

FILED
MARCH 20 1993
COURT OF COMMON PLEAS
WOOD COUNTY, OHIO

Filed
March 20, 1993
J. Clerk

IN THE COURT OF COMMON PLEAS
WOOD COUNTY, OHIO

STATE OF OHIO, ex rel.	:	CASE NO. 89 CIV 115
LEE FISHER	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE DECESSNA
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CITY OF PERRYSBURG,	:	<u>CONSENT ORDER</u>
	:	
Defendant.	:	

WHEREAS the Complaint and Amended Complaints 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 City of Perrysburg (hereinafter "Perrysburg") having consented to the entry of this Order,

NOW, THEREFORE, without trial of any issue of fact or law nor admission by Perrysburg of any fact or liability as alleged in the Complaint or Amended Complaints, 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 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 the persons mentioned. Perrysburg shall provide a copy of this Consent Order to each contractor it employs to perform work itemized herein, and shall instruct, in writing, each general contractor to provide a copy of this Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT

3. Perrysburg agrees to the terms of this Consent Order for purposes of settlement only. Payment of the Civil Penalty under Paragraph 10 and completion of construction in accordance with the Construction Schedule of Paragraph 6(a)-(d) of this Consent Order shall constitute full satisfaction of any civil liability by Perrysburg for all of the following claims arising prior to the date of entry of this Order: (1) claims under ORC Chapter 6111 as alleged in the Complaint and Amended Complaints; (2) claims for violation of the City's currently effective NPDES permit and preceding permits; (3) claims for violation of the Director's Final Findings and Orders issued to the City on September 26, 1984 and on July 12, 1985; (4) claims

for violation of Permit to Install (PTI) No. 03-3980, issued November 16, 1988, or PTI No. 03-4150, issued February 6, 1989; and (5) claims for any overflows and bypasses from the sanitary sewer system. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for other claims or conditions. Nothing in this Order shall limit the State of Ohio's ability to seek enforcement for violations which occur after entry of this Consent Order.

IV. COMPLIANCE SCHEDULE

4. Perrysburg agrees and is hereby enjoined and ordered to immediately comply with its currently effective NPDES Permit, and any renewals or modifications thereof, except for the final effluent limitations set forth in said permit.

5. Between the effective date of the Consent Order and June 1, 1992, Perrysburg agrees and is enjoined to comply with the interim effluent limitations set forth in Appendix "A" attached hereto instead of the final effluent limits in the City's NPDES permit and any renewals or modifications thereof. The interim effluent limits contained in Appendix "A" do not constitute an NPDES permit or a modification of any existing permit. After June 1, 1992, Defendant Perrysburg agrees and is enjoined to meet the applicable final effluent standards set forth in its NPDES permit No. 2PD00002*DD and any renewals or modifications thereof.

V. CONSTRUCTION SCHEDULE

6. Perrysburg agrees and is hereby enjoined and ordered to construct improvements to its wastewater treatment plant, as more fully described in Ohio EPA Permit to Install (PTI) No. 03-3980, Exhibit 1, and the plans and specifications approved thereunder, and to attain compliance with the final effluent limitations of NPDES permit No. 2PD00002*DD and any modification or renewals thereof, in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Receive Bids	Completed
(b) Award Building Contracts	Completed
(c) Begin Construction	Completed
(d) Completion of construction of sufficient wetstream treatment facilities for compliance with final effluent limits	Completed
(e) Attain compliance with applicable final effluent limitations	June 1, 1992

7. Within fourteen (14) days after the completion date set forth in Subparagraph 6(e) above, Defendant Perrysburg shall submit a written notice stating whether or not Perrysburg has performed the appropriate task to Ohio EPA's Northwest 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. Nothing in Ohio EPA's issuance of PTI's No. 03-3980 and 03-4150 or their attachment hereto shall be construed to be a guarantee on the part of the State that the work, if done in accordance with these permits, will comply with the requirements of ORC Chapter 6111 or this Consent Order.

VI. CIVIL PENALTY

10. Defendant Perrysburg shall pay to the State of Ohio a civil penalty of Sixteen Thousand Two Hundred Fifty Dollars (\$16,250.00). The penalty shall be paid by delivering to Administrative Assistant Janis Miller or her successor, at the Office of the Attorney General, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, 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.

VII. STIPULATED PENALTIES

11. In the event that Defendant Perrysburg fails to meet any of the construction milestones in Paragraph 6(a)-(d) of this Consent Order or violates any applicable interim effluent limit in Appendix A hereto, the Defendant shall be liable for and shall pay a stipulated penalty according to the amounts listed

under the "Interim Limits" column of the Stipulated Penalty Schedule attached as Appendix B.

12. In the event that Defendant Perrysburg fails to meet any applicable final effluent limitation other than the percentage removal requirements set forth in Part II, Paragraph O of the permit, in accordance with Subparagraph 6(e) of this Consent Order, the Defendant shall be liable for and shall pay a stipulated penalty according to the amounts listed under the "Final Limits" column of the Stipulated Penalty Schedule attached as Appendix B.

13. For purposes of determining Perrysburg's compliance with applicable effluent limitations for mercury, the analytical procedure currently approved (the "Current Procedure") under 40 CFR Part 136 will be used. If a new analytical procedure for mercury having a lower detection limit is promulgated by U.S. EPA before the termination of stipulated penalties applicable to the mercury limitations, compliance with the terms of this Consent Order shall continue to be determined in accordance with the Current Procedure for a period of twelve (12) months after the new procedure is promulgated by regulation. All analytical results for mercury properly reported as below detection shall be considered to constitute zeros for purposes of determining compliance with this Consent Decree.

14. For purposes of determining stipulated penalties pursuant to this Consent Order only, violation of a seven (7) day average effluent limitation shall constitute a single violation and violation of a thirty (30) day average effluent limitation

shall constitute a single violation. For purposes of the attached Stipulated Penalty Schedule, the number of violations will be determined with respect to a single parameter rather than on an aggregate basis.

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

VIII. TERMINATION

16. Except as provided in Paragraph 17 below, the provisions set forth in Section VII of this Consent Order will be terminated if Perrysburg has complied with the final effluent limitations contained in its NPDES Permit, and any renewal or modification thereof, for a period of one (1) year following the completion of all required construction and has paid all penalties due and owing pursuant to this Consent Order.

17. With respect to final mercury limits, stipulated penalties shall terminate upon Perrysburg's compliance with the final effluent limitations for mercury alone for a period of one (1) year following the completion of all required construction, without regard to the City's compliance with any other final effluent limitations.

18. Termination of these provisions under Paragraphs 16 or 17 of the Consent Order shall be by either: (1) order of the Court, upon application by any party upon a determination of the Court that all provisions required under either paragraph have been satisfied; or (2) upon the filing of a joint motion for termination by the Parties.

IX. NON-WAIVER PROVISIONS

19. Perrysburg does not waive any rights or remedies it has under federal or state laws or regulations to comment on, contest or seek any change in federal or state laws, regulations or permit requirements, to seek modification of its NPDES permit or any laws or regulations, or to challenge any terms, conditions or effluent limitations in a subsequently-issued NPDES Permit or findings and orders.

20. Nothing in this Consent Order is to be construed to restrict or limit the right of Perrysburg to raise any and all defenses available under its NPDES Permit.

X. RESERVATION OF RIGHTS

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

22. The Parties reserve and do not waive any and all legal and equitable rights, remedies and defenses that may be available for violation or enforcement of this Consent Order.

XI. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

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

XII. RETENTION OF JURISDICTION

24. This 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.

XIII. COSTS

25. Defendant Perrysburg hereby agrees and is ordered to pay the costs of this action accruing up through the date of entry of this Consent Order only.



JUDGE, COURT OF COMMON PLEAS OF

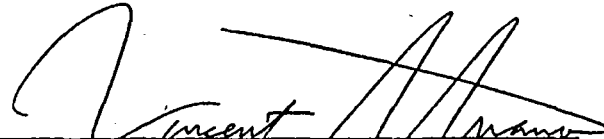
Clerk to furnish copy to counsel
of record and unrepresented
parties.

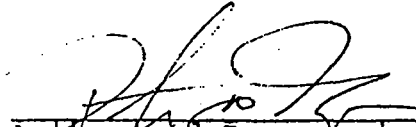
APPROVED:

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

BY:


MARGARET A. MALONE (0021770)
Assistant Attorney General
30 East Broad Street, 25th Fl.
Columbus, Ohio 43266-0410
(614) 466-2766


JAMES F. ALLEN (0020238)
VINCENT ATRIANO (0041084)
Squire, Sanders & Dempsey
41 South High Street
Columbus, Ohio 43215
(614) 365-2700


Authorized Representative of
City of Perrysburg

PETER D. GWYN (0025690)
Solicitor, City of Perrysburg
Gwyn & Aubry
110 West Second Street
Perrysburg, Ohio 43551
(419) 874-3569

EXHIBIT I

OHIO ENVIRONMENTAL PROTECTION AGENCY

Permit to Install

Applicant's Name: Mayor and Council
Address: 201 West Indiana Avenue
City: Perrysburg
Person to Contact: Mr. James Bagdonas
Telephone:

Application No. 03-3980
Permit Fee \$750.00
State: Ohio 43551

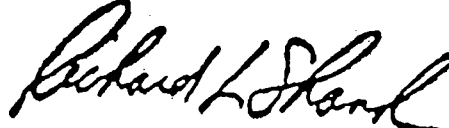
Description of Proposed Source: Wastewater Treatment Plant Expansion

Issuance Date: November 16, 1988

Effective Date: November 16, 1988

The above named entity is hereby granted a permit to install for the above described source pursuant to Chapter 3745-31 of the Ohio Administrative Code. Issuance of this permit does not constitute expressed or implied approval or agreement that, if constructed or modified in accordance with the plans included in the application, the above described source of environmental pollutants will operate in compliance with applicable State and Federal laws and regulations, and does not constitute expressed or implied assurance that if constructed or modified in accordance with those plans and specifications, the above described source of pollutants will be granted the necessary operating permits. This permit is granted subject to the following conditions attached hereto:

Ohio Environmental Protection Agency



Richard L. Shank, Ph.D.
Director
P. O. Box 1049, 1800 WaterMark Dr.
Columbus, Ohio 43266-0149

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This permit shall expire if construction has not been initiated by applicant within eighteen months of the effective date of this permit. By accepting this permit, applicant acknowledges that this eighteen month period shall not be considered or construed as extending or having any effect whatsoever on any compliance schedule or deadline set forth in any administrative or court order issued to or binding upon the permit applicant, and applicant shall abide by such compliance schedules or deadlines to avoid the initiation of additional legal action by the Ohio EPA.

The Director of the Ohio Environmental Protection Agency, or his authorized representatives, may enter upon the premises of the above named applicant during construction and operation at any reasonable time for the purpose of making inspections, conducting tests, examining records or reports pertaining to the construction, modification or installation of the above described source of environmental pollutants.

Issuance of this permit does not relieve you of the duty of complying with all applicable federal, state, and local laws, ordinances, and regulations.

This permit is conditioned upon payment of applicable fees as required by Section 3745.11 of the Ohio Revised Code, and shall be invalid unless the permit fee specified above has been paid in full to the Ohio EPA within fifteen days of issuance of this permit to install.

The proposed wastewater disposal system shall be constructed in strict accordance with the plans and application approved by the Director of the Ohio Environmental Protection Agency. There shall be no deviation from these plans without the prior express, written approval of the agency. Any deviations from these plans or the above conditions may lead to such sanctions and penalties as provided under Ohio law. Approval of this plan and issuance of this permit does not constitute an assurance by Ohio Environmental Protection Agency that the proposed facilities will operate in compliance with all Ohio laws and regulations. Additional facilities shall be installed upon orders of the Ohio Environmental Protection Agency if the proposed sources are inadequate or cannot meet applicable standards.

This permit applies to a wastewater disposal system designed to serve an average daily hydraulic flow of no more than 5,400,000 gallons.

No liquids, sludges, or toxic or hazardous substances other than those set forth in the approved permit shall be accepted for disposal without the prior written approval of the Ohio Environmental Protection Agency.

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The appropriate district office of the Ohio Environmental Protection Agency shall be notified, in writing as to (a) the construction starting date; (b) the construction completion date; and (c) the date the wastewater disposal system was placed into operation.

Daily records of operation shall be maintained and submitted monthly to the Ohio Environmental Protection Agency within 15 days after the end of each month.

The city shall be responsible for the proper operation and maintenance of the wastewater disposal system.

The operation of the wastewater disposal system shall be under the responsible charge of a certified operator having the proper certificate issued under Chapter 3745-7-05 of the Ohio Administrative Code.

The plant shall be operated in accordance with an Ohio EPA approved operation and maintenance manual.

Appendix A

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning on the effective date of this permit and lasting until the date that the improved wastewater treatment works are to attain operational level as specified in item (e) in the Schedule of Compliance, the permittee is authorized to discharge in accordance with the following limitations and monitoring requirements from outfall: 2PD00002001.

<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		
00010	°C	Temperature	-	-	-	-	Daily	Continuous (Max. Ind. Therm.)
00530	mg/l	Suspended Solids	45	85	-	-	3/Week	Composite
00550	mg/l	Oil & Grease	Not to exceed 10 at any time				1/Week	Grab
00610	mg/l	Ammonia (N)	-	-	-	-	3/Week	Composite
00665	mg/l	Phos., Total	1.5	3.0	-	-	3/Week	Composite
31616	Count /100ml	Fecal Coliform (Summer Only)	1000	2000	-	-	3/Week	Grab
50050	MGD	Flow	-	-	-	-	Daily	Continuous
80082	mg/l	CBOD ₅	30	60	-	-	3/Week	Composite

2. The pH (Reporting Codes 00402 (minimum) and 00401 (maximum)) shall not be less than 6.5 S.U. nor greater than 9.0 S.U. and shall be monitored daily by multiple grab sample. The critical values (low and high) shall be reported.
3. If the entity uses chlorine for disinfection, the Chlorine Residual (Reporting Code 50060) shall be maintained at a level not to exceed 0.5 mg/l and shall be monitored daily by multiple grab sample (Summer Only).
4. The Dissolved Oxygen (Reporting Code 00300) shall be monitored daily by multiple grab sample. The critical (low) value shall be reported.

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (Cont.)

5. During the period beginning on the effective date of this permit and lasting until the date that the improved wastewater treatment works are to attain operational level as specified in Item (e) in the Schedule of Compliance, the permittee is authorized to discharge in accordance with the following limitations and monitoring requirements from outfall: 2PD00002001.

<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		
00335	mg/l	COD	-	-	-	-	1/Week	Composite
00625	mg/l	Kjeldahl,TKN(N)	-	-	-	-	1/Month	Composite
00630	mg/l	Nitrate (N) + Nitrite (N)	-	-	-	-	1/Week	Composite
01027	ug/l	Cadmium, Total	-	-	-	-	1/Month	Composite
01034	ug/l	Chromium, Total	-	-	-	-	1/Month	Composite
01042	ug/l	Copper, Total	-	-	-	-	1/Month	Composite
01051	ug/l	Lead, Total	-	-	-	-	1/Month	Composite
01067	ug/l	Nickel, Total	-	-	-	-	1/Month	Composite
01092	ug/l	Zinc, Total	-	-	-	-	1/Month	Composite
71900	ug/l	Mercury, Total	-	-	-	-	1/Month	Composite

Appendix B

STIPULATED PENALTY SCHEDULE

INTERIM LIMITS

FINAL LIMITS

Number of Violations
of Single Parameter Penalty

Number of Violations
of Single Parameter Penalty

Daily Maximum

1-60 \$250
61-120 500
121-150 750
over 150 1000

1-30 \$400
31-60 800
61-90 1000
over 90 1500

7-day Average

1-8 250
9-16 500
17-22 750
over 22 1000

1-3 500
4-7 750
8-11 1000
12-16 1250
17-24 2000
over 24 3000

30-day Average

1-2 250
3-4 500
5 750
over 5 1000

1-2 1000
3-4 1250
5-6 1500
7-8 2000
9-10 3500
over 10 5000