

IN THE COURT OF COMMON PLEAS
KNOX COUNTY, OHIO

STATE OF OHIO, ex rel.	:	CASE NO. 90-IN-040090
LEE FISHER	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE OTHO EYSTER
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
VILLAGE OF DANVILLE,	:	
	:	
Defendant.	:	

JOINT MOTION TO AMEND CONSENT ORDER

INTRODUCTION

Now come the parties, Plaintiff State of Ohio and Defendant the Village of Danville, by and through their respective attorneys, and jointly move to amend the Consent Order filed in the above-referenced matter on April 17, 1990.

Grounds for this Motion are set forth more fully in the attached Memorandum in Support of said Motion which is hereby incorporated as if fully rewritten herein.

MEMORANDUM IN SUPPORT

On or about April 17, 1990, this Court entered a Consent Order in the above-captioned case. The instant matter arises upon a Joint Motion of the parties requesting that the Court amend the Order filed April 17, 1990.

Subsequent to the filing of the April 17, 1990 Consent Order, it became apparent to both parties that Defendant Danville would not be able to complete the necessary improvements to its wastewater treatment plant ("WWTP") in time to

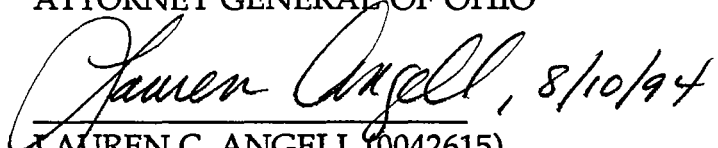
meet the final compliance deadlines established in the April 17, 1990 Consent Order. In addition, it became apparent to both parties that Defendant Danville would not be able to meet the loading limits in its currently effective NPDES permit and was having some difficulty meeting the pH limits for an as yet unknown reason. Both parties are agreed that the amended loading limits provided in Appendix A to the proposed Amended Consent Order, attached hereto as Attachment A, are reasonable and will allow Defendant Danville to complete necessary improvements to its WWTP while complying with the Amended Consent Order.

CONCLUSION

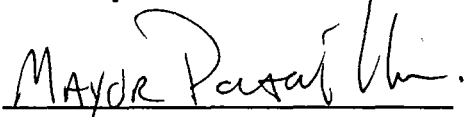
For the reasons stated above, the parties respectfully request that this Court sign and enter into its Journal the attached Amended Consent Order to amend the original Consent Order filed with this Court on April 17, 1990.

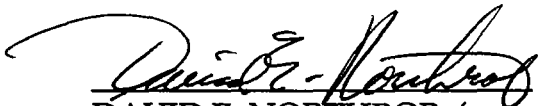
Respectfully submitted,

LEE FISHER
ATTORNEY GENERAL OF OHIO

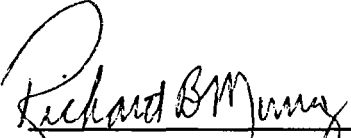

LAUREN C. ANGELL (0042615)
Assistant Attorney General
Environmental Enforcement
Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410
Telephone: (614) 466-2766

Attorney for Plaintiff State of Ohio


MAYOR Patrick
Authorized Representative of
Village of Danville, Ohio


DAVID E. NORTHROP, (0001004)
Samuels & Northrop Co., L.P.A.
180 E. Broad Street, Ste. 816
Columbus, Ohio 43215
Telephone: (614) 464-3232

Trial Attorney for Defendant
Village of Danville


RICHARD B. MURRAY, (0002392)
110 East Gambier Street
Mount Vernon, Ohio 43050
Telephone: (614) 397-7474

Attorney for the Village of Danville

ATTACHMENT A

IN THE COURT OF COMMON PLEAS
KNOX COUNTY, OHIO

STATE OF OHIO, ex rel.	:	CASE NO. 90-IN-040090
LEE FISHER	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE OTHO EYSTER
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	:	
vs.	:	
	:	
VILLAGE OF DANVILLE,	:	
	:	
Defendant.	:	

AMENDED CONSENT ORDER

The Complaint and Consent Order in the above-captioned matter having been filed herein on April 16, 1990 and on April 17, 1990 respectively, and Defendant the Village of Danville ("Danville" or "Defendant") having violated the April 17, 1990 Consent Order, Plaintiff, State of Ohio, by its Attorney General Lee Fisher ("Plaintiff"), and Defendant Danville, having consented to the entry of this Amended Consent Order amending the previous Consent Order entered on April 17, 1990,

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 to 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 Danville 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 alleged in its Complaint that Defendant had operated its wastewater treatment plant ("WWTP") and sewer system in such a manner as to result in numerous violations of the requirements of the NPDES Permits and Director's Final Findings and Orders 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 the April 17, 1990 Consent Order constitutes full satisfaction of any civil liability by Defendant for all claims under such laws alleged in the April 16, 1990 Complaint, which occurred prior to the entry of the April 17, 1990 Consent Order.

4. 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 April 16, 1990 Complaint for all violations which occurred subsequent to the entry of the April 17, 1990 Consent Order through the date of entry of this Amended Consent Order, and for all violations of the April 17, 1990 Consent Order through the date of entry of this Amended Consent Order. Nothing in this Amended Consent 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 which occur after the filing of this Amended Consent Order.

IV. COMPLIANCE SCHEDULE

5. Defendant Danville is hereby enjoined and ordered to immediately comply with the requirements of Chapter 6111. of the Ohio Revised Code ("O.R.C.") and the terms and conditions of the rules and regulations adopted under that Chapter, and with Danville's currently effective NPDES permit, and any renewals or modifications thereof, except for the final loading limitations set forth in said permit. This exception to compliance with Chapter 6111. is contingent on full compliance with the terms and conditions of Appendix "A" attached hereto. Between the effective date of this Amended Consent Order and May 31, 1995, Defendant is hereby ordered and enjoined to comply with the interim loading and effluent limitations and monitoring requirements table set forth in Appendix A. The interim loading and effluent limitations and monitoring requirements contained in Appendix A do not constitute an NPDES permit nor a modification of any existing permit. After May 31, 1995, Defendant Danville is permanently enjoined to meet the final loading and effluent limitations and monitoring requirements set forth in its currently effective NPDES permit and any renewals or modifications thereof. Defendant Danville is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. STIPULATED PENALTIES FOR FAILURE TO COMPLY WITH APPENDIX A

6. In the event that Defendant Danville fails to meet any of the daily or 7-day loading or effluent limitation requirements and/or monitoring requirements only of this Amended Consent Order as set forth in Appendix A, Defendant Danville shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment chart:

- First 30 days following the effective date of this Amended Consent Order; **\$300 per each violation of each loading or effluent limitation or monitoring requirement**
- From the 31st to the 60th day following the effective date of this Amended Consent Order; **\$600 per each violation of each loading or effluent limitation or monitoring requirement**
- From the 61st to the 90th day following the effective date of this Amended Consent Order; **\$900 per each violation of each loading or effluent limitation or monitoring requirement**
- From the 91st day following the effective date of this Amended Consent Order and continuing until May 31, 1995. **\$1200 per each violation of each loading or effluent limitation or monitoring requirement**

7. In the event that Defendant Danville fails to meet any of the 30-day loading or effluent limitation requirements only of this Amended Consent Order set forth in Appendix A, Defendant Danville shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment chart:

- First 30 days following the effective date of this Amended Consent Order; **\$500 per each violation of each effluent or loading limitation**
- From the 31st to the 60th day following the effective date of this Amended Consent Order; **\$800 per each violation of each effluent or loading limitation**

•From the 61st to the 90th day following the effective date of this Amended Consent Order;

\$1000 per each violation of each effluent or loading limitation

•From the 91st day following the effective date of this Amended Consent Order and continuing until May 31, 1995.

\$1500 per each violation of each effluent or loading limitation

8. For the purpose of calculating stipulated penalties under the provisions of this Amended Consent Order only, Plaintiff agrees to treat each 7-day effluent limitation violation as one violation only, and each 30-day effluent limitation violation as one violation only.

VI. CONSTRUCTION SCHEDULE

9. This Consent Order does not constitute authorization nor approval of the construction of any physical structure or facilities, nor 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.

VII. CIVIL PENALTY

10. Defendant Danville shall pay to the State of Ohio a civil penalty of one thousand dollars (\$1000.00). The penalty shall be paid by delivering to the "Administrative Assistant", a certified check for \$1000.00, payable to the order of "Treasurer, State of Ohio", within forty-five (45) days from the date of entry of this Amended Consent Order. Said check shall be mailed to the following address:

State of Ohio Attorney General's Office
State Office Tower
30 E. Broad Street, 25th Floor
Environmental Enforcement Section
Columbus, Ohio 43215 - 3428

Attention: Administrative Assistant

VIII. PAYMENT OF STIPULATED PENALTIES

11. Any stipulated penalty required to be paid pursuant to the provisions of Section V Paragraphs 6, 7 and 8 of this Amended Consent Order, shall be made by delivering to "Administrative Assistant", a certified check or checks for the appropriate amounts, within forty-five (45) days from the date of the failure to comply with the herein listed sections of the Amended Consent Order. Said check shall be mailed to the following address:

State of Ohio Attorney General's Office
State Office Tower
30 E. Broad Street, 25th Floor
Environmental Enforcement Section
Columbus, Ohio 43215 - 3428

Attention: Administrative Assistant

IX. POTENTIAL FORCE MAJEURE

12. If any event occurs which causes or may cause a delay of any requirement of this Amended Consent Order, Defendant Danville 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 Danville to prevent or minimize the delay, and the timetable by which measures will be implemented. Defendant Danville will adopt all reasonable measures to avoid or minimize any such delay.

13. In any action by the Plaintiff to enforce any of the provisions of this Amended Consent Order, Defendant Danville may raise 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 Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and 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 recommended by Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant Danville shall rest with Defendant. 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, or serve as a basis for an extension of time under this Amended Consent Order. Failure by Defendant Danville to comply with the notice requirements of Paragraph 12 shall render this Paragraph void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendant's right to request an extension of its obligations under this Amended Consent Order based on such incident. An extension of one compliance date based on a particular incident does not mean that Defendant Danville qualifies for an extension of a subsequent compliance date or dates. Defendant Danville must make an individual showing or proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Amended 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.

X. TERMINATION OF STIPULATED PENALTIES

14. The Stipulated Penalties For Failure to Comply With Appendix A clause, found in Section V. of this Amended Consent Order, may terminate if the City of Danville has:

- (1) completed all necessary construction to its wastewater treatment plant and

sewer system as was necessary to eliminate any and all sewer system overflows and treatment plant bypasses;

(2) eliminated any and all sewer system overflows and treatment plant bypasses;

(3) achieved and maintained compliance with the final effluent and loading limitations contained in its currently effective NPDES permit or any renewals or modifications thereof, for any and all discharges from its WWTP, for a period of one (1) year;

(4) has conducted all required monitoring and sent all required monitoring reports to the Ohio EPA for a period of one (1) year; and

(5) has paid all penalties, both civil and stipulated, required to be paid pursuant to this Amended Consent Order.

Termination of these stipulated penalties shall only be effected by Order of Court, upon application by any party and a demonstration that all five (5) conditions set forth in this paragraph have been met.

XI. COMPLIANCE NOT DEPENDENT ON FINANCING

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

XII. MISCELLANEOUS PROVISIONS

16. No earlier than a date three (3) years from the date of the Court's approval of this Amended Consent Order, Defendant Danville may move the Court, pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure ("R. Civ. Pro."), to terminate this Amended Consent Order if Defendant Danville can demonstrate that:

(1) it has been in full compliance with the obligations contained in this

Amended Consent Order for a three (3) year period from the date of the Court's approval of this Amended Consent Order; and

(2) it is eligible for relief from judgment under R. Civ. Pro. 60(B).

Plaintiff State of Ohio takes no position as to such Motion and reserves any and all rights it may have to oppose the Motion, including the argument that the mere passage of a three (3) year time period of compliance with the Amended Consent Order does not necessarily demonstrate that Defendant Danville is eligible for relief from judgment under R. Civ. Pro. 60(B).

XIII. RETENTION OF JURISDICTION

17. 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.

XIV. COSTS

18. Defendant Danville is hereby ordered to pay the costs of this action.

APPROVED:

DATE

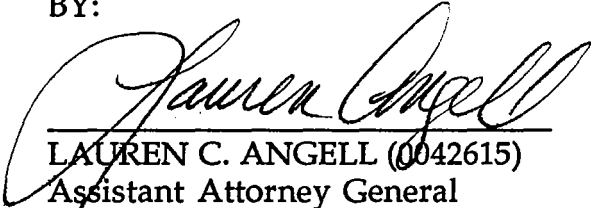
JUDGE OTHO EYSTER
COURT OF COMMON PLEAS
KNOX COUNTY, OHIO

APPROVED:

8/10/94

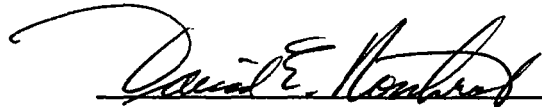
DATE:

LEE FISHER
ATTORNEY GENERAL OF OHIO
BY:



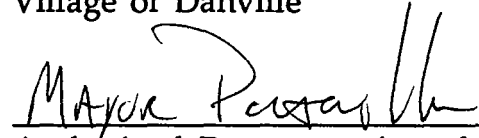
LAUREN C. ANGELL (0042615)
Assistant Attorney General
30 East Broad Street
Columbus, Ohio 43266-0410

Counsel for Plaintiff, State of Ohio

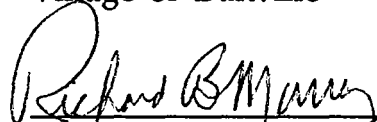


DAVID NORTHROP (0001804)
Samuels & Northrop Co., L.P.A.
180 E. Broad St., Ste. 816
Columbus, OH 43215

Counsel for Defendant
Village of Danville



Authorized Representative of
Village of Danville



RICHARD MURRAY (0002392)
110 East Gambier Street
Mount Vernon, Ohio 43050

Counsel for Defendant
Village of Danville

APPENDIX A

PART I, A. FINAL EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning on the effective date of this permit and lasting until the expiration date, the permittee is authorized to discharge in accordance with the following limitations and monitoring requirements from outfall 4PC00100001. See Part II, OTHER REQUIREMENTS, for locations of effluent sampling.

EFFLUENT CHARACTERISTIC		DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS		
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	Water Temperature	-	-	--	--	Daily	Max. Ind. Therm.
00530	mg/l	Total Suspended Solids	65	90	--	--	2/week	Composite
00556	mg/l	Oil & Grease	Not to exceed 10 at any time				1/Qtr.	Grab
00610	mg/l	Nitrogen, Ammonia (NH ₃)						
		(Summer)	4.5	6.8	--	--	1/2 Wks	Composite
		(Winter)	--	--	--	--	1/2 Wks	Composite
31616	#/100ml	Fecal Coliform (Summer only)	1000	2000	--	--	1/Week	Grab
50050	MGD	Flow Rate	--	--	--		Daily	Continuous
80082	mg/l	CBOD ₅						
		(Summer)	20	30	--	--	2/Week	Composite
		(Winter)	25	40	--	--	2/Week	Composite

- During the period beginning on the effective date of this permit and lasting until a date 30 days from the effective date of this permit, the permittee need only monitor for pH. From the date beginning on the 31st day after the effective date of this permit, 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 sample.
- If the entity uses chlorine for disinfection, the Chlorine Residual (Reporting Code 50060) shall be maintained at a level not to exceed 0.038 mg/l and shall be monitored daily by grab sample. (Summer only)**
- The Dissolved Oxygen (Reporting Code 00300) shall be maintained at a level of not less than 6.0 mg/l and shall be monitored daily by grab sample.

* The average effluent loading limitations are established using the following flow value: 0.20 MGD.
 ** See Part II, Items G and L.

Part I, A. - FINAL EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

5. During the period beginning on the effective date of this permit and lasting until the expiration date, the permittee is authorized to discharge in accordance with the following limitations and monitoring requirements from outfall 4PC00100001. See Part II, OTHER REQUIREMENTS, for locations of effluent sampling.

EFFLUENT CHARACTERISTIC			DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS	
Reporting Code	Units	Parameter	Concentration Specified Units		Loading kg/day		Meas. Freq.	Sample Type
			30 day	Daily Max.	30 day	Daily Max.		
01074	µg/l	Nickel, Total Recoverable	-	-	-	-	2/Year	Composite
01094	µg/l	Zinc, Total Recoverable	-	-	-	-	2/Year	Composite
01113	µg/l	Cadmium, Total Recoverable	-	-	-	-	2/Year	Composite
01114	µg/l	Lead, Total Recoverable	-	-	-	-	2/Year	Composite
01118	µg/l	Chromium, Total Recoverable	-	-	-	-	2/Year	Composite
01119	µg/l	Copper, Total Recoverable	-	-	-	-	2/Year	Composite
01220	µg/l	Chromium, Dissolved Hexavalent	-	-	-	-	2/Year	Grab
99992	µg/l	Mercury, Total Recoverable	-	-	-	-	2/Year	Composite

Part I, B. - ADDITIONAL MONITORING REQUIREMENTS

1. Influent Monitoring. The permittee shall monitor the treatment works' influent wastewater at Station Number 4PC00100601, and report to the Ohio EPA in accordance with the following table. Samples of influent used for determination of net values or percent removal must be taken the same day as those samples of effluent used for that determination. See Part II, OTHER REQUIREMENTS, for location of influent sampling.

<u>CHARACTERISTIC</u>			<u>MONITORING REQUIREMENTS</u>	
Reporting Code	Units	Parameter	Measurement Frequency	Sample Type
00530	mg/l	Total Suspended Solids	1/Week	Composite
80082	mg/l	CBOD ₅	1/Week	Composite

Part I, B. - ADDITIONAL MONITORING REQUIREMENTS

2. Upstream and Downstream. The permittee shall monitor the receiving stream, upstream of the point of discharge, at Station Number 4PC00100801, and downstream of the point of discharge, at Station Number 4PC00100901, and report to the Ohio EPA in accordance with the following table. See Part II, OTHER REQUIREMENTS, for location of sampling.

<u>CHARACTERISTIC</u>			<u>MONITORING REQUIREMENTS</u>	
Reporting Code	Units	Parameter	Measurement Frequency	Sample Type
00010	°C	Water Temperature	1/Quarter	Grab
00300	mg/l	Dissolved Oxygen	1/Quarter	Grab
00400	S.U.	pH	1/Quarter	Grab
00610	mg/l	Nitrogen, Ammonia (NH ₃)	1/Quarter	Grab
31616	#/100ml	Fecal Coliform (Summer Only)	1/Quarter	Grab
80082	mg/l	CBOD ₅	1/Quarter	Grab

Part I, B. - ADDITIONAL MONITORING REQUIREMENTS

3. Sludge. The permittee shall monitor the treatment works' final sludge at Station Number 4PC00100581, and report to the Ohio EPA in accordance with the following table. See Part II, OTHER REQUIREMENTS, for location of sludge sampling.

CHARACTERISTIC			MONITORING REQUIREMENTS*	
Reporting Code	Units**	Parameter	Measurement Frequency	Sample Type
00611	mg/kg	Nitrogen, Ammonia	2/Year	Grab
00627	mg/kg	Nitrogen, Total Kjeldahl	2/Year	Grab
01003	mg/kg	Arsenic	1/Year	Grab
01028	mg/kg	Cadmium	2/Year	Grab
01029	mg/kg	Chromium	2/Year	Grab
01043	mg/kg	Copper	2/Year	Grab
01052	mg/kg	Lead	2/Year	Grab
01068	mg/kg	Nickel	2/Year	Grab
01093	mg/kg	Zinc	2/Year	Grab
01148	mg/kg	Selenium	1/Year	Grab
70316	Dry Tons	Sludge Weight***	1/Month	Total
70318	%	Sludge Solids, Percent Total	1/Month	Grab
70322	%	Sludge Solids, Percent Volatile	1/Month	Grab
71921	mg/kg	Mercury	2/Year	Grab
78465	mg/kg	Molybdenum	1/Year	Grab

* When sludge is removed from the wastewater treatment facility and disposed of by land application. If no sludge is removed during month, leave data area blank and enter "No sludge removed during month" in the "Additional Remarks" section (signature still required).

** Units of mg/kg on dry weight basis.

*** Calculated total for the sampling period.

See Part I, C. Schedule of Compliance.

See Part II, Item K.