

IN THE COURT OF COMMON PLEAS
PERRY COUNTY, OHIO

RECEIVED

ST NO 17

23245

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

CASE NO. _____
JUDGE _____

Plaintiff,

vs.

CONSENT ORDER

VILLAGE OF SOMERSET

Defendant.

Whereas, 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 Somerset (hereinafter "Somerset") 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 Somerset under Chapter 6111 of the Ohio Revised Code, and venue is proper in this Court.

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. Somerset 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 Environmental Protection and in violation of the water pollution laws of the State of Ohio. Although Somerset denies any and all legal or equitable liability under any federal, state or local law for the violations alleged in the Complaint, the parties have entered into this Consent Order in good faith to avoid expensive and protracted litigation. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Somerset, its agents, officers and employees for claims arising under Chapter 6111 of the Ohio Revised Code ("RC") and the regulations promulgated thereunder alleged in the Complaint and including any violations that may be alleged to have occurred up through and including the date of entry of this Consent Order. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for violations which occur after the entry of this Consent Order.

IV. COMPLIANCE SCHEDULE

4. Somerset is hereby enjoined and ordered to immediately comply with the requirements of RC Chapter 6111 and the terms and conditions of the rules and regulations adopted under that Chapter and its currently effective NPDES Permit, and any renewals or modifications thereof, except for the final effluent limitations set forth in said permit. Between the effective date of this Consent Order and the

completion date set forth for Task (f) in Section V below, Somerset is enjoined to comply with the interim effluent limitations set forth in Appendix "A" attached hereto. The interim effluent limits contained in Appendix "A" do not constitute an NPDES permit or a modification of any existing permit. After the completion date set forth for Task (f) in Section V below, Defendant Somerset is enjoined to meet the final effluent standards set forth in its then currently effective NPDES permit, as such may be renewed or modified. Somerset is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

5. Somerset 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 its approved General Plan for Wastewater Treatment and to attain compliance with the final effluent limitations of its current NPDES permit and any modifications or renewal thereof in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Complete PTI application and submit approvable detail plans	April 1, 1995
(b) Advertisement of Building Bids	November 1, 1995
(c) Execution of Building Contracts	March 1, 1996
(d) Start construction	May 1, 1996
(e) Complete construction of sufficient wetstream treatment facilities for compliance with final effluent limits of then currently effective NPDES permit and the elimination of bypasses and overflows.	May 1, 1998

- (f) Attain and maintain compliance with final effluent limitations, with all overflows and by-passes eliminated July 1, 1998

6. Within seven (7) business days from each future completion date listed above, Somerset shall submit a written report stating whether or not Somerset has performed the action set forth therein to Ohio EPA's Southeast District Office.

7. 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

8. Somerset shall pay to the State of Ohio a civil penalty of Five Thousand Five Hundred Dollars (\$5,500.00). The penalty shall be paid by delivering to counsel for Plaintiff a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within forty-five (45) days from the date of entry of this Consent Order, with notation directing it to the attention of Matthew A. Sanders, Acting Administrative Assistant, or a person subsequently designated by the State, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

VII. STIPULATED PENALTIES

9. In the event that Somerset fails to meet any of the requirements of this Consent Order set forth in Paragraphs 4, 5(a), 5(b), 5(c), 5(d), 5(e) and/or 5(f), the scheduled milestone requirements, 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 (30) days - Two Hundred Fifty Dollars (\$250.00) per day. For each day of failure to meet a requirement, from thirty-one (31) to sixty days (60) - Five Hundred Dollars (\$500.00) per day. For each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days Seven Hundred Fifty Dollars (\$750.00). For each day of failure to meet a requirement, over ninety days (90) days - One Thousand Dollars (\$1,000.00) per day.

10. In the event that Defendant Somerset fails to meet any of the requirements of this Consent Order set forth in Paragraph 5(f), the Defendant shall immediately and automatically be liable for payment of a stipulated penalty of Two Thousand Dollars (\$2,000.00) per day of violation of said requirement. The Defendant shall be liable for an additional stipulated penalty of Five Thousand Dollars (\$5,000.00) per day of violation if the failure to comply continues for more than thirty (30) days, i.e., Seven Thousand Dollars (\$7,000.00) per day of violation. In the event that failure to comply with the requirements of Subparagraph 5(f) continues more than sixty (60) days, Defendant shall be liable for an additional Three Thousand Dollars (\$3,000.00) per day of violation, i.e., Ten Thousand Dollars

(\$10,000) per day of violation.

11. Any payment required to be made under the provisions of Paragraphs 9 or 10 of this Order shall be made by delivering a certified check or checks for the appropriate amounts made payable to "Treasurer, State of Ohio" to the attention of Matthew A. Sanders, Acting Administrative Assistant, or a person subsequently designated by the State, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order.

VIII. POTENTIAL FORCE MAJEURE

12. If any event occurs which causes or may cause a delay of any requirement of this Consent Order applicable to Somerset, Somerset shall notify the Ohio EPA in writing within fourteen (14) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of delay, the measures taken and to be taken by Somerset to prevent or minimize the delay and the timetable by which those measures will be implemented. Somerset will adopt all reasonable measures to avoid or minimize any such delay.

13. In any action by the State of Ohio to enforce any of the provisions of this Consent Order, Somerset may raise at that time the question of 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 the State of Ohio does not agree that such a defense

exists, it is, however, hereby agreed upon by Somerset and the State of Ohio 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, if ever, that the proceeding to enforce this Consent Order is commenced by the State. At that time the burden of proving that any delay was or will be caused by circumstances beyond the control of Somerset shall rest with Somerset. Failure by Somerset to comply with the notice requirements of the preceding paragraph of this Consent Order shall constitute a waiver by Somerset of any right it may have to raise such a defense. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances shall not in any event constitute circumstances entirely beyond the control of Somerset, or serve as a basis for an extension of time under this Consent Order.

IX. RETENTION OF JURISDICTION

14. 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.

X. TERMINATION CLAUSE

15. This Consent Order shall terminate as to Section VII, Paragraphs 9 and 10 after Somerset has completed construction per Paragraph 5, 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 a period of one (1) year and has paid all penalties required pursuant to this Consent Order. Termination of the stipulated penalty provisions of the Consent Order shall be by Order of the Court, upon application by any party, and a finding that these conditions are met.

XI. COMPLIANCE NOT DEPENDANT ON GRANTS OR LOANS

16. Performance of the terms of this Consent Order by Somerset is not conditioned on the receipt of any federal or state grant or loan funds. In addition, Somerset'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 application for the same.

XII. NON-WAIVER PROVISION

17. The parties reserve and do not waive any and all legal and equitable rights, remedies and defenses that may be available for violation or enforcement of this Consent Order. Somerset does not waive any rights or remedies it has under Chapter 6111, state regulations, or permit requirements, or to seek modification to its NPDES permit or to challenge any terms, conditions or effluent limits imposed by any NPDES permit issued to Somerset subsequent to the entry of this Consent Order.


XIII. COSTS

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

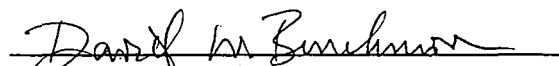

JUDGE, COURT OF COMMON PLEAS
PERRY COUNTY

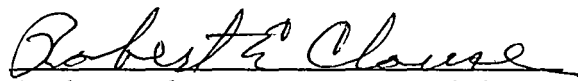
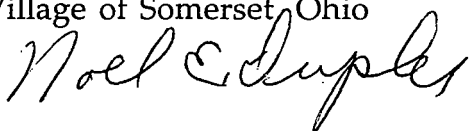
APPROVED:

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


Lori A. Massey, Esq. (0047226)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street 25th Floor
Columbus, Ohio 43215-3428
(614) 466-2766

FOR VILLAGE OF SOMERSET
BY:


David W. Burchmore, Esq.
SQUIRE, SANDERS & DEMPSEY
4900 Society Center
127 Public Square
Cleveland, Ohio 44114
(216) 479-8500


Authorized Representative of the
Village of Somerset, Ohio


Counsel for Village of Somerset

APPENDIX "A"

Part I, INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS
for outfall OPB0004001

EFFLUENT CHARACTERISTIC		DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS	
Reporting Code	Units Parameter	Concentration Specified Units		Loading* kg/day		Meas. Freq.	Sample Type
		30 day	7 day	30 day	7 day		
00530	mg/l Total suspended solids	(summer) 12	24	--	--	2/week	Composite
		(winter) 30	45	--	--	2/week	Composite
00610	mg/l Nitrogen, Ammonia (NH ₃)	--	--	--	--	2/week	Composite
80082	mg/l CBOD ₅ (summer)	10	15	--	--	2/week	Composite
		(winter) 25	40	--	--	2/week	Composite
00630	mg/l Nitrogen, Nitrate + Nitrate	--	--	--	--	1/month	Composite
01074	ug/l Nickel, total recoverable	--	--	--	--	1/quarter	Composite
01094	ug/l Zinc, total recoverable	--	--	--	--	1/quarter	Composite
01113	ug/l Cadmium, total recoverable	--	--	--	--	1/quarter	Composite
01114	ug/l Lead, total recoverable	--	--	--	--	1/quarter	Composite
01118	ug/l Chromium, total recoverable	--	--	--	--	1/quarter	Composite
01119	ug/l Copper, total recoverable	--	--	--	--	1/quarter	Composite
01220	ug/l Chromium, dissolved hexavalent	--	--	--	--	1/quarter	Grab
99992	ug/l Mercury, total recoverable	--	--	--	--	1/quarter	Composite

* The average effluent loading limitations are established using the following flow value:
0.250 MGD.

Part II, OTHER INTERIM REQUIREMENTS

The permittee shall monitor the system overflows at station OPB00040002 (overflow from plant influent pump station to Somerset Creek) and report to the Ohio EPA in accordance with the following table:

EFFLUENT CHARACTERISTIC			DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS	
Reporting Code	Units	Parameter	Concentration Specified Units		Loading* kg/day		Meas. Freq.	Sample Type
			30 day	7 day	30 day	7 day		
00530	mg/l	Suspended Solids	--	--	--	--	1/month	Grab
50050	Million Gallons	Volume	--	--	--	--	when discharging	Daily Est.
80082	mg/l	CBOD ₅	--	--	--	--	1/month	Grab
80998	Number/ Month	Occurrences	--	--	--	--	when discharging	Estimate
80999	Hours	Duration	--	--	--	--	when discharging	Daily Est.

* The average effluent loading limitations are established using the following flow value: 0.250 MGD.