

IN THE COURT OF COMMON PLEAS  
KNOX COUNTY, OHIO

FILED  
KNOX COUNTY  
COURT OF COMMON PLEAS

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

Plaintiff

v.

THE VILLAGE OF GAMBIER,  
OHIO,

Defendant.

CASE NO.

JUDGE

TERESA SCHILLER  
CLERK OF COURTS

94 IN 07 0145

CONSENT ORDER

The Complaint in the above captioned matter having been filed herein, and Plaintiff State of Ohio by its Attorney General Lee Fisher and Defendant The Village of Gambier, Ohio (hereinafter referred to as "Gambier") 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 Gambier 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, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them. Defendant Gambier is ordered to provide a copy of this Consent Order to each contractor it employs to perform the work itemized herein. Defendant is further 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. Plaintiff alleges in its Complaint that Defendant Gambier 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 its National Pollutant Discharge Elimination System ("NPDES") permit issued 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 Gambier for all claims alleged in the Complaint.

C. Nothing in this 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 the Complaint.

### IV. PERMANENT INJUNCTION

A. Defendant Gambier is hereby permanently enjoined and ordered to immediately comply with the requirements of RC Chapter 6111. and the rules adopted thereunder, and its currently effective National Pollutant Discharge Elimination System ("NPDES") permit Ohio EPA No. 4PB00101\*BD, and any renewals or modifications thereof.

B. Between the effective date of this Consent Order and September 1, 1995 Defendant Gambier is enjoined and ordered to comply with the interim effluent limitations set forth in Exhibit "A" which is attached hereto and incorporated by reference herein. The interim effluent limitations contained in Exhibit "A" do not constitute a permit or a modification of Defendant's existing NPDES permit, No. 4PB00101\*BD.

C. After December 31, 1995, Defendant Gambier is enjoined and ordered to meet the final effluent limitations set forth in its NPDES permit, Ohio EPA 4PB00101\*BD, and any renewals or modification thereof.

D. Defendant Gambier is enjoined and ordered to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

**V. CONSTRUCTION SCHEDULE INJUNCTION**

A. Defendant Gambier is enjoined and ordered to complete construction of the improvements to its wastewater treatment plant described in the permit to install, No. 90-277 issued by the Director of Environmental Protection on February 1, 1994 and to attain compliance with the final effluent limitations of its NPDES permit, Ohio EPA No. 4PB00101\*BD, and any modifications or renewals thereof in accordance with the following schedule:

<b><u>TASK</u></b>	<b><u>COMPLETION DATE</u></b>
1. Initiation of Project Design Work.	Completed
2. Submittal of Approvable Plans and specifications to Ohio EPA.	Completed
3. Advertisement of Building Bids.	Completed
4. Execution of Building Contracts.	Completed
5. Initiation of Construction.	Completed
6. Completion of construction of sufficient wet stream treatment facilities to ensure compliance with final effluent limits.	September 1, 1995
7. Attain compliance with final effluent limitations.	December 31, 1995

B. Within ninety (90) days of the Court's entry of this Consent Order, Defendant Gambier is enjoined and ordered to submit to the Ohio EPA an approvable Sludge Management Plan. Defendant is enjoined and ordered to implement the approved Plan within five (5) days after receipt of written approval from the Ohio EPA.

**VI. REPORTING REQUIREMENT**

Within seven (7) days from the completion date of each task listed above, Defendant

Gambier is ordered to submit a written report stating whether it has performed the actions set forth therein to the Ohio EPA's Central District Office, Division of Water Pollution Control located at 2305 Westbrooke Drive, Building C, Columbus, Ohio 43228.

**VII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS**

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

**VIII. EFFECT OF CONSENT ORDER**

Defendant Gambier is ordered, pursuant to RC Section 6111.09, to pay to the State of Ohio a civil penalty of Ten thousand dollars. (\$10,000). The penalty shall be paid by delivering to Plaintiff's attorney, or his successor, a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within forty-five (45) days from the Court's entry of this Consent Order.

**X. STIPULATED PENALTIES**

A. In the event that Defendant Gambier fails to meet any of the requirements of this Consent Order set forth in Article IV and Article V, Subparagraphs A 2. through 7., Article V, Paragraph C, and Article IX, 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—two hundred dollars (\$200.00) per day per violation;
2. For each day of each failure to meet a requirement from thirty-one (31) to sixty days (60) – three hundred dollars (\$300) per day per violation;
3. For each day of each failure to meet a requirement over sixty (60)

days--eight hundred dollars  
(\$800.00) per day per violation.

B. Any payment required to be made under the provisions of Paragraphs A and B of this Article shall be made by delivering to Plaintiff's attorney, or his successor, a certified check or checks, for the appropriate amounts within ten (10) days from the date of the failure to meet the requirement of this Consent Order, made payable to "Treasurer, State of Ohio".

**XI. POTENTIAL FORCE MAJEURE**

In any action to enforce any of the Provisions of this Consent Order Defendant Gambier 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 Plaintiff 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 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.

**XI. RETENTION OF JURISDICTION**

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

**XIII. COSTS**


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

Entered this 25<sup>th</sup> day of July 1994.

  
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JUDGE, KNOX COUNTY, OHIO  
COURT OF COMMON PLEAS


APPROVED:

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


  
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RICHARD A. BAER,  
VILLAGE OF GAMBIER ADMINISTRATOR  
Authorized Representative  
The Village of Gambier, Ohio

