

IN THE  
COURT OF COMMON PLEAS  
COLUMBIANA COUNTY, OHIO

STATE OF OHIO, *ex rel.*  
LEE FISHER  
ATTORNEY GENERAL OF OHIO, : CASE NO. 92-CIV-186  
: JUDGE DOUGLAS C. JENKINS

FILED  
MAR 10 1994  
COLUMBIANA COUNTY  
COMMON PLEAS COURT  
ANTHONY J. DATTILIO, Clerk

v.

THE VILLAGE OF NEW WATERFORD,  
OHIO,

Defendant.

AMENDED CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio ("State") by its Attorney General, Lee Fisher, and Defendant The Village of New Waterford, Ohio (hereinafter referred to as "New Waterford") having consented to the entry of this Amended 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 New Waterford under Chapter 6111. of the Ohio Revised Code ("RC"), and venue is proper in this Court.

**II. PARTIES**

The provisions of this Amended 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 New Waterford is ordered to provide a copy of this Amended Consent Order to each contractor it employs to perform the work itemized herein. In addition, Defendant is ordered to require each general contractor to provide a copy of this Amended Consent Order to each of its subcontractors for such work.

### III. SATISFACTION OF LAWSUIT

A. The State alleges in its Complaint that Defendant New Waterford 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 ("Director") 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 Amended Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims alleged in the Complaint.

C. Nothing in this Amended Consent Order shall be construed to limit the authority of the State to seek relief for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Amended Consent Order.

#### IV. PERMANENT INJUNCTION

A. Defendant New Waterford 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 NPDES permit, and any renewals or modifications thereof.

B. Between the effective date of this Amended Consent Order and May 15, 1995, Defendant New Waterford is enjoined and ordered to comply with the interim effluent limitations set forth in Appendix "A" that is attached hereto and incorporated by reference herein.

C. The interim effluent limitations contained in Appendix "A" do not constitute an NPDES permit or a modification of any existing permit.

D. After May 15, 1995, Defendant New Waterford is enjoined and ordered to meet the final effluent standards set forth in its NPDES permit, No. 3PB00059\*DD, and any renewals or modification thereof.

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

#### V. CONSTRUCTION SCHEDULE INJUNCTION

Defendant New Waterford is enjoined and ordered to eliminate discharges from overflows and bypasses from its sanitary sewer system, and to complete construction of the improvements to its wastewater treatment plant described in the revised Detailed Plan to be approved by the Director, and to

attain compliance with the final effluent limitations of its NPDES permit, No. 3PB00059\*DD, 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.	Completed
(b) Submittal of Approveable Plans and Specifications to Ohio EPA.	August 1, 1994
(c) Advertisement of Building Bids.	November 1, 1994
(d) Execution of Building Contracts.	December 1, 1994
(e) Initiation of Construction.	February 15, 1995
(f) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits, and to eliminate all bypasses and overflows from the system.	October 16, 1995
(g) Attain compliance with final effluent limitations.	December 15, 1995

#### VI. REPORTING REQUIREMENT

Within seven (7) days from the completion date of each milestone listed above, Defendant New Waterford is ordered to submit a written statement identifying whether it has performed the actions set forth therein to the Ohio EPA's Northeast District Office, Division of Water Pollution Control located at 2110 East Aurora Road, Twinsburg, Ohio 44087-1969.

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

Performance of the terms of this Amended Consent Order by Defendant New Waterford 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**

This Amended 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 or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

**IX. CIVIL PENALTY**

Defendant New Waterford was ordered, pursuant to RC Section 6111.09, to pay to the State a civil penalty of two thousand five hundred dollars (\$2,500.00). The penalty was paid by delivering to the State'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 the April 2, 1992 Consent Order.

**X. STIPULATED PENALTIES**

A. In the event that Defendant New Waterford fails to meet any of the requirements of this Amended Consent Order set forth in Article V, Subparagraphs (a) through (f), 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--one hundred dollars (\$100.00) per day per violation;
2. For each day of each failure to meet a requirement from thirty-one (31) to sixty (60) days--two hundred dollars (\$200.00) per day per violation;
3. For each day of each failure to meet a requirement over sixty (60) days--three hundred dollars (\$300.00) per day per violation.

B. In the event Defendant New Waterford fails to meet the final requirements of this Amended Consent Order set forth in Article V, Subparagraph (g), Defendant shall be liable for and shall pay a stipulated penalty in accordance with the following payment schedule:

1. For each day of each failure to meet a requirement up to thirty (30) days--four hundred dollars (\$400.00) per day per violation;
2. For each day of each failure to meet a requirement from thirty-one (31) to sixty (60) days--five hundred dollars (\$500.00) per day per violation;
3. For each day of each failure to meet a requirement over sixty (60) days--seven hundred fifty dollars (\$750.00) per day per violation.

C. Any payment required to be made under the provisions of Paragraphs A and B of this Article shall be made by delivering to the State'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

Amended Consent Order, made payable to "Treasurer, State of Ohio".

D. Defendant New Waterford is ordered, pursuant to Article X of the April 2, 1992 Consent Order to pay to the State a stipulated penalty of two thousand five hundred dollars (\$2,500.00). This stipulated penalty shall be paid by delivering to the State's attorney, or his successor, a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within ten (10) days of the Court's entry of this Amended Consent Order.

**XI. RETENTION OF JURISDICTION**

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

**XII. COSTS**

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

Entered this 10 day of March, 1994.

COURT OF COMMON PLEAS  
COLUMBIANA COUNTY, OHIO

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JUDGE DOUGLAS C. JENKINS

APPROVED:

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

  
RETANIO A. RUCKER (0039744)  
Assistant Attorney General

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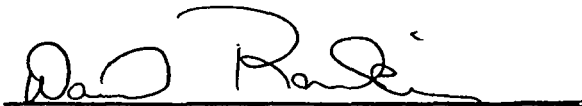
  
ROBERT W. HUM (0032935)  
Village Solicitor

9 East Felger Court  
Columbiana, Ohio 44408  
(216) 482-1222

Attorney for Defendant the Village  
of New Waterford, Ohio

  
JAMES RUPERT MAYOR

Authorized Representative  
The Village of New Waterford, Ohio





APPENDIX "A"

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning on the effective date of this Consent Order and lasting until the date that the improved wastewater treatment works are to attain operational level as specified in milestone (g), Article V of this Consent Order, Defendant New Waterford is authorized to discharge in accordance with the following limitations and monitoring requirements from outfall No. 3PB00059001.

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
REPORTING			CONCENTRATION		LOADING*		Meas. Freq.	Sample Type
CODES	UNITS	PARAMETER	Other Units (Specify)		kg/day			
			30 day	7 day	30 day	7 day		
00010	°C	Temperature	-	-	-	-	Daily	(Max.) Ind. Therm.
00530	mg/l	Suspended Solids	45	68	-	-	2/week	Composite
00556	mg/l	Oil & Grease	Not to exceed 10 at any time				1/qtr	Grab
00610	mg/l	Ammonia (N)	-	-	-	-	1/2 wks	Composite
51616	Count /100ml	Fecal Coliform						
		(Summer)	1000	2000	-	-	1/week	Grab
		(Winter)	1000	2000	-	-	1/week	Grab
50050	MGD	Flow	-	-	-	-	Daily	24 hour total continuous
80082	mg/l	CBOD <sub>5</sub>	40	60	-	-	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 sample.
3. If the entity uses chlorine for disinfection, the Chlorine Residual (Reporting Code 50060) shall be maintained at a level not to exceed 0.5 mg/l and shall be monitored daily by grab sample. (Summer only)
4. The Dissolved Oxygen (Reporting Code 00300) shall be maintained at a level of not less than 4.0 mg/l and monitored daily by grab sample.

AN ORDINANCE AUTHORIZING THE MAYOR AND THE VILLAGE SOLICITOR TO ENTER INTO AN AMENDED CONSENT ORDER WITH THE STATE OF OHIO REGARDING CASE NO. 92-CIV-186 IN THE COURT OF COMMON PLEAS, COLUMBIANA COUNTY, OHIO, AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF NEW WATERFORD, COUNTY OF COLUMBIANA, STATE OF OHIO:

**SECTION ONE:** THAT the Mayor and the Village Solicitor are hereby authorized to execute an Amended Consent Order with the State of Ohio regarding Case No. 92-CIV-186 in the Court of Common Pleas, Columbiana County, Ohio. A copy of said Amended Consent Order is attached hereto and incorporated herein as if fully rewritten.

**SECTION TWO:** THAT this Ordinance shall be and hereby is declared to be an emergency measure necessary to the preservation of the health, safety, morals, peace and general welfare of the Village of New Waterford and the inhabitants thereof, by reason of the need to maintain continuity with regard to provision of said services which are essential to the operation of the Village, and, as such, this Ordinance shall take effect and be in full force and virtue immediately upon passage.

Passed by Council this 1 day of March, 1994.

Nancy Benson  
PRESIDENT OF COUNCIL

APPROVED:  
James L. Rupert  
MAYOR

ATTEST:  
Terrellynn Gray  
CLERK 3-1-94

This Ordinance posted at the following locations as required by Ohio Revised Code Section 731.25:

- |   |                             |
|---|-----------------------------|
| 1. <u>New Waterford Bank</u>            | Starting Date <u>3-2-94</u> |
| 2. <u>Vittle Village</u>                | Starting Date <u>3-2-94</u> |
| 3. <u>Community Building</u>            | Starting Date <u>3-2-94</u> |
| 4. <u>New Waterford Fire Department</u> | Starting Date <u>3-2-94</u> |
| 5. <u>New Waterford Laundromat</u>      | Starting Date <u>3-2-94</u> |

Terrellynn Gray  
CLERK