

IN THE COURT OF COMMON PLEAS
MADISON COUNTY, OHIO

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

Plaintiff,

vs.

CITY OF LONDON,

Defendant.

: CASE NO. 92CV-07-125
:
: JUDGE ROBERT D. NICHOLS
:
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: CONSENT ORDER
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COURT REPORT

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 The City of London (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 wastewater treatment plant and sewer system in such a manner as to result in numerous violations of the discharge limitations and monitoring requirements of the NPDES Permit 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 any civil liability by Defendant for all claims under such laws alleged in the Complaint through the date of entry of this Consent Order. 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 entry of this Consent Order.

IV. 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 and its currently effective NPDES Permit No. 4PC0003*ED and any renewals or modifications thereof, except for the final effluent limitations set forth in said permit.

5. Defendant is hereby Enjoined and Ordered to properly operate and maintain its wastewater treatment plant, sewer system, and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

6. Defendant is enjoined and ordered to eliminate discharges from overflows and bypasses from its sanitary sewer system and to attain compliance with the terms of NPDES permit No. 4PC0003*ED and any modifications or renewals thereof by elimination of any unauthorized discharge in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Initiation of Project Design Work	Completed
(b) Submittal of Approvable Plans and Specifications to Ohio EPA	Completed
(c) Advertisement of Building Bids	June 1, 1993
(d) Execution of Building Contracts	June 14, 1993

- (e) Initiation of Construction July 1, 1993
- (f) Completion of construction of sufficient facilities to ensure the elimination of all bypasses and overflows. October 31, 1993
- (g) Eliminate overflows and bypasses. October 31, 1993

7. Within Seven days from each completion date listed above, Defendant shall submit a written report stating whether or not Defendant has performed the action set forth therein to Ohio EPA's Central District Office.

8. 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.

9. After construction to eliminate the overflow has been completed, if Defendant opens the overflow it shall monitor the overflow and shall be liable for stipulated penalties for each event in accordance with the Stipulated Penalty provision of this Consent Order. Defendant shall monitor in accordance with Attachment "A" appended hereto.

VI. CIVIL PENALTY

10. Defendant shall pay to the State of Ohio a civil penalty of sixty thousand dollars (\$60,000.00). The penalty shall be paid by delivering a certified check payable to the order of "Treasurer, State of Ohio" to Janis Miller, Administrative Assistant, or a person subsequently designated by the State, at the office of the Attorney General, Environmental Enforcement, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410. This penalty shall be paid in three installments of twenty thousand dollars (\$20,000.00). The first installment shall be paid by August 6, 1993. The second installment shall be paid by November 1, 1993 and the third installment shall be paid by February 2, 1994.

VII. STIPULATED PENALTIES

11. In the event that Defendant fails to meet any of the requirements of this Consent Order set forth in Paragraphs 4, 5, 6(a), 6(b), 6(c), 6(d), 6(e) and 6(f) 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 - Five Hundred Dollars (\$500.00) per day for each requirement not met. For each day of failure to meet a requirement, from thirty-one (31) to sixty days (60) - One

Thousand Dollars (\$1,000.00) per day for each requirement not met. For each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days - Two Thousand Five Hundred Dollars (\$2,500.00) per day for each requirement not met. For each day of failure to meet a requirement, over ninety days (90) days - Three Thousand Five Hundred Dollars (\$3,500.00) per day for each requirement not met.

12. In the event that Defendant fails to meet any of the requirements of this Consent Order set forth in Subparagraph 6(g) and paragraph 9, the Defendant shall immediately and automatically be liable for payment of a stipulated penalty of \$5,000.00 per day of each violation of said requirement. The Defendant shall be liable for an additional stipulated penalty of One Thousand Dollars (\$1,000.00) per day of each violation if the failure to comply continues for more than thirty (30) days, i.e. Six Thousand Dollars (\$6,000.00) per day of each violation. In the event that failure to comply with the requirements of Subparagraph 6(g) continues more than sixty (60) days, Defendant shall be liable for an additional Four Thousand Dollars (\$4,000.00) per day of each violation, i.e., Ten Thousand Dollars (\$10,000.00) per day of each violation.

13. Any payment required to be made under the provisions of Paragraphs 11 or 12 of this Order shall be made by delivering 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" to Janis Miller, Administrative Assistant, or a person subsequently designated by the State, at the office of the Attorney General, Environmental Enforcement, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410.

VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

14. 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. POTENTIAL FORCE MAJEURE

15. If any event occurs which causes or may cause a delay of any requirement of this Consent Order applicable to Defendant shall notify the Ohio EPA in writing within fourteen (14) 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.

16. In any action by the State of Ohio 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 State of Ohio does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and the State of Ohio 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. Failure by Defendant to comply with the notice requirements of Paragraph 15 shall constitute a waiver by Defendant of any right it may have to raise such a defense. 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.

X. RETENTION OF JURISDICTION

17. 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.

XI. TERMINATION CLAUSE

18. The Stipulated Penalty Provision, Section VII, paragraphs 11 and 12, of this Consent Order shall terminate after Defendant has completed construction per Paragraph 6, achieved and maintained compliance with the final effluent limitations contained in its NPDES permit, and any renewal or modification thereof and eliminated bypasses and overflows, for period of two (2) years and has paid all penalties required pursuant to this Consent Order. Termination of the stipulated penalty provisions of the Consent Order shall be by Order of the Court, upon application by any party, and a finding that all of the conditions set forth above are met.

XII. COSTS

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

XIII. ENFORCEMENT COSTS

20. Defendant is ordered and enjoined to pay the costs of relator Ohio Attorney General expended in pursuing the instant

action, totalling seven thousand five hundred dollars (\$7,500.00) by delivering a certified check in such an amount for payment into the State Treasury made payable to the order of "Treasurer, State of Ohio" to Janis Miller, Administrative Assistant, or a person subsequently designated by the State, Environmental Enforcement Section 25th Floor, 30 East Broad Street, Columbus, Ohio 43266-0410, within thirty (30) days after the entry of this Consent Order. Any check submitted in compliance with this Section shall be in addition to and separate from any check submitted pursuant to any other Section of this Consent Order.

Robert D. Nichols

JUDGE ROBERT D. NICHOLS
COURT OF COMMON PLEAS OF
MADISON COUNTY

APPROVED:

LEE FISHER
ATTORNEY GENERAL OF OHIO

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RE: [unclear] THAT THIS
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Wanda J. Perry
DEPUTY CLERK