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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

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U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

UNITED STATES OF AMERICA,
Plaintiff,

v.

CITY OF GENEVA, OHIO

and

THE STATE OF OHIO,

Defendants.

Civil Action No. C87-973Y

JUDGE LAMBROS

CONSENT ORDER

WHEREAS Plaintiff, United States of America, on behalf of the United States Environmental Protection Agency, having filed the Complaint herein on April 21, 1987, against Defendant, City of Geneva, Ohio, ("Geneva") alleging violations of the Clean Water Act (the "Act"), 33 U.S.C. §1251 et seq., and National Pollutant Discharge Elimination System ("NPDES") permit No. OH0020109 (State permit No. 3PD00014*FD);

WHEREAS, Geneva is a municipality organized and existing under the laws of the State of Ohio, that owns and operates a wastewater treatment works located at 141 North Avenue, Geneva, Ohio ("the plant") and discharging from point source 3PD0014001 into Cowles Creek;

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WHEREAS, on September 12, 1985, the Ohio Environmental Protection Agency ("OEPA") issued National Pollutant Discharge Elimination System ("NPDES") permit No. OH0020109 (State permit No. 3PD00014*FD) (the "NPDES permit") to Geneva, setting effluent limitations on Geneva's discharge of pollutants into Cowles Creek;

WHEREAS, Geneva appealed the NPDES permit to the Ohio Environmental Board of Review ("OEBR") on October 19, 1985;

WHEREAS, in the course of discussions with the State of Ohio related to the settlement of Geneva's NPDES permit and its other appeals to the OEBR, Geneva has agreed to construct certain treatment facilities to achieve NPDES permit limitations;

WHEREAS, the State of Ohio is a party hereto pursuant to Section 309(e) of the Act, 33 U.S.C. §1319(e);

WHEREAS, Geneva has demonstrated to the satisfaction of the plaintiff, U.S. EPA that construction of improvements to its wastewater treatment works and attainment of final effluent limitations contained in the applicable NPDES permit by July 1, 1988, is a physical impossibility; and

WHEREAS, the parties have agreed that settlement of this matter is in the public interest and that entry of this Order without a trial of any issue of fact or law in this case is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, and without adjudication of any issues of fact or law, or admission by Defendants of any fact, violation or

liability, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION

1. This Court has jurisdiction over the parties and the subject matter of this action pursuant to 28 U.S.C. §§1331 and 1355 and 33 U.S.C. §1319(b). Venue is proper in this district pursuant to §309(b) and (3) of the Act, 33 U.S.C. §1319(b) and (e), because Geneva is located within the Northern District of Ohio and because the treatment works which is the subject of this action is located in Ashtabula County at 141 North Avenue, Geneva, Ohio. The Complaint states a claim upon which relief can be granted pursuant to Section 309 of the Clean Water Act, 33 U.S.C. §1319.

II. APPLICABILITY

2. The provisions of this Consent shall apply to and be binding upon all parties to this action, and their officers, directors, agents, employees, successors and assigns. The State of Ohio does not consent to be bound by Section VIII of this Order (Force Majeure). Geneva shall provide a copy of this Consent Order to any successor, owner or operator of the Geneva treatment works prior to transfer of that ownership or operation interest, and shall simultaneously notify the United States Environmental Protection Agency ("U.S. EPA") Region V, the United States Attorney of the Northern District of Ohio and the State of Ohio that such notice has been given. This Consent Order is entered in full and final settlement of this action.

III. COMPLIANCE PROGRAM

3. Defendant shall achieve and thereafter maintain compliance with the terms of its NPDES permit and the Act in accordance with the compliance program set forth below.

A. Compliance Schedule

Geneva shall implement improvements at the plant pursuant to the following schedule:

	<u>Compliance Activity</u>	<u>Compliance Date</u>
(1)	Submit detailed plans to OEPA for construction of dechlorination equipment and nitrification facilities.	Completed
(2)	Advertise for bids for construction of plant improvements for dechlorination equipment and nitrification facilities	October 22, 1987
(3)	Open bids	November 19, 1987
(4)	Award contract for construction for dechlorination equipment and nitrification facilities	February 5, 1988
(5)	Start construction of dechlorination equipment and nitrification facilities	February 15, 1988
(6)	Finish construction of wet stream facilities and initiate operation of dechlorination equipment and nitrification facilities	July 30, 1988
(7)	Achieve final effluent limitations contained in NPDES permit for chlorine residual, ammonia nitrogen, and remaining effluent parameters	August 15, 1988

B. Interim Effluent Limitations and Monitoring Requirements

(1) Geneva shall, at a minimum, comply with the following limitations and monitoring requirements from the date of entry of this Consent Order until its attainment of the final effluent limitations, as required in paragraph III.3.D. herein:

INTERIM EFFLUENT LIMITATIONS for Outfall 3PD00014001

<u>EFFLUENT CHARACTERISTIC</u>		<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING</u>		
Reporting Code	UNITS	PARAMETER	Concentration Other Units (Specify)		Loading kg/day		REQUIREMENTS	
			30 day	7 day	30 day	7 day	Meas. Freq.	Sample Type
50050	MGD	Flow	-	-	-	-	Daily	Con- tinuous
00010	°C	Temperature	-	-	-	-	Daily	Max. Inc Therm.
00530	mg/l	Suspended Solids	30	45	227	341	3/Wk	Composit
00310	mg/l	BOD5	30	45	227	341	3/Wk	Composit
31616	Count /100ml	Fecal Coliform (Summer Only)	1000	2000	-	-	3/Wk	Grab
00550	mg/l	Oil & Grease	-	-	-	-	1/Mo	Grab
80082	mg/l	CBOD5	-	-	-	-	3/Wk	Composit
00610	mg/l	Ammonia (N)	-	-	-	-	3/Wk	Grab
00665	mg/l	Phos., Total	1.0	1.5	8	11	3/Wk	Composit

(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 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.
- (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 grab sample.

INTERIM EFFLUENT MONITORING REQUIREMENTS for Outfall 3PD00014001

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING</u>	
Reporting Code	UNITS	PARAMETER	Concentration		Loading		REQUIREMENTS	
			Other Units (Specify)	30 day	7 day	kg/day	30 day	7 day
00335	mg/l	COD	-	-	-	-	1/Wk	Compositi
00625	mg/l	Kjieldahl TKN(N)	-	-	-	-	1/Wk	Compositi
01027	ug/l	Cadmium	-	-	-	-	1/Mo	Grab
01032	ug/l	Chromium (Hex)	-	-	-	-	1/Mo	Grab
01033	ug/l	Chromium (Tri.)	-	-	-	-	1/Mo	Grab
01042	ug/l	Copper	-	-	-	-	1/Mo	Grab
01051	ug/l	Lead	-	-	-	-	1/Mo	Grab
71900	ug/l	Mercury	-	-	-	-	1/Mo	Grab
01067	ug/l	Nickel	-	-	-	-	1/Mo	Grab
01092	ug/l	Zinc	-	-	-	-	1/Mo	Grab

C. Operation and Maintenance and Planned Interruptions

Geneva shall continue to maintain and operate the plant and collection systems to minimize equipment breakdowns and interruptions of treatment. Geneva shall make best efforts to

schedule interruptions to minimize adverse water quality impacts. Geneva shall give at least (5) days notice to the Ohio EPA of all planned interruptions, by telephone call or in writing, and obtain OEPA approval prior to the interruption. This notice to OEPA shall include identification of the planned interruption's possible adverse environmental effects. A written report of an interruption, and its actual impact on effluent quality, if any, shall be given to U.S. EPA and OEPA within (10) days of its occurrence. During the time that an interruption reported under this section adversely affects effluent quality, any resulting violation of effluent limitation shall not be subject to Section VI (Stipulated Penalties) of this Consent Order if Geneva demonstrates: (1) the construction which caused the interruption was necessary because of the compliance program improvements at the Geneva plant; (2) the need for and method of the construction activity associated with the interruption was consistent with good engineering practice; and (3) the construction directly caused the interruption and the specific violation of the effluent limitation(s) at issue. These elements shall be addressed in Geneva's written report. Failure by Geneva to comply with the notice requirements of this section for planned interruptions shall render this paragraph void and of no force and effect as to the particular interruption involved. Pending attainment of the final effluent limitations, Geneva shall maintain the best effluent quality possible, consistent with the other obligations of this Consent Order.

Operation and maintenance information for the new equipment shall be incorporated into Geneva's current Operation and Maintenance program. The program, among other things, shall include maintenance schedules for new equipment. By July 30, 1988, a description of the updated Operation and Maintenance program, including copies of any operation and maintenance guidelines, shall be submitted to OEPA for review and comment.

D. Final Effluent Limitations

By August 15, 1988, and thereafter, Geneva shall comply with all final effluent limits in its NPDES permit.

IV. FUNDING

4. Compliance with the terms of this Consent Order by Geneva is not conditioned on the receipt of federal or state grant funds. In addition, failure to comply is not excused by the lack of federal or state grant funds, or by the processing of any applications for the same.

V. REPORTING

5. After the lodging of this Consent Order and until it is terminated in accordance with Paragraph 28, Geneva shall submit to Plaintiff and the Ohio EPA a written report for each calendar quarter, detailing the deadlines and other terms Geneva was required to meet during the reporting period and the current status and/or progress of the construction of improvements required by such dates. This report shall include, but not be limited to, identification of any items that might affect timely

completion, and a projection of the work to be performed pursuant to the Consent Order during the next two calendar quarters.

These reports shall be delivered by the 15th day of April, July, October and January for the previous calendar quarter.

6. In addition to the quarterly reports required in Paragraph 5, not later than fourteen (14) calendar days following the date on which an action is required of Geneva under this Consent Order, Geneva shall deliver to the Ohio EPA and the U.S. EPA written notice that the action has been taken or completed as required. If the action has not been taken or completed as required, a notice shall be delivered to U.S. EPA and Ohio EPA stating the reasons and/or causes for any failure to complete a scheduled action, and the probability of meeting the next milestone in the schedule. The notice shall also describe the actions to be taken or that are being taken to return the program elements to the schedule. Notification to U.S. EPA and OEPA of any delay or anticipated delay shall not by itself excuse the delay.

7. Quarterly status report shall be signed by a duly authorized representative of Defendant having knowledge of the report's contents. Defendant shall not object to the admissibility in evidence of any quarterly report in any civil proceeding to enforce this Consent Order.

8. Effluent information which Geneva is required to monitor and report under this NPDES permit or under paragraph III. 3.B. herein shall be submitted to U.S. EPA and OEPA on a

monthly basis, in accordance with effluent monitoring and reporting requirements set forth in the NPDES permit.

9. All written reports, notices, and submissions required by this Consent Order shall be submitted to the following addresses: For Plaintiff: Director, Water Division, Attention: Chief, Compliance Section (5WQC-TUB-8), U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604. For Ohio: Attn: Harry Courtright, Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio, 44806. For Geneva: City Manager, City of Geneva, 81 East Main Street, Geneva, Ohio 44041. In addition, all written reports and notifications sent pursuant to Section V.6. or Section VIII shall be sent to: Chief, Environmental Enforcement Section, United States Department of Justice, P.O. Box 1611, Ben Franklin Station, Washington, D.C. 20044.

Unless otherwise specified in this Consent Order, reports and notices shall be given in writing, and shall be considered delivered upon placement in the U.S. Mail, with proper postage affixed. If another means is used to deliver a report or notice, it shall be considered delivered upon the date received at the Ohio EPA or U.S. EPA office.

VI. STIPULATED PENALTIES

10. If Geneva fails to comply with a requirement of this Consent Order, then Geneva, upon written notice from U.S. EPA, shall be liable to pay to the United States the stipulated penalties set forth below, unless excused by Paragraphs 12-14 (Force Majeure provisions).

A. If Geneva fails to complete any construction required under Section III.3.A. (1) through (6) of this Consent Order by the dates specified therein, then Geneva shall be liable to pay stipulated penalties as follows:

- (1) \$100 per day, for the first 60 days;
- (2) \$250 per day, for days 61 through 90;
- (3) \$500 per day, for days 91 through 120;
- (4) \$1000 per day for each day of violation beyond 120th day.

B. If Geneva violates any interim effluent limit specified in Section III.3.B. of this Consent Order, Geneva shall be liable to pay stipulated penalties as follows:

- (1) \$100 per day per parameter for the first 60 days in which the limit for that parameter is violated;
- (2) \$250 per day per parameter for days 61 through 90 in which the limit for that parameter is violated;
- (3) \$500 per day per parameter for days 91 through 120 in which the limit for that parameter is violated; and
- (4) \$1000 per day per parameter for each day of violation beyond 120th day in which the limit for that parameter is violated.

C. If Geneva fails to achieve and maintain any final effluent limit by the date specified in Section III.3.D., then Geneva shall be liable to pay stipulated penalties as follows:

- (1) \$250 per day per parameter for the first 60 days in which the limit for that parameter is violated;
- (2) \$500 per day per parameter for days 61 through 90 in which the limit for that parameter is violated;
- (3) \$1000 per day per parameter for days 91 through 120 in which the limit for that parameter is violated; and,

- (4) \$5000 per day per parameter for each day of violation beyond 120th day in which the limit for that parameter is violated.

D. For purposes of paragraphs B and C, each violation of a weekly interim or final effluent limitation shall be deemed to be seven days of violation, each violation of a monthly interim or final effluent limitation shall be deemed to be a violation for each day of that month.

E. All stipulated penalties due hereunder shall be paid by cashier's or certified check made payable to the "Treasurer, United States of America," and delivered to U.S. Attorney's Office, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114-1704, within 20 days of notice from U.S. EPA.

F. 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 Geneva's sewer revenues and funds, and not to other funds or sources available to Geneva to pay any penalties that may be due hereunder, or ordered by this Court. This provision does not relieve the City 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.

G. Nothing in Section VI shall be construed to limit any other remedies available to Plaintiff for violations of this Consent Order or any provision of law.

VII. CIVIL PENALTY

11. Within 30 days after the entry of this Consent Order, Geneva shall pay a civil penalty in the amount of THIRTY THOUSAND DOLLARS (\$30,000.00) to the United States of America. Payment shall be made by certified or cashier's check, payable to "Treasurer, United States of America," and delivered to U.S. Attorney's Office, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114-1704. A copy of the check shall be sent to the U.S. Environmental Protection Agency, Region V, Water Division, Compliance Section, 230 South Dearborn Street, Chicago, Illinois 60673.

VIII. FORCE MAJEURE

12. If any event occurs which causes or may cause a violation of any requirement of this Consent Order, Geneva shall notify U.S. EPA in writing within ten (10) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of delay, the measures taken and to be taken by Geneva to prevent or minimize the delay and the timetable by which those measures will be implemented. Geneva will adopt all reasonable measures to avoid or minimize any such delay.

13. If the parties agree that the violation has been or will be caused entirely by circumstances beyond the control of Defendant, the parties may stipulate to an extension of the particular compliance requirement affected, by a period not exceeding the delay actually caused by such circumstances. In such event, the parties may apply to this Court for an appropriate modification of this Consent Order. In the event the parties cannot agree, any party may submit the matter to this Court for resolution.

14. The burden of proving that any violation was caused entirely by circumstances beyond the control of the Defendant shall rest with Geneva. Unanticipated or increased costs associated with the implementation of action called for by this Consent Order, or changed financial circumstances shall not serve as a basis for an extension of time under this Consent Order. Failure by Geneva to comply with the notice requirements of the Force Majeure provisions shall render those provisions void and of no force and effect as to the particular incident involved and shall constitute a waiver of Geneva's right under the Force Majeure provision to obtain an extension of its obligations under this Consent Order based on such incident. An extension of one compliance date based on a particular incident does not mean that Geneva qualifies for an extension of a subsequent compliance date or dates. Geneva must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought.

IX. RIGHT OF ENTRY

15. Consistent and in accordance with rights of entry under federal, state and local law, regulation as permit, until termination of the provisions of this Consent Order, U.S. EPA, and OEPA and their contractors, consultants, and attorneys, shall have authority to enter the plant at all times, upon proper presentation of credentials to the highest ranking employee present on the premises, for the purposes of:

A. Monitoring the progress of activities required by this Consent Order,

B. Verifying any data or information required to be submitted to U.S. EPA pursuant to this Consent Order; and

C. Obtaining samples, and, upon request, splits of any samples taken by the Geneva or its consultants. If U.S. EPA takes any samples, upon request Geneva or its consultants are entitled to split samples.

This provision in no way limits or affects any right of entry and inspection held by the Plaintiff pursuant to applicable federal or state laws, regulations, or permits.

X. PERMIT OBLIGATIONS

16. 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

OEPA or such other permits as may be required by applicable federal, state, or county laws, rules or regulations.

17. This Consent Order is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. §1342. This Consent Order does not relieve Geneva of any obligation to apply for, obtain and comply with the requirements of any new or existing NPDES permit or comply with any other federal, state law or regulation.

XI. NON-WAIVER PROVISIONS

18. This Consent Order does not limit or affect the rights of Geneva, the State of Ohio or the Plaintiff as against third parties, nor the rights of third parties.

19. The parties reserve and do not waive any and all legal and equitable rights, remedies and defenses that may be available for violation or enforcement of this Consent Order.

20. The Plaintiff does not waive any rights or remedies available to it for any violation by Geneva of federal or state laws, regulations, or permit conditions following termination of the Consent Order.

21. Geneva does not waive any rights or remedies it has under federal or state laws or regulations to comment on or contest any changes in federal or state laws, regulations or permit requirements, or to seek modification to its NPDES permit or any laws or regulations.

XII. FAILURE OF COMPLIANCE

22. The Plaintiff does not, by its consent to the entry of this Consent Order, warrant or aver in any manner that Geneva's complete compliance with the Consent Order will result in compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 et seq., or the NPDES permit applicable to the treatment plant after its completion. Notwithstanding U.S. EPA's or OEPA's review and approval of any plans, the Defendant shall remain solely responsible for compliance with the terms of this Consent Order and its NPDES permit.

XIII. COSTS OF SUIT

23. Each party shall bear its own costs and attorneys' fees in this action.

XIV. PUBLIC COMMENT

24. The parties agree and acknowledge that final approval by the United States and entry of this Consent Order is subject to the requirements of 28 C.F.R. §50.7, which provides for notice and an opportunity for public comment.

XV. SEVERABILITY

25. It is the intent of the parties that the provisions of this Consent Order are severable, and if any provision is declared by a court of competent jurisdiction to be invalid and unenforceable, the remaining provisions shall continue in full force and effect.

XVI. GENERAL PROVISIONS

26. The State of Ohio is a Party hereto solely pursuant to Section 309(e) of the Act, 33 U.S.C. §1319(e). The United States has not alleged any affirmative act by the State of Ohio that violates the Clean Water Act, or any law of Ohio which prevents Geneva from raising revenues needed to comply with this consent judgment. The State shall have no liability under this Consent Order except as required by Section 309(e) of the Clean Water Act in the event that the laws of the State prevent Geneva from raising revenues needed to comply with this Order. The Attorney General of the State of Ohio hereby certifies that the present laws of the State do not prevent Geneva from raising revenues needed to comply with this Consent Order.

XVII. CONTINUING JURISDICTION OF THE COURT

27. The Court shall retain jurisdiction of this case until termination of this Consent Order, in order to enforce or modify the Consent Order, or to interpret the rights and obligations of the parties to the Consent Order. During the pendency of the Consent Order, any party may apply to the Court for any orders, directions or relief necessary to construe and effectuate this Consent Order.

28. This Consent Order shall terminate after Geneva has achieved and maintained compliance with the final effluent limitations contained in its NPDES permit for a period of one (1) year and has paid all penalties required pursuant to this Consent

Order. Termination of the Consent Order shall be by Order of the Court, upon application by any party.

Dated:

June 2, 1988

Thomas D. Lambro

JUDGE OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF OHIO

The parties enter into this Consent Order and submit it to the Court that it may be approved and entered:

CITY OF GENEVA, OHIO

By: Steven R. Aynes
Manager, City of Geneva

Dated: 1/26/88

APPROVED AS TO FORM:

Nancy L. Pasquale
City Solicitor

Elizabeth Julman 1/27/88
Attorney for City of Geneva

Dated: 1/25/88

STATE OF OHIO

~~Assistant~~
Deputy Attorney General
Office of Attorney
General

By: Margaret A. Kaden

Dated: 2/13/88

UNITED STATES OF AMERICA

By: Roger J. Marzulla
Roger J. Marzulla
Acting Assistant Attorney
General
Land and Natural Resources
Division
U.S. Department of Justice

Dated: _____

PATRICK M. McLAUGHLIN
United States Attorney for
the Northern District of
Ohio

By: Steven Bell 4.5.88
STEVEN BELL
Assistant United States
Attorney

Thomas L. Adams, Jr.
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Assistant Administrator
for Enforcement and
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Frank M. Covington
for VALDAS V. ADAMKUS
Regional Administrator
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