

IN THE
COURT OF COMMON PLEAS
STARK COUNTY, OHIO

JUN 5 9 57 AM '92
ENFORCEMENT

STATE OF OHIO, *ex rel.* : CASE NO.
LEE FISHER :
ATTORNEY GENERAL OF OHIO : JUDGE

Plaintiff,

v.

THE VILLAGE OF NAVARRE,

Defendant.

FILED
JUN - 2 1992
HELEN J. GAROFALO
STARK COUNTY OHIO
CLERK OF COURTS

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 Navarre, Ohio (hereinafter "Navarre") 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 Navarre 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 Navarre is ordered to provide a copy of this Consent Order to each consultant/contractor it employs to perform the work itemized herein, and Defendant is ordered to require each general consultant/contractor to provide a copy of this Consent Order to each of its subconsultants/subcontractors for such work.

III. SATISFACTION OF LAWSUIT

A. Plaintiff alleges in its Complaint that Defendant Navarre 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 National Pollution Discharge Elimination System ("NPDES") permits and Final Findings and Orders issued to it by the Director of Environmental Protection and in violation of the water pollution control law 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 Navarre for all claims under such laws 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, which occur after the filing of the Complaint.

D. The signing of this Consent Order shall not be construed as an admission by Defendant Navarre of the

violations alleged in the Complaint.

IV. RIGHT OF ENTRY

A. Defendant Navarre is ordered to give consent to Plaintiff State of Ohio, its agents and employees, to enter into and onto Defendant's wastewater treatment facility and associated structures, without a search warrant, to inspect its operation and/or records, or to observe Defendant conducting the work required by this Consent Order.

B. Nothing in this Consent Order shall be construed to limit Plaintiff's statutory or permit authority under RC Chapter 6111. or the rules adopted thereunder, to conduct inspections and/or surveys and/or review records.

V. EFFECT UPON OTHER ACTIONS

Nothing in this Consent Order shall be construed to relieve Defendant Navarre of the obligation to comply with applicable federal, state or local statutes, regulations or ordinances, or shall constitute a waiver or release of any right, remedy, defense or claim against Defendant with regard to any person not a party to this Consent Order.

VI. PERMANENT INJUNCTIVE RELIEF

A. Defendant Navarre is hereby enjoined and ordered to immediately and permanently comply, and thereafter continue to comply, with the requirements of RC Chapter 6111. and the rules adopted thereunder, its currently effective NPDES permit, No. 3PC00009*CD, and any renewals or modifications thereof.

B. Defendant Navarre is hereby enjoined and ordered to properly operate and maintain its wastewater treatment plant

and any associated equipment and structures.

VII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

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

VIII. EFFECT OF CONSENT ORDER

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 the Director of Environmental Protection or other such permits as may be required by applicable federal, state or local laws, rules or regulations.

IX. POTENTIAL FORCE MAJEURE CLAUSE

In any action to enforce any of the provisions of this Consent Order, Defendant Navarre 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 a dispute arises and/or 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 State law.

X. CIVIL PENALTY

Defendant Navarre is ordered to pay to the State of Ohio, pursuant to RC Section 6111.09, a civil penalty of five thousand dollars (\$5,000.00). The penalty shall be paid by delivering to Plaintiff's attorney and/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.

XI. STIPULATED PENALTIES

A. In the event that Defendant Navarre fails to meet any of the provisions of this Consent Order set forth in Articles VI and X, Defendant shall be liable for payment of a stipulated penalty according to the following payment schedule:

1. For each day of each failure to meet a provision, up to thirty (30) days--one hundred dollars (\$100.00) per day per violation;
2. For each day of each failure to meet a provision, from thirty-one (31) to sixty days (60)--two hundred dollars (\$200.00) per day per violation;
3. For each day of each failure to meet a provision, from sixty-one (61) to ninety (90) days--three hundred dollars (\$300.00) per day per violation;

4. For each day of each failure to meet a provision, over ninety days (90) days--four hundred dollars (\$400.00) per day per violation.

B. Any payment required to be made under the provisions of Paragraph A of this Article shall be made by delivering to Plaintiff's attorney, and/or his successor, a certified check, or checks, for the appropriate amounts, within thirty (30) days from the date of the failure to meet the requirement of this Consent Order, made payable to "*Treasurer, State of Ohio*".

XII. TERMINATION OF STIPULATED PENALTIES

A. The provisions of this Consent Order set forth in Article XI Paragraphs A and B requiring the payment of stipulated penalties shall be terminated upon a demonstration by Defendant Navarre that: 1) it has achieved and maintained compliance with the final effluent limitations and monitoring requirements contained in its currently effective NPDES permit, No. 3PC00009*CD, and any renewals or modifications thereof, for the period of one (1) year from the Court's entry of this Consent Order, and 2) it has paid all penalties required by this Consent Order.

B. Termination of the stipulated penalty section of this Consent Order shall only be by order or decree of the Court upon application by any party, and a demonstration that the conditions outlined in Paragraph A of this Article have been met.

XIII. NON-WAIVER PROVISION

It is understood by the parties that Defendant Navarre does not waive any rights or remedies it has under federal or state laws, regulations or permit requirements, to seek modifications to its currently effective NPDES permit, No. 3PC00009*CD, or any laws or regulations, or to challenge any terms, conditions or effluent limits in any NPDES permit issued subsequent to the entry of this Consent Order.

XIV. RETENTION OF JURISDICTION

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

XV. COSTS

Defendant Navarre is ordered to pay the costs of this action.

XVI. EFFECTIVE DATE OF CONSENT ORDER

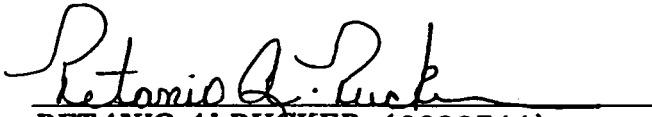
The effective date of this Consent Order shall be the date on which it is filed of Record with the Clerk of Courts for the Stark County Court of Common Pleas.

Entered This ^{June} 1st Day of ~~May~~, 1992.

lol Sheila G. Farmer /rajr
JUDGE, COURT OF COMMON PLEAS
STARK COUNTY, OHIO

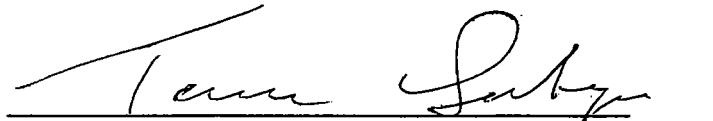
APPROVED:

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



RETANIO A. RUCKER (0039744)
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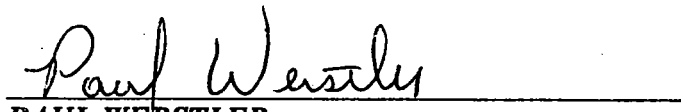
Attorney for Plaintiff State of Ohio


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Attorney for Defendant The
Village of Navarre, Ohio


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P.O. Box 2
Navarre, Ohio 44662-0002
(216) 879-2719

Village Solicitor for Defendant
The Village of Navarre, Ohio


PAUL WERSTLER
Mayor

Authorized Representative The
Village of Navarre, Ohio

6587E

RESOLUTION

~~Ordinance~~ No. 1992-2

Passed May 5, 19 92

RESOLUTION AUTHORIZING THE SETTLEMENT OF NEGOTIATIONS BETWEEN THE VILLAGE OF NAVARRE, OHIO, AND THE STATE OF OHIO, OFFICE OF THE ATTORNEY GENERAL, REGARDING CONSENT ORDER RELATING TO THE NAVARRE VILLAGE SEWER TREATMENT PLANT, AND DECLARING THE SAME TO BE AN EMERGENCY

WHEREAS, the Village of Navarre, Ohio, has had protracted negotiations between the Village and the Office Of The Attorney General, State of Ohio, regarding a proposed Consent Order relating to the Navarre Village Sewer Treatment Plant, and:

WHEREAS, said negotiations have resulted in a settlement of the dispute between said Village and the Ohio Attorney General's Office, which will be embodied in a "CONSENT ORDER" filed with the Clerk of the Common Pleas Court of Stark County, Ohio, and:

WHEREAS, it is in the best interest of the health, safety and welfare of the residents of the Village of Navarre, Ohio, that said "CONSENT ORDER" be implemented and:

WHEREAS, it is in the best interest of the health, safety, and welfare of the residents of the Village of Navarre, Ohio, that the MAYOR of said Village be authorized to execute all documents relating to said "CONSENT ORDER" and settlement.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF NAVARRE, STATE OF OHIO, THAT:

SECTION 1: The Council of said Village of Navarre, Ohio, hereby approves the "CONSENT ORDER" and settlement between said Village and the Attorney General's Office of The State of Ohio, relating to the Navarre Village Sewer Treatment Plant.

SECTION 2: The MAYOR of said Village is hereby authorized to execute all documents relating to said "CONSENT ORDER" and settlement.

SECTION 3: This Resolution is hereby declared to be an emergency resolution, as it is of immediate necessity to the health, safety, and welfare of the residents of the Village of Navarre, Ohio, that the "CONSENT ORDER" and settlement agreement represented thereby, and the authorization of the MAYOR to execute all documents be made immediately. The reason for the emergency is that the Ohio Attorney General's Office is insisting upon expedited settlement of the dispute with the Village, in order for said settlement to be implemented without adversary litigation, which would cause considerable expense to the Village. Therefore, this Resolution shall take effect immediately after its passage by Council, under suspension of rules, as provided for by Ohio Revised Code, sections 731.17 and 731.30.

Passed (as an emergency and under suspension of rules):
May 5, 1992


PAUL T. WERSTLER, MAYOR

Attest:


MARY ANN HEISTAND, CLERK-TREASURER

RECORD OF ORDINANCES

Dayton Legal Blank Co.

Form No. 30043

RESOLUTION

~~Ordinance~~ No. 1992-2

Passed

May 5, 19 92.

I, Mary Ann Heestand, Clerk-Treasurer of the Village of Navarre, Ohio, do hereby certify that the foregoing is a true copy of Resolution 1992-2 duly passed and adopted by the Council of the Village of Navarre, on the 5th day of May, 1992 as compared by me with the original on file in my office.

Mary Ann Heestand

I, Mary Ann Heestand, Clerk-Treasurer of the Village of Navarre, Ohio, do hereby certify there is no newspaper in said Village and that publication of the above Resolution was duly made by posting one copy thereof at each of the five places designated by Council and that said Resolution will remain posted for at least fifteen days thereafter.

Post Office, Navarre Deposit Bank Co., Village Clean Laundromat
Alice's Restaurant, Muskoff Drug Store

Mary Ann Heestand