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IN THE COURT OF COMMON PLEAS
GEAUGA COUNTY, OHIO

BETTY J. MONTAGUE
Clerk of Courts
Geauga County

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

CASE NO. 90 M000910

JUDGE

Plaintiff,

CONSENT ORDER

v.

VILLAGE OF MIDDLEFIELD

-COTH-

Defendant.

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 Middlefield (hereinafter "Middlefield") 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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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 Middlefield 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.

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IV. COMPLIANCE SCHEDULE

4. Defendant Middlefield 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 No. 3PB00034*BD, 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 January 31, 1993, Defendant is enjoined to comply with the interim effluent limitations set forth in Appendix "A" attached hereto. The interim effluent limitations and requirements contained in Appendix "A" do not constitute an NPDES permit or a modification of any existing permit. After January 31, 1993, Defendant is enjoined to meet the final effluent standards set forth in its NPDES permit No. 3PB00034*BD and any renewals or modifications thereof. Defendant Middlefield is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

5. Defendant Middlefield is enjoined and ordered to eliminate all overflows and bypasses and complete construction of the improvements to its sewer collection system described in

the permit to install approved by the Ohio EPA on June 29, 1989 and to complete construction of the improvements described in a General Plan, as it is approved by the Ohio EPA, and to attain compliance with the final effluent limitations of NPDES permit No. 3PB00034*BD and any modifications or renewals thereof in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Initiation of Main Street Pump Station operation	February 28, 1990
(b) Submit evaluation of wastewater treatment plant	June 12, 1990 <i>JL</i>
(c) Submit approvable General Plan to Ohio EPA	September 15, 1990 <i>ESD</i>
(d) Initiation of Project Design Work	November 30, 1990
(e) Submittal of Approvable Plans and Specifications including PTI application to Ohio EPA	May 30, 1991
(f) Advertisement of Building Bids.	August 30, 1991
(g) Execution of Building Contracts	October 30, 1991
(h) Initiation of Construction	November 30, 1991
(i) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits and the elimination of bypasses and overflows.	December 31, 1992
(j) Attain compliance with final effluent limitations, and eliminate overflows and bypasses.	January 31, 1993

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Clerk of Courts
Georgia County

Within seven days from each completion date listed above, Defendant Middlefield shall submit a written report stating whether or not Middlefield has performed the action set forth therein to Ohio EPA's North Eastern 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 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 Middlefield shall pay to the State of Ohio a civil penalty of one thousand dollars (\$1,000.00). 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 date of entry of this Consent Order.

VII. STIPULATED PENALTIES

7. In the event that Defendant Middlefield fails to meet any of the requirements of this Consent Order set forth in Paragraphs 4, 5 (a), 5 (b), 5 (c), 5(d), 5 (e), 5 (f), 5(g), 5(h), and 5(i) including any scheduled milestone requirement,

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COLUMBUS, OHIO

the Defendant shall immediately and automatically 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 (30) days - Five Hundred Dollars (\$500.00) per day for each requirement not met. For each day of failure to meet a requirement, from thirty-one (31) to sixty days (60) - One Thousand Dollars (\$1,000.00) per day for each requirement not met. For each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days - Two Thousand Five Hundred Dollars (\$2,500.00) per day for each requirement not met. For each day of failure to meet a requirement, over ninety days (90) days - Three Thousand Five Hundred Dollars (\$3,500.00) per day for each requirement not met.

8. In the event that Defendant Middlefield fails to meet any of the requirements of this Consent Order set forth in Subparagraph 5(j), the Defendant shall immediately and automatically be liable for payment of a stipulated penalty of \$5,000.00 per day of each violation of said requirement. The Defendant shall be liable for an additional stipulated penalty of One Thousand Dollars (\$1,000.00) per day of each violation if the failure to comply continues for more than thirty (30) days, i.e. Six Thousand Dollars (\$6,000.00) per day of each violation. In the event that failure to comply with the

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requirements of Subparagraph 5(j) continues more than sixty (60) days, Defendant shall be liable for an additional Four Thousand Dollars (\$4,000.00) per day of each violation, i.e., Ten Thousand Dollars (\$10,000.00) per day of each 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 (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

10. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Middlefield shall notify the Ohio EPA in writing within ten (10) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Middlefield to prevent or minimize the delay and the timetable by which measures will be implemented. Middlefield will adopt all reasonable measure to avoid or minimize any such delay.

11. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Middlefield may raise that 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

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Clerk of Courts
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limitation, acts of God, strikes, acts of war or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Middlefield and the Plaintiff 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 by the Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Middlefield shall rest with Middlefield. 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 Middlefield, or serve as a basis for an extension of time under this Consent Order. Failure by Middlefield to comply with the notice requirements of this Paragraph shall render this Paragraph void and of no force and effect as to the particular incident involved and shall constitute a waiver of Middlefield's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one compliance date based on a particular incident does not mean that Middlefield qualifies for an extension of a subsequent compliance date or dates. Middlefield must make an

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individual showing or proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order without a Force Majeure Clause does not constitute a waiver by Middlefield of any rights or defenses it may have under applicable law.

12. All written notifications required pursuant to paragraph 10 and 11 herein shall be submitted to Ohio EPA's North Eastern District Office and to Ohio EPA's Central Office to the attention of Heidi Sorin, DWPC.

IX. TERMINATION OF STIPULATED PENALTIES

13. The provisions of this Consent Order set forth in Section VII, Paragraphs 7, and 8 requiring the payment of stipulated penalties may be terminated after Defendant Middlefield has achieved and maintained compliance with the final effluent limitations contained in its NPDES permit for a period of one (1) year after the completion of construction and payment of all penalties required pursuant to this Consent Order. Termination of stipulated penalties shall be by Order of the Court, upon application by any party and a demonstration that the conditions set forth in this paragraph have been met.

X. COMPLIANCE NOT DEPENDENT UPON FINANCING

14. Performance of the terms of this Consent Order by Middlefield is not conditioned upon the receipt of any financing, including, but not limited to, grants, loans or any other form of funding.

XI. RETENTION OF JURISDICTION

15. 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.

XII. COSTS

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

S/Hans R. Veit
JUDGE, COURT OF COMMON PLEAS

APPROVED:

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

VILLAGE OF MIDDLEFIELD
STEPHEN M. O'BRYAN
VILLAGE SOLICITOR

BY:

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Janet A. Mosak, Mayor
Authorized Representative of
Village of Middlefield

Attachment 1

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS for Outfall 3PB00034001

REPORTING Code	UNITS	PARAMETER	DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS	
			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	30	45	80	119	2/Week	Composite
00310	mg/l	BOD ₅	30	45	80	119	2/Week	Composite
31616	Count /100ml	Fecal Coliform (Summer Only)	1000	2000	-	-	2/Week	Composite
80082	mg/l	CBOD ₅	-	-	-	-	2/Week	Composite

- 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.
- The Chlorine Residual (Reporting Code 50060) shall be maintained at a level not to exceed 0.5 mg/l at any time and shall be monitored daily by grab sample. (Summer Only)
- The Dissolved Oxygen (Reporting Code 00300) shall be maintained at a level not less than 5.0 mg/l at any time and shall be monitored daily by grab sample.
- See Attachment 2 OTHER REQUIREMENTS.

* The average effluent loading limitations are established using the following flow value: 0.7 MGD

Date Issued: April 10, 1984
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OTHER REQUIREMENTS

Attachment 2

- The permittee is authorized to discharge from the following overflows and bypasses only during periods when the flow in the sewer system exceeds the capacity of the sewer system. See Item 2 below for monitoring and reporting requirements.

<u>Station Number</u>	<u>Description</u>	<u>Receiving Stream</u>
3PB00034002	pneumatic pump station overflow	unnamed tributary to Tare Creek
3PB00034003	pump station overflow	unnamed tributary to Tare Creek

- The permittee shall monitor the system's bypasses and overflows at Stations 3PB00034002 thru 3PB00034003 and report to the Ohio EPA in accordance with the following table.

<u>CHARACTERISTIC REPORTING</u>			<u>MONITORING REQUIREMENTS</u>	
<u>CODE</u>	<u>UNITS</u>	<u>PARAMETER</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
0051	Number	Occurrences	When discharging	Estimate
0052	Hours	Duration	When discharging	Daily Est.
0052	Million Gallons	Volume	When discharging	Daily Est.
00310	mg/l	BOD ₅	1/Month	Grab
00530	mg/l	Suspended Solids	1/Month	Grab

Monitoring data shall be obtained for each month when a discharge occurs. Samples should be collected during the first 30 minutes of discharge. The monthly monitoring report shall be attached to the normal monthly report for (EPA 4500).

Date Issued: April 10, 1984
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THIS IS TO CERTIFY THAT THE FOREGOING IS
A TRUE AND CORRECT COPY OF THE DOCUMENT
ON FILE IN THE COURT OF COMMON PLEAS
COUNTY OF COLUMBIA, OHIO
THIS 16th day of November 1990
BETTY J. HANAHAN, CLERK OF COURTS
BY June Marie Bray DEPUTY CLERK

Form EPA 4456

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COLUMBIA COUNTY