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IN THE COURT OF COMMON PLEAS  
WARREN COUNTY, OHIO

COMMON PLEAS COURT  
WARREN COUNTY, OHIO  
**FILED**  
JUN 14 1991  
PAUL E. HARRISON  
Clerk of Courts Warren County, Ohio

STATE OF OHIO, ex rel. :  
LEE FISHER :  
ATTORNEY GENERAL OF OHIO :  
30 East Broad Street :  
Columbus, OH 43266-0410 :  
  
Plaintiff, :  
  
vs. :  
  
CITY OF MASON :  
  
Defendant. :

910049434  
CASE NO.

JUDGE Brownson

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

II. PARTIES

2. 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. Mason shall provide a copy of this Consent Order to each contractor it employs to perform work itemized herein, and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work.

### III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Mason has operated its wastewater treatment plant and sewer system in such a manner as to result in numerous violations of the discharge limitations and other requirements of the NPDES Permit issued to it by the Director of Ohio EPA and in violation of the water pollution laws of the State of Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Mason for all claims 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, including violations that occur after the filing of the Complaint. Nothing in this Consent Order or any document incorporated herein by reference shall constitute an admission by Defendant of any legal or factual matter set forth herein or in the Complaint.

### IV. COMPLIANCE SCHEDULE

4. Mason 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 and its currently effective NPDES Permit, and any renewals or modifications thereof, except for the final effluent limitations set forth in said permit.

5. Between August 15, 1991 and September 1, 1995, Mason is enjoined to comply with the interim effluent limitations and monitoring requirements set forth in Appendix "A" attached hereto. The interim effluent limits and monitoring requirements contained in Appendix "A" do not constitute an NPDES permit or a modification of any existing permit. On and after September 1, 1995, Mason is enjoined to meet the final effluent standards and monitoring requirements set forth in its NPDES permit No. 1PC00004\*CD and any renewals or modifications thereof.

6. Mason is hereby Enjoined and Ordered to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

#### V. CONSTRUCTION SCHEDULE

7. Mason is enjoined and ordered to eliminate discharges from bypasses and overflows in its sanitary sewer system and to complete construction of immediate improvements to its wastewater treatment plant and to attain and maintain compliance with the final effluent limitations of NPDES permit No. 1PC00004\*CD and any modifications or renewals thereof in accordance with the following schedule:

TASK

COMPLETION DATE

Immediate Improvements

- (a) Commence a diagnostic evaluation of the wastewater treatment plant to determine what immediate measures, including construction, can be taken to improve effluent quality. The diagnostic evaluation must include, but not necessarily be limited to, the measures set forth in Appendix B. January 7, 1991
- (b) Submit a written report to the Southwest District of Ohio EPA describing the results of the completed diagnostic evaluation. May 31, 1991
- (c) Submit a complete application for a permit-to-install, including approvable detail plans, to the Southwest District Office of Ohio EPA for the immediate improvements described in the diagnostic evaluation. January 31, 1992
- (d) Begin construction of immediate improvements. May 31, 1992
- (e) Complete construction of immediate improvements. March 31, 1993

Bypasses and Overflows

- (f) Begin a sewer system evaluation to determine the sources and quantities of extraneous water entering the sanitary sewers as infiltration and inflow and to determine the improvements needed to eliminate bypasses and overflows. April 30, 1991
- (g) Submit a written report to the Southwest District Office of Ohio EPA describing the results of the completed sewer system evaluations. February 29, 1992

- (h) Submit a complete application for a permit-to-install, including approvable detail plans, to the Southwest District Office of Ohio EPA for improvements to eliminate bypasses and overflows. January 2, 1993
- (i) Begin construction of improvements to eliminate bypasses and overflows. May 1, 1993
- (j) Complete construction of improvements and cease discharging from bypasses and overflows. April 30, 1994

Final Effluent Limitations

- (k) Commence preparation of a general plan to determine wastewater treatment plant and collection system improvements needed to meet final effluent limitations September 1, 1991
- (l) Submit a general plan to the Southwest District Office of Ohio EPA for wastewater treatment plant and collection system improvements to meet final effluent limitations. September 1, 1992
- (m) Submit a complete application for a permit-to-install, including approvable detail plans, to the Southwest District Office of Ohio EPA for wastewater treatment plant and collection system improvements to meet final effluent limitations. October 1, 1993
- (n) Begin construction of wastewater treatment plant and collection system improvements to meet final effluent limitations. April 1, 1994
- (o) Complete construction of wastewater treatment plant and collection system improvements needed to meet final effluent limitations August 1, 1995
- (p) Attain compliance with final effluent limitations and maintain compliance thereafter. September 1, 1995

8. Within Seven days from each completion date listed above, Mason shall submit a written report stating whether or

not Mason has performed the action set forth therein to Ohio EPA's Southwest District Office.

9. 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 Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

VI. INTERIM MEASURES

10. Mason shall complete the measures set forth below in accordance with the schedule set forth below:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Enter into a contract with a licensed sludge hauler to dispose of excess solids from the plant's aeration ditches, clarifiers and digesters in accordance with an approved sludge management plan.	June 30, 1991
(b) Submit to the Southwest District Office of Ohio EPA a site inspection request and soil test results for approvable land application sites having sufficient area to receive the City's excess sludge for immediate disposal.	July 31, 1991
(c) Remove and dispose of all excess solids from the plant's aeration ditches, clarifiers and digesters, and maintain such removal thereafter in accordance with an approved sludge management plan.	November 30, 1991

(d) Submit a plan to the Southwest District Office of Ohio EPA for the identification of readily removable sources of infiltration and inflow and a schedule for removing those sources.

May 31, 1991

(e) Complete the removal of all sources of infiltration and inflow identified pursuant to the above plan. (Until all of the sources identified by the plan have been removed, Mason shall submit monthly progress reports to the Southwest District Office of Ohio EPA including calculations estimating the quantity of extraneous water removed and copies of supporting data.)

February 29, 1992

(f) Submit a written engineering report to the Southwest District Office of Ohio EPA describing the expected effectiveness of chemical addition to improve sedimentation at the wastewater treatment plant and making a technical determination as to whether chemical feed facilities would assist the City in attaining and maintaining compliance with applicable effluent limitations and this Consent Order.

May 31, 1991

(g) Complete construction of chemical feed facilities pursuant to a permit to install and commence and maintain the addition of chemicals to improve sedimentation, if the report submitted pursuant to subparagraph (f) above makes a technical determination that chemical feed facilities would assist the City in attaining and maintaining compliance with applicable effluent limitations and this Consent Order.

January 2, 1992

(h) Not connect sanitary sewers from newly constructed buildings unless such buildings have low-flow or water-saving fixtures or hold a construction permit from the City. Submit a report to the Southwest District Office of the Ohio EPA showing how this requirement will be implemented.

September 30, 1991

11. If Mason fails to comply with any of the interim measures required by paragraph 10 by the scheduled deadline, or any of the milestones required by paragraph 7(a)-(p) inclusive by the corresponding deadline, then in addition to incurring stipulated penalty liability under paragraph 13, Mason shall not cause, permit, authorize or allow the connection of new sources of wastewater nor extensions to the existing sanitary sewers from the date such noncompliance commences until the date such noncompliance ends.

#### VII. CIVIL PENALTY

12. Mason shall pay to the State of Ohio a civil penalty of Fifty Thousand Dollars (\$50,000.00). The penalty shall be paid by delivering to counsel for Plaintiff a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within forty-five (45) days from the date of entry of this Consent Order.

#### VIII. STIPULATED PENALTIES

13. In the event that Mason fails to comply with any interim effluent limitation under Paragraph 5 of this Consent Order or any of the requirements set forth in Paragraphs 4, 6,



7(a) through 7(i) inclusive, 7(k) through 7(o) inclusive, or 10(a) through 10(h) inclusive, Mason 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 - Two Hundred And Fifty Dollars (\$250.00) 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 - One Thousand Five Hundred Dollars (\$1,500.00) per day for each requirement not met. For each day of failure to meet a requirement, from ninety-one days (91) days to one hundred and twenty (120) 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 one hundred twenty (120) days - Three Thousand Five Hundred Dollars (\$3500.00) per day for each requirement not met.

14. In the event that Mason fails to meet any of the requirements of this Consent Order set forth in Subparagraph 7(j) or 7(p), then Mason shall immediately and automatically be liable for payment of a stipulated penalty of \$1,000.00 per day of each violation of each requirement. Mason shall be liable for an additional stipulated penalty of One Thousand Dollars (\$1,000.00) per day of each violation of each requirement if the failure to comply continues for more than thirty (30) days, i.e. Two Thousand Dollars (\$2,000.00) per day of each

violation. In the event that failure to comply with the requirements of Subparagraph 7(j) or 7(p) continues more than sixty (60) days, Mason shall be liable for an additional Two Thousand Dollars (\$2,000.00) per day of each violation, i.e., Three Thousand Dollars (\$3,000.00) per day of each violation. In the event that failure to comply with the requirements of Subparagraph 7(j) or 7(p) continues more than ninety (90) days, Mason shall be liable for an additional Four Thousand Dollars (\$4,000.00) per day of each violation, i.e., Five Thousand Dollars (\$5,000.00) per day of each violation. In the event that failure to comply with the requirements of Subparagraph 7(j) or 7(p) continues more than one hundred and twenty days (120), Mason shall be liable for an additional Nine Thousand Dollars (\$9,000.00) per day of each violation, i.e., Ten Thousand Dollars (\$10,000.00) per day of each violation.

15. Any payment required to be made under the provisions of Paragraphs 13 or 14 of this Order shall be made by delivering to Plaintiff's counsel 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 the Consent Order, made payable to "Treasurer, State of Ohio".

#### IX. POTENTIAL OF FORCE MAJEURE

16. If any event occurs which causes or may cause a delay of any requirement of this Consent Order applicable to Mason, Mason shall notify the Ohio EPA in writing within fourteen (14)

days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of delay, the measures taken and to be taken by Mason to prevent or minimize the delay and the timetable by which those measures will be implemented. Mason will adopt all reasonable measures to avoid or minimize any such delay.

17. In any action by the State of Ohio to enforce any of the provisions of this Consent Order, Mason may raise at that time the question of whether it is entitled to a defense that its 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. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed upon by Mason and the State of Ohio 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, if ever, that the proceeding to enforce this Consent Order is commenced by the State. At that time the burden of proving that any delay was or will be caused by circumstances beyond the control of Mason shall rest with Mason. Failure by Mason to comply with the notice requirements of Paragraph 16 shall constitute a waiver by Mason of any right it may have to raise such a defense. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances shall not in any event constitute circumstances entirely beyond the control of

Mason, or serve as a basis for an extension of time under this Consent Order.

X. DOCUMENT SUBMITTAL

18. Any plans, reports or other documents required under this Consent Order to be submitted to the Southwest District Office of the Ohio Environmental Protection Agency shall be submitted to:

Martyn Burt or his successor  
Wastewater Supervisor  
Southwest District Office  
Ohio Environmental Protection Agency  
40 South Main Street  
Dayton, Ohio 45402.

XI. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

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

XII. RETENTION OF JURISDICTION

20. The Court will retain jurisdiction of this action for the purpose of overseeing compliance with this Consent Order.

XIII. COSTS

21. Mason is hereby ordered to pay the costs of this action.

/S/ NEAL B BRONSON

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JUDGE, COURT OF COMMON PLEAS OF  
WARREN COUNTY, OHIO

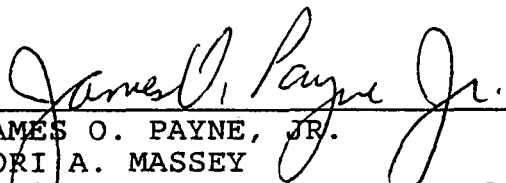
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WARREN COUNTY, OHIO  
COMMON PLEAS COURT

BY *Landy Cotel*  
DEPUTY

APPROVED:

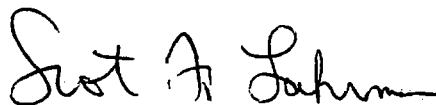
STATE OF OHIO, ex rel.  
LEE FISHER  
ATTORNEY GENERAL OF OHIO

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Counsel for Defendant  
City of Mason

1805E/15-28

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS  
for Outfall IPC00004001

Reporting Code	UNITS	PARAMETER	DISCHARGE LIMITATIONS				MONITORING REQMENTS		
			Concentration	Loading*		Meas. Sample Freq.	Type		
			Other Units (Specify)	30 day	7 day	30 day	7 day		
00010	°C	Temperature	-	-	-	-	-	Daily Cont.	
00530	mg/l	Suspended Solids	30	45	284	426	3/wk.	Comp.	
00310	mg/l	BOD <sub>5</sub>	30	45	284	426	3/wk.	Comp.	
00550	mg/l	Oil & Grease	15 at any time					1/Month	Grab
00610	mg/l	Ammonia (N)							
		(Summer)	1.5	2.0	14.2	21.3		Daily Comp.	
		(Winter)	2.5	5.0	23.7	35.5		Daily Comp.	
31616	Count /100ml	Fecal Coliform (Summer Only)	1000	2000	-	-		Daily Grab	
50050	MGD	Flow	-	-	-	-		Daily Cont.	
80082	mg/l	CBOD <sub>5</sub>	-	-	-	-		3/wk. Comp.	

1. 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 multiple grab sample.
2. 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 multiple grab sample (Summer Only).
4. The Dissolved Oxygen (Reporting Code 00300) shall be maintained at a level of not less than 5.0 mg/l and shall be monitored daily by multiple grab.

\* The average effluent loading limitations are established using the following flow value: 2.5 MGD

Appendix "A" (cont.)

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS  
for Outfall 1PC00004001

<u>EFFLUENT CHARACTERISTIC</u>		<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING</u>	
Reporting		Concentration		Loading*		REQMNTS	
Code	UNITS PARAMETER	Other Units (Specify)		kg/day		Meas. Sample	
		30 day	7 day	30 day	7 day	Freq.	Type
00630	mg/l NO <sub>2</sub> & NO <sub>3</sub> (N-Total)	-	-	-	-	3/wk.	Comp.
01027	ug/l Cadmium	-	-	-	-	1/month	Comp.
01034	ug/l Chromium	-	-	-	-	1/month	Comp.
01042	ug/l Copper	-	-	-	-	1/month	Comp.
01051	ug/l Lead	-	-	-	-	1/month	Comp.
71900	ug/l Mercury	-	-	-	-	1/month	Comp.
01067	ug/l Nickel	-	-	-	-	1/month	Comp.
01092	ug/l Zinc	-	-	-	-	1/month	Comp.



APPENDIX B

DIAGNOSTIC EVALUATION MEASURES

- A. Review existing plans, specifications, reports, and other documents.
- B. Determine potential short-term operational revisions that can be carried out using minimal WWTP equipment modifications.
- C. Perform hydraulic and unit process evaluation.
- D. Evaluate BOD<sub>5</sub> & NH<sub>3</sub>-N removal processes.
- E. Evaluate waste sludge treatment and dewatering processes.
- F. Evaluate problems, propose immediate improvements.
- G. Prepare report indicating recommendations for immediate improvements, cost estimates, and financing alternatives.

1805E/29