

IN THE COURT OF COMMON PLEAS
PERRY COUNTY, OHIO

RECEIVED

STATE OF OHIO, ex rel
LEE FISHER
ATTORNEY GENERAL OF OHIO, :
COUNTY :
COURT OF COMMON PLEAS :
Plaintiff, :
: :
vs. :
: :
CITY OF NEW LEXINGTON :
: :
Defendant. :

SEP 26 PM 12 14 CASE NO. 23123
JUDGE LINTON D. LEWIS, JR.

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff, State of Ohio, by its Attorney General Lee Fisher ("Plaintiff") and Defendant City of New Lexington ("Defendant" or "New Lexington") having consented to the entry of this Order by the Court,

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 both personal and subject matter jurisdiction over the parties and the claims contained in the Complaint. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 6111. of the Ohio Revised Code ("O.R.C.") and the rules promulgated thereunder. Venue is proper in this Court.

II. PERSONS BOUND

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 New Lexington shall provide a copy of this Consent Order to all such persons described above and to each contractor it employs to perform work itemized herein. Defendant New Lexington shall request each general contractor to provide a copy of this Consent Order to each of its subcontractors for such work, until such time as the terms and conditions of this Consent Order have been fully complied with.

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 Permits issued to it by the Director of Ohio EPA ("Director"), the Director's final Findings and Orders, and of the water pollution laws of the State of Ohio. Although New Lexington 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 New Lexington 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 of the following claims arising prior to the date of entry of this Order and continuing through to the date of entry of this Consent Order: (1) claims under O.R.C. Chapter 6111., as alleged in the Complaint; (2) claims for violations of the City's *BD, *CD and *DD NPDES permits, as alleged in the Complaint; (3) claims for violation of the Director's Final Findings and Orders issued to the City on January 30, 1986, as alleged in the Complaint; and (4) claims

for any overflows and bypasses from the City's sanitary sewer system. 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. COMPLIANCE SCHEDULE

4. Defendant New Lexington is hereby enjoined and ordered to immediately comply with the requirements of Chapter 6111. of the O.R.C. 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, except for:

- 1) the final effluent limitations and monitoring requirements set forth in said permit in Part I, A; and
- 2) all of the requirements set forth in Part II, I & J of Defendant's NPDES permit number OPC00008*DD.

Between the effective date of this Consent Order and June 20, 1997, Defendant is enjoined to comply with the interim effluent limitations and monitoring requirements set forth in Appendix A attached hereto. Between the effective date of this Consent Order and September 20, 1998, Defendant is enjoined to comply with the interim bypass and overflow monitoring requirements set forth in Appendix A attached hereto. The interim effluent limits, monitoring requirements and bypass and overflow monitoring requirements contained in Appendix A do not constitute an NPDES permit nor a modification of any existing permit. After June 20, 1997, Defendant New Lexington is enjoined to meet the final effluent limitations and monitoring requirements set forth in its NPDES permit No. OPC00008*DD, and any renewals or modifications thereof. After September 20, 1998, Defendant New Lexington is enjoined to eliminate all bypasses and overflows at its wastewater treatment plant. New Lexington is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. STIPULATED PENALTIES FOR VIOLATION OF INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS SET FORTH IN APPENDIX A

5. In the event that Defendant New Lexington fails to meet any of the interim monitoring, interim daily effluent limitation or 7-day effluent limitation requirements set forth in Appendix A, Defendant New Lexington shall be liable for and shall pay a stipulated penalty according to the following payment chart:

INTERIM DAILY AND 7-DAY EFFLUENT VIOLATIONS
INTERIM MONITORING REQUIREMENT VIOLATIONS:

•First 30 violations after September 20, 1994	\$150 per day per violation;
•From the 31st to the 60th violation after September 20, 1994	\$300 per day per violation;
•From the 61st to the 90th violation after September 20, 1994	\$450 per day per violation;
•From the 91st violation after September 20, 1994 and continuing until June 20, 1997	\$750 per day per violation.

6. In the event that Defendant New Lexington fails to meet any of the interim 30-day effluent limitation requirements set forth in Appendix A, Defendant New Lexington shall be liable for and shall pay a stipulated penalty according to the following payment chart:

INTERIM 30-DAY EFFLUENT LIMITATIONS:

- First 30 violations after September 20, 1994 \$300 per day per violation;
- From the 31st to the 60th violation after September 20, 1994 \$600 per day per violation;
- From the 61st to the 90th violation after September 20, 1994 \$900 per day per violation;
- From the 91st violation after September 20, 1994 and continuing until June 20, 1997 \$1200 per day per violation.

7. For the purpose of calculating stipulated penalties under the provisions of this Consent Order only, Plaintiff agrees to treat each 7-day effluent limitation violation as one violation only, and each 30-day effluent limitation violation as one violation only.

VI. CONSTRUCTION SCHEDULE

8. Defendant New Lexington is enjoined and ordered to eliminate discharges from overflows and bypasses from its sanitary sewer system and to complete construction of improvements to its wastewater treatment plant necessary to attain compliance with the final effluent limitations of NPDES permit No. OPC00008*DD and any modifications or renewals thereof, in accordance with the following schedule:

TASK

COMPLETION DATE

Collection System:

- a) Commence Improvements to the Sections of the Collection System Identified as Receiving Significant Volumes of Infiltration/Inflow, as Recommended and Detailed in the September 1993 Sewer System Evaluation Survey Update
Completed;
- b) Adopt or Revise, and Enforce any Ordinances Necessary to Prohibit and Remove Private Sources of Inflow into the Collection System. A Copy of each such Ordinance Passed Shall be Submitted to the OEPA, Southeast District Office Upon Issuance
Completed;
- c) Eliminate all Discharges to the Sanitary Sewer System from Fire Cisterns Located on Property for which the City has an Easement
July 20, 1995;
- d) Eliminate all Discharges to the Sanitary Sewer System from Fire Cisterns Located on Property for which the City does not have an Easement
July 20, 1996;
- e) Complete all of the Recommendations of the September 1993 Sanitary Sewer Evaluation Survey Update Necessary to Eliminate all Overflows and Bypasses by September 20, 1998
December 20, 1996;
- f) Complete a Follow-Up Infiltration/Inflow Study to Determine if Inflow and Infiltration are Excessive
June 20, 1997;
- g) A Report of the Findings of the Follow-Up Infiltration/Inflow Study Shall be Submitted to the OEPA Southeast District Office. This Report Must Include a Plan for Improvements To Any Portions of the Sewer System Which Have Been Identified as Continuing To Have Excessive Infiltration and Inflow
December 20, 1997;
- h) Eliminate all Overflows and Bypasses
September 20, 1998.

Treatment System

- i) Submit Approvable Permit to Install Application and Detail Plans for Treatment System Improvements Which Will Allow the City to Meet the Final Effluent Limitations of Its NPDES Permit September 20, 1995;
- j) Let Bids for Construction of Wastewater Treatment Improvements December 20, 1995;
- k) Begin Construction of Wastewater Treatment Improvements March 20, 1996;
- l) Complete Construction and put Completed System into Operation April 20, 1997;
- m) Attain compliance with Final Effluent Limitations June 20, 1997.

9. Within 14 days from each completion date listed above, Defendant New Lexington shall submit a written report stating whether or not Defendant has performed the action set forth therein to the Southeast District Office of the Ohio EPA.

10. This Consent Order does not constitute authorization nor approval of the construction of any physical structure or facilities, nor 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.

VII. STIPULATED PENALTIES FOR FAILURE TO COMPLY WITH SCHEDULE DEADLINES

11. In the event that Defendant New Lexington fails to meet any of the requirements of this Consent Order as set forth in Section VI, Paragraphs 8(a), 8(b), 8(c), 8(d), 8(e), 8(f), 8(g), 8(i), 8(j), 8(k) and 8(l), that is, in the event Defendant New Lexington fails to timely meet any of the above listed interim task construction deadlines or milestones, Defendant New Lexington shall be liable for and shall pay a

stipulated penalty according to the following schedule:

INTERIM CONSTRUCTION SCHEDULE DEADLINES

- From 1 to 30 days following the date the task was due; \$250 per day per failure to complete task

- From 31 to 60 days following the date the task was due; \$350 per day per failure to complete task

- From 61 to 90 days following the date the task was due; \$500 per day per failure to complete task

- From 91 days following the date the task was due until the date such task is completed; \$800 per day per failure to complete task

VIII. STIPULATED PENALTIES FOR FAILURE TO TIMELY COMPLY WITH FINAL EFFLUENT LIMITATIONS AND TO TIMELY ELIMINATE BYPASSES AND OVERFLOWS

12. In the event that Defendant New Lexington fails to eliminate all overflows and bypasses on or before September 20, 1998, and/or violates any final effluent limitation or final monitoring requirement in its currently effective NPDES permit or any modifications thereto at any time after June 20, 1994, Defendant New Lexington shall be liable for and shall pay a stipulated penalty according to the following schedules:

BYPASSES & OVERFLOWS

- From the 1st to the 10th violation occurring after September 20, 1998 \$500 per day per overflow or bypass event;
- From the 10th to the 15th violation occurring after September 20, 1998 \$600 per day per overflow or bypass event;
- From the 15th to the 20th violation occurring after September 20, 1998 \$800 per day per overflow or bypass event;
- From the 21st violation occurring after September 20, 1998 \$1000 per day per overflow or bypass event.

DAILY AND 7-DAY AVERAGE FINAL EFFLUENT LIMITATIONS AND DAILY AND BI-WEEKLY MONITORING REQUIREMENTS

- From the 1st to the 30th violation occurring after June 20, 1997 \$500 per day per violation;
- From the 31st to the 60th violation occurring after June 20, 1997 \$600 per day per violation;
- From the 61st to the 90th violation occurring after June 20, 1997 \$800 per day per violation;
- From the 91st violation occurring after June 20, 1997 \$1000 per day per violation.

30-DAY AVERAGE FINAL EFFLUENT LIMITATIONS AND
MONTHLY AND QUARTERLY MONITORING REQUIREMENTS

- From the 1st to the 5th violation occurring after June 20, 1997 \$500 per day per violation;
- From the 6th to the 10th violation occurring after June 20, 1997 \$600 per day per violation;
- From the 11th to the 15th violation occurring after June 20, 1997 \$800 per day per violation;
- From the 16th violation occurring after June 20, 1997 \$1000 per day per violation.

IX. CIVIL PENALTY

13. Defendant New Lexington is ordered and enjoined to pay to the State of Ohio, a civil penalty of five thousand dollars (\$5000.00). This civil penalty shall be paid by delivering to:

Attorney General's Office
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410

Attn: "Administrative Assistant"

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.

X. MISCELLANEOUS

14. Any payment of stipulated penalties required to be made under the provisions of Section V, Paragraphs 5 and/or 6, and/or Section VII, Paragraph 11

and/or Section VIII, Paragraph 12 of this Order shall be made be paid by delivering to:

Attorney General's Office
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410

Attn: "Administrative Assistant"

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.

XI. POTENTIAL FORCE MAJEURE

15. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Defendant New Lexington shall notify the Ohio EPA in writing within twenty (20) 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 Defendant New Lexington to prevent or minimize the delay, and the timetable by which measures will be implemented. Defendant New Lexington 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, Defendant New Lexington may raise 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 Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and 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 recommended by Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the

control of Defendant New Lexington 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 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 New Lexington to comply with the notice requirements of Paragraph 15 shall render this Paragraph void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendant'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 Defendant New Lexington qualifies for an extension of a subsequent compliance date or dates. Defendant New Lexington 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 Defendant of any rights or defenses it may have under applicable law.

XII. TERMINATION OF STIPULATED PENALTIES

17. The provisions of this Consent Order, set forth in Section V Paragraphs 6, 7 and 8, and Section VII Paragraph 11 and Section VIII, Paragraph 12, requiring payment of stipulated penalties, shall terminate if the City of New Lexington has:

- (1) completed all construction to its wastewater treatment plant and sewer system as is required under Section VI, Paragraph 8 of this Consent Order;
- (2) eliminated any and all sewer system overflows and treatment plant bypasses;
- (3) achieved and maintained compliance with the final effluent limitations contained in its currently effective NPDES permit or any renewals or modifications thereof, for any and all discharges from its WWTP, for a period of one (1) year;

(4) has conducted all required monitoring and sent all required monitoring reports to the Ohio EPA for a period of one year; and

(5) has paid all penalties, both civil and stipulated, required to be paid pursuant to this Consent Order.

18. The provisions of this Consent Order requiring payment of stipulated penalties, set forth in Section V, Paragraphs 6, 7 and 8, and Section VII Paragraph 11 and Section VIII, Paragraph 12, shall be terminated either by:

1) order of the Court, upon application by any Party, upon a determination of the Court that all five (5) provisions required under Section XII Paragraph 17 have been satisfied; or

2) Upon the filing of a Joint Motion for Termination by the Parties.

XIII. COMPLIANCE NOT DEPENDENT ON FINANCING

19. Performance of the terms of this Consent Order by Defendant New Lexington is not conditioned on the receipt of any financing, including any Federal or State grant or loan funds. In addition, New Lexington'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.

XIV. RETENTION OF JURISDICTION

20. The Court will retain jurisdiction of this action for the purpose of overseeing compliance with the terms and conditions of this Consent Order and for making any order or decree which it deems appropriate to carry out this Consent Order.

XV. NON-WAIVER PROVISION AND RESERVATION OF RIGHTS

21. This Consent Order does not limit nor affect the rights of the City of New Lexington or the Plaintiff as against third parties, nor the rights of third parties.

22. Nothing in this Consent Order is to be construed to restrict or limit the right of The City of New Lexington to raise any and all defenses available under its NPDES Permit.

XVI. COSTS

23. Defendant New Lexington is hereby ordered to pay the costs of this action.

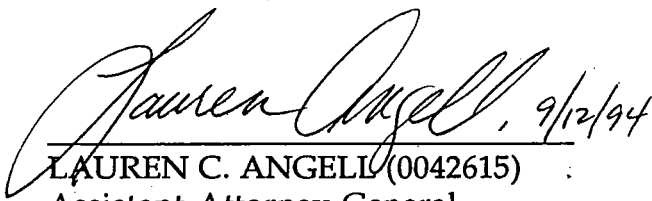
ENTERED this 13th day of September, 1994.



THE HONORABLE LINTON D. LEWIS, JR.
PERRY COUNTY COURT OF COMMON PLEAS


APPROVED:

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



LAUREN C. ANGELI (0042615)
Assistant Attorney General
State Office Tower
Environmental Enforcement Section
30 East Broad Street
Columbus, Ohio 43266-0410

Counsel for Plaintiff State of Ohio



VINCENT ATRIANO (0041084)
Squire, Sanders & Dempsey
Banc Ohio National Plaza
155 East Broad Street
Columbus, Ohio 43215

Counsel for Defendant
New Lexington

* by Lauren Angeli, as per
9/12/94 telephone
authorization



Authorized Representative for The
City of New Lexington

BY: John Johnson

NAME: _____

TITLE: City Administrator

APPENDIX A

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Part I, A

1. During the period beginning on the date of this Consent Order and lasting until June 20, 1997, Defendant New Lexington is authorized to discharge to Rush Creek in accordance with the following effluent limitations and monitoring requirements from the following outfall: OPC00008001.

<u>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	Daily	30 day	Daily		
50050 MGD	Flow Rate	-	-	-	-	Daily	24 hr. total measured
80082 MG/L	CBOD ₅	100	115	-	-	1/Week	24 hr. Comp.
00530 MG/L	Residue, total nonfilterable	70	78	-	-	1/Week	24 hr. Comp.
00610 MG/L	Nitrogen, Ammonia (NH ₃ -N)	-	-	-	-	1/Week	24 Hr. Comp.

2. The pH (Reporting Code 00400) shall not be less than 6.0 S.U. nor greater than 9.0 S.U. and shall be monitored 1/week by grab sample.
3. The dissolved oxygen (Reporting Code 00300) shall be monitored daily by grab sample.

*The average effluent loading limitations are established using the following flow value: 0.5 MGD.

PART I, A - INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (Cont.)

1. During the period beginning on the date of this Consent Order and lasting until June 20, 1997, the permittee is authorized to discharge in accordance with the following limitations and monitoring requirements from the following outfall: OPC00008001. See PART II, OTHER REQUIREMENTS, for locations of effluent sampling.

<u>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		
00630	mg/l	Nitrate (N) + Nitrite (N)	--	--	--	--	1/Month	Composite
01113	ug/l	Cadmium, total recoverable	--	--	--	--	1/Qtr.	Composite*
01220	ug/l	Chromium (Hex), Dissolved	--	--	--	--	1/Qtr.	Grab*
01118	ug/l	Chromium, Total recoverable	--	--	--	--	1/Qtr.	Composite*
01119	ug/l	Copper, total recoverable	--	--	--	--	1/Qtr.	Composite*
01114	ug/l	Lead, total recoverable	--	--	--	--	1/Month	Composite*
01074	ug/l	Nickel, total recoverable	--	--	--	--	1/Qtr.	Composite*
01094	ug/l	Zinc, total recoverable	--	--	--	--	1/Month	Composite*
99992	ug/l	Mercury, total recoverable	--	--	--	--	1/Qtr.	Composite*

* Sampling for these parameters at Station OPC00008601 and Station OPC00008001 shall occur on the same day.

** Sampling at Station OPC00008001 for this parameter shall occur one detention time (the time it takes for a volume of water to travel through the treatment plant) after sampling at Station OPC00008601 for the same parameter on the same day.

PART II, - OTHER REQUIREMENTS (Cont.)

The permittee shall monitor the system's bypasses at Station OPC00008002 and report to the Ohio EPA in accordance with the following Table:

<u>CHARACTERISTIC</u>		Parameter	<u>MONITORING REQUIREMENTS</u>	
Reporting Code	Units		Measurement Frequency	Sample Type
80998	Number/Day	Occurrences	Daily	Continuous
80999	Hours	Duration	Daily	Continuous
80082	mg/l	CBOD ₅	1/month	Grab
00530	mg/l	Suspended Solids	1/month	Grab
50050	Million Gallons/Day	Rate	Daily	Single Reading

The permittee shall monitor the system's overflows found during the SSE or found subsequent to the SSE and report to the Ohio EPA in accordance with the following Table:

<u>CHARACTERISTIC</u>		Parameter	<u>MONITORING REQUIREMENTS</u>	
Reporting Code	Units		Measurement Frequency	Sample Type
80998	Number/Day	Occurrences	Daily	Continuous
80999	Hours	Duration	Daily	Continuous
50050	Million Gallons/Day	Rate	Daily	Single Reading

The permittee shall sample during each bypass event. Samples should be collected during the first 30 minutes of discharge. This sampling is not required where storm events occur on Saturdays, Sundays, recognized holidays or after the usual hours of operation. In this situation, the permittee shall use the "AN" code to record such storm events.

Data for the Number of Occurrence(s) per day, the daily Duration and the Flow rate may be estimated.

For days when there are no bypass discharges, data for parameters which require laboratory analyses should be reported as "AH" and an explanation of "No Discharge" entered in the "Additional Remarks" section. Also, on such days Zero should be reported for occurrences, duration, and flow.

Monitoring data shall be submitted for each month when discharge occurs. The monthly monitoring report shall be attached to the normal monthly report form (EPA-4500). Monitoring of the following bypasses and overflows shall continue until such time as they are eliminated:

<u>Station Number</u>	<u>Description</u>	<u>Receiving Stream</u>
OPC00008002	Manhole preceding lift stations overflow	Rush Creek
OPC00008	Overflows (as identified in SSE or subsequently thereafter)	