

IN THE COURT OF COMMON PLEAS
GUERNSEY COUNTY, OHIO

FILED
COMMON PLEAS COURT
1992 APR 7 7 PM 1:00
TERESA A. BANTONIC
CLERK OF COURT
GUERNSEY COUNTY, OHIO

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

Plaintiff,

Case No. 88M312
Judge David A. Ellwood

vs.

VILLAGE OF BYESVILLE, OHIO

Defendant.

CONSENT ORDER

APR 27 9 30 AM '92
DEPARTMENT OF
CORRECTIONS
OHIO

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 Village of Byesville, Ohio (hereinafter "Byesville") 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 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 Byesville shall provide a copy of this Consent Order to each 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 has operated its wastewater treatment plant and sewer system in such a manner as to result in numerous 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 denies the allegations of Plaintiff's Complaint. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant 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.

IV. INJUNCTION

4. Defendant Byesville 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 under that Chapter and its currently effective NPDES Permit including the effluent limitations, and any renewals or modifications thereof, except as expressly provided in Section V below. Byesville is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. COMPLIANCE SCHEDULE

5. Defendant Byesville is enjoined and ordered to eliminate discharges from overflows and bypasses from its sanitary sewer system and/or treatment plant and to complete construction of the improvements to its wastewater treatment plant and sanitary sewer system in order to eliminate the occurrence of bypasses and overflows and comply with its NPDES permit in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Flow Proportioned Composite Sampler Installed and operating to monitor Effluent	December 31, 1992
(b) Remove all sludge, grease and grit deposits from Imhoff tank at treatment plant	August 1, 1992
(c)(i) Submittal of Approvable Plans and Specifications to Ohio EPA with Application for Permit to Install for Pump Station Improvements	August 31st, 1992
(c)(ii) Pump Station Improvements Completed	August 31st, 1992
(d) Submittal to Ohio EPA of a general plan for disinfection facilities to	

- meet the final table effluent
limitations for chlorine residual May 1, 1992,
- (e) Wastewater Treatment Plant and Sewer System under the charge of full-time Class III operator August 1, 1992
- (f) Redesigned, dedicated, Wastewater Plant Laboratory facility complying with 40 CFR 136 placed in service December 31, 1993
- (g) Conduct and complete additional sewer system evaluations of all sections of the collection system still receiving significant inflow and/or infiltration as of January 1, 1992. October 31, 1992
- (h) Submit the findings of the additional sewer system evaluations conducted in accordance with (g) above together with recommendations for improvements to eliminate overflows and bypasses both in the sewer system and at the plant to Ohio EPA for approval. January 31, 1993
- (i) Commence implementation of the SSES recommendations, as approved, to ensure the elimination of bypasses and overflows both in the sewer system and at the treatment plant. April 1, 1993
- (j) Complete implementation of the recommendations. Occurrence of any discharges from all overflows and bypasses in sewer system and at treatment plant eliminated. August 31, 1993

Within seven days from each date listed above, Defendant Byesville shall submit a written report, stating whether or not Byesville has performed the action set forth therein, to Ohio EPA's Southeast District Office.

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.

6. Defendant Byesville shall submit an approvable Operation and Maintenance Manual to the Southeast District Office of Ohio EPA by March 15, 1992. The manual shall include, but not be limited to, the items listed on Attachment A. The manual shall address Imhoff tank operation and maintenance; sludge and solids removal; plant operation during high flows; proper solids balance within the plant; adequate staffing including a full-time dedicated operator; adequate dedicated laboratory facilities; pump station operations including proper float switch order and bypass pump connection installation and operations.

VI. CIVIL PENALTY

7. Defendant Byesville shall pay to the State of Ohio a civil penalty of five thousand dollars (\$5,000.00). The penalty shall be paid by delivering a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within forty-five days from the date of entry of this Consent Order to:

Janis Miller
Administrative Assistant
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410

VII. STIPULATED PENALTIES

8. In the event that Defendant Byesville fails to meet any of the requirements of this Consent Order set forth in Paragraphs 4, 5(a), 5(b), 5(c), 5(d), 5(e), 5(f), 5(g), 5(h), 5(i), and 6, including any schedule 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 days - \$500.00 per day. For each day of each failure to meet a requirement, from thirty-one to sixty days - \$1,000.00 per day. For each day of failure to meet a requirement, from sixty-one to ninety days - \$2,500.00. For each day of each failure to meet a requirement, from ninety-one to one hundred twenty days - \$3,500.00 per day.

9. In the event that an overflow or bypass from Defendant Byesville's sanitary sewer system or treatment plant occurs after the date set forth in Subparagraph 5(j), the Defendant shall be liable for and shall pay a stipulated penalty of \$2,500.00 per each day of each violation of said requirement. The Defendant shall be liable for and shall pay an additional stipulated penalty of one thousand dollars (\$1,000.00) per day of each violation if the failure to comply with the requirements of subparagraph 5 (j) continues for more than thirty (30) days, i.e. three thousand dollars (\$3,000.00) per day of each violation. In the event that failure to comply with the requirements of Subparagraph 5(j) continues more than sixty (60) days, Defendant shall be liable for and shall pay an

additional stipulated penalty of two thousand dollars (\$2,000.00) per day of each violation, i.e., five thousand dollars (\$5,000.00) per day of each violation. In the event that the failure to comply with requirements of Subparagraph 5(j) continues for more than 90 days, Defendant shall be liable for and shall pay an additional stipulated penalty of two thousand five hundred dollars (\$2,500.00) per day of each violation, i.e. seven thousand five hundred dollars (\$7,500.00) per day of each violation.

10. In the event that Defendant Byesville violates any of the final effluent limits in its NPDES permit with the exception of the chloringe residual limitation, the Defendant shall be liable for and shall pay a stipulated penalty of \$1,500.00 per day of each day of each violation of an effluent limitation. The Defendant shall be liable for and shall pay an additional stipulated penalty of One Thousand Dollars (\$1,000.00) per day of each violation if the violation of the effluent limit continues for more than thirty (30) days, i.e. two thousand five hundred dollars (\$2,500.00) per day of each violation. In the event that the violations of the effluent limit continues more than sixty (60) days, Defendant shall be liable for and shall pay an additional one thousand five hundred dollars (\$1,500.00) per day of each violation, i.e., four thousand Dollars (\$4,000.00) per day of each violation. In the event that violations of the effluent limitation continues more than 90 days, Defendant shall be liable for and shall pay an additional two thousand five hundred dollars

(\$2,500.00) per day of each violation, i.e. seven thousand five hundred dollars (\$7,500.00) per day of each violation.

11. Any payment required to be made under the provisions of Paragraphs 8, 9, or 10 of this Order shall be made by delivering a certified check or checks for the appropriate amounts, within forty-five days from the date of the violation made payable to "Treasurer, State of Ohio" to:

Janis Miller
Administrative Assistant
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410

12. The requirements of paragraph 9 of this Consent order requiring the payment of stipulated penalties shall terminate after Defendant has completed and attained compliance with, all of the requirements of Section V of this Order; maintained compliance with subparagraph 5(j) for a period of one year; and paid all penalties required pursuant to this Order. The requirements of paragraph 10 of this Consent Order requiring the payment of stipulated penalties shall terminate after the Defendant has maintained compliance with the final effluent limitations of NPDES permit OPB0004*CD, or any renewal thereof, for a period of one year and paid all penalties required pursuant to this Order. Termination of paragraphs 9 and 10 shall be by order of the Court upon a determination that the requirements of this paragraph have been met. Any party may apply to the Court for termination of the stipulated penalties under this paragraph.

VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

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

IX. POTENTIAL FORCE MAJEURE

14. If any event occurs which causes or may cause a delay of any requirement of this Consent Order applicable to Byesville, Byesville shall notify the Ohio EPA in writing within fourteen (14) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of delay, the measures taken and to be taken by Byesville to prevent or minimize the delay and the timetable by which those measures will be implemented. Byesville will adopt all reasonable measures to avoid or minimize any such delay.

15. In any action by the State of Ohio to enforce any of the provisions of this Consent Order, Byesville may raise at that time the question of whether 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 State of Ohio does not agree that such a defense exists, it is, however, hereby agreed upon by Byesville and the State of Ohio 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, if ever, that the proceeding to enforce this Consent Order is commenced by the State. At that time the burden of proving that any delay was or will be caused by circumstances beyond the control of Byesville shall rest with Byesville. Failure by Byesville to comply with the notice requirements of Paragraph 14 shall constitute a waiver by Byesville of any right it may have to raise with the implementation of any action required by this Consent Order, or changed financial circumstances shall not in any event constitute circumstances entirely beyond the control of Byesville, or serve as a basis for an extension of time under this Consent Order.

X. RETENTION OF JURISDICTION

16. 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

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

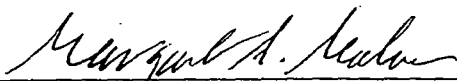
David A. Elwood

JUDGE, COURT OF COMMON PLEAS

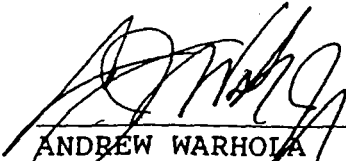
APPROVED:

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

BY:



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



ANDREW WARHOLA
Village Solicitor
Bank Ohio Building
749 Wheeling Avenue
Cambridge, Ohio 43725



CHRISTOPHER R. SCHRAFF
Porter, Wright, Morris, Arthur
41 South High
Columbus, Ohio 43215



Authorized Representative
of Village of Byesville

0742E(56-66)

ATTACHMENT A

General Review Guidelines Operation and Maintenance Manuals

- General Comments
 - Usefulness of document to operator (easy to revise)
 - Worded in a clear concise manner
 - Operator is advised to revise O&M manual as necessary
- Documents
 - Permit
 - Water Quality Standards
 - State and Federal reporting forms
 - Sewer Use Ordinance
- Operation
 - Each major peice of equipment discussed separately
 - Start-up (general operating parameters) and shutdown
 - Troubleshooting
 - Signs of trouble (emergency operation)
 - Seasonal considerations
 - Controls
 - Actual vs design flow for initial operation
- Personnel
 - Manpower necessary to operate and maintain
 - Qualifications for positions
- Lab
 - Purpose of testing and interpretation of tests
 - Forms, equipment and supplies
 - QA/QC program discussed
 - Sampling/preservation methods
- Records
 - Sufficient blank and example forms provided
(specific to project)
 - Value of good recordkeeping presented
 - Storage of records discussed
- Maintenance
 - Clear and concise
 - Specific requirements (including replacement)
 - Reasonable timeframes
 - Specific list of equipment necessary (tools and spare parts)
- Emergency Response
 - Does it talk about emergencies that are likely to occur?
 - Power failure
 - Major equipment failure
 - Chemical spills
 - Fire
 - Flood
 - Phone numbers in a readily accessible form (table)
 - Responsibilities clearly spelled out
- Safety
 - Clear and concise
 - Risk of infection and preventative measures discussed
 - Restricted entry procedures and equipment necessary
 - Housekeeping and disinfection
- Utilities
 - All department 24 hour numbers listed
- Electrical
 - Clear and concise description that can be utilized by
the operator

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1992 MAY 8 PM 2:12

SEP 17 1992
ENVIRONMENTAL ENFORCEMENT

STATE OF OHIO, ex rel.)
LEE FISHER)
ATTORNEY GENERAL OF OHIO,)
)
Plaintiff,)
)
vs.)
)
VILLAGE OF BYESVILLE, OHIO,)
)
Defendant.)

Case No. 88M312
JUDGE DAVID A ELLWOOD

STIPULATION AND MODIFICATION OF CONSENT ORDER

It is hereby agreed and stipulated by and between Plaintiff State of Ohio and Defendant Village of Byesville that Section V(c)(ii) on page 3 of the Consent Order herein, entered on April 7, 1992, is modified as follows:

<u>TASK</u>	<u>COMPLETION DATE</u>
(c)(ii) Pump Station Improvements Completed	August 31, 1993

APPROVED:

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

VILLAGE OF BYESVILLE

By: Margaret A. Malone
Margaret A. Malone
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(614) 466-2766

By: Christopher R. Schraff
Christopher R. Schraff
Porter, Wright, Morris &
Arthur
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(614) 227-2097

Attorney for Village of
Byesville

SO ORDERED:

David A. Ellwood
Judge, Court of Common Pleas