

IN THE COURT OF COMMON PLEAS  
SHELBY COUNTY, OHIO

FILED  
94 DEC 23 PM 12:35  
BARBARA GLOTT  
CLERK

STATE OF OHIO, ex rel.  
LEE FISHER  
ATTORNEY GENERAL OF OHIO  
30 East Broad Street  
Columbus, OH 43266-0410

Plaintiff,

vs .

VILLAGE OF ANNA  
209 WEST MAIN ST.  
ANNA, OHIO 45302

Defendant.

CASE NO. 94 CV 206

JUDGE

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 Village of Anna (hereinafter "Anna") 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 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 Anna 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 sub contractors for such work.

### III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant has operated its wastewater treatment plant and sewer system in such a manner as to result in numerous violations of the discharge limitations and monitoring requirements of the NPDES Permits issued to it by the Director of Environmental Protection Agency and in violation of the water pollution laws of the State of Ohio. Defendant neither admits nor denies the allegations stated in the Complaint.

Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims under such laws alleged in the Complaint and for any violations of the effluent limitations of Anna's NPDES permit(s) which have occurred prior to the filing of 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 which are neither alleged in the Complaint nor satisfied by compliance with this order including violations which occur after the filing of the complaint.

### IV. COMPLIANCE SCHEDULE

4. Defendant Anna 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.

A. Between the effective date of this Consent Order and June 30, 1998 Defendant is enjoined to comply with the interim effluent limitations set forth in Attachment "A" and Attachment "B" attached hereto. The interim effluent limits contained in Attachment "A" and Attachment "B" do not constitute an NPDES permit or a modification of any existing permit. After June 30, 1998 Defendant Anna is enjoined to meet the final effluent standards set forth in its NPDES permit No. *IPB00004\*DD* and any renewals or modifications thereof.

B. Defendant Anna is hereby Enjoined and Ordered to properly operate and maintain

its wastewater treatment plant and any associated equipment and structures.

## V. CONSTRUCTION SCHEDULE

5. Defendant Anna is enjoined and ordered to eliminate discharges from overflows and bypasses from its sanitary sewer system, to complete construction of improvements to its wastewater treatment plant and to attain compliance with the final effluent limitations of NPDES permit No. *IPB00004\*DD* and any modifications or renewals thereof in accordance with the following schedule set forth below:

### SCHEDULE

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) (i) Initiation of Project Design Work	January 2, 1995
(a)(ii) Submittal of notification to the OEPA whether Honda/Anna Engine plant effluent will be routed to the City of Sidney rather than the Village of Anna	April 2, 1995
(b) Submittal of Approval Plans and Specifications to Ohio EPA	January 31, 1996
(c) Advertisement of Building Bids	April 30, 1996
(d) Execution of Building Contracts	July 30, 1996
(e) Initiation of Construction	September 30, 1996
(f) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits and the elimination of bypasses and overflows.	March 30, 1998
(g) Attain compliance with final effluent limitations, and eliminate overflows and bypasses.	June 30, 1998

B. Within Seven days from each completion date listed above, Defendant Anna shall submit a written report stating whether or not Anna has performed the action set forth therein to

Ohio EPA's Southwest District Office.

C. 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. CIVIL PENALTY**

6. Defendant Anna 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.

#### **VII. STIPULATED PENALTIES**

7. In the event that Defendant Anna fails to meet any of the requirements of this Consent Order set forth in Paragraphs 4, 5(a), 5(b), 5(c), 5(d), 5(e) and 5(f) including any scheduled milestone requirement, 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.

8. In the event that Defendant Anna fails to meet any of the requirements of this Consent Order

set forth in Subparagraph 5(g) the Defendant shall immediately and automatically be liable for payment of a stipulated penalty of \$5,000.00 per day of each violation of said requirement. The Defendant shall be liable for an additional stipulated penalty of One Thousand Dollars (\$1,000.00) per day of each violation if the failure to comply continues for more than thirty (30) days, i.e. Six Thousand Dollars (\$6,000.00) per day of each violation. In the event that failure to comply with the requirements of Subparagraph 5(g) continues more than sixty (60) days, Defendant shall be liable for an additional Four Thousand Dollars (\$4,000.00) per day of each violation, i.e., Ten Thousand Dollars (\$10,000.00) per day of each violation.

9. Any payment required to be made under the provisions of Paragraphs 7 or 8 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".

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

10. Performance of the terms of this Consent Order by Anna is not conditioned on the receipt of any Federal or State grant funds or loans. In addition, Anna'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.

#### **IX POTENTIAL FORCE MAJEURE**

11. In any action to enforce any of the provisions of this Consent Order, Defendant 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 the way of example and not limitation, Acts of God, unusually severe weather conditions, strikes, acts of war, civil disturbances, or conflicting orders of any regulatory agencies or courts. While Plaintiff does not agree that such a defense exists, it is however hereby agreed 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. 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 law or equity

**X. RETENTION OF JURISDICTION**

12. 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.

**XI. COSTS**

13. Defendant Anna is hereby ordered to pay the costs of this action.

12-23-94  
DATE

S / John D. Schmitt  
JUDGE, COURT OF COMMON  
PLEAS OF  
SHELBY COUNTY, OHIO

APPROVED:

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

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Harold M. Shue, Mayor  
Village of Anna  
209 West Main St.  
Anna, Ohio 45302

**ATTACHMENT A**  
**INTERIM**

The interim effluent limits set forth herein shall be effective beginning on the date of entry of this Consent Order December \_\_\_\_\_, 1994 and lasting until the Honda/Anna Engine plant effluent is rerouted from the Village of Anna's wastewater treatment plant to the City of Sidney wastewater treatment plant or until December 31, 1996, whichever occurs earlier.

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
Code	Reporting Units	Parameter	Concentration		Loading*		Meas. Freq.	Sample Type
			Other Units (Specify)	30 Day	7 Day	30 Day		
00010	OC	Temperature	-	-	-	-	Daily	Continuous (Max. Ind. Therm.)
00530	mg/l	Suspended Solids (Summer) (Winter)	62 75.2	93 112.8	117.3 142.3	176 213.5	2/Week 2/Week	Composite Composite
00556	mg/l	Oil & Grease	Not to exceed 10 at any time	Not to exceed 10 at any time	Not to exceed 10 at any time	Not to exceed 10 at any time	1/Month	Grab
00610	mg/l	Ammonia (N) (Summer) (Winter)	25 15.7	37.5 23.5	47.3 29.7	71 44.5	2/Week 2/Week	Composite Composite
31616	Count/100 ml	Fecal Coliform (Summer only)	1000	2000	-	-	2/Weekg	Grab
50050	MGD	Flow	=	=	=	=	Daily	Continuous

80082	mg/l	CBOD5 (Summer) (Winter)	50 38.7	75 58	94.6 73.2	141.9 109.7	2/Week 2/Week	Composite Composite
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(ATTACHMENT A CONT'D)

2. The pH (Reporting Code 00400) shall not be less than 6.6. S.U. nor greater than 9.0 S.U. and shall be monitored daily by grab sample.
3. If the entity uses chlorine for disinfection, the Chlorine Residual (Reporting Code 50060) shall be monitored daily by grab sample. (Summer only)\*\*
4. The Dissolved Oxygen (Reporting Code 00300) shall be monitored daily by grab sample.

\* The average effluent loading limitations are established using the following flow value: 0.5 MGD

\*\* See Part II, Item G of NPDES Permit # 1PB00004





**ATTACHMENT B**

The interim effluent limits set forth herein shall be effective from either (i) the Honda/Anna Engine plant effluent is rerouted from the Village of Anna's wastewater treatment plant to the City of Sidney wastewater treatment plant or (ii) January 1, 1997, whichever occurs first. In no event shall the interim effluent limits set forth herein be in effect beyond June 30, 1998.

Code	Reporting Units	Parameter	DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS	
			Concentration Other Units (Specify)		Loading* kg/day		Meas. Freq.	Sample Type
			30 Day	7 Day	30 Day	7 Day		
00010	°C	Temperature	-	-	-	-	Daily	Continuous (Max. Ind. Therm.)
00530	mg/l	Suspended Solids	30	45	56.8	85.2	2/Week	Composite
00556	mg/l	Oil & Grease	Not to exceed 10 at any time	Not to exceed 10 at any time	Not to exceed 10 at any time	Not to exceed 10 at any time	1/Month	Grab
00610	mg/l	Ammonia (N) (summer) (winter)	25	37.5	47.3	71	2/Week	Grab
31616	Count/100 ml	Fecal Coliform (Summer only)	1000	2000	-	-	2/Week	Grab
50050	MGD	Flow	-	-	-	-	Daily	Continuous
80082	mg/l	CBOD5	25	40	47.3	75.7	2/Week	Composite

2. 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

**(ATTACHMENT B CONT'D)**

sample.

3. If the entity uses chlorine for disinfection, the Chlorine Residual (Reporting Code 50060) shall be monitored daily by grab sample. (Summer only)\*\*
4. The Dissolved Oxygen (Reporting Code 00300) shall be monitored daily by grab sample.

\* The average effluent loading limitations are established using the following flow value: 0.5 MGD

\*\* See Part II. Item G. of NPDES Permit #1PB00004

**ATTACHMENT B**  
**(FOR OUTFALL 00004001)**

<u>EFFLUENT CHARACTERISTIC</u>		<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>		
Code	Reporting Units	Parameter	Concentration		Loading*		Meas. Freq.	Sample Type
			Other Units (Specify)		30 Day	7 Day		
00630	mg/l	Nitrate (N)+ Nitrite (N)	-	-	-	-	1/Month	Grab
00720	mg/l	Cyanide, Total	-	-	-	-	1/Month	Grab
010271	ug/l	Cadmium Total	-	-	-	-	1/Qtr	Composite
01034	ug/l	Chromium Total	-	-	-	-	1/Qtr.	Composite
01042	ug/l	Copper, Total	-	-	-	-	1/Qtr.	Composite
01051	ug/l	Lead, Total	-	-	-	-	1/Qtr.	Composite
01067	ug/l	Nickel, Total	-	-	-	-	1/Qtr.	Composite
01092	ug/l	Zinc, Total	-	-	-	-	1/Qtr.	Composite
01220	ug/l	Chromium (Hex.) Dissolved	-	-	-	-	1/Qtr.	Grab
32730	ug/l	Phenolics	-	-	-	-	1/Qtr.	Grab
71900	ug/l	Mercury, Total	-	-	-	-	1/Qtr.	Composite