

IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

92CV0349

FILED
PORTAGE COUNTY
COURT OF COMMON PLEAS

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

Plaintiff,

vs.

PORTAGE COUNTY BOARD OF
COMMISSIONERS,

Defendant.

CASE NO. 21 10 06 AM '92

JUDGE

BELORES REED
JUDGE GEORGE E. MARTIN

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 Portage County Board of Commissioners (hereinafter "Portage County") 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 Portage 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 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 Portage County shall provide a copy of this Consent Order to each general 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 Portage County has operated its Baronwood, County Home and Village Estates wastewater treatment plants and sewer systems in such a manner as to result in violations of the discharge limitations and monitoring requirements of the NPDES Permits 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 Portage County for all claims under such laws alleged in the Complaint. Nothing in this Consent 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. (a) Defendant Portage County 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 thereunder.

(b) After November 1, 1991, Defendant Portage County is enjoined to meet the final effluent standards set forth in its NPDES Permits Nos. 3PG00092*BD, 3PG00097*CD, and 3PG00099*CD and any renewals or modifications thereof. Defendant Portage County is also enjoined to properly operate and maintain its wastewater treatment plants and any associated equipment and structures.

(c) Defendant Portage County is enjoined and ordered to completely abandon the Baronwood and County Home wastewater treatment plants, and cease the direct discharge of effluent therefrom, by September 30, 1992 and November 30, 1992 respectively.

V. CONSTRUCTION SCHEDULE: BARONWOOD

5. Defendant Portage County is enjoined and ordered to completely abandon the Baronwood wastewater treatment plant, and cease the direct discharge of effluent therefrom, in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Initiation of Project Design Work	Complete
(b) Submittal of Approvable Plans and Specifications to Ohio EPA	September 16, 1991
(c) Advertisement of Building Bids	November 14, 1991
(d) Execution of Building Contracts	March 19, 1992
(e) Initiation of Construction	April 30, 1992
(f) Completion of Construction of the Force Main Routing Baronwood's Sewage to the Ravenna Treatment Plant	September 15, 1992
(g) Complete Abandonment of the Baronwood Treatment Plant, Cessation of the Discharge of Effluent Therefrom, and Routing of Baronwood's Sewage to the Ravenna Treatment Plant	September 30, 1992

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

VI. CONSTRUCTION SCHEDULE: COUNTY HOME

6. Defendant Portage County is enjoined and ordered to completely abandon the County Home wastewater treatment plant, and cease the direct discharge of effluent therefrom, in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Initiation of Project Design Work	Complete
(b) Submittal of Approvable Plans and Specifications to Ohio EPA	March 1, 1992
(c) Advertisement of Building Bids	April 16, 1992
(d) Execution of Building Contracts	June 26, 1992.
(e) Initiation of Construction	July 6, 1992
(f) Completion of Construction of the Force Main Routing County Home's Sewage to the Ravenna Treatment Plant	November 15, 1992
(g) Complete Abandonment of the County Home Treatment Plant, Cessation of the Discharge of Effluent Therefrom, and Routing of County Home's Sewage to the Ravenna Treatment Plant	November 30, 1992

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

VII. EFFECT OF CONSENT ORDER

7. 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.

VIII. CIVIL PENALTY

8. Defendant Portage County shall pay to the State of Ohio a civil penalty of eight thousand dollars (\$8,000.00). 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.

IX. STIPULATED PENALTIES

9. In the event that Defendant Portage County fails to meet any of the requirements of this Consent Order set forth in Subparagraphs 4(a) and/or 4(c), Paragraph 5, and/or Paragraph 6, 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 each failure to meet a requirement, up to sixty (60) days - five hundred dollars (\$500.00) per day for each requirement not met. For each day of each failure to meet a requirement, from sixty-one (61) to one hundred twenty (120) days - one thousand dollars (\$1,000.00) per day for each requirement not met. For each day

of each failure to meet a requirement, from one hundred twenty-one (121) to one hundred eighty (180) days - one thousand five hundred dollars (\$1,500.00) per day for each requirement not met. For each day of each failure to meet a requirement, over one hundred eighty (180) days - two thousand five hundred dollars (\$2,500.00) per day for each requirement not met.

10. In the event that Defendant Portage County fails to meet any of the requirements of this Consent Order set forth in Subparagraph 4(b), Portage County shall immediately and automatically be liable for payment of stipulated penalties according to the following subparagraphs, which subparagraphs have been negotiated for purposes of this Consent Order only:

(a) In the event that Portage County fails to meet any of its daily final effluent limitations, up to sixty (60) days, Portage County shall be liable for payment of a stipulated penalty of two hundred and fifty dollars (\$250.00) for each day of each final effluent limitation violation. Portage County shall be liable for an additional stipulated penalty of two hundred and fifty dollars (\$250.00) per day per violation if the failure to meet a daily final effluent limitation continues for more than sixty (60) days but not more than ninety (90) days, i.e., five hundred dollars (\$500.00) per day per violation. In the event that failure to meet a daily final effluent limitation continues for more than ninety (90) days, Portage County shall be liable for an additional five hundred dollars (\$500.00) per day per violation, i.e., one thousand dollars (\$1,000.00) per day per violation.

(b) In the event that Portage County fails to meet any of its 7-day average final effluent limitations, Portage County shall be liable for payment of a stipulated penalty of one thousand dollars (\$1,000.00) for each initial 7-day period during which each failure occurs; if any failure to meet a 7-day average final effluent limitation continues for a second 7-day period, Portage County shall be liable for payment of a stipulated penalty of two thousand dollars (\$2,000.00) per failure; if any failure to meet a 7-day average final effluent limitation continues for a third 7-day period, Portage County shall be liable for payment of a stipulated penalty of three thousand dollars (\$3,000.00) per failure; if any failure to meet a 7-day average final effluent limitation continues for a fourth 7-day period, Portage County shall be liable for payment of a stipulated penalty of four thousand dollars (\$4,000.00) per failure; if any failure to meet a 7-day average final effluent limitation continues for a fifth 7-day period, Portage County shall be liable for payment of a stipulated penalty of five thousand dollars (\$5,000.00) per failure; if any failure to meet a 7-day average final effluent limitation continues beyond a fifth 7-day period, Portage County shall be liable for payment of a stipulated penalty of six thousand dollars (\$6,000.00) for each such failure during each such 7-day period.

(c) In the event that Portage County fails to meet any of its 30-day average final effluent limitations, Portage County shall be liable for payment of a stipulated penalty of two thousand dollars (\$2,000.00) for each initial 30-day period

during which each failure occurs; if any failure to meet a 30-day average final effluent limitation continues for a second 30-day period, Portage County shall be liable for payment of a stipulated penalty of three thousand dollars (\$3,000.00) per failure; if any failure to meet a 30-day average final effluent limitation continues for a third 30-day period, Portage County shall be liable for payment of a stipulated penalty of four thousand dollars (\$4,000.00) per failure; if any failure to meet a 30-day average final effluent limitation continues for a fourth 30-day period, Portage County shall be liable for payment of a stipulated penalty of five thousand dollars (\$5,000.00) per failure; if any failure to meet a 30-day average final effluent limitation continues beyond a fourth 30-day period, Portage County shall be liable for payment of a stipulated penalty of eight thousand dollars (\$8,000.00) for each such failure during each such 30-day period.

11. Any payment required to be made under the provisions of Paragraphs 9 or 10 of this Consent 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".

X. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

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

XI. RETENTION OF JURISDICTION

13. 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.

XII. TERMINATION OF STIPULATED PENALTIES

14. The provisions of this Consent Order set forth in Section IX, Paragraphs 9 and 10, requiring payment of stipulated penalties, shall terminate if Defendant Portage County has paid all penalties required pursuant to this Consent Order and has achieved and maintained compliance with the final effluent limitations contained in its NPDES Permits Nos. 3PG00092*BD, 3PG00097*CD, and 3PG00099*CD for a period of one (1) year, commencing August 1, 1991, or for any one (1) year period thereafter. Termination of the aforementioned stipulated penalties shall only be effected by Order of the Court upon application by any party, which application must contain a demonstration that the two (2) conditions set forth in this paragraph have been met.

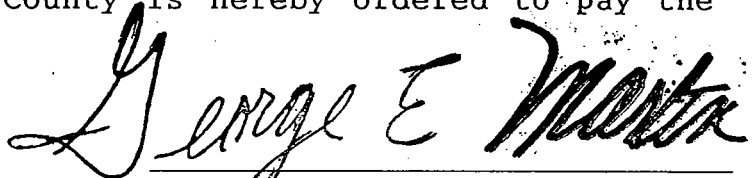
XIII. POTENTIAL FORCE MAJEURE

15. In any action to enforce any of the provisions of this Consent Order, Defendant Portage County may raise at that time the question of whether 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, act of God, unusually severe

weather conditions, strikes, acts of war or civil disturbances, or orders of any regulatory agency. 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 enforcement action, if any, is commenced. 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.

XIV. COSTS

16. Defendant Portage County is hereby ordered to pay the costs of this action.



JUDGE PORTAGE COUNTY
COURT OF COMMON PLEAS

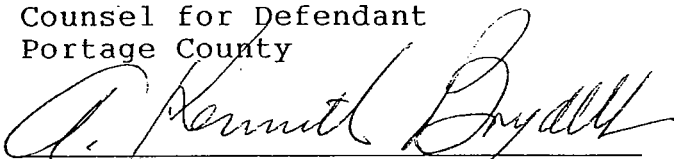
APPROVED:

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

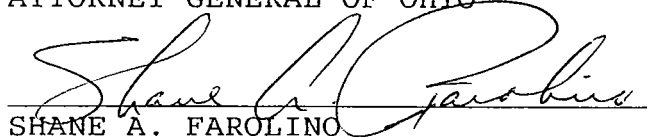


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