

IN THE COURT OF COMMON PLEAS
CLARK COUNTY, OHIO

STATE OF OHIO, ex rel.	:	CASE NO. 89-CIV-1011
ANTHONY J. CELEBREZZE, JR.	:	
ATTORNEY GENERAL OF OHIO	:	JUDGE LORIG
	:	
Plaintiff	:	
	:	
v.	:	
	:	
CITY OF SPRINGFIELD	:	<u>ORDER</u>
	:	
Defendant.	:	

Section X, provides that the stipulated penalty provisions of Section VII paragraphs seven (7) and eight (8), may be terminated after Defendant Springfield has completed construction of its wastewater treatment facilities sufficient to ensure compliance with final effluent limits and has achieved and maintained compliance with the final effluent limitations contained in its NPDES permit for a period of one (1) year and paid any stipulated penalties required pursuant to the Consent Order.

Springfield has maintained compliance with the effluent limitations contained in its NPDES permit in excess of one year. In addition, no stipulated penalties have accrued through any provision of the order. Therefore, it is hereby ORDERED that the stipulated penalties provisions contained in Section 7 of the Consent Decree entered in the above captioned case on May 3, 1989, is hereby terminated.

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 CLERK
 COMMON PLEAS COURT
 CLARK COUNTY, OHIO
 JUDGE, COURT OF COMMON PLEAS



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IN THE COURT OF COMMON PLEAS
CLARK COUNTY, OHIO

CASE NO. 89-CIV-1011

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

:
:
: JUDGE _____

Plaintiff,

-vs-

:
:
: CONSENT ORDER

CITY OF SPRINGFIELD,

Defendant.

:
:
:

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 Springfield (hereinafter "Springfield") 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 Springfield shall

provide a copy of this Consent Order to each contractor it employes to perform work itemized herein, and each general contractor shall provide a copy of this Consent 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 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 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 Springfield 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 July 1, 1989, 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 July 1, 1989, Defendant Springfield is enjoined to meet the final effluent standards set forth in its NPDES permit No. 1PE00007*FD and any renewals or modifications thereof. Defendant Springfield is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

5. Defendant Springfield is enjoined and ordered to complete construction of the improvements to its wastewater treatment plant described in the Municipal Compliance Plan as approved by Ohio EPA and to attain compliance with the final effluent limitations of NPDES permit No. 1PE00007*FD 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	Complete
(b) Submittal of Approvable Plans and Specifications to Ohio EPA	Complete
(c) Advertisement of Building Bids	Complete
(d) Execution of Building Contracts	Complete
(e) Initiation of Construction	Complete
(f) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits	Complete
(g) Attain compliance with final effluent limitations.	July 1, 1989

Within seven days from each completion date listed above, Defendant, Springfield shall submit a written report stating whether or not Springfield has performed the action set forth therein to Ohio EPA's Southwest District Office.

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 Springfield shall pay to the State of Ohio a civil penalty of Three Thousand Five Hundred Dollars (\$3,500.00). 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 Springfield fails to meet any of the requirements of this Consent Order set forth in Paragraphs 4 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 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 twenty (120) days - Two Thousand Five Hundred Dollars (\$2,500.00). For each day of failure to meet a requirement, over one hundred twenty (120) days - Three Thousand Five Hundred Dollars (\$3,500.00) per day.

8. In the event that Defendant Springfield 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 (\$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(g) continues more than ninety (90) 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 (45) 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 Springfield 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 Springfield 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. TERMINATION OF STIPULATED PENALTIES

12. The provisions of this Consent Order set forth in Section VII, paragraphs 7 and 8 requiring the payment of stipulated penalties may be terminated after Defendant Springfield has completed construction of its wastewater treatment facilities sufficient to ensure compliance with final effluent limits and has achieved and maintained compliance with the final effluent limitations contained in its NPDES permit for a period of one (1) year and payment of all stipulated penalties required pursuant to this Consent Order. Termination of stipulated penalties shall be by Order of the Court, upon application by any party and a demonstration that the conditions of this paragraph have been met.

XI. COSTS

13. Defendant Springfield is hereby ordered to pay the costs of this action.

JOURNALIZED
JUL 13 1989

[Handwritten Signature]

JUDGE, COURT OF COMMON PLEAS

APPROVED:

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

CLARK COUNTY, OHIO
FILED
JUL 11 1989
COMMON PLEAS COURT
RONALD E. VINCIGUERRA, CLERK

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