

IN THE  
COURT OF COMMON PLEAS  
SANDUSKY COUNTY, OHIO

EMERSON  
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STATE OF OHIO, *ex rel.*  
LEE FISHER  
ATTORNEY GENERAL OF OHIO,  
  
Plaintiff,  
  
v.  
  
THE CITY OF BELLEVUE, OHIO,  
  
Defendant.

CASE NO. 92 CV 308  
JUDGE

CONSENT ORDER

ALBERTA PATRICK  
1992 APR 28 PM 3:05  
COMMUNICATIONS SECTION

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio by its Attorney General, Lee Fisher and Defendant The City of Bellevue, Ohio (hereinafter referred to as "Bellevue") 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

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 Bellevue under Chapter 6111. of the Ohio Revised Code ("RC"), and venue is proper in this Court.

II. PARTIES

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 Bellevue is ordered to provide a copy of this Consent Order to each contractor it employs to perform the 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

A. Plaintiff alleges in its Complaint that Defendant Bellevue 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 National Pollution Discharge Elimination System ("NPDES") permit, No. 2PD00037\*ED, issued to it by the Director of Environmental Protection, and in violation of the water pollution control laws of the State of Ohio, *i.e.*, RC Chapter 6111. and the rules adopted thereunder.

B. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant Bellevue for all claims under such laws alleged in the Complaint.

C. Nothing in this Consent 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, regardless of when said violations occurred.

### IV. RIGHT OF ENTRY

A. Defendant Bellevue is ordered to give consent to

Plaintiff State of Ohio, its agents and employees, to enter into and onto Defendant's wastewater treatment facility and associated structures, without a search warrant, to inspect its operation and/or records, or to observe Defendant conducting the work required by this Consent Order.

B. Nothing in this Consent Order shall be construed to limit Plaintiff's statutory or permit authority under RC Chapter 6111. or the rules adopted thereunder, to conduct inspections and/or surveys and/or review records.

**V. EFFECT UPON OTHER ACTIONS**

Nothing in this Consent Order shall be construed to relieve Defendant Bellevue of the obligation to comply with applicable federal, state or local statutes, regulations or ordinances, or shall constitute a waiver or release of any right, remedy, defense or claim against Defendant with regard to any person not a party to this Consent Order.

**VI. PERMANENT INJUNCTIVE RELIEF**

A. Defendant Bellevue is hereby enjoined and ordered to immediately and permanently comply, and thereafter continue to comply, with the requirements of RC Chapter 6111. and the rules adopted thereunder, its currently effective NPDES permit, No. 2PD00037\*ED, 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 30, 1994, Defendant is enjoined and ordered to comply with the interim effluent limitations set forth in Appendix A that is attached hereto and incorporated by reference herein.

B. The interim effluent limits contained in Appendix A do not constitute an NPDES permit or a modification of any existing permit.

C. After June 30, 1994, Defendant Bellevue is permanently enjoined and ordered to meet the final effluent limitations set forth in its NPDES permit, No. 2PD00037\*ED, along with the other terms and conditions of said permit, and any renewals or modifications thereof.

D. Defendant Bellevue is permanently enjoined and ordered to properly operate, and continue thereafter to maintain its wastewater treatment plant and any associated equipment and structures.

#### VII. OTHER INJUNCTIVE RELIEF

##### A. LOCAL LIMITS JUSTIFICATION

1. Within thirty (30) days of the Court's entry of this Consent Order, Defendant Bellevue is enjoined and ordered to submit to the Ohio Environmental Protection Agency's ("Ohio EPA") Central Office, Pretreatment Unit in Columbus, Ohio, in duplicate, 1) technical justification for revising local industrial user limitations to attain compliance with the final effluent limitations contained in its currently effective NPDES permit, No. 2PD00037\*ED, and any renewals or modifications thereof, along with a pretreatment program modification request, or 2) technical justification for retaining existing local industrial user limitations.

Technical justification is required for cadmium, chromium, copper, lead, nickel and zinc. Technical justification is also

required for arsenic, cyanide, mercury and silver unless screening of wastewater and sludge indicate these pollutants are not present in significant amounts. Furthermore, technical justification is required for any other pollutants where a local limit may be necessary to protect against pass through or interference.

To demonstrate technical justification for new local industrial user limits or justification for retaining existing limits, the following information must be submitted to the Ohio EPA:

- a. Dometic/background and industrial pollutant contributions;
- b. Treatment plant removal efficiencies;
- c. A comparison of maximum allowable headworks loadings based on all applicable criteria. Criteria may include sludge disposal, NPDES permit limits, and interference with biological processes such as activated sludge, sludge digestion, nitrification, *etc.*;
- d. If revised industrial user discharge limits are proposed, the method of allocating available pollutant loads to industrial users; and
- e. Supporting data, assumptions and methodologies used in establishing the information in a through d above.

2. Within thirty (30) days of receiving written notice from the Ohio EPA that proposed revisions to the local industrial user limitations are approved, Defendant Bellevue is enjoined and ordered to incorporate the revised local limits in

all industrial user control documents.

**B. INDUSTRIAL USER CONTROL DOCUMENTS**

1. Defendant Bellevue is enjoined and ordered to correct the following deficiencies in its industrial user control documents noted during the Ohio EPA's May 21, 1990 audit of its pretreatment program:

- a. Sampling and reporting requirements must be adequately specified;
- b. Location of sampling must be indicated; and
- c. Industrial user permits must contain standard conditions such as a statement of duration, statement of non-transferability, notification requirements, and applicable civil and criminal penalties at a minimum.

2. Within thirty (30) days of the Court's entry of this Consent Order, Defendant Bellevue is enjoined and ordered to submit to the Ohio EPA's Central office Pretreatment Unit in Columbus, Ohio, in duplicate, an example industrial user control document as a pretreatment program modification request including all necessary revisions to correct the deficiencies noted in Article VII, Subparagraph B1.

3. Within thirty (30) days of receiving written notice from the Ohio EPA that the proposed revisions to the industrial user control documents are approved, Defendant Bellevue is enjoined and ordered to issue control documents to, at a minimum, all Significant Industrial Users as defined by 40 CFR 403.3(t).

**C. LOCAL PRETREATMENT REGULATIONS**

1. Defendant Bellevue is enjoined and ordered to adopt local

pretreatment rules to enable it to implement and enforce federal, state and local pretreatment regulations and requirements including, but not limited to, regulatory and programmatic changes recommended by the Pretreatment Implementation Review Task Force ("PIRT") and the Domestic Sewage Study ("DSS").

2. Within thirty (30) days of the Court's entry of this Consent Order and prior to the adoption by City Council, Defendant Bellevue is enjoined and ordered to submit all proposed changes to the local regulations to the Ohio EPA's Central Office Pretreatment Unit, in duplicate, as a program modification.

3. Within thirty (30) days of receiving written notice from the Ohio EPA that proposed revisions to the local regulations are acceptable, Defendant Bellevue is enjoined and ordered to adopt the proposed rules and submit duplicate copies of the final local regulations to the Ohio EPA Central Office Pretreatment Unit in Columbus, Ohio with verification of adoption.

**D. ENFORCEMENT RESPONSE PLAN**

1. Defendant Bellevue is enjoined and ordered to develop an Enforcement Response Plan in accordance with the requirements in 40 CFR 403.8(f)(5) to establish detailed procedures indicating how Defendant will investigate and respond to instances of industrial user noncompliance. Defendant is enjoined and ordered to submit the proposed Enforcement Response Plan to the Ohio EPA's Central Office Pretreatment Unit, in duplicate, as a program modification.

2. Defendant Bellevue is enjoined and ordered to begin implementation of the Enforcement Response Plan immediately after receiving written notice from the Ohio EPA that the proposed plan

is approved.

**VIII. MISCELLANEOUS INJUNCTIVE PROVISIONS**

In the event Defendant Bellevue is notified by the Ohio EPA that any or all of the documents submitted to achieve compliance with Article VII are unsatisfactory in whole, or in part, said Defendant is enjoined and ordered to amend and submit to the Ohio EPA a revised document, or documents, incorporating all of the required modifications or additions within thirty (30) days after receipt of the Ohio EPA's notification requiring modifications or additions. Where the Ohio EPA approves the revision, Defendant is enjoined and ordered to implement the revised document, or documents, within five (5) days after receiving written approval from the Ohio EPA.

**IX. CONSTRUCTION SCHEDULE INJUNCTION**

Defendant Bellevue is enjoined and ordered to complete construction of the improvements to its wastewater treatment plant described in the detailed plan to be approved by the Ohio EPA, and to attain and maintain compliance with the final effluent limitations of NPDES permit, No. 2PD00037ED, and any modifications or renewals thereof, specifically, the final phosphorus effluent limitation contained therein, in accordance with the following schedule:

**TASK**

**COMPLETION DATE**

(a) Initiate study on the improvements necessary for POTW. (Note: Defendant is ordered to submit the results of this study to the Ohio EPA immediately upon the completion thereof.)

June 30, 1992



- (b) Submittal of Approvable Detailed Plans and PTI application for the necessary Bellevue POTW improvements. December 31, 1992
- (c) Begin construction of the approved POTW improvements. April 30, 1993
- (d) Complete construction of the approved POTW improvements. April 30, 1994
- (e) Attain compliance with final effluent limitations. June 30, 1994

**X. REPORTING REQUIREMENT**

Within seven (7) days from the completion date of each milestone listed in Article VII, Article VIII, and Article IX, Subparagraphs (a) through (d), Defendant Bellevue is ordered to submit a written report stating whether it has performed the action set forth therein to the Ohio EPA's Northwest District Office, Division of Water Pollution Control at 347 North Dunbridge Road, P. O. Box 466, Bowling Green, Ohio 43402; with an additional copy to the Ohio EPA's Central Office, Division of Water Pollution Control/Enforcement Section, and also the Pretreatment Section, at 1800 WaterMark Drive, Columbus, Ohio 43266-0149.

**XI. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS**

Performance of the terms of this Consent Order by Defendant Bellevue is not conditioned on the receipt of any federal or state grant or loan funds. In addition, Defendant's performance is not excused by the failure to obtain or a shortfall of any federal or state grant or loan funds, or by the processing of any applications for the same.

## XII. EFFECT OF CONSENT ORDER

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.

## XIII. POTENTIAL FORCE MAJEURE CLAUSE

In any action to enforce any of the provisions of this Consent Order, Defendant Bellevue 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 a dispute arises and/or 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 State law.

#### XIV. CIVIL PENALTY

Defendant Bellevue is ordered to pay to the State of Ohio, pursuant to RC Section 6111.09, a civil penalty of thirty-three thousand dollars (\$33,000.00). The penalty shall be paid by delivering to Plaintiff's attorney, and/or his successor, a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within thirty (30) days from the Court's entry of this Consent Order.

#### XV. STIPULATED PENALTIES

A. In the event that Defendant Bellevue fails to meet any of the requirements of this Consent Order set forth in Articles IV, VI, VII, VIII, IX, X and XIV, Defendant shall be liable for payment of a stipulated penalty according to the following payment schedule:

1. For each day of each failure to meet a requirement, up to thirty (30) days--one hundred dollars (\$100.00) per day per violation;
2. For each day of each failure to meet a requirement, from thirty-one (31) to sixty days (60)--two hundred dollars (\$200.00) per day per violation;
3. For each day of each failure to meet a requirement, from sixty-one (61) to ninety (90) days--three hundred dollars (\$300.00) per day per violation;
4. For each day of each failure to meet a requirement, over ninety days (90) days--four hundred dollars (\$400.00) per day per violation.

B. Any payment required to be made under the provisions of Paragraph A of this Article shall be made by delivering to

Plaintiff's attorney, and/or his successor, a certified check, or checks, for the appropriate amounts, within thirty (30) days from the date of the failure to meet the requirement of this Consent Order, made payable to "*Treasurer, State of Ohio*".

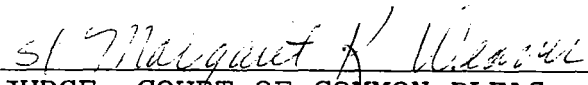
**XVI. RETENTION OF JURISDICTION**

The Court will retain jurisdiction of this action for the purpose of enforcing the terms and provisions of this Consent Order.

**XVII. COSTS**

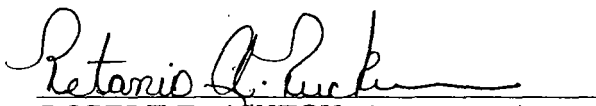
Defendant Bellevue is ordered to pay the costs of this action.

ENTERED THIS 24 DAY OF APRIL, 1992.

  
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JUDGE, COURT OF COMMON PLEAS  
Sandusky County, Ohio

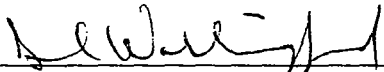
APPROVED:

STATE OF OHIO, *ex rel.*  
LEE FISHER  
ATTORNEY GENERAL OF OHIO

  
\_\_\_\_\_  
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Columbus, Ohio 43266-0410  
(614) 466-2766

Attorney for Plaintiff  
State of Ohio



**David Wallingford, Esq.** (0008752)

Law Director

117 West Main

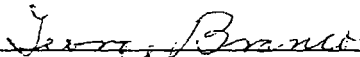
P. O. Box 368

Bellevue, Ohio 44811

(419) 483-2621

Attorney for Defendant

The City of Bellevue, Ohio



**George Branco**

Mayor

Authorized Representative

The City of Bellevue, Ohio,

APPENDIX A

OEPA 2PD00037

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Reporting Code	UNITS PARAMETER	DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS	
		Concentration Other Units (Specify)		Loading* kg/day		Meas. Freq.	Sample Type
		30 day	7 day	30 day	7 day		
00010	°C Temperature	-	-	-	-	Daily	Continuous (Max. Ind. Therm.)
00530	mg/l Suspended Solids	30	45	273	409	3/Week	Composite
00556	mg/l Oil & Grease	Not to exceed 10 at any time				1/Week	Grab
00610	mg/l Ammonia (N)						
	(Summer)	1.5	2.2	14	20	3/Week	Composite
	(Winter)	6.0	9.0	55	82	3/Week	Composite
00665	mg/l Phos., Total						
	(Summer)	3.5	5.2	31.9	47.3	3/Week	Composite(1)
	(Winter)	5.0	7.5	45.5	68.2	3/Week	Composite(1)
31616	Count Fecal Coliform /100ml (Summer Only)	1000	2000	-	-	3/Week	Grab
31648	Count E. Coli /100ml (Summer Only)	-	-	-	-	3/Week	Grab
50050	MGD Flow	-	-	-	-	Daily	Continuous
80082	mg/l CBOD <sub>5</sub>						
	(Summer)	10	15	91	136	3/Week	Composite
	(Winter)	25	40	227	363	3/Week	Composite

2. The pH (Reporting Codes 00402 (minimum), and 00401 (maximum)) shall not be less than 6.5 S.U. nor greater than 9.0 S.U. and shall be monitored by multiple grab sample and reported daily. The critical values (low and high) shall be reported.
3. If the entity uses chlorine for disinfection, 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 multiple grab sample. (Summer Only)\*\* The critical (high) values shall be reported.
4. The Dissolved Oxygen (Reporting Code 00300) shall be maintained at a level of not less than 5.0 mg/l and shall be monitored daily by multiple grab sample. The critical (low) value shall be reported.

\* The average effluent loading limitations are established using the following flow value: 2.4 MGD

\*\* See Part II, Items G and H, OEPA 2PD00037

(1) See Part II, Item K, OEPA2PD00037

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (Cont.)

<u>EFFLUENT CHARACTERISTIC</u>		<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
Reporting Code	UNITS PARAMETER	Concentration Other Units(Specify) 30 day	Daily Max.	Loading* kg/day 30 day	Daily Max.	Meas. Freq.	Sample Type
00335	mg/l COD	-	-	-	-	1/Week	Composite
00630	mg/l Nitrite (N) + Nitrate (N)	-	-	-	-	3/Week	Composite
00625	mg/l Kjeldahl, TKN(N)	-	-	-	-	1/Month	Composite
01027	ug/l Cadmium, Total	-	2.0	-	0.01	1/Month	Composite(1)
01034	ug/l Chromium, Total	-	-	-	-	1/Month	Composite(1)
01042	ug/l Copper, Total	-	17	-	0.2	1/Month	Composite(1)
01051	ug/l Lead, Total	-	45	-	0.4	1/Month	Composite(1)
01067	ug/l Nickel, Total	-	320	-	2.9	1/Month	Composite(1)
01092	ug/l Zinc, Total	-	176	-	1.6	1/Month	Composite(1)
01220	ug/l Chromium (Hex), Dissolved	-	-	-	-	1/Month	Grab(2)
71900	ug/l Mercury, Total	-	0.3	-	0.003	1/Month	Composite(1)

\* The average effluent loading limitations are established using the following flow value: 2.4 MGD

(1) See Part II, Item K, OEPA2PD00037

(2) See Part II, Item L, OEPA2PD00037

ORDINANCE NO.9 -92

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR AND LAW DIRECTOR TO ENTER INTO A CONSENT DECREE WITH THE STATE OF OHIO, AND DECLARING AN EMERGENCY.

WHEREAS, it has been alleged that the City has in the past been in violation of the discharge limitations and monitoring requirements of the National Pollution Discharge Elimination System ("NPDES") permit issued to it by the Director of Environmental Protection, and in violation of the water pollution control laws of the State of Ohio; and

WHEREAS, it is in the best interests of the City to settle the above matters by entering into a Consent Decree with the State of Ohio;

WHEREAS, an acceptable decree has been provided to the City, which will be attached hereto when the same has been executed by both parties and filed in a court of competent jurisdiction.

NOW, THEREFORE, BE IT ORDAINED By the Council of the City of Bellevue, Huron and Sandusky Counties, Ohio:

SECTION 1: That the Mayor and Law Director be and they are hereby authorized and directed to execute and enter into the proposed Consent Decree with the State of Ohio on behalf of the City in settlement of the above matters.

SECTION 2: That said Consent Decree shall be attached hereto and incorporated herein for all purposes as Exhibit "A" upon said Decree being executed by both parties and filed in a court of competent jurisdiction.

SECTION 3: That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety, and welfare of the City of Bellevue, and for the further specific reason that it is necessary to settle these matters to the satisfaction of the State and the City as soon as possible, to avoid possible litigation detrimental to the City.

WHEREFORE, this Ordinance shall go into full force and effect from and immediately after the earliest period allowed by law.

DATE: 2/24/92

Jeffrey A. Cook  
JEFFREY A. COOK  
PRESIDENT OF COUNCIL

ATTEST:  
Vickie K. Dauch  
VICKIE K. DAUCH  
CLERK OF COUNCIL

APPROVED:  
George J. Branco  
GEORGE J. BRANCO  
MAYOR

CERTIFICATION  
I, VICKIE K. DAUCH, Clerk of Council of the City of Bellevue do hereby certify this to be a true and correct Ord. 9-92  
Bellevue City Council on 2/24/92  
Vickie K. Dauch  
VICKIE K. DAUCH  
Clerk of Council  
Bellevue, Ohio