**LAW OFFICE OF PAUL E. BURNS**

Attorney at Law
133 West Grand River
Brighton, Michigan 48116
(810) 227-5000 FAX (810) 220-5895

ATTORNEY-CLIENT PRIVILEGED CONFIDENTIAL COMMUNICATION

December 5, 2018

VIA ELECTRONIC MAIL

Northfield Township Board of Trustees
Township of Northfield
8350 Main Street
Whitmore Lake, Michigan 48189

Re: Wastewater Treatment Plant

Dear Trustees,

The Township Board has asked that my office summarize the Township's legal obligations with regard to its Wastewater Treatment Plant. In order to understand the legal obligations of the Township with regard to the Township's Wastewater Plant, it is important to understand its legal history. The history of the plant is very complex. Below is a list of the legal documents of which I am aware that relate to the Township's Wastewater Treatment Plant:

1. Lease of Sewage Disposal System and Sewage Treatment Agreement.
Dated: 09/30/1969
2. Opinion and Order
Dated: 02/29/1972
3. Order
Dated: 05/04/1972
4. Supplemental Order
Dated: 09/11/1978
5. Supplemental Order
Dated: 03/19/1991

6. Intergovernmental Agreement (Northfield-Hamburg)
Dated: 03/14/1991
 7. Amended Consent Judgment
Dated: 05/23/2002
 8. Township of Northfield/Township of Green Oak Wastewater Treatment
Contract
Dated: 06/25/2001
 9. Township of Northfield/Township of Green Oak Wastewater Treatment
Contract
Dated: 11/17/2004
- * Copies the above documents will be forwarded to the Board by separate email due to their file size.

By way of explanation, in the early 1970's a lawsuit was initiated by the Lakeland Property Owner's Association against Northfield Township in the Livingston Circuit Court under the Michigan Environmental Protection Act. The Livingston Circuit Court took jurisdiction and rendered a legal Opinion and Order on February 29, 1972. In that court Order and Opinion the Livingston Circuit Court re-determined the effluent standards for the Township's Wastewater Treatment Plant previously set fourth by the State of Michigan. In short, at this point in time, the Township's Wastewater Treatment Plant's effluent standards and flow became under the dual jurisdiction of the State of Michigan and the Livingston County Circuit Court.

The Order and Opinion of the Livingston County Circuit Court states, in part, as follows:

It is the further order of this Court that defendant herein is no longer restrained from physically increasing the size of its waste water disposal plant but that said defendant cannot and is hereby ordered not to increase the volume of its daily discharges beyond 250,000 gallons per day until further order of the Court and the Court being satisfied, at that time, that the above judicially set standards have been met and will be regularly met and will continue to be met as the discharge volume increases and further that the Court is satisfied that plaintiffs receiving waters will not be polluted

by such increase in volume of effluent discharge.

The Order and Opinion also states, in part:

It is further order of this Court that this Court shall retain jurisdiction of this matter pending completion of the re-designated time schedules mentioned above by the Water Resources Commission

The Order and Opinion was amended on September 11, 1979 by consent to increase the allowable flow of the Wastewater Treatment Plant to 700,000 gallons per day.

On March 19, 1991, after a Supplemental Order was entered by Livingston Circuit Judge, Stanley J. Latreille to allow for the expansion of the Wastewater Treatment Plant to 1,500,000 gallons per day, if Hamburg Township purchased capacity of 250,000 gallons per day and 1,300,000 gallons per day if Hamburg Township did not purchase capacity. Specifically the Supplemental Order states, in part:

1. NORTHFIELD shall be permitted to increase the capacity of its Wastewater Treatment Plant to One Million Five Hundred Thousand (1,500,000) gallons per day based upon an annual average. The Wastewater Treatment Plant with said increased Capacity is hereinafter referred to as the "EXPANDED PLANT", and is subject to the following provisions of this Supplemental Order.

5. If HAMBURG TOWNSHIP does not purchase 250,000 gallons per day of the capacity of the EXPANDED PLANT from NORTHFIELD, then the Capacity of the EXPANDED PLANT may only be Increased to One Million Three Hundred Thousand (1,300,000) gallons per day on an annual average. In such event, all other provisions of this Supplemental Order shall remain in full force and effect.

The Supplemental Order contemplates expansion of the Wastewater Treatment Plant and became the incentive for Northfield Township to enter into intergovernmental

agreements with Hamburg Township and Green Oak Township, which are parties to the lawsuit.

On March 14, 1991, at approximately the same time, Northfield Township entered into an intergovernmental agreement with Hamburg Township. The intergovernmental agreement states, in part:

The expansion is expected to occur in phases. Phase 1 is expected to increase the capacity of the Plant to One Million One Hundred Thousand (1,100,000) gallons per day. Phase 2 is expected to increase the capacity of the Plant to One Million Three Hundred Thousand (1,300,000) gallons per day. Phase 3 is expected to increase the capacity of the Plant to One Million Five Hundred Thousand (1,500,000) gallons per day. NORTHFIELD, in its discretion, may combine the phases and determine the timing of phases. NORTHFIELD agrees to exercise due diligence in the construction of its expanded Plant so as to provide service to HAMBURG pursuant to the terms of this Agreement. This provision is not intended to modify paragraph V(B) of this Agreement.

II. SEWAGE DISPOSAL SERVICE BY NORTHFIELD

- A. NORTHFIELD agrees to receive and treat sanitary Sewage from HAMBURG provided that the flow does not exceed Two Hundred Fifty Thousand (250,000) gallons per day based upon an annual average, within eighteen (18) months after NORTHFIELD receives payment pursuant to paragraph IV(A) of this agreement, and
- B. The effluent from HAMBURG shall emanate only from an area of HAMBURG outlined in Attachment "A" attached hereto, dated March 14th, 1991 and signed by the Supervisor and Clerk for each Township. Said effluent shall emanate only from residential homes and commercial establishments. No industrial effluent shall be permitted. The map may be altered with the written agreement of NORTHFIELD which may not be unreasonably withheld. It is the intent of the parties that the properties abutting Strawberry Lake, excluding the properties commonly referred to as the "Bluffs", be provided with sanitary sewage disposal service. HAMBURG agrees to use its best

efforts to provide service to said properties.

Hamburg did not exercise its right to purchase 250,000 gallons per day within the time parameters in the Intergovernmental Agreement. As a result, Hamburg Township's option to purchase capacity in Northfield's Wastewater Treatment Plant lapsed.

On May 25, 2002 an Amended Consent Judgment was entered by Livingston Circuit Judge, Daniel A. Burress. The Amended Consent Judgment allows expansion of the Wastewater Treatment Plant to 2.25 million gallons per day, upon certain conditions. The Amended Consent Judgment, in addition, creates a committee, known as the ISC (Intermunicipal Sewer Committee). The ISC is defined in the Consent Judgment:

PURPOSE OF INTERMUNICIPAL SEWER COMMITTEE

The ISC shall study currently existing, publicly owned treatment plants located within HAMBURG, NORTHFIELD and GREEN OAK and shall study whatever effluent to formulate written recommendations for the best available technology that is practical, economically feasible and effective for each community's treatment plant.

DUTIES AND POWERS OF INTERMUNICIPAL SEWER COMMITTEE

The ISC shall have general authority to monitor the member townships' existing sewage plants and make recommendations thereto. The existing sewage treatment plants shall mean (i) the Northfield Township Waste Water Treatment Plant on Leman Road in Green Oak Township, (ii) the Hidden Lake Waste Water Treatment Plant located on Silver Lake Road In Green Oak Township, and (iii) the Hamburg Township Waste Water Treatment Plant located on M-36 in Hamburg Township.

Thereafter, two intergovernmental contracts were entered into between Northfield Township and Green Oak Township, on June 25, 2001 and November 17, 2014. The June 25, 2001 agreement was designed to legally "cap" the capacity provided to specific properties located in Green Oak Township. The properties in Green Oak Township were part of a long-standing special assessment district. At the time, Green Oak Township was granting connections to users in Green Oak Township unbeknownst to Northfield Township and to users that were not part of the Special Assessment District.

The November 17, 2004 Intergovernmental Agreement was designed to provide sewer service to a specific portion of Green Oak Township and to provide connection revenue to support payment of municipal bonds for Northfield 's Wastewater Plant expansion. The Intergovernmental Agreement states, in part:

SEWAGE DISPOSAL SERVICE BY NORTHFIELD

Northfield agrees to receive into its plant and treat Sanitary sewage from Green Oak, provided the average daily flow as determined on an annual basis does not exceed a total of 200,000 gallons per day calculated on an annual basis (being equal to 1600 REU's) for the term of the Contract. The effluent From Green Oak shall emanate only from an area of Green Oak outlined in Exhibit "A" attached hereto

**CHARGES FOR FUTURE CONNECTIONS TO
NORTHFIELD'S WASTEWATER SEWAGE
DISPOSAL SERVICE**

Northfield and Green Oak agree that users currently Connected to the Northfield sewage disposal system will not be charged a connection fee pursuant to this contract. Northfield and Green Oak also agree that those property owners which are not currently connected to the Northfield sewage disposal system will be assessed a connection fee at such time as they indicate a willingness to connect to Northfield's sewage disposal system pursuant to this contract. The connection fee will be calculated based on Northfield's then prevailing rater per residential equivalent unit. Northfield's engineers shall determine the number of residential equivalent units applicable to the property requesting to connect to Northfield's sewage disposal system. The number of residential equivalent units shall be determined based on Northfield's ordinances then in effect. Green Oak agrees to be bound by Northfield's ordinances as to the calculations and charges for residential equivalent units. All requests by those property owners who desire to connect to Northfield's sewage disposal service shall request, in writing, service from Northfield.

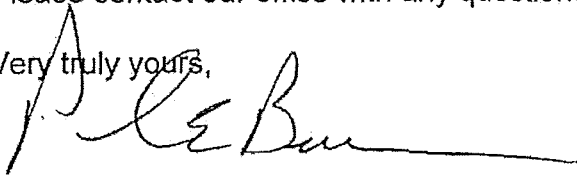
Northfield Township Board of Trustees
December 5, 2018
Page 7

In summary, there are three tiers and/or layers of legal obligations that the Township is required to fulfill. They are:

2. Any and all requirements of the State of Michigan MDEQ permit which is currently in force and effect.
3. All requirements of the court orders that have been entered by the Livingston County Circuit Court, the most recent being dated May 23, 2002.
4. The contractual obligations of the intergovernmental agreements with both Green Oak Township and Hamburg Township.

Please contact our office with any questions in this regard.

Very truly yours,

A handwritten signature in black ink, appearing to read "P. E. Burns", with a long horizontal flourish extending to the right.

Paul E. Burns

cc: Mr. Steven Aynes
Mr. Dan Willis

NORTHFIELD/ HAMBURG, et al
WASTE WATER LAWSUIT
INDEX

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Dated: 09/11/1979
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Dated: 03/19/1991
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9. Township of Northfield/Township of Green Oak Wastewater Treatment Contract
Dated: 11-17-2004

LEASE OF SEWAGE DISPOSAL SYSTEM
AND SEWAGE TREATMENT AGREEMENT

This Agreement made this 30 day of September, 1969, between the Township of Northfield, Wastewaw County, Michigan (herein called Northfield) and the Township of Green Oak, Livingston County, Michigan, (herein called Green Oak).

WHEREAS, Green Oak is constructing a sanitary sewage collection system, herein called the Green Oak system, which system consists of those sanitary sewers constructed by the Township of Green Oak in accordance with its Whitmore Lake West Side Special Assessment Sewer Improvement and its Whitmore Lake East Side Special Assessment Sewer Improvement.

NOW THEREFORE, the parties agree as follows:

1. In consideration of the sum of One (\$1.00) Dollar in hand paid to it by Northfield, receipt of which is hereby acknowledged, and other good and valuable considerations as set forth in this Agreement, Green Oak hereby leases to Northfield and Northfield hereby leases from Green Oak, the sanitary sewers located within the Township of Green Oak and described fully in the plans and specifications filed as a part of the Green Oak Township Special Assessment Improvement known as the Whitmore Lake West Side Special Assessment Sewer Improvement and the Whitmore Lake East Side Special Assessment Sewer Improvement for an initial term commencing on the date hereof and terminating on December 31, 1979. After the initial term of this lease, it shall be extended automatically for successive terms of ten (10) years each. The Agreement may be terminated by either party, after the expiration of the initial term, upon one years written notice served upon the other party by delivering the same to the Clerk of the municipality upon which notice is to be served. The lease may be terminated at any time upon the mutual consent of both parties.

2. During the term of this lease or any extension thereof, Northfield shall maintain and operate the Green Oak system, so far as lawful and practicable, in the same manner as it maintains and operates the Northfield system, including the billing directly to, and collection of all rates, charges and fees directly from the users of the Green Oak system. All Northfield books and records pertaining to the Green Oak system shall be available to Green Oak for inspection by its authorized agents and representatives.

3. Northfield shall provide the services hereunder to the users of the Green Oak system at the rates, charges and fees established for similar users of the Northfield system by ordinances of Northfield. Northfield shall give ninety (90) days notice of any change in said rates, charges and fees to Green Oak in writing, delivered in person or by mail to the Green Oak Township Clerk.

4. Annually, and prior to September 1, Northfield shall certify to the Green Oak Township Assessing Officer all the said rates, charges and fees, together with interest and penalties, owing by users of the Green Oak system and delinquent for six (6) months or more, and such assessing officer shall enter the same on the Green Oak tax roll as a lien against the premises to which such services have been rendered, and Green Oak shall enforce the lien and shall collect said sums as provided by law. Green Oak shall promptly remit to Northfield all sums so collected. If Green Oak fails or neglects to so enter such delinquent charges on its next tax roll, Green Oak shall pay Northfield such charges not later than December 1, of the year of such certification.

5. During the term of this Agreement, Northfield shall perform such maintenance and repairs as shall be necessary to Green Oak's system to the extent possible from the normal revenue of the combined Northfield-Green Oak system. Northfield shall not be obligated to reconstruct or repair parts of the Green Oak system damaged or destroyed by natural disaster, war or

insurrection or similar unusual happenings beyond Northfield's control.

6. The execution of this lease shall be deemed to be the formal consent of the Township of Green Oak to the exercise by Northfield of its powers under Act 94 of the Public Acts of 1933, as amended, within the Township of Green Oak and Northfield is hereby granted a franchise to transact local business in Green Oak Township as may be convenient and necessary to provide the service required under this lease.

7. Northfield shall furnish Green Oak all ordinances, rules and regulations of Northfield pertaining to the Northfield system and Green Oak shall promptly adopt, enact and establish similar ordinances, rules and regulations to effect, so far as practicable, uniformity thereof throughout the Northfield and Green Oak Systems. Green Oak shall be liable to Northfield for any loss or damage of Northfield by reason of Green Oak's neglect or failure to adopt, enact, establish and enforce its said ordinances, rules and regulations.

8. It is understood and agreed by both parties hereto that the Green Oak system has been constructed for the reception and transporation of sanitary sewage only and Green Oak shall take such reasonable steps as are necessary to prevent the introduction thereto of storm or surface drainage.

9. Green Oak agrees that Northfield's standards and specifications from time to time in effect shall govern the installation and maintenance of sewers in the Green Oak system and that plans and specifications for any extensions, alterations or replacements within the Green Oak system shall be submitted to Northfield for approval prior to construction.

10. In the event proper operation of the Northfield system requires Northfield to discontinue temporarily all or a part of service to be rendered to Green Oak hereunder, no claims for damages for such discontinuance shall be made by Green Oak against Northfield, provided that any action hereunder by Northfield shall not discriminate between customers of the

Northfield system and customers of the Green Oak system.

11. To the extent necessary Green Oak hereby grants permission to Northfield to use streets, highways, alleys and/or easements in the Township for the purpose of constructing, maintaining and operating such parts of the Northfield system as are necessary to provide service to the Green Oak system.

12. The parties recognize the possibility that the revenues of the Northfield system, including revenues received from the Green Oak system, may from time to time be insufficient to meet the obligations of Northfield under a certain contract dated July 12, 1967, between Northfield and the Huron Utilities Association, or under any bonds or other contractual undertakings of Northfield for financing future improvements or extensions of the sewage treatment plant and disposal facility which are necessary to provide continued service to Green Oak. In the event of such deficiencies, and to the extent that Northfield has pledged its faith and credit under said bonds, contracts, or other contractual undertakings to advance funds, to meet deficiencies, Green Oak shall be obligated to pay to Northfield its share of such deficiency in the relative proportion of said sum as the then number of customers capacity of the Green Oak system bears to the total number of customer capacity of the combined Northfield and Green Oak systems. It is understood by both townships that such payments of Northfield and Green Oak would be in the nature of advances to the sewage disposal system and that Northfield will adjust its rates so as to provide funds and to meet future payments under said bonds, contract or other contractual undertakings as they become due and to provide a fund from which Northfield and Green Oak will be reimbursed for said advancements within a reasonable period of time.

13. In the event of the termination of this lease, Northfield shall continue to accept, treat, and dispose of

sanitary sewage emanating from the Green Oak system until December 31, 1999, unless sooner terminated by Green Oak upon five (5) year's written notice served upon Northfield by delivering the same to the Clerk of the other municipality or may be terminated at any time upon mutual consent of both parties. Such continued service shall be upon such reasonable conditions and rates as shall be agreed upon by the parties hereto.

14. This Agreement shall inure to the benefit of and be binding upon the respective parties hereto, their successors and assigns and shall take effect upon its adoption and execution by the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by respective, duly authorized officers as of the day and year first written.

In the presence of:

TOWNSHIP OF GREEN OAK

By: *Kenneth J. Foran*
Supervisor

By: *Mona M. Whang*
Clerk

TOWNSHIP OF NORTHFIELD

By: *Peter J. Kelley*
Supervisor

By: *Charles A. Port*
Clerk

WITNESSES:

Cynthia L. Wilson
Cynthia L. Wilson

Mary E. Williamson
Mary E. Williamson

WITNESSES:

Elizabeth Ann Campbell
Elizabeth Ann Campbell

Cynthia Dean
Cynthia Dean

NORTHFIELD TOWNSHIP
a general law township

By: Michael McFarland
Michael McFarland
Its: Supervisor

By: Michele K. Manning
Michele K. Manning
Its: Clerk

GREEN OAK TOWNSHIP
a General Law Township

By: Mark St. Charles
Mark St. Charles
Its: Supervisor

By: Michael H. Sadak
Michael H. Sadak
Its: Clerk

have up to thirty (30) days in which to respond to the grievance.

This response shall be in writing.

- B. Should the parties be unable to resolve their differences within sixty (60) days of the date of the written response to the grievance or be then unable to agree upon a method to mediate and resolve their differences, either party may seek its lawful or equitable remedies in the Michigan Court having lawful jurisdiction over the subject matter of the dispute.

18. **NON-ASSIGNABILITY**

This Contract is not assignable by Green Oak without written consent from Northfield.

19. **SUCCESSORS**

It is hereby agreed that this Contract shall be binding upon all successor governmental units which may assume jurisdiction over all or part of the areas now governed by the parties.

20. **SEVERABILITY**

Should any provision of this Contract be found by a court of law to be unconstitutional it shall be severed from the Contract and the remaining provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first above written.

and by Green Oak's attorney for insurance obtained by Northfield shall be provided prior to the treatment of sewage from Green Oak annually.

14. **TAXES**

Green Oak agrees not to assess any ad valorem taxes on any sewage facilities situated within Green Oak and owned by Northfield.

15. **COMPLIANCE WITH COURT ORDERS**

The parties hereby agree that this Agreement is subject to the terms and conditions of all applicable Orders entered by the Livingston County Circuit Court in the case Lakeland Property Owners Association, et al v Portage, Base, and Whitewood Owners Association, Inc., Case No. 70-1453-CE.

16. **COMPLIANCE WITH NORTHFIELD'S ORDINANCES**

Green Oak agrees to adopt ordinances which shall require all sewage disposal facility users situated within the area outlined in Exhibit "A" to be bound by all rules, regulations, and ordinances of Northfield to the same extent that users within the corporate limits of Northfield are so bound.

17. **RESOLUTION OF DISPUTES**

It is recognized by both parties that in the future certain disputes regarding the terms of this Contract may arise between Northfield and Green Oak. In order to provide for the orderly resolution of these matters the following process is established:

- A. Within thirty (30) days after a grievance is noted, the offended legislative body shall inform the other legislative body of their disagreement in writing. The non-aggrieved legislative body shall

the party claiming suspension, provided that no cause or contingency shall relieve Green Oak of its obligation to make payment.

12. **INDEMNIFICATION**

Green Oak agrees to hold Northfield harmless against and from any and all claims, costs, charges and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed against Northfield by reason of any of the following occurring during the term of this Contract:

- A. Any negligent or tortuous acts, error or omission of Green Oak of any of its personnel, employees, subcontractors, or consultants in the construction, operation, or maintenance of the Sewage Disposal System and facilities, notwithstanding any prior approval of Northfield of the plans and specifications relating to the construction of such system and facilities and inspections conducted thereof by Northfield; and
- B. Any failure by Green Oak or any of its personnel, employees, consultants, or sub-contractors, to perform its obligations, either expressed or implied, under this Contract or any negligent or tortuous act, error or omission of Green Oak, its personnel, employees, consultants or subcontractors.

13. **INSURANCE**

During the term of this Contract, the parties shall maintain public liability insurance for the sewage disposal system. Evidence of such insurance in a form approved by Northfield Township's attorney for insurance obtained by Green Oak

due notice to any party which fails to comply with all rules, regulations, orders and standards promulgated by the USEPA and/or the MDEQ.

9. **EXCLUSIVE SERVICE AND FRANCHISE**

During the term of this Contract, Northfield shall have the exclusive right and franchise to treat sanitary sewage originating in the service area outlined in Exhibit "A".

10. **PLANNED INTERRUPTION OF SERVICE**

In the event the proper operation of the sewage disposal system requires Northfield to discontinue temporarily all or part of the sewage disposal system servicing Green Oak, no claims for damages for such discontinuance shall be made by Green Oak. Northfield shall notify, in writing, Green Oak upon learning of any points of connection which will be intentionally, temporarily interrupted by Northfield to facilitate repair, modification or connection to Northfield's Sewage Disposal System. Northfield, prior to such interruption, shall give Green Oak reasonable notice of the time, duration and area affected by the interruption of service.

11. **FAILURE OF PERFORMANCE**

No failure of delay in the performance of the executed Wastewater Treatment Contract by the parties shall be deemed to be a breach thereof when such failure or delay is occasioned by or due to any Act of God, strikes or lockouts, wars, riots, epidemics, explosions, sabotage, breakage, or accidents to machinery or lines of pipe, the binding order of any court or governmental authority, or any other cause, whether of the kind herein enumerated or otherwise not in control of

- A. All maintenance and repair costs associated with the sewage facilities located within Green Oak shall be borne by Northfield excepting those obligations of Green Oak as set forth in Paragraph 5(F) of this Contract.
- B. Green Oak shall provide to Northfield the legal right of access to the service area for the purposes of construction, maintenance and repair.

7. **TERM**

The term of this Contract shall commence on the date hereto and terminate twenty (20) years hence, unless the Sewage Disposal System permanently discontinues operation during this term, then under such circumstances the agreement shall expire. Northfield and Green Oak agree that this contract may be extended if mutually agreeable terms are entered into by Northfield and Green Oak at the time of the expiration of this Contract.

8. **TOXIC OR UNACCEPTABLE WASTES**

In cases where the character of sanitary sewage emanating from Green Oak is such that it imposes an unreasonable or additional burden upon Northfield's Sewage Disposal System, above that imposed by the average domestic sewage entering Northfield's Sewage Disposal System, Green Oak shall cause such entity to treat such sanitary sewage in such a manner accepted by the United States Environmental Protection Agency (USEPA) and State of Michigan Department of Environmental Quality (MDEQ) or their successors. The average domestic sewage shall contain the following parameters: 5-day BOD above 300 mg/l, suspended solids above 300 mg/l, phosphorus above 6mg/l, total ammonia nitrogen above 35 mg/l. Green Oak or Northfield shall terminate service, after

incurred by Northfield, with the exception of routine maintenance costs and/or expenditures.

- D. Detailed records including drawn plans of any construction, alteration, addition or relocation of sewage facilities located in Green Oak shall be kept on file by Green Oak and copies shall be delivered and retained by Northfield for review.
- E. Green Oak shall grant Northfield permission to use streets, highways, alleys and other rights of way within Green Oak under its control for the purpose of maintaining and repairing sewage facilities located within Green Oak. After initial construction, Green Oak shall restore all existing structures or improvements lying in said rights of way of construction to as good a condition as before the construction took place and shall save harmless Northfield from any and all liability, claims, suits, actions or causes of action for damages, for injuries or otherwise by reason of the construction work provided for herein.
- F. Green Oak, by ordinance, shall provide that the homeowner shall install and maintain all service leads to individual premises, including meters, grinder pumps and valves and bear the cost of connecting said service leads to, and severing from, Northfield's sewage facilities located within Green Oak. Northfield's responsibility and liability shall end at the property line of the homeowner.

6. **MAINTENANCE AND REPAIR OF SEWER**

payments shall be considered overdue or not paid pursuant to the times prescribed by this Contract or by Northfield Township Ordinances, whichever may be applicable. Default includes, but is not limited to, either nonpayment or late payment.

5. CONSTRUCTION OF SEWERS TO SERVE GREEN OAK

- A. Northfield shall have no responsibility to pay for cost of designing and constructing sewage facilities located in the area of Green Oak outlined in Exhibit "A" attached hereto.
- B. All design and construction of sewage facilities in Green Oak shall be supervised and approved by Northfield's Engineer.
- C. Upon completion of the construction of all of the sewage facilities located in Green Oak, the sewage facilities shall be dedicated to Northfield free of charge. Should Northfield permanently discontinue sewer service to Green Oak for any reason, Green Oak shall, at its option, upon giving written notice to Northfield, become the owner of all the sewage facilities including meters located on the property in the area of Green Oak outlined in Exhibit "A". Such ownership shall be subject only to Northfield's right to use the sewage facilities for transmission of sewage to other areas which are then serviced by the facilities located within the area of Green Oak outlined in Exhibit "A". In the event Green Oak becomes the owner of the sewage facilities located within the area defined in Exhibit "A", Green Oak shall reimburse Northfield for all costs and/or expenditures

Northfield and Green Oak agree that users currently connected to the Northfield sewage disposal system will not be charged a connection fee pursuant to this contract. Northfield and Green Oak also agree that those property owners which are not currently connected to the Northfield sewage disposal system will be assessed a connection fee at such time as they indicate a willingness to connect to Northfield's sewage disposal system pursuant to this contract. The connection fee will be calculated based on Northfield's then prevailing rate per residential equivalent unit. Northfield's engineers shall determine the number of residential equivalent units applicable to the property requesting to connect to Northfield's sewage disposal system. The number of residential equivalent units shall be determined based on Northfield's ordinances then in effect. Green Oak agrees to be bound by Northfield's ordinances as to the calculations and charges for residential equivalent units. All requests by those property owners who desire to connect to Northfield's sewage disposal service shall request, in writing, service from Northfield.

4. **DEFAULT**

Green Oak pledges its full faith and credit for all of the charges set forth in this Contract. Northfield reserves the right to discontinue service to Green Oak in the event that Green Oak is in default of this Contract. Additionally, Northfield may charge interest for any overdue payments. The interest rate charged shall be the maximum permitted by law, but in no event shall the interest charges exceed twenty-five (25%) percent per annum on the unpaid balance of the debt. The

i. Green Oak agrees to require all users in Exhibit "A", by ordinance, to pay to Northfield a rate to be charged for the operation, maintenance and equipment replacement of the wastewater disposal system equal to the prevailing per-gallon rate established by resolution or ordinance of the Northfield Township Board, for Northfield Users.

ii. Wastewater treatment service charges shall begin on the date of connection to Northfield's wastewater treatment system or upon the issuance of an approved rough plumbing inspection for the property under construction. Green Oak shall promptly notify Northfield in writing of such information necessary to begin billing.

iii. Annually and prior to September 1, Northfield shall certify to the Green Oak assessing officer all the rights, charges and fees, together with interest and penalties, owing by Green Oak users delinquent at the end of the fiscal year, and such assessing officer shall enter the same on the appropriate tax roll as a lien against the premises for which the services have been rendered and Green Oak shall enforce the lien and shall collect said sums as provided by law. Green Oak shall remit to Northfield all sums so collected. If Green Oak fails or neglects to so enter such delinquent charges on its next tax roll, Green Oak shall pay to Northfield such charges not later than December 1 of the year of such certification.

**B. CHARGES FOR FUTURE CONNECTIONS TO NORTHFIELD'S
WASTEWATER SEWAGE DISPOSAL SERVICE**

WHEREAS, Northfield and Green Oak agree that because of the proximity of the service area to the plant and the environmentally sensitive nature of the service area, it is in the best interests of Northfield and Green Oak to make available to the service area centralized sewage disposal services; and

WHEREAS, Northfield and Green Oak are desirous of entering into an arrangement whereby the sanitary sewage generated in the area described in Exhibit "A" would be transmitted to and treated in Northfield's sewage disposal plant; and

NOW, THEREFORE, it is hereby agreed by and between the parties as follows:

1. **SEWAGE DISPOSAL SERVICE BY NORTHFIELD**

Northfield agrees to receive into its plant and treat sanitary sewage from Green Oak, provided the average daily flow as determined on an annual basis does not exceed a total of 200,000 gallons per day calculated on an annual basis (being equal to 1600 REU's) for the term of the Contract. The effluent from Green Oak shall emanate only from an area of Green Oak outlined in Exhibit "A" attached hereto.

2. **PURCHASE OF SEWAGE DISPOSAL SERVICE**

Northfield and Green Oak agree that Green Oak shall require, by Ordinance, all potential users in the area of Green Oak outlined in Exhibit "A" to connect and purchase sewer services from Northfield.

3. **COMPENSATION**

A. **OPERATION, MAINTENANCE AND EQUIPMENT**

REPLACEMENT CHARGE – SEWAGE DISPOSAL SERVICE

TOWNSHIP OF NORTHFIELD/TOWNSHIP OF GREEN OAK
WASTEWATER TREATMENT CONTRACT

COPY

THIS AGREEMENT made this 12 day of ^{November 1957} ~~October~~, 2004, between the Township

of Northfield, a general law township, with offices at 75 Barker Road, Post Office Box 576, Whitmore Lake, Michigan 48189 (hereinafter "Northfield"), and the Township of Green Oak, a general law township, with offices at 10001 Silver Lake Road, Brighton, Michigan 48116-8361 (hereinafter "Green Oak").

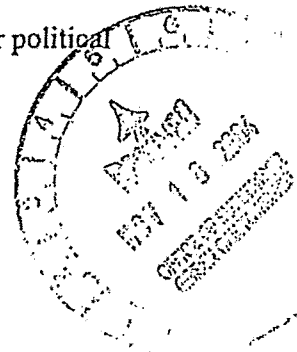
WITNESSETH:

WHEREAS, Northfield is the owner and operator of a wastewater treatment plant (hereinafter "plant") located in the Township of Green Oak, County of Livingston, State of Michigan; and

WHEREAS, Northfield has taken steps to expand its wastewater treatment plant located in Green Oak Township, County of Livingston, State of Michigan to service a capacity up to 225 million gallons per day; and

WHEREAS, Green Oak desires to have a portion of Green Oak Township served subject to the terms and conditions of a Consent Judgment (Lakeland Property Owners Association, et al v Portage, Base and Whitewood Owners Association, Livingston County Circuit Court Case No. 70-1453-CE) by Northfield's wastewater treatment plant; and

WHEREAS, Act 129 of Public Acts of 1943, being MCL 123.232, provides that any two or more political subdivisions may contract relative to the furnishing of sewage disposal services by one or more of such political subdivisions to another political subdivision; and



IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first above written.

WITNESSES:

Maryanne A. Ely

Karen L. Darys

NORTHFIELD TOWNSHIP
a general law township

Michael D. McFarland
By: Michael D. McFarland
Its: Supervisor

Michelle K. Manning
By: Michelle K. Manning
Its: Clerk

WITNESSES:

William L. Deshore
WILLIAM L. DESHORE

Elizabeth Ann Connelly
ELIZABETH ANN CAMPBELL

Northfield-Green Oak 1

GREEN OAK TOWNSHIP
a general law township

Mark St. Charles
By: Mark St. Charles
Its: Supervisor

Michael H. Sedlak
By: Michael Sedlak
Its: Clerk

either party may seek its lawful or equitable remedies in the Michigan Court having lawful jurisdiction over the subject matter of the dispute.

17. **CONDITIONAL APPROVAL**

The obligations of Northfield under this Agreement are specifically conditioned upon Northfield obtaining any and all necessary state and federal approval for the design and construction of the expansion to its wastewater treatment plant and other sanitary sewage disposal facilities and upon entry of an appropriate Order approved by Northfield's attorney in the Livingston County Circuit Court in the case of Lakeland Property Owners, et al v Township of Northfield, Livingston County Circuit Court case number 1453, vesting total jurisdiction of the Northfield wastewater treatment plant and collector system in the Michigan Department of Environmental Quality.

18. **NON-ASSIGNABILITY**

This Agreement is not assignable by Green Oak without written consent from Northfield.

19. **SUCCESSORS**

It is hereby agreed that this Agreement shall be binding upon all successor governmental units, which may assume jurisdiction over all or part of the areas now governed by the parties.

20. **SEVERABILITY**

Should any provision of this Agreement be found by a court of law to be unconstitutional it shall be severed from the Agreement and the remaining provisions shall remain in full force and effect.

Green Oak's attorney for insurance obtained by Northfield shall be provided prior to the treatment of sewage from Green Oak annually.

14. **TAXES**

Green Oak agrees not to assess any ad valorem taxes on any sewage disposal facilities situated within Green Oak and owned by Northfield.

15. **BOUND BY NORTHFIELD'S ORDINANCES**

Green Oak agrees to adopt ordinances which require all sewage disposal facility users situated within the area outlined in Exhibit "A", to be bound by all rules, regulations and ordinances of Northfield to the same extent that users within the corporate limits of Northfield are so bound. Northfield shall provide copies of any such rules, regulations and ordinances to Green Oak.

16. **RESOLUTION OF DISPUTES**

It is recognized by both parties that in the future certain disputes regarding the terms of this Agreement may arise between Northfield and Green Oak. In order to provide for the orderly resolution of these matters the following process is established:

- A. Within thirty (30) days after a grievance is noted, the offended legislative body shall inform the other legislative body of their disagreement in writing. The non-aggrieved legislative body shall have up to thirty (30) days in which to respond to the grievance. This response shall be in writing.
- B. Should the parties be unable to resolve their differences within sixty (60) days of the date of the written response to the grievance or be then unable to agree upon a method to mediate and resolve their differences,

whether of the kind herein enumerated or otherwise not in the control of the party claiming suspension, provided that no cause or contingency shall relieve Green Oak of its obligation to make payment.

12. **INDEMNIFICATION**

Green Oak and Northfield agree to save each other harmless against and from any and all claims, costs, charges and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed against the other by reason of any of the following occurring during the term of this Agreement:

- A. Any negligent or tortious acts, error or omission of Green Oak or Northfield of any of its personnel, employees, subcontractors, or consultants in the construction, operation, or maintenance of the sewage disposal system and facilities, notwithstanding any prior approval of Northfield of the plans and specifications relating to the construction of such system and facilities and inspections conducted thereof by Northfield; and,
- B. Any failure by Green Oak or Northfield or any of its personnel, employees, consultants, or sub-contractors, to perform its obligations, either express or implied, under this Agreement or any negligent or tortious act, error or omission of Green Oak, its personnel, employees, consultants or subcontractors.

13. **INSURANCE**

During the term of this Agreement, the parties shall maintain public liability insurance for the sewage disposal system. Evidence of such insurance in a form approved by Northfield Attorney for insurance obtained by Green Oak and by

parties that the average domestic sewage standard and rules, regulations, orders and standards promulgated by the U.S.E.P.A., the Michigan Department of Environmental Quality and Northfield or their successors are subject to revision. Green Oak also shall require, by ordinance, that all users in Green Oak comply with the requirements of Exhibit "B" attached.

9. **EXCLUSIVE SERVICE AND FRANCHISE**

During the term of this Agreement, Northfield shall have the exclusive right and franchise to treat sanitary sewage originating in the service area outlined in Exhibit "A".

10. **PLANNED INTERRUPTION OF SERVICE**

In the event the proper operation of the sewage disposal system requires Northfield to discontinue temporarily all or part of the sewage disposal system servicing Green Oak, no claims for damages for such discontinuance shall be made by Green Oak against Northfield. Northfield shall immediately notify by telephone Green Oak Township upon learning of any points of connection which will be intentionally interrupted temporarily by Northfield to facilitate repair, modification or connection to Northfield's sewage disposal system, Northfield, prior to such interruption, shall give Green Oak reasonable notice of the time, duration and area affected by the interruption of service.

11. **FAILURE OF PERFORMANCE**

No failure or delay in the performance of the executed Agreement by the parties shall be deemed to be a breach thereof when such failure or delay is occasioned by or due to any Act of God, strikes or lockouts, wars, riots, epidemics, explosions, sabotage, breakage, or accidents to machinery or lines of pipe, the binding order of any court or governmental authority, or any other cause,

B. Green Oak shall provide to Northfield the legal right of access to the service area for the purposes of construction, maintenance and repair.

7. **TERM**

The term of this Contract shall commence on the date hereto and terminate thirty (30) years hence, unless Green Oak fails to exercise its option pursuant to Paragraph 1A (iv) of this Contract and/or the sewage disposal system permanently discontinues operation during this term; under such circumstances the agreement shall expire. Northfield and Green Oak agree that this Contract may be extended if mutually agreeable terms are agreed upon by Northfield and Green Oak at the time of the expiration of this Contract.

8. **TOXIC OR UNACCEPTABLE WASTES**

In cases where the character of sanitary sewage emanating from Green Oak is such that it imposes an unreasonable or additional burden upon Northfield's sewage disposal system, above that imposed by the average domestic sewage entering Northfield's sewage disposal system, Green Oak shall cause such entity to treat such sanitary sewage in such a manner accepted by the United States Environmental Protection Agency (A.S.A.P.) and State of Michigan Department of Environmental Quality or their successors. The average domestic sewage standard shall be defined as influent which shall not exceed the following parameters: 5 - day EQUIVALENT above 300 mg/1, suspended solids above 300 mg/1, phosphorus above 6 mg/1, total ammonia nitrogen above 35 mg/1. Green Oak or Northfield shall terminate service to any premise within their respective jurisdictions, after due notice, which fails to comply with all rules, regulations, orders and standards promulgated by the U.S.E.P.A., the Michigan Department of Environmental Quality and Northfield. It is recognized by both

- D. Detailed records including drawn plans of any construction, alteration, addition or relocation of sewage facilities located in Green Oak shall be kept on file by Green Oak and copies shall be delivered and retained by Northfield for review;
- E. Green Oak shall grant Northfield permission to use streets, highways, alleys and other rights of way within Green Oak under its control for the purpose of maintaining and repairing sewage facilities located within Green Oak. After initial construction, Northfield shall restore all existing structures or improvements lying in said rights of way of construction to as good a condition as before the construction took place.
All easements granted to Green Oak for the purpose of maintaining and repairing sewage facilities located within Green Oak shall be assigned to Northfield; and
- F. Green Oak, by ordinance, shall provide that the homeowner shall install and maintain all service leads to individual premises, including meters and valves and bear the cost of connecting said service leads to and severing from Northfield's sewage facilities located within Green Oak. Northfield's responsibility and liability shall end at the property line of the homeowner. Specifications for services leads, meters and valves shall be determined by Northfield. Copies of specifications for service leads, meters and valves shall be delivered by Northfield to Green Oak.

6. **MAINTENANCE AND REPAIR OF SEWER TO SERVE GREEN OAK**

- A. All maintenance and repair costs associated with the sewage facilities located within Green Oak shall be borne by Northfield excepting those obligations of Green Oak as set forth in Paragraph 5(F) of this Contract.

The payments shall be considered overdue if not paid pursuant to the times prescribed by this Agreement or by Northfield Township ordinances whichever may be applicable. Default includes, but is not limited to, either nonpayment or late payment.

5. **CONSTRUCTION OF SEWERS TO SERVE GREEN OAK**

- A. Northfield shall have no responsibility to pay for the cost of designing and constructing sewage facilities located in the area of Green Oak outlined in Exhibit "A" attached hereto;
- B. All design and construction of sewage facilities in Green Oak shall be supervised and approved by the Northfield's Engineer and wastewater treatment plant personnel;
- C. Within thirty (30) days of completion of the construction of all of the sewage facilities located in Green Oak, the sewage facilities shall be dedicated to Northfield free of charge. Should Northfield permanently discontinue sewer service to Green Oak for any reason, Green Oak shall, at its option, upon giving written notice to Northfield, become the owner of all the sewage facilities including meters located on the property located in the area of Green Oak outlined in Exhibit "A" subject only to Northfield's right to use the sewage facilities for transmission of sewage to other areas which are then serviced by the use of such facilities. In the event Green Oak becomes the owner of the sewage facilities located within the area defined in Exhibit "A", Green Oak shall reimburse Northfield for all costs and/or expenditures incurred by Northfield, excepting therefrom only routine maintenance costs and/or expenditures;

report to Northfield of land use permits issued by Green Oak within the service area described in Exhibit "A". The Sewer Connection Permit Charge shall be modified from time to time and become equal to the prevailing Sewer Connection Permit Charge paid by Northfield residents. All computations regarding the number of residential equivalent units for each Sewer Connection Permit Charge shall be computed by utilizing Northfield's then prevailing ordinances as adopted by the Northfield Township Board for all Northfield residents from time to time. If said permits are not utilized within one year of the date of the purchase of said permit, the permit may be revoked at Northfield's option by the repayment of the original permit amount. Northfield and Green Oak agree that no interest shall be paid on any repayment by Northfield.

B. OPERATION, MAINTENANCE AND EQUIPMENT REPLACEMENT CHARGE - SEWAGE DISPOSAL SERVICE

Green Oak shall require, by ordinance, that each user pay to Northfield a bi-monthly charge for the operation, maintenance and equipment replacement of the sewage disposal system as adopted by the Northfield Township Board, by ordinance, from time to time.

4. DEFAULT

Green Oak pledges its full faith and credit for all of the charges set forth in this Agreement. Northfield reserves the right to discontinue service to Green Oak in the event that Green Oak is in default of this Agreement. Additionally, Northfield may charge interest for any overdue payments. The interest rate charged shall be the maximum permitted by law, but in no event shall the interest charges exceed twenty-five (25%) percent per annum on the unpaid balance of the debt.

Exhibit "A" would be transmitted to and treated in Northfield's sewage disposal plant;
and

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. **SEWAGE DISPOSAL SERVICE BY NORTHFIELD**

Northfield agrees to receive the effluent from Green Oak which shall emanate only from an area of Green Oak outlined in Exhibit "A", attached hereto. The effluent emanating from Green Oak in the area outlined in Exhibit "A" shall not exceed an additional one hundred twenty four (124) residential equivalent units than the number of residential equivalent units previously designated for special assessment districts by Green Oak Township for the property outlined in Exhibit "A". Further, Green Oak Township shall not create any additional special assessment districts within the area outlined in Exhibit "A" without Northfield's prior written approval.

2. **PURCHASE OF SEWAGE DISPOSAL SERVICE**

Green Oak shall require, by Ordinance, all potential users in the area of Green Oak outlined in Exhibit "A" to connect and purchase sewer services from Green Oak which are provided by Northfield under the terms of this Agreement.

3. **COMPENSATION**

A. **CONNECTION PERMIT CHARGE – SEWAGE DISPOSAL SERVICE**

Northfield and Green Oak agree that a payment shall be made by each user for each individual Sewer Connection Permit Charge. The initial charge shall be Three Thousand Five Hundred Dollars and No/100 (\$3,500.00) for each Sewer Connection Permit Charge and the fee shall be paid to Northfield by each user at the time of each request for a land use permit from Green Oak. Green Oak shall monthly provide a written

TOWNSHIP OF NORTHFIELD/TOWNSHIP OF GREEN OAK
WASTEWATER TREATMENT CONTRACT

THIS AGREEMENT made this 25th day of June, 2001 between the TOWNSHIP OF NORTHFIELD, a general law township with offices at 75 Barker Road, Post Office Box 576, Whitmore Lake, Michigan 48189 (hereinafter "Northfield"), and the TOWNSHIP OF GREEN OAK, a general law township with offices at 10789 Silver Lake Road, South Lyon, Michigan 48178 (hereinafter "Green Oak").

WITNESSETH:

WHEREAS, Northfield is the owner and operator of a wastewater treatment plant (hereinafter "plant") located in the Township of Green Oak, County of Livingston, State of Michigan; and

WHEREAS, Act 129 of Public Acts of 1943, the Sewers and Sewer Disposal Contracts Act, provides that any two or more political subdivisions may contract relative to the furnishing of sewage disposal services by one or more of such political subdivisions to another political subdivision; and

WHEREAS, Northfield and Green Oak agree that because of the proximity of the service area to the plant and the environmentally sensitive nature of the service area, it is in the best interests of Northfield and Green Oak to make available to the service area centralized sewage disposal services; and

WHEREAS, Northfield and Green Oak agree that Green Oak shall only have the right to purchase sewage disposal service from Northfield pursuant to the terms and conditions of this Agreement; and

WHEREAS, Northfield and Green Oak are desirous of entering into an agreement whereby the sanitary sewage generated in the service area described in

AMERICAN CITY EDISON
JUN 25 2001

TOWNSHIP OF GREEN OAK



EXHIBIT C

Watershed Study Criteria

1. Define goals, methodologies, and protocols for long term study of watershed area.
2. Define sampling plan and specify activities and schedules for implementation of proposed plan.
3. Propose implementation of this study within an initial \$22,500 budget in year one and up to approximately \$30,000 in each of years two through five, subject to adjustment based upon additional funding requirements for Wastewater Treatment Plant study during the term of this Consent Judgment.

EXHIBIT B

Wastewater Treatment Plant Technology Study Criteria:

1. Review current available wastewater treatment technology suitable to the member townships' respective treatment plants.
2. Review existing plant specifications, engineering, and operations and current plans, specifications and engineering drawings and information relating to any proposed plant expansions except 2.25 MGD. HAMBURG and GREEN OAK agree that the existing NORTHFIELD wastewater treatment plant can be immediately expanded and operated, in accordance with MDEQ Permit No. M10023710, issued November 14, 1997, at 2.25 million gallons per day (mgd) by duplicating the current technology utilized at NORTHFIELD's wastewater treatment plant which would also include the construction of an equalization basin, as more particularly defined in Exhibit A. The design and construction set forth in Exhibit A are approved by the parties and are not subject to the review provisions of the Consent Judgment.
3. Propose recommendations for specific technology applicable to any proposed plant expansions.
4. Recommend specific effluent goals for each plant including but not limited to recommendations regarding nitrogen and phosphorus.

EXHIBIT A

EQUALIZATION BASIN

These improvements would include the construction of a concrete basin to dampen the peak flow entering the WWTP. Related appurtenances would include: flow metering, aeration/mixing equipment, revisions to the grit/screening facilities, related electrical/instrumentation work, piping modifications and necessary site improvements.

WWTP EXPANSION TO 2.25 MGD

These improvements would duplicate existing treatment technology at the WWTP including the addition of: flow splitting structures, primary settling tank(s), aeration tank(s)/equipment, final settling tank(s), RAS pumping facilities, aeration blowers/piping, tertiary filter(s), sludge storage, digester improvements, standby power improvements, electrical/instrumentation and necessary site improvements.

REFERENCE TO PLANS AND SPECIFICATIONS

This Exhibit A references and incorporates by such reference the plans, documents, drawings, concepts and specifications ("the current Design and Construction Plans") provided by Northfield Township and reviewed by Hamburg Township and the same are made a part of this Exhibit A as though fully set forth herein:

List to be filed separately


The parties understand and agree that the Current Design and Construction Plans may be henceforth from time to time amended or modified and that any such amendments and modifications, insofar as the technology remains consistent with the concepts and standards contemplated in the Current Design and Construction Plans, shall be deemed approved by Hamburg Township as though fully set forth herein.

LAW OFFICE OF PAUL E. BURNS
Attorneys for Defendant
Northfield Township

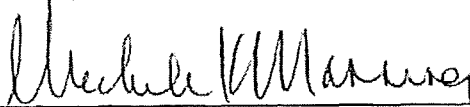


PAUL E. BURNS (P31596)
133 West Grand River
Brighton, Michigan 48116

NORTHFIELD TOWNSHIP
a general law township



By: Mike McFarland
Its: Supervisor



By: Michele K. Manning
Its: Clerk

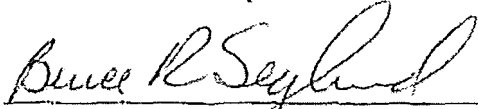
FROM : PAUL E BURNS

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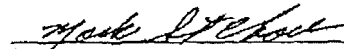
CONNELLY, CROWLEY, GROTH
& SEGLUND

Attorneys for Intervening Defendant
Green Oak Township



BRUCE R. SEGLUND (P32446)
2410 S. Commerce Road
Walled Lake, Michigan 48390

GREEN OAK TOWNSHIP
a general law township



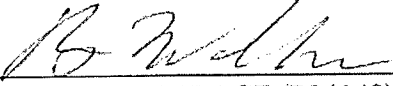
By: Mark St. Charles
Its: Supervisor



By: Michael Sedlak
Its: Clerk


**APPROVED AS TO FORM
AND CONTENT:**

HOOPER, HATHAWAY, PRICE,
BEUCHE & WALLACE
Attorneys for Plaintiff
Township of Hamburg

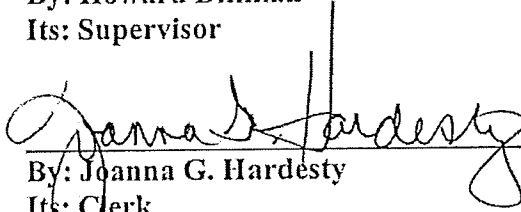


BRUCE T. WALLACE (P24148)
126 South Main Street
Ann Arbor, Michigan 48104

HAMBURG TOWNSHIP
a general law township



By: Howard Dillman
Its: Supervisor



By: Joanna G. Hardesty
Its: Clerk

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HON. DANIEL A. BURRESS

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13. SEVERABILITY

Should any provision of this Consent Judgment be found by a court of law to be unconstitutional it shall be severed from the Consent Judgment and the remaining provisions shall remain in full force and effect.

14. CONFLICTS WITH OTHER JUDGMENTS

NORTHFIELD, GREEN OAK and HAMBURG all acknowledge that the Hidden Lake Waste Water Treatment Plant is subject to the terms and conditions of a certain Judgment and Amended Judgment in the case of "Beck Development, et. al. vs. Green Oak Township, et. al.," Case Number 95-14297-CH in the Livingston County Circuit Court. NORTHFIELD, GREEN OAK and HAMBURG agree that, in case of conflict between this Consent Judgment and the terms and conditions of the Judgments in Case No. 95-14297-CH, the terms and conditions of the Judgments in Case No. 95-14297-CH shall control and nothing in this Consent Judgment shall be interpreted or construed to negate or modify in any way the terms and conditions of the Judgments in Case No. 95-14297-CK.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first above written.

HON. DANIEL A. BURRESS

DANIEL A. BURRESS
CIRCUIT COURT JUDGE

5/23/02

7. **TERM**

The term of this Consent Judgment shall commence on the date hereto and terminate five (5) years hence. HAMBURG, NORTHFIELD, and GREEN OAK agree that this Consent Judgment may be extended if mutually agreeable terms are agreed upon by HAMBURG, NORTHFIELD, and GREEN OAK at the time of the expiration of this Consent Judgment.

8. **TERMINATION**

Termination of this Consent Judgment shall be by Petition for Termination to the Livingston County Circuit Court for good cause shown.

9. **BOUND BY THIS CONSENT JUDGMENT**

Each party agrees to adopt ordinances effectuating this Consent Judgment and binding them to all rules, processes and conditions of this Consent Judgment to the same extent that the other parties to this Consent Judgment are so bound.

10. **DEFAULT**

The parties pledge their full faith and credit for all duties set forth in this Consent Judgment.

11. **FAILURE OF PERFORMANCE**

No failure or delay in the performance of the executed Consent Judgment by the parties shall be deemed to be a breach thereof when such failure or delay is occasioned by or due to any Act of God, strikes or lockouts, wars, riots, epidemics, or other similar cause, whether of the kind herein enumerated or otherwise not in the control of the party claiming suspension.

12. **NON-ASSIGNABILITY**

It is hereby agreed that this Consent Judgment shall be binding upon all successor governmental units which may assume jurisdiction over all or part of the areas now governed by the parties.

wastewater treatment or watershed protection shall be subject to binding arbitration in accordance with the following procedures:

- A. The aggrieved township may give notice of its intent to arbitrate any environmental dispute within thirty (30) days of any recommendation or action giving rise to the claim or dispute.
- B. The disputing parties shall each have fifteen (15) days from the date of the notice described in paragraph 6(A) to select and name one arbitrator to the arbitration panel. The two selected arbitrators shall have fifteen (15) days to name the third arbitrator.
- C. Arbitrators cannot be appointed from the legislative bodies of the member townships' governing bodies. The arbitration panel shall determine the procedure for arbitration other than the timeline set forth herein.
- D. The arbitration panel shall report its findings on the claim or dispute to each member legislative body within sixty (60) days of being constituted or such other reasonable time period as the arbitrators deem appropriate and issue a binding decision regarding the grievance.
- E. HAMBURG, NORTHFIELD and GREEN OAK each agrees to consider itself bound and to be bound by any decision made by the arbitrators pursuant to this agreement. The parties further agree that the binding decision is in lieu of any and all statutory or common law remedies and there shall be no review or appeal, e.g. judicial, administrative, or otherwise.
- F. The Arbitrators shall have discretion to award costs and fees upon a finding that any parties' objections were improvidently made.
- G. The parties agree that a judgment of the Livingston County Circuit Court may be rendered upon the arbitration award made pursuant to this Consent Judgment.

- J. Unless otherwise specified in this agreement, the ISC shall act upon a majority vote of all of its members at any regular or special meeting.

5. **FUNDING OF INTERMUNICIPAL SEWER COMMITTEE (ISC)**

For the purpose of providing funds to meet the expenses of the ISC, the member townships' governing bodies shall, by resolution, authorize the allocation of municipal funds for such purpose. Each member township shall make a minimum contribution of fifteen thousand dollars (\$15,000.00) per annum commencing with entry of this Consent Judgment and thereafter on the anniversary thereof, ending five (5) years hence. Additional funding shall be based on the recommendation of the ISC and approved by a majority vote of each member township's board of trustees, with each member township bearing 33.34% proportion of the total additional funds approved. Funding of the ISC shall not be subject to Arbitration. Each Township shall establish a fund within their respective budgets to be monitored by the Treasurer for each Township. The ISC shall submit proportionate costs to each Township quarterly for payment.

- A. The ISC may accept gifts and grants from the federal government, state government and local governments, also from private individuals, foundations or agencies, if the grants are made for furtherance of the objectives for which the committee is established. Any funds received by the ISC shall be divided by 33.34% and deposited into each Township's ISC fund.
- B. The ISC shall maintain records relative to its operation and hold them open for review.

6. **PROCEDURE OF BINDING ARBITRATION**

In the event that a recommendation of the ISC is not unanimous, the dissenting township's governing body may demand that the dispute be submitted to binding arbitration by a three-person arbitration panel. Such dispute and any other claims or disputes regarding

by the experts described in paragraph 4(F) below. In addition, the ISC shall monitor the member townships for sewage plant spills. The ISC shall compile and report these statistics to the member townships quarterly.

- C. The ISC shall review any proposed wastewater treatment plant expansions or modifications except as set forth herein.
- D. The ISC shall in the first year of this Consent Judgment commission a Wastewater Treatment Plant Technology Study and commence a Watershed Study in accordance with the criteria described in Exhibits B and C.
- E. The ISC shall review any studies performed at the direction of this ISC.
- F. Each member of the ISC shall appoint an expert to conduct the studies set forth in paragraph 4(D) and serve the ISC. The ISC may employ any other personnel deemed necessary to coordinate and conduct all types of surveys and studies relating to the watershed issues and make individual or joint written recommendations as to the best available and economically feasible technological solution to such issues. However, in the event a dispute proceeds to Arbitration pursuant to Paragraph 6 of this Agreement, the disputing parties shall each select one expert. The two selected experts shall select a third expert. Time deadlines for the selection of experts for the purposes of Arbitration shall be determined by the Arbitration panel.
- G. The ISC shall adopt, by resolution of a majority of its full membership, any expert recommendation for submission to each member township's governing body.
- H. The ISC may publicize its purposes, objectives and findings, and may distribute reports thereon.
- I. The ISC shall make an annual report of its activities to each member township's governing body.

their representatives consistent with compensation policies for other citizen boards of the respective municipality.

- C. The ISC shall meet at least quarterly and at such other times and places as shall be determined by the ISC or as compelled by member township requests for review of disagreements. The ISC shall maintain minutes of its meetings and hold them open for review.
- D. The ISC may establish By-Laws and Procedures not inconsistent with this Consent Judgment and subject to the approval of the member townships' legislative bodies.

3. **PURPOSE OF INTERMUNICIPAL SEWER COMMITTEE (ISC)**

The ISC shall study currently existing, publicly owned treatment plants located within HAMBURG, NORTHFIELD and GREEN OAK and shall study wastewater effluent to formulate written recommendations for the best available technology that is practical, economically feasible and effective for each community's treatment plant.

4. **DUTIES AND POWERS OF INTERMUNICIPAL SEWER COMMITTEE (ISC)**

- A. The ISC shall have general authority to monitor the member townships' existing sewage plants and make recommendations thereto. The existing sewage treatment plants shall mean (i) the Northfield Township Waste Water Treatment Plant on Leman Road in Green Oak Township, (ii) the Hidden Lake Waste Water Treatment Plant located on Silver Lake Road in Green Oak Township, and (iii) the Hamburg Township Waste Water Treatment Plant located on M-36 in Hamburg Township.
- B. The ISC shall monitor the member townships' existing sewage plants for compliance with effluent levels to be established by the Michigan Department of Environmental Quality and for best efforts to achieve effluent goals recommended

CREATION OF INTERMUNICIPAL SEWER COMMITTEE (ISC)

- A. The governing bodies of NORTHFIELD, GREEN OAK and HAMBURG shall, by resolution in each respective body, establish and organize an intermunicipal committee, to be known as the Intermunicipal Sewer Committee ("ISC").
- B. The ISC shall consist of six (6) members, two (2) from each township NORTHFIELD, GREEN OAK and HAMBURG. Each township board shall appoint two (2) committee members ("appointee") within 60 days of the execution of this Consent Judgment and thereafter every two (2) years at each township's first regularly scheduled township board meeting of the year. No appointee shall be a member of any member township's board of trustees. It is mutually understood that given the technical nature of issues that will be facing the ISC in the future, it is prudent that the ISC be made up of individuals familiar with environmental issues. In the event an ISC committee member resigns, his or her appointing township board shall appoint a new representative within 45 days of said resignation. The new appointee shall fill the vacancy for the unexpired term. The board of each member township may remove any or all of its appointed representatives at any time if it is deemed by a majority of members of the township board that such removal is in the best interest of the township. Resignations and/or removal of appointments shall not inhibit the actions of the ISC and the ISC shall be empowered to perform as if the appointee were never appointed and the ISC were fully staffed. Each appointee shall qualify by taking the constitutional oath of office and filing it with the appropriate clerk of the municipality. The volunteer ISC members shall serve without compensation from ISC funds. The respective member townships, at their option, may compensate

WHEREAS, NORTHFIELD, GREEN OAK and HAMBURG are desirous of creating such a intermunicipal committee to avoid further litigation regarding wastewater disposal services in each township, and

WHEREAS, NORTHFIELD, GREEN OAK and HAMBURG agree that the resolution of wastewater disposal service and environmental issues in a swift, effective, and conclusive manner is of paramount concern in each township; and

WHEREAS, NORTHFIELD, GREEN OAK and HAMBURG are desirous of entering into an agreement whereby future disputes regarding sewage disposal services and watershed protection in each township that may arise would be transmitted to and reviewed by the intermunicipal committee for orderly resolution of the matter; and

WHEREAS, NORTHFIELD, GREEN OAK and HAMBURG agree that because of the proximity of the respective plants to each township and the environmentally sensitive nature of the service area, it is in the best interests of NORTHFIELD, GREEN OAK and HAMBURG to create such an intermunicipal committee to review issues and make recommendations regarding sewage disposal services and related environmental issues in each township; and

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. GRANT OF EXPANSION OF NORTHFIELD'S WASTEWATER TREATMENT PLANT

In further consideration of the mutual promises herein, HAMBURG and GREEN OAK agree that the existing NORTHFIELD wastewater treatment plant can be immediately expanded and operated, in accordance with MDEQ Permit No. M10023710, issued November 14, 1997, at 2.25 million gallons per day (mgd) by duplicating the current technology utilized at NORTHFIELD's wastewater treatment plant which would also include the construction of an equalization basin, as more particularly defined in Exhibit A. The design and construction as set forth in Exhibit A are approved by the parties and are not subject to the review provisions of the Consent Judgment.

THIS CONSENT JUDGMENT made this ____ day of April 2002, by and between TOWNSHIP OF HAMBURG, a general law township, whose address is 10405 Merrill Road, Post Office Box 157, Hamburg, Michigan, 48139 ("HAMBURG"), TOWNSHIP OF NORTHFIELD, a general law township, whose address is 75 Barker Road, Post Office Box 576, Whitmore Lake, Michigan 48189 ("NORTHFIELD"), and TOWNSHIP OF GREEN OAK, a general law township, whose address is 10001 Silver Lake Road, Brighton, Michigan 48116 ("GREEN OAK").

WITNESSETH:

WHEREAS, NORTHFIELD, GREEN OAK and HAMBURG own and operate wastewater treatment works (hereinafter "plants"), the NORTHFIELD and GREEN OAK plants being located in Green Oak Township in the County of Livingston, and the HAMBURG plant being located in Hamburg Township, County of Livingston, State of Michigan; and

WHEREAS, NORTHFIELD, GREEN OAK and HAMBURG are desirous of settling pending litigation between them in the case of "Lakeland Property Owners, et. al. and Hamburg Township vs. Northfield Township and Green Oak Township," Case No. 70-1453-CE in the Livingston County Circuit Court, and creating a mechanism to ensure monitoring of the plants, cooperation among the respective Townships and speedy resolution of disputes which arise as a result of the operation of the plants, their effects upon the respective townships, and overall environmental protection; and

WHEREAS, Act Number 200 of Public Acts of 1957, as amended, (MCLA 123.631 to 123.637) provides for the creation by 2 or more municipalities of an intermunicipal committee for the purpose of studying area problems; and

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

LAKELAND PROPERTY OWNERS ASSOCIATION,
a Michigan unincorporated voluntary association,
and TOWNSHIP OF HAMBURG, a Michigan
body corporate, jointly and severally,

Civil Action No. 70-1453-CE
HON. DANIEL A. BURRESS

Plaintiffs,

AND

PORTAGE, BASE, AND WHITEWOOD OWNERS
ASSOCIATION, INC., a Michigan non-profit
corporation, formerly known as PORTAGE AND
BASE LAKE ASSOCIATION, INC., a Michigan
non-profit corporation,

Intervening Plaintiff,

v

TOWNSHIP OF NORTHFIELD, a Michigan
body corporate,

Defendant,

AND

TOWNSHIP OF GREEN OAK, a Michigan
body corporate,

Intervening Defendant.

TRUE COPY
MARGARET M. DUNLEAVY
LIVINGSTON COUNTY, CLERK

Lakeland Property Owners Assoc.
A Michigan Unincorporated
Voluntary Association
In Pro Per

HOOPER, HATHAWAY, PRICE,
BEUCHE & WALLACE
Attorneys for Plaintiff
Township of Hamburg
BY: BRUCE T. WALLACE (P24148)
BY: WILLIAM J. STAPLETON (P38339)
126 South Main Street
Ann Arbor, Michigan 48104
(734) 662-4426

Portage, Base and Whitewood
Owners Association, Inc.
In Pro Per

PAUL E. BURNS (P31596)
Attorney for Defendant
Township of Northfield
133 W. Grand River
Brighton, MI 48116-1600
(810) 229-6761

CONNELLY, CROWLEY, GROTH
& SEGLUND
BY: BRUCE R. SEGLUND (P32446)
Attorneys for Intervening Defendant
Green Oak Township
2410 S. Commerce Road
Walled Lake, Michigan 48390
(248) 624-4505

AMENDED CONSENT JUDGMENT

SEWER TAP-IN PERMIT ELIGIBILITY APPLICATION

APPLICANT: (Please complete the following information.)

NAME _____
Mailing _____
Address: _____
Telephone: _____

Property _____
Address: _____
Legal Description: Lot _____ Subdivision _____
or Metes and Bounds, Section _____

Tax Parcel ID Number: _____

Purpose of Tap-In: Residential Home _____ Duplex _____
Commercial Establishment _____

(If Commercial: Type of Business _____
Square Footage (inside) _____ # of FTE Employees _____
Anticipated Water Usage _____ (# of gallons per day)
We may contact you for additional information.)

The property is located in the _____ Sewer District and (HAS) (HAS NOT) been assessed
for the initial Capacity Reservation Charge of \$1,500.

Treasurer

The above applicant has applied for a building permit to construct a Single Family
Residence Duplex Commercial Building (type: _____). Building Permit #
_____ is pending issuance of Sewer Tap-In Permit.

A copy of the Certificate of Compliance (Temporary/Permanent) will be supplied upon
completion of the structure.

Building Official

The above application has been reviewed by me and appears to conform to all requirements
agreed to by HAMBURG TOWNSHIP and NORTHFIELD TOWNSHIP in accordance to the
Intergovernmental Agreement and the provisions of the Circuit Court of Livingston County.
I recommend issuance of the Sewer Tap-In Permit by NORTHFIELD TOWNSHIP.

Supervisor

ACTION BY NORTHFIELD TOWNSHIP:
Permit Number _____ issued this Date _____
or
Permit Denied this Date _____ for the following reason:

Official

(CO issued: _____ Date sewer billing entered _____)-----

ATTACHMENT "B"

[illegible]

STATE OF MICHIGAN)
COUNTY OF Livingston)SS

On this 14th day of March, 1991, before me, a Notary Public, in and for said County and State, personally appeared Harry Bater, Supervisor of Hamburg Township, and Martha Parrish, Clerk of Hamburg Township, who acknowledged said instrument to be the free act and deed of Hamburg Township.

Theresa M Brennan
Theresa M Brennan Notary Public
Livingston, County, MI
My Commission Expires: 6/22/94

wp/n-field.19

In witness whereof, the parties hereto have made and executed this Agreement as of the day and year first above written.

W. W. Southard
R. W. SOUTHARD

Paul E. Burns
PAUL E. BURNS

TOWNSHIP OF NORTHFIELD

By: William D. Eskridge
William D. Eskridge
Its Supervisor

By: Diane M. Pomorski
Diane M. Pomorski
Its Clerk

W. W. Southard
R. W. SOUTHARD

Paul E. Burns
PAUL E. BURNS

TOWNSHIP OF HAMBURG

By: Harry Bator
Harry Bator
Its Supervisor

By: Martha A. Parrish
Martha Parrish
Its Clerk

STATE OF MICHIGAN)
COUNTY OF Livingston) SS

On this 14th day of March, 1991, before me, a Notary Public, in and for said County and State, personally appeared William D. Eskridge, Supervisor of Northfield Township, and Diane M. Pomorski, Clerk of Northfield Township, who acknowledged said instrument to be the free act and deed of Northfield Township.

Theresa M Brennan
Theresa M Brennan Notary Public
Livingston, County, MI
My Commission Expires: 6/22/94

XVIII. JOINT UTILITY BOARD

A. The purpose of the Joint Utility Board is to serve as a recommending body to the NORTHFIELD Township Board as to the operation of the Plant. The board may investigate future operational changes, ordinance revisions or recommendations, and may review requests for unallocated capacity needs, plans for Plant expansion and financial reports;

B. The Board shall be made up of two (2) representatives from each Township board and one (1) alternate and shall be appointed by the respective legislative bodies for the term of office. The respective legislative body may remove any or all of its appointed representatives at any time if it is deemed that such a removal is in the best interest of the Township;

C. The Board shall meet quarterly at the NORTHFIELD Township offices or a place to be mutually agreed upon. Other meetings may be called by reasonable notification to a NORTHFIELD representative with indication of the purpose or agenda of such a meeting;

D. The Board members shall serve with compensation from Plant funds at the rate of Forty and No/100 (\$40.00) Dollars per meeting; and

E. Officers to be selected annually in May shall be a Chairman and a Secretary. The Chairman shall conduct the meeting. The Secretary shall take and transcribe minutes of the meeting to be distributed to all members. Recommendations shall be sent to the NORTHFIELD Clerk for Township board action.

XIX. NON-ASSIGNABILITY

This Agreement is not assignable by HAMBURG without prior written consent of NORTHFIELD.

XX. SUCCESSORS

It is hereby agreed that this Agreement shall be binding upon all successor governmental units which may assume jurisdiction over all or part of the areas now governed by the parties.

XXI. TERM OF THE AGREEMENT

The provisions of this agreement shall commence on the date hereof and shall be in effect for the next twenty (20) years and shall be automatically renewed for ten (10) year increments unless notification of termination shall be received in writing by either party within three (3) years prior to its termination.

XIII. INTERRUPTION OF SERVICE

In the event service is interrupted, either accidentally or intentionally, no claims for damages for such discontinuance shall be made by HAMBURG or its users against NORTHFIELD. NORTHFIELD shall immediately notify HAMBURG by telephone upon learning of any interruptions of service. Whenever service will be intentionally interrupted temporarily by NORTHFIELD to facilitate repair, modification or connection to NORTHFIELD'S sewage disposal system, NORTHFIELD, prior to such interruption, shall give HAMBURG reasonable notice of the time, duration and area affected by the interruption of service, including immediate telephonic notification.

XIV. FAILURE OF PERFORMANCE

No failure or delay in the performance of this Agreement shall be deemed to be a breach thereof when such failure or delay is occasioned by or due to any act of God, strikes or lockouts, wars, riots, epidemics, explosions, sabotage, breakage, or accidents to machinery or lines of pipe, the binding order of any court or governmental authority, or any other cause, whether of the kind herein enumerated or otherwise not in the control of the party claiming suspension.

XV. INSURANCE

During the term of this Agreement, all parties shall maintain insurance in the amount of not less than Two Million and No/100 (\$2,000,000.00) Dollars for a comprehensive general liability policy. Insurances shall be reviewed annually by NORTHFIELD and HAMBURG to insure proper coverage. Evidence of such insurance shall be provided by NORTHFIELD and HAMBURG to each other prior to the treatment of sewage from HAMBURG and annually thereafter. Each party shall cause the other party to be a named insured on its policy.

XVI. TAXES

HAMBURG agrees not to assess any taxes on any sewage disposal facilities situated within HAMBURG and owned by NORTHFIELD.

XVII. BOUND BY NORTHFIELD ORDINANCES

HAMBURG agrees to adopt ordinances which require all sewage disposal facility users situated within the area outlined in Attachment "A", to be bound by all rules, regulations and ordinances of NORTHFIELD to the same extent that users within the corporate limits of NORTHFIELD are so bound. HAMBURG agrees to adopt new ordinances or modify ordinances within ninety (90) days of notification of said ordinances by NORTHFIELD. NORTHFIELD agrees to give HAMBURG ninety (90) days written notice of its intent to adopt new ordinances or to modify ordinances relating to the Plant.

system to the extent possible from the revenues generated from the sewer use charges. NORTHFIELD shall not be obligated to reconstruct or repair parts of the HAMBURG system damaged or destroyed by natural disaster, war or insurrection or similar unusual happenings beyond NORTHFIELD'S control. NORTHFIELD shall maintain and operate the HAMBURG system in the same manner as it maintains and operates the NORTHFIELD system. All NORTHFIELD books and records pertaining to the sanitary sewage disposal system shall be available to HAMBURG for inspection.

X. MASTER METER

Master metering facilities, which shall measure only flow from HAMBURG, shall be purchased and installed by HAMBURG. The location of the master metering facilities shall be mutually agreed upon by HAMBURG and NORTHFIELD. HAMBURG agrees to convey ownership to NORTHFIELD of the master meter and NORTHFIELD agrees to own and maintain such meter. HAMBURG reserves the right to install a computer data link from the master metering facility to HAMBURG Township at HAMBURG'S expense.

XI. TOXIC OR UNACCEPTABLE WASTES

In cases where the character of sanitary sewage emanating from HAMBURG is such that it imposes an unreasonable or additional burden upon NORTHFIELD'S sewage disposal system above that imposed by the average domestic sewage entering NORTHFIELD'S sewage disposal system, as determined by NORTHFIELD, HAMBURG shall cause such entity to treat such sanitary sewage in a manner accepted by the United States Environmental Protection Agency (U.S.E.P.A.) and the State of Michigan Department of Natural Resources or their successors. The average domestic sewage standard shall be defined as effluent which shall not exceed the following parameters:

BOD	250 MG/L
SUSPENDED SOLIDS	250 MG/L
NITROGEN	20 MG/L
PHOSPHOROUS	6 MG/L
PH	9

It is understood that the above standards may be modified from time to time.

XII. EXCLUSIVE SERVICE

During the term of this Agreement, NORTHFIELD shall have the exclusive right to treat sanitary sewage originating in the service area as outlined in Attachment "A", providing capacity is available from NORTHFIELD.

which NORTHFIELD maintains on deposit the largest amount of its sewer revenue money.

VIII. CONSTRUCTION OF SEWERS TO SERVE HAMBURG

A. HAMBURG shall have complete and full responsibility to pay for the cost of designing and constructing sewage lines, pump stations or any other appurtenances thereto for the purposes of HAMBURG connecting to the Plant. Conversely, NORTHFIELD shall not have any responsibility to pay for the cost of designing and constructing sewage lines, pump stations or any other appurtenances thereto for the purposes of HAMBURG connecting to the Plant;

B. All design of sewage facilities in HAMBURG shall be approved by NORTHFIELD'S Engineer. NORTHFIELD'S Engineer shall conduct a final inspection of said facilities. Design review, report review and final inspection costs incurred by NORTHFIELD of HAMBURG facilities shall be paid by HAMBURG to NORTHFIELD within thirty (30) days of billing. NORTHFIELD'S Engineer may review periodic construction progress reports, reports on compaction testing and pressure testing, and review televising of HAMBURG'S sewer lines, at HAMBURG'S expense, but not to exceed Four Thousand and No/100 (\$4,000.00) Dollars. NORTHFIELD and HAMBURG agree that they will take reasonable steps to limit the duplication of engineering services and to minimize engineering costs;

C. Detailed records including drawn plans of any construction, alteration, addition or relocation of sewage facilities located in HAMBURG shall be kept on file by HAMBURG and copies shall be delivered and retained by NORTHFIELD for review;

D. HAMBURG, by ordinance, shall provide that all users shall install and maintain service leads, and bear the cost of connecting said service leads to sewage facilities located within HAMBURG. Users other than single family residences and duplexes shall install and maintain meters and valves, and bear the cost of connecting same; and

E. HAMBURG shall own said sewer lines, pump stations and any other appurtenances constructed by them and NORTHFIELD agrees to operate and maintain said facilities during the term of this agreement as more particularly set forth in paragraph 9 below.

IX. MAINTENANCE AND REPAIR OF SEWER FACILITIES TO SERVE HAMBURG

All ordinary and necessary maintenance and repair costs associated with the sewage facilities located within HAMBURG shall be borne by NORTHFIELD. NORTHFIELD shall perform such maintenance and repairs as shall be necessary to HAMBURG'S

C. This Agreement is specifically conditional upon the entry of a Supplemental Order acceptable to the attorneys for NORTHFIELD and HAMBURG by the Livingston County Circuit Court permitting NORTHFIELD to expand its Plant to One Million Five Hundred Thousand (1,500,000) gallons per day based upon an annual average. In the event such a Supplemental Order is not entered by the Court, this Agreement is terminated.

VI. NORTHFIELD FINANCIAL/CONTRACTUAL OBLIGATIONS

NORTHFIELD having ownership of and cause to operate, maintain, replace, modify, or expand the NORTHFIELD Plant for the purposes of serving HAMBURG under the provisions of this Agreement, may finance by borrowing money or otherwise any or all costs of such operation, maintenance, replacement, modification, or expansion. The parties recognize that the possibility of revenues, including revenues received from the users in HAMBURG, may from time to time be insufficient to meet the obligations of NORTHFIELD under any bonds, contracts or other contractual undertakings of NORTHFIELD now outstanding or hereafter issued or entered into for financing such costs of the Plant and related facilities which are necessary to provide service to HAMBURG. It is understood that to the extent NORTHFIELD has pledged its full faith and credit under said bonds, contracts, or other contractual undertakings, NORTHFIELD may adjust its rates so as to provide funds to meet future payments under said bonds, contracts, or other contractual undertakings as they become due.

VII. DEFAULT

A. NORTHFIELD reserves the right to discontinue service to HAMBURG in the event that HAMBURG is in default of this Agreement, as well as, any other additional remedies provided by law. NORTHFIELD may charge interest for any overdue payments. The interest rate charged shall be the prime rate plus one (1) percent. Payment shall be considered overdue if not paid pursuant to the times prescribed by this Agreement or by NORTHFIELD's Ordinances, whichever may be applicable. Default includes, but is not limited to, either nonpayment or late payment. In the event of default NORTHFIELD shall give written notice of same to HAMBURG and permit HAMBURG thirty (30) days from the date of said notice to cure any default. HAMBURG shall have any remedies available to it under the law for any default by NORTHFIELD; and

B. "Prime rate" means the variable rate of interest announced from time to time by the Bank as its "prime rate". The prime rate may not be the lowest rate offered by the Bank to any of its customers. Any change in the prime rate shall take effect on the day of the change in the prime rate. "Bank" shall mean from time to time the financial institution in which NORTHFIELD has designated as its depository bank in

property under construction. HAMBURG shall notify NORTHFIELD of such information necessary to begin billing; and

(4) Annually, prior to September 1, NORTHFIELD shall certify to the HAMBURG Township Assessing Officer all the rates, charges, and fees, together with interest and penalties, owing by HAMBURG users delinquent as of the end of the March billing period (the end of NORTHFIELD'S sewer department fiscal year), and such Assessing Officer shall enter the same on the appropriate tax roll as a lien against the premises to which the services had been rendered, and HAMBURG shall enforce the lien and shall collect said sums as provided by law. HAMBURG shall promptly remit to NORTHFIELD all sums so collected. If HAMBURG fails or neglects to so enter such delinquent charges on its next tax roll, HAMBURG shall pay to NORTHFIELD such charges not later than December 1, of the year of such certification.

V. TERMINATION OF AGREEMENT

A. HAMBURG shall have:

(1) Fifteen (15) months from the date of the execution of this Agreement to inform NORTHFIELD, in writing, that its special assessment districts have been confirmed and a copy of the special assessment district(s) roll shall be provided to NORTHFIELD. However, it is the intent that HAMBURG confirm the special assessment district(s) roll within twelve (12) months; and

(2) Twenty-four (24) months from the date of the execution of this Agreement to pay NORTHFIELD the funds more particularly set forth in paragraph IV(A) of this Agreement.

B. If HAMBURG does not perform the obligations set forth in paragraphs 1 or 2 above within the time parameters herein described, neither HAMBURG nor NORTHFIELD shall have any rights or obligations under this Agreement, except NORTHFIELD shall be permitted to expand its Plant's capacity to discharge One Million Three Hundred Thousand (1,300,000) gallons per day based on an annual average in accordance with the Supplemental Order entered on March 14th, 1991 in the case of Lakeland Property Owners Association, et al. v Township of Northfield, et al. (Civil Action No. 1453); and

(2) In the event that the property is not connected within the time parameters set forth above, HAMBURG agrees that the sewer connection charge for each residential equivalent unit shall be the current sewer connection permit charge established by NORTHFIELD by ordinance. In the event that a residential equivalent unit(s) was previously assigned to the property pursuant to this Agreement and paid for by HAMBURG, the landowner will receive credit for that payment. The sewer connection permit charge shall be paid prior to permitting the property owner to connect to the system. The sewer connection permit charge may be modified from time to time at NORTHFIELD's option, by ordinance; and

(3) If a connection permit is purchased and the permittee does not connect within one (1) year of the date of purchase of said permit, NORTHFIELD shall notify HAMBURG, and HAMBURG shall have the option to revoke said permit and notify NORTHFIELD of such revocation, upon which NORTHFIELD shall return payment to HAMBURG. HAMBURG shall revoke any permit(s) not utilized within two (2) years from the date of purchase. NORTHFIELD and HAMBURG agree that no interest shall be paid on any repayment by NORTHFIELD.

C. OPERATION, MAINTENANCE, AND EQUIPMENT REPLACEMENT CHARGE - SEWAGE DISPOSAL SYSTEM

(1) NORTHFIELD shall provide services to HAMBURG users at the rates, charges, and fees established for similar users of the NORTHFIELD system by ordinances of NORTHFIELD. NORTHFIELD shall give ninety (90) days notice of any change in said rates, charges, and fees to HAMBURG in writing, delivered in person or by mail. NORTHFIELD shall have the right to amend its ordinances, to change the rates, charges, and fees from time to time;

(2) NORTHFIELD agrees to bill and collect sewer service charges on a quarterly basis to be billed in June, September, December and March for all nonmetered customers. Metered customers may be billed upon a monthly, bi-monthly, or quarterly basis. Billings are paid in arrears;

(3) Sewer service charges shall begin on the date of connection to the public sewer system for existing or occupied residences or nonresidential establishments or upon the issuance of a temporary/permanent certificate of occupancy for

Exhibit "A", shall be defined and determined in accordance with NORTHFIELD'S ordinances which may be modified from time to time;

(4) Both parties acknowledge that bids have not been received nor awarded for the Plant expansion. Unforeseen construction problems may cause increases in the estimated total project cost, therefore, HAMBURG agrees to pay, when billed within thirty (30) days, the difference between the projected cost estimate and actual cost incurred in accordance with the formula established above. Conversely, the cost may result in an overpayment by HAMBURG; therefore, HAMBURG shall be entitled to a proportionate reimbursement plus interest at the rate the funds from HAMBURG were previously invested by NORTHFIELD which is to be paid within thirty (30) days of completion of the project;

(5) The capacity reservation charge shall be paid by HAMBURG to NORTHFIELD prior to NORTHFIELD providing any services under this Agreement, but in no event later than twenty-four (24) months from the date of execution of this Agreement; and

(6) HAMBURG agrees to exercise due diligence in the establishment of its special assessment districts, construction of sewer lines and connection therewith.

B. CONNECTION PERMIT CHARGE - SEWAGE DISPOSAL SERVICE

(1) HAMBURG agrees to require each person having control of a structure in which sanitary sewage originates, and each owner and each occupant of such a structure to be connected to an available public sanitary sewer. Such connection shall be completed promptly, but in no case later than ninety (90) days from the date of publication of a notice by the HAMBURG Township Clerk of the availability of the public sanitary system in a newspaper of general circulation in the Township of HAMBURG. If a REU(s) was assigned the property and paid by HAMBURG and the property is connected to the system within ninety (90) days, no additional connection charges shall be due unless HAMBURG failed to assign a sufficient number of REU(s) to the property. NORTHFIELD shall provide a procedure for the extension of the ninety (90) day connection requirement set forth above for hardship cases;

C. Additional statistical information shall be supplied to NORTHFIELD by HAMBURG or its users on all nonresidential establishments to calculate sewage capacity and/or appropriate pretreatment facilities in accordance with NORTHFIELD'S ordinance prior to any connection to the NORTHFIELD system. Such statistical information may include, but not be limited to, square footage, seating capacity, number of employees, anticipated water usage, number of rooms, type of facility and proposed uses; and

D. HAMBURG consents to the use by NORTHFIELD of the public streets, alleys, lands and rights-of-way in HAMBURG for the purpose of operating, maintaining and repairing the sewage disposal service supplied by NORTHFIELD to individual users in HAMBURG. HAMBURG further consents to the furnishing of sewage disposal service to the individual users situated in HAMBURG. In consideration of the furnishing by NORTHFIELD of sewage disposal service to individual users in HAMBURG, HAMBURG agrees that such performance by NORTHFIELD shall be in lieu of all licenses, fees, rentals, taxes or charges which HAMBURG or other assessment district or governmental unit might otherwise levy and impose upon NORTHFIELD for the furnishing of sewage disposal service in HAMBURG.

IV. COMPENSATION

A. CAPACITY RESERVATION CHARGE

(1) HAMBURG agrees to share all of the design, engineering, inspection, construction, legal and other associated costs of the expansion of the Plant from Seven Hundred Fifty Thousand (750,000) gallons per day to One Million Five Hundred Thousand (1,500,000) gallons per day on a pro-rata basis. The formula to be employed for calculating HAMBURG'S payment shall be as follows:

1/3 the Total Plant Expansion Project Cost

+ One Thousand Five Hundred (\$1,500.00)
Dollars per Residential Equivalent Unit
(which represents the current connection
permit charge)

= Total amount owed by Hamburg

(2) NORTHFIELD shall supply HAMBURG with the cost of phase 1 after contracts have been let, and an estimate of the design and construction cost of all remaining construction phases;

(3) Residential equivalent unit(s), to be assigned to properties within the territory set forth in

and entered by the Livingston County Circuit Court in the case of Lakeland Property Owners Association, et al. v Northfield Township, et al., Case No. 1453; and

B. The expansion is expected to occur in phases. Phase 1 is expected to increase the capacity of the Plant to One Million One Hundred Thousand (1,100,000) gallons per day. Phase 2 is expected to increase the capacity of the Plant to One Million Three Hundred Thousand (1,300,000) gallons per day. Phase 3 is expected to increase the capacity of the Plant to One Million Five Hundred Thousand (1,500,000) gallons per day. NORTHFIELD, in its discretion, may combine the phases and determine the timing of phases. NORTHFIELD agrees to exercise due diligence in the construction of its expanded Plant so as to provide service to HAMBURG pursuant to the terms of this Agreement. This provision is not intended to modify paragraph V(B) of this Agreement.

II. SEWAGE DISPOSAL SERVICE BY NORTHFIELD

A. NORTHFIELD agrees to receive and treat sanitary sewage from HAMBURG provided that the flow does not exceed Two Hundred Fifty Thousand (250,000) gallons per day based upon an annual average, within eighteen (18) months after NORTHFIELD receives payment pursuant to paragraph IV(A) of this Agreement; and

B. The effluent from HAMBURG shall emanate only from an area of HAMBURG outlined in Attachment "A" attached hereto, dated March 14th, 1991 and signed by the Supervisor and Clerk for each Township. Said effluent shall emanate only from residential homes and commercial establishments. No industrial effluent shall be permitted. The map may be altered with the written agreement of NORTHFIELD which may not be unreasonably withheld. It is the intent of the parties that the properties abutting Strawberry Lake, excluding the properties commonly referred to as the "Bluffs", be provided with sanitary sewage disposal service. HAMBURG agrees to use its best efforts to provide service to said properties.

III. PURCHASE OF SEWAGE DISPOSAL

A. No free service shall be furnished to any person, firm or corporation, public or private, or to any public agency or instrumentality;

B. Prior to connection HAMBURG agrees to have its users submit to NORTHFIELD a "Sewer Tap-in Permit Eligibility Application" for each proposed connection to the NORTHFIELD system, a copy of which is attached as Attachment "B", dated March 14th, 1991 and signed by the Supervisor and Clerk for each Township;

TOWNSHIP OF NORTHFIELD - TOWNSHIP OF HAMBURG

INTERGOVERNMENTAL AGREEMENT

This Agreement is made this 14th day of March, 1991 between the Township of Northfield, a general law township, with offices at 75 Barker Road, P.O. Box 576, Whitmore Lake, Michigan 48189 (hereinafter "Northfield"), and the Township of Hamburg, a general law township, with offices at 10405 Merrill Road, P.O. Box 157, Hamburg, Michigan 48189 (hereinafter "Hamburg").

RECITALS

WHEREAS, NORTHFIELD is the owner and operator of a wastewater treatment plant (hereinafter "Plant") located in the Township of Green Oak, County of Livingston, State of Michigan; and

WHEREAS, on December 5, 1989, Northfield filed a Verified Petition for Amendment of an Order of the Livingston County Circuit Court entered on May 4, 1972 and a Supplemental Order entered on September 11, 1978 in the case of Lakeland Property Owner's Association, et al. v Northfield Township, et al., Case No. 1453; and

WHEREAS, the Verified Petition filed by NORTHFIELD sought to obtain the Livingston County Circuit Court's permission to increase the Plant's capacity from 750,000 gallons per day to One Million Five Hundred Thousand (1,500,000) gallons per day; and

WHEREAS, Act 129 of Public Acts of 1943, as amended, provides that any two or more political subdivisions may contract relative to the furnishing of sewage disposal services by one political subdivision to another political subdivision; and

WHEREAS, NORTHFIELD and HAMBURG are desirous of entering into an agreement whereby sanitary sewage generated by certain residential and commercial users in HAMBURG Township would be transmitted to and treated in NORTHFIELD'S Plant;

NOW, THEREFORE, in consideration of the promises and covenants of each other, the parties agree as follows:

I. CAPACITY

A. NORTHFIELD shall be permitted to increase the capacity of its wastewater disposal plant to One Million Five Hundred Thousand (1,500,000) gallons per day based upon an annual average under the terms and conditions set forth in this Agreement and the Supplemental Order dated March 14th, 1991

3. NORTHFIELD and HAMBURG acknowledge that the NORTHFIELD wastewater treatment plant currently discharges less phosphorus than the limitation for phosphorus set forth on page 4. NORTHFIELD pledges its best efforts to seek comparable performance in the operations of its EXPANDED PLANT. NORTHFIELD acknowledges that the current level of performance approximates 0.3 mg/l and pledges its best efforts to seek comparable performance in the operations of the EXPANDED PLANT but does not warrant that the discharge of phosphorus from the EXPANDED PLANT will be limited to 0.3 mg/l. IT IS SO ORDERED.

4. For purposes of monitoring the performance of the EXPANDED PLANT pursuant to Paragraphs 2 and 3 above, NORTHFIELD shall submit to HAMBURG copies of the final effluent reports submitted monthly to the Michigan Department of Natural Resources.

5. If HAMBURG TOWNSHIP does not purchase 250,000 gallons per day of the capacity of the EXPANDED PLANT from NORTHFIELD, then, the capacity of the EXPANDED PLANT may only be increased to One Million Three Hundred Thousand (1,300,000) gallons per day on an annual average. In such event, all other provisions of this Supplemental Order shall remain in full force and effect.

6. The jurisdiction of this Court in this matter is retained and continued.

STANLEY J. LATREILLE

HON. STANLEY LATREILLE
Circuit Judge

wp/n-field.20

Effluent Characteristic	Discharge Limitations				
	Dates In Effect	Daily Minimum	Daily Maximum	30-Day Average	7-Day Average
Flow (in MGD)	All Year	--	Monitoring Only		--
Carbonaceous Biochemical Oxygen Demand (CBOD ₅)	All Year	--	10 mg/l	4 mg/l 50 lb/d	-- 125 lb/d
Total Suspended Solids	All Year	--	--	10 mg/l 125 lb/d	15 mg/l 188 lb/d
Ammonia Nitrogen (as N)	4/1-4/30	--	12 mg/l	6.4 mg/l 80 lb/d	-- 150 lb/d
	5/1-10/31	--	2 mg/l	0.5 mg/l 6 lb/d	-- 25 lb/d
	11/1-11/30	--	12 mg/l	6 mg/l 75 lb/d	-- 150 lb/d
	12/1-3/31	--	--	7.4 mg/l 93 lb/d	--
Total Phosphorus (as P)	All Year	--	--	0.4 mg/l	--
Dissolved Oxygen	5/1-10/31	6 mg/l	--	--	--
	11/1-4/30	5 mg/l	--	--	--
Fecal Coliform Bacteria	All Year	--	--	--	100/100ml
Total Residual Chlorine	All Year	--	Monitoring Only		--
	All Year beginning 1/1/92	--	0.036 mg/l	--	--
pH (standard units)	All Year	6.5	9.0	--	--

average. The Wastewater Treatment Plant with said increased capacity is hereinafter referred to as the "EXPANDED PLANT", and is subject to the following provisions of this Supplemental Order.

2. NORTHFIELD may discharge treated municipal wastewaters from the EXPANDED PLANT through outfall 001 to the Horseshoe Lake drain. Such discharges shall be limited and monitored by NORTHFIELD as follows:

(See page 4 of this Supplemental Order.)

SUPPLEMENTAL ORDER

At a session of said Court, held in the
City of Howell, County of Livingston,
State of Michigan, on March 19, 1991.

PRESENT: THE HONORABLE STANLEY J. LATREILLE
Circuit Judge

This action was originally filed on August 27, 1970. The Court entered an Order pursuant to its Opinion dated May 4, 1972. The Court entered a Supplemental Order on September 11, 1978. On December 5, 1989, Northfield Township filed a Verified Petition for Amendment of the above-referenced Order. Northfield's Petition requested that an Order to Show Cause be entered. On December 10, 1989, the Court entered an Order to Show Cause.

A hearing was originally scheduled for February 26, 1991. The hearing was adjourned to February 28, 1991. On February 28, 1991, the attorneys for all of the parties appeared before this Court. This Court commenced the trial. All parties being represented and having had full opportunity to present evidence and witnesses, and Hamburg Township, Northfield Township and Green Oak Township having agreed to the substance of this Order on March 14, 1991 and Lakeland Property Owners Association expressing opposition, but choosing to present no evidence,

IT IS HEREBY ORDERED AS FOLLOWS:

1. NORTHFIELD shall be permitted to increase the capacity of its Wastewater Treatment Plant to One Million Five Hundred Thousand (1,500,000) gallons per day based upon an annual

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

LAKELAND PROPERTY OWNERS ASSOCIATION,
a Michigan unincorporated voluntary
association, and TOWNSHIP OF HAMBURG,
a Michigan body corporate, jointly
and severally,

Plaintiffs,

Civil Action No. 1453

Hon. Stanley J. Latreille

AND

PORTAGE, BASE, AND WHITEWOOD OWNERS
ASSOCIATION, INC., a Michigan
non-profit corporation, formerly
known as PORTAGE AND BASE LAKE
ASSOCIATION, INC., a Michigan
non-profit corporation,

Intervening Plaintiff,

v

TOWNSHIP OF NORTHFIELD, a Michigan
body corporate,

Defendant,

AND

TOWNSHIP OF GREEN OAK, a Michigan
body corporate,

Intervening Defendant.

TRUE COPY
STANLEY J. LATREILLE
44th Circuit Court

MICHAEL F. MERRITT (P17642)
Attorney for Plaintiff
Lakeland Property Owners
3075 E. Grand River
Howell, MI 48843
(517) 548-4100

BRUCE T. WALLACE (P24148)
ROBERT W. SOUTHARD (P37203)
Attorneys for Intervening
Plaintiff, Hamburg Township
126 South Main Street
Ann Arbor, MI 48104
(313) 662-4426

BRENNAN & BURNS
Attorneys for Defendant
Township of Northfield
Paul E. Burns (P31596)
133 W. Grand River
Brighton, MI 48116
(313) 229-6761

RAYMOND F. CLEVINGER (P11972)
Attorney for Intervening
Defendant, Green Oak Township
427 N. Main Street
Ann Arbor, MI 48104
(313) 663-1001

therein in the redesignated time schedules referred to in paragraph 11 of said order, and

Upon motion of Defendant Township of Northfield and Defendant Township of Green Oak for a supplemental order herein it appearing that the improvement of the Northfield Township wastewater treatment facility is substantially completed in conformance to the design thereof, and that the performance of that facility is meeting and exceeding all effluent requirements imposed by the May 11, 1972 order herein, and the Court being fully advised in the premises. Now, therefore,

IT IS ORDERED AND ADJUDGED AS FOLLOWS:

1. That the said motion be and hereby is granted, the Court hereby determining that the effluent requirements heretofore imposed by said order have been met, complied with and satisfied.

2. That the Defendant Township of Northfield be and hereby is authorized to increase the volume of effluent to be discharged from the said wastewater treatment facility to a total volume not exceeding 150,000 gallons per day.

3. That the remaining portion of prior orders in this litigation be and hereby are vacated excepting that this Court shall retain jurisdiction over the said effluent facility until such time as the Court on May 1, 1973 shall be satisfied in effect and the monthly operating charges shall be filed with the Clerk of each of the County of Madison and public record, until further order of the Court.

Approved and decreed to:

[Signature]
Circuit Court

[Signature]
Attorney for Plaintiff Township

[Signature]
Attorney for Defendant Township

[Signature]
Attorney for Green Oak Township

[Signature]
Attorney for Northfield Township

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF LANSING

LAKELAND PROPERTY OWNERS' ASSOCIATION, a Michigan
unincorporated voluntary association, and
TOWNSHIP OF HAMMURG, a Michigan Municipal
Corporation, jointly and severally,

Plaintiffs,

and

PORTAGE AND BAY LAKE ASSOCIATION, INC.,
a Michigan not-profit Corporation,

Intervening Plaintiff,

vs.

TOWNSHIP OF NORTHFIELD, a Michigan Municipal
Corporation,

Defendant,

and

TOWNSHIP OF GREEN OAK, a Michigan Municipal
Corporation,

Intervening Defendant.

ARTHUR E. CAMPESTER
Attorney for Plaintiffs

(P-10075)

JOHN E. LANE
Attorney for Intervening Plaintiff

(P-10076)

DALE E. COOPER
Attorney for Intervening Defendant

(P-10077)

DOUGLAS K. BEAUMONT
Attorney for Defendant

(P-10078)


SUPPLEMENTAL ORDER

At a session of said Court held in the
County of Ingham, Michigan, on
the 11 day of September, 1973.

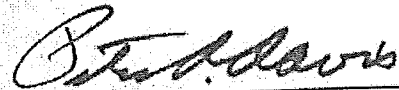
PRESENT: THE HONORABLE PAUL H. MANNING,
Circuit Judge

By order made and entered May 14, 1973 before this Court, the Court
retained jurisdiction in the above entitled cause pending compliance of all

VII. That defendants NORTHFIELD TOWNSHIP and GREEN OAK TOWNSHIP are restrained from issuing any new tap-in permits or increasing the number of units or users of their waste water treatment plant if such increase in units or users will result in a discharge in excess of 250,000 gallons per day, notwithstanding any contrary language in this Order.



Circuit Judge

PREPARED AND PRESENTED BY:


Peter A. Davis
HOOPER, HATHAWAY, FICHERA,
PRICE & DAVIS
Tenth Floor, First National Bldg.
Ann Arbor, Michigan 48108
662-4426

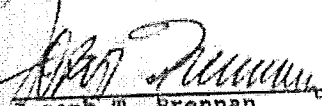
Attorneys for Plaintiffs.

APPROVED AS TO FORM AND CONTENT:


John R. Laird
LAIRD & GRACE
201 Ann Arbor Trust Bldg.
Ann Arbor, Michigan 48108
662-2450

Attorneys for Intervening Plaintiff.

APPROVED AS TO FORM:


Joseph T. Brennan
BRENNAN AND BIBEAU
29870 Middlebelt Road
Farmington, Michigan 48024
951-6111

Attorneys for Defendant and for
Intervening Defendant.

schedules contained in paragraph 2 of said Amended Final Order of Determination, No. 1478, shall be adjusted where necessary by said Water Resources Commission, except that the new phosphate removal standard contained in subparagraph e of paragraph 1 shall be complied with forthwith.

III. That defendant NORTHFIELD TOWNSHIP shall forthwith meet with officials of HAMBURG TOWNSHIP and officials of Livingston County and shall make a complete disclosure to said officials of the intentions of NORTHFIELD TOWNSHIP respecting its sewage treatment plant, including but not limited to plant expansion plans and a timetable of increased discharge volume up to but not to exceed 750,000 gallons per day of effluent in conformity with the judicially redetermined effluent standards set forth in part I of this Order.

IV. That NORTHFIELD TOWNSHIP is no longer restrained from increasing the size of its waste water disposal plant but that said defendant shall not increase the volume of its effluent discharges beyond 250,000 gallons per day until further order of this Court, and the Court being satisfied, at that time, that the above judicially set standards have been met and will be regularly met and will continue to be met as the discharge volume increases and further that the Court is satisfied that plaintiffs receiving waters will not be polluted by such increase in volume of effluent discharge.

V. That this Court shall retain jurisdiction of this matter pending completion of all matters set forth in the re-designated time schedules referred to in paragraph II above.

VI. That pending further action of the Water Resources Commission, temporary restraining orders may issue as needed to maintain the present status quo.

I. That the standards contained in paragraph 1 of the Amended Final Order of Determination, No. 1478, dated March 18, 1971, of the State of Michigan Water Resources Commission are deficient and said Water Resources Commission is hereby directed to substitute therefor the following redetermined and additional standards:

1. Treat or control the sewage and wastes collected by its system of sewers and drains to the extent that when discharged from its waste water treatment plant to the Horseshoe Drain or any other water course they shall:
 - a. Contain not more than four (4.0) milligrams per liter of oxygen consuming substances as measured by the five-day biochemical oxygen demand (BOD) test.
 - b. Contain not more than ten (10.0) milligrams per liter of suspended solids.
 - c. Contain not more than five tenths (0.5) milligram per liter of ammonia nitrogen as $\text{NH}_3\text{-N}$.
 - d. Contain not more than one thousand (1,000) total coliform per one hundred (100) milliliters and the average of any series of ten consecutive samples shall not exceed one thousand (1,000) coliform per one hundred (100) milliliters. The average fecal coliform density for the same ten consecutive samples shall not exceed one hundred (100).
 - e. Contain not more than twenty percent (20%) of the phosphorus contained in the influent to the waste water treatment facility. Township of Northfield, Washtenaw County is ordered to begin complying with this standard forthwith.
 - f. Contain not less than five (5.0) milligrams per liter of dissolved oxygen (DO), and at no time less than seventy-five percent (75%) of the saturated dissolved oxygen at the actual temperature of the effluent discharge.
 - g. Concentrations of substances of unnatural origin shall be less than those which are or may become injurious to the receiving waters designated use of recreational, total body contact.
 - h. The temperature of such effluent discharge shall not exceed ninety (90) degrees Fahrenheit.

II. That, in the event defendants elect to continue discharging effluent into plaintiffs' receiving waters, the time

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

LAKELAND PROPERTY OWNERS ASSOCIATION,
a Michigan unincorporated voluntary
association, and TOWNSHIP OF HAMBURG,
a Michigan body corporate, jointly
and severally,

Plaintiffs,

AND

PORTAGE AND BASE LAKE ASSOCIATION,
INC., a Michigan non-profit corporation,

Civil Action

No. 1453

Intervening Plaintiff,

vs.

TOWNSHIP OF NORTHFIELD, a Michigan
body corporate,

Defendant,

AND

TOWNSHIP OF GREEN OAK, a Michigan
body corporate,

Intervening Defendant.

FILED

MAY 4 1972

COUNTY CLERK
Howell, Mich

ORDER

At a session of said Court held
in the Courthouse in Howell, Michi-
gan, this 4 day of MAY,
1972.

PRESENT: THE HONORABLE PAUL R. MAHINSKE
Circuit Judge

This non-jury cause having been tried, argued, briefed and
submitted in July of 1971, the Court being fully advised in the
premises, and pursuant to the Opinion filed herein on February
29, 1972, containing certain findings of fact and conclusions
of law; now, therefore,

IT IS HEREBY ORDERED, ADJUDGED and DECREED as follows:

action of the Water Resources Commission temporary restraining orders may issue, as needed, to maintain the present status quo.

It is the further order of this Court that defendants herein are restrained from issuing any new tap-in permits or increasing the number of units or users of their waste water treatment plant if such increase in units or users will provide a discharge in excess of 250,000 gallons per day, notwithstanding the language of the perceeding paragraph.

It is the further order of this Court that plaintiffs herein are directed to prepare an order in conformity with this opinion of the Court, circulate the same amongst all parties hereto for consent as to form and content and present the same for entry no later than 20 days from the date of receipt of this opinion. In the event that plaintiff cannot secure such signatures or that defendants refuse to affix their signatures the same may be brought on for entry, after notice, on a regular motion day.


PAUL R. MAHINSKI, Circuit Judge

schedule set forth in item 2 a through 2 d of said amended order No. 1316, dated October 15, 1969.

It is the further order of this Court that in the event that defendants herein elect not to cease discharging their effluent into plaintiffs receiving waters that the herein judicially redetermined water effluent standards shall be put into effect under a time table to be set by the Water Resources Commission with the exception of the phosphate removal requirement (see c above) which shall be complied with forthwith.

It is the further order of this Court that defendant Northfield Township shall forthwith meet with officials of Hamburg Township and officials of Livingston County, Michigan for a complete disclosure to said officials of their intentions which shall include but not be limited to plant expansion plans and a time table of increased discharge volume up to but not to exceed 750,000 gallons per day of effluent in conformity with the herein judicially redetermined effluent standards.

It is the further order of this Court that defendant herein is no longer restrained from physically increasing the size of its waste water disposal plant but that said defendant cannot and is hereby ordered not to increase the volume of its daily discharges beyond 250,000 gallons per day until further order of the Court and the Court being satisfied, at that time, that the above judicially set standards have been met and will be regularly met and will continue to be met as the discharge volume increases and further that the Court is satisfied that plaintiffs receiving waters will not be polluted by such increase in volume of effluent discharge.

It is the further order of this Court that this Court shall retain jurisdiction of this matter pending completion of the redesignated time schedules mentioned above by the Water Resources Commission.

It is the further order of this Court that pending further

-3-
nded final order of determination No. 1316, dated October 15, 1969 of the State of Michigan Water Resources Commission to be deficient and directs said Water Resources Commission to adopt the following standards setforth herein as substitutes for and in lieu of the standards setforth in said Water Resources Commission's amended final order of determination No. 1316.

Said judicially directed redetermined standards, and additional standards, shall read as follows:

1. "Treat or control the sewage and wastes collected by its system of sewers and drains to the extent that when discharged from its waste water treatment plant to the Horseshoe Drain or any other water course they shall:
 - a. Contain not more than four (4.0) milligrams per liter of oxygen consuming substances as measured by the five-day biochemical oxygen demand (BOD) test.
 - b. Contain not more than ten (10.0) milligrams per liter of suspended solids.
 - c. Contain not more than five tenths (0.5) milligram per liter of ammonia nitrogen as $\text{NH}_3\text{-N}$.
 - d. Contain not more than one thousand (1,000) total coliform per one hundred (100) milliliters and the average of any series of ten consecutive samples shall not exceed 1,000 coliform per one hundred (100) milliliters. The average fecal coliform density for the same ten consecutive samples shall not exceed 100.
 - e. Contain not more than twenty percent (20%) of the phosphorus contained in the influent to the waste water treatment facility. Township of Northfield, Washtenaw County is ordered to begin complying with this standard forthwith.
 - f. Contain not less than ten (10.0) milligrams per liter of dissolved oxygen (DO).
 - g. Concentrations of substances of unnatural origin shall be less than those which are or may become injurious to the receiving waters designated use of recreational, total body contact.
 - h. The temperature of such effluent discharge shall not exceed ninety degrees fahrenheit.

It is the further order of this Court that said water Resources Commission shall adjust, where necessary, the time

plaintiffs herein has not been overcome. It is the further finding of this Court that the affirmative defense raised by the defendants herein of there being no feasible and prudent alternative to their conduct has not been borne out by defendants proofs. Defendants merely recited, through their witnesses, that there was no reasonable and feasible alternatives to their actions and did not support such recitations with facts other than alluding to economic considerations. Defendants also admitted, by way of their proofs, that present and future population below the outfall pipe had not been taken into consideration at the original construction of their waste water treatment plant and apparently is being ignored currently upon their request to continue operation and expand the volume of their discharge.

Plaintiffs herein, in their Complaint, seek relief from this Court which this Court feels presently may be overly harsh in view of the fact that it is the opinion of this Court that the polluting effect of defendants effluent into plaintiffs receiving waters can be negated and that the receipt of a clean non polluting effluent into plaintiffs receiving waters from defendants waste water treatment plant will not injure plaintiffs herein.

If defendants herein elect not to abide by the hereinafter judicially redetermined effluent standards they are at complete liberty to forthwith cease discharging their effluent in such a manner and at such a place as the same finds its way into, either directly or indirectly, the receiving waters of plaintiffs herein. This may well be accomplished by defendants herein either relocating or constructing anew its outfall pipe to a point of discharge not offensive to plaintiffs herein or their receiving waters.

By authority of MSA 14.528 (202) sec. 2 (2) (a) (b) this Court finds the standards setforth in paragraph 1.2 to f of an

This Court further finds, based on the evidence and testimony presented to it, that defendants present effluent discharge as a matter of fact and law is a pollutant and that the same does constitute a nuisance which is abatable via equitable and or declaratory relief. And further, this Court finds as a matter of fact and as a matter of law that such discharge by defendants of a polluted effluent is an unreasonable use of these waters and is Violative of plaintiffs riparian rights. This Court further finds that the offensive quality of defendant's effluent can be corrected by the adjustment of standards, heretofore set out, to improve the quality of such effluent to a state acceptable by this Court.

Section 3(1) of the Act sets forth the standards of evidentiary showings in such matters now before the Court. Without taking issue as to the legislature's power to set rules of evidence in court this court will accept, arguendo, the standards set out in said section 3(1) which reads as follows:

"When the plaintiff in the action has made a prima facie showing that the conduct of the defendant has, or is likely to pollute, impair or destroy the air, water or other natural resources or the public trust therein, the defendant may rebut the prima facie showing by the submission of evidence to the contrary. The defendant may also show, by way of an affirmative defense, that there is no feasible and prudent alternative to defendant's conduct and that such conduct is consistent with the promotion of the public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment or destruction."

This Court finds as a matter of fact and as a matter of law that the plaintiff herein has established a Prima Facie showing that the conduct of the defendants herein has polluted and is likely to continue to pollute the natural resources in question. It is the further finding of this Court as a matter of fact and as a matter of law that although the defendant has submitted its case and evidence that such Prima Facie case of

dispute between circuits must be resolved by a higher tribunal.

This Court does not believe Act 127, 1970, is unconstitutional by virtue of it having contained therein a prohibited delegation of powers. Said Act simply states that when a Court finds a standard to be unreasonable or deficient the Court may set an acceptable standard which the Court may enforce directly or order the agency involved to enforce such standard.

This Court is further of the opinion that it can direct the Water Resources Commission to adopt a different pollution standard without a judicial review of Commission proceedings wherein standards were adopted and by virtue of said Act 127 can direct the Commission to adopt different standards via judicial review of the Commission's proceedings. Such power of this Court is not inconsistent with the authority set out in said Act 127 in this regard see also Act 245, 1929 as amended by Public Acts 1970, No. 200, and Public Acts of 1969, No. 306.

In addition to the above, this Court is not unkindful of the law set out in White Lake Association v. Whitehall, 22 Mich App 262. This Court is of the opinion that White Lake, and the rules set out therein, is no longer controlling in that Act 127 of 1970, specifically section 2 thereof, denies the Water Resources Commission primary jurisdiction in matters such as are now before the Court. The primary jurisdiction doctrine was the controlling factor employed by the Court of Appeals in its disposition of White Lake but such doctrine was coupled with considerations of the lack of advance judicial proceedings when such doctrine was asserted and the fairness or unfairness of remitting plaintiff therein to another proceeding, and further, such doctrine was employed in the absence of the language now found in Act 127 of 1970. It should be understood herein that this Court does not disagree with the rationale for nor the necessity of the primary jurisdiction doctrine but merely points out that the same is not absolutely controlling herein.

instrumentality or agency of the state or a political subdivision thereof, the Court may: (a) determine the validity, applicability and reasonableness of the standard. (b) When a Court finds the standard to be deficient, direct the adoption of a standard approved and specified by the Court."

This Court finds that the above language is not mandatory. Also in this regard see section 4(2) of the Act which reads as follows:

"If administrative, licensing or other proceedings are required or available to determine the legality of the defendants conduct, the Court may remit the parties to such proceedings..."

Section 6 of the Act recites:

"This Act shall be supplementary to existing administrative and regulatory procedures provided by law."

This Court finds, as a matter of law, that it does have original jurisdiction in litigation such as is presently before the Court. This Court further finds, as a matter of law, that the litigation now before this Court is original litigation authorized by Public Act 127, 1970 and not judicial review of administrative proceedings or orders as set out in section 4 of said Act. One could legitimately confuse litigation now before this Court as one being in the nature of judicial review of an order of an administrative body in that defendants herein attempt to justify their present and future activities on a heretofore entered amended final order of determination from the Water Resources Commission. Plaintiffs herein are not appealing from such order but are merely, in the process of their original litigation, attacking the proposed future conduct of defendants herein based on such WRC Order of Determination.

Defendant, in its Brief, relies heavily on the opinion of Judge Warren, Ingham County Circuit Judge, in the matter of Roberts v. State of Michigan, et al, Ingham County Circuit Court, File No. 12428-C. This Court is of the opinion that it is not controlled by the opinion set out in Roberts by the learned Ingham County Circuit Court Judge and further finds that any

the evidence and exhibits presented to it, that defendants herein have in the past and are currently discharging an effluent that pollutes the receiving waters.

This Court further finds that the quality and quantity of defendants effluent can be and will be ordered adjusted. And further, this Court finds, as a matter of fact, based upon the evidence and testimony presented to it, that not only is the existing quality of defendants effluent objectionable but that the proposed standards of quality and quantity set out in defendants exhibit No. 3 above are unreasonable and deficient when taking into account the designated use of the receiving waters.

Before adopting and specifying any particular standards in this case the Court will now address itself to the question of jurisdiction in this case of Lakeland, et al v. Township of Northfield, et al.

Defendants herein seriously contest the jurisdiction not only of this Court in this case but of the Circuit Court in general in any particular litigation wherein there has been activity of the Department of Natural Resources and/or the Water Resources Commission and such activity of such agency has been productive of an order wherein a standard has been fixed.

Public Act 127, 1970, also known as the "Thomas J. Anderson, Gordon Rockwell Environmental Protection Act of 1970", provides in section 2 thereof that any person, natural or otherwise, "may maintain an action in the Circuit Court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief...for the protection of the air, water and other natural resources and the public trust therein from pollution, impairment or destruction."

MSA 14.528 (202) sec. 2.(2) reads as follows:

(2) In granting relief provided by subsection (1) where there is involved a standard for pollution or for an anti-pollution device or procedure, fixed by rule or otherwise, by an

in his opinion, based on his observations, the water course in question has never been as bad in the past as defendants would indicate but that such water course is currently in poor physical shape and has become so over the past several years. Further rebuttal testimony was received from a party who has lived for the past 27 years on Mill Creek which runs through her property. Such testimony indicated that before 1963 Mill Creek was used for general recreational purposes which included fishing and swimming approximately 1800 feet from the outfall pipe. Said witness further testified that said creek is now useless for swimming and fishing purposes and that she receives a highly offensive odor from said waters.

This Court finds, as a matter of law, that the State of Michigan via its paramount powers, had a right to establish the waste water disposal plant herein in question in Green Oak Township with the discharge pipe located in Hamburg Township and also had the right to, as it did, dispose of such plant as a State facility and sell the same to a lesser municipality but subject to promises and conditions made to or held out to other parties or municipalities affected by the operation of said waste water treatment plant or the location of said plant's discharge pipe.

This Court of equity holds that as a matter of law plaintiffs herein are entitled to rely on those portions of their exhibits No. 2, 9 and 10 herein set out at pages 12 and 13. Such promises, to be enforced, are hereby held to be subject to a showing that the detrimental conditions set out therein do in fact exist, which this Court so finds as a fact.

This Court finds, as a matter of fact, based on the testimony received from both plaintiff and defense witnesses under oath in open Court that the State of Michigan has not lived up to the promises contained in the exhibits above referred to.

This Court further finds, as a matter of fact, based on

source of contamination in the area in question.

Professor Borchardt was of the opinion that the latest Water Resource Commission recommendations were the most strict of any one would find in the country and would be productive of a high quality discharge and that such discharge would support fish. Professor Borchardt further testified that the expansion of defendants plant as planned would have little if any impact with regard to flow alone and that the important consideration is the poundage of nutrients and further that the quality of the recommended effluent is far superior to the present effluent from such plant and finally that if such plant were closed down completely it would make no difference in nutrients already in existance in the area.

In support of defendants above referred to testimony regarding the extensive use of septic tanks in the area in question and their contribution to the contamination complained of, defendants introduced into evidence exhibits No. 18 through and including No. 27 which were photographic slides of the area in question. Slide No. 22 purports to be a picture of a cottage at Ore Lake pumping water directly onto the surface of the ground. Slide No. 23 purports to be a picture of another cottage with a drainfield under construction at ground water level. Slide No. 25 depicts the East shore of Strawberry Lake showing a high concentration of cottages, the lake level line, and a retaining wall through which there appears to be a drain pipe running directly into the lake. Slides No. 26 and 27 appear to be cumulative of the content of No. 25.

Rebuttal testimony indicated that dye tests have been made at Strawberry Lake resulting in only two traces being apparent, one immediately and the other within a 24 hour surveillance. A 47 year resident on Bob White Beach testified, in rebuttal, that

the outfall and further that an increase to 250,000 gallons per day from 225,000 gallons per day of such stable effluent would be a non measurable impact on the receiving waters. It was Mr. Frost's further testimony that he does not recommend stable effluents being discharged into any empounded lake.

Joseph W. Price, Sanitary Public Health Engineer, Washtenaw County, BS, MS, 20 years experience, testified that there are about 2,000 dwellings in the area in question employing the use of septic tanks and that such septic tank purpose is a settlement process and not a treatment process with the idea that such waste is to be absorbed in a tile field. Mr. Price further testified that many of the cottages in the area in question are from one to three feet above ground water and that many are seasonably within the ground water.

Mr. Price accepts the latest WRC standards as proper for expansion of defendants plant to meet population growth.

Dr. Jack A. Borchardt, Professor of Sanitary and Water Resources Engineering University of Michigan testified that in 1956 he studied the Huron River for the City of Ypsilanti by the taking of 30,000 samples at 16 points over 30 miles of the river to study algae. Such studies were not compared to, in the testimony of Mr. Borchardt, present levels in the waters in question. Later grab sampling to show nutrients above and below defendants plant on the Huron River were done within the last year at Horseshoe Creek and up to Ore Lake through Strawberry Lake. High concentrations were detected at Ore Lake and such concentrations rose and fell to Horseshoe Creek. This witness further testified that the entire watershed in question has a super abundance of phosphates and that there is no reason to believe nor levels/contribution of phosphates has a marked effect on the algae already present with the recommendation that these lakes must be sewered inasmuch as septic tank use is a serious

with. Mr. Bohunsky further testified that defendants herein have two options, 1. Remove phosphates, 2. expand plant and remove phosphates. To this witness defendant has, apparently, elected to follow No. 2 and this witness does not know whether or not Hamburg Township was ever consulted with regard to these two options being offered defendant (see excerpts from plaintiffs exhibits 2,9 and 10 set out above).

It was the further testimony of this witness that if the defendants herein comply with the amended final order of determination and damage is still being done to the receiving waters because of nutrients the levels in the order could be ordered "adjusted" or the complaint ignored even though the "standards" are being abused. See exhibit No. 15 "Water Quality Standards For Michigan Waters".

Francis B. Frost, holder of a BS in Civil Engineering, Sanitary Engineer with the Water Resources Commission for 35 years, Chief Engineer and Chief of Water Research Division and Enforcement of Water Resources Laws was the next witness of defendants herein who testified that the latest WRC order makes the effluent self sustaining if such order is complied with and further that fish could exist in such effluent and further testified that said order is extremely restrictive and has some items, such as l.c., that he feels engineers might well not be able to consistently comply with. It was the further testimony of this witness that the water course in question is so over loaded with nutrients now that the complete removal of defendants plant or the increase of its output to 750,000 gallons per day would make no difference.

It was the further testimony of this witness that there was no feasible alternate outfall site. Mr. Frost further testified that the current order of the WRC calls for a stable effluent which means that the influent does not decompose after leaving

who owns or operates the present treatment plant its expansion will not be permitted until a thorough and complete evaluation and study is made and the matter is discussed with your Township Board and the County of Livingston with specific consideration being given to the point of discharge of the treated effluent from the expanded plant."

Paragraph 2.c of plaintiffs exhibit No. 10, the same being a letter from Mr. Donald M. Pierce dated April 6, 1964 to Mr.

Donald A. Moon, 326 W. Main, Brighton, Michigan reads as follows:

"We will require that the point of discharge be relocated if it creates a nuisance, becomes a health hazard or damages fish life in Hamburg Creek, Huron River or any of the chain of lakes located in Hamburg Township."

It was the testimony of Mr. Blakeslee, a Regional Project Engineer of the Michigan Department of Public Health, after reviewing the above passages cited herein from plaintiffs exhibits that plant expansion of defendants plant was never discussed with Hamburg Township.

Mr. John M. Bohunsky, a Water Resources Commission Regional Engineer and holder of a BS and MS Degree with 11 years experience with said commission testified that in 1968 the WRC moved against 11 communities to remove phosphates and that two such communities did not comply, defendant Northfield Township herein being one of those two communities. Mr. Bohunsky testified that the water course in question is highly polluted, with nutrients, both above and below the outfall pipe and testified further that he judged the quality of the receiving waters by a visual observation made some months prior to his testimony. This witness's testimony was further that he did not know if stopping all phosphates from defendants plant would make any appreciable difference with regard to Strawberry Lake. Such witness further testified that he is in total agreement with all the standards set out in defendants exhibit No. 3 above and further opines that the receiving waters would be enhanced if the final order is complied

operations at the highest degree such facility is capable of operating at overall. It was further testified to that the Michigan Department of Public Health inspects such plants every six months and scans their reports. Mr. Blakeslee testified that defendants plant is operated extremely good and is at an efficiency level in the 85% range and is operating within its designed limits and further that such plant was not designed to consider phosphates but more importantly that defendants plant is not capable of meeting the standards set out in the final amended order of the Water Resources Commission and further that in order to comply with such final order the plant in question would necessitate the addition of an additional treatment stage.

Further testimony was to the effect that the load of the defendants plant has increased since its construction and that such plant is still within the expectations of performance when constructed.

Paragraph two of plaintiffs exhibit No. 2, the same being a letter from Donald M. Pierce, Chief Waste Water Section Division of Engineering, Michigan Department of Health, dated January 9, 1964 to Mr. W.J. Maxey, Jr., Assistant Superintendant, Boys Training School, Whitmore Lake, Michigan reads as follows:

"It is imperative that you and others to whom copies of this letter are directed recognize that the point of discharge of the treated effluent would have to be altered if nuisance conditions, public health hazards, damage to fish life or other unlawfull conditions should be created. Surveillance will be maintained of the stream below the point of effluent discharge and we will advise you and others if conditions exist or land uses change requiring an alteration in the point of discharge."

Paragraph three of plaintiffs exhibit No. 3, the same being a letter dated February 27, 1964 from the above referred to Donald M. Pierce to Mr. Francis Shehan, 7209 Stone Street, Hamburg Michigan reads as follows:

"We wish to assure you and the others to whom copies of this letter are being sent that irrespective of

Commission (WRC) who administer such funds.

Mr. Holland further testified that all users of defendant's waste water treatment plant are located in the horseshoe drainage area and that such users are almost completely domestic. Such witness further testified that if the size of this plant is increased that defendants would continue to discharge into Horseshoe Creek. Alternatives to such discharging were studied and a determination was made that the present method is the most reasonable and feasible, in his opinion. It was such witness's further testimony that the above mentioned 7,000 foot outfall pipe originally cost approximately One-hundred Thousand Dollars (\$100,000.00).

On cross examination Mr. Holland did admit that phosphates do pollute but did not admit that defendant's plant herein does in fact pollute the waters in question with the further statement that in his opinion local units and population are doing the polluting. His further testimony was that while building this plant his engineering firm did not take into consideration the level of population along the water course to be used as a disposal nor were water samples taken from any of these lakes or water courses before the plant was built. Said witness did concede that this plant must remove 80% phosphates even if not extended as per the terms of defendant's exhibit No. 3 set out above.

Mr. Paul Blakeslee, a Regional Professional Engineer with a specialty in sanitary engineering and a holder of a BS and MS Degree testified regarding municipal waste water systems and the fact that the WRC reviews plans and designs with the Michigan Department of Public Health issuing construction permits. Further, the Michigan Department of Public Health, as per the testimony of Mr. Blakeslee, transmits plant operation personnel, receives reports regarding operating data such as flow, volume, weather information, influent and effluent qualities, and attempts to control facility

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It was the further testimony of Mr. Beebe that the plant in question operates within the expectations of the Department of Health at a present volume of Two Hundred Twenty Thousand (220,000) gallons per day which has increased steadily since 1964. The current treatment efficiency of the plant in question has remained constant since its inception. Said plant services 1,400 (units) users. It was the further testimony of said witness that at present efficiency levels this plant could handle 240 additional units or users and still be within its planned capacity of Two Hundred Fifty Thousand (250,000) gallons per day.

It was the concluding testimony of this witness that there have been normal mechanical problems, within levels of expectation, and that said plant employs daily membrane filtering for coliform counts and in addition chlorination is used.

Mr. John Holland, the holder of a University of Michigan degree in engineering testified that he has much experience in waste water treatment plants in both their construction and evaluation of operations. This witness's company designed defendants plant and recommended the location of said plant at Hamburg Township as a regional facility. It was this witness's further testimony that a plant, such as defendants, is designed to do a reasonable job based on the financial ability of the community, and further, that this plant does not remove phosphates and was not originally designed to remove phosphates as the WRC did not require such removal at the time of the construction of this plant. It was the further opinion and testimony of this witness that compliance with the amended final order of determination (defendants exhibit No. 3) would cost approximately One Million Five-Hundred Thousand Dollars (\$1,500,000.00) and that the same is a strong order to the extent that compliance would require state and federal aid which defendants herein have applied for but such aid has been withdrawn by the Water Resources

opinion and testimony was to the effect that the recommended level is not adequate to protect the environment in that the receiving waters have a count upstream from the outfall pipe unknown but opines it is far below One Thousand (1,000) coliform per Hundred (100) milliliters.

With regard to item 1.e, which reads as follows:

"Contain not more than Twenty percent (20%) of the phosphorus contained in the influent to the waste water treatment facility."

Said witness testified that this means 80% removal of phosphate but all other factors are unknown. The witness did concede that 80% removal is about as good as present technology allows. It was the further testimony of Mr. McLaughlin that the defendant is currently not removing phosphates, and last year, as per the witness's calculations, defendants discharged 14,000 pounds of phosphates into the water course in question. It was the concluding expert testimony of Mr. McLaughlin that if the WRC determinations were complied with nutrients would be increased in an unknown degree primarily because of the levels set in I.C. therein.

At this point plaintiffs rested their case and relied on their Briefs and other legal arguments contained therein. Thereupon defendants moved to dismiss based on the argument that the WRC Order was conclusive and not appealed from. Such Motion was denied by this Court on the basis that plaintiffs herein had made a Prima Facie case and that the burden of over coming such Prima Facie case had shifted to defendants.

Mr. John Beebe, Superintendent of defendants plant, testified that he is a licensed plant operator by the Department of Health, State of Michigan and that such plant is a secondary treatment plant of the trickling filter type. Monthly reports are made on all extractions and performances of the plant and such reports are filed with the State Department of Health which supervises the operations, reviews such reports and makes recommendations.

the BOD load on the Huron River Chain at Kensington Lake and Park is 2 to 4 parts per million. Exhibit No. 14 above reflects that the BOD load at the time such report and study was made were at 24 parts per million with high concentrations of phosphates. In the opinion of said expert witness a clean lake, or water course, is defined as one with a BOD load below 5 parts per million. In addition to the above said expert testified that the discharge from defendants outfall pipe had a lower level of dissolved oxygen (hereinafter referred to as DO) than the receiving waters. Nitrate loads were determined to be, by said witness's studies and testimony, to be 33 parts per million at the outfall and .8 parts per million upstream of said outfall. Further testimony from said witness indicated that anything over .1 parts per million nitrate cannot be tolerated for any stream or river in the state.

It was the expert opinion of said witness that defendants herein contribute considerable pollution to the water chain under consideration. And further, that Strawberry Lake cannot stand today's input by defendants let alone the possibility of tripling said input.

Mr. McLaughlin testified in detail regarding his objections to the Department of Natural Resources amended final order of determination recommendations with regard to defendants waste water plant operation. Mr. McLaughlin agreed with only one provision of said technical recommendations the same being l.c.

Said DNR recommendations may be found in detail at defendants exhibit No.3. Two strenuous objections were made by Mr. McLaughlin to recommendations contained in the DRC Order of Determination. The recommendations heretofore referred to strongly objected to by Mr. McLaughlin are found at l.d and l.e. l.d reads as follows:

"Contain not more than One Thousand (1,000) total coliform per One Hundred (100) milliliters."

The witness testified that this item should be a recommendation of no active coliforms. His strenuous objections in his

in Hamburg Township but further testified that his resistance came somewhat late inasmuch as the State of Michigan had already made that decision. During meetings with officials from the Boys Training School and the State of Michigan this witness learned of the intended expansion of defendants waste water treatment facility but had not been contacted in his official capacity regarding such proposed expansion until a few months prior to trial.

Mr. Francis B. McLaughlin, Director of Laboratories, Analytic and Biological Laboratories, Inc., testified as to his professional personal contact with the areas in question. Mr. McLaughlin holds a Bachelor of Science Degree in Microbiology from the Detroit Institute of Technology and has twenty years of experience in such work in addition to having run the above mentioned laboratory since 1956. Mr. McLaughlin's credentials include extensive biochemical work for private and public concerns mostly in the area of evaluation of test results to the problem at hand. Mr. McLaughlin was quite familiar with the defendants plant, its outfall, and the total area downstream therefrom. Mr. McLaughlin was the author of a certain study of the Northfield Township effluent, Huron River and Strawberry Lake phosphate levels made in 1970. Mr. McLaughlin was also the author of a study of the effluents from the Northfield Township Waste Water Treatment Plant and their effect on the Huron River Ecology made in 1970. The above two mentioned studies were received as exhibits No. 14 and No. 12 respectively.

It was the testimony of Mr. McLaughlin, via the witness stand and the above mentioned studies, that defendants discharge onto and into the receiving waters contains an excess biochemical oxygen demand (hereinafter referred to BOD). Such excess BOD load was determined to be, in the opinion of Mr. McLaughlin, 40 parts per million. Further testimony from said witness indicated that

2. Hamburg's consent to the operation of the said pipeline is not required;

3. That the wording of Hamburg Township Nuisance Ordinance No. 10 does not setforth provisions that prescribe a nuisance;

4. That a certain Water Resources Commission Order authorizes defendants activities. In addition to the above defendants allege that there is no feasible and prudent alternative to defendants continuing to maintain and operate their treatment facility or the expansion of same, and further, that plaintiffs are estopped from making some or all of its complaints at this time.

Defendants further allege that plaintiffs herein are not entitled to equitable relief inasmuch as they come to Court with unclean hands in that defendants allege much of the pollution plaintiffs complain of is caused by activities of plaintiffs themselves or the citizenry living within the confines of plaintiff Township of Hamburg.

Testimony was taken in this matter in open Court on July 20, 21, 22, and 23, 1971 and this Court was afforded the benefit of the testimony of several witnesses and the offering and receiving of numerous exhibits both in support of plaintiffs case and defendants case and rebuttal thereto. This Court feels it necessary at this time to review, herein, material portions of such testimony.

A past and present Hamburg Township officer testified that many complaints were received by them from Hamburg residents regarding the condition of the water in the various lakes, odors emitting from such waters, fish kills and other complaints and such complaints reached their peak some four to five years ago and have continued up to the present at that level.

Francis Shehan, a Hamburg Township Official, testified that during his tenure in office, which covers the past twelve years, he, officially, resisted defendants out fall pipe being located

Plaintiffs have raised the following legal issues during the litigation of this matter;

A. Northfield Township is constitutionally prohibited in the operating or maintaining of said plant and its outfall outside of its corporate limits;

B. Northfield Township failed to obtain the consent of Hamburg Township to the location of such outfall and is required to do so;

C. Plaintiffs have a constitutional right to clean water;

D. The presence of said sewer pipeline and outfall is a trespass upon Hamburg Township;

E. Defendants discharges of effluent into the waters located in Hamburg Township constitute a public and private enjoynable nuisance;

F. The discharges of defendants effluents into plaintiffs waters are discharges by a non-riparian and non-littoral party and is an unreasonable use of those waters which is violative of plaintiffs riparian rights;

G. Northfield Township is bound by all the obligations of the State of Michigan via promises made by the state to Hamburg Township;

H. Plaintiffs property is being taken without compensation and without due process of law under both the United States and Michigan Constitutions;

I. Plaintiffs are entitled to declaratory and equitable relief under the Environmental Protection Act of 1970, PA 127.

J. Defendants have no meritorious affirmative defenses to plaintiffs complaints.

To the above defendants herein respond as follows:

1. That the defendant townships have statutory authority for ownership and operation outside of township limits;

Township owns and operates the said Sewage Disposal Plant which is located in defendant Green Oak Township and such plant serves homes and business operations located around Whitmore Lake. Whitmore Lake is physically situated in both Livingston and Washtenaw County. The out fall from the sewage disposal plant in question is located in Hamburg Township and is reached by a pipe from said plant which is approximately 7,200 feet in length. The out fall pipe discharges into a small water course which flows into the Huron River just up stream from Strawberry Lake and other lakes located in Plaintiff Hamburg Township upon which other plaintiffs reside.

Defendants current discharge per day is approximately one quarter million gallons. Plaintiffs allege that the contents of such discharge are polluting the lakes and other water courses upon which they reside. It is further alleged, without dispute from defendants herein, that plaintiffs are located approximately four miles distant from Whitmore Lake which is serviced by defendants plant.

The waste water disposal plant now in dispute^{was}/originally constructed by the State of Michigan in 1963 and 1964 to serve and service the W.J. Maxey Boys Training School, located in Green Oak Township.

In 1966 the State sold the above mentioned sewage plant to Northfield Township, for consideration, together with all of its right, title and interest in the above mentioned plant and pipeline. It is further alleged, without dispute, that Northfield Township intends to expand the operations of such plant and increase the discharge of said plant's effluent to 750,000 gallons per day and further intends on using the existing form of disposal of the product of said plant.

Defendant Green Oak Township, on December 28, 1970, filed its Answer to the original Complaint and the Complaint of the Intervening Plaintiffs.

Green Oak Township filed a Motion for Reference to the Michigan Water Resources Commission (herein after referred to as WRC) and for Modification of the Preliminary Injunction on December 28, 1970 together with a Brief in Support of said Motion for Reference. Such Motion was ultimately denied by this Court.

This matter was ultimately tried by the Court after first having filed with it Northfield Township's Answer to the Complaint of the intervening plaintiffs, a Supplemental Answer of defendant Northfield Township, Reply to Affirmative Defenses of defendant Township of Northfield, Interrogatories to plaintiffs by defendants, a Pretrial Conference, Plaintiffs objections to Interrogatories of the third-party defendant, Answers to certain Interrogatories by plaintiffs, a Second Pretrial Conference, Supplemental Answers to Interrogatories of intervening defendants, plaintiffs Request for Admissions from Defendants and Objections to Request for Admissions from Defendant. And finally, this Court received for filing, defendant Township's Second Supplement to Answer, followed by Answer to Amendment to Complaint.

Plaintiffs allege, in their Complaint, that defendant Townships herein collect sewage from around their own lake and township and dump the effluent from such collections several miles away into the heart of Hamburg Township, where it pollutes the lakes and water courses upon which plaintiffs herein reside. Plaintiffs seek a mandatory injunction closing down or rerouting defendants out fall, or, in the alternative, Injunctive Relief against defendants expanding said operation together with an Order compelling defendants to better treat the effluent discharge from their plant. It should be noted that defendant Northfield,

the effect that they are suffering damages both directly and by way of pollution of the water course that they are located on due to the operations of defendants waste water treatment plant. And further, plaintiffs complain of and seek a Restraining Order against the expansion of such operations.

Interim Relief was sought by plaintiffs herein in the form of a Preliminary Injunction to restrain defendant, Northfield Township, from beginning construction on a physical expansion of such plant and from restraining defendant from increasing its daily discharge over and above the level for which this plant was constructed. Such Restraining Order was ultimately issued by this Court.

Defendant Northfield Township filed its Answer to plaintiffs Complaint in this matter and setout therein certain affirmative defenses. Defendant Northfield Township also filed a Motion for Change of Venue alleging that Venue was improperly laid. After arguments on such Motion said Motion was denied.

The above referred to Interim Preliminary Injunction was issued by this Court on October 7, 1970.

After Lakeland Property Owners Association and Hamburg Township filed their reply to the defendants Answer this Court received an application of Portage and Base Lake Association, both being Michigan non-profit corporations, for intervention as party plaintiffs and such application was filed on November 25, 1970. On November 30, 1970 this Court received a Motion to Intervene, as a party defendant, from the Township of Green Oak. On December 4, 1970 this Court signed an order allowing the intervention, as parties plaintiff, of Portage and Base Lake Association incorporated. On December 9, 1970 this Court entered its order granting intervention, as a party defendant, of the Township of Green Oak based upon a stipulation of the parties dated December 1, 1970 and filed with this Court on December 10, 1970.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

LAKELAND PROPERTY OWNERS ASSOCIATION,
a Michigan unincorporated voluntary
association, and TOWNSHIP OF HAMBURG,
a Michigan body corporate, jointly
and severally,

Plaintiffs,

AND

Civil Action
No. 1453

PORTAGE AND BASE LAKE ASSOCIATION, INC.,
a Michigan non-profit corporation,

Intervening Plaintiffs,

-v-

TOWNSHIP OF NORTHFIELD, a Michigan
body corporate,

Intervening Defendant,

AND

TOWNSHIP OF GREEN OAK, a Michigan
body corporate,

Defendant.

FILED

FEB 29 1972

COUNTY CLERK
Howell, Mich.

OPINION OF THE COURT

This cause of action was initially instituted between Lakeland Property Owners Association, a Michigan unincorporated voluntary association, and Township of Hamburg, a Michigan body corporate, jointly and severally as plaintiffs against the Township of Northfield by the filing of the Complaint with this Court on August 27, 1970. In said Complaint plaintiffs complain of activities of defendant, Township of Northfield, in the operation of a certain waste water treatment plant located in Green Oak Township. Northfield Township is located in Washtenaw County, Hamburg and Green Oak Townships are both located in Livingston County.

The allegations, in short, in plaintiffs Complaint are to