

IN THE COURT OF COMMON PLEAS  
MERCER COUNTY, OHIO

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

Plaintiff,

vs.

VILLAGE OF ██████████  
Defendant.

CASE NO. 91-CIV-070

JUDGE JEFFREY R. INGRAHAM

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 Village of Coldwater (hereinafter "Coldwater") 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.

20  
AUG 07 91 296  
JEFFREY R. INGRAHAM  
CLERK OF 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 Coldwater 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. 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.

AUG 02 91 297

JAMES L. HIGGINS

IV. COMPLIANCE SCHEDULE

4. Defendant Coldwater 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, and any renewals or modifications thereof, except for the final effluent limitations set forth in said permit. After the effective date of this consent order, Defendant Coldwater is enjoined to meet the final effluent standards set forth in its NPDES permit No. 2PB00013\*DD and any renewals or modifications thereof. Coldwater is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

5. Defendant Coldwater is enjoined and ordered to complete construction of the improvements to its wastewater treatment plant described in the Municipal Compliance Plan submitted to Ohio EPA on June 30, 1987 and to attain compliance with the final effluent limitations of NPDES permit No. 2PB00013\*DD and any modifications or renewals thereof in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Initiation of Project Design Work	Completed

298  
91

- |  |              |
|--|--------------|
| (b) Submittal of Approvable Plans and Specifications to Ohio EPA   | Completed    |
| (c) Advertisement of Building Bids   | Completed    |
| (d) Execution of Building Contracts  | Completed    |
| (e) Initiation of Construction   | Completed    |
| (f) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits. | July 1, 1989 |
| (g) Attain compliance with final effluent limitations.   | July 1, 1989 |

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.

VI. CIVIL PENALTY

6. Defendant Coldwater shall pay to the State of Ohio a civil penalty of Four Thousand Dollars (\$4,000). 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 days from the date of entry of this Consent Order.

0 91299

VII. STIPULATED PENALTIES

7. In the event that Defendant Coldwater fails to meet any of the requirements of this Consent Order set forth in Paragraph 4 and Subparagraph 5(f) including any scheduled milestone requirement, 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 failure to meet a requirement, up to forty-five days - \$500.00 per day. For each day of failure to meet a requirement, from forty-six to ninety days - \$1,000.00 per day. For each day of failure to meet a requirement, from ninety-one to one hundred thirty-five days - \$2,500.00. For each day of failure to meet a requirement, after one hundred thirty-five days - \$3,500.00 per day.

8. In the event that Defendant Coldwater fails to meet any of the requirements of this Consent Order set forth in Subparagraph 5(g), the Defendant shall immediately and automatically be liable for payment of a stipulated penalty of \$5,000.00 per day of violation of said requirement. The Defendant shall be liable for an additional stipulated penalty of one thousand dollars (\$ 1,000.00) per day of violation if the failure to comply continues for more than forty-five (45) days, i.e. six thousand dollars (\$6,000.00) per day of violation. In the event that failure to comply with the

91 300

requirements of Subparagraph 5(g) continues more than ninety (90) days, Defendant shall be liable for an additional two thousand dollars (\$2,000.00) per day of violation, i.e., eight thousand dollars (\$8,000.00) per day of violation. In the event that failure to comply with the requirements of Subparagraph 5(g) continues more than one hundred thirty-five (135) days, Defendant shall be liable for an additional two thousand dollars (\$2,000.00) per day of violation, i.e., ten thousand dollars (\$10,000.00) per day of violation.

9. Any payment required to be made under the provisions of Paragraphs 7 or 8 of this Order shall be made by delivering to Plaintiff's counsel a certified check or checks for the appropriate amounts, within forty-five days from the date of the failure to meet the requirement of the Consent Order, made payable to "Treasurer, State of Ohio".

#### VIII. POTENTIAL FORCE MAJEURE

10. In any action to enforce any of the provisions of this Consent Order Defendant Coldwater 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

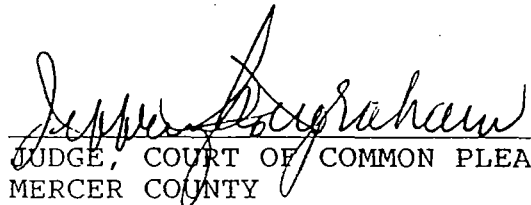
upon by the parties that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an enforcement action, if any, is commenced. Acceptance of this Consent Order without a force majeure clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

IX. RETENTION OF JURISDICTION

11. 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.

X. COSTS

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

  
\_\_\_\_\_  
JUDGE, COURT OF COMMON PLEAS  
MERCER COUNTY

FILED  
AC 0 69  
91302

APPROVED:

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

BY:

Lori A. Massey  
LORI A. MASSEY  
Assistant Attorney General  
30 East Broad Street  
Columbus, Ohio 43266-0410

David William Bruns  
DAVID WILLIAM BRUNS  
Solicitor, Village of  
Coldwater  
123 West Main Street  
Coldwater, Ohio 45828

Maurice G. Cron  
MAURICE G. CRON, Mayor  
Authorized Representative  
of Village of Coldwater

2517E/11-18

CERTIFICATE

I hereby certify that a copy of the foregoing entry was mailed this 2nd day of August, 1991, to Ms. Lori A. Massey, Mr. David Wm. Bruns and Mr. Maurice G. Cron.

Carolyn Lippner

91