

IN THE COURT OF COMMON PLEAS CV91 11 1867
BUTLER COUNTY, OHIO

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

Plaintiff;

vs.

BOARD OF COMMISSIONERS OF
BUTLER COUNTY

Defendant.

Case No. 13 9112 No. 11
JUDGE _____
COURTS
ROBB, JR.
CONSENT ORDER
18 1991

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 Board of Commissioners of Butler County (hereinafter "Butler County") 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.

I CERTIFY THE WITHIN TO BE A TRUE COPY OF THE ORIGINAL FILED
November 18 1991
EDWARD S. ROBB, JR.
County Clerk of Court
Deputy

J 141 P 487

II. PARTIES

CV91 11 1867

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. Defendant Butler County 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 Queen Acres and Upper Mill Creek wastewater treatment plants and sewer systems in such a manner as to result in numerous violations of the discharge limitations and monitoring requirements of the NPDES Permits 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 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 or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint.

J 141 P 488

IV. COMPLIANCE SCHEDULE

4. Defendant Butler County is hereby enjoined and ordered to immediately comply with all requirements of Chapter 6111 of the Ohio Revised Code, all terms and conditions of the rules and regulations adopted under that Chapter, and all requirements of its currently effective NPDES Permits, and any renewals or modifications thereof, except for the final effluent limitations and monitoring requirements set forth in NPDES Permit No. 1PK00016*DD. Between the effective date of this Consent Order and July 15, 1994 Defendant's Upper Mill Creek plant is enjoined and ordered to comply with the interim effluent limitations and monitoring requirements set forth in Attachment "A" attached hereto. The interim effluent limits and monitoring requirements contained in Attachment "A" does not constitute an NPDES permit or a modification of any existing permit. After July 15, 1994, Defendant Butler County's Upper Mill Creek plant is enjoined and ordered to meet the final effluent standards and all other requirements set forth in its NPDES Permit No. 1PK00016*DD and any renewals or modifications thereof. Butler County is hereby enjoined and ordered to properly operate and maintain its Queen Acres and Upper Mill Creek wastewater treatment plants and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

5. Defendant Butler County is enjoined and ordered to complete construction of the improvements to its Upper Mill Creek wastewater treatment plant pursuant to the work plans to be submitted in partial fulfillment of Paragraph 5(A); and to attain compliance with the final effluent limitations of its NPDES permit and any modifications or renewals thereof in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Submit approvable permit to install application and detailed plans.	March 15, 1992
(b) Award contracts and start construction	October 15, 1992
(c) Complete construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits.	April 15, 1994
(d) Attain and remain in compliance with final effluent limitations, and eliminate overflows and bypasses.	July 15, 1994

6. Within seven days from each completion date listed in paragraph 5 above, Defendant Butler County shall submit a written report stating whether or not Butler County has performed the action set forth therein to Ohio EPA's Southwest 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 Butler County shall pay to the State of Ohio a civil penalty of Five Thousand Dollars (\$5,000.00). 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.

VII. STIPULATED PENALTIES

9. In the event that Defendant Butler County fails to meet any of the requirements of this Consent Order set forth in Paragraphs 4 except for the interim effluent limitations contained in Attachment A attached hereto, 5(a), 5(b), and 5(c) including any scheduled milestone requirement, 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 sixty (60) days - Two Hundred Fifty Dollars (\$250.00) per day for each requirement not met. For each day of failure to meet a requirement, from sixty-one (61) to ninety days (90) - Five Hundred Dollars (\$500.00) per day for each requirement not met. For each day of failure to meet a requirement, from ninety-one (91) to one hundred and twenty (120) days - One Thousand Two Hundred Fifty Dollars (\$1,250.00) per day for each requirement not met. For

each day of failure to meet a requirement, over one hundred and twenty days (120) days - Two Thousand Dollars (\$2,000.00) per day for each requirement not met.

10. In the event that Defendant Butler County fails to meet any of its 7-day average interim effluent limitations contained in Attachment "A" attached hereto or any of its 7-day average final effluent limitations by the date specified in Subparagraph 5(d), Defendant shall be liable for payment of a stipulated penalty of One Thousand Dollars (\$1,000.00) for each 7-day period during which the failure occurs; if the failure to meet any of its 7-day average effluent limitations continues for a second consecutive 7-day period, Defendant shall be liable for payment of a stipulated penalty of Two Thousand Dollars (\$2,000.00) for each second consecutive 7-day period; if the failure to meet any of its 7-day average effluent limitations continues for a third consecutive 7-day period, Defendant shall be liable for a payment of a stipulated penalty of Three Thousand Dollars (\$3,000.00) for each third consecutive 7-day period; if the failure to meet any of its 7-day average effluent limitations continues for a fourth consecutive 7-day period, Defendant shall be liable for payment of a stipulated penalty of Four Thousand Dollars (\$4,000.00) for each fourth consecutive 7-day period; if the failure to meet any of its 7-day average effluent limitations continues for a fifth consecutive 7-day period, Defendant shall be liable for payment of a stipulated penalty of Five Thousand Dollars (\$5,000.00) for each fifth consecutive seven day period; if the

J 141 P 492

failure to meet any of its 7-day average effluent limitations continues beyond a fifth consecutive 7-day period, Defendant shall be liable for payment of a stipulated penalty of Eight Thousand Dollars (\$8,000.00) for each consecutive 7-day period thereafter.

11. In the event that Defendant Butler County fails to meet any of the 30-day average interim effluent limitations contained in Attachment "A" attached hereto or any of its 30-day average final effluent limitations by the date specified in Subparagraph 5(d) Defendant shall be liable for payment of a stipulated penalty of Two Thousand Dollars (\$2,000.00) for each 30-day period during which the failure occurs; if the failure to meet any of its 30-day average effluent limitations continues for a second consecutive 30-day period, Defendant shall be liable for the payment of a stipulated penalty of Three Thousand Dollars (\$3,000.00) for each second consecutive 30-day period; if the failure to meet any of its 30-day average final effluent limitations continues for a third consecutive 30-day period, Defendant shall be liable for the payment of a stipulated penalty of Four Thousand Dollars (\$4,000.00) for each third consecutive 30-day period; if the failure to meet any of its 30-day average effluent limitations continues for a fourth consecutive 30-day period, Defendant shall be liable for the payment of a stipulated penalty of Five Thousand Dollars (\$5,000.00) for each fourth consecutive 30-day period; if the failure to meet any of its 30-day average effluent limitations continues beyond a fourth consecutive 30-day period, Defendant

shall be liable for the payment of a stipulated penalty of Ten Thousand Dollars (\$10,000.00) for each consecutive 30-day period thereafter.

12. In the event that Defendant Butler County fails to meet any of its daily interim effluent limitations contained in Attachment "A" attached hereto or any of its daily final effluent limitations by the date specified in Subparagraph 5(d), Defendant shall be liable for payment of a stipulated penalty of \$175.00 for each day of any effluent limitations violation. The Defendant shall be liable for an additional stipulated penalty of \$325.00 per day of violation if the failure continues for more than sixty days, i.e., Five Hundred Dollars (\$500.00) per day of violation. In the event that failure to meet any of the daily effluent limitations continues for more than one hundred and twenty (120) days, Defendant shall be liable for an additional Five Hundred Dollars (\$500.00) per day of violation, i.e., One Thousand Dollars (\$1,000.00) per day of violation.

13. Any payment required to be made under the provisions of Paragraphs 9, 10, 11 or 12 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".

⁸ J 141 P 494

VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

14. Performance of the terms of this Consent Order by Butler County is not conditioned on the receipt of any Federal or State grant funds or loans. In addition, Butler County's performance is not excused by the failure to obtain or shortfall of any Federal or State grant funds, or loans, or by the processing of any applications for the same.

IX. POTENTIAL FORCE MAJEURE

15. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Butler County shall notify the Ohio EPA in writing within ten (10) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Butler County to prevent or minimize the delay and the timetable by which measures will be implemented. Butler County will adopt all reasonable measures to avoid or minimize any such delay.

16. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Butler County may raise that 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 Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Butler County and the Plaintiff 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 by the Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Butler County shall rest with Butler County. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances shall not constitute circumstances entirely beyond the control of Butler County, or serve as a basis for an extension of time under this Consent Order. Failure by Butler County to comply with the notice requirements of Paragraphs 15 and 17 shall render this Paragraph void and of no force and effect as to the particular incident involved and shall constitute a waiver of Butler County's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one compliance date based on a particular incident does not mean that Butler County qualifies for an extension of a subsequent compliance date or dates. Butler County must make an individual showing or proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order without a Force Majeure Clause does not constitute a waiver by Butler County of any rights or defenses it may have under applicable law.

17. All written notifications required pursuant to paragraph 15 and 16 herein shall be submitted to Ohio EPA's Southwest District Office to the attention of Steve Martin,

1/4/11 P 496

DWPC, and to Ohio EPA's Central Office to the attention of Heidi Sorin, DWPC, or their successors.

X. TERMINATION OF STIPULATED PENALTIES

18. The provisions of this Consent Order set forth in Section VII, Paragraphs 10, 11, and 12 requiring the payment of stipulated penalties may be terminated after Defendant Butler County has achieved and maintained compliance with the final effluent limitations contained in its NPDES permit for a period of one (1) year after the completion of construction and payment of all penalties required pursuant to this Consent Order. Termination of stipulated penalties shall be by Order of the Court, upon application by any party and a demonstration that the conditions set forth in this paragraph have been met.

XI. SUBORDINATION

19. The payment of stipulated penalties under this Consent Order, or any further penalties ordered by the Court, shall be subordinate to annual repayment of the principal and interest requirements for the term of the financing required to implement the improvements to be made to Defendant's Upper Mill Creek plant as required by paragraph 5. This provision for subordination applies only to payments from Butler County's sewer revenues and funds, and not to other funds or sources available to Butler County to pay any penalties that may be due hereunder or ordered by this Court. This provision does not relieve the Defendant Butler County of its liability for the payment of stipulated penalties or any further penalties ordered by the Court, but only defers such payment until

CV91 11 1867

payment can be made without violating the terms of subordination contained in this provision.

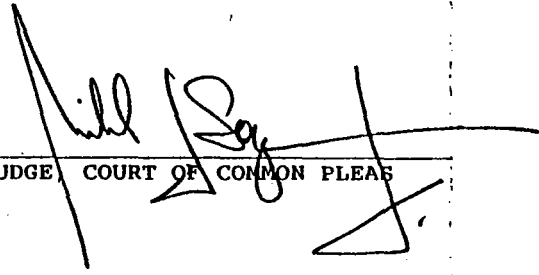
XII. RETENTION OF JURISDICTION

20. 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.

XIII. COSTS

21. Defendant Butler County is hereby ordered to pay the costs of this action.

Date: November 11, 1991

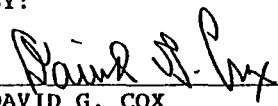


JUDGE COURT OF COMMON PLEAS

APPROVED:

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

BY:



DAVID G. COX
Assistant Attorney General
Environmental Enforcement
Section
30 East Broad Street
Columbus, Ohio 43266-0410

FILED IN CLERK'S OFFICE
NOV 18 1991
CLERK

J 141 P 498

CV91 11 1867

Stephen N. Haughey
STEPHEN N. HAUGHEY
Frost & Jacobs
2500 Central Trust Center
201 E. Fifth Street
Cincinnati, Ohio 45202
Counsel for Butler County

SEE ATTACHED RESOLUTION NO. 91-7-1024
Authorized Representative of
Butler County

6276E/1-13

J 141 P 499

EMLOUCEHEA
EMBOURHEHEA
JAN 21 1991
JAN 21 1991
OHIO

ATTACHMENT A

INTERIM EFFLUENT AND MONITORING REQUIREMENTS

<u>1. EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
Reporting Code	UNITS	PARAMETER	Concentration		Loading*		Meas. Freq.	Sample Type
			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	12	18	151	227	3/week	Composite
00550	mg/l	Oil & Grease	Not to exceed 10.0 at any time				1/Qtr.	Grab
00610	mg/l	Ammonia (N)	4.0	6.0	60.6	90.9	3/week	Composite
00665	mg/l	Phos., Total	-	-	-	-	1/Week	Composite
31616	Count /100 ml	Fecal Coliform (Summer Only)	1000	2000	-	-	3/week	Grab
50050	MGD	Flow	-	-	-	-	Daily	Continuous
80082	mg/l	CBOD ₅	10	15	151	227	3/week	Composite
00615	mg/l	Nitrite (N)	-	-	-	-	1/Week	Composite
00620	mg/l	Nitrate (N)	-	-	-	-	1/Week	Composite
01027	mg/l	Cadmium	-	-	-	-	1/Month	Composite
01220	ug/l	Chromium (Hex) Dissolved	-	-	-	-	1/Month	Composite
01034	ug/l	Chromium (Total)	-	-	-	-	1/Month	Composite
01042	ug/l	Copper	-	-	-	-	1/Month	Composite
01051	ug/l	Lead	-	-	-	-	1/Month	Composite
01067	ug/l	Nickel	-	-	-	-	1/Month	Composite
01092	ug/l	Zinc	-	-	-	-	1/Month	Composite
71900	ug/l	Mercury	-	-	-	-	1/Month	Composite
00720	ug/l	Cyanide, Total	-	-	-	-	1/Month	Composite

* The average effluent loading limitations are established using a flow value of 4.0 MGD.

ATTACHMENT A, CONTINUED

2. The pH (Reporting Codes 00402 (minimum), 00400 (average), and 00401 (maximum)) shall not be less than 6.5 S.U. nor greater than 9.0 S.U. and shall be monitored continuously and reported daily.
3. If chlorine is used 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 by multiple grab sample and the highest value reported daily (summer only).
4. The Dissolved Oxygen (Reporting Code 00300) shall be maintained at a level not less than 5.0 mg/l and shall be monitored continuously and reported daily (summer only).