

IN THE COURT OF COMMON PLEAS
WASHINGTON COUNTY, OHIO

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

CASE NO. 89-OT-254 WASHINGTON CO. OHIO

JUDGE SUSAN E. BOYER

Plaintiff,

JOINT MOTION TO MODIFY
CONSENT ORDER

v.

THE VILLAGE OF LOWELL, OHIO,


Defendant.

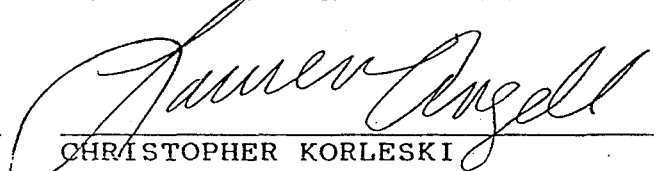
Now come the parties, Plaintiff State of Ohio and Defendant the Village of Lowell, by and through their respective attorneys, and jointly move to modify the Consent Order filed in the above-referenced matter on or about March 28, 1991.

The reasons for this Motion are set forth more fully in the attached Memorandum in Support of said Motion which is hereby incorporated as if fully rewritten herein.

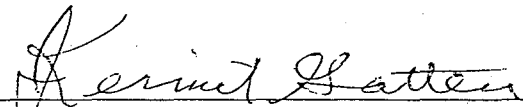
Respectfully submitted,

LEE FISHER-
ATTORNEY GENERAL OF OHIO


ROLAND W. RIGGS, III
Lowell Village Solicitor
311 Fourth Street
Marietta, Ohio 45750


CHRISTOPHER KORLESKI
LAUREN C. ANGELL
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Counsel for Defendant
Village of Lowell, Ohio


KERMIT GATTEN
Authorized Representative of
Village of Lowell, Ohio

IN THE COURT OF COMMON PLEAS
WASHINGTON COUNTY, OHIO

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

Plaintiff,

v.

THE VILLAGE OF LOWELL, OHIO,

Defendant.

CASE NO. 89-08-254
WASHINGTON CO. OHIO
JUDGE SUSAN E. BOYER
JOURNAL ENTRY

Leave is hereby granted to the parties, Defendant Village of Lowell, Ohio and Plaintiff State of Ohio to modify the Consent Order filed in the above-referenced matter on or about March 28, 1991, for the reasons and in the manner described by the parties in their October 21, 1991 Memorandum in Support of Joint Motion to Modify Consent Order.

SUSAN E. BOYER, JUDGE
COURT OF COMMON PLEAS
WASHINGTON COUNTY, OHIO

IN THE COURT OF COMMON PLEAS
WASHINGTON COUNTY, OHIO

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WASHINGTON CO. OHIO

STATE OF OHIO, ex rel. : CASE NO. 89-OT-254
LEE FISHER :
ATTORNEY GENERAL OF OHIO, : JUDGE SUSAN E. BOYER
 :
Plaintiff, :
 :
v. :
 :
THE VILLAGE OF LOWELL, OHIO, :
 :
Defendant. :

MEMORANDUM IN SUPPORT OF JOINT
MOTION TO MODIFY CONSENT ORDER

On or about March 28, 1991, this Court entered a Consent Order in the above-captioned case. The instant matter arises upon a Joint Motion of the parties requesting that the Court modify the Order filed March 28, 1991.

MEMORANDUM

Subsequent to the filing of the March 28, 1991 Consent Order, new information became available to the parties with respect to the interim effluent limits contained in Appendix "A" of the Order. Based on a thorough review of that information, both parties are agreed that the interim effluent limits for suspended solids, fecal coliform, CBOD₅ and pH and the monitoring requirements for dissolved oxygen originally set forth in Appendix "A" to the Order should be modified as set forth in Appendix "A" (Modified), which is attached hereto and incorporated herein as if fully rewritten. Further, both parties have agreed that BOD₅ should be removed from Appendix

"A". This modification represents the interim effluent limits and the monitoring requirements that the parties now agree Defendant must comply with until Defendant attains compliance with the final effluent limitations contained in its NPDES permit on December 1, 1992 as set forth in Subparagraph 5(i) of the March 28, 1991 Order.

Subsequent to the filing of the March 28, 1991 Consent Order, new information became available to the parties with respect to the date by which Defendant Lowell could place their wastewater treatment plant, which is the subject of the March 28, 1991 Consent Order, under the full-time responsible charge of a licensed, certified Class II operator. Based on a thorough review of that information, both parties are agreed that the date by which Defendant Lowell must place its wastewater treatment plant under the full-time responsible charge of a licensed, certified Class II operator set forth in Section V, Subparagraph 5(d) of the Consent Order should be modified as set forth in in Appendix "B", which is attached hereto and incorporated herein as if fully rewritten. This modification represents the date by which the parties now agree Defendant must place their wastewater treatment plant under the full-time responsible charge of a licensed, certified Class II operator.

CONCLUSION

For the reasons stated above, the parties respectfully request that the March 28, 1991 Consent Order be modified in accordance with the language in Appendix "A" (Modified) and in Appendix "B".

Respectfully submitted,

LEE FISHER
ATTORNEY GENERAL OF OHIO

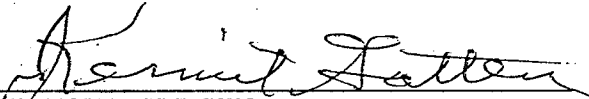


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KERMIT GATTEN
Authorized Representative of
Village of Lowell, Ohio

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INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

<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	Max. Ind. Therm.
00530	mg/l	Suspended Solids	30	45	-	-	1/Week	Composite
00610	mg/l	Ammonia (N)	-	-	-	-	1/Month	Composite
31616	Count /100ml	Fecal Coliform (Summer Only)	1000	2000	-	-	1/Week	Grab
50050	MGD	Flow	-	-	-	-	Daily	Continuous
80082	mg/l	CBOD ₅	25	40	-	-	1/Week	Composite

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 monitored daily by grab sample.

* The average effluent loading limitations are established using the following flow value: 0.108060 MGD

APPENDIX "B"

sewer system as needed to attain compliance with the final effluent limitations of NPDES permit No. OPB00022*CD and any modifications or renewals thereof in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Submit a Sewer System Evaluation Survey to determine sources of clean water entering the sanitary sewer system	Completed
(b) Submit an approvable facilities plan	July 1, 1991
(c) Submit an approvable PTI application and detailed plans and specifications to Ohio EPA	October 1, 1991
(d) Wastewater treatment plant under the full time responsible charge of a licensed, certified Class II operator	September 1, 1992
(e) Advertise building bids	February 1, 1992
(f) Execution of building contracts	April 1, 1992
(g) Initiation of construction	May 1, 1992
(h) Completion of construction	November 1, 1992
(i) Attain compliance with final effluent limitations, and eliminate overflows and bypasses	December 1, 1992

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

IN THE COURT OF COMMON PLEAS
WASHINGTON COUNTY, OHIO

STATE OF OHIO, ex rel .	:	CASE NO. 89-OT-254
LEE FISHER	:	
ATTORNEY GENERAL OF OHIO	:	JUDGE SUSAN E. BOYER
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
VILLAGE OF LOWELL	:	<u>CONSENT ORDER</u>
	:	
Defendant.	:	

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 Lowell (hereinafter "Defendant") 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 Village of Lowell 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 Village of Lowell 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 September 30, 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 September 30, 1992, Defendant Village of Lowell is enjoined to meet the final effluent standards set forth in its NPDES permit No. OPB00022*CD and any renewals or modifications thereof. Village of Lowell is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. SCHEDULE FOR COMPLETING IMPROVEMENTS TO WASTEWATER FACILITY

5. Defendant Village of Lowell is enjoined and ordered to eliminate discharges from overflows and bypasses from its sanitary sewer system and to complete construction of any and all improvements to its wastewater treatment plant and sanitary

sewer system as needed to attain compliance with the final effluent limitations of NPDES permit No. OPB00022*CD and any modifications or renewals thereof in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Submit a Sewer System Evaluation Survey to determine sources of clean water entering the sanitary sewer system	Completed
(b) Submit an approvable facilities plan	July 1, 1991
(c) Submit an approvable PTI application and detailed plans and specifications to Ohio EPA	October 1, 1991
(d) Wastewater treatment plant under the full time responsible charge of a licensed, certified Class II operator	December 1, 1991
(e) Advertise building bids	February 1, 1992
(f) Execution of building contracts	April 1, 1992
(g) Initiation of construction	May 1, 1992
(h) Completion of construction	November 1, 1992
(i) Attain compliance with final effluent limitations, and eliminate overflows and bypasses	December 1, 1992

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

7. 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

8. Defendant Village of Lowell shall pay to the State of Ohio a civil penalty of five thousand dollars (\$5,000.00). 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.

VII. STIPULATED PENALTIES

9. In the event that Defendant Village of Lowell 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), and 5 (h) 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 (\$1,000.00) 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.

10. In the event that Defendant Village of Lowell fails to meet any of the requirements of this Consent Order as set forth in Subparagraph 5(i), the 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. 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. Six Thousand Dollars (\$6,000.00) per day of each violation. In the event that failure to comply with the requirements of Subparagraph 5(i) 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.

11. Any payment required to be made under the provisions of Paragraphs 9 or 10 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 Village of Lowell is not conditioned on the receipt of any Federal or State grant or loan funds. In addition, the Village of Lowell's performance is not excused by the failure to obtain or a shortfall of any Federal or State grant or loan funds, or by the processing of any applications for the same.

VIII. 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.

X. COSTS

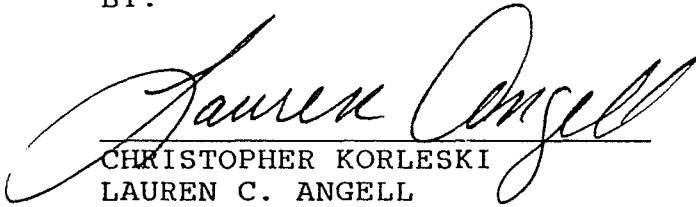
14. Defendant Village of Lowell is hereby ordered to pay the costs of this action.

JUDGE, COURT OF COMMON PLEAS

APPROVED:

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

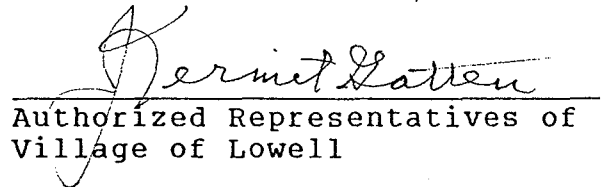
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Authorized Representatives of
Village of Lowell

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ATTACHMENT A

PART I, A. - INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning on the effective date of this permit and lasting until date that the improved wastewater treatment works are to attain operational level as specified in Item e, Part IC in the Schedule of Compliance, the permittee is authorized to discharge in accordance with the following limitations and monitoring requirements from outfall: OPB00022001. See PART II, OTHER REQUIREMENTS, for locations of effluent sampling.

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
Reporting Code	UNITS	PARAMETER	Concentration Other Units (Specify)		Loading* kg/day		Meas. Freq.	Sample Type
			30 day	7 day	30 day	7 day		
00010	°C	Temperature						
00310	mg/l	BOD ₅						
00530	mg/l	Suspended Solids						
00610	mg/l	Ammonia (N)						
31616	Count /100ml	Fecal Coliform (Summer Only)						
50050	MGD	Flow						
80082	mg/l	CBOD ₅						

2. pH (Reporting Code 00400).**
3. Chlorine Residual (Reporting Code 50060).**
4. Dissolved Oxygen (Reporting Code 00300).**

** Maintain existing conditions.