

FILED
IN COMMON PLEAS COURT
JEFFERSON COUNTY, OHIO

SEP 1 1989

JOSEPH G. HAMROCK
CLERK

IN THE
COURT OF COMMON PLEAS
JEFFERSON COUNTY, OHIO

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

Plaintiff,

v.

THE BOARD OF COUNTY
COMMISSIONERS OF JEFFERSON
COUNTY, OHIO,

Defendant.

CASE NO. 88-CIV-386
JUDGE JOHN J. MASCIO

AMENDED CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio by its Attorney General Anthony J. Celebrezze, Jr. and Defendant The Board of County Commissioners of Jefferson County, Ohio (hereinafter "Jefferson 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 Jefferson County under Chapter 6111 of the Ohio Revised Code ("RC") 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 Jefferson 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 Jefferson County 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 Environmental Protection 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 in the Complaint. The signing of this Consent Order by Defendant is neither an admission or a 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 Jefferson County is hereby enjoined and ordered to immediately comply with the requirements of RC Chapter 6111 and the terms and conditions of the rules 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 June 1, 1991, 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 June 1, 1991, Defendant is enjoined to meet the final effluent standards set forth in its NPDES permit No. OPH00000*BD and any renewals or modifications thereof. Defendant is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

5. Defendant Jefferson County 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 and sewer system described in the Municipal Compliance Plan submitted to Ohio EPA on May 17, 1988 and to attain compliance with the final

effluent limitations of NPDES permit No. OPH00000*BD and any modifications or renewals thereof in accordance with the following schedule:

PHASE I

(Barber's Hollow Wastewater Treatment Plant)

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Initiation of Project Design Work.	Completed
(b) Submittal of Approvable Plans and Specifications to Ohio EPA.	Completed
(c) Advertisement of Building Bids.	Completed
(d) Execution of Building Contracts.	November 2, 1989
(e) Initiation of Construction.	December 18, 1989
(f) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits and the elimination of bypasses and overflows.	May 1, 1991
(g) Attain compliance with final effluent limitations, and eliminate overflows and bypasses.	June 1, 1991

PHASE II

(Reed's Mill Lift Station)

<u>TASK</u>	<u>COMPLETION DATE</u>
(h) Initiation of Project Design Work.	Completed
(i) Submittal of Approvable Plans and Specifications to Ohio EPA.	August 1, 1988
(j) Advertisement of Building Bids.	October 3, 1988
(k) Execution of Building Contracts.	January 2, 1989

TASK

COMPLETION DATE

- | | |
|--|-------------------|
| (l) Initiation of Construction. | February 15, 1989 |
| (m) Completion of construction to rehabilitate the facilities to ensure the elimination of bypasses and overflows. | November 13, 1989 |

VI. REPORTING REQUIREMENT

6. Within seven (7) days from the completion date of each milestone listed above, Defendant Jefferson County shall submit a written report stating whether it has performed the action set forth therein to Ohio EPA's Southeast District Office, Division of Water Pollution Control at 2195 Front Street, Logan, Ohio 43138 and Ohio EPA's Central Office, Division of Water Pollution Control/Enforcement Section at 1800 WaterMark Drive, Columbus, Ohio 43266-0149.

VII. COMPLIANCE NOT DEPENDANT ON GRANTS

7. Performance of the terms of this Consent Order by Defendant Jefferson County is not conditioned on the receipt of any Federal or State grant funds. In addition, Defendant's performance is not excused by the failure to obtain or shortfall of any Federal or State grant funds or by the processing of any applications for the same.

VIII. EFFECT OF CONSENT ORDER

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 the Director of Environmental Protection or other such permits as may be required by applicable federal, state or local laws, rules or regulations.

IX. CIVIL PENALTY

9. Defendant Jefferson County shall pay to the State of Ohio a civil penalty of thirteen thousand dollars (\$13,000.00). 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 days from the date of entry of this Consent Order.

X. STIPULATED PENALTIES

10. In the event that Defendant Jefferson County fails to meet any of the requirements of this Consent Order set forth in Paragraph 4 and Subparagraphs 5(d) through 5(f) and 5(h) through 5(l), including any schedule milestone requirement, Defendant shall be liable for and shall pay a stipulated penalty according to the following payment schedule:

- a. For each day of failure to meet a requirement up to thirty (30) days--five hundred dollars (\$500.00) per day;
- b. For each day of failure to meet a requirement from thirty-one (31) to sixty (60) days--six hundred dollars (\$600.00) per day;
- c. For each day of failure to meet a requirement from sixty-one (61) to seventy-five (75) days--eight hundred dollars (\$800.00) per day;

- d. For each day of failure to meet a requirement from seventy-six (76) to ninety-one (91) days--nine hundred fifty dollars (\$950.00) per day;
- e. For each day of failure to meet a requirement from ninety-two (92) to one hundred fifteen (115) days--one thousand dollars (\$1,000.00) per day;
- f. For each day of failure to meet a requirement from one hundred sixteen (116) to one hundred fifty (150) days--two thousand five hundred dollars (\$2,500.00) per day;
- g. For each day of failure to meet a requirement over one hundred fifty (150) days--three thousand five hundred dollars (\$3,500.00) per day.

11. In the event that Defendant Jefferson County fails to meet any of the requirements of this Consent Order set forth in Subparagraphs 5(g) and 5(m), including any schedule milestone requirement, Defendant shall be liable for and shall pay a stipulated penalty according to the following payment schedule:

- a. For each day of failure to meet a requirement up to thirty (30) days--four thousand dollars (\$4,000.00) per day;
- b. For each day of failure to meet a requirement from thirty-one days (31) to sixty (60) days--six thousand dollars (\$6,000.00) per day;
- c. For each day of failure to meet a requirement from sixty-one (61) to ninety (90) days--eight thousand dollars (\$8,000.00) per day;
- d. For each day of failure to meet a requirement over ninety (90) days--ten thousand dollars (\$10,000.00) per day.

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 (45) days from the date of the failure to meet the requirement of the Consent Order, made payable to "Treasurer, State of Ohio".

XI. POTENTIAL FORCE MAJEURE

13. In an action to enforce the provisions of this Consent Order, Defendant Jefferson County may raise the question of whether it is entitled to a defense that its conduct was caused by reasons beyond its control. Such reasons would include by way of example and not limitation an 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 hereby agreed upon by the parties that it is premature to raise and adjudicate the existence of such a defense at this time. The appropriate point to adjudicate the existence of such a defense is at the time 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 defenses or rights it may have under applicable law.

XII. RETENTION OF JURISDICTION

14. The Court will retain jurisdiction of this action for the purpose of making any decree or order which it deems appropriate to carry out this Consent Order.

XIII. COSTS

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

JUDGE, COURT OF COMMON PLEAS

DATE

APPROVED:

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

ALBERT OLEXIA, CHAIRMAN BOARD
OF COUNTY COMMISSIONERS

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Authorized Representative
The Board of County Commissioners
of Jefferson County, Ohio

7246E

APPENDIX A

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS
for Outfall OPH00000001

1. <u>Effluent Characteristic Monitoring</u>						<u>Discharge Limitations</u>		
Reporting Code	UNITS	PARAMETER	Concentration		Loading*		<u>REQUIREMENTS</u>	
			Other Units (Specify)	30 day	7 day	30 day	7 day	Meas. Freq.
5005	MGD	Flow	-	-	-	-	Daily	Total
00010	°C	Temperature	-	-	-	-	Daily	Max. Ind. Therm.
005300	mg/l	Suspended Solids	30	45	48	72	1/Week	Composite
00310	mg/l	BOC ₅	30	45	48	72	1/Week	Composite
31616	Count /100ml	Fecal Coliform (Summer Only)	1000	2000	-	-	1/Week	Composite
00610	mg/l	Ammonia (N)	-	-	-	-	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 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)
4. 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: 0.420 MGD

APPENDIX A (cont'd)

Additional Monitoring Requirement

System Bypass. The permittee shall monitor the collection system bypass when discharging, at Station OPH00000002 and report to the Ohio EPA in accordance with the following Table:

<u>CHARACTERISTIC</u>			<u>MONITORING REQUIREMENTS</u>	
<u>Reporting Code</u>	<u>Units</u>	<u>Parameter</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
80098	Number/No.	Occurrences	Daily When discharging	Estimate
80099	Hours	Duration	Daily When discharging	Daily Est.
00310	mg/l	BOD ₅	1/month When discharging	Grab
00530	mg/l	Suspended Solids	1/month When discharging	Grab
50050	Million Gallons	Volume	Daily When discharging	Daily Est.

Monitoring data shall be submitted for each month when discharge occurs. The monthly monitoring report shall be attached to the normal monthly report form (EPA-4500).

- The permittee is authorized to discharge from the following bypass only until the lift station is upgraded in accordance with Order No. 4 of the Findings and Orders issued on June 12, 1986. See Item 1 above for monitoring and reporting requirements. Also see Part III, Item 11 of NPDES permit No. OPH000000*BD.

Station Number
Receiving Stream

Description

OPH00000002

Reed's Hill Pump Station Cross Creek