

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

STATE OF OHIO, ex rel	:	CASE NO. 91-CV-1771
LEE FISHER	:	
ATTORNEY GENERAL OF OHIO	:	JUDGE HAAS
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
VILLAGE OF WAYNESBURG	:	<u>CONSENT ORDER</u>
	:	
Defendant.	:	

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 Waynesburg (hereinafter "Waynesburg") 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 Court.

II. PARTIES

2. The provisions of this Consent Order shall apply to 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 Waynesburg 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 not alleged in the Complaint, including violations which occur after the filing of the Complaint.

IV. COMPLIANCE SCHEDULE

4. Defendant Waynesburg is hereby enjoined and ordered to immediately comply with the requirements of Chapter 6111 of the Ohio Revised Code, of the rules and regulations adopted under that Chapter, the terms and conditions 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 compliance deadline set forth in paragraph 5(g), Defendant is enjoined to comply with the interim effluent limitations set forth in Attachment "A" attached hereto. The interim effluent limits contained in Attachment "A" do not constitute an NPDES permit or a modification of any existing permit. After July 14, 1994, Defendant Waynesburg is enjoined to cease all discharges from its James Street wastewater treatment plant.

V. CONSTRUCTION SCHEDULE

5. Defendant Waynesburg is enjoined and ordered to undertake such construction so as to eliminate all discharges to waters of the State from its James Street wastewater treatment plant in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Initiation of Project Design Work	December 1, 1991
(b) Submittal of Approvable Plans and Specifications to Ohio EPA	August 1, 1992

- | | |
|---|------------------|
| (c) Advertisement of Building Bids | October 1, 1992 |
| (d) Execution of Building Contracts | December 1, 1992 |
| (e) Initiation of Construction | January 1, 1993 |
| (f) Completion of construction of
sanitary sewer line to Magnolia
Wastewater Treatment Plant | July 1, 1994 |
| (g) Elimination of discharges to waters
of the State from James Street
Wastewater Treatment Plant | July 14, 1994 |

6. Within seven days from each completion date listed above, Defendant Waynesburg shall submit a written report stating whether or not Waynesburg has performed the action set forth therein to Ohio EPA's Northeast 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. Defendant Waynesburg shall pay to the State of Ohio a civil penalty of Three Thousand Five Hundred Dollars (\$3500.00). 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 one hundred and twenty (120) days from the date of entry of this Consent Order.

VII. STIPULATED PENALTIES

9. In the event that Defendant Waynesburg 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 5 (f), including any scheduled milestone requirement, the Defendant shall 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 - Five Hundred Dollars (\$500.00) per day. For each day of failure to meet a requirement, from thirty-one (31) to sixty days (60) - One Thousand Dollars (\$1,000.00) per day. For each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days - Two Thousand Five Hundred Dollars (\$2,500.00). For each day of failure to meet a requirement, over ninety days (90) days - Three Thousand Five Hundred Dollars (\$3,500.00) per day.

10. In the event that Defendant Waynesburg fails to meet any of the requirements of this Consent Order set forth in Subparagraph 5(g), the Defendant shall 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 Subparagraph 5(h) 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.

11. Any payment required to be made under the provisions of Paragraphs 7 or 8 of this Order shall be made by delivering to Plaintiff's counsel a certified check or checks for the appropriate amounts, within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, made payable to "Treasurer, State of Ohio".

VIII. TERMINATION OF STIPULATED PENALTIES

12. The Stipulated Penalties set forth in Section VII may be terminated in the event that Waynesburg complies with the appropriate milestones set forth in paragraph 5, and Waynesburg can demonstrate to the satisfaction of the Plaintiff that it has been in total compliance with the terms of this Consent Order during the period of time provided in paragraph 5 for abandonment of the Village's wastewater treatment plant. Termination of stipulated penalties shall be by order of the Court, upon application by any party and a demonstration that the conditions of this paragraph have been met.

IX. POTENTIAL FORCE MAJEURE

13. Acceptance of this Consent Order without a force majeure clause does not constitute a waiver by Waynesburg of any rights or defenses it may have under applicable law. In any action to enforce any of the provisions of this Consent Order the Defendant 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, acts 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 the existence of such a defense and that the appropriate point at which to determine the existence of such a defense is at the time such a defense is raised in the context of litigation relating to a violation of this Consent Order.

X. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

14. Performance of the terms of this Consent Order by Defendant is not conditioned on the receipt of any federal or state grant 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 or loan funds or by the processing of any applications for the same.

XI. RETENTION OF JURISDICTION

15. 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.

XII. COSTS

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

IT IS SO ORDERED.

DATE

6/ John Haas
JUDGE, STARK COUNTY COURT OF
COMMON PLEAS

APPROVED:

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

VILLAGE OF WAYNESBURG

BY:

BY:

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Mary L. Connelly, Mayor
Authorized Representative of
Village of Waynesburg.

5740E/1-8
kmh

A FE
CLERK
By Mary Shusterman
Date 1/13/91

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
<u>REPORTING Code</u>	<u>UNITS</u>	<u>PARAMETER</u>	<u>Concentration</u>		<u>Loading*</u>		<u>Meas. Freq.</u>	<u>Sample Type</u>
			<u>Other Units (Specify)</u>	<u>30 day</u>	<u>7 day</u>	<u>30 day</u>		
50050	MGD	Flow	-	-	-	-	Daily	Continuous
00010	°C	Temperature	-	-	-	-	Daily	Max. Ind. Therm.
00530	mg/l	Suspended Solids	80	120	67	100	2/Week	Composite
00310	mg/l	8005	180	270	150	225	2/Week	Composite
31616	Count /100ml	Fecal Coliform (Summer Only)	-	-	-	-	2/Week	Grab
00665	mg/l	Phos., Total	-	-	-	-	1/Month	Composite
	mg/l	Oil & Grease	-	-	-	-	1/Qtr.	Grab
00610	mg/l	Ammonia (N)	-	-	-	-	1/Month	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. Effluent disinfection will be accomplished by an ultraviolet disinfection unit. (Summer Only)
4. The Dissolved Oxygen (Reporting Code 00300) shall be monitored daily by grab sample.
1. See PART II, OTHER REQUIREMENTS.

* The average effluent loading limitations are established using the following flow value: 0.40 MGD