

IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

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

Plaintiff,

vs.

MAHONING COUNTY COMMISSIONERS

Defendant.

CASE NO. 90-cv-714

JUDGE WILLIAM E. HOUSER

CONSENT ORDER

OFFICE OF COURTS
MAHONING COUNTY, OHIO
MAR 26 3 29 PM '90
ANTHONY J. CELEBREZZE, JR.

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 Mahoning County Commissioners (hereinafter "Mahoning County") 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 Mahoning County 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 two of its wastewater treatment plants and sewers 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: CRAIG BEACH PLANT

4. Defendant Mahoning County 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 No. 3PH00030*CD, 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 April 1, 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 April 1, 1991, Defendant Mahoning County is enjoined to meet the final effluent standards set forth in its NPDES permits No. 3PH00030*CD and any renewals or modifications thereof. Mahoning County is hereby enjoined to properly operate and maintain its Craig Beach wastewater treatment plant and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE: CRAIG BEACH PLANT

5. Defendant Mahoning County is enjoined and ordered to eliminate discharges from overflows and bypasses from its sanitary sewer system associated with its Craig Beach Plant and to complete construction of the improvements to its Craig Beach wastewater treatment plant described in the General Plan

submitted to Ohio EPA on July 27, 1987, given technical approval on February 3, 1988 and to attain compliance with the final effluent limitations of NPDES permit No. 3PH00030*CD 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 | August 1, 1989 |
| (f) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits and the elimination of bypasses and overflows. | January 1, 1991 |
| (g) Attain compliance with final effluent limitations, and eliminate overflows and bypasses. | April 1, 1991 |
| (h) Completion of remaining construction | June 2, 1991 |

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. COMPLIANCE SCHEDULE: NEW MIDDLETOWN PLANT

6. Defendant Mahoning County 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 No. 3PH00016*BD, 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 April 1, 1991 Defendant is enjoined to comply with the interim effluent limitations set forth in Appendix "B" attached hereto. The interim effluent limits contained in Appendix "B" do not constitute an NPDES permit or a modification of any existing permit. After April 1, 1991, Defendant Mahoning County is enjoined to meet the final effluent standards set forth in its NPDES permit No. 3PH00016*BD and any renewals or modifications thereof. Mahoning County is hereby enjoined to properly operate and maintain its New Middletown wastewater treatment plant and any associated equipment and structures.

VII. CONSTRUCTION SCHEDULE: NEW MIDDLETOWN PLANT

7. Defendant Mahoning County is enjoined and ordered to eliminate discharges from overflows and bypasses from its

sanitary sewer system associated with its New Middletown Plant and to complete construction of the improvements to its New Middletown wastewater treatment plant described in the General Plan submitted to Ohio EPA in October, 1987 and given technical approval on July 29, 1988 and to attain compliance with the final effluent limitations of NPDES permit No. 3PH00016*BD 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 | August 1, 1989 |
| (f) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits and the elimination of bypasses and overflows. | February 1, 1991 |
| (g) Attain compliance with final effluent limitations, and eliminate overflows and bypasses. | April 1, 1991 |
| (h) Completion of remaining construction | June 1, 1991 |

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.

VIII. CIVIL PENALTY

8. Defendant Mahoning County shall pay to the State of Ohio a civil penalty of thirty thousand dollars (\$30,000.00), of which eighteen thousand dollars (\$18,000) shall be the penalty for New Middletown and twelve thousand dollars (\$12,000) shall be the penalty for Craig Beach. 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.

IX. STIPULATED PENALTIES

9. In the event that Defendant Mahoning County fails to meet any of the requirements of this Consent Order set forth in Paragraphs 4, (except for its applicable effluent limitations contained in Appendices "A" and "B" or NPDES permits Nos. 3PH00016*BD and 3PH00030*CD) 5(e), 5(f), 5(h), 6, 7(e), 7(f) and 7(h), 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 sixty (60) days - Two Hundred Fifty Dollars (\$250.00) per day for each requirement not met. For each day of failure to meet a requirement, from sixty-one (61) to ninety days (90) - Five Hundred Dollars (\$500.00) per day for each requirement not met. For each day of failure to meet a requirement, from ninety-one (91) to one hundred and twenty (120) days - One Thousand Two Hundred Fifty Dollars (\$1,250.00) per day for each requirement not met. For each day of failure to meet a requirement, over one hundred and twenty days (120) days - Two Thousand Dollars (\$2,000.00) per day for each requirement not met.

10. In the event that Defendant Mahoning County fails to meet any of its 7-day average interim effluent limitations contained in Appendices "A" or "B" attached hereto or any of its 7-day average final effluent limitations by the date specified in Subparagraphs 5(g) or 7(g), Defendant shall be liable for payment of a stipulated penalty of One Thousand Dollars (\$1,000.00) for the first 7-day period during which the failure occurs; if the failure to meet any of its 7-day average 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 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

(\$3,000.00); if the failure to meet any of its 7-day average 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 effluent limitations continues for a fifth consecutive 7-day period, Defendant shall be liable for payment of a stipulated penalty of Five Thousand Dollars (\$5,000.00); if the failure to meet any of its 7-day average effluent limitations continues beyond a fifth consecutive 7-day period, Defendant shall be liable for payment of a stipulated penalty of Eight Thousand Dollars (\$8,000.00).

11. In the event that Defendant Mahoning County fails to meet any of the 30-day average interim effluent limitations contained in Appendices "A" or "B" attached hereto or any of its 30-day average final effluent limitations by the date specified in Subparagraphs 5(g) or 7(g), Defendant shall be liable for payment of a stipulated penalty of Two Thousand Dollars (\$2,000.00) for the first 30-day period during which the failure occurs; if the failure to meet any of its 30-day average 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 for Four Thousand Dollars (\$4,000.00); if the failure to meet any of its 30-day average 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 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 Mahoning County fails to meet any of its daily interim effluent limitations contained in Appendices "A" or "B" attached hereto or any of its daily final effluent limitations by the date specified in Subparagraphs 5(g) or 7(g), Defendant shall be liable for payment of a stipulated penalty of \$175.00 for each day of any effluent limitations 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 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 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".

X. COMPLIANCE NOT DEPENDENT ON GRANTS

14. Performance of the terms of this Consent Order by Mahoning County is not conditioned on the receipt of any Federal or State grant funds. In addition, Mahoning County's performance is not excused by the failure to obtain or shortfall of any Federal or State grant funds, or by the processing of any applications for the same.

XI. POTENTIAL FORCE MAJEURE

15. In any action to enforce any of the provisions of this Consent Order Defendant Mahoning County 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 defenses it may have under applicable law.

XII. TERMINATION OF STIPULATED PENALTIES

16. The provisions of this Consent Order set forth in Section IX, Paragraphs 9, 10, 11 and 12 requiring the payment of stipulated penalties may be terminated after Defendant Mahoning County has achieved and maintained compliance with the final effluent limitations contained in its NPDES permit for a period of one (1) year after the completion of construction and payment of all 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 set forth in this paragraph have been met.

XIII. RETENTION OF JURISDICTION

17. 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.

XIV. COSTS

18. Defendant Mahoning County is hereby ordered to pay the costs of this action.

William G. Houser
JUDGE, COURT OF COMMON PLEAS

APPROVED:

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

THE CLERK SHALL SERVE NOTICE
OF THIS ORDER UPON ALL PARTIES
WITHIN THE 10 DAYS PER O.C.R. 5.

BY:

Karen S. Cleveland
KAREN S. CLEVELAND
Assistant Attorney General
30 East Broad Street
Columbus, Ohio 43266-0410

Stephen N. Haughey 3/21/9
STEPHEN HAUGHEY
Frost & Jacobs
201 East 5th Street
Cincinnati, Ohio 45202-4182

[Signature]
Authorized Representative
of Mahoning County

1888E/70-82

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS for Outfall 3PH00030001

| REPORTING Code | EFFLUENT CHARACTERISTIC | | DISCHARGE LIMITATIONS | | | | MONITORING REQUIREMENTS | |
|-------------------|-------------------------|---------------------------------|--|-------|--------------------|-------|----------------------------|---------------------|
| | UNITS | PARAMETER | Concentration Other Units (Specify) | | Loading* kg/day | | Meas. Freq. | Sample Type |
| | | | 30 day | 7 day | 30 day | 7 day | | |
| 50050 | MGD | Flow | - | - | - | - | Daily | Continuous |
| 00010 | °C | Temperature | - | - | - | - | Daily | Max. Ind. Therm. |
| 00530 | mg/l | Suspended Solids | 60 | 90 | - | - | 2/Week | Composite |
| 00310 | mg/l | BOD ₅ | 40 | 60 | - | - | 2/Week | Composite |
| 31616 | Count /100ml | Fecal Coliform (Summer Only) | 1000 | 2000 | - | - | 2/Week | Grab |
| 00610 | mg/l | Ammonia (N) | - | - | - | - | 1/Month | Composite |
| 00665 | mg/l | Phos., Total | - | - | - | - | 1/Month | Composite |
| 00550 | mg/l | Oil & Grease | Not to exceed 5 at any time | | - | - | 1/Qtr. | Grab |
| 80082 | mg/l | CBOD ₅ | - | - | - | - | 2/Week | Composite |
| 00625 | mg/l | Kjeldahl, TKN(N) | - | - | - | - | 1/Month | Composite |

2. The pH (Reporting Code 00400 (average)) shall not be less than 6.0 S.U. nor greater than 8.5 S.U. and shall be monitored daily by grab sample.

3. The Chlorine Residual (Reporting Code 50060) shall be monitored daily by grab sample.

4. The Dissolved Oxygen (Reporting Code 00300) shall be monitored daily by grab sample.

5. ~~...~~

* The average effluent loading limitations are established using the following flow value: N/A

September 14, 1968

ATTACHMENT B

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS for Outfall 3PH00016001

| Reporting Code | UNITS | PARAMETER | DISCHARGE LIMITATIONS | | | | MONITORING REQUIREMENTS | |
|------------------------|-------|-------------------|--|-------|--------------------|-------|----------------------------|---------------------|
| | | | Concentration Other Units (Specify) | | Loading* kg/day | | Meas. Freq. | Sample Type |
| | | | 30 day | 7 day | 30 day | 7 day | | |
| 50050 MGD | | Flow | - | - | - | - | Daily | Continuous |
| 00010 °C | | Temperature | - | - | - | - | Daily | Max. Ind. Therm. |
| 00530 mg/l | | Suspended Solids | 30 | 45 | 23 | 34 | 2/Week | Composite |
| 00310 mg/l | | BOD ₅ | - | - | - | - | 2/Week | Composite |
| 50010 Counts /100ml | | Fecal Coliform | 1000 | 2000 | - | - | 2/Week | Grab |
| 50050 mg/l | | CBOD ₅ | 23 | 35 | 18 | 26 | 2/Week | Composite |
| 00610 mg/l | | Ammonia (N) | - | - | - | - | 1/Month | Composite |
| 00665 mg/l | | Phos., Total | - | - | - | - | 1/Month | Composite |

2. The pH (Reporting Codes 00400 (average)) shall not be less than 6.5 S.U. nor greater than 9.0 S.U. and shall be monitored continuously and reported daily.

3. The Chlorine Residual (Reporting Code 50060) shall be monitored daily by grab sample.

4. The Dissolved Oxygen (Reporting Code 00300) shall be monitored daily by grab sample.

* The average effluent loading limitations are established using the following flow value: 0.2 MGD

ADDITIONAL MONITORING REQUIREMENTS for Outfall 3PH00016002

1. Plant Bypass. The permittee shall monitor the treatment plant's bypass, when discharging, at Station 3PH00016002 and report to the Ohio EPA in accordance with the following table. See PART II, OTHER REQUIREMENTS, of NPDES permit 3PH00016*CD for location of sampling:

| <u>CHARACTERISTIC</u> | | | <u>MONITORING REQUIREMENTS</u> | |
|-----------------------|--------------|------------------|--------------------------------|--------------------|
| <u>Reporting Code</u> | <u>Units</u> | <u>Parameter</u> | <u>Measurement Frequency</u> | <u>Sample Type</u> |
| 80998 | Number | Occurrences | Daily | Continuous |
| 80999 | Hr./day | Duration | Daily | Continuous |
| 00310 | mg/l | BOD ₅ | Once/Day | Grab |
| 00530 | mg/l | Suspended Solids | Once/Day | Grab |
| 50050 | MGD | Flow | Daily | Continuous |

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.

2. The permittee is authorized to discharge from the following bypass only during wet weather periods when the flow in the sewer system exceeds the capacity of the sewer system. See Attachment 2, Item 1, for monitoring and reporting requirements. Also, see Part III, Item 11 of NPDES permit 3PH00016*BD.

| <u>Station Number</u> | <u>Description</u> | <u>Receiving Stream</u> |
|-----------------------|--------------------|-------------------------|
| 3PH00016002 | Plant Bypass | Honey Creek |

Date: _____
 Page: _____