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IN THE COURT OF COMMON PLEAS  
SHELBY COUNTY, OHIO

|                            |   |                    |
|----------------------------|---|--------------------|
| STATE OF OHIO, ex rel.     | : | CASE NO. 85-CV-374 |
| ANTHONY J. CELEBREZZE, JR. | : |                    |
| ATTORNEY GENERAL OF OHIO,  | : |                    |
|                            | : |                    |
| Plaintiff,                 | : |                    |
|                            | : |                    |
| v.                         | : | JUDGE LEWIS        |
|                            | : |                    |
| SHELBCO, INC., et al.,     | : |                    |
|                            | : |                    |
| Defendants.                | : |                    |

CONSENT ORDER

The State of Ohio (hereinafter the "State") by its Attorney General, Anthony J. Celebrezze, Jr., filed this action to enforce provisions of Ohio Revised Code Chapters 3767 and 6111, and the rules adopted thereunder, against Defendants Shelbco, Inc. (hereinafter "Shelbco") and A. J. DeCoster (hereinafter "DeCoster").

The parties have reached agreement on the scope of injunctive relief and civil penalty appropriate to resolve this case.

Now, therefore, without trial of any issue of law or fact, and without any admission by Defendants of any allegation asserted in the Amended Complaint, and upon consent of the parties, this Court ORDERS, ADJUDGES AND DECREES as follows:

I. JURISDICTION

1. This Court has jurisdiction over the subject matter of this case pursuant to Chapters 3767 and 6111 of the Ohio

Revised Code. Although denied by Defendants, the Complaint states a claim upon which relief can be granted. This Court has jurisdiction over the parties. Venue is proper in this Court.

## II. PARTIES

2. The provisions of this Consent Order shall apply to and be binding upon Shelbco, its agents, officers, employees, assigns, successors and those persons in active concert or participation with it who receive actual notice of this Order, whether by personal service or otherwise. Portions of this Consent Order shall apply to and be binding upon DeCoster as set forth hereafter. Defendants shall provide a copy of this Order to any assign or successor of the Shelbco facility or grounds.

## III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Amended Complaint that Defendants have operated their hog facility and grounds on Darke-Shelby Road, Cynthian Township, Yorkshire, Ohio (hereinafter the "Property") in violation of various state nuisance and water pollution laws. By entering into this Consent Order, Defendants Shelbco and DeCoster wish to settle and resolve disputed claims, and do not admit the allegations in the Amended Complaint. Compliance with the terms of this Consent Order shall constitute full satisfaction by Shelbco, by its past or current officers and directors, by its past or current employees, and by DeCoster of and from any liability, damages or obligations of whatsoever

kind, nature, or description, based on any allegation, claim, demand or cause of action alleged in the Amended Complaint.

#### IV. INJUNCTIVE RELIEF

4. Defendants are Ordered to complete the following acts on or before the dates set forth below:

A. Establish a permanent vegetative cover on the exterior lagoon walls by June 30, 1988.

B. Divert all surface drainage away from the lagoon in accordance with the plan submitted to Ohio EPA on November 25, 1987, as amended by the submittal of December 14, 1987.

C. By the date of this Order, direct all hog waste and known wastewater from the facility to the lagoon for treatment and storage pending disposal.

D. Install visible level gauges to indicate the minimum design level of the lagoon and the freeboard distance of the lagoon by January 10, 1988.

E. Beginning from the date of this Order and ending December 31, 1988, Defendants shall keep the Southwest District Office of the Ohio EPA advised monthly of the progress of Items A through D of this section. Should Defendants encounter any problem with compliance with A through D of this section, they shall explain the problem in writing to the Southwest District Office of the Ohio EPA and seek written approval to extend the dates set forth herein. If approval is denied, Defendants may seek Court approval of an extension of the dates, and Plaintiff reserves the right to oppose such a request.

5. Shelbco is Ordered to complete the following acts on or before the dates set forth below:

A. Upon achieving the minimum design volume referenced in "Ohio Livestock Waste Management Guide" (Bulletin 604), Shelbco shall thereafter not pump the lagoon below such minimum design volume without the written approval of Ohio EPA.

B. Shelbco shall test and treat the waste in the lagoon to maintain a pH between 7.0 and 8.0, standard units, and a conductivity of below 10 mmhos/cm. For the first two years after the date of this Order, Shelbco shall monitor the lagoon monthly for pH and conductivity. Thereafter, Shelbco shall monitor quarterly for these parameters, and the results shall be submitted to the Ohio EPA Southwest District Office within thirty (30) days of collection.

C. Beginning in January, 1988, Shelbco shall collect groundwater samples quarterly from the production well for the next three years. "Quarterly" means the months of January, April, July and October. Using EPA-approved methods and procedures for chemical analyses, Shelbco shall test each sample drawn for the following parameters:

|                        |                        |
|------------------------|------------------------|
| pH                     | Conductivity           |
| Temperature            | Total Alkalinity       |
| Ammonia-nitrogen       | Total kjeldal nitrogen |
| Sulfate                | Chloride               |
| Total dissolved solids | Chemical oxygen demand |
| Total organic carbon   | Sodium                 |
| Nitrate-nitrogen       |                        |

Shelbco shall submit the results of each such test to the Southwest District Office of the Ohio EPA by the fifteenth day of February, May, August and November.

D. Should the analytical results of the groundwater tests show the presence of contaminants in the groundwater that Ohio EPA believes are the result of Shelbco's operations, Shelbco shall conduct further testing and groundwater monitoring assessment as directed by Ohio EPA.

E. Shelbco shall repair tension cracks in the exterior sides and top of the lagoon walls by January 20, 1988. Shelbco shall thereafter quarterly inspect for, and repair if necessary, tension cracks in the exterior sides or top of the lagoon walls.

F. Shelbco shall apply aggregate riprap or stabilize the inside slopes of the lagoon using cement stabilization to a depth of six inches (compacted basis) from the minimum operating level (elevation 100 feet) to the top of the lagoon (elevation 107 feet) by June 30, 1988.

G. Should Shelbco encounter any problem with compliance with A through F of this section, it shall explain the problem in writing to the Southwest District Office of the Ohio EPA and seek written approval to extend the dates set forth herein. If approval is denied, Shelbco may seek Court approval of an extension of the dates, and Plaintiff reserves the right to oppose such a request.

6. Shelbco is ordered to complete the following acts on or before the dates set forth below:

A. After fall harvest and before spray irrigation, Shelbco shall have the wastewater constituents of the lagoon analyzed for the following parameters:

|  |                              |
|--|------------------------------|
| Total solids                                   | Volatile solids              |
| Total nitrogen                                 | Ammonia nitrogen             |
| Phosphorus (as P <sub>2</sub> O <sub>5</sub> ) | Potassium (K <sub>2</sub> O) |
| Calcium  | Magnesium                    |

Shelbco shall submit the results of the above analysis to the Southwest District Office of the Ohio EPA before any spray irrigation occurs.

B. After fall harvest and before spray irrigation, Shelbco shall have collected annually one soil sample to an eighteen (18) inch depth per twenty (20) acres of land upon which Shelbco will spray irrigate wastewater from the lagoon, and the results shall be submitted to the Ohio EPA Southwest District Office within thirty (30) days of collection. Shelbco shall have each sample analyzed for the following parameters:

|   |                          |
|---|--------------------------|
| Cation exchange capacity<br>(milliequivalent/100 grams) | Organic matter (percent) |
| Available phosphorus                                    | Exchangeable potassium   |
| Calcium   | Magnesium                |
| Nitrate-nitrogen<br>(pounds per acre)                   | pH (S.U.)                |

7. Shelbco is Ordered to complete the following acts on or before the dates set forth below:

A. Shelbco shall notify Kendra Dearth or Rich Bendula or their successors of Ohio EPA two weeks prior to the ground-water sampling, the lagoon water sampling, the soil sampling and

the tension crack inspection set forth in Paragraphs 5-C, 5-E, 6-A, and 6-B of this Order.

B. Land management recommendations shall be implemented as follows:

- (i) Corn or soybeans shall be planted on the ground used by Shelbco for spray irrigation in the Spring and harvested in the Fall;
- (ii) Weed control and lime application shall be provided to maximize crop production as indicated by the soil testing results (if necessary);
- (iii) No additional acreage is necessary for irrigation;
- (iv) No spray irrigation will occur at a rate greater than 0.5 in./day/or 3 in./year/acre. Adjustment of the application rate may be warranted as a result of the sampling set forth in Paragraphs 6-A, and 6-B of this Order, if approved by Ohio EPA;
- (v) No spray irrigation shall occur during any rain, upon frozen or snow-covered ground, or following any rain if the combination of the rainfall and the spray irrigation exceeds 0.5 in./day; and
- (vi) The irrigation site will be worked up before, and incorporated within 10 days after final spray irrigation, or as soon as practicable thereafter.

C. Except as modified herein, Shelbco shall comply with the operational terms and conditions of PTI No. 05-1399.

D. Using Drager tubes, or an Ohio EPA-approved equivalent, Shelbco shall test for ammonia concentration for each of the four confinement areas of the building at a ventilation fan outlet outside of the building corresponding to the

confinement area as designated by Ohio EPA on the same day once per month commencing with the entry of this Order. Shelbco shall submit the results of the foregoing test to Kendra Dearth or her successor by the 5th day of each month. Should the average concentration level for ammonia exceed 15 ppm instantaneous average for three consecutive months, Shelbco shall install the flow-through system previously submitted and approved by Ohio EPA. Should the average concentration level for ammonia still exceed 15 ppm instantaneous average, Shelbco shall attempt to control ammonia levels in the confinement building by using Micro-aid, or some equivalent product, as a feed supplement.

8. Shelbco is immediately and permanently enjoined from placing sewage, industrial wastes, wastewater and/or other wastes or causing such wastes to be placed in locations where they cause pollution of waters of the State.

#### V. MISCELLANEOUS

9. Plaintiff does not waive any rights it may have to seek redress for future violations of Ohio Revised Code Chapters 3767 or 6111, and Defendants do not waive any rights or defenses which Defendants may have in defense to any such actions.

10. Any violation of this Consent Order by Shelbco shall place Shelbco in contempt of Court with sanctions as deemed appropriate by the Court in accordance with applicable law. Any violation by DeCoster of the portions of this Consent Order applicable to him shall place DeCoster in contempt of Court with -



sanctions as deemed appropriate by the Court in accordance with applicable law. Defendants do not waive any rights or defenses which Defendants may have in defense to any such action.

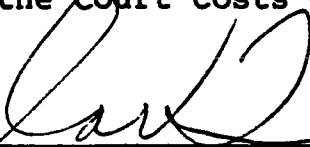
11. Defendants shall allow personnel from Ohio EPA and its authorized representatives access to the property at reasonable times to monitor compliance with this Consent Order without a warrant.

12. Nothing in this Consent Order shall be construed to relieve Defendant of their obligations to comply with applicable federal, state or local statutes, regulations or ordinances, or shall constitute a waiver or release of any right, remedy, defense or claim of Defendants or against Defendants with regard to any person not a party to this Consent Order.

13. The Court shall retain jurisdiction of this matter for the purpose of making an order or decree which it may deem at any time appropriate to carry out the Consent Order.

14. Defendants deny any liability for the imposition of civil penalties but, in order to resolve this matter, agree to pay a civil penalty of Thirty Thousand Dollars (\$30,000.00).

15. Defendants shall pay the Court costs of the action.

  
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CARROLL LEWIS, JUDGE

**APPROVED:**


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

  
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