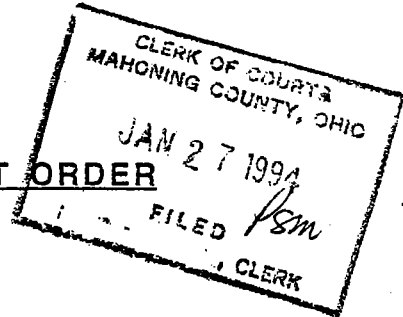


IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO

STATE OF OHIO, ex rel. : CASE NO. 9407 239  
LEE FISHER :  
ATTORNEY GENERAL OF OHIO : JUDGE  
Plaintiff, :  
vs. :  
MAHONING COUNTY BOARD OF : CONSENT ORDER  
COMMISSIONERS, :  
Defendants. :



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 Mahoning County Board of Commissioners (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 Mahoning County 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

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interest and any person acting in concert or privity with any of the parties.

### III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant Mahoning County has operated its Meander and Boardman POTWs in violation of, *inter alia*, their discharge limitations and monitoring requirements of the NPDES Permits issued to Defendant by the Director of Ohio EPA, and of the State of Ohio water pollution control laws. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims under such laws as alleged in the Complaint, and for all effluent limitation and monitoring violations disclosed in monthly operating reports received by Ohio EPA by 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 filing of the Complaint.

### IV. DEFINITIONS

4. As used in this Consent Order, the following terms are defined as follows:
- a. "Boardman POTW" means Defendant Mahoning County's publicly owned treatment works located at 7980 East Parkside Drive, Boardman, Ohio.
  - b. "Meander POTW" means Defendant Mahoning County's publicly owned treatment works located at 3264 State Route 46, Mineral Ridge, Ohio.
  - c. "Ohio EPA" or the "Agency" means the Ohio Environmental Protection Agency.
  - d. "ORC" means the Ohio Revised Code.
  - e. "OAC" means the Ohio Administrative Code.

- f. "POTW" means Publicly Owned Treatment Works.
- g. "USEPA" means United States Environmental Protection Agency.

#### **V. PERMANENT INJUNCTION**

5. Except as otherwise required by paragraphs 6, 7, 10 and 11 of this Consent Order, Defendant Mahoning County is permanently enjoined and ordered to operate and maintain its Boardman and Meander POTWs in full compliance with O.R.C. Chapter 6111, the regulations adopted under that Chapter, the terms and conditions of their currently effective NPDES permits, and the terms and conditions of any permit renewals or modifications thereof. Defendant Mahoning County is hereby enjoined and ordered to properly operate and maintain its Boardman and Meander POTWs and any associated equipment and structures.

#### **VI. COMPLIANCE SCHEDULE**

6. Between the effective date of this Consent Order and July 1, 1996, or the date the final effluent limitation for mercury as contained in Defendant's Boardman NPDES Permit is modified, whichever occurs first, Defendant Mahoning County's Boardman POTW is enjoined and ordered to comply with the interim effluent limitation for mercury set forth in Appendix "A" attached hereto. The interim effluent limit for mercury contained in Appendix "A" does not constitute an NPDES permit or a modification of any existing permit. After July 1, 1996, or the date the final effluent limitation for mercury as contained in Defendant's Boardman NPDES Permit is modified, whichever occurs first, Defendant Mahoning County's Boardman POTW is enjoined and ordered to meet all the final effluent limitations set forth in its NPDES permit No. 3PK00002\*GD and any renewals or modifications thereof.

7. Defendant Mahoning County is enjoined and ordered to place no later than six months after receiving a final determination from the Advisory Board of Examiners on the pending Class IV Operator license applications for Mahoning County personnel, the operations of its Boardman and Meander POTWs under the separate responsible charge of two certified Class IV Operators, one operator for each plant, as required by O.A.C. Rule 3745-7-02 and their respective NPDES permits.

8. Effective immediately, Mahoning County is enjoined and ordered, for its Boardman and Meander POTWs, to submit to Ohio EPA monthly operating reports for each month no later than the 15th day of the next month, as required by their respective NPDES permits.

9. Effective immediately, Mahoning County is enjoined and ordered, for its Boardman POTW, to submit to Ohio EPA bioassay results no later than 60 days after the sampling date, as required by its NPDES permit.

10. Defendant Mahoning County is enjoined and ordered to submit to Ohio EPA an approvable comprehensive mercury plan for outfall no. 001 in accordance with the following schedule:

- a. As soon as possible but no later than four months after the entry of this Consent Order, Defendant Mahoning County's Boardman POTW shall submit to Ohio EPA a report describing the measures to be taken to achieve compliance with final effluent limitations for mercury. This report shall include a detailed plan to locate, isolate and eliminate sources of mercury to the sanitary sewers and a schedule for implementing the plan to attain compliance with final effluent limitations for total mercury. Defendant Mahoning County's Boardman POTW shall implement the plan in accordance with their proposed schedule.
- b. As soon as possible, but not later than July 1, 1996, Defendant Mahoning County's Boardman POTW shall comply with the final

effluent limitations for total mercury set forth in its effective NPDES permit and any renewals or modifications thereof.

- c. Defendant Mahoning County shall submit to Ohio EPA written notification of compliance with Paragraph 10b within seven days after compliance.

11. Defendant Mahoning County is enjoined and ordered to establish and submit, within thirty days of entry of this Consent Order, to Ohio EPA a well documented Quality Assurance Quality Control (QA/QC) program for all wastewater analytical laboratories utilized by the Defendant. The QA/QC program shall specify in detail the operations of the laboratories necessary to ensure reliable and accurate analytical data, shall meet the requirements of 40 CFR Part 136, and shall conform to, at a minimum, Chapter 1020 of the 17th edition of Standard Methods.

#### **VII. CIVIL PENALTY**

12. Defendant Mahoning County shall pay to the State of Ohio a civil penalty of \$101,500.00. The penalty shall be paid by delivering to Matthew Sanders, Administrative Assistant, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0140 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.

#### **VIII. ENFORCEMENT COSTS**

13. Defendant Mahoning County shall pay the enforcement costs of relator Ohio Attorney General expended in pursuing the instant action, totaling \$2,000.00 by delivering a check in such an amount for payment into the State Treasury made payable to the order of "Treasurer, State of Ohio" to Matthew Sanders, Administrative

Assistant, or his successor, Environmental Enforcement Section, 25th Floor, 30 East Broad Street, Columbus, Ohio 43216, within thirty (30) days after the entry of the instant Consent Order. Any check submitted in compliance with this Section VIII shall be in addition to and separate from any check submitted pursuant to any other Section of this Consent Order.

#### **IX. STIPULATED PENALTIES**

14. If Defendant Mahoning County fails to meet any of the requirements of this Consent Order, except as otherwise provided by paragraphs 15, 16, and 17, then Defendant shall immediately and automatically be liable for payment of a stipulated penalty according to the following payment schedule:

- a. For each day of failure to meet a requirement, up to thirty (30) days, two hundred fifty dollars (\$250.00) per day for each requirement not met.
- b. For each day of failure to meet a requirement, from thirty-one (31) to sixty (60) days, five hundred dollars (\$500.00) per day for each requirement not met.
- c. 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.
- d. For each day of failure to meet a requirement, over ninety days, one thousand dollars (\$1,000.00) per day for each requirement not met.

15. If Defendant Mahoning County fails to meet any of the daily effluent limitations of its NPDES permits, then Defendant shall immediately and automatically be liable for payment of a stipulated penalty according to the following payment schedule:

- a. For each day of failure to meet a daily effluent limitation, from one to thirty (30) days, two hundred fifty dollars (\$250.00) per day for each limitation not met.
- b. For each day of failure to meet a daily effluent limitation, from thirty-one (31) to sixty (60) days, five hundred dollars (\$500.00) per day for each limitation not met.
- c. For each day of failure to meet a daily effluent limitation, from sixty-one (61) to ninety (90) days, seven hundred fifty dollars (\$750.00) per day for each limitation not met.
- d. For each day of failure to meet a daily effluent limitation, over ninety days, one thousand dollars (\$1,000.00) per day for each limitation not met.

The provisions of this paragraph apply per each separate daily effluent limitation.

16. For the purpose of calculating stipulated penalties under the provisions of this paragraph, each 7-day period of violation of a specific 7-day average effluent limitation shall be calculated as a single violation. If Defendant Mahoning County fails to meet any of the 7-day average effluent limitations of its NPDES permits, then Defendant shall immediately and automatically be liable for payment of a stipulated penalty according to the following payment schedule:

- a. For each first through fourth consecutive failure to meet any 7-day average effluent limitation, seven hundred fifty dollars (\$750.00) for each 7-day period during which each such failure occurs.
- b. For each fifth through eighth consecutive failure to meet any 7-day average effluent limitation, one thousand dollars (\$1,000.00) for each 7-day period during which each such failure occurs.
- c. For each ninth through eleventh consecutive failure to meet any 7-day average effluent limitation, one thousand two hundred fifty dollars (\$1,250.00) for each 7-day period during which each such failure occurs.
- d. For each failure beyond the eleventh consecutive failure to meet any 7-day average effluent limitation, one thousand five hundred

dollars (\$1,500.00) for each 7 day period during which each such failure occurs.

The provisions of this paragraph apply per each separate 7-day average effluent limitation.

17. For the purpose of calculating stipulated penalties under the provisions of this paragraph, each 30-day period of violation of a specific 30-day average effluent limitation shall be calculated as a single violation. If Defendant Mahoning County fails to meet any of the 30-day average effluent limitations of its NPDES permits, then Defendant shall immediately and automatically be liable for payment of a stipulated penalty according to the following payment schedule:

- a. For each failure to meet any 30-day average effluent limitation, one thousand dollars (\$1,000.00) for each 30-day period during which each such failure occurs.
- b. For each second consecutive failure to meet any 30-day average effluent limitation, one thousand five hundred dollars (\$1,500.00) for each 30-day period during which each such consecutive failure occurs.
- c. For each third consecutive failure to meet any 30-day average effluent limitation, two thousand dollars (\$2,000.00) for each 30-day period during which each such consecutive failure occurs.
- d. For each failure beyond the third consecutive failure to meet any 30-day average effluent limitation, two thousand five hundred dollars (\$2,500.00) for each 30-day period during which each such consecutive failure occurs.

The provisions of this paragraph apply per each separate 30-day average effluent limitation.

18. Any payment required to be made under the provisions of paragraphs



14, 15, 16, and 17 of this Order shall be made by delivering to Matthew Sanders, or his successor, Administrative Assistant, Environmental Enforcement Section, Attorney General's Office, 30 E. Broad Street, 25th Floor, Columbus, Ohio 43266-0410 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".

#### **X. TERMINATION OF STIPULATED PENALTIES**

19. The stipulated penalties imposed by paragraphs 14, 15, 16, and 17 of this Order may be terminated as to each paragraph of this Consent Order for which stipulated penalties are imposed only after Defendant has achieved and maintained compliance with all the requirements of that paragraph for a period of twelve consecutive months. Termination of one paragraph subject to stipulated penalties under this Consent Order does not terminate the accrual of or the liability for payment of stipulated penalties under any other paragraph. Termination of stipulated penalties under this Consent Order shall only be upon written application by any party, and by order of the Court after the Court has made a determination that the requirements of this paragraph have been satisfied.

#### **XI. POTENTIAL FORCE MAJEURE**

20. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Defendant Mahoning County shall notify the Ohio EPA, Northeast District Office, in writing within ten (10) days of when Defendant knows or should have known 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 to prevent or minimize the delay and the timetable by which measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

21. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendant may raise that 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 that an action to enforce the terms of this Consent Order, if any, is commenced by the Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely 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 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 20 shall render this Paragraph 21 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 qualifies for an extension of a subsequent compliance date or dates. Defendant must

make an individual showing of 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. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS**

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

**XIII. MISCELLANEOUS**

23. This Order shall be effective upon the date of entry by the Court.

24. All documents, plans, studies or other specifications required by this Consent Order shall be submitted to:

Ohio EPA  
Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
ATTN: DSW Enforcement Group Leader

25. Defendant Mahoning County shall, within thirty days of receipt, respond in writing to Ohio EPA to all comments made by Ohio EPA in response to documents submitted by Defendant pursuant to paragraphs 9, 10, and 11.

26. Nothing in this Order shall release Defendant of its obligation to comply with applicable Federal, State or local statutes, rules or ordinances, including the

requirement of obtaining any and all permits necessary for the construction or upgrade of its wastewater facilities.

27. This Court shall retain jurisdiction of this action for the purpose of making any order or decree which it deems appropriate to carry out this Consent Order.

28. Defendant Mahoning County shall pay all court costs of this action.

January 27, 1994  
DATE

William G. Huser  
JUDGE, COURT OF COMMON PLEAS

APPROVED:

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

BY:

Joan R. Kooistra  
DAVID G. COX (0042724)  
JOAN R. KOOISTRA (0055226)  
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43266-0410  
(614) 466-2766

Lynn Maro  
LYNN MARO (0052146)  
Assistant Prosecuting Attorney  
120 Market Street  
Youngstown, Ohio 44503-1726.

Mark A. Lordi  
Authorized Representative of Mahoning  
County Board of Commissioners

THE CLERK SHALL SERVE NOTICE  
OF THIS ORDER UPON ALL PARTIES  
WITHIN THREE (3) DAYS PER CIV. R. 5.

ATTACHMENT A

**EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS FOR OUTFALL 3PK00002001:**

1. See Part II, **OTHER REQUIREMENTS** of NPDES permit 3PK00002\*GD, for effluent sampling locations.

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
Reporting Code	Units	Parameter	Concentration Specified Units		Loading* kg/day		Meas. Freq.	Sample Type
			30 day	7 day	30 day	7 day		
00010	°C	Water Temperature	-	-	-	-	Daily	Continuous (Max. Ind. Therm.)
00530	mg/l	Total Suspended Solids (Summer) (Winter)	13 30	20 45	246 569	370 853	Daily Daily	Composite Composite
00550	mg/l	Oil and Grease, Total	Not to Exceed 10.0 at any time				2/Week	Grab
00610	mg/l	Ammonia (N) (Summer) (Winter)	1.5 -	2.25 -	28 -	43 -	Daily Daily	Composite Composite
00665	mg/l	Phosphorus, Total (P)	-	-	-	-	Daily	Composite
31616	Count /100ml	Fecal Coliform (Summer Only)	1000	2000	-	-	Daily	Grab
50050	MGD	Flow Rate	-	-	-	-	Daily	Continuous
80082	mg/l	CBOD <sub>5</sub> (Summer) (Winter)	10 25	15 40	189 473	284 757	Daily Daily	Composite 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 continuously and reported daily. (1)
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 continuously with the maximum value reported daily. (Summer only)\*\*
4. The Dissolved Oxygen (Reporting Code 00300) shall be maintained at a level of not less than 5.0 mg/l and shall be monitored continuously with the minimum value reported daily.

\* The average effluent loading limitations are established using the following flow value: 5.0 MGD.

\*\* See Part II, Item I of NPDES permit 3PK00002\*GD.

(1) See Part I, C, Item 1b of NPDES permit 3PK00002\*GD.

ATTACHMENT A (cont.)

**EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS FOR OUTFALL 3PK00002001:**

1. See Part II, OTHER REQUIREMENTS of NPDES permit 3PK00002\*GD, for effluent sampling locations.

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
Reporting Code	Units	Parameter	Concentration Specified Units		Loading kg/day		Meas. Freq.	Sample Type
			30 day	Daily Max.	30 day	Daily Max.		
00335	mg/l	COD	-	-	-	-	Daily	Composite
00625	mg/l	Nitrogen, Total Kjeldahl	-	-	-	-	1/Week	Composite
00630	mg/l	Nitrogen, Nitrite + Nitrate	-	-	-	-	Daily	Composite
00720	mg/l	Cyanide, Total	0.011	0.048	0.21	0.91	1/Week	Grab(1)
01027	µg/l	Cadmium, Total (Cd)	2.4	18	0.05	0.34	1/Week	Composite**
01034	µg/l	Chromium, Total (Cr)	106	234	2.01	4.44	1/Week	Composite**
01042	µg/l	Copper, Total (Cu)	17	57	0.32	1.08	1/Week	Composite**
01051	µg/l	Lead, Total (Pb)	38	213	0.72	4.04	1/Week	Composite**
01067	µg/l	Nickel, Total (Ni)	-	-	-	-	1/Week	Composite**
01092	µg/l	Zinc, Total (Zn)	223	848	4.41	16.08	1/Week	Composite**
01220	µg/l	Chromium, Dissolved Hexavalent	13	24	0.25	0.45	1/Week	Grab(1)
34253	µg/l	Alpha BHC	-	-	-	-	1/Qtr.	Grab(1)
34351	µg/l	Endosulfan Sulfate	-	-	-	-	1/Qtr.	Grab(1)
39100	µg/l	Bis(2-ethylhexyl) Phthalate	-	-	-	-	1/Qtr.	Grab(1)
39782	µg/l	Lindane	-	-	-	-	1/Qtr.	Grab(1)
71900	µg/l	Mercury, Total (Hg)	1.0	1.0	-	-	1/Week	Composite**

\* The average effluent loading limitations are established using the following flow value: 5.0 MGD.

\*\* See Part II, Item J of NPDES permit 3PK00002\*GD.

(1) See Part II, Item K of NPDES permit 3PK00002\*GD.