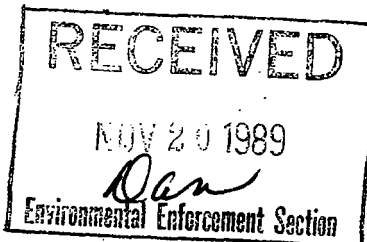


IN THE COURT OF COMMON PLEAS  
CLERMONT COUNTY, OHIO



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

Plaintiff,

vs.

CLERMONT COUNTY BOARD  
OF COMMISSIONERS

Defendant.

CASE NO. 88 CV 0256

JUDGE WILLIAM WALKER

CONSENT ORDER

RECEIVED  
CLERMONT COUNTY  
ENVIRONMENTAL ENFORCEMENT SECTION

NOV 20 1989  
FILED

FILED

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 Clermont County Board of Commissioners (hereinafter "Board") 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 and their successors

in interest and assigns. Defendant Board shall provide a copy of this Consent Order to each county commissioner, and each officer, employee, and agent or contractor it employs or enlists to perform work itemized herein, and Defendant shall make best efforts to insure that 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 plants and sewer systems in such a manner as to result in violations of the discharge limitations and monitoring requirements of the NPDES Permits issued to it by the Director of the Ohio EPA and in violation of the water pollution laws of the State of Ohio. Nothing in this Consent Order or any document incorporated herein by reference shall constitute an admission by Defendant of any legal or factual matter set forth herein or in the Complaint. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of 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 journalization of this Consent Order.

4. The parties hereto acknowledge and agree that this settlement shall not be binding on any of the parties until

approved by the Court. If the Court shall fail or refuse to approve the Consent Order, the settlement shall be null and void and without any force or effect and none of the parties shall be bound thereby.

5. The final findings and orders of the Director that presently apply to any of the wastewater treatment plants that are the subject of this Consent Order shall be deemed rescinded upon the effective date of this Consent Order. To the extent that the schedules contained in the permits differ from those schedules set forth in this Consent Order, the schedules in this Consent Order are controlling and enforceable through this Consent Order.

#### IV. MIDDLE EAST FORK WASTEWATER TREATMENT PLANT

6. Compliance Schedule. Defendant Board is hereby enjoined and ordered to immediately comply with the requirements of Chapter 6111 of the Ohio Revised Code and the rules and regulations adopted under that Chapter and the terms and conditions of its currently effective NPDES Permit No. 1PK00010\*DD, and any renewals or modifications thereof except as provided in this paragraph.

During the period from entry of this Consent Order through March 31, 1990, Defendant shall not be liable as a result of a contempt action brought against Defendant for violating the final effluent limitations set forth in its currently effective NPDES Permit No. 1PK00010\*DD, and any renewals or modifications thereof.

C

During the period from April 1, 1990, to May 31, 1993, if the cumulative flow at the Middle East Fork Plant exceeds [(N x 3,600,000 gallons) plus 1,800,000 gallons] (Where N equals the number of days in that period), Defendant shall not be liable as a result of a contempt action brought against Defendant for violating the final effluent limitations set forth in its currently effective NPDES Permit No. 1PK00010\*DD, and any renewals or modifications thereof.

7. Defendant Board is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

8. Construction Schedule. Defendant Board is enjoined and ordered to complete construction of the improvements which will enable the Middle East Fork Wastewater Treatment Plant to comply with final effluent limits under all flow conditions in accordance with the following schedule.

<u>Task</u>	<u>Completion Date</u>
(a) Submit approvable detailed plans and apply for a permit to install	January 1, 1991
(b) Start construction to comply with final effluent limitations under all flow conditions	August 1, 1991
(c) Substantially Complete construction	March 1, 1993
(d) Achieve operation of the plant so that the plant meets final limits under all flow conditions.	June 1, 1993

V. LOWER EAST FORK WASTEWATER  
TREATMENT PLANT AND SEWER SYSTEM

9. Compliance Schedule for the Lower East Fork Treatment Plant. Defendant Board is hereby enjoined and ordered to immediately comply with the requirements of Chapter 6111 of the Ohio Revised Code and the rules and regulations adopted under that Chapter and the terms and conditions of its currently effective NPDES Permit No. 1PK00009\*ED, and any renewals or modifications thereof, except as paragraphs 10 and 13 provide otherwise.

10. Between the effective date of this Consent Order and February 29, 1992, Defendant is enjoined to comply with the interim effluent limitations set forth in Attachment "A" attached hereto, except that Defendant shall meet the interim effluent limitation for chlorine residual until October 1, 1990. The interim effluent limits contained in Attachment "A" do not constitute an NPDES permit or a modification of any existing permit.

11. After March 1, 1992, Defendant Board is enjoined to meet the final effluent standards set forth in its NPDES permit No. 1PK00009\*ED and any renewals or modifications thereof.

12. Defendant Board is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

13. Compliance Schedule for the Lower East Fork Sewer System. Between the date of this Consent Order and the times

set forth below, Defendant is authorized to discharge from overflows 1PK00009002 through 1PK00009017 in accordance with the conditions set forth in Attachments D and E. Defendant shall comply with such conditions in Attachments D and E.

<u>STATION NUMBER</u>	<u>DESCRIPTION</u>	<u>END DATE FOR UNAUTHORIZED BYPASSES AND OVERFLOWS</u>
1PK00009002	Happy Hollow lift station	November 1, 1991
1PK00009003	Delmont lift station	November 1, 1991
1PK00009004	Ellis lift station	November 1, 1991
1PK00009005	Highview lift station	November 1, 1991
1PK00009006	Hall Run trunk sewer east of I-275	March 1, 1992
1PK00009007	Oak Street lift station	November 1, 1991
1PK00009008	SR 28 lift station	November 1, 1991
1PK00009009	SR 131 lift station	November 1, 1991
1PK00009010	Aicholtz Road sewer west of I-275	November 1, 1994
1PK00009011	Viking Village lift station	November 1, 1991
1PK00009012	West Clough lift station	June 1, 1994
1PK00009013	Shepherd Road lift station	November 1, 1991
1PK00009014	Stoneybrook lift station	November 1, 1991
1PK00009015	Shayler Road sewer overflow near Timber Creek Drive	November 1, 1994
1PK00009016	Shayler Road sewer near Benjamin Street	November 1, 1994
1PK00009017	Overflow from sewer northeast of Rancho Lane	November 1, 1994

This authorization does not constitute an NPDES permit or a modification of an existing permit.

14. On and after the date described for each station number set forth in paragraph 13 above, Defendant Board is enjoined and ordered to eliminate all sanitary sewer overflow and bypass events caused solely by hydraulic overloading or by other circumstances not authorized by Permit No. 1PK00009\*ED

that may occur at each of such station numbers.

15. Construction Schedule for the Lower East Fork Wastewater Treatment Plant. Defendant Board is enjoined and ordered to complete construction of the improvements to the Lower East Fork Wastewater Treatment Plant in accordance with Permit to Install No. 05-3216 and to attain compliance with the final effluent limitations of NPDES permit No. 1PK00009\*ED and any modifications or renewals thereof in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Start construction in accordance with PTI # 05-3216	June 1, 1990
(b) Submit approvable detailed plans and apply for a permit to install for disinfection facilities designed to meet the final residual chlorine effluent limit of 0.07 mg/l	July 1, 1990
(c) Obtain compliance with the final residual chlorine effluent limit of 0.07 mg/l.	October 1, 1990
(d) Start construction of new disinfection facilities	February 1, 1991
(e) Substantially complete construction and attain operational level of new disinfection facilities	July 1, 1991
(f) Substantially complete construction of improvements specified in PTI #05-3216	December 1, 1991
(g) Achieve operation of plant so that plant meets final limits	March 1, 1992

16. Construction Schedule for the Lower East Fork Sewer

System. Defendant is enjoined and ordered to eliminate all sanitary sewer overflow and bypass events from the Lower East Fork sewer system caused solely by hydraulic overloading or by other circumstances not authorized by Permit No. 1PK00009\*ED and any renewals or modifications thereof in accordance with the following schedule for each lift station described in paragraph 13 above:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Submit a complete application for a permit to install and approvable detailed plans for sewer system and, if necessary, treatment plant improvements to eliminate all sanitary sewer overflow and bypass events caused solely by hydraulic overloading or by other circumstances not authorized by Permit No. 1PK00009*ED and any renewals or modifications thereof.	November 1, 1991
(b) Begin construction of sanitary sewer and, if necessary, treatment plant improvements.	February 1, 1992
(c) Substantially complete construction of sanitary sewer and, if necessary, treatment plant improvements. Eliminate all sanitary sewer overflow and bypass events caused solely by hydraulic overloading or by other circumstances not authorized by Permit No. 1PK00009*ED and any renewals or modifications thereof in accordance with the schedule established for each station number described in paragraph 13 above.	See end dates for discharges set forth in paragraph 13 above.

VI. O'BANNON CREEK WASTEWATER TREATMENT PLANT

17. Compliance Schedule. Defendant Board is hereby



enjoined and ordered to immediately comply with the requirements of Chapter 6111 of the Ohio Revised Code and the rules and regulations adopted under that Chapter and the terms and conditions of its currently effective NPDES Permit, and any renewals or modifications thereof. Defendant Board is enjoined to meet the final effluent limitations set forth in its NPDES permit No. 1PK00017\*CD and any renewals or modifications thereof. Defendant Board is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

VII. NINE MILE CREEK WASTEWATER  
TREATMENT PLANT

18. Compliance Schedule. Defendant Board is hereby enjoined and ordered to immediately comply with the requirements of Chapter 6111 of the Ohio Revised Code and the rules and regulations adopted under that Chapter and the terms and conditions of its currently effective NPDES Permit No. 1PK00008\*ED, and any renewals or modifications thereof. Defendant Board is enjoined to meet the final effluent limitations set forth in NPDES Permit No. 1PK00008\*ED and any renewals or modifications thereof. Defendant Board is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

VIII. STONELICK CREEK WASTEWATER  
TREATMENT PLANT

19. Compliance Schedule. Defendant Board is hereby enjoined and ordered to immediately comply with the

requirements of Chapter 6111 of the Ohio Revised Code and the rules and regulations adopted under that Chapter and the terms and conditions of its currently effective NPDES Permit No. 1PH00012\*BD, and any renewals or modifications thereof, except as paragraph 20 provides otherwise.

20. Between the effective date of this Consent Order and January 31, 1993, Defendant is enjoined to comply with the interim effluent limitations set forth in Attachment "B" attached hereto, except that, during this period, the interim effluent limitations for CBOD<sub>5</sub> and suspended solids shall not apply where the twenty-four hour flow for any day exceeds 120,000 gallons or when peak hourly flows exceed 350,000 gallons per day and Defendant reports the occurrence of such event, in writing, at the time that the monthly operating report for the month in which such event occurs is due pursuant to its NPDES permit. The interim effluent limits contained in Attachment "B" do not constitute an NPDES permit or a modification of any existing permit.

21. After February 1, 1993, Defendant Board is enjoined to meet the final effluent limitations set forth in its NPDES permit No. 1PH00012\*BD and any renewals or modifications thereof, if Stonelick remains in operation.

22. Defendant Board is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

23. Construction Schedule. Defendant Board is enjoined

and ordered to complete construction of wastewater treatment plant improvements and to attain compliance with the final effluent limitations of NPDES permit No. 1PH00012\*BD and any modifications or renewals thereof or cease the discharge and direct the flow to another wastewater treatment plant in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Hire full time Class II Operator	March 1, 1990
(b) Submit approvable detailed plans and apply for a permit to install for either eliminating the plant or upgrading the plant to meet final effluent limitations	March 1, 1991
(c) Start construction of final improvements to either meet final effluent limits or eliminate the discharge	November 1, 1991
(d) Substantially complete construction of final improvements to either meet final effluent limits or eliminate the discharge	November 1, 1992
(e) Attain compliance with final effluent limitations or eliminate the direct discharge from the plant to waters to the state and direct the flow to another wastewater treatment plant.	February 1, 1993

#### IX. FELICITY WASTEWATER TREATMENT PLANT

24. Compliance Schedule. Defendant Board is hereby enjoined and ordered to immediately comply with the requirements of Chapter 6111 of the Ohio Revised Code and the rules and regulations adopted under that Chapter and the terms and conditions of its currently effective NPDES Permit No.

1PH00011\*BD, and any renewals or modifications thereof, except as paragraphs 25 and 26 provide otherwise.

25. Between the effective date of this Consent Order and December 31, 1990, Defendant is enjoined to comply with the interim effluent limitations set forth in Attachment "C" attached hereto. The interim limitations for CBOD<sub>5</sub> and suspended solids shall not apply when the twenty-four hour flow for any day exceeds 150,000 gallons and Defendant reports the occurrence of such event, in writing, at the time that the monthly operating report for the month in which such event occurred is due pursuant to its NPDES permit. The interim effluent limits contained in Attachment "C" do not constitute an NPDES permit or a modification of any existing permit.

26. From January 1, 1991 until September 30, 1992, Defendant is enjoined to comply with the interim effluent limitations set forth in Attachment "C" regardless of flow conditions.

27. Commencing October 1, 1992, Defendant Board is enjoined to meet the final effluent limitations set forth in its NPDES permit No. 1PH00011\*BD and any renewals or modifications thereof.

28. Defendant Board is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

29. Construction Schedule. Defendant Board is enjoined and ordered to complete construction of improvements to its

wastewater treatment plant and to attain compliance with the final effluent limitations of NPDES permit No. 1PH00011\*BD and any modifications or renewals thereof in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Hire full time Class II Operator	March 1, 1990
(b) Submit general plans for upgrading the plant to meet final effluent limitations	April 1, 1990
(c) Submit approvable detailed plans and apply for a permit to install for upgrading the plant to meet final effluent limitations	December 1, 1990
(d) Substantially complete that phase of the construction so that Defendant attains compliance with interim effluent limitations	January 1, 1991
(e) Start construction of final improvements	July 1, 1991
(f) Substantially complete construction of final improvements	July 1, 1992

X. REPORTS

30. On the first business day of each month until all milestones set forth herein have been achieved, Defendant shall mail a written report to the Southwest District Office of Ohio EPA stating whether it has performed the actions required by this Order to be taken during the preceding month.

XI. APPROVALS

31. This Consent Order does not constitute authorization or approval of the construction of any physical structure or

Consent  
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.

32. Should the Defendant exceed an interim or final effluent limitation for pH, Defendant shall not be liable for payments of a stipulated penalty for the first day of exceedance occurring in any one calendar month at any facility that is the subject of this Consent Order.

#### XII. CIVIL PENALTY

33. Defendant Board shall pay to the State of Ohio a civil penalty of one hundred thousand dollars (\$100,000). 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.

#### XIII. STIPULATED PENALTIES

##### A. INTERIM AND FINAL EFFLUENT LIMIT REQUIREMENTS

34. Defendant Board shall pay stipulated penalties for violation of the requirement to comply with interim and final effluent limitations set forth in paragraphs 6, 10, 11, 17, 18, 20, 21, 25, 26, and 27 in the amounts set forth herein. For each violation of a particular effluent limitation at a particular wastewater treatment plant, Defendant shall pay a stipulated penalty based upon the number of violations

occurring after the effective date of this Consent Order and whether the violation involves an interim or final effluent limitation. Although the parties (may) disagree as to whether a violation of a seven-day or thirty-day average effluent limitation constitutes one or (seven or thirty) violations, it is agreed that for the purpose of the imposition of stipulated penalties pursuant to this Consent Order, a violation of a seven-day average effluent limitation is considered one violation and a violation of a thirty-day average effluent limitation is considered one violation. Except as paragraphs 32, 35, 36 and 37 otherwise provide, the amounts that Defendant Board shall pay are set forth in the schedule below.

<u>OCCURRENCE OF VIOLATIONS</u>	<u>DAILY LIMIT Interim/Final</u>	<u>7-DAY AVERAGE Interim/Final</u>	<u>30-DAY AVERAGE Interim/Final</u>
First	\$ 250/ 400	\$ 500/1000	\$ 1000/2000
Second	400/ 800	1000/2000	2000/4000
Third	800/1000	1500/3000	2500/5000
Greater than three	1000/2000	2000/4000	3000/6000

35. During the period from the entry of this Consent Order through March 31, 1990, Defendant shall not be liable for stipulated penalties for violations of the final effluent limitations for the Middle East Fork Wastewater Treatment Plant. Except as provided in paragraph 36 below, during the period from April 1, 1990 to May 31, 1993, Defendant Board shall pay a stipulated penalty in the amount of two hundred

dollars for each day of each violation of the applicable effluent limitations for the Middle East Fork Wastewater Treatment Plant set forth in its NPDES permit referenced in paragraph 6.

36. During the period from April 1, 1990 to May 31, 1993, at any time that the cumulative flow at the Middle East Fork Plant exceeds [(N x 3,600,000 gallons) plus 1,800,000 gallons] (where N equals the number of days in that period), Defendant shall not be liable for stipulated penalties for violations of the final effluent limitations for BOD<sub>5</sub>, suspended solids, ammonia- nitrogen, and fecal coliform.

37. During the period from the entry of this Consent Order to March 31, 1990, Defendant Board shall pay a stipulated penalty in the amount of one hundred dollars for each day of each violation of applicable effluent limitations for the Stonelick and Felicity Wastewater Treatment Plants set forth in paragraphs 20 and 25 of this Consent Order.

#### B. MILESTONE REQUIREMENTS

38. For violations of any of the milestone requirements of this Consent Order set forth in Paragraphs 8(a)-(c), 15(a)-(f), 16(a) and (b), 23(a)-(d), and 29(a)-(f), 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 each failure to meet a milestone requirement up to thirty (30) days - Five Hundred Dollars (\$500.00) per day. For each day of each failure to meet a



requirement from thirty-one (31) to sixty days (60) - One Thousand Dollars (\$1,000.00) per day. For each day of each failure to meet a requirement from sixty-one (61) to ninety (90) days - Two Thousand Five Hundred Dollars (\$2,500.00). For each day of each failure to meet a requirement over ninety days (90) days - Three Thousand Five Hundred Dollars (\$3,500.00) per day.

39. For violations of any of the milestone requirements of this Consent Order set forth in Subparagraphs 8(d), 14, 15(g), 16(c), and 23(e), the Defendant shall be liable and shall pay a stipulated penalty according to the following payment schedule. For each day of each failure to meet a milestone requirement, Defendant shall pay a stipulated penalty of Five Thousand Dollars (\$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 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 Subparagraphs 8(d), 14, 15(g), 16(c), and 23(e) 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.

#### C. MONITORING AND REPORTING REQUIREMENTS

40. For violations of any of the monitoring and reporting

requirements of the applicable NPDES permit referenced in paragraphs 6, 9, 17, 18, 19, and 24 of this Consent Order (excluding those imposed upon Defendant in its approved pretreatment programs) or with the requirements of paragraph 13 of this Consent Order, Defendant shall be liable and shall pay a stipulated penalty according to the following payment schedule. For each day of each failure to meet a monitoring or reporting requirement up to sixty (60) days - Four Hundred Dollars (\$400.00) per day. For each day of each failure to meet such a requirement from sixty (60) to ninety (90) days - Five Hundred Dollars (\$500.00) per day. For each day of each failure to meet such a requirement over ninety (90) days - One Thousand Dollars (\$1,000.00) per day.

D. OTHER REQUIREMENTS

41. For violations of any of the requirements of this Consent Order included in paragraphs 6, 7, 9, 12, 17, 18, 19, 22, 24, and 28 set forth below, Defendant shall be liable and shall pay a stipulated penalty according to the following payment schedule. For each day of each failure to meet the particular requirement up to thirty (30) days - Four Hundred Dollars (\$400.00) per day. For each day of each failure to meet a requirement from thirty-one (31) to sixty (60) days - Five Hundred Dollars (\$500.00) per day. For each day of each failure to meet a requirement over ninety (90) days - One Thousand Dollars (\$1,000.00) per day. The violations referenced in this paragraph are as follows:

- a. failure to operate the wastewater treatment works under the supervision of a State certified operator as required by O.A.C. 3745-7-02;
- b. failure to properly operate and maintain the treatment works as required by the general conditions of the currently effective NPDES permit for the particular plant.

42. Any payment required to be made under the provisions of Paragraphs 34 through 41 of this Consent 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".

43. The provisions of Section XIII providing for the payment of stipulated penalties shall terminate with respect to each wastewater treatment plant after a determination by order of this Court that all construction required by the Consent Order has been performed and such plant has been in total compliance with all of the final effluent limitations in its effective permit for a period of twelve consecutive months.

#### XIV. POTENTIAL OF FORCE MAJEURE

44. (A) If Defendant discovers that it will be unable to meet any milestone deadline in this Consent Order for any reason, including circumstances beyond its control, it may notify Plaintiff of the anticipated delay and reasons therefore. Upon receipt of such notice, Plaintiff may agree to waive or defer one or more milestone deadlines herein or the enforcement thereof. Plaintiff will promptly inform Defendant

of its decision in writing. Plaintiff is not bound by oral representations of Ohio EPA personnel concerning the validity of Defendant's reason for delay. A decision by Plaintiff to waive or defer any milestone deadline of this Consent Order shall not be a bar to any enforcement action for Defendant's failure to meet the date of the milestone as deferred. A decision by Plaintiff to defer enforcement of any milestone deadline or stipulated penalties set forth in this Consent Order shall not constitute a waiver of enforcement action with regard to the terms of this Consent Order unless the Plaintiff expressly so agrees.

(B) In any action by the State of Ohio to enforce any of the provisions of this Consent Order, Defendant may raise at that time the question whether 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, acts of regulatory agencies, or civil disturbances. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant 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 Defendant shall

rest with Defendant. 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 Defendant, or serve as a basis for an extension of time under this Consent Order. Failure by Defendant 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 and shall constitute a waiver of Defendant's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one compliance date based on a particular incident does not mean that Defendant qualifies for an extension of a subsequent compliance date or dates. Defendant must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order without a force majeure clause as to the State of Ohio does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

XV. MISCELLANEOUS

45. Nothing in this Consent Order shall preclude Defendant from exercising its rights under R.C. Chapter 3745 to challenge any actions by the Director of Ohio EPA that may adversely affect the Defendant.

46. Nothing herein shall preclude Clermont County from seeking relief provided under applicable law so long as it

complies with the notice provisions of paragraph 44 of this consent order.

47. For purposes of this Consent Order alone, the length of time that may be required to engage in litigation that may be needed to obtain easements cannot now be foreseen by the parties. With respect to the Lower East Fork Wastewater Treatment Plant and Sewer System, delays due to actions of the Ohio Historical Preservation Office or federal agencies charged with the responsibility of protecting or preserving archeological sites cannot now be foreseen by the parties.

48. For purposes of this Consent Order, the phrase "substantially complete" as employed in paragraphs 8(c), 15(e) and (f), 16(c), 23(d), and 29(d) and (f) shall mean that phase of construction when all components of the treatment works necessary for the facility to achieve and maintain the applicable effluent limitations as established by this Order are in place and operational.

49. Unless otherwise specifically provided herein, notices required or authorized by this Consent Order may be given by first class mail to the following named persons (or such other persons as the parties may prescribe from time to time in accordance with this paragraph 49):

CLERMONT COUNTY:

A. Steven Wharton  
Director for Planning and Development  
Assistant County Administrator  
76 South Riverside Drive  
Batavia, Ohio 45103


STATE OF OHIO:

Steve Martin  
(or his successor)  
Southwest District Office  
Ohio Environmental Protection Agency  
40 South Main Street  
Dayton, Ohio 45402

Monthly Operating Reports shall be submitted in accordance with the terms of the applicable permit, or any renewal or modifications thereof. Other notices or reports required by this Consent Order shall be deemed given upon date of mailing by certified mail to the above addressee.

50. The Court will retain jurisdiction of this action for the purpose of making any order which it deems appropriate to carry out this Consent Order.

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



JUDGE WILLIAM WALKER  
CLERMONT COUNTY  
COURT OF COMMON PLEAS


APPROVED:

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


CLERMONT COUNTY BOARD OF  
COMMISSIONERS

BY:

BY:



DOMINIC J. HANKET  
JAMES O. PAYNE, JR.  
Assistant Attorneys General  
30 East Broad Street  
Columbus, Ohio 43266-0410



THOMAS L. BLUST  
Chief, Civil Litigation  
Office of the Prosecuting Attorney  
Clermont County, Ohio

ATTACHMENT A

LOWER EAST FORK WWTP EFFLUENT LIMITATIONS

1. EFFLUENT CHARACTERISTIC

DISCHARGE LIMITATIONS

<u>REPORTING CODES</u>	<u>UNITS</u>	<u>PARAMETER</u>	<u>CONCENTRATION</u>	
			<u>30-day</u>	<u>7-day</u>
00530	mg/l	Suspended solids	12	18
80082	mg/l	CBOD <sub>5</sub>	15	23
000610	mg/l	Ammonia (summer only)	6.4	9.6
31616	#/100 ml	Fecal coliform (summer only)	1000	2000

2. The pH (reporting code 00400) shall not be less than 6.5 S.U. nor greater than 9.0 S.U.
3. The chlorine residual (reporting code 50060) shall be maintained at a level not to exceed 0.5 mg/l (summer only).
4. The dissolved oxygen (reporting code 00300) shall be maintained at a level not less than 5.0 mg/l.



ATTACHMENT B

STONELICK CREEK WWTP EFFLUENT LIMITATIONS

1. EFFLUENT CHARACTERISTIC

DISCHARGE LIMITATIONS

<u>REPORTING CODES</u>	<u>UNITS</u>	<u>PARAMETER</u>	<u>CONCENTRATION</u>	
			<u>30-day</u>	<u>7-day</u>
00530	mg/l	Suspended solids	30	45
80082	mg/l	CBOD <sub>5</sub>	25	40

2. The pH (reporting code 00400) shall not be less than 6.5 S.U. nor greater than 9.0 S.U.
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 maintained at a level not less than 5.0 mg/l.

ATTACHMENT C

FELICITY WWTP EFFLUENT LIMITATIONS

1. EFFLUENT CHARACTERISTIC

DISCHARGE LIMITATIONS

REPORTING CODES	UNITS	PARAMETER	CONCENTRATION	
			30-day	7-day
00530	mg/l	Suspended solids	30	45
80082	mg/l	CBOD <sub>5</sub>	25	40
31616	#/100 ml	Fecal coliform (summer only)	1000	2000

2. The pH (reporting code 00400) shall not be less than 6.5 S.U. nor greater than 9.0 S.U.
3. The chlorine residual (reporting code 50060) shall be maintained at a level not to exceed 0.5 mg/l (summer only).
4. The dissolved oxygen (reporting code 00300) shall be maintained at a level not less than 5.0 mg/l.

ATTACHMENT D

Defendant Clermont County is authorized to discharge from the following overflows only during periods when flow in the sewer system exceeds the capacity of the sewer system. See Attachment E for monitoring and reporting requirements. Also see, Part III, Paragraph 11 of NPDES Permit No. 1PK00009\*ED.

<u>STATION NUMBER</u>	<u>DESCRIPTION</u>
1PK00009002	Overflow from Happy Hollow lift station
1PK00009003	Overflow from Delmont lift station
1PK00009004	Overflow from Ellis lift station
1PK00009005	Overflow from Highview lift station
1PK00009006	Overflow from Hall Run trunk sewer near Round Bottom Road
1PK00009007	Overflow from Oak Street lift station
1PK00009008	Overflow from S.R. 28 lift station
1PK00009009	Overflow from S.R. 131 lift station
1PK00009010	Overflow from Aicholtz Road sewer west of I-275
1PK00009011	Overflow from Viking Village lift station
1PK00009012	Overflow from West Clough lift station
1PK00009013	Overflow from Shepherd Road lift station
1PK00009014	Overflow from Stoneybrook lift station
1PK00009015	Overflow from Shayler Road sewer near Timber Creek Drive
1PK00009016	Overflow from Shayler Road sewer near Benjamin Street
1PK00009017	Overflow from sewer northeast of Rancho Lane

ATTACHMENT E

Defendant Clermont County shall monitor the systems bypasses and overflows at Stations 1PK00009002 through 1PK00009017 and report to the Ohio EPA in accordance with the following table:

<u>1. CHARACTERISTIC</u>			<u>MONITORING REQUIREMENTS</u>	
<u>REPORTING CODES</u>	<u>UNITS</u>	<u>PARAMETERS</u>	<u>MEASUREMENT FREQUENCY</u>	<u>SAMPLE TYPE</u>
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	Mil. Gal.	Volume	When discharging	Daily Est.

7711.1-28

IN THE COURT OF COMMON PLEAS  
CLERMONT COUNTY, OHIO

FILED  
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CLERK OF COMMON PLEAS COURT  
CLERMONT COUNTY, OHIO

STATE OF OHIO, ex rel. )  
LEE FISHER )  
ATTORNEY GENERAL OF OHIO, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CLERMONT COUNTY BOARD OF )  
COMMISSIONERS, )  
 )  
Defendant. )

CASE NO. 88 CV 0256  
JUDGE WILLIAM WALKER

STIPULATION, MOTION FOR TERMINATION  
OF STIPULATED PENALTIES AND ORDER

The parties stipulate that, based upon the monthly operating reports and other information submitted by the Clermont County Board of Commissioners, the Middle East Fork wastewater treatment plant has been in total compliance with all of the final effluent limitations in its NPDES permit for a period of twelve consecutive months and otherwise satisfies the requirements of paragraph 43 of the Consent Order entered in this action on November 7, 1989.

Accordingly, the Clermont County Board of Commissioners hereby moves that this Court enter an order terminating the requirement for the payment of stipulated penalties for the Middle East Fork wastewater treatment plant pursuant to paragraph 43 of the aforementioned Consent Order.

Respectfully submitted,

BOARD OF COUNTY COMMISSIONERS  
CLERMONT COUNTY, OHIO

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Attorney for Plaintiff

ORDER

The Court, having reviewed the stipulation of the parties and the Motion of Clermont County Board of Commissioners, and having been advised in the premises, hereby determines that the requirements of paragraph 43 of the Consent Order have been met and orders that the requirement for payment of stipulated penalties for future violations of the Consent Order by the Middle East Fork wastewater treatment plant is hereby terminated.

  
\_\_\_\_\_  
JUDGE WILLIAM WALKER