

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

FILED NO. 18
BY *Am*

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

CASE NO. 88-CV-11-7578
JUDGE REDA

Plaintiff,

vs.

CONSENT ORDER

OI-NEG TV PRODUCTS, INC.

Defendant.

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
1990 SEP -6 AM 8:10
THOMAS J. ENRIGHT
CLERK OF COURTS

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 OI-NEG TV Products, Inc. (hereinafter "OI-NEG") having consented to the entry of this Order,

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NOW THEREFORE, without trial or admission of any violation or 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 assigns and successors in interest.

3. Defendant OI-NEG shall provide a copy of this Consent Order to each officer, employee, agent and 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

4. Plaintiff alleges in its Complaint that Defendant ²has ²¹⁹⁷²⁴operated its Southwood Plant in such a manner as to result ⁹in ⁶violations of the discharge limitations of the NPDES Permit No. 4IN00032*DD issued to it by the Director of Ohio EPA (referred to herein as "the NPDES Permit"), the Director's Final Findings and Orders issued by the Director on February 26, 1986 (referred to herein as "the Orders"), and 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 and continuing up to the date of entry of this Consent Order. 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 of pretreatment requirements and of R.C. Chapter 3704, or for violations of R.C. Chapter 6111 which occur after the filing of the Consent Order. The State of Ohio agrees not to seek both stipulated penalties, as provided for in this Order, and civil penalties, as authorized under R.C. Chapter 6111. for the same violations of this Consent Order.

IV. INJUNCTION

5. Defendant OI-NEG is hereby enjoined and ordered to immediately comply with the requirements of its currently effective NPDES Permit, and any renewals or modifications thereof, except as Paragraphs 6, 7 and 9 provide otherwise.

6. Between the effective date of this Consent Order and the "final compliance date for lead at Outfall 002" (as defined in paragraph 7 below) Defendant OI-NEG is enjoined to comply with an interim daily maximum effluent limitation for lead of 3262 ug/l at Outfall 002. The foregoing interim effluent limit does not constitute an NPDES permit or a modification of any existing permit.

7. Defendant OI-NEG shall attain compliance with the final effluent limitation for lead at Outfall 002 in its NPDES Permit, and any renewals or modifications thereof, as expeditiously as practicable but not later than the final compliance date for lead at Outfall 002. As used in this Consent Order the phrase "final compliance date for lead at Outfall 002" shall mean the earliest of:

- a. the date upon which OI-NEG certifies compliance with the then-applicable effluent limitation for lead at Outfall 002 pursuant to Paragraph 8; or
- b. the date by which OI-NEG is required to achieve compliance with the final effluent limit for lead under a plan approved by Ohio EPA pursuant to Paragraph 9; or
- c. December 31, 1992.

8. Not later than December 31, 1991, Defendant OI-NEG shall either: (a) certify compliance with its then-applicable final effluent limitation for lead at Outfall 002; or (b) submit to Ohio EPA an approvable plan for the implementation of wastewater treatment equipment and/or other measures necessary to bring Outfall 002 into compliance with the final effluent limit for lead in the NPDES Permit, and any renewals or modifications thereof. Such a plan shall include, at a minimum, the following:

- (1) a documented demonstration of what measures OI-NEG has implemented to bring Outfall 002 into compliance with the final effluent limit for lead in the NPDES Permit, and any renewals or modifications thereof, including all air pollution control measures and any other measures to reduce any deposition of airborne lead on OI-NEG's facility in areas where lead may come into contact with wastewater flowing into Outfall 002;

- (2) a documented demonstration that OI-NEG is not able to comply with the final effluent limit for lead at Outfall 002 by December 31, 1991;
- (3) the method and technology or measures to be employed to bring Outfall 002 into compliance with the final effluent limit for lead as expeditiously as practicable but not later than December 31, 1992, including dates certain for:
- (A) initiation of project design work, if applicable;
 - (B) submission of approvable permit to install application that proposes measures that will culminate in compliance with the final effluent limit for lead, if applicable;
 - (C) initiation of construction, if applicable;
 - (D) completion of construction, if applicable;
 - (E) attain compliance with the lead final effluent limitation for Outfall 002.

9. If approved by Ohio EPA, the plan shall be implemented as approved in accordance with the schedule as approved. In no event shall the final compliance date for the final effluent limit at Outfall 002 be later than December 31, 1992. Between December 31, 1991 and the final compliance date in the approved plan, OI-NEG shall comply with the interim effluent limit for lead at Outfall 002 set forth in paragraph 6 above. The

schedule as approved is hereby incorporated by reference into this paragraph of the Consent Order and is hereby made subject to stipulated penalties for failure to meet the interim or final schedule dates therein.

10. If Ohio EPA notifies OI-NEG that part or all of the plan submitted pursuant to paragraph 8 or the application for a permit to install submitted pursuant to paragraph 8(b)(3) is not approvable as submitted, OI-NEG shall resubmit the disapproved portions(s) within twenty (20) days of Ohio EPA's notification to OI-NEG. OI-NEG shall correct the deficiencies to the satisfaction of the Ohio EPA.

11. Within fifteen (15) days following any milestone date contained in a plan approved pursuant to paragraph 9, OI-NEG shall submit a written report to Ohio EPA stating whether the milestone was met.

12. 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 systems. If required, 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.

V. CIVIL PENALTY

13. Within thirty (30) days after entry of this Consent Order, Defendant OI-NEG shall pay to the State of Ohio a civil

penalty of One Hundred and Seventy Thousand Dollars (\$170,000.00). In addition, if OI-NEG fails to certify compliance with the final lead effluent limit at Outfall 002 on or before December 31, 1991, OI-NEG shall pay to the State of Ohio by January 31, 1992 an additional civil penalty of Forty Thousand dollars (\$40,000.00). All penalties due under this paragraph shall be paid by delivering to counsel of record for Plaintiff, at the address indicated herein, a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within the time periods specified above.

VI. STIPULATED PENALTIES

14. In the event that Defendant OI-NEG fails to comply with any applicable effluent limit, other than thirty (30) day average effluent limitations, the Defendant shall pay a stipulated penalty according to the following payment schedule. For each reported violation, up to thirty - \$600.00 per violation. For each reported violation, from thirty-one to sixty -\$1,000.00 per violation. For each reported violation, from sixty-one to ninety- \$3,000.00 per violation. For each reported violation, more than ninety (90) - \$5,000.00 for each violation. For purposes of computing stipulated penalties under this paragraph, violations of effluent limits for lead shall accrue separately from violations of effluent limits for all other parameters.

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15. Although the parties (may) disagree as to whether a violation of a thirty-day (30) day average effluent limitation constitutes one or thirty violations, it is agreed that for purposes of the imposition of stipulated penalties pursuant to this Consent Order, a violation of a thirty-day average effluent limitation is considered one violation. In the event that OI-NEG fails to comply with any applicable thirty (30) day average effluent limitation, OI-NEG shall pay a stipulated penalty of one thousand dollars (\$1,000.00) for each thirty (30) day period during which the failure occurs. If the failure to meet any thirty (30) day average effluent limitation for the same pollutant continues for a second consecutive thirty (30) day period, OI-NEG shall pay a stipulated penalty of three thousand dollars (\$3,000.00). If the failure to meet any of its thirty (30) day average effluent limitations for the same pollutant continues for a third consecutive thirty (30) day period, OI-NEG shall pay a stipulated penalty of five thousand dollars (\$5,000.00). If the failure to meet any of its thirty (30) day average effluent limitations for the same pollutant continues for a fourth or more consecutive thirty (30) day periods, OI-NEG shall pay a stipulated penalty of ten thousand dollars (\$10,000.00) for each such period.

16. In the event that Defendant OI-NEG fails to comply with: (1) any milestone on the approved schedule under paragraph 9; (2) any milestone contained in any subsequent

renewal or modification of the permit; (3) the operation and maintenance requirements specified in section III.3. of the permit and any renewal or modification of the permit; or (4) any monitoring requirement contained in the permit or any renewal or modification of the permit, OI-NEG shall pay a stipulated penalty according to the following schedule: for each day of violation up to thirty (30) days, Two Hundred and Fifty Dollars (\$250.00) per day of violation of said requirement; for each day of violation from thirty-one (31) to sixty (60), Five Hundred Dollars (\$500.00) per day of violation of said requirement; for each day of violation from sixty-one (61) to ninety (90), Seven Hundred Fifty Dollars (\$750.00) per day of violation of said requirement; for each day of violation beyond ninety (90) days, One Thousand Dollars (\$1000.00) per day of violation of said requirement.

17. Any stipulated penalty-payment required to be made under this Section of this Order shall be made by delivering to Plaintiff's counsel a certified check or checks for the appropriate amounts, within thirty (30) days from the date of the failure to meet the requirement of the Consent Order, made payable to "Treasurer, State of Ohio".

18. The provisions of this Section providing for the payment of stipulated penalties shall terminate as to all pollutants other than lead after OI-NEG has demonstrated to the State's satisfaction that OI-NEG has been in compliance with

all of the applicable effluent limitations for all pollutants other than lead in its effective permit for a period of twelve (12) consecutive months and all penalties and stipulated penalties due have been paid in full. The provisions of this Section providing for the payment of stipulated penalties shall terminate as to lead after OI-NEG has demonstrated to the State's satisfaction that OI-NEG has been in compliance with all of the applicable final lead effluent limitations in its effective permit for a period of twelve (12) consecutive months and all penalties and stipulated penalties due have been paid in full.

19. Except as provided in the last sentence of paragraph 4 of this Consent Order, nothing herein shall prevent Plaintiff from seeking to employ contempt or other remedies for enforcement of this Consent Order. Nothing in this Consent Order shall prevent OI-NEG from asserting any legal or equitable defense it may have to a claim that it has violated its NPDES Permit or this Consent Order.

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VII. POTENTIAL OF FORCE MAJEURE

20. In any action by the State of Ohio to enforce any of the provisions of this Consent Order, OI-NEG may raise at that time the question of 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 or civil disturbances. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed upon by OI-NEG 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 delay was or will be caused by circumstances beyond the control of OI-NEG shall rest with OI-NEG. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances shall not by themselves constitute circumstances beyond the control of OI-NEG, or serve as a basis for an extension of time under this Consent Order.

VIII. NOTICES

21. Unless otherwise required by law or specifically provided herein, notices required or authorized by this Consent Order to be given to Ohio EPA shall be given by first class mail to the following person:

Larry Korecko or his successor
Division of Water Pollution Control
Central District Office
Ohio Environmental Protection Agency
2305 Westbrooke Drive
P.O. Box 2198
Columbus, OH 43266-2198

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IX. RETENTION OF JURISDICTION

22. The Court will retain jurisdiction of this action for the purpose of overseeing compliance with this Consent Order.

X. COSTS

23. Defendant OI-NEG is hereby ordered to pay the costs of this action.

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JUDGE, COURT OF COMMON PLEAS
FRANKLIN COUNTY

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APPROVED:

OI-NEG TV PRODUCTS, INC.

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