attached and it is marked Exhibit 2. A copy of the plan filed by the Board of County Commissioners, the Trustees of River Edge Township and the Trustees of Warrensville Township is contained in the Answer of the Board of County Commissioners which is attached hereto and marked Exhibit 8. When it became obvious to the Court that there were certain material phases of a plan for a Metropolitan Sewer System that could not be agreed to by the parties, further testimony was taken as to the type of an agency that should be the subject of the Court's Order.

In addition to evidence presented by the parties hereto, a recommendation from Governor John J. Gilligan was presented in Court by his personal representative and a copy of a resolution adopted by the Ohio Water Pollution Control Board was presented by the Attorney General of Ohio. These are

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Approved by
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Included in the record herein and copies are attached hereto and marked as Exhibits 3 and 4. The Court also received testimony from the following persons: Mr. Dale Bryson, Deputy Regional Enforcement Director, The Environmental Protective Agency of the United States; Mr. Carl S. Bohm, Director of the Regional Planning Commissioners; Mr. George Watkins, Three Rivers Watershed District; Mr. Seth Taft of the Cuyahoga County Board of Commissioners; Mr. Eugene B. Squires, President of the Builders Association of Greater Cleveland; Mr. George C. Fenker, Chairman of Regional Sewer Committee of Municipal Engineers; Mr. Ron Courtney, President, Cuyahoga County Municipal Engineers Association; Mr. Estal E. Sparlin, Director, Citizens League of Cleveland; Mr. Charles Pinzone, Executive Secretary, Cleveland Building Trades Council of the Cleveland AFL-CIO Federation of Labor; Mrs. Janet Hutchison, Chairman of the Pollution Control Committee of the League of Women Voters of Cuyahoga County, Ohio; Mrs. Evelyn Stebbins of the Citizens for Clean Air & Water.

There also were recommendations from the American Society of Civil Engineers, The Lake Erie Watershed Conservation Foundation and the Regional Plan Commission, which are not a part of the record. Copies of these however are attached hereto and marked Exhibits 5, 6, and 7.

The determination of the issues that are in dispute and the fashioning of the orders that are necessary to give effect to the decision of the Court, calls for the exercise of the traditional equitable powers of this Court.

Upon due consideration of the pleadings, evidence, stipulations and admissions of the parties, it is the decision of the Court that proceedings must be taken for the immediate establishment of a Cleveland regional sewer district under the provisions of Chapter 6119, as amended, of the Ohio Revised Code; that its name, location, necessity, purpose and plan for the operation of the district, territory, structure of its governing body, its plan for its financing and particular conditions and provisions with reference to it, are contained in Exhibit "A" which is attached hereto and made a part

hereof. Said Exhibit is in the form of a petition in order to facilitate the preparation and filing of the petition required by Chapter 6119. It includes, however, the findings and determinations of the Court as to issues raised herein.

The said district shall have merged into it by transfer from the City of Cleveland to said district, the sewage treatment and disposal facilities of the City of Cleveland, including generally the Easterly, Southerly and Westerly sewage treatment and disposal plants, the sludge force main, the interceptor sewers flowing into said plants, and all land, facilities, equipment and working capital which are a part of the Cleveland Sewage Treatment and Disposal System, specifically excepting therefrom its local collection system.

Exhibit "A" includes within it a plan for the operation of the district as required by Chapter 6119. This plan chiefly consists of items upon which the parties were in agreement as is evident from Exhibits 1 and 2. The Court has included in such exhibit not only the matters upon which the parties were in agreement, but his determination of those matters upon which they were not agreed, and has incorporated all items in the petition and plan and these, when included in the Judgment Entry herein, will constitute, in part, the Judgment of the Court.

Under the provisions of Section 6119.02 of the Revised Code, the procedure for the organization of a regional sewer district is initiated by a petition filed in the office of the Clerk of Courts of the Common Pleas Court which shall be signed by one or more municipalities, corporations or counties after having been authorized by the legislative authority of the political subdivision. The legislative authority of any municipality, corporation or the Board of County Commissioners of any County may act in behalf of any part of their respective political subdivision. Since all of the concerned political subdivisions are located in Cuyahoga County, Ohio, the Court has determined that the Defendant, Board of County Commissioners of Cuyahoga County, Ohio, should initiate the required statutory proceedings by authorizing and filing the required petition in a form which contains and reflects the decision of

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Court Clerk

the Court in the premises.

The Court has had the benefit of excellent cooperation by all parties in attempting to expeditiously bring about the results that are necessary for the public health, safety and welfare. This has included the suburbs in the persons of Mayor John Petruska of Parma, Mayor Raymond A. Stachewicz of Garfield Heights, their Law Directors and other legal representatives; the Council of the City of Cleveland, whose representatives, Lawrence W. Duggan, Michael Zore and Robert C. McCall participated in Court proceedings herein with Mayor Ralph J. Perk and Utilities Director Raymond P. Kadukis, Law Director Richard Hollington, Jr., Assistant Law Directors Louis Rego and Nicholas DeVito, Charles A. Crown, Commissioner of Water Pollution Control and Lawrence M. Pollitzer, Chief Electrical Engineer, the County of Cuyahoga, by Hugh A. Corrigan, President of the Board of County Commissioners, Member Seth Taft, John H. Puzenski, Sanitary Engineer and A. M. Braun, Assistant Prosecuting Attorney.

The creation or establishment of the regional sewer district shall be in conformity with the proceedings specified in Ohio Revised Code Sections 6119.02, 03, 04 and the Defendant Board of County Commissioners will be mandatorily enjoined to authorize and file the designated petition. The Defendant, City of Cleveland, will be mandatorily enjoined to transfer its sewage treatment and disposal facilities to the regional sewer district by appropriate deeds or other instruments of conveyance in accordance with an ordinance authorizing the appropriate officers of the City of Cleveland to do so upon execution of an Agreement by the Board of Trustees of the district to cause the amount determined by the Court to be credited to Cleveland users.

A brief discussion of matters which were in dispute and have been resolved by the Court follows:

1. The Type of Agency.

After a complete review of the laws of Ohio with reference to the power and authority of a sewer district as contained in Chapters 6117 and 6119 together with a consideration of all of the circumstances and conditions thereto outlined in the within lawsuit, the Court has decided that a Chapter 6119 district should be established.

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Respectfully,
The Court

2. Board of Trustees.

a. Consideration has been given by the Court to the contentions of all parties and witnesses as to the number of persons that should constitute the Board of Trustees, their compensation and the manner of designation or appointment. The Court does not feel that the source of a member's appointment is of the importance ostensibly maintained by some persons. It must be remembered that the procedure established for the appointments will prevail for a great number of years and that changes in the personnel of the appointing authorities are inevitable.

b. Each member, when he takes office will be vested with the same authority and the same responsibility for the protection of the health, safety and welfare of millions of persons. The Court cannot conceive of any appointing authority designating a member of the Board of Trustees who would subvert the performance of his duties because of the source of his appointment. Each member is to provide protection for every concerned city, village and township and each of its citizens.

c. The Court feels that the Board of Trustees will best function if it consists of seven persons; three appointed by the Mayor of Cleveland, two by the Commissioners of Cuyahoga County and two by the Governor of Ohio. The authority vested by law in the State of Ohio with respect to pollution control and related matters, together with the pending threat that it may itself take over the Cleveland sewer facilities, has inclined the Court to include the Governor of Ohio as an appointing authority.

The fact that there is a substantially greater percentage of water billed as sewage to the residents and businesses in Cleveland, than to those in the suburban communities, warrants the appointment by the Mayor of Cleveland of 50 percent more members than the Board of County Commissioners, even though the population difference is not of the same proportion.

d. Compensation of Trustees. It is not anticipated that the duties of the Trustees will be of the occasional perfunctory, rubber-stamp type. They will have duties involving over 40 political entities. The time spent in connection with this work will not be limited to that spent at formal meetings.

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Neither will it constitute full time employment. Membership on public boards and commissions without compensation, or with token compensation, is commendable. Many capable persons, however, have not reached the status in life where they can afford such luxury. It is not expected that the romance and glamour of membership on a sewer board will be an acceptable substitute for monetary compensation. The sum of \$3,600.00 per year for each member and \$5,200.00 per year for the chairman, constitutes reasonable compensation.

Cleveland's contentions that those Trustees appointed by its Mayor should be sufficient in number to actually control the Board have not been convincing for the reasons previously stated. Further, the plan for operation of the district provides for its operation by Cleveland for four years under contract with the district.

The Court is satisfied that the City of Cleveland, the State of Ohio, the County of Cuyahoga and every political subdivision within its area, together with their residents and businesses will be adequately represented by the members of the Board and that the rights and interests of each will be protected. The contentions of the suburbs that they have, as a practical matter, been the subjects of a taxation without representation situation will be without any validity.

The qualifications for the members appointed by the Governor will be the same as required by Section 6111.02 for membership on the Water Pollution Control Board of Ohio. The regular term of the members of the Board will be for five years subject, however, to varying terms for those first appointed as indicated in Exhibit "A".

3. Territory.

The territory initially included within the district is described in detail in Exhibit "A". Chapter 6119 makes adequate provision for the expansion of territory in the district - even outside of Cuyahoga County.

4. Determination of a reasonable sum to be charged to the suburban users and credited to the City of Cleveland users for the suburban share of the Cleveland facilities being transferred to the district that were not amortized during the period of suburban contribution to the cost thereof.

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It obviously has become the obligation of the Court as part of his requiring the establishment of a regional sewer district for the public health and safety to set a basis for equalization of contributions to the District.

Testimony as to an amount that would represent a reasonable sum to be used as a basis for disposition of this issue was presented in the form usually presented for the determination of utility rates in accordance with Ohio Revised Code §4909.05.

We are not concerned with utility rates in this phase of this matter nor does this constitute the sale of assets of one party to another nor the appropriation of one's property for the benefit of another.

The transfer of Cleveland facilities in the organization of the District constitutes an incorporation of facilities operated by one governmental agency into another governmental agency having a broader base and with authority for expansion to conform to changing needs.

It is to be expected that all communities that are becoming a part of the District should contribute, on a proportional basis, for its physical facilities -- that a proportional equalization in this respect be achieved. This is conceded by all parties. Since all facilities will originally come from the City of Cleveland the suburban users are to provide compensation to the Cleveland users for the suburban share of the facilities. This can only be done by an addition to the suburban rate which will be utilized as a reduction in the Cleveland rate. It would not be practical to attempt to achieve this equalization in a few years.

The testimony as to how such amount should be arrived at was interesting and covered a broad area. All witnesses applied the Reconstruction Cost Less Depreciated (RCMD) approach.

All computations started with the original costs to Cleveland of the various facilities. These were then expanded by the application of trending factors according to charts published by the Engineering News Record and also reduced by varying depreciation calculations. There was also testimony that

due to technological advances and the imposition of new Federal or State standards that a substantial portion of the present facilities might well become functionally obsolete within a relatively short time. Computations made by each side indicated that facilities which had been in use for generations have present values which are many times that of the original costs. Such valuation procedures are necessary in determining rates and they are important, although not controlling, for a determination of a basis to be used to achieve an equalization of contributions in a new agency being established for the protection of the public health and safety.

If a new agency was not being established, Cleveland would not have its rates reduced because it was being reimbursed by others for a part of its old facilities; nor would the suburbs be surcharged for the amounts credited to Cleveland for such reimbursement. Cleveland would remain possessed of such facilities, for which it would never be reimbursed by another agency. At the same time, the suburbs would receive the benefit of the use of such facilities but they would never be required to so reimburse Cleveland for them.

Some of the facilities with which we are concerned have been in use for generations; they consist of masonry imbedded in the earth and are performing the functions for which they were designed, and either possess useful lives in excess of that upon which the depreciation allowances were based or may become obsolete in a relatively short time.

All valuations other than the original costs that were testified to at the trial are, of course, both theoretical and arbitrary. They will never be utilized for any purpose other than the consideration given them by this Court in arriving at a basis for requiring a decrease in the Cleveland rate and an increase in the suburban rate as a means of equalizing contributions to the District.

There are no statutes or judicial precedents by which the Court is bound. The decision of the Court is one that is discretionary with it and is predicated upon the application of the equitable principles being applied.

fashioning of all the orders herein which are necessary for the public health and safety.

Contributions by the suburbs to the cost of the facilities being transferred were assumedly being deducted from the calculations testified to by the witnesses. However, Cleveland refused to acknowledge any such contributions for the years of 1970, 1971 and 1972, although they obviously were made but in form different from that of prior years. Federal and State grants were supposed being deducted from the original costs of the facilities. Yet, U.S. Government P.W.A. grants totalling \$3,104,630.44 during the years of 1935 through 1939 were not deducted in the Cleveland calculations. They probably were not deducted when costs were used as a factor in computing rates either.

Testimony included averments that certain units apparently listed in the original cost totals had become obsolete or had been scrapped. There was also testimony that some of the historical costs included engineering changes and that the 15% add-on included in Cleveland's calculation was subject to question.

While some of the items have been in use for generations others are almost brand new and in some instances the amounts included as historical costs really constitute the total amount of some contracts which had not as yet been completed. Approximately 50% of the historical costs of facilities at the Easterly plant are in the "almost brand new" category.

The portion of the plan of operations agreed to by the parties include the assumption by the suburbs of all of the cost of four of the presently planned interceptors as a portion of their equalization contributions looking to the time when, years in the future, there actually will be a uniform regional rate.

Upon due consideration of all the evidence, pleadings, arguments, briefs, admissions, stipulations, and exhibits; the Court has determined that based upon equitable consideration, a reasonable sum to be used as the basis for equalization of contributions, as of May 1, 1972, is the sum of \$29,869,250.00. Any addition to the costs of the facilities after May 1, 1972, shall be computed on the basis of 30.8% of the actual cost.

The facilities that necessarily must be transferred are the sewage treatment and disposal plants and the interceptors.

This equalization shall be carried out by including in the Sub-district No. 2 rates such amount as will total the said sum over a period of 25 years together with interest on said sum at 5-1/4% interest computed quarterly and which amounts shall be credited to and used as a deduction from rates for water billed as sewage for the Cleveland (Subdistrict No. 1) users during said period of time.

The following shall be the procedure to be followed for the establishment and organization of the Regional Sewer District:

(1) The Board of County Commissioners will authorize and file the petition hereinbefore referred to as Exhibit "A" forthwith and not later than Tuesday, April 18, 1972.

(2) The Presiding Judge of the Cuyahoga County Common Pleas Court will designate a Judge to sit as Judge in the proceedings in accordance with Chapter 6119 of the Ohio Revised Code, and if such Judge determines that such petition complies with the requirements of Chapter 6119 of the Ohio Revised Code as to form and content, he shall fix the time and place of a final hearing on such petition which shall be no later than sixty (60) days and not earlier than (25) twenty-five days after such filing.

(3) The Clerk of Courts of Cuyahoga County shall give notice of the hearing for four (4) weeks as required by Ohio Revised Code §6119.04.

(4) During said period of publication and prior to said final hearing, the defendant, the City of Cleveland shall take the necessary steps by ordinance to authorize the execution by appropriate officials of deeds or other proper instruments of conveyance transferring the sewage treatment and disposal facilities of the City of Cleveland, free and clear of any indebtedness or otherwise, to the Regional Sewer District upon execution of an agreement by the Board of Trustees of the District that the amounts as specified by the Court shall be charged to the suburban users and credited to the Cleveland users. Equalization of the contributions of the suburbs to the District

(5) Upon final hearing on said petition, the Court will make the proper findings and orders with reference to the creation and organization of the new Regional Sewer District.

(6) Pending the hearing described in No. 5, the injunctive orders heretofore existing will be continued subject to further order of the Court.

(7) Upon the conclusion of the hearing referred to in No. 5 above, and with Cleveland having completed the proceedings with reference to the transfer of said facilities as provided in No. 4, the Court will immediately schedule a hearing for the purpose of determining the necessity for the continuance of the sewer connection ban against the City of Cleveland and the suburban communities. The necessity for further mandatory orders or other sanctions for the enforcement of orders of the Court may require the continuance or extension of such injunctive orders.

(8) The Court will not direct the Ohio Water Pollution Board to take any steps to initiate action under Senate Bill No. 105, unless the Court determines that facts, conditions or circumstances presently unknown and inconceivable to the Court make the establishment and organization of a Regional Sewer District under Chapter 6119 of the Ohio Revised Code impossible within a reasonable time.

(9) Jurisdiction of the within action will be retained by this Court for the implementation of the orders entered in accordance herewith and for such further proceedings as the Court deems necessary to carry the provisions of its decree into effect.

Coming now to a consideration of the issues raised by the answer of the defendant, The Village of Cuyahoga Heights, Ohio, the Court finds that, under date of August 11, 1916, the City of Cleveland and the Village of Newburgh Heights entered into a contract which made it possible to locate the Southern sewage disposal plant in what was then Newburgh Heights and is now in Cuyahoga Heights, Ohio. This contract was thereafter the subject of two (2) lawsuits.

In each of these lawsuits the Court upheld the validity of the contract, its applicability to the Village of Cuyahoga Heights, and that the

City of Cleveland could not levy a sewer charge on the inhabitants of the Village, either Industrial or private. (See Cleveland v. Cuyahoga Heights, Common Pleas Court Case No. 566,906, 37 Ohio Ops. 36, its affirmation in Court of Appeals Case No. 20692 (6/16/1947), 81 Ohio App. 191; and also the case of Cuyahoga Heights v. Cleveland, as reported in 80 Ohio Law Abs. 530 (1959).)

The obvious benefits of the contract to the various Cuyahoga County governmental subdivisions in the treatment and disposal of their sewage cannot be continued without also continuing the benefits to the Village of Cuyahoga Heights and its residents. The District must therefore assume all rights, powers, responsibilities, duties and obligations of Cleveland under said contract.

The following pertains to issues not previously discussed in detail.

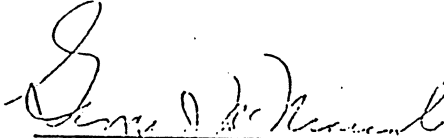
Prayers for relief herein required a determination of issues which were raised because of the inability of parties to agree on rates for water billed as sewage for suburban defendants for the period following July 1st, 1969. By entry herein dated February 2, 1972, the Court found that any further negotiations with reference to attempting to agree on said sewer rates would be in vain; that the resolution of these issues required the Court in the exercise of its equitable jurisdiction to find and determine what sums did constitute reasonable rates for the periods involved, so that action by the Court in such respects would have the effect of completing and continuing the contract of the parties.

The Court has heretofore adopted and approved the report of Theodore H. Mann who was appointed a Referee herein to make designated determinations in connection with such issues.

Upon due consideration of the report of the Referee, the evidence, pleadings, arguments, briefs, admissions, stipulations, and exhibits, the Court's finding with respect to the issues as to said rates is in favor of Cleveland and against the municipal defendants.

The amount heretofore unpaid by the defendants, The City of East Cleveland and The City of Cleveland Heights shall be forthwith paid over to The City of Cleveland.

A Judgment Entry in accordance with this opinion of the Court has been prepared, signed and filed with the Clerk of Courts.


George J. McDonagle, Judge

4 April 1972



STATE OF OHIO
OFFICE OF THE GOVERNOR
COLUMBUS 43215

JOHN J. GILLIGAN
GOVERNOR

February 11, 1972

The Honorable George J. McMonagle
Judge, Court of Common Pleas
County of Cuyahoga
Cleveland, Ohio 44113

Dear Judge McMonagle:

Thank you for your invitation to testify concerning sewage collection and treatment in the metropolitan Cleveland area. I have long hoped that the City of Cleveland and its neighboring communities would agree to the kind of equitable and regional system that is necessary to treat sewage in an effective and economical manner. I applaud your courage and determination to establish such a system.

On February 8, 1972 the Ohio Water Pollution Control Board adopted the following resolution:

Resolved, that the Water Pollution Control Board hereby requests the Attorney General to file with Judge George J. McMonagle, of the Common Pleas Court of Cuyahoga County in Case No. 886,594, a motion to fashion a regional sewer authority of the general type provided for in Chapter 6119 of the Ohio Revised Code as amended and to inform Judge McMonagle that if the Court determines that a regional sewer authority cannot be fashioned the Board is prepared to initiate Senate Bill No. 105 proceedings against the other parties to said case at anytime.

Although I generally support this resolution, I believe you should also seriously consider establishing a sewer district as provided for in Chapter 6117.

On December 1, 1971 I wrote to all the parties concerned indicating that unless they could agree on an adequate regional sewerage system, the state would have to take further action. The formation of a sewer authority by your court now seems to be the last hope for a prompt resolution of this problem. If you are unsuccessful in your efforts, the state will take those steps which are necessary to invoke the power of the Ohio Water Development Authority to establish a regional sewerage system in the Cleveland area.

Exhibit 31 / Governor Gilligan's
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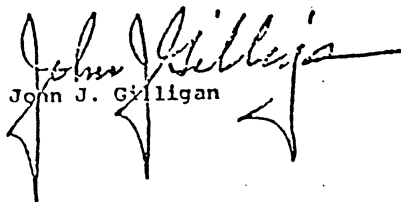
The Honorable George J. McMonagle

Page Two

I will be happy to assist you in any way possible in this matter.

With warmest personal regards,

Sincerely yours,


John J. Gilligan

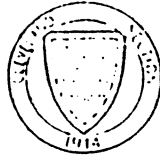
JJG/mjv

Exhibit 3 - Governor Gilligan's
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OFFICERS

President
Vice President
Treasurer
Secretary
Meadowbrook Blvd.
Cleveland Hts., Ohio 44118
Home - 371-1754
Bus. - 795-7474



AMERICAN SOCIETY OF CIVIL ENGINEERS
CLEVELAND, OHIO

DIRECTORS

Richard E. Panek
Roger L. Hyde
Donald W. Brenzel
Robert B. Billman, Jr.
Norman L. Liver
Lamont W. Curtis, Jr.
Jack W. Clark
Robert P. Stoll

February 22, 1972

Honorable Judge George J. McMonagle
Court of Common Pleas
1 Lakeside Avenue
Cleveland, Ohio 44114

Your Honor:

I am enclosing a resolution adopted by the Cleveland Section of the American Society of Civil Engineers which is directly related to the hearings you are now holding on a proposed metropolitan sewer district. Our 550 man organization in the Greater Cleveland area is concerned about the inability of the existing governmental bodies to achieve the united front necessary to successfully clean up our environment, and believe a regional sanitation authority is a step in the right direction.

If you have any questions or if we may be of some help, please call me.

Sincerely,

Clyde D. Riffle - Secretary
Cleveland Section A.S.C.E.

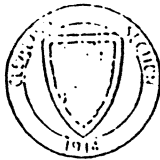
CDR:dar
cc: Ralph E. Scott, President

American Society of Civil Engineers

Exhibit 5
Page 1

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1970
Jacob, Jr. - Vice Pres.
... - Treasurer
... - Secretary
4318, City Hall
Cleveland, Ohio 44114
Tel. - 571-3201
Bus. - 691-2381



Frederick E. ...
Richard E. ...
Roger L. ...
Kenneth A. ...
Richard A. ...
William R. ...
William T. ...

AMERICAN SOCIETY OF CIVIL ENGINEERS
CLEVELAND, OHIO

RESOLUTION

WHEREAS, the Greater Cleveland area is facing a serious environmental problem due to the lack of comprehensive planning for solid wastes disposal and regional sewer planning. Both matters are of immediate concern to the County and the various political subdivisions; and

WHEREAS, resolution of these problems will be best handled on a regional basis, which should be not less than County in scope; and

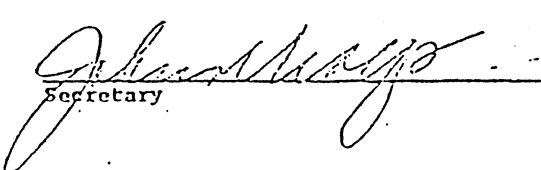
WHEREAS, these programs must be carefully planned and evaluated by competent engineering personnel; and

WHEREAS, the County Mayors and City Managers Association has expressed concern over the problems of sanitation and solid wastes; and

WHEREAS, this Society as a leader in environmental control, wishes to lend support to civic officials; and

NOW, THEREFORE, the Cleveland Section of the American Society of Civil Engineers recommends that a regional authority be initially established on a County basis, to administer a regional sanitation and solid waste disposal authority, and respectfully recommends that the Association request the County Commissioners to join and establish such an authority under any one of several prevailing enabling acts of the General Assembly, authorizing the formation of such regional bodies staffed by competent professional engineers.

The Cleveland Section of the American Society of Civil Engineers pledges its active professional support of its members to achieve this goal.


Secretary

ADOPTED APRIL 17, 1970
BY THE BOARD OF DIRECTORS
OF THE CLEVELAND SECTION OF
THE AMERICAN SOCIETY OF CIVIL ENGINEERS

THE LAKE ERIE WATERSHED CONSERVATION FOUNDATION
1917 SUPERIOR BUILDING
CLEVELAND, OHIO 44114

Telephone: 696-3346

March 10, 1972

Honorable George J. McMonagle, Judge
Common Pleas Court
Lakeside Court House
Cleveland, Ohio 44113

Dear Judge McMonagle:

The Trustees of the Foundation met yesterday and passed the attached resolution.

They appreciate your efforts.

To the extent the private sector of this metropolitan community needs to do more to marshal support for regional management of the sewerage system, you may count on us to continue our efforts.

Sincerely,



R. L. Ireland
President and Chairman of the Board

RLI:kep
attach.

P. S. (For your information, I have attached a list of the Trustees)

Lake Erie Watershed Conservation Foundation

EXHIBIT 6
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CLEVELAND METROPOLITAN SEWERAGE SYSTEM

WHEREAS the City of Cleveland and some thirty of its suburbs, directly or through Cuyahoga County, are joined together in a sewerage system that constitutes a metropolitan system, and

WHEREAS pollution from this system has not been abated, and

WHEREAS lawsuits over pollution from and operation of the system have brought the issues into the Common Pleas Courtroom of Judge McMonagle, and

WHEREAS the situation reflects adversely upon Metropolitan Cleveland and its citizens,

NOW THEREFORE BE IT RESOLVED that the Lake Erie Watershed Conservation Foundation supports the early dissolution of the existing barriers to abatement of water pollution in the Cleveland area and calls upon the citizens of this area to support the principle of regional management of their sewerage system.

Adopted by Trustees of the Lake Erie Watershed Conservation Foundation
March 9, 1972

Exhibit 6 - Lake Erie Watershed
Conservation Foundation
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- H. L. Ireland - Consolidation Coal Co. Executive (ret.)
- Dr. N. P. Auburn - President Emeritus, Akron University
- P. E. Belcher - Chairman, First National Bank of Akron
- M. A. Bradley - Director of Public Relations, Hanna Mining Co.
- T. L. Boardman - Editor, Cleveland Press
- J. H. Bruch - Manager, Area Development, C.E.I.
- R. P. Carpenter - Vice President, Environmental Control, Republic Steel Corp.
- H. A. Carrigan - President, Cuyahoga County Board of Commissioners
- W. H. Tells - Regional Manager, Civic and Governmental Affairs, Ford Motor Co.
- J. F. Floberg - Vice President and General Counsel, Firestone Tire & Rubber Co.
- F. C. Manak - Public Affairs Counsel, U. S. Steel Corp.
- Dr. H. R. Nara - Associate Dean, School of Engineering, Case Western Reserve Univ.
- L. R. Reeve - Assistant to President, Harshaw Chemical Co.
- R. N. Simonsen - Senior Environmental Consultant, Standard Oil Co. (Ohio)
- R. F. Smith - Plant Manager, General Motors Corp, Fisher Body Division
- T. V. Vail - Executive Editor, Plain Dealer
- R. M. Whitt - Assistant to Director of Environmental Control, Sherwin-Williams Co.

Exhibit 6 - Lake Erie Watershed
 Conservation Foundation
 Page 3

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Carl S. Bohm, Director

415 The Arcade / Cleveland, Ohio 44114 / 216-861-6805

March 16, 1972

The Honorable George J. McMonagle
Judge of Court of Common Pleas
County of Cuyahoga
Cleveland, Ohio 44113

Re: Ohio Water Pollution Control Board
vs. City of Cleveland, et al.
Cuyahoga County Common Pleas
Court Case No. 886,594
(Consolidated Case)

Dear Judge McMonagle:

The Executive Committee of the Regional Planning Commission has directed me to offer the Commission's assistance as a friend of the Court in Case No. 886,594.

Any records, data or other resources we may have are at the Court's disposal. If there is any analysis the Court would like us to perform, we will be pleased to cooperate. We are offering our services in the interest of the citizens of Cuyahoga County.

Sincerely yours,



Carl S. Bohm
Director

CSB/mt

Regional Planning Commission

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CITIZEN MEMBERS

Klein, Howard B., President
The Higbee Company
Public Square
Cleveland, Ohio 44113
579-3576

Hartman, Ray C., Vice President
T. W. Grogan Company
640 Hanna Building
Cleveland, Ohio 44115
241-5080

Gallagher, Patrick J.
Ohio Bell Telephone Company
100 Erieview Plaza
Cleveland, Ohio 44114
822-2857

Rawson, Robert H.
The Empire Plow Company
3140 East 65th Street
Cleveland, Ohio 44127
641-2290

Welsh, Philip H.
Kaiser Foundation
55 Public Square
Cleveland, Ohio 44113
621-5600

COUNTY MEMBERS

County Commissioners

Corrigan, Hugh A., Pres.
Pokorny, Frank R.
Taft, Seth C.
County Administration Bldg.
1219 Ontario Street
Cleveland, Ohio 44113
241-2700

County Engineer

Porter, Albert S.
1926 Standard Building
Cleveland, Ohio 44113
861-5211

CSB
LJS
RRK

MUNICIPAL MEMBERS

Rissell, Howard
City of Shaker Heights
1525 Investment Plaza
Cleveland, Ohio 44114
621-3383

Briers, James
City of Bay Village
Ohio Bell Telephone Company
100 Erieview Plaza--Room 553
Cleveland, Ohio 44114
822-8690

Christman, Ralph E., Mayor
City of North Olmsted
5206 Dover Center Road
North Olmsted, Ohio 44070
777-8000

Cleggett, Stanley H.
Village of Woodmere
East Ohio Gas Company
1717 East 9th Street
Cleveland, Ohio 44114
522-2187

Konigsberg, Irving W., Mayor
City of University Heights
2300 Warrensville Center Road
University Heights, Ohio 44118
932-7800 361-6090

Lisy, Emil J., Jr., Mayor
City of Maple Heights
5353 Lee Road
Maple Heights, Ohio 44137
662-6000

Petruska, John, Mayor
City of Parma
6611 Ridge Road
Parma, Ohio 44129
886-2323

Storey, Robert
City of Cleveland
Burke, Habor & Berick
1500 Central National Bank Bldg.
Cleveland, Ohio 44115
771-2700