

IN THE COURT OF COMMON PLEAS  
AUGLAIZE COUNTY, OHIO

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

Plaintiff,

vs.

VILLAGE OF MINSTER,

Defendant.

CASE NO.

93-187

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 Minster (hereinafter "Minster") 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

AUGLAIZE COUNTY  
Court COMMON PLEAS COURT  
FILED

93 JUL 13 PM 3:14

SUE ELLEN KOHLER  
CLERK

## 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 Minster 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 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 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 Defendant for all claims under such laws 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 which occur after the filing of the Complaint.

IV. COMPLIANCE SCHEDULE

4. Defendant Minster is hereby enjoined and ordered to immediately comply with the requirements of Chapter 6111 of the Ohio Revised Code and the rules and regulations adopted under that Chapter and the terms and conditions of its currently effective NPDES permit, and any renewals or modifications thereof, except for the final effluent limitations set forth in said permit. Defendant Minster is enjoined to meet the final effluent standards set forth in its NPDES permit No. 2PB00036\*CD and any renewals or modifications thereof. Minster is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

5. Defendant Minster is enjoined and ordered to complete construction of the improvements to its wastewater treatment plant described in the Municipal Compliance Plan as approved by Ohio EPA on April 24, 1989 and to attain compliance with the final effluent limitations of NPDES permit No. 2PB00036\*CD and any modifications or renewals thereof in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Initiation of Project Design Work	Complete

- (b) Submittal of Approvable Plans and Specifications to Ohio EPA Complete
- (c) Advertisement of Building Bids Complete
- (d) Execution of Building Contracts Complete
- (e) Initiation of Construction Complete
- (f) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits. Complete
- (g) Attain compliance with final effluent limitations. Complete

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.

6. Defendant Minster is enjoined and ordered to eliminate discharges from overflows and bypasses from its main lift station and to complete construction of the improvements necessary to eliminate such overflows and bypasses in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Initiation of Project Design Work	June 1, 1993
(b) Submittal of Approvable Plans and Specifications to Ohio EPA	January 1, 1994

- |  |                  |
|--|------------------|
| (c) Advertisement of Building Bids   | November 1, 1994 |
| (d) Execution of Building Contracts  | December 1, 1994 |
| (e) Initiation of Construction   | January 1, 1995  |
| (f) Completion of construction of<br>main lift station improvements<br>necessary for elimination of<br>bypasses and overflows. | August 1, 1996   |
| (g) Attain elimination of overflows<br>and bypasses.   | August 1, 1996   |

Within Seven days from each completion date listed above, Defendant Minster shall submit a written report stating whether or not Minster has performed the action set forth therein to Ohio EPA's Northwest District Office.

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

7. Defendant Minster shall pay to the State of Ohio a civil penalty of four thousand dollars (\$4,000.00). The penalty shall be paid by delivering a certified check for that amount, payable to the order of "Treasurer, State of Ohio"

within forty-five days from the date of entry of this Consent Order to the attention of Janis Miller, Administrative Assistant, or a person subsequently designated by the State, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266.

#### VII. STIPULATED PENALTIES

8. In the event that Defendant Minster fails to meet any of the requirements of this Consent Order set forth in Paragraph 4 and Subparagraphs 5(f) and 6(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 days - \$500.00 per day. For each day of failure to meet a requirement, from thirty-one to sixty days - \$1,000.00 per day. For each day of failure to meet a requirement, from sixty-one to ninety days - \$2,500.00 per day. For each day of failure to meet a requirement, after ninety days - \$3,500.00 per day.

9. In the event that Defendant Minster fails to meet any of the requirements of this Consent Order set forth in Subparagraphs 5(g) and 6(g), the Defendant shall immediately and automatically be liable for payment of a stipulated penalty of \$5,000.00 per day of violation of said requirement. The

Defendant shall be liable for an additional stipulated penalty of one thousand dollars (\$1,000.00) per day of violation if the failure to comply continues for more than thirty (30) days, i.e., six thousand dollars (\$6,000.00) per day of violation. In the event that failure to comply with the requirements of Subparagraphs 5(g) and 6(g) continues more than sixty (60) days, Defendant shall be liable for an additional four thousand dollars (\$4,000.00) per day of violation, i.e., ten thousand dollars (\$10,000.00) per day of violation.

10. Any payment required to be made under the provisions of Paragraphs 8 or 9 of this Order shall be made by delivering a certified check or checks for the appropriate amounts, within forty-five days from the date of the failure to meet the requirement of the Consent Order, made payable to "Treasurer, State of Ohio" to the attention of Janis Miller, Administrative Assistant, or a person subsequently designated by the State, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266.

#### VIII. POTENTIAL FORCE MAJEURE

11. In any action to enforce any of the provisions of this Consent Order Defendant Minster 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.

#### **IX. TERMINATION CLAUSE**

12. This Consent Order shall terminate as to Section VII Paragraphs 8, 9 and 10 after Minster has completed construction per Paragraphs 5 and 6, achieved and maintained compliance with the final effluent limitations contained in its NPDES permit, and any renewal or modification thereof and eliminated bypasses and overflows, for period of one (1) year and has paid all penalties required pursuant to this Consent Order. Termination of these provisions of the Consent Order shall be by Order of the Court, upon application by any party.

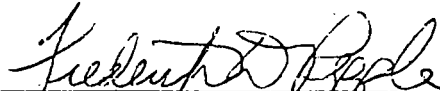
#### **X. RETENTION OF JURISDICTION**

13. 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

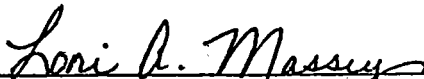
14. Defendant Minster is hereby ordered to pay the costs of this action.

  
\_\_\_\_\_  
JUDGE, COURT OF COMMON PLEAS  
AUGLAIZE COUNTY

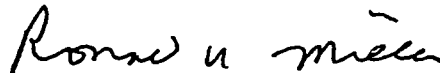
APPROVED:

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

BY:

  
\_\_\_\_\_  
LORI A. MASSEY (0047226)  
Assistant Attorney General  
Environmental Enforcement  
30 East Broad Street, 25th Fl.  
Columbus, Ohio 43266-0410

Attorney for the State

  
\_\_\_\_\_  
RONALD H. MILLER (0023792)  
Solicitor, Village of Minster  
5 Willipie Street  
Wapakoneta, Ohio 45895

Attorney for the Village of  
Minster

  
\_\_\_\_\_  
Theodore G. Purpus - MAYOR  
Authorized Representative  
of Village of Minster

2929E/33-41

**TO THE CLERK:**

The above Journal Entry MAY be  
a final appealable order. Copies  
to all parties and attorneys.