

IN THE COURT OF COMMON PLEAS
WAYNE COUNTY, OHIO

STATE OF OHIO, EX REL)
ANTHONY J. CELEBRESSE, JR.)
ATTORNEY GENERAL OF OHIO)

CASE NO. 89-CI-328
JUL-1, P-213
JUDGE 82

Plaintiff.

vs.

CITY OF WOOSTER, OHIO)

CONSENT ORDER

Defendant)

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Anthony J. Celebresse, Jr. (hereinafter "Plaintiff") and Defendant City of Wooster (hereinafter "Wooster") 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 Wooster 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 Wooster 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 is further enjoined to comply with its currently effective NPDES Permit, and any renewals or modifications thereof.

V. INJUNCTIVE RELIEF

5. The City of Wooster shall hire a qualified independent consultant to conduct an audit of their POTW laboratory by January

1, 1990 and a second one by January 1, 1992. This audit shall include an evaluation of the City's NPDES Permit compliance requirements, analytical procedures, quality assurance and control program, reporting procedures, and deficiencies determined as a result of the annual DMR-QA Study administered by U.S. EPA.

6. Any deficiencies noted during the audit shall be corrected within sixty days of the date of the audit report. Written documentation of all corrective actions taken shall be submitted to the Northeast District Office of the Ohio EPA.

7. The initial audit report shall be submitted to the Northeast District Office by April 1, 1990 and a subsequent report shall be submitted by April 1, 1992.

VI. CIVIL PENALTY

8. Defendant Wooster shall pay to the State of Ohio a civil penalty of Twenty Seven Thousand and No/100 Dollars (\$27,000.00). The penalty shall be paid by delivering to counsel for Plaintiff a certified check for the amount said penalty, payable to the order of "Treasurer, State of Ohio."

VII. STIPULATED PENALTIES

9. In the event that Defendant, City of Wooster fails to meet any of the requirements of this Consent Order set forth in Paragraph 4, the Defendant shall 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 sixty days - \$250.00 per day. For each day of failure to meet a requirement,

from sixty-one to ninety days - \$1,000.00 per day. For each day of failure to meet a requirement, after ninety days \$1,500.00 per day.

10. In the event that Defendant City of Wooster fails to meet any of its 7-day average final effluent limitations, Defendant shall be liable for payment of a stipulated penalty of One Thousand Dollars (\$1,000.00) for each 7-day period during which the failure occurs: if the failure to meet any of its 7-day average final effluent limitations continues for a second consecutive 7-day period, Defendant shall be liable for payment of a stipulated penalty of Two Thousand Dollars (\$2,000.00): if the failure to meet any of its 7-day average final effluent limitations continues for a third consecutive 7-day period, Defendant shall be liable for a payment of a stipulated penalty of Three Thousand Dollars: if the failure to meet any of its 7-day average final effluent limitations continues for a fourth consecutive 7-day period, Defendant shall be liable for payment of a stipulated penalty of Four Thousand Dollars (\$4,000.00); if the failure to meet any of its 7-day average final effluent limitations continues beyond a fourth consecutive 7-day period, Defendant shall be liable for payment of a stipulated penalty of Five Thousand Dollars (\$5,000.00).

11. In the event that Defendant, City of Wooster fails to meet any of the 30-day average final effluent limitations, Defendant shall be liable for payment of a stipulated penalty of Two Thousand Dollars (\$2,000.00) for each 30-day period during which the failure occurs; if the failure to meet any of its 30-day

average final effluent limitations continues for a second consecutive 30-day period, Defendant shall be liable for the payment of a stipulated penalty of Three Thousand Dollars (\$3,000.00); if the failure to meet any of its 30-day average final effluent limitations continues for a third consecutive 30-day period, Defendant shall be liable for the payment of a stipulated penalty of Four Thousand Dollars (\$4,000.00); if the failure to meet any of its 30-day average final effluent limitations continues for a fourth consecutive 30-day period, Defendant shall be liable for the payment of a stipulated penalty of Five Thousand Dollars (\$5,000.00); if the failure to meet any of its 30-day average final effluent limitations continues beyond a fourth consecutive 30-day period, Defendant shall be liable for the payment of a stipulated penalty of Ten Thousand Dollars (\$10,000.00).

12. In the event that Defendant, City of Wooster fails to meet any of its daily final effluent limitations, Defendant shall be liable for payment of a stipulated penalty of \$175.00 for each day of any final effluent limitation violation. The Defendant shall be liable for an additional stipulated penalty of \$325.00 per day of violation if the failure continues for more than sixty days, i.e. Five Hundred Dollars (\$500.00) per day of violation. In the event that failure to meet any of the daily final effluent limitations continues for more than one hundred and twenty (120) days, Defendant shall be liable for an additional Five Hundred Dollars (\$500.00) per day of violation, i.e., One Thousand Dollars (\$1,000.00) per day of violation.

13. Any payment required to be made under the provisions of Paragraphs 9, 10, 11 or 12 of this Order shall be made by delivering to Plaintiff's counsel a certified check or checks, made payable to Treasurer, State of Ohio, for the appropriate amounts, within sixty days from the date Defendant receives violation notice from Ohio EPA. In each violation notice Ohio EPA will state the amount to be paid by Defendant due to the violations of this Consent Order.

14. (A) If any event occurs which causes or may cause a violation or delay of any requirement of this Consent Order, Wooster shall notify the Ohio EPA in writing within ten (10) days of the event, describing in detail the nature of the violation, the precise cause or causes of the violation, the measures taken and to be taken by Wooster to prevent or minimize the violation and the timetable by which measures will be implemented. Wooster will adopt all reasonable measures to avoid or minimize any such violation.

(B) In any action by the State of Ohio to enforce any of the provisions of this Consent Order, Wooster may raise that it is entitled to a defense that the violation 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 Wooster 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 Ohio. At that time, the burden of proving that any violation was or will be caused by circumstances entirely beyond the control of Wooster shall rest with Wooster. 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 Wooster, or serve as a basis for a justification for violation. Acceptance of this Consent Order without a Force Majeure Clause as to the State of Ohio does not constitute a waiver by Wooster of any rights or defenses it may have under applicable law.

VIII. TERMINATION OF STIPULATED PENALTIES

15. The provisions of this Consent Order set forth in Section VII, Paragraphs 8, 9 and 10 requiring the payment of stipulated penalties may be terminated after Defendant has achieved and maintained compliance with its NPDES permit for a period of one (1) year and payment of the civil penalty contained in Section VI of 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 set forth in this paragraph have been met. If Ohio EPA, in the independent exercise of its enforcement discretion determines that termination of the stipulated penalties set forth in paragraphs 8, 9 and 10 is consistent with the enforcement objectives of Ohio EPA, then Ohio

EPA will not oppose an application to terminate the stipulated penalty provision contained herein.

IX RETENTION OF JURISDICTION

16. 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

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

Robert H. Bomer

JUDGE, COURT OF COMMON PLEAS

APPROVED:

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

THE CITY OF WOOSTER

BY: *Michael Marous*

MICHAEL MAROUS
Assistant Attorney General
30 East Broad Street
Columbus, Ohio 43266-0410

BY: *Donald L. Detrow*

DONALD L. DETROW
Director of Administration
538 North Market Street
Wooster, Ohio 44691-3499

NOTICE TO THE CLERK: PLEASE
SERVE UPON ALL PARTIES NOT IN
DEFAULT FOR FAILURE TO APPEAR
NOTICE OF THIS JUDGMENT AND
ITS DATE OF ENTRY UPON THE
JOURNAL.

JOURNALIZED

OCT 13 1989

PAULINE L. MYERS, CLERK
WAYNE COUNTY, OHIO