



officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them.

Defendant Delta 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 Delta 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 August 1, 1989 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 August 1, 1989, Defendant Delta is enjoined to meet the final effluent standards set forth in its NPDES permit No. 2PB00003\*ED and any renewals or modifications thereof. Delta is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

5. Defendant Delta is enjoined and ordered to eliminate discharges from overflows and bypasses from its sanitary sewer system and to complete construction of the improvements to its wastewater treatment plant described in the Municipal Compliance Plan submitted to Ohio EPA on May 1, 1986, revised on October 28, 1986, and approved November 25, 1986; and to attain compliance with the final effluent limitations of NPDES permit No. 2PB00003\*ED and any modifications or renewals thereof in accordance with the following schedule:

TASK

COMPLETION DATE

- |  |                  |
|--|------------------|
| (a) Initiation of Project Design Work  | Complete         |
| (b) Submittal of Approvable Plans and Specifications to Ohio EPA   | Complete         |
| (c) Advertisement of Building Bids   | July 26, 1988    |
| (d) Execution of Building Contracts  | October 1, 1988  |
| (e) Initiation of Construction   | October 15, 1988 |
| (f) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits and the elimination of bypasses and overflows. | July 1, 1989     |
| (g) Attain compliance with final effluent limitations, and eliminate overflows and bypasses.   | August 1, 1989   |
| (h) Completion of remaining construction   | January 1, 1990  |

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 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 Delta shall pay to the State of Ohio a civil penalty of sixteen thousand, five hundred dollars (\$16,500.00). 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 date of entry of this Consent Order.

VII. STIPULATED PENALTIES

7. In the event that Defendant Delta fails to comply with a requirement of this Consent Order, then Delta shall be liable for and shall pay the stipulated penalty set forth below:

A. If Delta fails to meet the construction schedule milestones set forth in paragraphs 5(c), 5(d), 5(e), 5(f) and 5(h) by the date specified therein, then Delta shall be liable for and pay stipulated penalties as follows:

- (1) \$250.00 per day, for the first 30 days;
- (2) \$500.00 per day, for days 31-60;
- (3) \$750.00 per day, for days 61-90;
- (4) \$1,500.00 per day, for days 91-120;
- (5) \$3,500.00 per day for each day of violation beyond 120th day

B. If Delta violates any interim effluent limitation or monitoring requirement in paragraph 4 of this Consent Order, Delta shall be liable for and pay stipulated penalties as follows:

- (1) \$250 for each day of failure to monitor or meet a parameter for the first 30 days in which the limit for that parameter is violated;

(2) \$500.00 for each day of failure to monitor or meet a parameter for days 31-60 in which the limit for that parameter is violated;

(3) \$750.00 for each day of failure to monitor or meet a parameter for days 61-90 in which the limit for that parameter is violated.

(4) \$2,500.00 for each day of failure to monitor or meet a parameter for days 91-120 in which the limit for that parameter is violated;

(5) \$3,500.00 for each day of failure to monitor or meet a parameter for days beyond the 120th day in which the limit for that parameter is violated.

C. If Delta fails to meet any requirements of this Consent Order set forth in sub-paragraph 5(g), Delta shall be liable for and pay stipulated penalties as follows:

(1) \$250.00 for each day of violation of any of said requirements for the first 60 days in which that requirement has not been met;

(2) \$500.00 for each day of violation of any of said requirements for days 61-90 in which that requirement has not been met;

(3) \$5,000.00 for each day of violation of any of said requirements for days 91-120 in which that requirement has not been met;

(4) \$10,000.00 per day of violation of any of said requirements for days beyond the 120th day in which that requirement has not been met.

D. For purposes of sub-paragraph C, each violation of a seven day average final effluent limitation shall be deemed to be seven days of violation; each violation of a monthly average final effluent limitation shall be deemed to be a violation for each day of that month.

8. Any payment required to be made under the provisions of Paragraphs 6 or 7 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".

#### VIII. POTENTIAL FORCE MAJEURE

9. In any action to enforce any of the provisions of this Consent Order Defendant Delta 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

10. 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.

IX. COSTS

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



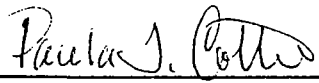
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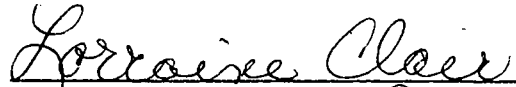


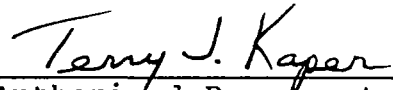
APPROVED:

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

BY:

  
\_\_\_\_\_  
PAULA T. COTTER  
Assistant Attorney General  
30 East Broad Street  
Columbus, Ohio 43266-0410

  
\_\_\_\_\_  
Mayor of Delta, O.

  
\_\_\_\_\_  
Authorized Representative of  
Village of Delta

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APPENDIX A

<u>EFFLUENT CHARACTERISTIC</u>		<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING</u>			
		Concentration		Loading*		<u>REQUIREMENTS</u>			
Reporting Code	PARAMETER	Other Units	Units (Specify)	30 day	7 day	30 day	7 day	Meas. Freq.	Sample Type
00010	C Temperature	-	-	-	-	-	-	Daily	Maximum Indicator Thermometer
00530	mg/l Suspended Solids	30	45	57	86	2/Wk		Composite	
00310	mg/l BOD <sub>5</sub>	30	45	57	86	2/Wk		Composite	
31616	Count Fecal Coliform /100 ml (Summer Only)	-	-	-	-	2/Wk		Grab	
00610	mg/l Ammonia (N)-	-	-	-	-	1/Mo		Grab	
00620	mg/l Nitrate (N)-	-	-	-	-	1/Mo		Grab	
00615	mg/l Nitrite (N)-	-	-	-	-	1/Mo		Grab	
01032	ug/l Chromium (Hex)	-	-	-	-	1/Mo		Composite	
01022	ug/l Chromium (Tri.)	-	-	-	-	1/Mo		Composite	
01092	ug/l Zinc	-	-	-	-	1/Mo		Composite	
00550	mg/l Oil & Grease	-	-	-	-	1/Qtr.		Grab	
50050	MGD Flow	-	-	-	-	Daily		Continuous	

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 monitored daily by grab sample.

\* The average effluent loading limitations are established using the following flow value: 3.0 MGD.

Ordinance No. 1576

Passed July 5, 1988

AN ORDINANCE AUTHORIZING THE  
MAYOR AND SOLICITOR TO SIGN A  
CONSENT ORDER WITH RESPECT TO CASE  
STYLED "STATE EX REL.  
CELEBREZZE V. VILLAGE OF DELTA"  
CONCERNING EPA VIOLATIONS, AND  
DECLARING AN EMERGENCY

WHEREAS, the Ohio Attorney General's Office has contacted the Village of Delta with respect to certain requirements of the Federal Clean Water Act which were to be met by July 1, 1988; and

WHEREAS, the Wastewater Treatment Plant expansion could not be completed in a timely fashion to comply with the July 1, 1988 deadline; and

WHEREAS, the State's Attorney General's office has requested that the Village enter into a consent order including civil penalty, revised completion schedules, and liquidated damages or penalties in the event the revised schedules are not complied with;

NOW THEREFORE, BE IT ORDAINED by the council of the Village of Delta as follows:


SECTION 1. That the Mayor and the Solicitor of the Village of Delta be and hereby are authorized to execute on behalf of the Village, a Consent Order. Said Consent Order includes an immediate penalty in the amount of \$16,500.00, payable within forty-five (45) days from the date of entry of the Consent Order, and a revised construction schedule. A copy of said Consent Order is attached hereto and incorporated by reference.

SECTION 2. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare of said village and to prevent further delay in federal funding of the Wastewater Treatment facility and prevent unnecessary construction delays with respect to the Wastewater Treatment facility.

Vote on emergency measure: Yeas 5 Nays 0


Passed as an emergency measure, this 5th day of July, A.D. 1988.

Attest

  
Clerk-Treasurer

  
MAYOR

I, Peggy A. Koons do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1576.

  
Clerk-Treasurer