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IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

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

Plaintiff,

vs.

CITY OF SOLON

Defendant.

CASE NO. \_\_\_\_\_

JUDGE 182668

041 RALPH A. McALLISTER

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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 Solon (hereinafter "Solon") 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 Solon 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 Northeast wastewater treatment plant and sewer system (wastewater treatment system) in such a manner as to result in numerous violations of the discharge limitations and monitoring requirements of NPDES Permit No. 3PC00012 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 Solon 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. Defendant is enjoined to take all necessary actions to make construction improvements to the wastewater treatment plant so as to eliminate direct discharge to the waters of the State by January 2, 1990. Between the effective date of this Consent Order and January 2, 1990, Defendant is enjoined to comply with the interim effluent limitations and monitoring requirements set forth in Appendix "A" attached hereto. The interim effluent limits and monitoring requirements contained in Appendix "A" do not constitute an NPDES permit or a modification of any existing permit. After January 2, 1990, Defendant Solon shall cease direct discharge to the waters of the state at this location. Solon is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

5. Defendant Solon is enjoined and ordered to eliminate discharges from overflows and bypasses from its sanitary sewer system and to complete construction of the improvements to eliminate direct discharge from its Northeast wastewater treatment plant 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	Completed
(d) Execution of Building Contracts	Completed
(e) Initiation of Construction	Completed
(f) Completion of construction of sufficient wastewater treatment plant improvements and sanitary sewer improvements to eliminate bypasses and overflows and to eliminate direct discharge from the Northeast Wastewater Treatment Plant to the waters of the State.	January 2, 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 Solon shall pay to the State of Ohio a civil penalty of seven thousand, five hundred dollars (\$7,500.00). 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 (45) days from the

date of entry of this Consent Order.

VII. STIPULATED PENALTIES

7. In the event that Defendant Solon fails to meet any of the requirements of this Consent Order set forth in Paragraphs 4, 5 (b), 5 (c) 5(d), 5 (e) and 5 (f) including any scheduled 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 (30) days - Two Hundred and Fifty Dollars (\$250.00) per day. For each day of failure to meet a requirement, from thirty-one (31) to sixty days (60) - Five Hundred Dollars (\$500.00) per day. For each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days - One Thousand Five Hundred Dollars (\$1,500.00). For each day of failure to meet a requirement, over ninety days (90) days - Two Thousand Five Hundred Dollars (\$2,500.00) per day.

8. In the event that Defendant Solon fails to meet any of the requirements of this Consent Order set forth in Subparagraph 5(f), the Defendant shall immediately and automatically be liable for payment of a stipulated penalty of \$2,000.00 per day of violation of said requirement. The Defendant shall be liable for an additional stipulated penalty of Five Hundred Dollars (\$500.00) per day of violation if the failure to comply continues for more than thirty (30) days, i.e. Three Thousand Dollars (\$3,000.00) per day of violation.

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In the event that failure to comply with the requirements of Subparagraph 5(f) continues more than sixty (60) days, Defendant shall be liable for an additional Two Thousand Dollars (\$2,000.00) per day of violation, i.e., Five Thousand Dollars (\$5,000.00) 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".

#### VIII. RETENTION OF JURISDICTION

10. In any action to enforce any of the provisions of this Consent Decree the City of Solon 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 but not limitation): acts of God, unusually severe weather conditions, strikes, acts of war or civil disturbances, or orders of any regulatory agency. While the State of Ohio and the Ohio EPA do 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 do so is at the time, if ever, that an enforcement action is commenced. Approval of this Consent Decree without a force majeure clause does not constitute a waiver by Defendant

City of Solon of any rights or defenses it may have under applicable law.

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.

IX. COSTS

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

*Robert A. Paulson*  
JUDGE, COURT OF COMMON PLEAS

APPROVED:

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

THE CITY OF SOLON

RECEIVED FOR FILING

JAN 19 1990

GERALD E. FUERST, CLERK  
BY *G. E. Fuerst* DEP.

BY:

*Ch. Korleski*  
CHRISTOPHER KORLESKI  
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Assistant Attorneys General  
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Columbus, Ohio 43266-0410

BY:

*Robert A. Paulson*  
ROBERT A. PAULSON, Mayor

*Charles T. Riehl*  
CHARLES T. RIEHL, Law Director  
City of Solon

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THE STATE OF OHIO Cuyahoga County	} SS.	GERALD E. FUERST, CLERK OF THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY.
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL. Vol. 1221 Pg 926 <u><i>Jan 19, 1990</i></u>		
NOW ON FILE IN MY OFFICE.		
WITNESS BY HAND AND SEAL OF SAID COURT THIS DAY OF <u><i>April</i></u> A.D. 199 <u><i>0</i></u>		<u><i>2/6</i></u>
GERALD E. FUERST, Clerk		

APPENDIX A

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS for Outfall 3P000012001

1. EFFLUENT CHARACTERISTIC		DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS	
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	89	133	2/Week	Composite
00310	mg/l BOD <sub>5</sub>	-	-	-	-	2/Week	Composite
31616	Count Fecal Coliform /100ml (Summer Only)	1000	2000	-	-	2/Week	Grab
00550	mg/l Oil & Grease	Not to exceed 10.0 at any time				1/Qtr.	Grab
00665	mg/l Phos., Total	-	-	-	-	1/Month	Composite
80082	mg/l C30D <sub>5</sub>	25	40	74	118	2/Week	Composite
00610	mg/l Ammonia (N) (Summer Only)	-	-	-	-	1/Month	Composite

2. The pH (Reporting Code 00400) (average) shall not be less than 5.5 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. (Summer Only)
4. 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: .78 MGD



APPENDIX A (CON'T)

OTHER REQUIREMENTS

- A. Plant Bypass. The permittee shall monitor the treatment plant's bypass, when discharging, at Station 3PC00012007 and report to the Ohio EPA in accordance with the following table. See PART II, OTHER REQUIREMENTS, for location of sampling.

<u>CHARACTERISTIC</u>			<u>MONITORING REQUIREMENTS</u>	
Reporting Code	Units	Parameter	Measurement Frequency	Sample Type
80998	Number	Occurrences	Daily	Estimate
80999	Hr./day	Duration	Daily	Estimate
00310	mg/l	BOD <sub>5</sub>	Once/day	Grab
00530	mg/l	Suspended Solids	Once/day	Grab
50050	MGD	Flow	Daily	Estimate

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.

The treatment plant bypass is prohibited except under emergency conditions as authorized by the Federal Regulation at 40 CFR 122.41 (m) or Part III, Item 11, General Conditions of the permit.

- B. The permittee shall monitor the systems bypasses and overflows at Stations 3PC00012003 through 3PC00012006 and report to the Ohio EPA in accordance with the following Table:

<u>CHARACTERISTIC</u>			<u>MONITORING REQUIREMENTS</u>	
Reporting Code	Units	Parameter	Measurement Frequency	Sample Type
80098	Number/Mo.	Occurrences	When discharging	Estimate
80099	Hours	Duration	When discharging	Daily Est.
00310	mg/l	BOD <sub>5</sub>	1/month	Grab
00530	mg/l	Suspended Solids	1/Month	Grab
50050	Million Gallons	Volume	When discharging	Daily Est.

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

APPENDIX A (CON'T)

OTHER REQUIREMENTS

9. Continued

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).

- C. 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 Attachment I, Items A and B for monitoring and reporting requirements. Also see PART III, Item II of the permit mentioned in Finding No. 3.

<u>Station Number</u>	<u>Description</u>	<u>Receiving Stream</u>
3PC00012003	Pump Station - Metro Park	Aurora Branch of Chagrin River.
3PC00012004	Pump Station - Bridal Trail	Unknown Creek to Chagrin River.
3PC00012005	Pump Station - Dogwood Lane	Unknown Creek to Chagrin River.
3PC00012006	Pump Station - Forest Lane	Unknown Creek to Chagrin River.
3PC00012007	Plant Influent	Unknown tributary to Aurora Branch of Chagrin River.