

OPY

IN THE COURT OF COMMON PLEAS
HURON COUNTY, OHIO

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

CASE NO. 52513

JUDGE WHITE

Plaintiff,

vs.

CITY OF WILLARD,

CONSENT ORDER

Defendant.

HURON COUNTY
COMMON PLEAS COURT
FILED

99 OCT 25 AM 10:37

CLARK HUNTER
CLERK

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 Willard (hereinafter "Willard") 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 Willard 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. COMPLIANCE SCHEDULE

4. Defendant Willard 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 31, 1991, 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 31, 1991, Defendant Willard is enjoined to meet the final effluent standards set forth in its NPDES permit No. 2PD0005*ED and any renewals or modifications thereof and to eliminate all overflows and bypasses. Willard is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

5. Defendant Willard is enjoined and ordered to eliminate all overflows and bypasses and to complete construction of the

improvements to its wastewater treatment plant described in the Permit to Install (03-4541) issued to Willard on August 21, 1988 and to complete construction of the improvements to its sewer collection system described in the document "Main Street Hydraulic Analysis" submitted to Ohio EPA on August 21, 1988, and to attain compliance with the final effluent limitations of NPDES permit No. 2PD0005*ED 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 for sewer collection system improvements	Completed
(b) Submittal of Approvable Plans and Specifications to Ohio EPA for sewer collection system improvements	May 2, 1990
(c) Advertisement of Building Bids for sewer collection system	July 2, 1990
(d) Execution of Building Contracts for wastewater treatment plant	November 16, 1989
(e) Execution of Building Contracts for sewer collection system	September 2, 1990
(f) Initiation of Construction for wastewater treatment plant	November 30, 1989
(g) Initiation of Construction for sewer collection system	October 1, 1990
(h) Completion of construction of sewer collection system improvements	

and of sufficient wetstream treatment facilities to insure compliance with final effluent limits and the elimination of bypasses and overflows.

May 31, 1991

- (i) Attain compliance with final effluent limitations, and eliminate overflows and bypasses.

July 31, 1991

Within seven days from each completion date listed above, Defendant Willard shall submit a written report stating whether or not Willard has performed the action set forth therein to Ohio EPA's North Western 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 Willard shall pay to the State of Ohio a civil penalty of Thirty-five Thousand dollars (\$35,000.00). 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 Willard fails to meet any of the requirements of this Consent Order set forth in Paragraph 4 and Subparagraphs 5(b), 5(c), 5(d), 5(e), 5(f), 5(g) and 5(h) the Defendant shall be liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of each failure to meet a requirement, up to thirty days - \$500.00 per day. For each day of each failure to meet a requirement, from thirty-one to sixty days - \$1,000.00 per day. For each day of each failure to meet a requirement, from sixty-one to ninety days - \$2,500.00. For each day of each failure to meet a requirement, after ninety days - \$3,500.00 per day.

8. In the event that Defendant Willard fails to meet any of the requirements of this Consent Order set forth in Subparagraph 5(i), the Defendant shall be liable for payment of a stipulated penalty of \$5,000.00 per day of each violation of said requirement. The Defendant shall be liable for an additional stipulated penalty of one thousand dollars (\$1000.00) per day of each violation if the failure to comply continues for more than thirty (30) days, i.e. six thousand dollars (\$6,000.00) per day of each violation. In the event that failure to comply with the requirements of subparagraph

5(i) continues more than sixty (60) days, Defendant shall be liable for an additional four thousand dollars (\$4,000.00) per day of each violation, i.e., ten thousand dollars (\$10,000.00) per day of each 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. SUBORDINATION

10. 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 Willard's sewer revenues and funds, and not to other funds or sources available to Willard 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.

IX. POTENTIAL FORCE MAJEURE

11. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Willard shall notify the Ohio 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 the delay, the measures taken and to be taken by Willard to prevent or minimize the delay and the timetable by which measures will be implemented. The ten days shall start to run when any of the City's officers, agents, employees, assigns, contractors or any person acting in concert or privity with any of them become either aware of the event or should have become aware of the event through the exercise of job duties, contractual responsibilities or otherwise. Willard will adopt all reasonable measure to avoid or minimize any such delay.

12. In any action by the State of Ohio to enforce any of the provisions of this Consent Order, Willard may raise that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed upon by Willard and the State of Ohio 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 by Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Willard shall rest with Willard. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances shall not constitute circumstances entirely beyond the control of Willard or serve as a basis for an extension of time under this Consent Order. Failure by Willard to comply with the notice requirements of this Paragraph shall render this Paragraph void and of no force and effect as to the particular incident involved. Acceptance of this Consent Order without a Force Majeure Clause does not constitute a waiver by Willard of any rights or defenses it may have under applicable law.

X. COMPLIANCE NOT DEPENDENT UPON FINANCING

13. Performance of the terms of this Consent Order by Willard is not conditioned upon the receipt of any financing, including, but not limited to grants, loans or any other form of funding.

XI. RETENTION OF JURISDICTION

14. 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.

XII. COSTS

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

ORIGINAL SIGNED BY
PHILLIP M. WHITE JR., JUDGE

JUDGE, COURT OF COMMON PLEAS
HURON COUNTY

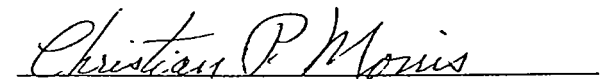
APPROVED:

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

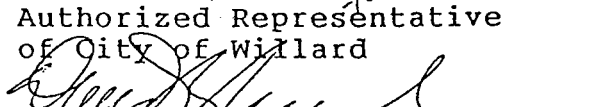
BY:



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Christian P. Morris
Authorized Representative
of City of Willard



Dee Dee
LAW DIRECTOR

3716E

APPENDIX A

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>				
			Concentration		Loading		Meas.	Sample			
Reporting Code	UNITS	PARAMETER	Other Units	(Specify)	kg/day	30 day	7 day	30 day	7 day	Freq.	Type
00010	°C	Temperature	-	-	-	-	-	-	-	daily	grab
00530	mg/l	TSS	25	40	-	-	-	-	-	3/wk	composite
00550	mg/l	Oil & Grease	-	-	-	-	-	-	-	1/wk	grab
00610	mg/l	Ammonia (N)	-	-	-	-	-	-	-	3/wk	composite
00665	mg/l	Phos., Total	2.0	3.0	-	-	-	-	-	3/wk	composite
31616	Count /100 ml	Fecal Coliform (summer only)	-	-	-	-	-	-	-	3/wk	grab
50050	MGD	Flow	-	-	-	-	-	-	-	daily 24 hr total	
80082	mg/l	CBOD ₅	20	30	-	-	-	-	-	3/wk	composite

- The pH (Reporting code 00400) shall not be less than 6.5 S.U. nor greater than 9.0 S.U. and shall be monitored daily by multiple grab sample.
- If the entity uses chlorine for disinfection, 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 multiple grab sample. (Summer Only)**
- The Dissolved Oxygen (Reporting Code 00300) shall be monitored daily by multiple grab sample.

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont.)

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
Reporting Code	UNITS	PARAMETER	Concentration		Loading		Meas. Freq.	Sample Type
			Other Units (Specify)		kg/day			
			30 day	7 day	30 day	7 day		
00335	mg/l	COD	-	-	-	-	1/wk	composite
00615	mg/l	Nitrite (N)	-	-	-	-	3/wk	composite
00620	mg/l	Nitrate (N)	-	-	-	-	3/wk	composite
00625	mg/l	Kjeldahl TKN(N)	-	-	-	-	1/mo	composite
01027	ug/l	Cadmium, Total	-	-	-	-	1/mo	composite
01034	ug/l	Chromium, Total	-	-	-	-	1/mo	composite
01042	ug/l	Copper, Total	-	-	-	-	1/mo	composite
01051	ug/l	Lead, Total	-	-	-	-	1/mo	composite
01067	ug/l	Nickel, Total	-	-	-	-	1/mo	composite
01092	ug/l	Zinc, Total	-	-	-	-	1/mo	composite
01220	ug/l	Chromium (Hex) Dissolved	-	-	-	-	1/mo	grab
71900	ug/l	Mercury, Total	-	-	-	-	1/mo	composite
39100	Bis (Z-ethy/hexyl) -phtalate		-	-	-	-	1/qtr	grab
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ADDITIONAL REQUIREMENTS

Plant Bypass(es). Willard shall provide the Ohio EPA's North West District Office with at least ten days prior written notice of any anticipated interruptions to its current wastewater treatment process whereby untreated or partially treated waste and/or sewage would be diverted to or enter waters of this State. Furthermore, the City's wastewater treatment plant and sewer collection system shall be properly maintained and operated to minimize any bypass or overflow occurrences. In the event of any bypass or overflow events the City shall provide the maximum amount of treatment available to said waste and/or sewage, including, but not limited to, diversion to and treatment in the City's collection system impoundment lagoon.

Bypasses and overflows are only authorized at the following outfall descriptions pursuant to the conditions set forth in these requirements:

- 2PD00005004 plant bypass
- 2PD00005005 bypass after primary clarifier
- 2PD00005006 bypass after final clarifier
- 2PD00005007 collection system impoundment overflow.

Willard shall monitor the treatment plant's bypass(es), when discharging, at Station(s) 2PD000005004 thru 2PD00005006 and report to the Ohio EPA in accordance with the following table.

EFFLUENT CHARACTERISTICMONITORING REQUIREMENTS

Reporting Code	UNITS	PARAMETER	Meas. Freq.	Sample Type
00530	mg/l	Suspended Solids	once/day	Grab
50050	MGD	Flow	daily	continuous
80082	mg/l	CBOD ₅	once/day	Grab
80998	No.	Occurrences	daily	continuous
80999	Hr/day	Duration	daily	continuous

Data for the Number of Occurrences(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.

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 its currently effective NPDES permit, and any renewals or modifications thereof.

Willard is only authorized to discharge overflows and bypasses from station 2PD00005007 during wet weather periods when the flow in the sewer system exceeds the capacity of the sewer system. Willard shall monitor the systems bypasses and overflows at station 2PD00005007 and report to the Ohio EPA in accordance with the following table.

EFFLUENT CHARACTERISTICMONITORING REQUIREMENTS

Reporting Code	UNITS	PARAMETER	Meas. Freq.	Sample Type
00530	mg/l	Suspended Solids	1/mo	Grab
50050	Million Gal.	Volume	When discharging	Daily Est.
80082	mg/l	CBOD ₅	1/mo	Grab
80998	No./mo	Occurrences	When discharging	Estimate
80999	Hours	Duration	When discharging	Daily Est.

The permittee shall set up a rotating schedule to sample at least five (5) stations during each storm event. Samples should be collected during the first 30 minutes of discharge.

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.

Monitoring data shall be submitted for each month when discharge occurs. The monthly monitoring report shall be attached to the normal monthly report.

3716E/1-15

Ordinance No. 4015

Passed October 9 1989

ORDINANCE NO. 4015

AN ORDINANCE AUTHORIZING THE CITY OF WILLARD TO ENTER INTO A CONSENT DECREE WITH THE STATE OF OHIO, IN SETTLEMENT OF STATE VS. WILLARD, CASE NO. 52513 IN THE HURON COUNTY COMMON PLEAS COURT, AND DECLARING AN EMERGENCY

Be it ordained by the Council of the City of Willard, Ohio:

Section 1. That the City Manager be and hereby is authorized to execute, on behalf of the City of Willard, the consent decree settling the case of State of Ohio vs. City of Willard, Case No. 52513 in the Huron County Common Pleas Court, a copy of which decree is attached hereto, incorporated herein, and marked as Exhibit "A".

Section 2. That this ordinance is declared to be an emergency, immediate passage of which is necessary for the preservation of the public peace, health and safety, for the reason that the case of State vs. Willard, must be resolved by October 26 in order for the City to receive O.W.D.A. financing for its sewage disposal plant construction. This ordinance shall therefore become effective immediately upon passage.

Passed: October 9 1989

Wade D. [Signature] President of Council (Protem)

Approved as to form:

[Signature] City Law Director

JoAnn Jones Clerk of Council

I, JoAnn Jones, Clerk of Council for the City of Wwillard, Ohio, do hereby certify that the foregoing copy of Ordinance No. 4015, passed by City Council on October 9, 1989, is a true and correct copy of the original on file in my office.

JoAnn Jones

Clerk of Council, City of Willard, OH