

FILED
COMMON PLEAS COURT
IN THE COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO
FEB 20 1990

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

Plaintiff,

vs.

CITY OF DOVER

Defendant.

ROCKNE W. CLARKE
CLERK OF COURTS

CASE NO. 90-CV-020038

JUDGE ROGER G. LILE

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein on February 6, 1990, and the Plaintiff State of Ohio by its Attorney General Lee Fisher (hereinafter "Plaintiff") and Defendant City of Dover (hereinafter "Dover") 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 Dover shall provide a copy of this Consent Order to each contractor it may employ to perform work on its wastewater treatment plant 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 violations of the discharge limitations and monitoring requirements of NPDES Permit No. OPD00005*ED, issued to it by the Director of Ohio EPA, and in violation of the water pollution laws of the State of Ohio. Although Dover has denied and continues to deny any and all legal or equitable liability under any federal, state or local law in connection with this action, the parties have entered into this Consent Order in good faith to avoid expensive and protracted litigation. Nothing in this Order shall be construed as an admission by Defendant of any of the violations of any provisions of Chapter 6111 or any other law or

regulation alleged in Plaintiff's Complaint. 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 or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint.

IV. INJUNCTION

4. Defendant Dover is hereby enjoined and ordered to comply with the requirements of Chapter 6111 of the Ohio Revised Code 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, including all monitoring requirements. Defendant Dover is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. CIVIL PENALTY

5. Defendant Dover shall pay to the State of Ohio a civil penalty of twelve thousand five hundred dollars (\$12,500.00). 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.

VI. STIPULATED PENALTIES.

6. Defendant Dover shall pay stipulated penalties for each violation of the requirement to comply with final effluent limitations as set forth in paragraph 4 in the amounts set forth herein. For each violation of a particular effluent limitation Defendant shall pay a stipulated penalty based upon the number of violations occurring after the effective date of this Consent Order. It is agreed that for the purpose of the imposition of stipulated penalties pursuant to this Consent Order, a violation of a seven-day average effluent limitation will be considered one violation and a violation of a thirty-day average effluent limitation will be considered one violation. The amounts that Defendant Dover shall pay are set forth in the schedule below.

<u>OCCURRENCE OF VIOLATIONS</u>	<u>DAILY LIMIT</u>	
1-3		\$300
4-6		500
6-9		750
10 and above		1,000

<u>OCCURRENCE OF VIOLATIONS</u>	<u>7-DAY AVERAGE</u>	<u>30-DAY AVERAGE</u>
First	\$1000	\$2500
Second	\$2000	\$4500
Third	\$3500	\$5500
Greater than three	\$6500	\$8500

7. In the event that Defendant Dover fails to meet any monitoring requirement of NPDES Permit No. OPD00005*ED, and any renewals or modifications thereof, Dover shall immediately and automatically be liable for and shall pay a stipulated penalty, for each violation, according to the following payment schedule. For each day of each failure to meet a monitoring requirement, up to thirty (30) days - two hundred fifty dollars (\$250.00) per day per violation. For each day of each failure to meet a monitoring requirement from thirty-one (31) to sixty (60) days - five hundred dollars (\$500.00) per day per violation. For each day of each failure to meet a monitoring requirement, up to sixty-one (61) to ninety (90) days - one thousand two hundred fifty dollars (\$1,250.00) per day per violation. For each day of each failure to meet a monitoring requirement beyond ninety-one (91) days - one thousand seven hundred fifty dollars (\$1,750.00) per day per violation.

8. Any payment required to be made under the provisions of Paragraphs 6 or 7 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".

VII. TERMINATION OF STIPULATED PENALTIES

9. The provisions of this Consent Order set forth in Section VI, Paragraphs 6 and 7, requiring the payment of

stipulated penalties shall terminate if Defendant Dover has achieved and maintained compliance with the final effluent limitations and all of the terms of NPDES permit No. OPD00005*ED and any renewal or modification thereof for a period of one (1) year and all penalties required pursuant to this Consent Order have been paid. For purposes of determining the initiation of the one (1) year compliance period, pursuant to the terms of this provision, the parties hereto agree that the one (1) year period may begin as early as August 1, 1990. Termination of stipulated penalties shall only 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.

VIII. POTENTIAL FORCE MAJEURE

10. In any action to enforce any of the provisions of this Consent Order 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. 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. 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.

IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

11. Performance of the terms of this Consent Order by Dover is not conditioned on the receipt of any Federal or State grant funds or loans. In addition, Dover'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.

X. MISCELLANEOUS

12. 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.

XI. RETENTION OF JURISDICTION

13. 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. NON-WAIVER PROVISION

14. This Consent Order does not limit or affect the rights of Dover, or the Plaintiff as against third parties, nor the rights of third parties.

15. Dover does not waive any rights or remedies it has under federal or state laws, regulations or permit requirements, to seek modifications to its NPDES permit or any laws or regulations, or to challenge any terms, conditions or effluent limits in any NPDES permit issued subsequent to the entry of this Consent Order.

XII. COSTS

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

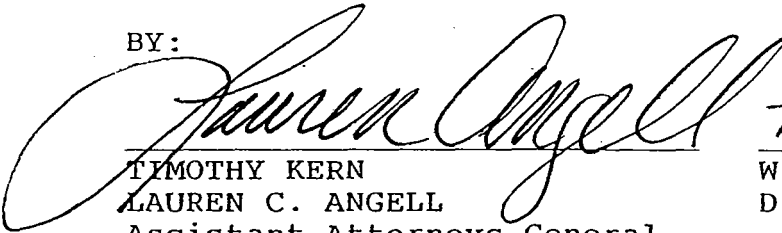
S/ROGER G. LILE

ROGER G. LILE, JUDGE
JUDGE, COURT OF COMMON PLEAS

APPROVED:

STATE OF OHIO, ex rel.
LEE FISHER
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Director of Public Service

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