

IN THE COURT OF COMMON PLEAS
 AUGLAIZE COUNTY, OHIO

STATE OF OHIO, ex rel	:	CASE NO. 90-69
ANTHONY J. CELEBREZZE, JR.	:	
ATTORNEY GENERAL OF OHIO	:	JUDGE FREDERICK D. PEPPE
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
BOARD OF COMMISSIONERS OF	:	
_____ COUNTY	:	<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 Anthony J. Celebrezze, Jr. (hereinafter "Plaintiff") and Defendant Board of Commissioners of Auglaize County (hereinafter "Auglaize County" or "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.

AUGLAIZE COUNTY
 COMMON PLEAS COURT
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 CLERK

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 Auglaize County 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 failed to comply with Orders contained in the Director of the Ohio EPA's Final Findings and Orders (hereinafter "Director's Findings and Orders") issued to Defendant Auglaize County on October 19, 1984, such failure to comply being 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. PERMANENT INJUNCTION

4. After August 31, 1993, Defendant Auglaize County is enjoined and ordered to meet the terms and conditions of its NPDES Permit No. 2PG00047*AD, including the final effluent standards set forth therein, and any renewals or modifications thereof and to 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.

V. COMPLIANCE AND CONSTRUCTION SCHEDULE

5. Defendant Auglaize County is enjoined and ordered to complete construction of wastewater facilities as described in the General Plan for the South Shore Project, submitted to Ohio EPA and approved on July 27, 1989, and as described in a General Plan for the North Shore Project, as it is approved by Ohio EPA, to attain compliance with the final effluent limitations of NPDES permit No. 2PG00047*AD and any modifications or renewals thereof in accordance with the following schedule:

NORTH SHORE PROJECT

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Initiation of Project Design Work	<u>May 31, 1990</u>
(b) Submittal of Approvable Plans and Specifications to Ohio EPA	<u>January 1, 1991</u>
(c) Advertisement of Building Bids	<u>December 31, 1991</u>

- (d) Execution of Building Contracts March 1, 1992
- (e) Initiation of Construction May 1, 1992
- (f) Completion of construction of sufficient wastewater facilities to ensure compliance with final effluent limits and the elimination of bypasses and overflows. June 30, 1993
- (g) Attain compliance with final effluent limitations, and eliminate overflows and bypasses. August 31, 1993

SOUTH SHORE PROJECT

<u>TASK</u>	<u>COMPLETION DATE</u>
(h) Initiation of Project Design Work	<u>Completed</u>
(i) Submittal of Approvable Plans and Specifications to Ohio EPA	<u>Completed</u>
(j) Advertisement of Building Bids	<u>Completed</u>
(k) Execution of Building Contracts	<u>Completed</u>
(l) Initiation of Construction	<u>May 1, 1990</u>
(m) Completion of construction of sufficient wastewater facilities to ensure compliance with final effluent limits and the elimination of bypasses and overflows.	<u>October 31, 1991</u>
(n) Attain compliance with final effluent limitations, and eliminate overflows and bypasses.	<u>December 31, 1991</u>

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

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 Auglaize County shall pay to the State of Ohio a civil penalty of Twelve Thousand Five Hundred Dollars (\$12,500.00). 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.

VII. STIPULATED PENALTIES

7. In the event that Defendant Auglaize County fails to meet any of the requirements of this Consent Order set forth in Paragraphs 5(a), 5(b), 5(c), 5(d), 5(e), 5(f), 5(h), 5(i), 5(j), 5(k), 5(l) and 5(m), 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 thirty (30) days - Two Hundred Fifty

Dollars (\$250.00) per day for each requirement not met. For each day of 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 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 failure to meet a requirement, from ninety one (91) days to one hundred twenty (120) days - Two Thousand Dollars (\$2,000.00) per day for each requirement not met. For each day of 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.

8. In the event that Defendant Auglaize County fails to meet any of the requirements of this Consent Order set forth in Subparagraph 5(g) or 5(n), the Defendant shall immediately and automatically be liable for payment of a stipulated penalty of \$3,000.00 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. Four Thousand Dollars (\$4,000.00) per day of each violation. In the event that failure to comply with the requirements of Subparagraph 5(g) or 5(n) continues more than sixty (60) days, Defendant shall be liable for an additional

Two Thousand Dollars (\$2,000.00) 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 5(g) or 5(n) 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.

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 (45) 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. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Auglaize County 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 Auglaize County to prevent or minimize the delay and the timetable by which measures will be implemented. Auglaize County will adopt all reasonable measure to avoid or minimize any such delay.

11. Upon receipt of the notice referenced in paragraph 10, Plaintiff may agree to waive or defer one or more milestone deadlines herein or the enforcement thereof. Plaintiff within sixty (60) days thereafter will inform Auglaize County of its decision in writing. Plaintiff is not bound by oral representations of Ohio EPA personnel concerning the validity of Auglaize County's reason for delay. A decision by Plaintiff to waive or defer any milestone deadline of this Consent Order shall not be a bar to any enforcement action for Auglaize County's failure to meet the date of the milestone as deferred. Such deferred milestone date shall be considered enforceable in place of the date specified in the milestone and shall be subject to the same stipulated penalty provisions as the original milestone date. A decision by Plaintiff to defer enforcement of any milestone deadline or stipulated penalties set forth in this Consent Order shall not constitute a waiver of enforcement action with regard to the terms of this consent Order, unless the Plaintiff expressly so agrees.

12. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Auglaize County 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, acts of God, unusually severe weather conditions, 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 Auglaize County 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 Auglaize County shall rest with Auglaize County. 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 Auglaize County, or serve as a basis for an extension of time under this Consent Order. Failure by Auglaize County to comply with the notice requirements of Section VIII shall render this Paragraph void and of no force and effect as to the particular incident involved and shall constitute a waiver of Auglaize County'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 Auglaize County qualifies for an extension of a subsequent compliance date or dates. Auglaize County 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 Auglaize County of any rights or defenses it may have under applicable law.

13. All written notifications required pursuant to paragraphs 10, 11 and 12 herein shall be submitted to Ohio EPA's Northwest District Office and to Ohio EPA's Central Office, 1800 WaterMark Drive, Columbus, Ohio 43266-0149, to the attention of Heidi Sorin, DWPC, or her successor, and Edward S. Dimitry, Assistant Attorney General, or his successor, at the address indicated on page 11 herein.

IX. COMPLIANCE NOT DEPENDENT ON GRANTS

14. Performance of the terms of this Consent Order by Auglaize County is not conditioned on the receipt of any financing, including, but not limited to grants, loans, or any form of funding.

X. RETENTION OF JURISDICTION

15. 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. MISCELLANEOUS

16. For purposes of this Consent Order alone, the length of time that may be required to engage in litigation that may be needed to obtain easements and/or determine user assessments cannot now be foreseen by the parties.

XII. TERMINATION OF STIPULATED PENALTIES

17. The provisions of this Consent Order set forth in Section VII, Paragraphs 7 and 8 requiring the payment of stipulated penalties shall terminate if Defendant Auglaize County has achieved and maintained compliance with the final effluent limitations contained in its NPDES permit for a period of one (1) year and has paid all penalties required pursuant to this Consent Order. Termination of these stipulated penalties shall only be effected by Order of the Court, upon application by any party and a demonstration that the conditions set forth in this paragraph have been met. Individual applications for termination of stipulated penalties, pursuant to the conditions set forth in this paragraph, may be made for the South Shore Project and North Shore Project. However, Section VII remains in full force and effect for either or both of the two projects which have not had stipulated penalties terminated pursuant to Order of Court, pursuant to this paragraph.

XIII. COSTS

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

/s/ FREDERICK D. PEPPE

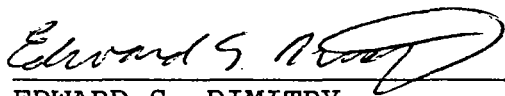
JUDGE, COURT OF COMMON PLEAS

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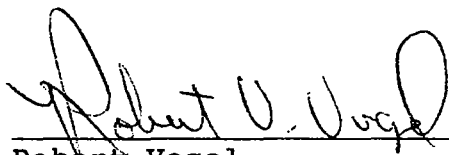
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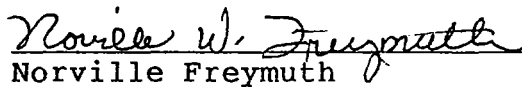
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