

IN THE
COURT OF COMMON PLEAS
SENECA COUNTY, OHIO

ORIGINAL
FILED
COMMON PLEAS COURT
SENECA COUNTY, OHIO
AUG 24 PM 3:46
CIVIL CLERK
CLEVELAND

STATE OF OHIO, *ex rel.* :
LEE FISHER :
ATTORNEY GENERAL OF OHIO, :
 :
Plaintiff, :
 :
v. :
 :
THE CITY OF FOSTORIA, OHIO, :
 :
Defendant. :

CASE NO. 47984
JUDGE

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio ("State") by its Attorney General Lee Fisher and Defendant The City of Fostoria, Ohio (hereinafter "Fostoria") 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

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 Fostoria under Chapter 6111. of the Ohio Revised Code ("RC"), and venue is proper in this Court.

II. PARTIES

The provisions of this Consent Order shall apply and be binding upon the parties to this action, their agents,

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LEE FISHER
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JUDGE M.P. KELBLEY

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II. PARTIES

The provisions of this 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 Fostoria is ordered to provide a copy of this Consent Order to each contractor it employs to perform the work itemized herein. In addition, Defendant is ordered to require each general contractor to provide a copy of this Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT

A. The State alleges in its Complaint that Defendant Fostoria operated its wastewater treatment plant and sewer system in such a manner as to result in, *inter alia*, numerous violations of the discharge limitations and monitoring requirements of its National Pollution Discharge Elimination System ("NPDES") permit, No. 2PD00031*JD, issued to it by the Director of Environmental Protection, and in violation of the water pollution control laws of the State of Ohio, *i.e.*, RC Chapter 6111. and the rules adopted thereunder.

B. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant Fostoria for all claims under such laws alleged in the Complaint.

C. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint, regardless of when said violations occurred.

IV. PERMANENT INJUNCTIVE RELIEF

A. Defendant Fostoria is hereby enjoined and ordered to immediately and permanently comply with the requirements of RC Chapter 6111. and the rules adopted thereunder, and its currently effective NPDES permit, No. 2PD00031*JD, and any renewals or modifications thereof, except for the final effluent limitations set forth in said permit.

B. Between the effective date of this Consent Order and February 3, 1995, Defendant Fostoria is enjoined and ordered to comply with the interim effluent limitations set forth in Attachment "A" that is attached hereto and incorporated by reference herein.

C. The interim effluent limits contained in Attachment "A" do not constitute an NPDES permit or a modification of any existing permit.

D. After February 3, 1995, Defendant Fostoria is enjoined and ordered to meet the final effluent limitations set forth in its NPDES permit, No. 2PD00031*JD, along with the other terms and conditions of said permit, and any renewals or modifications thereof.

E. Defendant Fostoria is hereby enjoined and ordered to properly operate, and continue thereafter, to maintain its wastewater treatment plant and any associated equipment and structures.

V. POTW IMPROVEMENT SCHEDULE INJUNCTION

Defendant Fostoria is enjoined and ordered to complete construction of the improvements to its wastewater treatment

plant to be described in the permit to install application for said improvements to be submitted to the Director of Environmental Protection January 4, 1993 and to attain compliance with the final effluent limitations of its NPDES permit, No. 2PD00031*JD, and any modifications or renewals thereof in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Initiation of project design work.	Completed
(b) Submittal of approvable plans and specifications to the Ohio Environmental Protection Agency ("Ohio EPA").	Completed
(c) Advertisement of construction bids.	August 2, 1993
(d) Execution of construction contracts.	September 2, 1993
(e) Initiation of construction.	November 1, 1993
(f) Complete construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits, and the elimination of all bypasses from the treatment plant.	November 3, 1994
(g) Attain compliance with final effluent limitations.	February 3, 1995

VI. CSO ELIMINATION SCHEDULE INJUNCTION

Defendant Fostoria is enjoined and ordered to eliminate the impact to waters of the State from all combined sewer overflows ("CSO") and all other overflows in its sanitary sewer system as described in the General Plan approved by the Director of Environmental Protection January 13, 1992, and to attain compliance with the terms and conditions of its NPDES permit, No. 2PD00031*JD, and any modifications or renewals thereof in accordance with the following schedule:

TASK

COMPLETION DATE

- | | |
|---|-------------------|
| (a) Initiation of CSO study. | Completed |
| (b) The initiation of project design work. | Completed |
| (c) Submittal of approvable plan and specifications to the Ohio EPA. | Completed |
| (d) Advertisement of construction bids. | August 2, 1993 |
| (e) Execution of construction contracts. | September 2, 1993 |
| (f) Initiation of construction. | November 1, 1993 |
| (g) Complete construction to reduce all CSO impacts and all other overflows from the sanitary sewer system. | November 3, 1994 |

VII. OTHER INJUNCTIVE RELIEF

A. Monitoring of Bypasses and Overflows

Defendant Fostoria is enjoined and ordered to monitor all bypasses and overflows that occur at Defendant's wastewater treatment plant and within the associated sanitary sewer system in accordance with the terms and conditions of its currently effective NPDES permit, No. 2PD00031*JD, and any modification or renewal thereof.

B. Implementation of Sludge Management Plan

Within five (5) days of the Court's entry of this Consent Order, Defendant Fostoria is enjoined and ordered to implement the Sludge Management Plan approved by the Ohio EPA October 24, 1990.

C. Use of U.S. EPA Approved Test Methods

Within five (5) days of the Court's entry of this Consent Order, Defendant Fostoria is enjoined and ordered to use U.S. EPA approved test methods for all pollutant parameters as

required by its NPDES permit, No. 2PD00031*JD, and any modifications or renewals thereof.

D. Revised Quality Assurance Manual

Within thirty (30) days of the Court's entry of this Consent Order, Defendant Fostoria is enjoined and ordered to submit to the Ohio EPA a revised Quality Assurance Manual for its wastewater treatment test laboratory. The revised Manual should address, at a minimum, the items addressed in the Ohio EPA's June 24, 1991 notice of violation regarding said laboratory. Within five (5) days of receiving written notice from the Ohio EPA that the revised Manual is approved, Defendant is enjoined and ordered to implement the approved Manual.

E. Technical Justification for Local Industrial User Limits

1. Defendant Fostoria is enjoined and ordered to evaluate the adequacy of local industrial user limitations to attain compliance with the final effluent limitations set forth in its NPDES permit, No. 2PD00031*JD, and any modifications or renewals thereof. Within ninety (90) days of the Court's entry of this Consent Order, Defendant is enjoined and ordered to submit to the Ohio EPA's Central Office Pretreatment Unit in Columbus, Ohio, in duplicate, technical justification for revising local industrial user limitations, along with a pretreatment modification request, or technical justification for retaining existing local industrial user limitations.

2. Defendant Fostoria is enjoined and ordered to provide technical justification for cadmium, chromium, copper, lead,

nickel and zinc. Defendant is also enjoined and ordered to provide technical justification for arsenic, cyanide, mercury and silver unless screening of wastewater and sludge indicate these pollutants are not present in significant amounts. (Note: The term "significant amounts" to be determined by the Ohio EPA.) In addition, Defendant is enjoined and ordered to provide technical justification for any other pollutants where a local limit may be necessary to protect against pass through interference.

VIII. MISCELLANEOUS INJUNCTIVE PROVISIONS

In the event Defendant Fostoria is notified by the Ohio EPA that any or all of the documents submitted to achieve compliance with Articles V, VI and VII are unsatisfactory in whole, or in part, said Defendant is enjoined and ordered to amend and submit to the Ohio EPA a revised document, or documents, incorporating all of the required modifications or additions within thirty (30) days after receipt of the Ohio EPA's notification requiring modifications or additions. Where the Ohio EPA approves the revision, Defendant is enjoined and ordered to implement the revised document, or documents, within five (5) days after receiving written approval from the Ohio EPA.

IX. REPORTING REQUIREMENT

Unless otherwise stated in this Consent Order, within seven (7) days from the completion date of each milestone listed in Article V, Subparagraphs (a) through (g), Article VI, Subparagraph (a) through (g), Article VII, and Article VIII, Defendant Fostoria is ordered to submit a written report stating

whether it has performed the action set forth therein to the Ohio EPA's Northwest District Office, Division of Water Pollution Control located at 347 North Dunbridge Road, P.O. Box 466, Bowling Green, Ohio 43402-0466.

X. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

Performance of the terms of this Consent Order by Defendant Fostoria is not conditioned on the receipt of any federal or state grant funds or loans. In addition, Defendant's performance is not excused by the failure to obtain or a shortfall of any federal or state grant funds or loans, or by the processing of any applications for the same.

XI. EFFECT OF CONSENT ORDER

This 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 the Director of Environmental Protection or other such permits as may be required by applicable federal, state or local laws, rules or regulations.

XII. POTENTIAL FORCE MAJEURE CLAUSE

In any action to enforce any of the provisions of this Consent Order, Defendant Fostoria may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons beyond its control such as, by way of example and not limitation, act of God, unusually severe weather conditions, strikes, acts of war or civil disturbances, or

orders of any regulatory agency. While the State does not agree that such a defense exists, it is, however, hereby agreed upon by the parties 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 a dispute arises and/or an enforcement action, if any, is commenced. Acceptance of this Consent Order without a force majeure clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable State law.

XIII. CIVIL PENALTY

Defendant Fostoria is ordered to pay to the State of Ohio, pursuant to RC Section 6111.09, a civil penalty of forty thousand dollars (\$40,000.00). The civil penalty shall be paid by delivering to the attorney for the State, and/or his successor, a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within five (5) days of the Court's entry of this Consent Order.

XIV. STIPULATED PENALTIES

A. In the event that Defendant Fostoria fails to meet any of the requirements of this Consent Order set forth in Article V, Subparagraphs (a) through (f), Article VI, Subparagraph (a) through (f), Article VII and Article VIII, including any scheduled milestone requirement, Defendant shall be liable for and shall pay a stipulated penalty according to the following payment schedule:

1. For each day of each failure to meet a requirement, up to thirty (30) days--one hundred dollars (\$100.00) per day per violation;
2. For each day of each failure to meet a requirement, from thirty-one (31) to sixty days (60)--two hundred dollars (\$200.00) per day per violation;
3. For each day of each failure to meet a requirement, from sixty-one (61) to ninety (90) days--three hundred dollars (\$300.00) per day per violation;
4. For each day of each failure to meet a requirement, over ninety days (90) days--four hundred dollars (\$400.00) per day per violation.

B. In the event that Defendant Fostoria fails to meet any of the final requirements of this Consent Order set forth in Article V, Subparagraph (g) and Article VI, Subparagraph (g), Defendant shall be liable for and shall pay a stipulated penalty according to the following payment schedule:

1. For each day of each failure to meet a requirement, up to thirty (30) days--five hundred dollars (\$500.00) per day per violation;
2. For each day of each failure to meet a requirement, from thirty-one (31) to sixty (60) days--seven hundred-fifty dollars (\$750.00) per day per violation;
3. For each day of each failure to meet a requirement, over sixty (60) days--one thousand dollars (\$1,000.00) per day per violation.

C. Any payment required to be made under the provisions of Paragraphs A or B of this Article shall be made by

delivering to the State's attorney, and/or his successor, a certified check, or checks, for the appropriate amounts, within forty-five (45) days from the date of the failure to meet the requirement of this Consent Order, made payable to "Treasurer, State of Ohio".

XV. RETENTION OF JURISDICTION

The Court will retain jurisdiction of this action for the purpose of enforcing the terms and provisions of this Consent Order.

XVI. COSTS

Defendant Fostoria is ordered to pay the costs of this action.

Entered this 24th day of August, 1993.

Michael P. Kelbley
JUDGE, COURT OF COMMON PLEAS
Seneca County, Ohio

APPROVED:

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

Retanio A. Rucker
MARGARET A. MALONE (0021770)
RETANIO A. RUCKER (0039744)
Assistant Attorneys General

Environmental Enforcement
30 East Broad Street, 25th fl.
Columbus, Ohio 43266-0410
(614) 466-2766

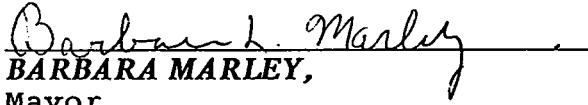
Attorney for Plaintiff
State of Ohio

I hereby certify that this is a true copy of the original pleading now on file in my office this 24th day of August, 1993
Carol R. Cleveland, Clerk, Common Pleas Court
State of Ohio, County of Seneca, Tiffin, Ohio
by *Carol R. Cleveland* Deputy Cle.



JOHN D. HADACEK, ESQ. (0002954)
Law Director
118 West Tiffin Street
P. O. Box 321
Fostoria, Ohio 44830
(419) 435-4600

Attorney for Defendant
The City of Fostoria, Ohio



BARBARA MARLEY,
Mayor

Authorized Representative
The City of Fostoria, Ohio,

ATTACHMENT A

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

OUTFALL 001

<u>Reporting Code/Units</u>	<u>Parameter</u>	<u>Concentration (mg/l)</u>		<u>Measurement Frequency</u>	<u>Sample Type</u>
		<u>30 day</u>	<u>7 day</u>		
00010	Temperature	-	-	daily	grab
00530 (mg/l)	Suspended Solids	30	40	3/week	composite
00550 (mg/l)	Oil & Grease	not to exceed 10 at any time		1/week	grab
00610 (mg/l)	Ammonia	-	-	3/week	composite
00665 (mg/l)	Phosphorus, tot.	-	-	3/week	composite
31616 (#/100ml)	Fecal Coliform Summer only	1000/100ml	2000/100ml	3/week	grab
50050 (MGD)	Flow	-	-	daily	continuous
80082 (mg/l)	CBOD ₅	15	22.5	3/week	composite

/dlh

Rec. January 19, 1993
Typed January 19, 1993
Law Director

RESOLUTION NO. 93-16

Authorizing the Mayor and the Law Director to sign a consent order to settle a lawsuit to be filed by the State of Ohio against the City of Fostoria relating to the City's violation of Ohio water pollution control laws, appropriating \$40,000.00 from the Sewer and Water Extension and Improvement Fund to pay the civil penalty for such violations and declaring an emergency to exist.

WHEREAS, the Ohio Attorney General, on behalf of the State of Ohio, has given notice to the City of Fostoria that it intends to file a complaint in the Common Pleas Court of Seneca County, Ohio, against the City of Fostoria for violating the standards of the Ohio Environmental Protection Agency governing discharges from the City's wastewater treatment plant, and

WHEREAS, Ohio Revised Code § 6111.09 imposes civil penalties of up to \$10,000.00 per day per violation, and

WHEREAS, the Ohio Attorney General has proposed that the City settle the matter by entering into a consent order which would include a construction schedule to bring the City's wastewater treatment plant up to specifications, a \$40,000.00 civil penalty for past violations and stipulated penalties for future violations, and

WHEREAS, compliance by the City of Fostoria with the terms of the proposed consent order would constitute full satisfaction of any civil liability by the City for such past violations of the Ohio water pollution control laws and would thereby avoid the risk of receiving a higher civil penalty and the duty to pay the attorney's fees incurred by the State of Ohio for filing and prosecuting its complaint against the City, now therefore

BE IT RESOLVED by the Council of the City of Fostoria, State of Ohio:

SECTION 1. The Mayor and the Law Director are hereby authorized to sign the proposed consent order, a copy of which is attached hereto as Exhibit A, settling the complaint to be filed by the Ohio Attorney General on behalf of the State of Ohio relating to violations by the City of Fostoria of the Ohio water pollution control laws.

SECTION 2. The Director of Public Service and Safety is hereby authorized to execute and deliver to the Board of Hancock County Commissioners any and all instruments in writing which may be required of the City in the carrying forward of the State Route 12 sewer extension project by the Board of Hancock County Commissioners with the understanding that there shall be no cost to the City of Fostoria for the construction of the project or the acquiring of any right-of-ways.

SECTION 3. The City of Fostoria hereby agrees to accept ownership and maintenance of the State Route 12 sewer extension along State Route 12 west of the City of Fostoria and east of Township Road 218 in Washington Township, Hancock County, Ohio, upon completion.

SECTION 4. This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare. The reason for such emergency lies in the fact that the Board of Hancock County Commissioners desires that the necessary proceedings begin immediately to allow the sewer line to be designed, contracted and installed in 1993.

Therefore, upon the affirmative vote of two-thirds (2/3) of all members elected to Council, this ordinance shall go into immediate force and effect.

Passed this 19th day of January, 1993.

Donald A. Elbert *Pro Pro Temp*
President of Council

ATTEST:

Jan M. Allen
Clerk of Council

Filed with me and approved by me this 19th day of January, 1993.

Barbara L. Manley
Mayor, Fostoria, Ohio



CITY of FOSTORIA

P. O. Drawer H
FOSTORIA, OHIO 44830

CERTIFICATION

I, Paul W. Allison, being the duly appointed Clerk of Council of the City of Fostoria, Ohio and Custodian of the Records, do hereby swear and attest that the attached document(s) is a true and correct copy of *Ordinance No 93-10*

as passed on January 19, 1993 by the Fostoria City Council.

PAUL W. ALLISON, CLERK/CUSTODIAN
OF COUNCIL RECORDS

This certificate dated this 25th day of January in the year of 1993.