

IN THE  
COURT OF COMMON PLEAS  
ADAMS COUNTY, OHIO

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

Plaintiff,

v.

THE VILLAGE OF WEST UNION,  
OHIO,

Defendant.

: CASE NO. 89-CIV-228

: JUDGE ELMER SPENCER

: CONSENT ORDER

*Henry K. Spencer*  
CLERK

93 JUN 29 PM 2:55

FILED  
ADAMS COUNTY  
CLERK OF COURTS

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 West Union, Ohio (hereinafter referred to as "West Union") 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 West Union 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 West Union is ordered to provide a copy of this 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 Consent Order to each of its subcontractors for such work.

### III. SATISFACTION OF LAWSUIT

A. The State alleges in its Complaint that Defendant West Union 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 Consent Order shall constitute full satisfaction of any civil liability by Defendant West Union for all claims alleged in the Complaint.

C. Nothing in this 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 this Consent Order.

### IV. PERMANENT INJUNCTION

A. Defendant West Union 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, No. 0PC00019\*CD, and any

renewals or modifications thereof.

B. Between the Court's entry of this Consent Order and October 3, 1994, Defendant West Union is enjoined and ordered 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 for a modification of any existing permit.

C. After October 3, 1994, Defendant West Union is enjoined and ordered to meet the final effluent standards set forth in its NPDES permit, No. OPC00019\*CD, and any renewals or modification thereof.

D. Defendant West Union 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 West Union 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 Facilities Plan submitted to the Ohio Environmental Protection Agency on May 26, 1992, and to attain compliance with the final effluent limitations of its NPDES permit, No. OPC00019\*CD, and any modifications or renewals thereof in accordance with the following schedule:

TASK

COMPLETION DATE

- |   |                   |
|---|-------------------|
| (a) Initiation of Project Design Work.  | Completed         |
| (b) Submittal of Approvable Plans and Specifications to Ohio EPA.   | May 3, 1993       |
| (c) Advertisement of Building Bids.   | August 2, 1993    |
| (d) Execution of Building Contracts.  | November 15, 1993 |
| (e) Initiation of Construction.   | January 4, 1994   |
| (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. | April 3, 1995     |
| (g) Attain compliance with final effluent limitations.  | May 1, 1995       |

VI. POTENTIAL FORCE MAJEURE

In any action to enforce any of the provisions of this Consent Order, Defendant West Union 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 the State 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.

**VII. REPORTING REQUIREMENT**

Within seven (7) days from the completion date of each milestone listed above, Defendant West Union is ordered to submit a written report stating whether it has performed the actions set forth therein to the Ohio EPA's Southeast District Office, Division of Water Pollution Control located at 2195 Front Street, Logan, Ohio 43138.

**VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS**

Performance of the terms of this Consent Order by Defendant West Union 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.

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

**X. CIVIL PENALTY**

Defendant West Union is ordered, pursuant to RC Section 6111.09, to pay to the State a civil penalty of five thousand dollars (\$5,000.00). The 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 forty-five (45) days from the Court's entry of this Consent Order.

#### XI. STIPULATED PENALTIES

A. In the event that Defendant West Union fails to meet any of the requirements of this 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 days (60)--two hundred dollars (\$200.00) per day per violation;
3. For each day of each failure to meet a requirement from sixty (60) to ninety (90) days--three hundred dollars (\$300.00) per day per violation.
4. For each day of each failure to meet a requirement over ninety (90) days--four hundred dollars (\$400.00) per day per violation.

B. In the event that Defendant West Union fails to meet any of the requirements of this Consent Order set forth in Article V, Subparagraph (g), 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--five hundred dollars (\$500.00) per day per violation;

2. For each day of each failure to meet a requirement from thirty-one (31) to sixty days (60)--seven hundred and fifty dollars (\$750.00) per day per violation;
3. For each day of each failure to meet a requirement over sixty (60) days--one thousand dollars (\$1,000.00) 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 Consent Order, made payable to "Treasurer, State of Ohio".

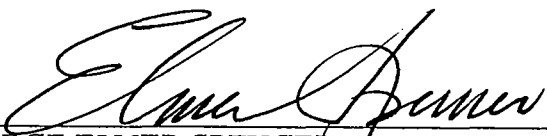
#### XII. RETENTION OF JURISDICTION

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

#### XIII. COSTS


Defendant West Union is hereby ordered to pay the costs of this action.

Entered this 29<sup>th</sup> day of June, 1993.

  
\_\_\_\_\_  
JUDGE ELMER SPENCER  
ADAMS COUNTY, OHIO, COURT OF  
COMMON PLEAS


APPROVED:

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

  
RETANIO A. RUCKER (0039744)  
Assistant Attorney General

Environmental Enforcement  
30 East Broad Street, 25th fl.  
Columbus, Ohio 43266-0410  
(614) 466-2766

Attorney for Plaintiff State of Ohio

  
CECELIA J. POTTS (0034613)  
Village Solicitor

221 South High Street  
P. O. Box 474  
Mt. Orab, Ohio 45154  
(513) 444-2576

Attorney for Defendant the Village  
of West Union, Ohio

  
DONALD KIRKER, MAYOR

Authorized Representative  
The Village of West Union, Ohio

2198E.2-9



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 (j), Article V of this Consent Order, Defendant West Union is authorized to discharge in accordance with the following limitations and monitoring requirements from outfall No. OPC00019001.

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
REPORTING		PARAMETER	CONCENTRATION		LOADING*		Meas. Freq.	Sample Type
CODES	UNITS		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	30	45	-	-	2/week	Composite
00556	mg/l	Oil & Grease	Not to exceed 10 at any time				1/month	Grab
00610	mg/l	Ammonia (N)	-	-	-	-	2/month	Composite
31616	Count /100ml	Fecal Coliform (Summer Only)	-	-	-	-	2/week	Grab
50050	MGD	Flow	-	-	-	-	Daily	24 hour total continuous
80082	mg/l	CBOD <sub>5</sub>	25	40	-	-	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 monitored daily by grab sample.

\*The average effluent loading limitations are established using the following flow value: 0.6 MGD.

RESOLUTION # 1993-14

WHEREAS, there is a pending case filed in the Common Pleas Court, Adams County, Ohio, captioned State of Ohio ex rel. Fisher -vs- The Village of West Union, Ohio, Case No. 89 CIV 228, and;

WHEREAS, there has been a proposed consent order submitted to the village by the State of Ohio and agreed to and approved by the village attorney and village solicitor as well as consultants for the village, and;

WHEREAS, the village needs to approve and accept the consent order and give authority to the mayor to sign the same to resolve said controversy now pending in the court system.

IT IS HEREBY RESOLVED:

1) The council for the Village of West Union hereby accepts the proposed consent order and authorizes the mayor of the Village of West Union to sign the proposed consent order and return to the Attorney General for filing in the above captioned court case.

Date: June 8, 1993

Donald W. Kuben  
Mayor

Dorothy Davis  
Clerk