

IN THE  
COURT OF COMMON PLEAS  
TRUMBULL COUNTY, OHIO

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

Plaintiff,

vs.

CITY OF HUBBARD,

Defendant.

CASE NO. 88-CV-928

JUDGE McKay

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. (hereinafter "Plaintiff") and Defendant City of Hubbard (hereinafter "Hubbard") 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 Hubbard under Chapter 6111 of the Ohio Revised Code, and venue is proper in this Court.

July 13, 1988  
This is a true and correct copy to the original  
Consent Order  
Violet C. Whitman  
Clerk of Courts  
By Michelle Ryan Deputy

FILED  
RECORDED  
JUL 13 2 43 PM '88  
VIOLET C. WHITMAN  
CLERK OF COURTS  
TRUMBULL COUNTY  
VOL. — PAGE —

## 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 Hubbard 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 Hubbard 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 Hubbard 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 Hubbard 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 March 7, 1990, Defendant Hubbard 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 March 7, 1990, Defendant Hubbard is enjoined to meet the final effluent limitations set forth in its NPDES permit No. 3PD00028\*BD and any renewals or modifications thereof. Hubbard is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

#### V. CONSTRUCTION SCHEDULE

5. Defendant Hubbard is enjoined and ordered to eliminate discharges from the overflows and bypasses in its sanitary sewer system listed in Attachment 2, paragraph B, of the Director's Final Findings and Order issued to Defendant on May 15, 1986, and to complete construction of the improvements to

its wastewater treatment plant described in the Facilities Plan submitted to Ohio EPA on July 13, 1987 and to attain compliance with the final effluent limitations of NPDES permit No. 3PD00028\*BD, any renewals and modifications 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	May 1, 1988
(c) Advertisement of Building Bids	July 6, 1988
(d) Execution of Building Contracts	October 6, 1988
(e) Initiation of Construction	November 7, 1988
(f) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits and the elimination of bypasses and overflows.	November 7, 1989
(g) Attain compliance with final effluent limitations, and eliminate overflows and bypasses.	March 7, 1990
(h) Completion of remaining construction	June 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 City of Hubbard shall pay to the State of Ohio a civil penalty of sixty-five thousand dollars (\$65,000.00). 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 Hubbard fails to meet any of the requirements of this Consent Order set forth in Paragraphs 4, 5 (b), 5 (c), 5 (d), 5 (e), 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 Hubbard 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 \$5,000.00 per day of violation of said requirement. The Defendant shall be liable for an additional stipulated penalty of one thousand dollars (\$ 1000.00) 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. POTENTIAL FORCE MAJEURE

10. In any action to enforce any of the provisions of this Consent Order Defendant Hubbard 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

11. 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.

X. COSTS


12. Defendant Hubbard is hereby ordered to pay the costs of this action.

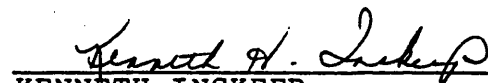
  
JUDGE, COURT OF COMMON PLEAS


APPROVED:

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

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