

IN THE  
COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

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

Plaintiff,

v.

THE COUNTY OF SUMMIT, OHIO,

Defendant.

CASE NO.

JUDGE

NO. TO JUDGE SPICER

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio by its Attorney General Anthony J. Celebrezze, Jr. and Defendant The County of Summit, Ohio (hereinafter referred to as "Summit 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 Summit County 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 Summit 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 Summit County has operated its wastewater treatment plants and sewer systems in such a manner as to result in numerous violations of the discharge limitations and monitoring requirements of the NPDES permits issued to it by the Director of Environmental Protection and in violation of the water pollution control 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 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 Summit 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

adopted under that Chapter and its currently effective NPDES permits and any renewals or modifications thereof.

Specifically, after September 1, 1989 Defendant is enjoined to meet the final effluent standards set forth in its NPDES permit Nos. 3PJ00000\*DD and 3PG00021\*DD and any renewals or modifications thereof. Defendant is also hereby enjoined to properly operate and maintain its Country Club Village #30 and Melody Village #10 wastewater treatment plants and any associated equipment and structures.

#### V. CONSTRUCTION SCHEDULE

5. Defendant Summit County is enjoined and ordered to complete construction of the improvements to its Country Club Village #30 and Melody Village #10 wastewater treatment plants described in the Detailed Plans approved by Ohio EPA on July 19, 1988 and February 29, 1988, respectively, and to attain compliance with the final effluent limitations of NPDES permit Nos. 3PJ00000\*DD and 3PG00021\*DD and any modifications or renewals thereof in accordance with the following schedules:

#### Country Club Village #30

<u>Task</u>	<u>Completion Date</u>
(a) Initiation of Project Design Work.	Completed
(b) Submittal of Approvable Detailed Plans and Specifications to Ohio EPA.	Completed
(c) Advertisement of Building Bids.	Completed

- |  |                   |
|--|-------------------|
| (d) Execution of Building Contracts.   | Completed         |
| (e) Initiation of Construction.  | Completed         |
| (f) Completion of construction of sufficient wastestream treatment facilities to ensure compliance with final effluent limits. | Completed         |
| (g) Attain compliance with final effluent limitations.   | September 1, 1989 |

Melody Village #10

<u>Task</u>	<u>Completion Date</u>
(h) Initiation of Project Design Work.	Completed
(i) Submittal of Approvable Detailed Plans and Specifications to Ohio EPA.	Completed
(j) Advertisement of Building Bids.	Completed
(k) Execution of Building Contracts.	Completed
(l) Initiation of Construction.	Completed
(m) Completion of construction of sufficient wastestream treatment facilities to ensure compliance with final effluent limits.	Completed
(n) Attain compliance with final effluent limitations.	September 1, 1989

VI. EFFECT OF CONSENT ORDER

6. 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. 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.

#### VII. CIVIL PENALTY

7. Defendant Summit County shall pay to the State of Ohio a civil penalty of four thousand dollars (\$4,000.00). 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 Court's entry of this Consent Order.

#### VIII. STIPULATED PENALTIES

8. In the event that Defendant Summit County fails to meet any of the requirements of this Consent Order set forth in Subparagraphs 5(g) and 5(n), Defendant shall be liable for and shall pay a stipulated penalty according to the following payment schedule:

- a. For each day of failure to meet a requirement, up to thirty (30) days--three thousand dollars (\$3,000.00) per day;
- b. For each day of failure to meet a requirement, from thirty-one (31) to sixty days (60)--four thousand dollars (\$4,000.00) per day;
- c. For each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days--five thousand dollars (\$5,000.00) per day;
- d. For each day of failure to meet a requirement, from ninety-one (91) to one hundred and twenty (120) days--seven thousand five hundred dollars (\$7,500.00) per day;
- e. For each day of failure to meet a requirement, over one hundred and twenty (120) days--ten thousand dollars (\$10,000.00) per day.

9. Any payment required to be made under the provisions of Paragraph 8 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".

IX. TERMINATION OF STIPULATED PENALTIES

10. The provisions of this Consent Order set forth in Section VIII, Paragraphs 8 and 9 requiring the payment of stipulated penalties may be terminated upon a showing by Defendant Summit County that Defendant has achieved and maintained compliance with the final effluent limitations contained in its NPDES permits and any modifications or renewals thereof for a period of one (1) year after the Court's entry of this Consent Order and payment of all penalties required pursuant to this Consent Order.

11. Termination of the stipulated penalties section shall be by Order of the Court upon application by any party and a demonstration that the conditions set forth in this section have been met.

X. POTENTIAL FORCE MAJEURE

12. In any action to enforce any of the provisions of this Consent Order, Defendant Summit 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 of Defendant of any rights or defenses it may have under applicable law.

XI. RETENTION OF JURISDICTION

13. 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.

XI. COSTS


14. Defendant Summit County is hereby ordered to pay the costs of this action.

\_\_\_\_\_  
JUDGE, COURT OF COMMON PLEAS

\_\_\_\_\_  
Date

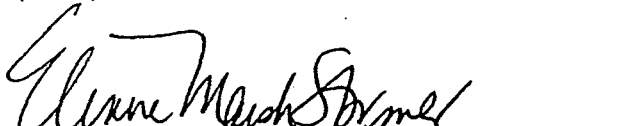
APPROVED:

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