

FILED  
LORAIN COUNTY

16 JUN 1989

IN THE  
COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

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

Plaintiff,

v.

CITY OF AMHERST, OHIO,

Defendant.

CASE NO. 89 CV 102639

JUDGE EDWARD M. ZALESKI

CONSENT ORDER

Plaintiff, the State of Ohio, by its Attorney General Anthony J. Celebrezze, Jr. on behalf of the Ohio Environmental Protection Agency ("Ohio EPA") filed the Complaint herein on July 2, 1989, alleging that the Defendant City of Amherst had violated the Ohio Water Pollution Control Act, Ohio Revised Code Sections 6111.04 and 6111.07 (the "Act") and the terms and conditions of its National Pollutant Discharge Elimination System ("NPDES") Permit No. D 801\*CD (the "Permit");

Defendant, the City of Amherst, Ohio (the "City"), owns and operates a wastewater treatment plant located in Lorain County, at North Lake Street, south of State Route 2 (the "Plant") which is alleged by Plaintiff to be in violation of Sections 6111.04 and 6111.07 of the Ohio Revised Code and its NPDES permits;

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The City asserts that since 1981, it has undertaken a number of steps in an attempt to upgrade its plant to comply with the requirements of Ohio Revised Code Chapter 6111 and its NPDES permit, including installation of a new primary clarifier, rapid sand filters, a new chlorine contact tank, new sludge drying beds, a new secondary clarifier; installation and replacement of media in the trickling filter; conversion of final clarifiers into backwash water controls, and existing single stage trickling filter into a two-stage filter to enhance ammonia removal; and renovation of sludge holding tank.

On August 10, 1989, Ohio EPA issued a draft NPDES Permit for the Plant. On September 19, 1989, Ohio EPA issued the NPDES Permit No. 3PDO0001\*DD as a final action (the "Permit").

Ohio EPA and the City having agreed that settlement of this matter is in the public interest in that entry of this Consent Order without further litigation is the most appropriate means of resolving this matter;

Ohio EPA and the City having moved the Court to enter this Consent Order;

Before the taking of any testimony, upon the pleadings, and without adjudication of any issue of fact or law herein, or admission by the City of any violation or liability, 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 against the City upon which the Court can grant relief under Chapter 6111 of the Ohio Revised Code and venue is proper in this Court.

## II. PARTIES

2. This Consent Order shall apply to and be binding upon the parties to this action, and the successors and assigns of each, as well as any officers, directors, agents and servants thereof. The City shall provide a copy of this Consent Order to each contractor that it retains to perform work at the Plant required to be performed under this Consent Order.

## III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that the City has operated its Plant in such a manner as to result in violations of ~~the discharge limitations and monitoring requirements of its~~ NPDES permit issued by the Director of Environmental Protection and in violation of the water pollution control laws of the State of Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction and final settlement of any civil liability by Defendant for all claims 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.

#### IV. PERMANENT INJUNCTION

4. The City is hereby enjoined and ordered to immediately comply with the requirements of Chapter 6111 of the Ohio Revised Code and the terms and conditions of the rules adopted under that Chapter and its currently effective NPDES Permit No. 3PD00001\*DD and any renewals or modifications thereof.

#### V. POTENTIAL FORCE MAJEURE

5. In any action to enforce any of the provisions of this Consent Order, the City 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, act 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 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. At that time, the burden of proving that any noncompliance was or will be caused by circumstances entirely beyond the control of Defendant will rest with Defendant. Hydraulic overload caused by overexpansion of the sewer system shall not constitute circumstances entirely beyond the control of Defendant. 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.

## VI. CIVIL PENALTY

6. The City shall pay to the State of Ohio a civil penalty of fifteen thousand dollars (\$15,000). The penalty shall be paid by delivering to counsel for Plaintiff a certified check, within thirty days after entry of this Order, made payable to the order of "Treasurer, State of Ohio".

## VII. STIPULATED PENALTIES

7. In the event that the City fails to meet any of the daily effluent limitations of its NPDES permit, the City shall pay a stipulated penalty of \$250 for each day of each effluent limitation violation. The City shall be liable for an additional stipulated penalty of \$250 per day of violation if the failure occurs for more than 60 days, for a total stipulated penalty of \$500 per day for each day of each violation for days 61 through 120. In the event that failure to meet a daily effluent limitation of its NPDES permit occurs beyond 120 days, the City shall be liable for an additional stipulated penalty of \$250 for a total of \$750 per day for each day of each violation for days 121 through 180. In the event that failure to meet a daily effluent limitation of its NPDES permit occurs beyond 180 days, the City shall be liable for an additional stipulated penalty of \$250 for a total of \$1,000 per day for each day of each violation that occurs beyond 180 days.

8. For the purpose of calculating stipulated penalties under the provisions of this paragraph of this Decree, each 7-day period of violation of a specific 7-day average effluent

limitation shall be calculated as a single violation. In the event that the City fails to meet any of its 7-day average effluent limitations of its NPDES permit, the City shall be liable for payment of a stipulated penalty in the amount set forth below:

<u>No. Occurrences Per Parameter</u>	<u>Penalty Per Violation</u>
1-3	\$1,000
4-6	\$1,500
7-10	\$2,000
over 10	\$2,500

9. For the purpose of calculating stipulated penalties under the provisions of this paragraph of this Decree, each 30 day period of violation of a specific 30-day average effluent limitation shall be calculated as a single violation. In the event that the City fails to meet any of the 30-day average effluent limitations, the City shall be liable for payment of a stipulated penalty for each parameter in the amount set forth below:

<u>No. Occurrences Per Parameter</u>	<u>Penalty Per Violation</u>
1	\$1,500
2	\$2,500
3	\$3,500
over 3	\$4,500

10. Any payment required to be made under the provisions of Paragraphs 7, 8, and 9 of this Consent Order shall be made by delivering to Plaintiff's counsel a certified check or checks for the appropriate amounts, within sixty (60) days from the date of the violation, made payable to "Treasurer, State of Ohio".

VIII. COMPLIANCE NOT DEPENDANT ON GRANTS OR LOANS

11. Performance of the terms of this Consent Order by the City 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 shortfall of any federal or state grant or loan funds or by the processing of any applications for the same.

IX. RETENTION OF JURISDICTION

12. 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 until this Consent Order is terminated in accordance with Section XI below.

X. COSTS

13. Each party shall bear its own costs and attorneys' fees in this action, and the City shall pay all court costs.

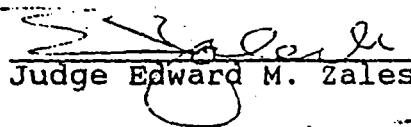
XI. TERMINATION

14. The provisions of this Consent Decree set forth in Section VII requiring payment of stipulated penalties shall terminate if Defendant Amherst has achieved and maintained compliance with the effluent limitations contained in its NPDES

permit for a period of one (1) year and has paid all penalties required pursuant to this Consent Decree. Termination of these stipulated penalties shall be affected only by Order of the Court, upon application by any party and a determination by the Court that the two conditions set forth in this paragraph have been met to the Court's satisfaction.


IT IS SO ORDERED:

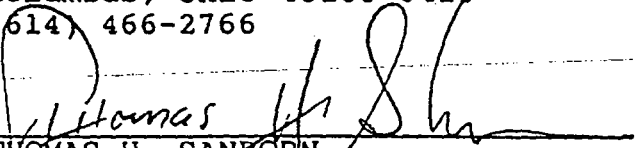
Date: \_\_\_\_\_


  
Judge Edward M. Zaleski

APPROVED:

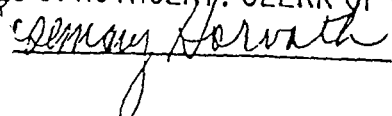
LEE FISHER  
ATTORNEY GENERAL OF OHIO

  
DOMINIC J. HANKET  
Assistant Attorney General  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43266-0410  
(614) 466-2766

  
THOMAS H. SANBORN  
Counsel for City of Amherst, Ohio

  
JOHN JAWORSKI  
Mayor and Authorized Representative  
The City of Amherst, Ohio

HEREBY CERTIFY THIS TO BE A TRUE AND  
CERTIFIED COPY OF THE ORIGINAL ON FILE  
IN THIS OFFICE.

DONALD J. ROTHGERY, CLERK OF COURTS  
BY  DEPUTY



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JUN 14 1991  
CINDY EPA-N.E.D.O.

FILED  
LORAIN COUNTY  
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CLERK OF COMMON PLEAS  
DONALD J. ROSENBERG

IN THE  
COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

STATE OF OHIO, ex rel	)	CASE NO. 89 CV 102639
LEE FISHER	)	
ATTORNEY GENERAL OF OHIO,	)	JUDGE EDWARD M. ZALESKI
Plaintiff,	)	
v.	)	
CITY OF AMHERST, OHIO,	)	<u>AMENDED CONSENT ORDER</u>
Defendant.	)	

Plaintiff, the State of Ohio, by its Attorney General on behalf of the Ohio Environmental Protection Agency ("Ohio EPA") filed the Complaint herein on July 2, 1989, alleging that the Defendant City of Amherst had violated the Ohio Water Pollution Control Act, Ohio Revised Code Sections 6111.04 and 6111.07 (the "Act") and the terms and conditions of its National Pollutant Discharge Elimination System ("NPDES") Permit No. D 801\*CD (the "Permit");

Defendant, the City of Amherst, Ohio (the "City"), owns and operates a wastewater treatment plant located in Lorain County, at North Lake Street, south of State Route 2 (the "Plant") which was alleged by Plaintiff to have been in violation of Sections 6111.04 and 6111.07 of the Ohio Revised Code and its NPDES permits;

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The City asserts that since 1981, it has undertaken a number of steps in an attempt to upgrade its plant to comply with the requirements of Ohio Revised Code Chapter 6111 and its NPDES permit, including installation of a new primary clarifier, rapid sand filters, a new chlorine contact tank, new sludge drying beds, a new secondary clarifier; installation and replacement of media in the trickling filter; conversion of final clarifiers into backwash water controls, and existing single stage trickling filter into a two-stage filter to enhance ammonia removal; and renovation of sludge holding tank;

On August 10, 1989, Ohio EPA issued a draft NPDES Permit for the Plant. On September 19, 1989, Ohio EPA issued the NPDES Permit No. 3PD00001\*DD as a final action (the "Permit");

The State and the City, agreeing that settlement of matters raised in the Complaint, without further litigation, was in the public interest and the most appropriate means of resolving those matters, proposed, and this Court approved, a Consent Order entered on May 30, 1991;

On August 14, 1992, the City moved to terminate the stipulated penalty provision of the Consent Decree as provided by the terms of the Consent Decree, asserting that it had achieved and maintained compliance with the effluent limitations contained in its NPDES permit for a period of one (1) year and had paid all penalties required pursuant to the Consent Decree;

On September 16, 1992, the State opposed the City's motion and sought \$5,000 in stipulated penalties, asserting the City had violated the terms of its permit on three (3) occasions during the one-year period after entry of the Consent Decree;

On October 16, 1992 the City filed a reply to the State response, asserting that no penalties were due and the provision should be terminated because it was not in violation of its permit on these occasions;

The City has scheduled further upgrades to its plant to improve existing treatment capabilities, including the replacement of media in its second stage trickling filter and the installation of a new final clarifier;

The State and the City recognize that replacement of the media in the second stage trickling filter will require the City to take the second stage trickling filter off-line during media replacement, and that efficient operation of the second stage trickling filter requires time for bacteria to grow on the filter media after replacement;

The State and the City agree that the plant improvements to be implemented by the City and settlement of this matter without further litigation are in the public interest, and replacement of the existing Consent Order and entry of this Amended Consent Order without further litigation is the most appropriate means of resolving this matter;

The State and the City have moved this Court to enter this Amended Consent Order;

Before the taking of any testimony, upon the pleadings, and without adjudication of any issue of fact or law herein, or admission by the City of any violation or liability, 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 against the City upon which the Court can grant relief under Chapter 6111 of the Ohio Revised Code and venue is proper in this Court.

#### II. PARTIES

2. This Amended Consent Order shall apply to and be binding upon the parties to this action, and the successors and assigns of each, as well as any officers, directors, agents and servants thereof. The City shall provide a copy of this Amended Consent Order to each contractor that it retains to perform work at the Plant required to be performed under this Amended Consent Order.

#### III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that the City has operated its Plant in such a manner as to result in violations of the discharge limitations and monitoring requirements of its NPDES permit issued by the Director of Environmental Protection and in violation of the water pollution control laws of the State of Ohio. The Consent Order entered on May 30, 1991 is hereby

replaced and superseded by this Amended Consent Order. Compliance with the terms of this Amended Consent Order shall constitute full satisfaction and final settlement of any civil liability by Defendant for all claims alleged in the State's Memorandum in Opposition to Motion to Terminate Consent Order. Nothing in this Amended Consent 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 or in the State's Memorandum in Opposition to Motion to Terminate Consent Order, including violations which occur after the filing of the Complaint.

#### IV. PERMANENT INJUNCTION

4. The City is hereby enjoined and ordered to immediately comply with the requirements of Chapter 6111 of the Ohio Revised Code and the terms and conditions of the rules adopted under that Chapter and its currently effective NPDES Permit No. 3PD00001\*DD and any renewals or modifications thereof, except that the City shall comply with the interim effluent limitations set forth in Section VIII in lieu of the corresponding limitations contained in the NPDES permit during the periods set forth in Section VIII.

#### V. POTENTIAL FORCE MAJEURE

5. In any action to enforce any of the provisions of this Amended Consent Order, the City 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, act 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 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. At that time, the burden of proving that any noncompliance was or will be caused by circumstances entirely beyond the control of Defendant will rest with Defendant.

Hydraulic overload caused by overexpansion of the sewer system shall not constitute circumstances entirely beyond the control of Defendant. Acceptance of this Amended 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.

#### VI. CIVIL PENALTY

6. The City shall pay to the State of Ohio a civil penalty of fifteen hundred dollars (\$1,500). The penalty shall be paid by delivering to Janis Miller, Administrative Assistant, Ohio Attorney General's Office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, a certified check, within thirty days after entry of this Order, made payable to the order of "Treasurer, State of Ohio".

VII. NEW FINAL CLARIFIER CONSTRUCTION SCHEDULE

7. The City shall design and install a new final clarifier in accordance with the following schedule:

	<u>Days From Entry of Amended Consent Order</u>
a) Submittal of PTI application and approvable detail plans to Ohio EPA	120 days
b) Commence construction	210 days
c) Construction completed, new final clarifier in service	540 days

VIII. FILTER MEDIA REPLACEMENT PROJECT

8. The City shall replace the filter media in the second stage trickling filter. Such filter replacement shall commence within thirty (30) days of entry of this Amended Consent Order, and be completed by April 1, 1993.

9. The City shall comply with the following interim effluent limitations in lieu of the corresponding limits in its NPDES permit for 90 days from the date the City commences replacement of the media in the second stage trickling filter:

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATION</u>			
Code	UNITS	PARAMETER	Concentration		Loading (kg/d)	
			<u>30 day</u>	<u>7 day</u>	<u>30 day</u>	<u>7 day</u>
00530	mg/l	Suspended Solids	100	100	758	758
80082	mg/l	CBOD5	100	100	758	758
00665	mg/l	Phosphorous, Total	2	3	15	23
00610	mg/l	Ammonia (N)		Monitor Only		



10. The interim effluent limit for Ammonia shall remain in effect for 90 days from the date the City commences replacement of the media in the second stage trickling filter. However, if the City notifies Ohio EPA five (5) days before the end of the 90-day period that the trickling filter bacteria have not adequately regenerated, the interim effluent limit for Ammonia shall remain in effect until May 31, 1993.

#### IX. STIPULATED PENALTIES.

11. In the event that the City fails to meet any of the deadlines set forth in Section VII and Paragraph 8 of Section VIII, the City shall pay a stipulated penalty of \$250 for each day the City fails to meet those deadlines. The City shall be liable for an additional stipulated penalty of \$250 per day of violation if the failure occurs for more than 60 days, for a total stipulated penalty of \$500 per day for each day of each violation for days 61 through 120. In the event that failure to meet those deadlines occurs beyond 120 days, the City shall be liable for an additional stipulated penalty of \$250 for a total of \$750 per day for each day of each violation for days 121 through 180. In the event the City's failure to meet those deadlines occurs beyond 180 days, the City shall be liable for an additional stipulated penalty of \$250 for a total of \$1,000 per day for each day of each violation that occurs beyond 180 days.

12. For the purpose of calculating stipulated penalties under the provisions of this paragraph of this Decree, each 7-day period of violation of a specific interim 7-day average effluent limitation shall be calculated as a single violation. In the event that the City fails to meet any of its interim 7-day average effluent limitations under Paragraph 9, the City shall be liable for payment of a stipulated penalty in the amount set forth below:

<u>No. Occurrences Per Parameter</u>	<u>Penalty Per Violation</u>
1-3	\$1,000
4-6	\$1,500
7-10	\$2,000
over 10	\$2,500

13. For the purpose of calculating stipulated penalties under the provisions of this paragraph of this Decree, each 30 day period of violation of a specific interim 30-day average effluent limitation shall be calculated as a single violation. In the event that the City fails to meet any of the interim 30-day average effluent limitations under Paragraph 9, the City shall be liable for payment of a stipulated penalty for each parameter in the amount set forth below:

<u>No. Occurrences Per Parameter</u>	<u>Penalty Per Violation</u>
1	\$1,500
2	\$2,500
3	\$3,500
over 3	\$4,500

14. Any payment required to be made under the provisions of Paragraphs 11, 12 and 13 of this Amended Consent Order shall be made by delivering to Janis Miller, Administrative Assistant, Ohio Attorney General's Office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, a certified check or checks for the appropriate amounts, within sixty (60) days from the date of the violation, made payable to "Treasurer, State of Ohio".

**X. COMPLIANCE NOT DEPENDANT ON GRANTS OR LOANS**

15. Performance of the terms of this Amended Consent Order by the City 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 shortfall of any federal or state grant or loan funds or by the processing of any applications for the same.

**XI. RETENTION OF JURISDICTION**

16. 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 Amended Consent Order.

**XII. COSTS**

17. Each party shall bear its own costs and attorneys' fees in this action, and the City shall pay all court costs.

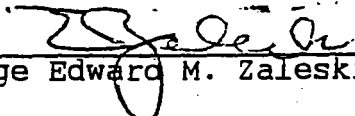
**XIII. TERMINATION**

18. The provisions of this Amended Consent Decree set forth in Section IX requiring payment of stipulated penalties

shall terminate if Defendant Amherst has completed the work required in Section VII and Paragraph 8 of Section VIII, and has paid all penalties required pursuant to this Amended Consent Decree. Termination of these stipulated penalties shall be affected only by Order of the Court, upon application by any party and a determination by the Court that the two conditions set forth in this paragraph have been met to the Court's satisfaction.

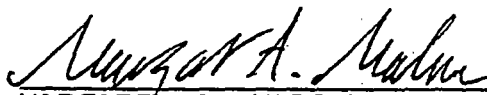
IT IS SO ORDERED:

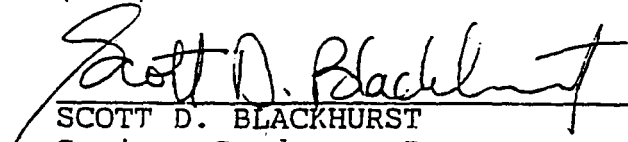
Date: \_\_\_\_\_

  
Judge Edward M. Zaleski


APPROVED:

LEE FISHER  
ATTORNEY GENERAL OF OHIO

  
MARGARET A. MALONE  
Assistant Attorney General  
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Attorney for City of Amherst, Ohio

  
JOHN JAWORSKI  
Mayor and Authorized Representative  
The City of Amherst, Ohio

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