

9-23-91 CONSENT ORDER FILED. CASE COMPLETE. COSTS TO DEFT. WARREN

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO, ex rel.	:	Case No. 89 CV 909
LEE FISHER	:	
Attorney General of Ohio,	:	Judge Mitchell F. Shaker
	:	
Plaintiff,	:	<u>CONSENT ORDER</u>
	:	
v.	:	
	:	
CITY OF WARREN	:	
	:	
Defendant.	:	

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 Warren (hereinafter "Warren" or "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 Warren 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.

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officers, employees, assigns, successors in interest and an person acting in concert or privity with any of them. Defendant Warren shall provide a copy of this Consent Order to each contractor it employs to perform work itemized here, 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 Warren has operated its wastewater treatment plant and sewer system in such a manner as to result (1) in numerous violations of the discharge limitations and monitoring requirements of NPDES Permit No. 3PE00008*DD issued to it by the Director of Ohio EPA, (2) in violation of Director's Findings and Orders issued on July 15, 1983 and (3) in violation of the water pollution laws of the State of Ohio. Warren denies these allegations. Entry of this Consent Order, payment of the civil penalty and completion of construction and elimination of overflows as required by Section V shall constitute full satisfaction of any civil liability by Defendant for violations of NPDES Permit No. 3PE00008*DD, as alleged in the Complaint which occurred prior to the entry of this Order, and violations of the July 15, 1983 Director's Findings and Orders, as alleged in the Complaint which occurred prior to the entry of this Order. 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 and/or for violations of the types of

claims alleged in the Complaint which occur after the entry of this Order.

IV. GENERAL INJUNCTIVE RELIEF

4. Defendant Warren is hereby enjoined and ordered to immediately comply with the requirements of Chapter 6111 of the Ohio Revised Code, the rules and regulations adopted under that Chapter, and the terms and conditions of NPDES Permit 3PE00008*DD, and any renewals or modifications thereof, except for the separate sanitary sewer system overflows Warren is eliminating pursuant to the compliance schedule in Section V. After June 30, 1993, Warren is enjoined not to discharge any wastewater from separate sanitary system overflows. Furthermore, Defendant Warren is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

**V. CONSTRUCTION AND ELIMINATION SCHEDULES
FOR THE GRANDVIEW AND BUCKEYE-McMYLER SANITARY
SEWER OVERFLOW INTERCEPTOR PROJECTS AND THE MAHONING
AVENUE-FREEMAN STREET OVERFLOW ELIMINATION PROJECT**

5. Defendant Warren is enjoined and ordered to eliminate discharges from overflows from its sanitary sewer system in accordance with the following schedules:

A. GRANDVIEW SANITARY SEWER OVERFLOW INTERCEPTOR PROJECT

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Initiation of Project Design Work	<u>Completed</u>
(b) Submittal of Approvable Plans and Specifications to Ohio EPA	<u>Completed</u>
(c) Advertisement of Building Bids	<u>Completed</u>
(d) Execution of Building Contracts	<u>Completed</u>
(e) Initiation of Construction	<u>Completed</u>
(f) Completion of Sewer Construction and elimination of the overflows listed below:	<u>December 30, 1992</u>

<u>Station Number</u>	<u>Description</u>	<u>Receiving Stream</u>
3PE00008021	Hazelwood Ave., S.E. @ East Market St.	Grandview St.-Storm & Mosquito Creek
3PE00008022	Adelaide Ave., S.E. @ Grandview St., S.E.	Grandview St.-Storm & Mosquito Creek
3PE00008023	Belvedere Ave., S.E. @ Grandview St., S.E.	Grandview St.-Storm & Mosquito Creek
3PE00008024	Hazelwood Ave., S.E. @ Grandview St., S.E.	Grandview St.-Storm & Mosquito Creek
3PE00008025	Perkinswood Blvd., S.E. @ Catalpa St., S.E.	Catalpa St.-Storm & Mosquito Creek
3PE00008026	Willard Ave., S.E. @ Grandview St., S.E.	Grandview St.-Storm & Mosquito Creek
3PE00008027	Trumbull Ave., S.E. @ Devon St., S.E.	Catalpa St.-Storm & Mosquito Creek
3PE00008028	Meadowbrook Ave., S.E. @ Catalpa St., S.E.	Catalpa St.-Storm & Mosquito Creek
3PE00008029	Trumbull Ave., S.E. @ Catalpa St., S.E.	Catalpa St.-Storm & Mosquito Creek
3PE00008031	Trumbull Ave., S.E. @ Central Pkwy Ave., S.E.	Catalpa St.-Storm & Mosquito Creek

B. BUCKEYE-McMYLER SANITARY SEWER OVERFLOW INTERCEPTOR PROJECT

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Initiation of Project Design Work	<u>Completed</u>
(b) Submittal of Approvable Plans and Specifications to Ohio EPA	<u>Completed</u>
(c) Advertisement of Building Bids	<u>November 15, 1991</u>
(d) Execution of Building Contracts	<u>January 15, 1992</u>
(e) Initiation of Construction	<u>January 30, 1992</u>
(f) Completion of Sewer Construction and elimination of the overflows listed below	<u>June 10, 1992</u>

<u>Station Number</u>	<u>Description</u>	<u>Receiving Stream</u>
JPE00008010	West Market Street @ Highland Ave., S.W.	South St.-Storm & Mahoning River
JPE00008011	West Market St. between Parkman Rd. & Haymaker Ave., N.W.	Hoyt Run-Storm & Mahoning River
JPE00008012	McMyler St., N.W. @ Nevada Ave., N.W.	Hoyt Run-Storm & Mahoning River
JPE00008014	McMyler St., N.W. @ Dickey Ave., N.W.	Hoyt Run-Storm & Mahoning River

C. MAHONING AVENUE-FREEMAN STREET OVERFLOW ELIMINATION PROJECT

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Elimination of the overflow listed below:	<u>October 1, 1991</u>

<u>Station Number</u>	<u>Description</u>	<u>Receiving Stream</u>
JPE00008017	Mahoning Ave., N.W. @ Freeman St., N.W.	Freeman St.-Storm & Mahoning River

6. Until elimination of the overflows listed in Paragraph 5, subsections A., B., and C., Warren shall only discharge from these overflows during wet weather periods when the flow in the

sewer system exceeds the capacity of the sewer system. Furthermore, until elimination of these overflows, Defendant Warren shall monitor these overflows and report discharges to the Ohio EPA in accordance with the following table:

<u>CHARACTERISTIC REPORTING UNITS</u>		<u>MONITORING REQUIREMENTS</u>	
	<u>PARAMETER</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
Number/No.	Occurrences	When discharging	Estimate
Hours	Duration	When discharging	Daily Est.
Million Gallons	Volume	When discharging	Daily Est.
mg/l	CBOD ₅	1/mo.	Grab
mg/l	Suspended Solids	1/mo.	Grab

Samples should be collected during the first 30 minutes of discharge. Data for the Number of Occurrence(s) per day, the daily Duration and the total daily Flow may be estimated.

For days when there are no overflow discharges, data parameters which require laboratory analyses should be reported as "AM" and an explanation of "No Discharge" entered in the "Additional Remarks" section. Also, on such days Zero should be reported for occurrences, duration and flow.

Monitoring data shall be submitted for each month when discharge occurs. When discharge occurs the monthly monitoring report shall be attached to the normal monthly report form (EPA-4500).

7. Within fourteen days from each completion date listed above, (in subsections A., B and C.) Warren shall submit a written report stating whether or not Warren has performed the action set forth therein to Ohio EPA's Northeast District Office.

8. 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.

9. The intent of this Order is that the compliance schedules for the elimination of overflows from Warren's sewer system replace the elimination schedule set forth in the July 15, 1983 Director's Findings and Orders. Furthermore, this Order contemplates that during wet weather there will be wastewater discharges to waters of the State from the Grandview Sewer System Overflow Project until December 30, 1992, from the Buckeye-McMyler Sewer System Overflow Project until June 30, 1993, and from the Mahoning Avenue-Freeman Street Sewer System Overflow Project until October 1, 1991 consistent with the type of overflow discharges which occurred during wet weather before the entry of this Order.

VI. REQUIREMENTS FOR TREATMENT PLANT
BYPASSES, PUMP STATION BYPASSES, AND
COMBINED SEWER SYSTEM OVERFLOWS

10. Defendant Warren shall not discharge wastewater from any plant bypasses or pump station bypasses, including but not limited to, the five identified below:

<u>SAMPLING STATION</u>	<u>DESCRIPTION OF LOCATION</u>
JPE00008002	Warren wastewater treatment plant bypass
JPE00008003	Main pump station bypass

3PE00008004
3PE00008005
3PE00008033

Lovers Lane @ Parkman Rd. Pump
Station
Rio Vista Ave. Pump Station
Brookside pump station bypass

The only exceptions to this prohibition from discharging from plant bypasses are set forth in Part III - General Conditions, No. 11 of Warren's NPDES permit. Currently, Warren's NPDES permit allows bypass discharges only when it is necessary (1) to prevent loss of life, personal injury or severe property damage, (2) to prevent damage to treatment works or processes, or (3) to allow essential maintenance to be performed according to a schedule approved in writing by the Ohio EPA, Northeast District Office. Warren is also required to comply with the reporting requirements set forth in Paragraph B of NPDES permit General Condition No. 11 if bypass discharges occur. Furthermore, if the above bypass discharge exceptions are changed or modified in subsequent NPDES permits issued to Warren, Warren will be permitted to bypass only pursuant to the changed or modified NPDES permit requirements.

11. Defendant Warren shall only discharge from the combined sewer system overflows identified below during wet weather periods when the flow in the sewer system exceeds the capacity of the sewer system.

<u>Station Number</u>	<u>Description</u>	<u>Receiving Stream</u>
3PE00008006	Red Run Regulator Overflow	Mahoning River
3PE00008007	West Market St. @ Main Ave.	Mahoning River
3PE00008018	High St., N.W. @	High St.-Storm & Mahoning River
3PE00008020	Mahoning Ave., N.W. High St. @ North Park Ave.	High St.-Storm & Mahoning River

3PE00008032

Comstock St., N.W. @ Mahoning River
Mahoning River

12. Defendant Warren shall monitor the overflows listed in Paragraph 11 and report discharges to the Ohio EPA in accordance with the following table:

CHARACTERISTIC REPORTING UNITS		MONITORING REQUIREMENTS	
PARAMETER		Measurement Frequency	Sample Type
Number/No.	Occurrences	When discharging	Estimate
Hours	Duration	When discharging	Daily Est.
Million Gallons	Volume	When discharging	Daily Est.
mg/l	CBOD ₅	1/month	Grab
mg/l	Suspended Solids	1/month	Grab

Samples should be collected during the first 30 minutes of discharge. Data for the Number of Occurrence(s) per day, the daily Duration and the total daily Flow may be estimated.

For days when there are no overflow discharges, data parameters which require laboratory analyses should be reported as "AH" and an explanation of "No Discharge" entered in the "Additional Remarks" section. Also, on such days Zero should be reported for occurrences, duration and flow.

Monitoring data shall be submitted for each month when discharge occurs. When discharge occurs the monthly monitoring report shall be attached to the normal monthly report form (EPA-4500).

13. Defendant Warren is authorized to discharge wastewater from the combined sewer system overflows identified in Paragraph 11 only until Warren is issued a new or modified NPDES permit which contains requirements regarding these combined sewer system overflows. If such NPDES permit sets forth requirements for the combined sewer system overflows

identified above, such NPDES permit requirements will supercede the requirements set forth in paragraphs 11 and 12.

VII. CIVIL PENALTY

14. Defendant Warren shall pay a civil penalty pursuant to Ohio Revised Code Section 6111.09 of Twenty Thousand Dollars (\$20,000.00). The penalty shall be paid by tendering to counsel for Plaintiff a certified check or cashier's check for that amount, payable to the order of "Treasurer, State of Ohio" within forty-five days from the date of the entry of this Consent Order. The check shall be delivered to the following address:

Lori A. Massey
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Fl.
Columbus, Ohio 43266

VIII. STIPULATED PENALTIES

15. In the event that Defendant Warren fails to meet any of the requirements of this Consent Order set forth in Section V, Paragraph 5, subsection A., Task (f) for the Grandview Sanitary Sewer Overflow Interceptor Project, Section V, Paragraph 5, subsection B., Tasks (c) through (f) for the Buckeye-McMyler Sanitary Sewer Overflow Interceptor Project, or Section V, Paragraph 5, subsection C., Task (a) for the Mahoning Avenue-Freeman Street Overflow Elimination Project, Defendant Warren 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 - \$500.00 per day.

For each day of failure to meet a requirement, from thirty-one (31) to sixty (60) days - \$1,000.00 per day.

For each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days - \$2,000.00.

For each day of failure to meet a requirement, from ninety-one (91) days or beyond - \$3,500.00 per day.

For violation of the monitoring requirements for sewer system overflows as set forth in Paragraphs 6 of Section V and 12 of Section VI, Warren shall immediately and automatically be liable for and pay a stipulated penalty of \$1,000.00 for each overflow that is not monitored as required during discharge.

16. In the event that Warren discharges wastewater from (1) the overflows listed in Section V, Paragraph 5, subsection A. after December 30, 1992 (2) the overflows listed in Section V, Paragraph 5, subsection B. after June 30, 1993 and/or (3) the overflow listed in Section V, Paragraph 5, subsection C. after October 1, 1991, Defendant Warren shall immediately and automatically be liable for and shall pay a stipulated penalty, in addition to any penalties required to be paid by the provisions of Paragraph 15, according to the following payment schedule:

For the first fifteen (15) days of wastewater discharges from any overflows,

\$1,000.00 per day. For the next ten (10) days (days 16 through 25) of wastewater discharges from any overflows, \$2,500.00 per day. For the next five (5) days (days 26 through 30) of wastewater discharges from any overflows, \$3,500.00 per day. If any wastewater discharges from overflows thereafter (from 31 days on), \$6,000.00 per day.

17. Any payment required to be made under the provisions of Paragraphs 15 or 16 of this Order shall be made by delivering to Plaintiff's counsel at the address set forth in Paragraph 14 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. NON-WAIVER PROVISION

18. Warren, by entering into this Consent Order, does not waive any rights it may have under O.R.C. Chapter 3745 to object to or appeal permits issued by the Director of Ohio EPA. However, no such objection or appeal by Warren relieves Warren from complying with any of the requirements of this Consent Order.

X. POTENTIAL FORCE MAJEURE

19. In any action by Plaintiff to enforce any of the provisions of this Consent Order, Warren 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, acts of God, strikes, acts

of war or civil disturbances. While Plaintiff does not agree that such a defense exists, it is, however 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 an enforcement action, if any, is commenced by Plaintiff. At that time the burden of proving that any delay was or will be caused by circumstances beyond the control of Warren shall rest with Warren. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances shall not constitute circumstances beyond the control of Warren. Acceptance of this Consent Order without a force majeure clause does not constitute a waiver by Warren of any rights or defenses it may have under applicable law.

XI. 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 Consent Order.

OHIO
ATTY GENERAL
OCT 12 10 21 AM '91
ENVIRONMENTAL
ENFORCEMENT

XII. COSTS

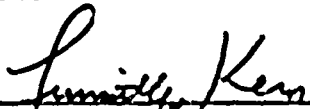
21. Defendant Warren is hereby ordered to pay the costs of this action.



JUDGE, MITCHELL F. SHAKER

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

BY:




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DANIEL J. SPERRA
MAYOR, CITY OF WARREN*



H. HERBERT LAUGHTART
Director of Public Service and
Safety, City of Warren*

*Per Ordinance No. 10296/91
passed by Warren City Council
on September 11, 1991.

APPROVED:



WILLIAM P. MCCLAIN, Law
Director, City of Warren

Attorney for Defendant

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