

IN THE COURT OF COMMON PLEAS
COLUMBIANA COUNTY, OHIO

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

CASE NO. 88-CIV-441
JUDGE DOUGLAS C. JENKINS

Plaintiff,

vs.

FILED
AUG 5 1988

CITY OF EAST PALESTINE
COLUMBIANA COUNTY
COMMON PLEAS COURT
Defendant. Carl L. Stacey, Clerk

CONSENT ORDER

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 City of East Palestine (hereinafter "East Palestine") 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 East Palestine 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 East Palestine 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 October 1, 1990, 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 October 1, 1990, Defendant East Palestine is enjoined to meet the final effluent standards set forth in its NPDES permit No. 3PC00002*BD and any renewals or modifications thereof. East Palestine is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

5. Defendant East Palestine 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

Municipal Compliance Plan submitted to Ohio EPA on December 11, 1986, and to attain compliance with the final effluent limitations of NPDES permit No. 3PC00002*BD and any modifications or renewals thereof in accordance with the following schedule:

<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	February 1, 1989
(d) Execution of Building Contracts	April 14, 1989
(e) Initiation of Construction	May 1, 1989
(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, 1990
(g) Submittal of Approvable Sludge Management Plan	June 1, 1990
(h) Attain compliance with final effluent limitations, and eliminate overflows and bypasses.	October 1, 1990

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 East Palestine shall pay to the State of Ohio a civil penalty of Two Thousand Dollars (\$2,000.00). 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.

VII. STIPULATED PENALTIES

7. In the event that Defendant East Palestine fails to meet any of the requirements of this Consent Order set forth in Paragraph 4, and Subparagraphs 5(c), 5(d), 5(e), 5(f), and 5(g), 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 forty-five (45) days - Five Hundred Dollars (\$500.00) per day. For each day of failure to meet a requirement, from forty-six (46) to ninety (90) days - One Thousand Dollars (\$1,000.00) per day. For each day of failure to meet a requirement, from ninety-one (91) to one hundred thirty-five (135) days - Two Thousand Dollars (\$2,000.00) per day. For each day of failure to meet a requirement, from one

hundred thirty-six (136) to one hundred eighty (180) days - Three Thousand Dollars (\$3,000.00) per day. For each day of failure to meet a requirement, over one hundred eighty (180) days - Three Thousand Five Hundred Dollars (\$3,500.00) per day.

8. In the event that Defendant East Palestine 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 Five Thousand Dollars (\$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 forty-five (45) 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(h) continues more than ninety (90) days, Defendant shall be liable for an additional Two Thousand Dollars (\$2,000.00) per day of violation, i.e., Eight Thousand Dollars (\$8,000.00) per day of violation. In the event that failure to comply with the requirements of Subparagraph 5(h) continues more than one hundred eighty (180) days, Defendant shall be liable for an additional Two Thousand Dollars (\$2,000.00) 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 (45) days from the date of the failure to meet the requirement of the Consent Order, made payable to "Treasurer, State of Ohio".

10. The payment of stipulated penalties under this Consent Order, or any further penalties ordered by the Court, shall be subordinate to annual repayment of the principal and interest requirements for the term of the financing required to implement the improvements. This provision for subordination applies only to payments from East Palestine's sewer revenues and funds, and not to other funds or sources available to East Palestine to pay any penalties that may be due hereunder or ordered by this Court. This provision does not relieve the ^{CITY} Village of its liability for the payment of stipulated penalties or any further penalties ordered by the Court, but only defers such payment until it can be made without violating the terms of subordination contained in this provision.

VIII. POTENTIAL FORCE MAJEURE

11. In any action to enforce any of the provisions of this Consent Order Defendant East Palestine 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.

13. This Consent Order shall terminate as to Section VII Paragraphs 7 and 8 after East Palestine has completed construction per paragraph 5, achieved and maintained compliance with the final effluent limitations contained in its NPDES permit or any renewal or modification thereof for a 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

14. Defendant East Palestine is hereby ordered to pay the costs of this action.

Joseph Jenkins HZ
JUDGE, COURT OF COMMON PLEAS
COLUMBIANA COUNTY
8-5-88

APPROVED:

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

BY:

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Carmen B. Chick
CARMEN B. CHICK, MAYOR
City of East Palestine
Authorized Representative
of City of East Palestine

2929E/8

State of Ohio }
Columbiana County, ss } I, CARL L. STACEY, Clerk of the Court of Common Pleas
within and for the County of Columbiana and the State of Ohio, do hereby certify
that the foregoing is truly taken and copied from the original, now on file in said
Clerk's office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my
name and affixed the seal of said Court, at Lisbon, Ohio
this 15th day of Feb, 1989

CARL L. STACEY Clerk
Carl L. Stacey Deputy
-9-

APPENDIX A

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS for Outfall 3PC00002001

<u>1. 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	30	45	204.5	306.7	3/Week	Composite
00310	mg/l	BOD ₅	30	45	204.5	306.7	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
80082	mg/l	CBOD ₅	-	-	-	-	3/Week	Composite

2. 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.
3. The Dissolved Oxygen (Reporting Code 00300) shall be monitored daily by grab sample.
4. See Attachment 2, OTHER REQUIREMENTS, of NPDES permit No. 3PC00002*BD.

* The average effluent loading limitations are established using the following flow value: 1.8 MGD

Date issued: December 18, 1985

APPENDIX A (cont.)

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS for Outfall 3PC00002001

<u>1. 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		
00335	mg/l	COD	-	-	-	-	1/Week	Composite
00625	mg/l	Kjeldahl, TKN(N)	-	-	-	-	3/Week	Composite
01027	ug/l	Cadmium	-	-	-	-	1/Month	Grab
01034	ug/l	Chromium	-	-	-	-	1/Month	Grab
01042	ug/l	Copper	-	-	-	-	1/Month	Grab
01051	ug/l	Lead	-	-	-	-	1/Month	Grab
71900	ug/l	Mercury	-	-	-	-	1/Month	Grab
01067	ug/l	Nickel	-	-	-	-	1/Month	Grab
01092	ug/l	Zinc	-	-	-	-	1/Month	Grab

Date Issued: December 18, 1985

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS for Outfall 3PC00002002

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		
50050	MGO	Flow	-	-	-	-	Daily	Continuous
00010	°C	Temperature	-	-	-	-	Daily	Max. Ind. Therm.
00530	mg/l	Suspended Solids	30	45	45.4	68.2	3/Week	Composite
00310	mg/l	BOD ₅	30	45	45.4	68.2	3/Week	Composite
00550	mg/l	Oil & Grease	-	-	-	-	1/Month	Grab
80082	mg/l	CBOD ₅	-	-	-	-	3/Week	Composite
00610	mg/l	Ammonia (N)	-	-	-	-	3/Week	Composite
00665	mg/l	Phos., Total	-	-	-	-	3/Week	Composite

- 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 Dissolved Oxygen (Reporting Code 00300) shall be monitored daily by grab sample.
- See Attachment 2, OTHER REQUIREMENTS of NPDES permit No. 3PC00002*BD.

* The average effluent loading limitations are established using the following flow value: 0.4 MGD

Date Issued: December 18, 1985

ADDITIONAL MONITORING REQUIREMENTS

1. The permittee is authorized to discharge from the following overflows and bypasses only during wet weather periods when the flow in the sewer system exceeds the capacity of the sewer system. See Item 2 below, for monitoring and reporting requirements. Also, see PART III, Item 11 of NPDES permit No. 3PC00002*BD.

<u>Station Number</u>	<u>Description</u>	<u>Receiving Stream</u>
3PC00002003	Plant Bypass	Leslie Run
3PC00002004	Overflow @ manhole 100' SE. before plant	Leslie Run
3PC00002005	Overflow @ manhole @ intersection of W. Main and Prospect St.	Leslie Run
3PC00002006	Overflow @ manhole in W. Main 150' west of Everett St.	Leslie Run
3PC00002007	Overflow @ manhole in Benton Alley, 200' east of Market Street	Leslie Run

2. The permittee shall monitor the treatment plant bypass and system bypasses, when discharging, at Stations 3PC00002003 through 3PC00002007 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>
80998	Number/Mo.	Occurrences	Daily	Continuous
80999	Hours	Duration	Daily	Continuous
00310	mg/l	BOD ₅	Once/Day	Grab
00530	mg/l	Suspended Solids	Once/Day	Grab
50050	MGD	Flow	Daily	Continuous

Data for the Number of Occurrence(s) per day, the daily Duration and the total daily Flow may be estimated.

For days when there are no bypass discharges, data for parameters which require laboratory analyses should be reported as "AH" and an explanation of "No Discharge" entered in the "Additional Remarks" section. Also, on such days Zero should be reported for occurrences, duration, and flow.

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).

Date Issued: December 18, 1985