

IN THE COURT OF COMMON PLEAS
WAYNE COUNTY, OHIO

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

Plaintiff,

vs.

CITY OF RITTMAN, OHIO,

Defendant.

CASE NO. 91-CI-257
JUDGE _____
PAUL H. TYERS
CLERK OF COURT

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 (hereinafter "Plaintiff") and Defendant City of Rittman, Ohio (hereinafter "Rittman" or "Defendant") having consented to the entry of this Order,

NOW THEREFORE, without trial of any issue of fact or law, and without admission of liability, 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 them. Defendant shall provide a copy of this Consent Order to each contractor it employs to perform work itemized herein.

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 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. Defendant's consent hereto is not an admission of liability for any of the claims alleged in the Complaint. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims 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. The State of Ohio represents that it has alleged in the Complaint all violations of final and interim effluent limitations and schedule of compliance in Rittman's NPDES permit(s) and all violations of Director's Findings and Orders

issued March 19, 1985 of which it has knowledge, following a diligent investigation.

IV. COMPLIANCE SCHEDULE

4. Defendant Rittman is hereby ordered and enjoined 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, and any renewals or modifications thereof, except for the final effluent limitations and monitoring requirements set forth in said permit. Between the effective date of this Consent Order and August 1, 1993 Defendant is ordered to comply with the interim effluent limitations and monitoring requirements set forth in Appendix "A" attached hereto. The interim effluent limits contained in Appendix "A" do not constitute an NPDES permit or a modification of any existing permit. Rittman is hereby ordered to properly operate and maintain its existing wastewater treatment plant and any associated equipment and structures.

5. On and after August 1, 1993, Defendant Rittman is ordered and enjoined either to (a) meet the final effluent limitations set forth in its NPDES permit No. 3PC00010*DD and any renewals or modifications thereof; or (b) cease discharge from its existing wastewater treatment plant. In the event Rittman ceases discharge from its existing wastewater plant, Rittman is ordered and enjoined to discharge wastewater from a new treatment

plant in compliance with the NPDES permit for the new plant, including the effluent limitations contained therein.

V. CONSTRUCTION SCHEDULE

6. Defendant Rittman is ordered and enjoined to eliminate discharges from overflows and bypasses from its sanitary sewer system and to complete construction of the new wastewater treatment plant described in the General Plan for Wastewater Treatment dated 1986, and the Addendum thereto dated May, 1988, which have been submitted to Ohio EPA; and to either (a) attain compliance with the final effluent limitations of NPDES permit No. 3PC00010*DD and any modifications or renewals thereof or (b) attain compliance with any NPDES permit in effect for the new wastewater treatment plant, in accordance with the following construction schedule:

| <u>TASK</u> | <u>MILESTONE DATE</u> |
|--|-----------------------|
| (a) Initiation of Project Design Work | completed |
| (b) Submittal of Approvable Plans and Specifications to Ohio EPA | completed |
| (c) Open Bids | August 1, 1991 |
| (d) Execution of Construction Contracts | November 1, 1991 |
| (e) Initiation of Construction | December 1, 1991 |

- (f) Completion of construction of treatment facilities to achieve compliance with final effluent limits and the elimination of bypasses and overflows. July 1, 1993
- (g) Eliminate overflows and bypasses. August 1, 1993
- (h) Attain compliance with final effluent limitations. August 1, 1993

7. Until completion of construction for the new wastewater treatment plant and sewer system improvements in accordance with the construction schedule in paragraph 6 above, overflows and bypasses from the sanitary sewer system shall be monitored and reported in accordance with Appendix "B" attached hereto.

8. Within fourteen (14) days from each completion date listed above, Defendant Rittman shall submit a written report stating whether or not Rittman has performed the action set forth therein to Ohio EPA's Northeast District Office.

VI. OTHER REQUIREMENTS

9. 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.

VII. CIVIL PENALTY

10. Defendant Rittman is ordered and enjoined to pay to the State of Ohio a civil penalty of thirteen thousand dollars (\$13,000.00). 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.

VII. STIPULATED PENALTIES

11. In the event that Defendant Rittman fails to meet any of the requirements of this Consent Order set forth in Paragraphs 4, 6(a), 6(b), 6(c), 6(d), 6(e), 6(f), 6(g) and 7 including any scheduled milestone requirement, the Defendant shall be liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of each failure to meet a requirement, up to thirty (30) days - two hundred fifty dollars (\$250.00) per day. For each day of each failure to meet a requirement, from thirty-one (31) to sixty (60) days - five hundred dollars (\$500.00) per day. For each day of each 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 each failure to meet a requirement, from ninety-one (91) to one hundred and eighty (180) days - one thousand dollars (\$1,000.00) per day. For each day of each failure to meet a requirement over one hundred and eighty

(180) days - two thousand five hundred dollars (\$2,500.00) per day.

12. In the event that Defendant Rittman fails to meet any of the requirements of this Consent Order set forth in Paragraph 5, the Defendant shall be liable for and shall pay a stipulated penalty of one thousand dollars (\$1,000.00) 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., two thousand dollars (\$2,000.00) per day of each violation. In the event that failure to comply with the requirements of Subparagraph 5 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., six thousand dollars (\$6,000.00) 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 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".

VIII. SUBORDINATION

14. The payment of stipulated penalties under this Consent Order, or any further penalties ordered by the Court, other than

the civil penalty in paragraph 10, shall be subordinate to annual repayment of the principal and interest requirements for the term of the financing required to implement the construction specified in Part V hereof. This provision for subordination applies only to payments from Rittman's sewer revenues and funds, and not to other funds or sources available to Rittman to pay any penalties that may be due hereunder or ordered by this Court. This provision does not relieve the City of its liability for the payment of stipulated penalties or any further penalties ordered by the Court, but only defers such payment until it can be made without violating the terms of subordination contained in this provision.

IX. TERMINATION

15. The provisions of this Consent Order relating to the payment of stipulated penalties, Section VII, paragraphs 11, 12, and 13, shall terminate after Rittman has completed the construction required under Section V, achieved and maintained compliance with the final effluent limitations in its applicable NPDES permit and any renewals or modifications thereof for the period of one (1) year, and has paid all penalties required pursuant to the Consent Order. Termination of these provisions of the Consent Order shall be by Order of the Court, upon application by any party and a finding by the Court that these criteria have been satisfied. Alternatively, these provisions

may be terminated by a joint stipulation of the parties to the Court.

X. POTENTIAL FORCE MAJEURE

16. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Rittman shall notify the Ohio EPA, Division of Water Pollution Control, Enforcement Coordinator, 1180 Watermark Drive, Columbus, Ohio 43215, in writing within ten (10) days of learning of the event and possible delay as a result thereof. The written notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Rittman to prevent or minimize the delay and the timetable by which measures will be implemented.

17. In any action by Plaintiff to enforce any of the provisions of this Consent Order, Rittman may raise that it is entitled to a defense that its conduct was caused by reasons beyond its control such as, by way of example and not limitation, acts of God, unusually severe weather conditions, strikes, acts of war or civil disturbances, or action or inaction of any regulatory agency or governmental body. 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 action to enforce the terms of

this Consent Decree is commenced by Plaintiff. At that time, the burden of proving that any delay, was or will be caused by circumstances beyond the control of Rittman shall rest with Rittman. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, shall not serve as a basis for an extension of time under this Consent Order. Failure by Rittman to comply with the notice requirements of this Section shall render this Paragraph void and of no force and effect as to the particular incident involved. Acceptance of this Consent Order without a force majeure clause does not constitute a waiver by Rittman of any rights or defenses it may have under applicable law.

XI. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

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

XII. RETENTION OF JURISDICTION

19. 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. Either party may

apply to the Court for further orders necessary to carry out this Consent Order.

XIII. COSTS

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



JUDGE, COURT OF COMMON PLEAS

APPROVED:

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

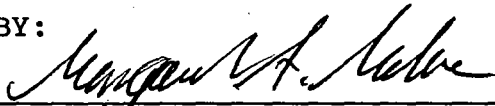
NOTICE TO THE CLERK: PLEASE
SERVE UPON ALL PARTIES NOT IN
DEFAULT FOR FAILURE TO APPEAR
NOTICE OF THIS JUDGMENT AND
ITS DATE OF ENTRY UPON THE
JOURNAL:

JOURNALIZED

AUG 8 - 1991

PAULINE L. MYERS, CLERK
WAYNE COUNTY, OHIO

BY:



MARGARET A. MALONE
Assistant Attorney General
30 East Broad Street
Columbus, Ohio 43266-0410

Counsel for Plaintiff, State of Ohio

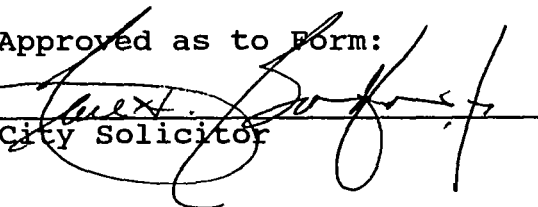
CITY OF RITTMAN, OHIO

BY:



Robert Kellogg, City Manager

Approved as to Form:



City Solicitor

Elizabeth E. Tulman

ELIZABETH E. TULMAN
Vorys, Sater, Seymour & Pease
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008

Counsel for City of Rittman

/clp
8081.1-11

APPENDIX A

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period between the effective date of the Consent Order and lasting until the date that the wastewater treatment works are to attain compliance with final effluent limitations as specified in subparagraph 6(h) of the Consent Order, Rittman is authorized to discharge in accordance with the following limitations and monitoring requirements from the following outfall: 3PC00010001. The discharge is subject to the provisions in Part II and III of NPDES Permit No. 3PC00010*DD.

| <u>EFFLUENT CHARACTERISTIC</u> | | | <u>DISCHARGE LIMITATIONS</u> | | | | <u>MONITORING REQUIREMENTS</u> | |
|--------------------------------|--------------|------------------------------|--------------------------------|------------------------------|-----------------|---------------|--------------------------------|--------------------|
| <u>REPORTING CODE</u> | <u>UNITS</u> | <u>PARAMETER</u> | <u>CONCENTRATION</u> | | <u>LOADING*</u> | | <u>Meas. Freq.</u> | <u>Sample Type</u> |
| | | | <u>OTHER UNITS (Specify)</u> | <u>OTHER UNITS (Specify)</u> | <u>kg/day</u> | <u>kg/day</u> | | |
| | | | <u>30 Day</u> | <u>7 Day</u> | <u>30 Day</u> | <u>7 Day</u> | | |
| 00010 | °C | Temperature | - | - | - | - | Daily | Max Ind. Therm. |
| 00310 | mg/l | BOD ₅ | 30 | 45 | 79.5 | 119 | 2/week | Composite |
| 00530 | mg/l | Suspended Solids | 30 | 45 | 79.5 | 119 | 2/week | Composite |
| 0550 | mg/l | Oil & Grease | Not to exceed 10.0 at any time | | | | 1/Qtr. | Grab |
| 00610 | mg/l | Ammonia (N) | - | - | - | - | 1/month | Composite |
| 00665 | mg/l | Phos., Total | - | - | - | - | 1/month | Composite |
| 31616 | Count /100ml | Fecal Coliform (Summer Only) | 1000 | 2000 | - | - | 2/week | Grab |
| 50050 | MGD | Flow | - | - | - | - | Daily | Continuous |
| 80082 | mg/l | CBOD ₅ | - | - | - | - | 2/week | Composite |

2. The pH (Reporting Code 00400) shall not be less than 6.5 S.U. nor greater than 9.0 S.U. and shall be monitored daily by grab sample.

3. 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 grab sample. (Summer Only).

4. 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: 0.7 MGD

APPENDIX B

1. The permittee shall monitor the sewer system overflow at Station 3PC00010003 and report to the Ohio EPA in accordance with the following Table:

| <u>CHARACTERISTIC</u> | | | <u>MONITORING REQUIREMENTS</u> | |
|-----------------------|-----------------|------------------|--------------------------------|--------------------|
| <u>Reporting Code</u> | <u>Units</u> | <u>Parameter</u> | <u>Measurement Frequency</u> | <u>Sample Type</u> |
| 80998 | Number/Mo. | Occurrences | When discharging | Estimate |
| 80999 | Hours | Duration | When discharging | Daily Est. |
| 00310 | mg/l | BOD ₅ | 1/Month | Grab |
| 00530 | mg/l | Suspended Solids | 1/Month | Grab |
| 50050 | Million Gallons | Flow | When discharging | Daily Est. |

Data for the Number of Occurrences(s) per month, the daily Duration and the total daily Flow may be estimated. Whenever possible, grab samples should be collected during the first 30 minutes of discharge.

For days when there are no discharges, data for parameters which require laboratory analysis 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 Occurrence, Duration and Flow.

Monitoring data shall be submitted for each month when discharge occurs. The monthly report shall be attached to the normal monthly report form (EPA-4500).

| <u>STATION NUMBER</u> | <u>DESCRIPTION</u> | <u>RECEIVING STREAM</u> |
|-----------------------|---|---------------------------------|
| 3PC00010003 | Overflow at manhole on Brookside Boulevard between Wayne Street and Industrial Avenue | Unnamed tributary of River Styx |