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FILED

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO, *ex rel.* : CASE NO. 94CVH-11-8160
LEE FISHER :
ATTORNEY GENERAL OF OHIO : JUDGE DAVID W. FAIS
Plaintiff, :
vs. :
CITY OF GROVE CITY : CONSENT ORDER
Defendant. :

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COMMON PLEAS COURT
FRANKLIN CO. OHIO
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CLERK OF COURTS

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 Grove City (hereinafter "Defendant") 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 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 North Lift Station in such a manner as to result in numerous overflows of raw sewage 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. Notwithstanding the above or other provisions contained in this Consent Order, nothing contained herein shall be deemed an admission by Defendant as to the allegations set forth 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. Defendant 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 and regulations adopted under that Chapter. Defendant is permanently enjoined from having any overflows or discharges to waters of the state from Defendant's sewer system. Defendant is hereby enjoined and ordered to properly operate and maintain its North Lift Station and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

5. Defendant is enjoined and ordered to install a permanent alternative power source to eliminate any and all overflows from its North Lift Station in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Initiation of Project Design Work for Alternative Power Source at North Lift Station.	<u>December 1, 1994</u>
(b) Advertisement of Building Bids.	<u>February 1, 1995</u>
(c) Execution of Building Contracts.	<u>April 1, 1995</u>
(d) Begin construction of Alternative Power Source at North Lift Station improvements adequate to eliminate all overflows.	<u>May 1, 1995</u>
(e) Completion of construction of Alternative Power Source at North Lift Station improvements adequate to eliminate all overflows.	<u>June 1, 1995</u>
(f) Elimination of overflows, no further overflows shall occur.	<u>June 1, 1995</u>

Within seven (7) days from each completion date listed above, Defendant shall submit a written report stating whether or not it has performed the action set forth

therein to Ohio EPA's Central District Office.

6. 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

7. Defendant shall pay to the State of Ohio a civil penalty of Twenty-two Thousand Dollars (\$22,000). The penalty shall be paid by delivering to Matthew A. Sanders, Acting Administrative Assistant, or a person subsequently designated by the State, at the Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check payable to the order of "Treasurer, State of Ohio" within thirty (30) days of the entry of this Consent Order.

VII. STIPULATED PENALTIES

8. In the event that Defendant fails to meet any of the requirements of this Consent Order set forth in Paragraphs 4 and 5, 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 thirty (30) days - Three Hundred Fifty Dollars (\$350.00) per day for each requirement not met. For each day of failure to meet a requirement, from thirty-one (31) to sixty days (60) - Five Hundred Dollars (\$500.00) per day for each requirement not met. For each day

of failure to meet a requirement, from sixty-one (61) to ninety (90) days - Seven Hundred Fifty Dollars (\$750.00) per day for each requirement not met. For each day of failure to meet a requirement, over ninety days (90) days - One Thousand Dollars (\$1,000.00) per day for each requirement not met.

9. Defendant shall immediately and automatically be liable for payment of a stipulated penalty of One Thousand Dollars (\$1,000.00) for each and every overflow event from the North Lift Station.

10. Any payment required to be made under the provisions of Paragraphs 7, 8 or 9 of this Order shall be made by delivering to Matthew A. Sanders, Acting Administrative Assistant, or a person subsequently designated by the State, at the Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, 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. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

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

12. The Court will retain jurisdiction of this action for the purpose of overseeing the implementation of this Consent Order by the Defendant.

X. POTENTIAL FORCE MAJEURE

13. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Defendant 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 delay, the measures taken and to be taken by Defendant to prevent or minimize the delay and the timetable by which those measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

14. In any action by the Plaintiff 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 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 Defendant 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, if ever, that the proceeding to enforce this Consent Order is commenced by the State. At that time the burden of proving that any delay was or will be caused by

circumstances beyond the control of Defendant shall rest with Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances shall not in any event constitute circumstances entirely beyond the control of Defendant, or serve as a basis for an extension of time under this Consent Order. Failure by Defendant to comply with the notice requirements of Paragraph 13 shall render this Paragraph void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendant to raise a defense of force majeure or its 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 Defendant qualifies for an extension of a subsequent compliance date or dates. Defendant must make an individual showing or proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of Consent Order without a Force Majeure Clause does not constitute a waiver by Defendant or any rights or defense it may have under applicable laws.

XI. COSTS

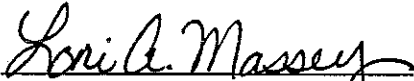
15. Defendant is hereby ordered to pay the costs of this action.

**JUDGE DAVID W. FAIS
FRANKLIN COUNTY COURT
OF COMMON PLEAS**

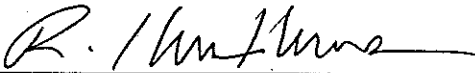
APPROVED:

**LEE FISHER
ATTORNEY GENERAL OF OHIO**

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Authorized Representative
of Grove City, Ohio