

IN THE COURT OF COMMON PLEAS
COLUMBIANA COUNTY, OHIO

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

CASE NO. 92-CIV-121

JUDGE DOUGLAS C. JENKINS

Plaintiff,

vs.

VILLAGE OF LISBON BOARD
OF PUBLIC AFFAIRS,

Defendant.

F I L E D
SEP 29 1994
COLUMBIANA COUNTY
COMMON PLEAS COURT
ANTHONY J. DATTILIO, Clerk

AMENDED 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 Lisbon Board of Public Affairs (hereinafter "Lisbon") having consented to the entry of a prior Consent Order entered on March 6, 1992 (hereinafter "the '92 Order"), and

WHEREAS, the '92 Order was entered to resolve Lisbon's violations of O.R.C. Chapter 6111. and the regulations adopted thereunder and which required the payment of a \$7,000 civil penalty, which penalty was paid by Lisbon, and

WHEREAS paragraph number 5 of the '92 Order has been violated by Defendant Lisbon, thereby rendering Lisbon in contempt of court, and

WHEREAS, Defendant Lisbon agrees that a regional waste water treatment plant to be constructed by Columbiana County is in the best interest of the health, safety, and welfare of the general public represented by Lisbon and Columbiana County, and

WHEREAS, certain provisions of the '92 Order need to be modified to accommodate construction of the County's wastewater treatment plant and the connection of Lisbon to that County plant, and

WHEREAS, the parties agree that with the modifications contained herein, this Amended Consent Order shall supersede and replace the '92 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 Lisbon under Chapter 6111. of the Ohio Revised Code ("O.R.C.") and venue is proper in this Court.

II. PARTIES

2. The provisions of this Amended Consent Order shall apply to 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 Lisbon shall provide a copy of this Amended Consent Order to each contractor it employs to perform work itemized herein, and each general contractor shall provide a copy of this Amended Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant Lisbon 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 control laws of the State of Ohio. In addition, Defendant has been in contempt of the '92 Order due to its failure to comply with the schedule of compliance contained in the '92 Order. Compliance with the terms of this Amended Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims under such laws alleged in the Complaint, and shall constitute full satisfaction of any civil liability by Defendant for all violations of the '92 Order and for Defendant's contempt of the '92 Order. Nothing in this Amended 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 any violations which occur after the filing of the Complaint, nor to seek relief for any claims or conditions related to violations of this Amended Consent Order, including any violations which occur after the entry of this Amended Consent Order.

IV. COMPLIANCE SCHEDULE AND INTERIM EFFLUENT LIMITS

4. Defendant Lisbon is hereby enjoined and ordered to immediately, upon entry of this Amended Consent Order, comply with the requirements of O.R.C. Chapter 6111. and the terms and conditions of the rules and regulations adopted under that Chapter and its currently effective NPDES Permits, and any

renewals or modifications thereof except for the final effluent limitations set forth in said permit. Defendant Lisbon is hereby enjoined and ordered to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

5. Between the effective date of this Amended Consent Order and continuing until September 1, 1996 Defendant Lisbon is enjoined and ordered to comply with the interim effluent limitations set forth in Attachment "A" attached hereto. The interim effluent limitations contained in Attachment "A" do not constitute an NPDES permit or a modification of any existing permit.

V. CONSTRUCTION SCHEDULE

6. Defendant Lisbon is enjoined and ordered to complete all Priority Group I sewer work recommended in the Combined Sewer Overflow Study approved by Ohio EPA on May 18, 1994 in accordance with the following schedule:

	<u>TASK</u>	<u>COMPLIANCE DATE</u>
a.	submit facility plan	date met
b.	initiate project design	date met
c.	submit detailed plans	date met
d.	advertise bids	date met
e.	execute building contracts	date met
f.	initiate construction	date met
g.	complete construction	12/4/94

7. Defendant Lisbon is enjoined and ordered to, no later than September

1, 1996, abandon its wastewater treatment plant and connect with the Columbiana County Regional wastewater treatment plant. In the event the Columbiana County Regional wastewater treatment plant is not constructed because of the decision of the United States Government, Bureau of Prisons not to construct the federal prison facility in Columbiana County, then this paragraph is nullified and of no force or effect.

8. In the event, prior to September 1, 1996, the federal prison project necessitating the construction of the Columbiana County Regional wastewater treatment plant is not pursued by the United States Government, Bureau of Prisons, and no Federal prison is constructed, Defendant Lisbon is enjoined and ordered to attain compliance with the final effluent limitations contained in its NPDES Permit No. 3PC 00025*CD, and any renewals or modifications thereof, in accordance with the following schedule:

<u>TASK</u>	<u>COMPLIANCE DATE</u>
a. initiation of project design	eight months after receiving notice, actual, constructive or otherwise, of failure of prison project
b. submittal of approvable, detailed plans and specifications to Ohio EPA	210 days after paragraph 8a.
c. advertisement of building bids	60 days after paragraph 8b.
d. execution of building contracts	90 days after paragraph 8c.
e. initiation of construction	14 days after paragraph 8d.

- | | | |
|----|---|------------------------------|
| f. | completion of construction of sufficient wet stream treatment facilities to ensure compliance with final effluent limitations | 365 days after paragraph 8e. |
| g. | attain compliance with final effluent limitations | 30 days after paragraph 8f. |

9. Within seven days from each completion date listed in paragraphs 6 through 8, Defendant Lisbon shall submit to Ohio EPA's Northeast District office a written report stating whether or not Lisbon has performed the action(s) set forth therein.

10. This Amended Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing structures or facilities. 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. STIPULATED PENALTIES

11. In the event that Defendant Lisbon fails to meet any of the applicable requirements of this Amended Consent Order set forth in Paragraphs 4, 5, 6(a), 6(b), 6(c), 6(d), 6(e), 6(f), 6(g), 7, 8(a), 8(b), 8(c), 8(d), 8(e), 8(f) and 9, 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 each failure to meet a requirement, up to thirty (30) days -

Five Hundred Dollars (\$500.00) per day for each requirement not met. For each day of each failure to meet a requirement, from thirty-one (31) to sixty days (60) - One Thousand Dollars (\$1000.00) per day for each requirement not met. For each day of each failure to meet a requirement, from sixty-one (61) to ninety (90) days - Two Thousand Five Hundred Dollars (\$2,500.00) per day for each requirement not met. For each day of each failure to meet a requirement, over ninety days (90) days - Three Thousand Five Hundred Dollars (\$3,500.00) per day for each requirement not met.

12. In the event that Defendant Lisbon fails to meet any of the applicable requirements of this Amended Consent Order set forth in subparagraph 8(g), Defendant shall immediately and automatically be liable for payment of a stipulated penalty of \$5,000.00 per day of each violation of said requirement. In the event that failure to comply with the requirements of subparagraph 8(g) continues for more than thirty (30) days, the Defendant shall be liable for an additional stipulated penalty of One Thousand Dollars (\$1,000.00) per day of each violation, i.e., Six Thousand Dollars (\$6,000.00) per day of each violation. In the event that failure to comply with the requirements of subparagraph 8(g) continues more than sixty (60) days, Defendant shall be liable for an additional Four Thousand Dollars (\$4,000.00) per day of each violation. i.e., Ten Thousand Dollars (\$10,000.00) per day of each violation.

13. Any payment required to be made under the provisions of Paragraphs 11 or 12 of this Amended Consent Order shall be made by delivering to Matt

Sanders, Administrative Assistant, Attorney General's office, Environmental Enforcement Section, 30 E. Broad St. 25th floor, Columbus, Ohio 43266-0410, or his successor, 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 this Amended Consent Order, made payable to "Treasurer, State of Ohio".

VII. POTENTIAL FORCE MAJEURE

14. If any event occurs which causes or may cause a delay of Defendant Lisbon's compliance with any requirement of this Amended Consent Order, Defendant shall notify the Ohio EPA, Northeast District Office, in writing within (10) days 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.

15. In any action by the Plaintiff to enforce any of the provisions of this Amended Consent Order, Defendant Lisbon 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, failure of the prison project, 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 Amended 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 Amended 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 Amended Consent Order. Failure by Defendant to comply with the notice requirements of Paragraph 14 shall render this Paragraph 15 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 Amended 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 Amended 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.

VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

16. Performance of the terms of this Amended Consent Order by Defendant Lisbon is not conditioned on the receipt of any Federal or State grant or loan funds. In addition, Lisbon's performance is not excused by the failure to obtain

or the shortfall of any Federal or State grant or loan funds, or by the processing of any applications for the same.

IV. RETENTION OF JURISDICTION

17. 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 Amended Consent Order.

X. COSTS

18. Defendant Lisbon is hereby ordered to pay the costs of this action.

Date: _____

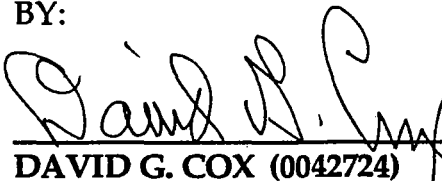
DOUGLAS C. JENKINS

JUDGE, COURT OF COMMON PLEAS

APPROVED:


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

BY:



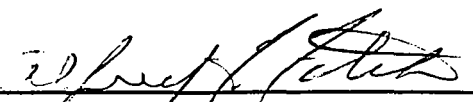
DAVID G. COX (0042724)

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



SCOTT WASHAM (0038546)

Village Solicitor
118 West Lincoln Way
Lisbon, Ohio 44432



Authorized Representative of
Village of Lisbon Board of
Public Affairs

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS for Outfall
3PC00025001

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
Reporting Code	UNITS	PARAMETER	Concentration		Loading*		Meas. Freq.	Sample Type
			Other Units (Specify)		kg/day			
			30 day	7 day	30 day	7 day		
00010	°C	Temperature	-	-	-	-	Daily	Continuous (Max. Ind. Therm.)
00530	mg/l	Suspended Solids	30	45	56.8	85.2	2/Week	Composite
00550	mg/l	Oil & Grease	Not to exceed 10 at any time				1/Month	Grab
00610	mg/l	Ammonia (N)						
		(Summer)	13.5	20.3	25.5	38.4	1/Month	Composite
		(Winter)	15	22.5	28.4	42.6	1/Month	Composite
31616	Count /100ml	Fecal Coliform (Summer Only)	1000	2000	-	-	2/Week	Grab
31648	Count /100ml	<u>E. coli</u> (1) (Summer Only)	-	-	-	-	2/Week	Grab
50050	MGD	Flow	-	-	-	-	Daily	Continuous
80082	mg/l	CBOD ₅	25	40	47.3	75.7	2/Week	Composite

1. The pH (Reporting Code 00400) shall not be less than 6.5 S.U. nor greater than 9.0 S.U. and shall be monitored daily by grab sample.
2. 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 daily by grab sample. (Summer Only)
3. The Dissolved Oxygen (Reporting Code 00300) shall be maintained at a level of not less than 6.0 mg/l and shall be monitored daily by grab sample.

* The average effluent loading limitations are established using the following flow value: 0.50 MGD

- (1) Until an approved analytical method for the enumeration of E. coli is promulgated in 40 CFR part 136, the permittee shall use Method 1103.1 contained in U.S. EPA report number 600/4-85/076. Copies of this report may be obtained from: National Technical Information Service; 5285 Port Royal Road; Springfield, VA 22161; phone 703-487-4650; Order No. PB-86-158052.

If an approved analytical method is promulgated during the period when this permit is effective, the permittee shall adopt the promulgated method within six months.

ATTACHMENT A (Cont.)

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS for Outfall
3PC00025001 (Cont.)

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
Reporting Code	UNITS	PARAMETER	Concentration		Loading*		Meas. Freq.	Sample Type
			Other Units (Specify)	30 day	Daily Max.	30 day		
00630	mg/l	Nitrate (N) + Nitrite (N)	-	-	-	-	1/Month	Composite
01027	ug/l	Cadmium, Total	-	-	-	-	1/Month	Composite
01034	ug/l	Chromium, Total	-	-	-	-	1/Month	Composite
01042	ug/l	Copper, Total	-	-	-	-	1/Month	Composite
01051	ug/l	Lead, Total	-	-	-	-	1/Month	Composite
01067	ug/l	Nickel, Total	-	-	-	-	1/Month	Composite
01092	ug/l	Zinc, Total	-	-	-	-	1/Month	Composite
01220	ug/l	Chromium (Hex) Dissolved	-	-	-	-	1/Month	Grab
71900	ug/l	Mercury, Total	-	-	-	-	1/Month	Composite