

IN THE COURT OF COMMON PLEAS  
LUCAS COUNTY, OHIO

FILED LUCAS COUNTY

JUN 10 9 12 AM '94

STATE OF OHIO, ex rel.  
LEE FISHER,  
ATTORNEY GENERAL OF OHIO,

Plaintiff,

vs.

BOARD OF COUNTY  
COMMISSIONERS OF LUCAS  
COUNTY,

Defendant.

CASE NO. 94-0341

JUDGE RICHARD W. KNEPPER

AMENDED  
CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Lee Fisher (hereinafter "Plaintiff") and Defendant Board of County Commissioners of Lucas County (hereinafter "Defendant") having consented to the entry of this Order,

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 6111 of the Ohio Revised Code and venue is proper in this Court.

## **II. PARTIES**

2. The provisions of this Amended Consent Order shall apply and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them. Defendant shall provide a copy of this Amended Consent Order to each contractor it employs to perform work itemized herein, and each general contractor shall provide a copy of this Amended Consent Order to each of its subcontractors for such work.

## **III. SATISFACTION OF LAWSUIT**

3. Plaintiff alleges in its Complaint that Defendant has operated wastewater treatment plants and sewer systems at the following locations in such a manner as to result in numerous violations of the requirements of NPDES Permits issued to it by the Director of Ohio EPA and in violation of the water pollution laws of the State of Ohio.

<b><u>Location</u></b>	<b><u>Current NPDES Permit</u></b>
Bentbrook Farms Subdivision	2PG00002*BD (Revoked, August 20, 1991)
Fullers Creekside Subdivision	2PH00000*BD
Lincoln Green Subdivision	2PH00004*BD (Not Renewed, January 27, 1993)
Oak Openings-Industrial Park	2PH00013*CD
Oak Terrace Subdivision	2PH00014*CD

Compliance with the terms of this Amended Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims under such laws alleged in the Complaint. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint, or for claims or violations alleged in the Complaint which occur after the filing of the Complaint.

#### **IV. INJUNCTIVE RELIEF**

4. Defendant is hereby enjoined and ordered to immediately comply with the requirements of Chapter 6111 of the Ohio Revised Code and the terms and conditions of the rules and regulations adopted under that Chapter. Defendant is ordered and enjoined to comply with its NPDES permits, and any renewals or modifications thereof, and to properly abandon treatment facilities and eliminate discharges into state waters at Bentbrook Farms, Fullers Creekside Subdivision, Lincoln Green Subdivision, Oak Openings-Industrial Park, and Oak Terrace Subdivision, as set forth below:

Bentbrook Farms

The treatment plant located at 5447 Sturbridge Road, Toledo, Ohio has been properly abandoned and NPDES Permit No. 2PG00002\*BD has been revoked. Defendant is ordered and enjoined not to discharge wastewater into state waters from this location.

Fullers Creekside Subdivision

Except for the final effluent limitations set forth in

said permit, Defendant is ordered and enjoined to comply with all terms and conditions of NPDES Permit No. 2PH00000\*BD. Between the effective date of this Amended Consent Order and July 1, 1994, Defendant is enjoined to comply with the interim effluent limitations set forth in Appendix "A" attached hereto. The interim effluent limits contained in Appendix "A" do not constitute an NPDES permit modification or a modification of any existing permit. After, July 1, 1994, Defendant shall have properly abandoned this treatment facility and eliminated discharges into waters of the state.

Lincoln Green Subdivision

The treatment plant located at 6520 Burnham Green, Toledo, Ohio has been properly abandoned and NPDES Permit No. 2PH00004\*BD has not been renewed. Defendant is ordered and enjoined not to discharge wastewater into state waters from this location.

Oak Openings-Industrial Park

Except for the final effluent limitations set forth in said permit, Defendant is enjoined to comply with all terms and conditions of NPDES Permit No. 2PH00013\*CD. Between the effective date of this Amended Consent Order and September 1, 1995, Defendant is ordered and enjoined to comply with the interim effluent limitations set forth in Appendix "B" attached hereto. The interim effluent limits contained in Appendix "B" do not constitute an NPDES permit modification or a modification of any existing permit. After, September 1, 1995, Defendant shall have properly abandoned the treatment plant and eliminated discharges into waters of the state.

In addition, if, after entry of this Amended Consent Order, any additional sanitary sewer connections are connected into the sewer system which serves the treatment plant, Defendant shall notify Ohio EPA's Northwest District Office, attention Al Rupp in writing thirty (30) days prior to any such sanitary sewer connection.

Oak Terrace Subdivision

Except for the final effluent limitations set forth in said permit, Defendant is enjoined to comply with all terms and conditions of NPDES Permit No. 2PH00014\*CD. Between the effective date of this Amended Consent Order and September 1, 1995, Defendant is ordered and enjoined to comply with the interim effluent limitations set forth in Appendix "C" attached hereto. The interim effluent limits contained in Appendix "C" do not constitute an NPDES permit modification or a modification of any existing permit. After, September 1, 1995, Defendant shall have properly abandoned the treatment plant and eliminated discharges into waters of the state.

5. Defendant is hereby enjoined to properly operate and maintain, at the five locations listed above, its wastewater treatment plants, until proper abandonment and elimination) and any associated equipment and structures, and its sewer systems. Furthermore, a representative of the sanitary engineer's department, under the guidance of a Class I Certified Operator shall make daily inspections, Monday through Friday, excluding legal holidays, of the three operating plants (Fullers Creekside, Oak Openings and Oak Terrace) to determine whether each wastewater treatment plant and any associated equipment and structures are operating properly. The Class I Certified Operator shall make twice weekly inspections of the three operating plants.

6. In addition to the requirements set forth in the above paragraph, Defendant shall implement the following requirements for the Oak Openings-Industrial Park treatment plant:

- (a) the Lucas County Sanitary Engineer or a Class IV Certified Operator shall make weekly inspections of the treatment plant and share information gathered from these inspections with department staff in order to improve treatment plant performance;

- (b) mixed liquor samples shall be taken at the treatment plant and analyzed twice per month and samples shall be taken and analyzed during every inspection when the plant's treatment capabilities are observed to be inhibited;
- (c) sampling and analysis of the industrial discharge from Story Color Corporation shall be conducted by Lucas County at least once per month;
- (d) Lucas County shall continue to require Port Authority officials to implement operation and maintenance procedures on the sanitary sewer diverter valve on the oil-water separator at the cargo facility apron so that future malfunctions are prevented; and
- (e) Lucas County shall require Johnson Controls Incorporated to continue sampling of their pretreatment process as required by the County and Johnson Controls' indirect discharge permit issued by Ohio EPA and to continue submitting the results to the Sanitary Engineer's Office on a monthly basis.

7. An operation and maintenance log shall be kept recording the results of each daily inspection and the additional weekly inspection of Oak Openings. On a weekly basis, the sanitary engineer or a Class IV Certified Operator shall review these log sheets with the treatment plant personnel and make recommendations regarding the operation of the wastewater treatment plants. The log sheets, the mixed liquor sample results, the Story Color sample results, and the Johnson Controls' sample results shall be submitted to Ohio EPA's Northwest District Office, attention Al Rupp by the 15th day of every month.

## V. CONSTRUCTION SCHEDULE

8.. Defendant is enjoined and ordered to eliminate all effluent discharges to waters of the state, as defined by O.R.C. Section 6111.01(H), from Fullers Creekside Subdivision, Oak Openings-Industrial Park, and Oak Terrace Subdivision in accordance with the following schedules:

### FULLERS CREEKSIDE SUBDIVISION

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Submittal of approvable plans and Specifications to Ohio EPA, Northwest District Office	Completed _____
(b) Advertisement for Bids	Completed _____
(c) Contracts Execution	Completed _____
(d) Initiation of Construction	Completed _____
(e) Completion of construction on sewer system to eliminate effluent discharge to waters of the state	Completed _____
(f) Elimination of all effluent discharges to waters of the state and proper abandonment of treatment facility.	July 1, 1994 _____

### OAK OPENINGS-INDUSTRIAL PARK

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Submittal of approvable plans and Specifications to Ohio EPA, Northwest District Office	Completed _____
(b) Advertisement for Bids	Completed _____

- (c) Contracts Execution June 1, 1994
- (d) Initiation of Construction September 1, 1994
- (e) Completion of construction on sewer system to eliminate effluent discharge to waters of the state July 1, 1995
- (f) Elimination of all effluent discharges to waters of the state and proper abandonment of treatment facility September 1, 1995

**OAK TERRACE SUBDIVISION**

<b><u>TASK</u></b>	<b><u>COMPLETION DATE</u></b>
(a) Submittal of approvable plans and Specifications to Ohio EPA, Northwest District Office	<u>Completed</u>
(b) Advertisement for Bids	<u>Completed</u>
(c) Contracts Execution	<u>June 1, 1994</u>
(d) Initiation of Construction	<u>September 1, 1994</u>
(e) Completion of construction	<u>July 1, 1995</u>
(f) Elimination of all effluent discharges to waters of the state and proper abandonment of treatment facility	<u>September 1, 1995</u>

9. Within fourteen (14) days from each milestone date listed above, Defendant shall submit a written report stating whether or not Defendant has performed the action set forth therein to Ohio EPA's Northwest District Office, attention Al Rupp.



10. This Amended Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Approval for any such construction or modification shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state or local laws, rules or regulations.

#### **V. STIPULATED PENALTIES**

11. In the event that Defendant fails to meet the compliance schedules for Fullers Creekside Subdivision, Oak-Openings Industrial Park and Oak Terrace Subdivision set forth in Paragraphs 8(a) through 8(e), the Defendant shall, immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of failure to meet a requirement, up to thirty (30) days - Five Hundred Dollars (\$500.00) per day for each requirement not met. For each day of failure to meet a requirement, from thirty-one (31) to sixty days (60) - One Thousand Dollars (\$1,000.00) per day for each requirement not met. For each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days - Two Thousand Five Hundred Dollars (\$2,500.00) per day for each requirement not met. For each day of failure to meet a requirement, over ninety days (90) days - Three Thousand Five Hundred Dollars (\$3,500.00) per day for each requirement not met.

12. In the event that Defendant Lucas County:

- (a) Discharges wastewater into waters of the state from the Bentbrook Farms Subdivision location after the entry of the original Consent Order filed on February 8, 1994;
- (b) Discharges wastewater into waters of the state from the Fullers Creekside Subdivision location after July 1, 1994;
- (c) Discharges wastewater into waters of the state from the Lincoln Green Subdivision after the entry of the original Consent Order filed February 8, 1994;
- (d) Discharges wastewater into waters of the state from the Oak Openings-Industrial Park location after September 1, 1995; and/or
- (e) Discharges wastewater into waters of the state from the Oak Terrace Subdivision after September 1, 1995.

Defendant Lucas County shall immediately and automatically be liable for payment of a stipulated penalty according to the following payment schedule:

Five Thousand Dollars (\$5,000.00) per day for the first thirty (30) days for each wastewater discharge from each discharge location;

Six Thousand Dollars (\$6,000.00) per day for days thirty (30) through sixty (60) for each discharge location;

Ten Thousand Dollars (\$10,000.00) per day for days beyond sixty (60) for each wastewater discharge from each discharging location.

13. In the event that Defendant Lucas County fails to maintain compliance with the interim effluent limitations from Fullers Creekside, Oak Openings and Oak

Terrace set forth in Appendices "A" through "C", Defendant Lucas County shall immediately and automatically be liable for a stipulated penalty according to the following schedule:

For each 30 day effluent limitation that is violated, \$2,000.00 dollars for each violation. If the same 30 day effluent limitation is violated a second time, \$4,000.00 for the second violation. If the same 30 day effluent limitation is violated a third time, \$6,000.00 for the third violation. For the same 30 day effluent limitation that is violated thereafter, \$8,000.00 for each violation;

For each 7 day or daily effluent limitation that is violated \$1,000.00 dollars for each violation. If the same 7 day or daily effluent limitation is violated in a second month, \$2,500.00 for each violation in the second month. If the same 7 day or daily effluent limitation is violated in a third month, \$4,000.00 for each violation in the third month. For the same 7 day or daily effluent limitation that is violated, thereafter, \$6,000.00 for each violation.

14. For violation of any other permitting requirement set forth in Appendices A through C, which would include monitoring and reporting requirements, \$500.00 for each day each requirement is not met.

15. In the event that Lucas County:

- (a) Fails to conduct an inspection as required by paragraph 5 or paragraph 6(a);
- (b) Fails to conduct the monitoring as required by paragraph 6(b) or paragraph 6(c);
- (c) Fails to require Port Authority officials to implement operation and maintenance procedures as set forth in paragraph 6(d);
- (d) Fails to require Johnson Controls to continue sampling and to continue submitting the results as set forth in paragraph 6(e); and/or

- (e) Fails to submit the documents to Ohio EPA as required by paragraph 7.

Defendant Lucas County shall immediately and automatically be liable for payment of a stipulated penalty of \$500.00 for each day each requirement is not met.

16. For purposes of computing these stipulated penalties, each separate 30 day effluent discharge violation shall be considered one violation and each separate 7 day effluent discharge violation shall be considered one violation.

#### **VI. POTENTIAL FORCE MAJEURE**

17. If any event occurs which causes or may cause a delay of any requirement of this Amended Consent Order, Defendant Lucas County shall notify the Ohio EPA in writing within ten (10) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendant Lucas County to prevent or minimize the delay and the timetable by which measures will be implemented. Defendant Lucas County will adopt all reasonable measures to avoid or minimize any such delay.

18. In any action by the Plaintiff to enforce any of the provisions of this Amended Consent Order, Defendant Lucas County may raise whether it is entitled to a defense that is conduct was caused by reasons entirely beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances, or orders of any judicial body or regulatory agency. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and the

Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an enforcement action, if any, is commenced by the Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendants Lucas County shall rest with Defendant Lucas County. Unanticipated or increased costs associated with the implementation of any action required by this amended Consent Order, or changed financial circumstances shall not constitute circumstances entirely beyond the control of Defendant Lucas County, or serve as a basis for an extension of time under this Consent Order. Failure by Defendant Lucas County to comply with the notice requirements of Paragraph 12 shall render this Paragraph valid and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendant Lucas County right to request an extension of its obligations under the Consent Order based on such incident. An extension of one compliance date based on a particular incident does not mean that Defendant Lucas County qualifies for an extension of a subsequent compliance date or dates. Defendant Lucas County must make an individual showing or proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order without a Force Majeure Clause does not constitute a waiver by Defendant Lucas County of any rights or defenses it may have under applicable law.

## **VII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS**

19. Performance of the terms of this Amended Consent Order by the Defendant Lucas County is not conditioned on the receipt of any Federal or State grant or loan funds. In addition, the Defendant Lucas County's performance is not excused by the failure to obtain or the shortfall of any Federal or State grant or loan funds, or by the processing of any applications for the same.

## **VII. RETENTION OF JURISDICTION**

20. The Court will retain jurisdiction of this action for the purpose of making any order or decree which it deems appropriate to carry out this Amended Consent Order.

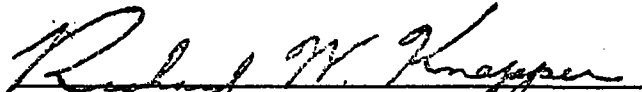
## **IX. FILING OF AMENDED CONSENT ORDER**

21. This Amended Consent Order includes (1) changes to the prohibitions and requirements for the Oak Openings-Industrial Park treatment plant, (2) changes to the Stipulated Penalties, and (3) the addition of new reporting requirements from the original Consent Order filed on February 8, 1994. In addition, since Defendant Lucas County has paid the civil penalty required by Section V. of the original Consent Order, such requirement is deleted from this Amended Consent Order. However, regarding stipulated penalties, such penalties shall be calculated from the date of filing of the original Consent Order. Thus, this Amended Consent Order shall replace the original

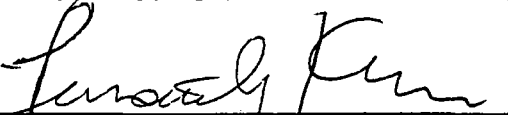
Consent Order.

**X. COSTS**

22. Defendant Lucas County is hereby ordered to pay the costs of this action.

  
JUDGE, COURT OF COMMON PLEAS  
OF  
LUCAS COUNTY


**STATE OF OHIO, ex rel.  
LEE FISHER  
ATTORNEY GENERAL OF OHIO**

  
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Amended Consent Order

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FULLERS CREEK SUBDIVISION  
APPENDIX A

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS  
FOR OUTFALL 2PH00000

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
Reporting Code	UNITS	PARAMETER	Concentration		Loading		Meas. Freq.	Sample Type
			Other Units	(Specify)	kg/day			
			30 day	7 day	30 day	7 day		
00010	°C	Temperature	--	--	--	--	daily	grab
00530	mg/l	Suspended solids	60	90	--	--	2/week	com- posite
00556	mg/l	Oil & Grease	--	--	--	--	1/qtr.	grab
00610	mg/l	Ammonia (N)	--	--	--	--	2/month	com posite
00665	mg/l	Phosphorus Total	--	--	--	--	1/month	com- posite
00671	Count /100ml	Fecal Coliform (Summer Only)	--	--	--	--	1/week	grab
50050	MGD	Flow	--	--	--	--	daily	24 hr Total
30082	mg/l	CBOD <sub>5</sub>	40	60	--	--	2/week	com- posite

The pH (Reporting Code 00400) shall not be less than 6.5 S.U. nor greater than 9.0 S.U. and shall be monitored daily by grab samples.

If the entity uses chlorine for disinfection, the Chlorine Residual (Reporting Code 50060) shall be maintained at a level not to exceed 0.5 mg/l and shall be monitored daily by grab sample. (Summer Only)\*\*.

The Dissolved Oxygen (Reporting Code 00300) shall be monitored daily by grab sample.



OAK OPENINGS INDUSTRIAL PARK  
APPENDIX B

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS  
FOR OUTFALL 2PH00013001

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
Reporting Code	UNITS	PARAMETER	Concentration		Loading		Meas. Freq.	Sample Type
			Other Units	(Specify)	kg/day			
			30 day	7 day	30 day.	7 day		
00010	°C	Temperature	--	--	--	--	daily	grab
00530	mg/l	Suspended solids	60	90	--	--	2/week	com- posite
00610	mg/l	Ammonia (N)	--	--	--	--	2/month	com- posite
00665	mg/l	Phosphorus Total	--	--	--	--	1/month	com- posite
31616	Count /100ml	Fecal Coliform (Summer Only)	--	--	--	--	1/week	grab
50000	MGD	Flow	--	--	--	--	daily	24 hr Total
30082	mg/l	CBOD <sub>5</sub>	60	90	--	--	2/week	com- posite

The pH (Reporting Code 00400) shall not be less than 6.5 S.U. nor greater than 9.0 S.U. and shall be monitored daily by grab samples.

If the entity uses chlorine for disinfection, the Chlorine Residual (Reporting Code 50060) shall be maintained at a level not to exceed 0.5 mg/l and shall be monitored daily by grab sample. (Summer Only)\*\*.

The Dissolved Oxygen (Reporting Code 00300) shall be monitored daily by grab sample.

OAK OPENINGS INDUSTRIAL PARK  
APPENDIX B (continued)

<u>EFFLUENT CHARACTERISTIC</u>		<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
Reporting Code	UNITS PARAMETER	Concentration		Loading		Meas. Req.	Sample Type
		Other Units (Specify)	30 day Daily Max.	kg/day	30 day Daily Max.		
00335	mg/l COD	-	-	-	-	1/month	composite
00630	mg/l Nitrate (N)+ Nitrate (N)	-	-	-	-	1/month	composite
01027	ug/l Cadmium, Total	-	-	-	-	1/month	composite
01034	ug/l Chromium, Total	-	-	-	-	1/month	composite
01042	ug/l Copper, Total	-	-	-	-	1/month	composite
01051	ug/l Lead, Total	-	-	-	-	1/month	composite
01067	ug/l Nickel, Total	-	-	-	-	1/month	composite
01092	ug/l Zinc Total	-	-	-	-	1/month	composite
01220	ug/l Chromium (Hex), Dissolved	-	-	-	-	1/month	grab
71900	ug/l Mercury Total	-	-	-	-	1/month	composite

OAK TERRACE SUBDIVISION  
APPENDIX C

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS  
FOR OUTFALL 2PH00014001

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
Reporting Code	UNITS	PARAMETER	Concentration		Loading		Meas. Freq.	Sample Type
			Other Units	(Specify)	kg/day			
			30 day	7 day	30 day	7 day		
00010	°C	Temperature	--	--	--	--	daily	grab
00530	mg/l	Suspended solids	30	45	--	--	2/week	com- posite
00556	mg/l	Oil & Grease	--	--	--	--	1/qtr.	grab
00610	mg/l	Ammonia (N)	--	--	--	--	2/month	com posite
00665	mg/l	Phosphorus Total	--	--	--	--	1/month	com- posite
31006	Count /100ml	Fecal Coliform (Summer Only)	--	--	--	--	1/week	grab
50050	MGD	Flow	--	--	--	--	daily	24 hr Total
80082	mg/l	CBOD <sub>5</sub>	25	40	--	--	2/week	com- posite

The pH (Reporting Code 00400) shall not be less than 6.5 S.U. nor greater than 9.0 S.U. and shall be monitored daily by grab samples.

If the entity uses chlorine for disinfection, the Chlorine Residual (Reporting Code 50060) shall be maintained at a level not to exceed 0.5 mg/l and shall be monitored daily by grab sample. (Summer Only)\*\*.

The Dissolved Oxygen (Reporting Code 00300) shall be monitored daily by grab sample.