

IN THE COURT OF COMMON PLEAS
 MEDINA COUNTY, OHIO

COMMON PLEAS COURT
 1991 JUL 11 PM 1:04

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

Case No. 54315
 JUDGE JUDITH A. CROSS

Plaintiff,

v.

JAMES F. TIVENAN
 d.b.a. Jim's Midway Taven
 9977 West Lafayette Road
 West Salem, Ohio 44287

CONSENT ORDER FOR A
 PERMANENT INJUNCTION

Defendant.

FILED
 JEAN WATERS
 MEDINA COUNTY
 CLERK OF COURT

MEDINA COUNTY COURT OF COMMON PLEAS - STATE OF OHIO MEDINA COUNTY, SS.
 I hereby certify that this is a true copy of the original on file in said Court WITNESS
 my hand and the seal of said Court, at Medina, Ohio this _____ day
 of _____, 19____
 By Jean Waters Deputy
 Jean Waters, Clerk of Courts

The State of Ohio, on relation of its Attorney General, Anthony J. Celebrezze, Jr., succeeded by Lee Fisher, at the written request of the Director of Environmental Protection, has filed a Complaint which, inter alia, sought injunctive relief and civil penalties. On February 8, 1991, this Court issued an Order rendering a default judgment and enjoining Defendant to, inter alia, comply with R.C. Chapter 6111 and to undertake various corrective measures. The Order further scheduled a hearing on the determination of civil penalties. Since that Order was issued, and prior to any hearing on civil penalties, the parties, through their attorneys, have negotiated this Consent Order which, in lieu of litigating the issues concerning civil penalties, shall serve as an agreed resolution to those issues and to modify and supersede the Court's February 8, 1991 Order. Upon agreement of the parties and upon entry of this Consent Order, the Court's February 8, 1991 Order is hereby modified and superseded.

Therefore, without the taking of any evidence, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. DEFINITIONS

1. As used in this Order, the following terms are defined as follows:

A. "Defendant" or "Defendants" means James F. Tivenan, Jim's Midway Tavern and Midway Tavern, Inc.

B. "Facility" means the waste water treatment system or treatment works located at 9977 West Lafayette Road, West Salem, Medina County, Ohio.

C. "OEPA" or "Ohio EPA" means the Ohio Environmental Protection Agency.

II. JURISDICTION AND VENUE

2. 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.

III. PERSONS BOUND

3. The provisions of this Consent Order shall apply to and be binding upon the Defendants, their officers, agents, servants, employees, successors in interest, and assigns, and those persons in active concert or participation with them, but

only with respect to operations of the facility as defined herein.

4. Defendant shall provide a copy of this Consent Order to each officer, agent, servant, employee, successor in interest and assign , and those persons in active concert or participation with them, but only to those individuals or entities whose duties and responsibilities involve the operation of the facility.

IV. SATISFACTION OF LAWSUIT

5. Plaintiff alleged in its Complaint, inter alia, that Defendant Tivenan has operated Jim's Midway Tavern located on Lafayette Road, West Salem, Medina County, Ohio without adequate wastewater disposal facilities and in such manner as to result in sewage, industrial waste or other wastes being discharged into waters of the State. The above described conduct resulted in numerous violations of the March 7, 1989 Findings and Orders issued to Defendant Tivenan by the Director of Ohio EPA and violated Chapter 6111 of the Ohio Revised Code. This Court's February 8, 1991 Order constituted a default judgment in the instant action. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant Tivenan for all claims under such laws 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, including violations which occur after the filing of the Complaint.

V. COMPLIANCE

6. Defendants are hereby permanently enjoined and ordered to immediately and continuously 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.

VI. OPERATION OF THE FACILITY

7. Defendants are hereby permanently enjoined and ordered to operate the facility on a continuous, twenty-four (24) hours per day, seven (7) days per week, basis in such manner that it does not cause or result in any violation of Ohio's water quality standards, including, but not limited to, OAC 3745-1-04 and 3745-1-07, or any other standards adopted pursuant to R.C. Section 6111.041.

VII. MAINTENANCE OF THE FACILITY

8. Defendants are hereby permanently enjoined and ordered to maintain the facility in a manner so that it is capable of producing an effluent of a quality so that any discharge from the facility will comply with OAC 3745-1-04 and 3745-1-07, or any other water quality standards adopted pursuant to R.C. Section 6111.041.

VIII. CIVIL PENALTY

9. Defendant is further ordered and enjoined to pay a civil penalty of three thousand dollars (\$3,000.00) to the Treasurer of the State of Ohio. Payment shall be made in twelve (12) successive monthly payments of two hundred fifty dollars (\$250.00) per month by tendering a check or money order to Plaintiff's attorney, or her successor, by the seventh day of each month beginning with the first month following the date of entry of this Order. Said checks or money orders shall be made payable to the "Treasurer, State of Ohio" and tendered at the following address:

Gertrude M. Kelly, Assistant Attorney General
Environmental Enforcement Section
30 E. Broad Street, 25th Floor
Columbus, Ohio 43266-0410

IX. STIPULATED PENALTIES

10. If Defendant fails to meet any of the requirements set forth under paragraphs 6 through 8 of this order, Defendant shall immediately and automatically be liable for and shall immediately pay stipulated civil penalties according to the following schedule. For each day of each failure to meet each requirement, up to thirty (30) days - Five hundred dollars (\$500.00) per day. For each day of each failure to meet each requirement, from thirty-one (31) to sixty (60) days - One Thousand dollars (\$1,000.00) per day. For each day of each

failure to meet each requirement, from sixty-one (61) to ninety (90) days - One Thousand Five Hundred dollars (\$1,500.00) per day. For each day of each failure to meet each requirement, from ninety-one (91) to one hundred twenty (120) days - Two Thousand Five Hundred dollars (\$2,500.00) per day. For each day of each failure to meet each requirement, over one hundred twenty (120) days - Three Thousand Five Hundred dollars (\$3,500.00) per day.

11. Any stipulated civil penalties due under Paragraph 10 of this Consent Order shall be paid by certified check or money order, payable to "Treasurer, State of Ohio", and mailed to Gertrude M. Kelly, Assistant Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43266-0410.

X. RETENTION OF JURISDICTION

12. 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.

XI. COSTS

13. Defendants are hereby ordered to pay the costs of this action.

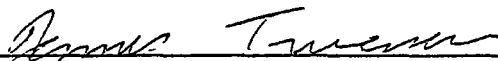
7/11/91
DATE

1st Judith A Cross
JUDITH A. CROSS, JUDGE
Medina County Court of
Common Pleas.


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



JAMES F. TIVENAN




Authorized Representative of
Jim's Midway Tavern and
Midway Tavern, Inc.



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