

IN THE COURT OF COMMON PLEAS
CHAMPAIGN COUNTY, OHIO

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

Plaintiff,

vs.

VILLAGE OF NORTH LEWISBURG, OHIO,

Defendant.

CASE NO. 91-CIV-82

JUDGE _____

CONSENT ORDER

FILED
JUN 18 3 30 PM '91
CLERK OF COURTS

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 North Lewisburg (hereinafter "Defendant" or "North Lewisburg") 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.

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COMMON PLEAS COURT
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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 North Lewisburg 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.

IV. COMPLIANCE SCHEDULE

4. Defendant North Lewisburg 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. Between the effective date of this Consent Order and January 1, 1992 Defendant is enjoined to comply with the interim effluent limitations set forth in Appendix "A" attached hereto. The interim effluent limits contained in Appendix "A" do not constitute an NPDES permit or a modification of any existing permit. After January 1, 1992, Defendant is enjoined to meet the final effluent standards set forth in its NPDES permit No. 1PB00039*BD and any renewals or modifications thereof. Defendant North Lewisburg is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

5. Defendant North Lewisburg is enjoined and ordered to eliminate discharges from overflows and bypasses from its sanitary sewer system and to complete construction of the improvements to its wastewater treatment plant described in the Municipal Compliance Plan submitted to Ohio EPA on June 1, 1989

and to attain compliance with the final effluent limitations of NPDES permit No. 1PB00039*BD 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
(b) Submittal of Approvable Plans and Specifications to Ohio EPA	June 1, 1991
(c) Advertisement of Building Bids	August 1, 1991
(d) Execution of Building Contracts	November 1, 1991
(e) Initiation of Construction	March 1, 1992
(f) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits and the elimination of bypasses and overflows.	March 1, 1993
(g) Attain and maintain compliance with limitations, and eliminate final effluent overflows and bypasses.	June 1, 1993

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

VI. POTENTIAL FORCE MAJEURE

6. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Defendant shall notify the Ohio EPA in writing within ten (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.

7. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendant may raise 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 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 enforcement action, 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 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 Consent Order. Failure by Defendant to comply with the notice requirements of Paragraph 6 shall render this Paragraph 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 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 or proof regarding each incremental step or other requirement for which an extension is sought. 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.

VII. CIVIL PENALTY

8. Defendant North Lewisburg shall pay to the State of Ohio a civil penalty of Two Thousand Five Hundred Dollars (\$2,500.00). 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.

VIII. STIPULATED PENALTIES

9. In the event that Defendant North Lewisburg fails to meet any of the requirements of this Consent Order set forth in Paragraph 4 and/or Subparagraphs 5 (a), 5 (b), 5 (c) 5(d), 5 (e) and 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 each failure to meet a requirement, up to thirty (30) days - Two Hundred Fifty Dollars (\$250.00) 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) - 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 ninety (90) 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 ninety (90) to one hundred twenty (120) days - Two Thousand Five Hundred Dollars (\$2,500.00) per day for each requirement not met. For each eay of each failure to meet a requirement, over one hundred twenty (120) days - Three Thousand Five Hundred Dollars (\$3,500.00) per day for each requirement not met.

10. In the event that Defendant North Lewisburg 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 Two Thousand Five Hundred Dollars (\$2,500.00) per day of each violation of said requirement. The Defendant shall be liable for an additional stipulated penalty of One Thousand Dollars (\$1,000.00) per day of each violation if the failure to comply continues for more than thirty (30) days, i.e. Three Thousand Five Hundred (\$3,500.00) per day of each violation. In the event that failure to comply with the requirements of Subparagraph 5(g) continues more than sixty (60) days, Defendant shall be liable for an additional Two Thousand Five Hundred Dollars (\$2,500.00) 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 5(g) continues more than ninety (90) 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.

11. Any payment required to be made under the provisions of Paragraphs Eight (8) or Nine (9) of this 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".

IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

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

X. 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.

XI. COSTS

14. Defendant North Lewisburg is hereby ordered to pay the costs of this action.

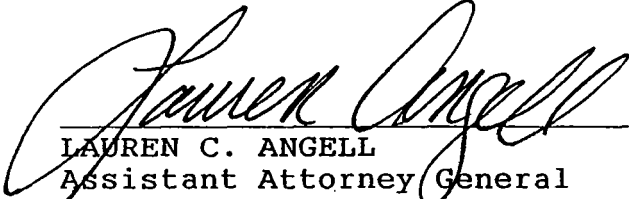
s/ Roger B. Wilson
JUDGE, COURT OF COMMON PLEAS
CHAMPAIGN COUNTY, OHIO

APPROVED:

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

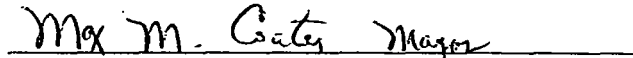
VILLAGE OF NORTH LEWISBURG

BY:

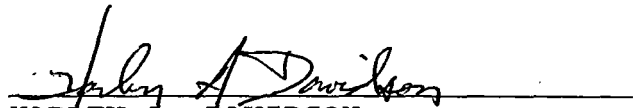


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BY:



Max M. Cates Mayor
Authorized Representative
of Village of North Lewisburg



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Attorney for Village of
North Lewisburg, Ohio

6210E

APPENDIX "A"

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS for Outfall 1PB00039001

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
<u>Reporting Code</u>	<u>UNITS</u>	<u>PARAMETER</u>	<u>Concentration</u>		<u>Loading*</u>		<u>Meas. Freq.</u>	<u>Sample Type</u>
			<u>Other Units (Specify)</u>	<u>30 day</u>	<u>7 day</u>	<u>30 day</u>		
00010	°C	Temperature	-	-	-	-	Daily	Max. Ind. Therm.
00310	mg/l	BOD ₅	55.0	82.5	20.9	31.3	1/Week	Composite
00530	mg/l	Suspended Solids	78.0	117.0	29.6	44.4	1/Week	Composite
50050	MGD	Flow	-	-	-	-	Daily	Continuous

2. 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.
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: 0.10