

FILED
APR 23 1997
PHIL G. GIAVASIS
STARK COUNTY OHIO
CLERK OF COURTS

IN THE
COURT OF COMMON PLEAS
STARK COUNTY, OHIO

STATE OF OHIO, ex rel., : CASE NO. 90-2143
BETTY D. MONTGOMERY :
ATTORNEY GENERAL OF OHIO, : JUDGE
 :
Plaintiff, :
 :
v. :
 :
THE VILLAGE OF BREWSTER, :
 :
Defendant. :

MODIFIED CONSENT ORDER AS TO DEFENDANT
THE VILLAGE OF BREWSTER

Plaintiff, the State of Ohio (hereinafter "State") filed a complaint against Defendant, the Village of Brewster (hereinafter "Brewster" or "Defendant"), for violations of Ohio's water pollution control laws and the regulations adopted thereunder. On December 19, 1990, this Court approved and signed the Consent Order that the State and Brewster had filed with it.

Since January 1992, Defendant has violated the 1990 Consent Order by violating the requirements of that Order mandating the completion of improvements and the elimination of all overflows and bypasses by January 31, 1992, and by violating the final effluent limits and monitoring requirements

contained in National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit No. 3PB00006*DD which governed the discharges from Brewster's waste water treatment facility located at 725 South Wabash Avenue, Brewster, Ohio.

The parties have agreed to file this Modified Consent Order to purge the Defendant's contempt of the 1990 Consent Order. The requirements and provisions of this Modified Consent Order supersede and replace the requirements of the Consent Order previously entered in this matter on December 19, 1990.

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. RELATION TO 1990 CONSENT ORDER

1. This Modified Consent Order supersedes and replaces the Consent Order entered in this matter on December 19, 1990.

II. JURISDICTION AND VENUE

2. 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 Brewster under Chapter 6111 of the Ohio Revised Code ("RC"), and venue is proper in this Court.

III. PERSONS BOUND

3. The provisions of this Modified Consent Order shall apply to and be binding upon Defendant, its agents, officers, employees, assigns, representatives, successors in interest and any person acting in concert or privity with it. Defendant

Brewster is ordered to provide a copy of this Modified Consent Order to each key employee, consultant or contractor employed to perform work referenced herein, and each general contractor shall provide a copy of this Modified Consent Order to each of its subcontractors for such work.

IV. SATISFACTION OF LAWSUIT

4. Plaintiff alleges in its Complaint that Defendant Brewster has operated its waste water 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 permits issued to it by the Director of Environmental Protection and in violation of the water pollution control laws of the State of Ohio, *i.e.*, RC Chapter 6111 and the rules adopted thereunder.

5. Defendant has operated its waste water treatment plant and sewer system in violation of the 1990 Consent Order.

6. Compliance with the terms of this Modified Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims under RC Chapter 6111 and the rules adopted thereunder as alleged in the Complaint. In addition, compliance with the terms of this Modified Consent Order shall serve as full satisfaction of any liability by Defendant for violation of the requirements of the 1990 Consent Order which have occurred prior to the entry of this Modified Consent Order.

V. RESERVATION OF RIGHTS

7. Nothing in this Modified Consent Order, including the imposition of

stipulated civil penalties for violations of this Modified Consent Order, shall limit the authority of the State of Ohio to:

A. Seek any legal or equitable relief for claims, conditions or violations not alleged in the Complaint, including, but not limited to, bringing any action against Defendant or against any other person relating to such claims or conditions;

B. Seek any legal or equitable relief for claims or conditions alleged in the Complaint which occur or exist on the date of or after the entry of this Modified Consent Order;

C. Enforce this Modified Consent Order through a contempt action or otherwise seek relief for violations of this Modified Consent Order;

D. Take any action authorized by law against any person, including Defendant, to eliminate or mitigate conditions at the sewer system and waste water treatment plant and the surrounding areas that may present a threat to the public health or welfare, or the environment; and/or,

E. Bring any legal or equitable action against any person other than Defendant.

For the purposes of this Modified Consent Order, and in particular the provisions of this Section, the term "person" includes: an individual; corporation; business trust; estate; trust; partnership; association; municipal corporation; interstate body created by compact; and their officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.

VI. PERMANENT INJUNCTION

8. Defendant is permanently enjoined and ordered as follows:

A. Defendant Brewster is hereby permanently enjoined and immediately ordered to comply with the requirements of Chapter 6111 of the Ohio Revised Code and the regulations adopted thereunder, and the terms and conditions of NPDES Permit No. 3PB00006*ED and any renewals or modifications thereof. NPDES Permit No. 3PB00006*ED is hereby incorporated herein by reference as if rewritten in full. All renewals, modifications or changes to Defendant's NPDES Permit approved by the Director of Ohio EPA and/or effective after the entry of this Order shall be deemed to be incorporated in and made an enforceable part of this Modified Consent Order.

B. Defendant is permanently enjoined and ordered to properly operate and maintain its sewer system and wastewater treatment plant and any associated equipment and structures at all times.

VII. CONSTRUCTION SCHEDULE

9. Defendant Brewster is permanently enjoined and immediately ordered to eliminate discharges from overflows and bypasses from its sanitary sewer system and waste water treatment plant and to complete construction of the improvements to its sanitary sewer system and waste water treatment plant, in accordance with the following schedule:

A. Defendant is permanently enjoined and ordered to complete

construction of the Relief Sewer Trunk for its sanitary sewer system in accordance with the terms and conditions of its approved permit-to-install (hereinafter "PTI") No.02-8999 issued June 30, 1995 (hereinafter "PTI"), on or before March 1, 1997.

B. Defendant is permanently enjoined and ordered to complete construction of the King's Highway Pump Station Modification to its sanitary sewer system in accordance with the terms and conditions of PTI No. 02-8999 on or before March 1, 1997.

C. Defendant is permanently enjoined and ordered to eliminate the sewer overflow valve on its sanitary sewer system on or before July 1, 1997.

D. Defendant is permanently enjoined and ordered to complete construction of the improvements to its waste water treatment plant in accordance with the terms and conditions of PTI No. 02-8999 on or before March 1, 1997.

E. Defendant is permanently enjoined and ordered to complete Evaluation Survey Field Work on its sanitary sewer system to determine the improvements necessary to eliminate discharges from overflows and bypasses from its sanitary sewer system on or before September 30, 1997.

F. Defendant is permanently enjoined and ordered to complete a Corrective Action Report outlining the improvements necessary to eliminate discharges from overflows and bypasses from its sanitary sewer system on or before January 1, 1998, and submit a copy of the report to Ohio EPA's

C
Northeast District Office on or before January 16, 1998 for review and comment. Ohio EPA will review the report and provide comments, if necessary, to Defendant on or before March 3, 1998.

G. Defendant is permanently enjoined and ordered to submit a complete PTI application and approvable detail plans for improvements to its sanitary sewer system necessary to eliminate discharges from overflows and bypasses from its sanitary sewer system to Ohio EPA on or before August 1, 1998. Ohio EPA will review the PTI application and detail plans and provide comments, if necessary, to Defendant on or before October 30, 1998.

H. Defendant is permanently enjoined and ordered to complete the bidding of the contracts necessary to complete the necessary improvements to the sanitary sewer system on or before December 1, 1998.

I. Defendant is permanently enjoined and ordered to complete construction of sufficient wetstream treatment facilities to ensure the elimination of bypasses and overflows from its sanitary sewer system and complete construction of the improvements to its sanitary sewer system in accordance with the terms and conditions of its approved PTI and detail plans on or before October 1, 1999.

J. Defendant is permanently enjoined and ordered to eliminate all overflows and bypasses from its sanitary sewer system and its waste water treatment plant on or before November 1, 1999.

VIII. REPORTING REQUIREMENT AND SUBMITTAL OF DOCUMENTS

10. Within seven (7) days from the completion date of each milestone listed in Paragraph Nine above, Defendant Brewster shall submit a written report stating whether it has performed the action set forth therein to Ohio EPA's Northeast District Office, Division of Surface Water at 2110 East Aurora Road, Twinsburg, Ohio 44087. Documents that are required to be submitted to Ohio EPA under this Consent Order shall also be sent to the above address.

IX. COMPLIANCE NOT DEPENDENT ON GRANTS

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

X. EFFECT OF MODIFIED CONSENT ORDER

12. This Modified 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.

XI. CIVIL PENALTY

13. Defendant shall pay to the State of Ohio a civil penalty of Thirteen Thousand, Five Hundred Dollars (\$13,500). The penalty shall be paid by delivering to Matt Sanders, or his successor, Administrative Assistant, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, within thirty (30) days from the date of entry of this Modified Consent Order, a certified check for that amount, payable to the order of "Treasurer, State of Ohio."

XII. STIPULATED PENALTIES

14. In the event that Defendant fails to comply with any requirement of this Order, Defendant is liable for and shall immediately pay stipulated penalties in accordance with the following schedule for each failure to comply:

- A. For each day of each failure to comply with a requirement or meet a deadline, up to and including thirty (30) days -- Five Hundred Dollars (\$500.00) per day for each requirement or deadline not met.
- B. For each day of each failure to comply with a requirement or meet a deadline from thirty-one (31) days to sixty (60) days -- One Thousand Dollars (\$1,000.00) per day for each requirement or deadline not met.
- C. For each day of each failure to comply with a requirement or meet a deadline from sixty-one (61) to ninety (90) days -- One Thousand Five Hundred Dollars (\$1,500.00) per day for each requirement or deadline not met.
- D. For each day of each failure to comply with a requirement or meet a deadline over Ninety (90) days -- Two Thousand Dollars (\$2,000.00) per day for each requirement or deadline not met.

Payments required by this section shall be paid within thirty (30) days of the

violation by delivering along with a letter summarizing the violations for which the penalty is paid.

XIII. MISCELLANEOUS

15. Nothing in this Order shall affect Defendant's obligation to comply with all applicable federal, state or local laws, regulations, rules or ordinances. Defendant shall obtain any and all federal, state, or local permits necessary to comply with this Order.

16. Any acceptance by the State of Ohio and/or the Ohio Environmental Protection Agency of any payment, document or other work due hereunder subsequent to the time that the obligation is due under this Order shall not relieve Defendant from the obligation created by the Order.

17. Defendant shall inform the Ohio EPA of any change of its business addresses or telephone numbers, or the cessation of business.

XIV. COSTS

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

19. Defendant is hereby ordered to pay the costs incurred by the Ohio EPA for the publication of the Proposed Modified Consent Order in a newspaper of general circulation. Defendant shall pay the costs associated with publication by delivering a certified check for the amount to Matt Sanders, or his successor, Administrative Assistant, Environmental Enforcement Section, Ohio Attorney General's Office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, within 30 days from the date they receive notice of the costs from Ohio EPA.

XV. CONTINUING JURISDICTION

20. This Court shall retain jurisdiction over this action for the purpose of enforcing Defendant's compliance with the terms and provisions of this Modified Consent Order.

XVI. ENTRY OF MODIFIED CONSENT ORDER AND FINAL JUDGMENT BY CLERK

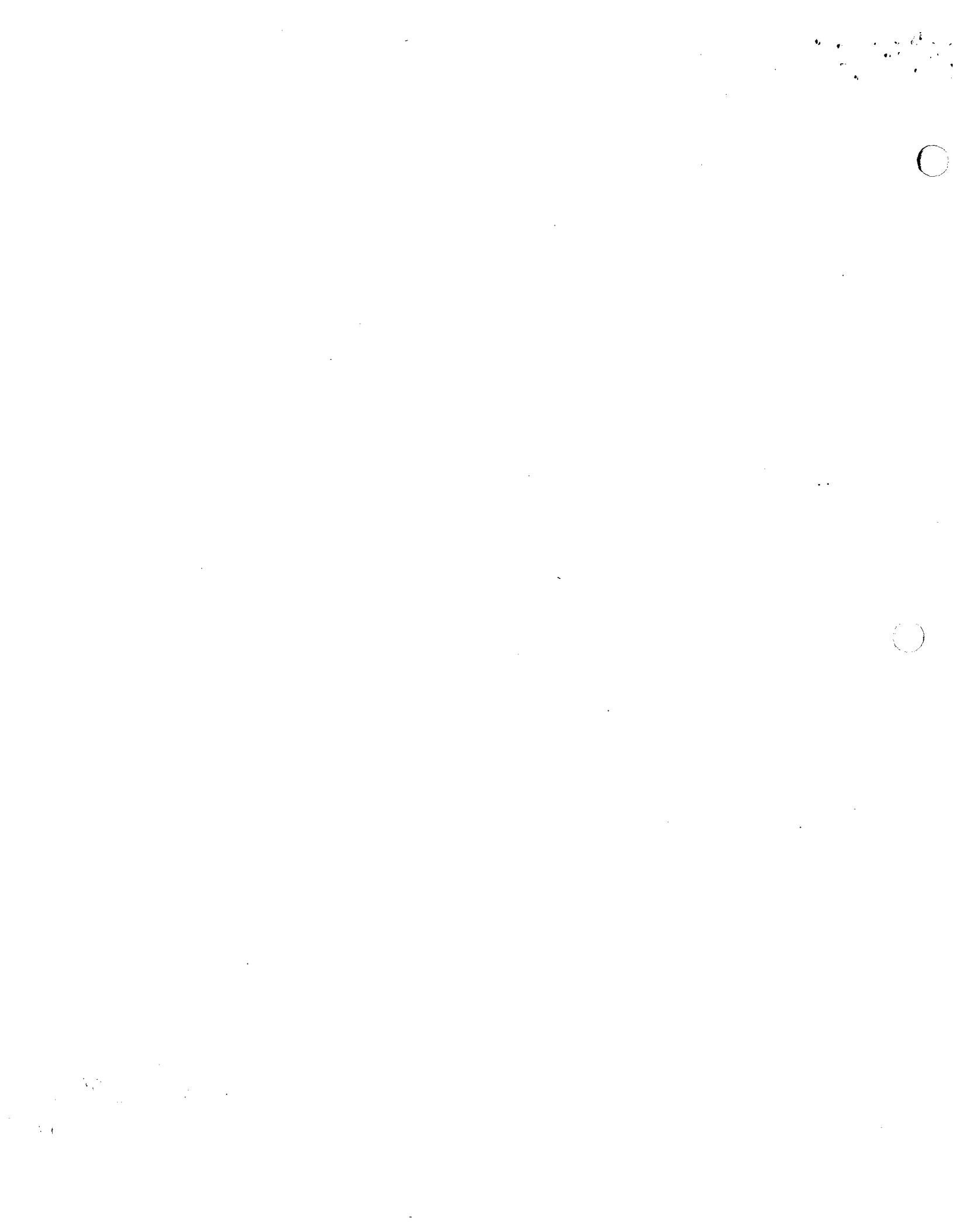
21. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Modified Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

IT IS SO ORDERED.

4-22-97
DATE

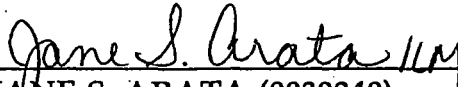
of James Durin
JUDGE
STARK COUNTY COURT OF COMMON PLEAS

A TRUE COPY TESTED
PHIL G. GIAMBRINO CLERK
By DiMaccaro Deputy
Date 4-24-97



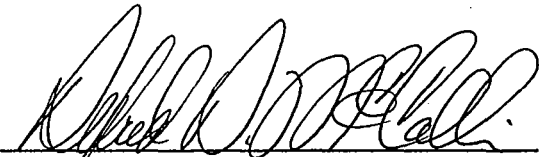
APPROVED:

BETTY D. MONTGOMERY,
ATTORNEY GENERAL OF OHIO




JANE S. ARATA (0039340)
LORI MASSEY (0047226)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
(614) 466-2766

March 28, 1997
DATE



Alfred D. McCallin
Village Solicitor
The Village of Brewster, Ohio

4/20/97
DATE



MICHAEL E. SCHWAB, Mayor
and Authorized Representative
The Village of Brewster, Ohio

01/20/97
DATE

OHIO
ATTY GENERAL
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EMPLOYMENT