

IN THE COURT OF COMMON PLEAS  
PUTNAM COUNTY, OHIO

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

Plaintiff,

vs.

VILLAGE OF OTTAWA,

Defendant.

CASE NO.

89-73

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 Ottawa (hereinafter "Ottawa") 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.

KARL J. MILLER, CLERK  
PUTNAM COUNTY, OHIO

1989 APR 10 PM 4:03

15000 STATE ROAD

## 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 Ottawa 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 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 Ottawa shall 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 December 1, 1989, Defendant shall 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 1, 1989, Defendant Ottawa shall to meet the final effluent standards set forth in its NPDES permit No. 2PD00028\*ED and any renewals or modifications thereof. Ottawa shall properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

#### V. CONSTRUCTION SCHEDULE

5. Defendant Ottawa shall complete construction of the improvements to its wastewater treatment plant described in the approved Municipal Compliance Plan submitted to Ohio EPA in June of 1986 and to attain compliance with the final effluent

limitations of NPDES permit No. 2PD00028\*ED 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 for Phosphorus Removal to Ohio EPA	Complete
(c) Advertisement of Building Bids for Phosphorus Removal	Complete
(d) Execution of Building Contracts and Initiation of Construction for Phosphorus Removal	Complete
(e) Submittal of Approvable Plans and Specifications to Ohio EPA for Potential Overflow Problem	Complete
(f) Advertisement of Building Bids for Potential Overflow Problem	June 30, 1989
(g) Execution of Building Contracts and Initiation of Construction for Potential Overflow Problem	November 1, 1989
(h) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits	November 1, 1989
(i) Attain compliance with final effluent limitations	December 1, 1989
(j) Completion of Construction for Potential Overflow Problem	March 31, 1991

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 Ottawa shall pay to the State of Ohio a civil penalty of Two Thousand Dollars (\$2,000). 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 Ottawa 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), 5(g), 5(h) and 5(j) including any scheduled milestone requirement, 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 sixty (60) days - \$250.00 per day. For each day of failure to meet a requirement, from sixty-one (61) to one hundred twenty (120) days -\$500.00 per day. For each day of failure to meet a requirement, from one hundred twenty-one (121) to one hundred eighty (180) days- \$1,000.00. For each day of failure to meet a requirement, from one hundred eighty-one (181) to two hundred forty (240) days - \$2,500.00 per day. For each day of failure to meet a requirement, over two hundred forty (240) days-\$3,500.00 per day.

8. In the event that Defendant Ottawa fails to meet any of the requirements of this Consent Order set forth in Subparagraph 5(i), the Defendant shall immediately and automatically 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 sixty (60) days, i.e. six thousand dollars (\$6,000.00) per day of violation. In the event that failure to comply with the requirements of Subparagraph 5(i) continues more than one hundred twenty (120) days, Defendant shall be liable for an additional two thousand dollars (\$2,000.00) per day of violation, i.e., eight thousand dollars (\$8,000.00) per day of violation. In the event that failure to comply with the requirements of Subparagraph 5(i)

continues more than one hundred eighty (180) days, Defendant shall be liable for an additional two thousand dollars (\$2,000.00) 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 Ottawa 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 Ottawa is hereby ordered to pay the costs of this action.

Randall Basinger "signed"  
\_\_\_\_\_  
JUDGE, COURT OF COMMON PLEAS  
PUTNAM COUNTY

KARL J. MILLER, CLERK  
PUTNAM COUNTY, OHIO

1989 APR 10 PM 4: 03

COMMON PLEAS COURT



APPROVED:

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

BY:

Karen S. Cleveland  
KAREN S. CLEVELAND  
Assistant Attorney General  
30 East Broad Street  
Columbus, Ohio 43266-0410

Clyde Schroeder  
CLYDE SCHROEDER  
Solicitor, Village of  
Ottawa  
35 East Main Street, Box 110  
Ottawa, Ohio 45875

Richard H. Edlebrock  
RICHARD H. EDLEBROCK, MAYOR  
Authorized Representative  
of Village of Ottawa

2929/24

KARL J. MILLER, CLERK  
PUTNAM COUNTY, OHIO

1989 APR 10 PM 4: 03

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning on the effective date of this permit and lasting until the expiration date, the permittee is authorized to discharge in accordance with the following limitations and monitoring requirements from the following outfall: 2P000028001. SEE PART II, OTHER REQUIREMENTS, of NPDES permit No. 2PB00028\*ED 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.
00310	mg/l	BOD <sub>5</sub>	30	45	159	239	3/Week	Composite
00530	mg/l	Suspended Solids	30	45	159	239	3/Week	Composite
00550	mg/l	Oil & Grease	-	-	-	-	1/Month	Grab
00610	mg/l	Ammonia (N)						
		(Summer)	2	3	11	16	3/Week	Grab
		(Winter)	-	-	-	-	3/Week	Grab
00665	mg/l	Phos., Total	-	-	-	-	3/Week	Composite
31616	Count /100ml	Fecal Coliform (Summer Only)	1000	2000	-	-	3/Week	Grab
50050	MGD	Flow	-	-	-	-	Daily	Continuous
80082	mg/l	CBOD <sub>5</sub>	-	-	-	-	3/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.
5. See PART II, OTHER REQUIREMENTS, of NPDES permit No. 2PB00028\*ED.

\* The average effluent loading limitations are established using the following flow values: 4 MGD