

IN THE COURT OF COMMON PLEAS
ASHLAND COUNTY, OHIO

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

Plaintiff,

vs.

CITY OF ASHLAND

Defendant.

CASE NO. 33912

JUDGE _____

CONSENT ORDER

JUANITA WRIGHT
CLERK OF COURTS
ASHLAND CO. OHIO

89 FEB 27 PM 2:47

IN

The Complaint in the above-captioned matter having
filed herein, and the Plaintiff State of Ohio by its Attorney
General Anthony J. Celebrezze, Jr. (hereinafter "Plaintiff")
and Defendant City of Ashland (hereinafter "Ashland") 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 Ashland 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 Ashland 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 July 1, 1989, 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 July 1, 1989, Defendant Ashland is enjoined to meet the final effluent standards set forth in its NPDES permit No. 2PD00010*ED and any renewals or modifications thereof. Ashland is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures..

V. CONSTRUCTION SCHEDULE

5. Defendant Ashland 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 Facilities Compliance Plan submitted to Ohio EPA and approved on May 6, 1986 to attain compliance with the final effluent limitations of NPDES permit No. 2PD00010*ED and any modifications or renewals thereof in accordance with the following schedule:

TASKCOMPLETION DATE

- | | |
|--|-----------------|
| (a) Initiation of Project Design Work | Completed |
| (b) Submittal of Approvable Detail Plans and Specifications and P.T.I. to Ohio EPA | Completed |
| (c) Advertisement of Building Bids | Completed |
| (d) Execution of Building Contracts | Completed |
| (e) Initiation of Construction | Completed |
| (f) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits and the elimination of bypasses and overflows. | June 1, 1989 |
| (g) Attain compliance with final effluent limitations and eliminate overflows and bypasses. | July 1, 1989 |
| (h) Completion of remaining construction. | October 1, 1989 |

Within seven days from each completion date listed above, Defendant Ashland shall submit a written report stating whether or not Ashland has performed the action set forth therein to Ohio EPA's Northwestern 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 Ashland shall pay to the State of Ohio a civil penalty of Thirty Two Thousand Five Hundred Dollars (32,500.00). 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 days from the date of entry of this Consent Order.

VII. STIPULATED PENALTIES

7. In the event that Defendant Ashland fails to meet any of the requirements of this Consent Order set forth in Paragraphs 4, 5(f) and 5(h), including any schedule 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 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, from ninety-one to one hundred twenty days - \$3,500.00 per day.

8. In the event that Defendant Ashland fails to meet any of the requirements of this Consent Order set forth in Subparagraph 5 (g), the Defendant shall immediately and

automatically be liable for payment of a stipulated penalty of \$3,000.00 per day of violation of said requirement. The Defendant shall be liable for an additional stipulated penalty of three thousand dollars (\$3,000.00) 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 Subparagraph 5(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.

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

VIII. RETENTION OF JURISDICTION

10. 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.

IX. TERMINATION OF STIPULATED PENALTIES

11. The provisions of this Consent Order requiring the payment of stipulated penalties, Section VI, paragraphs 7, 8,


and 9, shall terminate after Ashland has achieved compliance with paragraph 5(g) 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.

X. POTENTIAL FORCE MAJEURE

12. In any action to enforce any of the provisions of this Consent Order Defendant Ashland 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.

XI. COSTS

13. Defendant Ashland is hereby ordered to pay the costs of this action.




JUDGE, COURT OF COMMON PLEAS
ASHLAND COUNTY

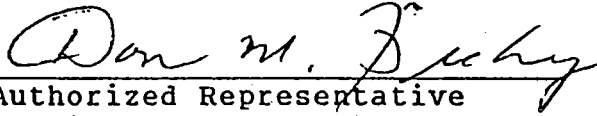
APPROVED:

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

BY:



EDWARD S. DIMITRY
MARGARET A. MALONE
Assistant Attorney General
30 East Broad Street
Columbus, Ohio 43266-0410



Authorized Representative
of City of Ashland

2936E/76

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

/SEE PART II, OTHER REQUIREMENTS, for location of effluent sampling.

<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)		30 day	7 day		
00010	°C	Temperature	-	-	-	-	Daily	Max. Ind. Therm.
00310	mg/l	BOD ₅	45	67	682	1016	3/Week	Composite
00530	mg/l	Suspended Solids	45	67	682	1016	3/Week	Composite
00550	mg/l	Oil & Grease	-	-	-	-	1/Month	Grab
00610	mg/l	Ammonia (N)	-	-	-	-	3/Week	Composite
00665	mg/l	Phos., Total	-	-	-	-	3/Week	Composite
31616	Count /100ml	Fecal Coliform (Summer Only)	-	-	-	-	3/Week	Grab
50050	MGD	Flow	-	-	-	-	Daily	Continuous
80082	mg/l	CBOD ₅	-	-	-	-	3/Week	Composite

- The pH (Reporting Code 00400) shall not be less than 6.0 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 monitored daily by grab sample.

* The average effluent loading limitations are established using the following flow value: 4.0 MGD

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

/ (SEE PART II, OTHER REQUIREMENTS, for location of effluent sampling.

<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		
00335	mg/l	COD	-	-	-	-	1/Week	Composite
00615	mg/l	Nitrite (N)	-	-	-	-	3/Week	Composite
00620	mg/l	Nitrate (N)	-	-	-	-	3/Week	Composite
01027	ug/l	Cadmium (1)	-	-	-	-	1/Month	Composite
01032	ug/l	Chromium (Hex) (1,2)	-	-	-	-	1/Month	Composite
01033	ug/l	Chromium (Tri) (1,2)	-	-	-	-	1/Month	Composite
01042	ug/l	Copper (1)	-	-	-	-	1/Month	Composite
01051	ug/l	Lead (1)	-	-	-	-	1/Month	Composite
01067	ug/l	Nickel (1)	-	-	-	-	1/Month	Composite
01092	ug/l	Zinc (1)	-	-	-	-	1/Month	Composite
32730	ug/l	Phenols (1)	-	-	-	-	1/Month	Composite
71900	ug/l	Mercury (1)	-	-	-	-	1/Month	Composite

* The average effluent loading limitations are established using the following flow value: N/A

- (1) Sampling for these parameters at station 2PD00010001 and station 2PD00010601 shall occur the same day.
- (2) The data for hexavalent and trivalent chromium will be used within 12 months of the effective date of this permit to develop effluent limits for these pollutants.

RESOLUTION NO. 11-88

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A CONSENT ORDER WITH THE OFFICE OF THE ATTORNEY GENERAL RELATING TO THE CONSTRUCTION OF THE WASTEWATER TREATMENT PLANT; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Ashland is currently engaged in a \$12.1 million improvement project of the wastewater treatment facilities of the City; and

WHEREAS, by the provisions of the Federal Clean Water Act, July 1, 1988 was established as the deadline for compliance, by all municipalities, with the terms of the National Pollutant Discharge Elimination System (NPDES) permit; and

WHEREAS, the City of Ashland has worked diligently for over four years toward the completion of this project; and

WHEREAS, the project is near completion and the effluent from the wastewater treatment plant is presently of a higher quality than ever before, nevertheless the City was unable to meet the July 1, 1988 deadline, due largely to matters beyond the City's control such as the necessity to rebid certain portions of the project, equipment and supplies delivery delays, construction delays, etc.; and

WHEREAS, the offices of the Ohio Environmental Protection Agency (OEPA) and the Ohio Attorney General have determined to bring an action against the City for its inability to meet the July 1, 1988 deadline; and

WHEREAS, the City has met with representatives of the OEPA and Attorney General's office and have negotiated a Consent Order establishing new dates for completion of the improvements to the City's wastewater treatment plant and for final compliance with the final effluent limits and establishing sanctions upon the City in the event it does not meet the new deadlines and for the City's inability to meet the July 1, 1988 deadline; and

WHEREAS, it is necessary to execute the Consent Order and return it to the office of the Attorney General at the earliest possible time, this Resolution is declared to be an emergency measure immediately necessary for the preservation of the public peace, property, health, safety and welfare; now therefore,

BE IT RESOLVED by the Council of the City of Ashland, State of Ohio, 5 members thereto concurring:

Section 1. That the Mayor is hereby authorized and directed to execute, on behalf of the City of Ashland, the proposed Consent Order, negotiated with the OEPA and the office of the Attorney General, relative to the City's Wastewater Treatment Plant Improvement Project.

Section 2. That for the reason that it is necessary to return said executed agreement to the Attorney General, at the earliest possible time, this Resolution is declared to be an emergency measure immediately necessary for the preservation of the public peace, property, health, safety and welfare.

Section 3. That this Resolution shall take effect and be in force from and after its passage by Council and approval pursuant to Section 12 of the Charter of the City of Ashland, Ohio.

Passed: NOV 15 1988, 1988 [Signature]
Vice President of Council

Attest: [Signature], Clerk

Approved: [Signature]
Mayor

Approved as to form and correctness:

[Signature], Date: 17 NOV, 1988
Director of Law

[Signature] CLERK OF COUNCIL
OF THE CITY OF ASHLAND OHIO, DO HEREBY CERTIFY THAT THE
FOREGOING IS A TRUE AND CORRECT COPY OF Resolution
NO 11-88 PASSED THE 15th DAY OF
November 1988
11/29/88 [Signature]
DATE CLERK OF COUNCIL