

IN THE COURT OF COMMON PLEAS
WARREN COUNTY, OHIO

1:50 SEP 10 PM 1:49

STATE OF OHIO, ex rel
ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO

Plaintiff,

vs.

BOARD OF COMMISSIONERS,
WARREN COUNTY, OHIO

Defendant.

CASE NO. 47586

JUDGE FEDDERS

CONSENT ORDER

OHIO
ENFORCEMENT
09 14 12:53 PM '99

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, Warren County, Ohio, (hereinafter "Board") 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 Board 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 and up to the time of filing this Consent Order. 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 this Order.

IV. COMPLIANCE SCHEDULE

4. Defendant Board 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 November 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 November 1, 1992, Defendant Board is enjoined to meet the final effluent standards set forth in its NPDES permit No. 1PK00018*BD and any renewals or modifications thereof. Defendant Board is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

5. Defendant Board 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 General Plan submitted to Ohio EPA on June 26, 1990, and to attain

compliance with the final effluent limitations of NPDES permit No. 1PK00018*BD and any modifications or renewals thereof in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Submittal of Approvable General Plan to Ohio EPA	June 26, 1990
(b) Initiation of Project Design Work	January 9, 1990
(c) Submittal of Approvable Plans and Specifications to Ohio EPA	August 15, 1990
(d) Advertisement of Building Bids	December 1, 1990
(e) Execution of Building Contracts	March 1, 1991
(f) Initiation of Construction	April 1, 1991
(g) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits and the elimination of bypasses and overflows.	October 1, 1992
(h) Attain compliance with final effluent limitations, and eliminate overflows and bypasses.	November 1, 1992

Within seven days from each completion date listed above, Defendant Board shall submit a written report stating whether or not Board 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. CIVIL PENALTY

6. Defendant Board shall pay to the State of Ohio a civil penalty of Forty-Two Thousand Five Hundred Dollars (\$42,500). 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 Board 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) and 5 (g) 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 - Five Hundred Dollars (\$500.00) per day for each requirement not met. For each day of failure to meet a requirement, from thirty-one (31) to sixty days (60) - One Thousand Dollars (\$1,000.00) 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 Five Hundred Dollars (\$1,500.00) per day for each requirement not met. For each day of failure to meet a requirement, from ninety (90) to one hundred and twenty (120) days - Two Thousand Five Hundred Dollars (\$2,500.00) per day for each requirement not met.

For each day of failure to meet a requirement, over one hundred and twenty (120) days - Three Thousand Five Hundred Dollars (\$3,500.00) per day for each requirement not met.

8. In the event that Defendant Board fails to meet any of the requirements of this Consent Order set forth in Subparagraph 5(h), the Defendant shall immediately and automatically be liable for payment of a stipulated penalty of Three Thousand Dollars \$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(h) continues more than sixty (60) days, Defendant shall be liable for an additional One Thousand Dollars (\$1,000.00) per day of each violation, i.e., Five Thousand Dollars (\$5,000.00) per day of each violation. In the event that failure to comply with the requirements of Subparagraph 5(h) continues more than ninety (90) days, Defendant Board shall be liable for an additional One Thousand Dollars (\$1,000) per day of violation,

i.e., Six Thousand Dollars (\$6,000.00) per day of violation. In the event that failure to comply with the requirements of Subparagraph 5(h) continues more than One Hundred Twenty (120) days, Defendant shall be liable for an additional One Thousand Dollars (\$1,000.00) per day of violation, i.e. Seven Thousand Dollars (\$7,000.00) per day of violation. In the event that failure to comply with the requirements of Subparagraph 5 (h) continues more than One Hundred Fifty (150) days, Defendant Board shall be liable for an additional Two Thousand Dollars (\$2,000.00) per day of violation, i.e., Nine Thousand Dollars (\$9,000.00) 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 (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. In any action to enforce any of the provisions of this Consent Order Defendant Board 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

12. 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. TERMINATION OF STIPULATED PENALTIES

13. The provisions of this Consent Order requiring the payment of stipulated penalties, Section VII paragraphs 7 and 8, shall terminate after the Board has achieved compliance with paragraphs 5 (g) and 5 (h) and maintained compliance with the final effluent limitations in its NPDES Permit for the period of one (1) year and has paid all penalties required pursuant to the Consent Order. Termination of these provisions of the Consent Order shall be by Order of the Court, upon application by any party.

XI. NOTICE

14. Whenever, under the terms and provisions of this Consent Order, notice is required to be given by Defendant Board, such notice shall be given to the following individuals, as representatives of the Ohio EPA:

Martyn Burt
Ohio EPA
SWDO
40 South Main St.
Dayton, Ohio 45402

Heidi Sorin
Ohio EPA
DWPC
1800 WaterMark Drive
Columbus, Ohio 43266

XII. COSTS

15. Defendant Board is hereby ordered to pay the costs of this action.

XIII. MISCELLANEOUS

16. All appendices or other attachments to this Consent Order are hereby incorporated fully into this Consent Order and made an enforceable part hereof.

17. Defendant Board's duties and obligations under the Consent Order become effective upon the Consent Order's approval and entry with this Court and docketed in this Court's journal. Upon this Court's approval and journalization of the Consent Order, Defendant shall be bound by all requirements

contained herein, including but not limited to meeting all past milestone dates provided in Section V.


/s/ P. Donald Fedders

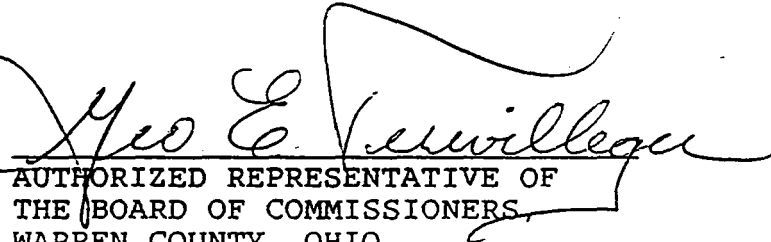
JUDGE FEDDERS
WARREN COUNTY
COURT OF COMMON PLEAS

APPROVED:


STATE OF OHIO, ex rel.
ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO

BY:


MARGARET A. MALONE
TERRENCE S. FINN
Assistant Attorneys General
Environmental Enforcement
30 East Broad Street
Columbus, Ohio 43266-0410
(614) 466-2766


AUTHORIZED REPRESENTATIVE OF
THE BOARD OF COMMISSIONERS,
WARREN COUNTY, OHIO

Counsel for Board of
Commissioners, Warren County,
Ohio

By: 
CHARLES R. DYAS, Jr.
CLARA S. MILLER
DINSMORE & SHOHL
2100 Fountain Square Plaza
511 Walnut Street
Cincinnati, Ohio 45202
(513) 977-8200

0456E
mp

APPENDIX A

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS for Outfall 1PK00018001

<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	20	30	-	-	3/Week	Composite
00550	mg/l Oil & Grease	10	20	-	-	1/Month	Grab
00610	mg/l Ammonia (N)						
	(Summer)	18	26	-	-	3/Week	Composite
	(Winter)	7.5	10.5	-	-	3/Week	Composite
31616	Count Fecal Coliform /100ml (Summer Only)	1000	2000	-	-	3/Week	Grab
50050	MGD Flow	-	-	-	-	Daily	Continuous
80082	mg/l CBOD ₅	20	30	-	-	3/Week	Composite

- 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.
- 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)
- The Dissolved Oxygen (Reporting Code 00300) shall be maintained at a minimum of 5.0 mg/l and shall be monitored daily by grab sample.