

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

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STATE OF OHIO, ex rel : CASE NO. 89-2240
ANTHONY J. CELEBREZZE, JR. :
ATTORNEY GENERAL OF OHIO : JUDGE BARBARA GORMAN

Plaintiff,

vs.

CITY OF WEST CARROLLTON

Defendant.

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 West Carrollton (hereinafter "Defendant") 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 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. GENERAL INJUNCTIVE RELIEF

4. Defendant is hereby enjoined and ordered to 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, including but not limited to, the final effluent limitations and monitoring requirements set forth in said permit. Furthermore, Defendant is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. CIVIL PENALTY

5. Defendant shall pay to the State of Ohio a civil penalty of five thousand dollars (\$5,000.00). 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 (45) days from the date of entry of this Consent Order.

VI. STIPULATED PENALTIES

6. In the event that Defendant fails to comply with a final effluent limitation as required by NPDES permit no. 1PD00014*FD, and any modifications or renewals thereof, the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule. For each 30 day effluent discharge violation, \$2,000.00 dollars for each violation. If the same 30 day effluent discharge violation occurs consecutively, \$4,000.00 for the second violation. If the same 30 day

effluent discharge violation occurs three times in succession, \$6,000.00 for the third violation. For the same consecutive 30 day effluent discharge violation thereafter, \$8,000.00 for each violation.

For each 7 day or daily effluent discharge violation, \$1,000.00 dollars for each violation. If the same 7 day or daily effluent discharge violation occurs consecutively, \$2,500.00 for the second violation. If the same 7 day or daily effluent discharge violation occurs three times in succession, \$4,000.00 for the third violation. For the same consecutive 7 day or daily effluent discharge violation thereafter, \$6,000.00 for each violation.

For violation of any other permitting requirement, including but not limited to monitoring and reporting requirements, \$500.00 for each day each requirement is not met.

For purposes of computing these stipulated penalties, each separate 30 day effluent discharge violation shall be considered one violation and each separate 7 day effluent discharge violation shall be considered one violation.

7. Any payment required to be made under the provisions of Paragraph 6 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".

VII. TERMINATION OF STIPULATED PENALTIES

8. The provisions of this Consent Order set forth in Section VI, paragraph 6 requiring the payment of stipulated penalties may be terminated after Defendant has achieved and maintained compliance with the final effluent limitations contained in its NPDES permit for a period of one (1) year and has payed all stipulated penalties required pursuant to this Consent Order.

VIII. POTENTIAL FORCE MAJEURE

9. In any action to enforce any of the provisions of this Consent Order, Defendant 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 defense it may have under applicable law.

IX. SUBMITTAL OF PTI APPLICATION

10. Within thirty (30) days from the date of entry of this Consent Order, Defendant shall submit a permit to install application with the required detailed plans for the sewerage system improvements conducted at the wastewater treatment plant pursuant to the requirements of Part I, C of NPDES permit No. 1PD00014*ED.

X. 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.

XI. COSTS

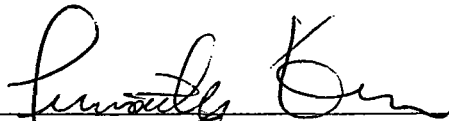
12. Defendant is hereby ordered to pay the costs of this action.

BARBARA GORMAN, JUDGE

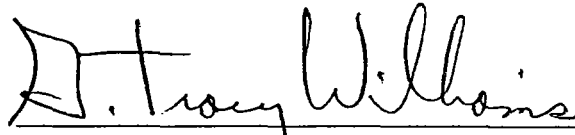
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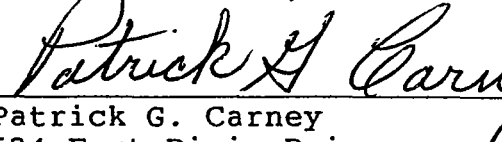
STATE OF OHIO, ex rel.
ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO

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