

IN THE COURT OF COMMON PLEAS
BELMONT COUNTY, OHIO

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

Plaintiff,

vs.

VILLAGE OF BETHESDA,

Defendant.

CASE NO. 89-C-14-092

JUDGE _____

CONSENT ORDER

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 Village of Bethesda (hereinafter "Bethesda") 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.

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COMMON PLEAS COURT
BELMONT COUNTY, OHIO
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COURT CLERK
OFFICE OF COURT CLERK

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 Bethesda 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 its wastewater treatment plant and sewer 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

4. Defendant Bethesda 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, 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 November 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 November 1, 1991, Defendant Bethesda is enjoined to meet the final effluent standards set forth in its NPDES permit No. OPB00001*BD and any renewals or modifications thereof. Bethesda is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

5. Defendant Bethesda is enjoined and ordered to complete construction of the improvements to its wastewater treatment plant described in the Municipal Compliance Plan as ultimately approved by Ohio EPA on December 11, 1987, and to attain

compliance with the final effluent limitations of NPDES permit No. OPB00001*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	November 1, 1989
(c) Advertisement of Building Bids	February 1, 1990
(d) Execution of Building Contracts	June 1, 1990
(e) Initiation of Construction	July 1, 1990
(f) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits.	September 1, 1991
(g) Attain compliance with final effluent limitations, reduce inflow, and eliminate overflows and bypasses.	November 1, 1991

Within seven (7) days from the completion date of each milestone listed above, Defendant shall submit a written reporting stating whether it has performed the action set forth therein to Ohio EPA's Southeast District Office.

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

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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. CIVIL PENALTY

6. Defendant Bethesda shall pay to the State of Ohio a civil penalty of Two Thousand Eight Hundred Dollars (\$2,800.00). 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 days from the date of entry of this Consent Order.

VII. STIPULATED PENALTIES

7. In the event that Defendant Bethesda fails to meet any of the requirements of this Consent Order set forth in Paragraph 4 and Subparagraphs 5(b), 5(c), 5(d), 5(e) and 5(f), including any scheduled milestone requirement, Defendant shall 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 thirty days - \$500.00 per day. For each day of failure to meet a requirement, from thirty-one to sixty days -\$1,000.00 per day. For each day of failure to meet a requirement, from sixty-one to ninety days- \$2,500.00. For each day of failure to meet a requirement, after ninety days - \$3,500.00 per day.

8. In the event that Defendant Bethesda fails to meet any of the requirements of this Consent Order set forth in Subparagraph 5(g), the Defendant shall be liable for payment of a stipulated penalty of \$5,000.00 per day of violation of said requirement. The Defendant shall be liable for an additional stipulated penalty of one thousand dollars (\$1000.00) 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 violation. In the event that failure to comply with the requirements of 60 paragraph 5(e) continues more than sixty (60) days, Defendant shall be liable for an additional four thousand dollars (\$4,000.00) per day of violation, i.e., ten thousand dollars (\$10,000.00) per day of violation.

9. Any payment required to be made under the provisions of Paragraphs 7 or 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 days from the date of the failure to meet the requirement of the Consent Order, made payable to "Treasurer, State of Ohio".

VIII. POTENTIAL FORCE MAJEURE

10. In any action to enforce any of the provisions of this Consent Order Defendant Bethesda 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.

IX. RETENTION OF JURISDICTION

11. 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.

X. COSTS

12. Defendant Bethesda is hereby ordered to pay the costs of this action.

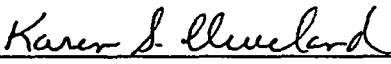
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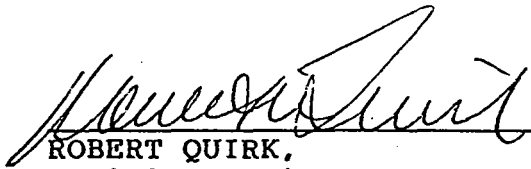
JUDGE, COURT OF COMMON PLEAS
BELMONT COUNTY


APPROVED:

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

BY:


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Assistant Attorney General
30 East Broad Street
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ROBERT QUIRK,
Solicitor, Village of
Bethesda
120 Newell
St. Clairsville, Ohio 43950


JUDY K. JENEWEAN, Mayor
Authorized Representative
of Village of Bethesda

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EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning on the effective date of this permit and lasting until the date that the improved wastewater treatment works are to attain operational level as specified in Section IV of this Consent Order, the permittee is authorized to discharge in accordance with the following limitations and monitoring requirements from outfall: OPB00001001. See PART II, OTHER REQUIREMENTS, of NPDES permit No. 0.PB00001*~~0~~D for location of effluent sampling.

<u>EFFLUENT CHARACTERISTIC</u>		<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
Reporting Code	UNITS PARAMETER	Concentration		Loading*		Meas. Freq.	Sample Type
		Other Units (Specify)		kg/day			
		30 day	7 day	30 day	7 day		
00010 °C	Temperature	-	-	-	-	Daily	Max. Ind. Therm.
00530 mg/l	Suspended Solids	45	60	22	29	1/Week	Composite
00610 mg/l	Ammonia (N)	-	-	-	-	1/Week	Composite
31616 Count /100ml	Fecal Coliform (Summer Only)	1000	2000	-	-	1/Week	Grab
50050 MGD	Flow	-	-	-	-	Daily	24 Hr. Total
80082 mg/l	CBOD ₅	45	60	22	29	1/Week	Composite

2. The pH (Reporting Code 00400) shall not be less than 6.5 S.U. nor greater than 9.0 S.U. and shall be monitored daily by grab sample.
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 of not less than 5.0 mg/l and shall be monitored daily by grab sample.

* The average effluent loading limitations are established using the following flow value: 0.128 MGD