

IN THE
COURT OF COMMON PLEAS
DEFIANCE COUNTY, OHIO

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

CASE NO. 29478

JUDGE

Plaintiff,

SEP 01 1989

vs.

THE BOARD OF COUNTY
COMMISSIONERS OF DEFIANCE
COUNTY, OHIO,

CONSENT ORDER

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, The Board of County Commissioners of Defiance County, Ohio (hereinafter "Defiance County") 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 Defiance 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 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. The signing of this Consent Order by Defendant is neither an admission or denial of the allegations contained in Plaintiff's 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 Defiance County 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 permits, and any renewals or modifications thereof, except for the final effluent limitations set forth in said permits. Between the effective date of this Consent Order and March 15, 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 March 15, 1992, Defendant Defiance County is enjoined to meet the final effluent standards set forth in its NPDES permit No. 2PH00013*CD and any renewals or modifications thereof. Between the effective date of this Consent Order and March 15, 1992, Defendant is enjoined to comply with the interim effluent limitations set forth in Appendix "B" attached hereto. The interim effluent limits contained in Appendix "B" do not constitute an NPDES permit or a modification of any existing permit. After March 15, 1992, Defendant is enjoined to meet the final effluent standards set forth in its

NPDES permit No. 2PG00050*CD and any renewals or modifications thereof. Defendant is hereby enjoined to properly operate and maintain its wastewater treatment plants and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

5. Defendant Defiance County is enjoined and ordered to complete construction of the improvements to its wastewater treatment plants described in the Municipal Compliance Plan submitted to Ohio EPA on June 8, 1988 as ultimately approved and to attain compliance with the final effluent limitations of NPDES permit No. 2PH00010*CD and any modifications or renewals thereof in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
<u>CHRISTI MEADOWS</u>	
(a) Initiation of Project Design Work	<u>August 1, 1989</u>
(b) Submittal of Approvable Plans and Specifications to Ohio EPA	<u>August 1, 1990</u>
(c) Advertisement of Building Bids	<u>November 1, 1990</u>
(d) Execution of Building Contracts	<u>December 15, 1990</u>
(e) Initiation of Construction	<u>January 15, 1991</u>
(f) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits and the elimination of bypasses and overflows.	<u>January 15, 1992</u>
(g) Attain compliance with final effluent limitations, and eliminate overflows and bypasses.	<u>March 15, 1992</u>

6. Defendant Defiance County is enjoined and ordered to complete construction of the improvements to its wastewater treatment plants described in the Municipal Compliance Plan submitted to Ohio EPA on March 1, 1988 as ultimately approved and to attain compliance with the final effluent limitations of NPDES permit No. 2PG00050*CD and any modifications or renewals thereof in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
<u>BELDENS</u>	
(a) Initiation of Project Design Work	<u>August 1, 1989</u>
(b) Submittal of Approvable Plans and Specifications to Ohio EPA	<u>August 1, 1990</u>
(c) Advertisement of Building Bids	<u>November 1, 1990</u>
(d) Execution of Building Contracts	<u>December 15, 1990</u>
(e) Initiation of Construction	<u>January 15, 1991</u>
(f) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits and the elimination of bypasses and overflows.	<u>January 15, 1992</u>
(g) Attain compliance with final effluent limitations, and eliminate overflows and bypasses.	<u>March 15, 1992</u>

7. Within seven (7) days from the completion date of each milestone listed above, Defendant shall submit a written report stating whether it has performed the aciton set forth therein to Ohio EPA's Northwest District Office.

8. 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

9. Defendant Defiance County shall pay to the State of Ohio a civil penalty of forty-five hundred dollars (\$4,500.00). 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 45 days of the filing of this Consent Order.

VII. STIPULATED PENALTIES

10. In the event that Defendant Defiance County fails to meet any of the requirements of this Consent Order set forth in Paragraph 4 and Subparagraphs 5(a), 5(b), 5(c), 5(d), 5(e), 5(f), 6(a), 6(b), 6(c), 6(d), 6(e), and 6(f) Defendant shall 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 days - \$500.00 per day. For each day of failure to meet a requirement, from thirty-one to sixty days -\$1,000.00 per day. For each day of failure to meet a

requirement, from sixty-one to ninety days- \$2,500.00. For each day of failure to meet a requirement, after ninety days - \$3,500.00 per day.

11. In the event that Defendant Defiance County fails to meet any of the requirements of this Consent Order set forth in Subparagraphs 5(g) or 6(g), Defendant shall be liable for payment of a stipulated penalty of \$5,000.00 per day of violation of said requirement. The Defendant shall be liable for an additional stipulated penalty of one thousand dollars (\$1,000.00) per day of violation if the failure to comply continues for more than thirty (30) days, i.e. six thousand dollars (\$6,000.00) per day of violation. In the event that failure to comply with the requirements of Subparagraphs 5(g) or 6(g) continues more than sixty (60) days, Defendant shall be liable for an additional four thousand dollars (\$4,000.00) per day of violation, i.e., ten thousand dollars (\$10,000.00) per day of violation.

12. Any payment required to be made under the provisions of Paragraphs 10 or 11 of this Order shall be made by delivering to Plaintiff's counsel a certified check or checks for the appropriate amounts, within forty-five 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

13. In any action to enforce any of the provisions of this Consent Order Defendant Defiance County 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

14. 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

15. This Consent Order shall terminate as to Section VII Paragraphs 10, 11 and 12 after Defiance County has completed construction per Paragraphs 5 and 6, achieved and maintained compliance with the final effluent limitations contained in its NPDES permit, and any renewal or modification thereof, for period of one (1) year and has paid all penalties required pursuant to this Consent Order. Termination of these provisions of the Consent Order shall be by Order of the Court, upon application by any party.

X. COSTS

16. Defendant Defiance County is hereby ordered to pay the costs of this action.

/s/ Charles A. Bakle Sr.
JUDGE, COURT OF COMMON PLEAS
DEFIANCE COUNTY

APPROVED:

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

BY:

Karen S. Cleveland

KAREN S. CLEVELAND
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Peter Seibel

PETER SEIBEL
Defiance County Prosecutor
509 Second Street
Defiance, Ohio 43512

Robert E. Switzer

ROBERT E. SWITZER, President
Authorized Representative
Defiance County Commissioner

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EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS for Effluent 2PH00010001

1. <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		
50050	MGD	Flow	-	-	-	-	Daily	Continuous
00010	°C	Temperature	-	-	-	-	Daily	Max. Ind. Therm.
00530	mg/l	Suspended Solids	15	25	11.37	18.95	1/Week	Grab
00310	mg/l	BOD ₅	25	35	18.95	26.54	1/Week	Grab
31616	Count /100ml	Fecal Coliform (Summer Only)	1000	2000	-	-	1/Week	Grab
00610	mg/l	Ammonia (N)	-	-	-	-	1/Week	Grab

- The pH (Reporting Code 00400) (average) 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 level of not less than 5.0 mg/l and shall be monitored 1/week by grab sample.
- See Attachment 2, OTHER REQUIREMENTS of NPDES permit No. 2PH00010*CD.

* The average effluent loading limitations are established using the following flow value: 0.2 MGD

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS for Outfall 2PG00050001

EFFLUENT CHARACTERISTIC			DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS	
Reporting Code	UNITS	PARAMETER	Concentration		Loading*		Meas. Freq.	Sample Type
			Other Units (Specify)		kg/day			
			30 day	7 day	30 day	7 day		
50050	MGD	Flow	-	-	-	-	Daily	24-Hr. Total
00010	°C	Temperature	-	-	-	-	Daily	Max. Ind. Therm.
00530	mg/l	Suspended Solids	30	45	1.7	2.6	1/Month	Grab
31616	Count /100ml	Fecal Coliform (Summer Only)	-	-	-	-	1/Qtr.	Grab
80082	mg/l	CBOD ₅	30	45	1.7	2.6	1/Month	Grab
00610	mg/l	Ammonia (N)	-	-	-	-	1/Month	Grab
01350	No.	Turbidity Severity(1)	-	-	-	-	Daily	Estimate
01330	No.	Odor, Severity(1)	-	-	-	-	Daily	Estimate
00623	No.	Color, Severity(1)	-	-	-	-	Daily	Estimate

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: 0.015 MGD

(1) See Part II, Item D of NPDES permit No. 2PG00050*CD.