

IN THE  
COURT OF COMMON PLEAS  
ROSS COUNTY, OHIO

STATE OF OHIO, ex rel : CASE NO. 88 CI 183  
ANTHONY J. CELEBREZZE, JR. :  
ATTORNEY GENERAL OF OHIO, :  
Plaintiff, : JUDGE NICHOLAS H. HOLMES, JR.  
v. :  
THE VILLAGE OF KINGSTON, OHIO, : CONSENT ORDER  
Defendant. :

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 Village of Kingston, Ohio (hereinafter "Kingston") 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 Kingston 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 Kingston shall provide a copy of this Consent Order to each general 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 Kingston 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 its NPDES permit issued 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 Kingston 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

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 December 30, 1992, 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 December 30, 1992, Defendant is enjoined to meet the final effluent limitations set forth in its NPDES permit No. 0PB00021\*BD and any renewals or modifications thereof. Defendant is further enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

5. Defendant Kingston 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 Facility Plan as approved by the Director of Environmental Protection on September 18, 1988 and to attain compliance with the final effluent limitations of NPDES permit No. 0PB00021\*BD, and any modifications or renewals thereof, in accordance with the following schedules:

Wastewater Treatment Plant

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Submittal of Approvable Facility Plan to Ohio EPA.	June 1, 1990
(b) Initiation of Project Design Work.	August 1, 1990
(c) Submittal of Approvable Plans and Specifications to Ohio EPA.	December 20, 1990
(d) Advertisement of Building Bids.	May 10, 1991
(e) Execution of Building Contracts.	September 1, 1991
(f) Initiation of Construction.	September 15, 1991
(g) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits and the elimination of bypasses and overflows.	August 1, 1991
(h) Attain and maintain compliance with final effluent limitations, and eliminate overflows and bypasses.	December 30, 1992

Main Pump Station

<u>TASK</u>	<u>COMPLETION DATE</u>
(i) Submittal of Approvable Facility Plan to Ohio EPA.	June 1, 1990
(j) Initiation of Project Design Work.	August 1, 1990
(k) Submittal of Approvable Plans and Specifications to Ohio EPA.	December 20, 1990
(l) Advertisement of Building Bids.	May 10, 1991
(m) Execution of Building Contracts.	September 1, 1991
(n) Initiation of Construction.	September 15, 1991

- (o) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits and the elimination of bypasses and overflows. August 1, 1992
- (p) Attain and maintain compliance with final effluent limitations, and eliminate overflows and bypasses. December 30, 1992

Southeast Sewer Separation

<u>TASK</u>	<u>COMPLETION DATE</u>
(q) Submittal of Approvable Facility Plan to Ohio EPA.	June 1, 1990
(r) Initiation of Project Design Work.	August 1, 1990
(s) Submittal of Approvable Plans and Specifications to Ohio EPA.	December 20, 1990
(t) Advertisement of Building Bids.	May 10, 1991
(u) Execution of Building Contracts.	September 1, 1991
(v) Initiation of Construction.	September 15, 1991
(w) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits and the elimination of bypasses and overflows.	August 1, 1992
(x) Attain and maintain compliance with final effluent limitations, and eliminate overflows and bypasses.	December 30, 1992

Central and North Sewer Separation

<u>TASK</u>	<u>COMPLETION DATE</u>
(y) Submittal of Approvable Facility Plan to Ohio EPA.	June 1, 1990
(z) Initiation of Project Design Work.	August 1, 1990
(aa) Submittal of Approvable Plans and Specifications to Ohio EPA.	December 20, 1990
(bb) Advertisement of Building Bids.	February 10, 1992
(cc) Execution of Building Contracts.	April 15, 1992
(dd) Initiation of Construction.	May 1, 1992
(ee) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits and the elimination of bypasses and overflows.	October 1, 1992
(ff) Attain and maintain compliance with final effluent limitations, and eliminate overflows and bypasses.	December 30, 1992

VI. REPORTING REQUIREMENT

6. Within seven (7) days from the completion date of each milestone listed above, Defendant Kingston shall submit a written report stating whether it has performed the action set forth therein to Ohio EPA's Southeast District Office, Division of Water Pollution Control at 2195 Front Street, Logan, Ohio 43138 with a carbon copy to Ohio EPA's Central Office, Division of Water Pollution Control/Enforcement Section at 1800 Watermark Drive, Columbus, Ohio 43266-0149.

VII. EFFECT OF CONSENT ORDER

7. 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 the Director of Environmental Protection or other such permits as may be required by applicable federal, state or local laws, rules or regulations.

VIII. POTENTIAL FORCE MAJEURE

8. In any action to enforce any of the provisions of this Consent Order, Defendant Kingston may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons entirely 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. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant will rest with Defendant. Unanticipated or

increased costs associated with the implementation of any action required by this Consent Order or changed financial circumstances shall not constitute circumstances entirely beyond the control of Defendant. 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. CIVIL PENALTY

9. Defendant Kingston shall pay to the State of Ohio a civil penalty of fifteen thousand dollars (\$15,000.00). The penalty shall be paid by delivering to counsel for Plaintiff two (2) certified checks, each in the amount of seven thousand five hundred dollars (\$7,500.00), made payable to the order of "Treasurer, State of Ohio" in accordance with the following payment schedule:

<u>Date</u>	<u>Amount</u>
a. Within forty-five (45) days from the Court's entry of this Consent Order	\$ 7,500.00
b. March 15, 1990	<u>\$ 7,500.00</u>
Total	\$15,000.00 =====



X. STIPULATED PENALTIES

10. In the event that Defendant Kingston fails to meet any of the requirements of this Consent Order set forth in Paragraph 4 and Subparagraphs 5(a) through 5(g), 5(i) through 5(o), 5(q) through 5(w) and 5(y) through 5(ee), including any schedule milestone requirement, Defendant shall be liable for and shall pay a stipulated penalty according to the following payment schedule:

- a. For each day of each failure to meet a requirement up to forty-five (45) days--five hundred dollars (\$500.00) per day;
- b. For each day of each failure to meet a requirement from forty-six (46) to ninety (90) days--one thousand dollars (\$1,000.00) per day;
- c. For each day of each failure to meet a requirement from ninety-one (91) to one hundred thirty-five (135) days--two thousand dollars (\$2,000.00) per day;
- d. For each day of each failure to meet a requirement from one hundred thirty-six (136) to one hundred eighty (180) days--three thousand dollars (\$3,000.00) per day;
- e. For each day of each failure to meet a requirement over one hundred eighty (180) days--three thousand five hundred (\$3,500.00) per day.

11. In the event that Defendant Kingston fails to meet any of the requirements of this Consent Order set forth in Subparagraphs 5(h), 5(p), 5(x) and 5(ff), Defendant shall be liable for and shall pay a stipulated penalty in accordance with the following payment schedule:

- a. For each day of each failure to meet a requirement up to forty-five (45) days--five thousand dollars (\$5,000.00) per day;

- b. For each day of each failure to meet a requirement from forty-six (46) to ninety (90) days--six thousand dollars (\$6,000.00) per day;
- c. For each day of each failure to meet a requirement from ninety-one (91) to one hundred eighty (180) days--eight thousand dollars (\$8,000.00) per day;
- d. For each day of each failure to meet a requirement over one hundred eighty (180) days--ten thousand (\$10,000.00) per day.

12. Any payment required to be made under the provisions of Paragraphs 10 or 11 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".

XI. COMPLIANCE NOT DEPENDANT ON GRANTS OR LOANS

13. Performance of the terms of this Consent Order by Defendant Kingston is not conditioned on the receipt of any federal or state grant or loan funds. In addition, Defendant's performance is not excused by the failure to obtain or shortfall of any federal or state grant or loan funds or by the processing of any applications for the same.

XII. RETENTION OF JURISDICTION

14. 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.

XIII. COSTS

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

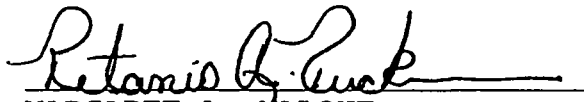
SIGNED NICHOLAS H. HOLMES, JR.

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

\_\_\_\_\_  
Date

APPROVED:

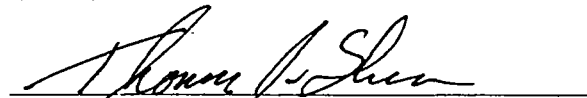
ANTHONY J. CELEBREZZE, JR.  
ATTORNEY GENERAL OF OHIO

  
\_\_\_\_\_  
MARGARET A. MALONE  
RETANIO Aj RUCKER  
Assistant Attorneys General

30 East Broad Street, 17th Fl.  
Columbus, Ohio 43266-0410  
(614) 466-2766

  
\_\_\_\_\_  
JAMES M. CUTRIGHT  
Village Solicitor

The Village of Kingston, Ohio  
72 West Second Street  
Chillicothe, Ohio 45601  
(614) 772-5595

  
\_\_\_\_\_  
THOMAS SHEAR, Mayor  
Authorized Representative  
The Village of Kingston, Ohio

THE CLERK OF COURTS IS HEREBY DIRECTED TO SERVE A COPY OF THIS *order*.....ON ALL COUNSEL AND ALL PARTIES NOT REPRESENTED BY COUNSEL BY FIRST CLASS UNITED STATES MAIL.

NICHOLAS H. HOLMES, JR.  
JUDGE

APPENDIX "A"

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS for Outfall OPB00021001

<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		
50050	MGD	Flow	-	-	-	-	Daily	Continuous
00010	°C	Temperature	-	-	-	-	Daily	Max. Ind. Therm.
00530	mg/l	Suspended Solids	85	100	64.3	75.7	2/Month	Grab
00310	mg/l	BOD <sub>5</sub>	45	65	34.1	49.2	2/Month	Grab
00610	mg/l	Ammonia (N)	-	-	-	-	2/Month	Grab

2. The pH (Reporting Code 00400 (average)) 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.

4. The Dissolved Oxygen (Reporting Code 00300) shall be monitored 2/month by grab sample.

\* The average effluent loading limitations are established using the following flow value: 0.20 MGD

4960E

Appendix "A" (cont'd)

ADDITIONAL MONITORING REQUIREMENTS

1. The permittee shall monitor the collection systems bypasses and overflows at Station OPB00021002 through OPB00021007 and report to the Ohio EPA in accordance with the following Table:

<u>CHARACTERISTIC</u>			<u>MONITORING REQUIREMENTS</u>	
<u>Reporting Code</u>	<u>Units</u>	<u>Parameter</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
80998	Number/Day	Occurrences	Daily when discharging	Estimate
80999	Hours	Duration	Daily when discharging	Daily Est.
00310	mg/l	BOD <sub>5</sub>	1/Month when discharging	Grab
00530	mg/l	Suspended Solids	1/Month when discharging	Grab
50050	Million Gallons	Volume	Daily when discharging	Daily Est.

The permittee shall set up a rotating schedule to sample at least five (5) stations during each storm event. Samples should be collected during the first 30 minutes of discharge.

Data for the Number of Occurrence(s) per day, the daily Duration and the total daily Flow may be estimated.

For days when there are no bypass discharges, data for parameters which require laboratory analyses should be reported as "AH" and an explanation of "No Discharge" entered in the "Additional Remarks" section. Also, on such days Zero should be reported for occurrences, duration, and flow.

Monitoring data shall be submitted for each month when discharge occurs. The monthly monitoring report shall be attached to the normal monthly report form.

2. The permittee is authorized to discharge from the following overflows and bypasses only during wet weather periods when the flow in the sewer system exceeds the capacity of the sewer system. See Item 1, above, for monitoring and reporting requirements. Also see PART III, Item 11 of NPDES permit No. OPB00021\*BD.

Appendix "A" (cont'd)

<u>Station Number</u>	<u>Description</u>	<u>Receiving Stream</u>
OPB00021002	Main Lift Station overflow	Blackwater Creek
OPB00021003	Trailer Park Lift Station overflow	Tributary to Blackwater Creek
OPB00021004	Manhole preceding Lift Station	Tributary to Blackwater Creek
OPB00021005	Manhole at Warren and Windsor	Tributary to Blackwater Creek
OPB00021006	Manhole at Pickaway and Mulberry	Tributary to Blackwater Creek
OPB00021007	Manhole at County Line Road and S.R. 159	Tributary to Blackwater Creek

961E