

IN THE COURT OF COMMON PLEAS
JEFFERSON COUNTY, OHIO

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

FILED
IN COMMON PLEAS COURT
JEFFERSON COUNTY, OHIO
JAN 04 1989
JOSEPH G. HAMROCK
CLERK

CASE NO. 88-CIV-355

JUDGE JOHN J. MASCIO

Plaintiff,

vs.

VILLAGE OF WINTERSVILLE,

Defendant.

FIRST MODIFIED
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 Wintersville (hereinafter "Wintersville") 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.

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 Wintersville 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 plants A, B, C, D and E 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 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. Signing this order does not constitute an admission by Defendant. 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 Wintersville 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

C effective NPDES Permits, and any renewals or modifications thereof, except for the effluent limitations set forth in said permits. Between the effective date of this Consent Order and February 1, 1991, Defendant is enjoined to comply with the interim effluent limitations set forth in the appropriate Appendix attached hereto. The Defendant is enjoined to operate Plant A in compliance with Appendix A; Plant B in compliance with Appendix B; Plant C in compliance with Appendix C; Plant D in compliance with Appendix D; and Plant E in compliance with Appendix E. The interim effluent limits contained in the Appendices do not constitute an NPDES permit or a modification of any existing permit. After February 1, 1991, Defendant Wintersville is enjoined to meet the final effluent standards set forth in its NPDES permit Nos. OPA00047*BD, OPA00048*BD, OPA00049*BD, OPA00050*BD, OPB00066*BD and any renewals or modifications thereof. Wintersville is hereby enjoined to properly operate and maintain its wastewater treatment plants and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

5. Defendant Wintersville 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 plants A, B, C, D and E described in the Municipal Compliance Plan submitted to Ohio

EPA on February 25, 1987 and to attain compliance with the final effluent limitations of NPDES permit Nos. OPA00047*BD, OPA00048*BD, OPA00049*BD, OPA00050*BD, OPB00066*BD and any modifications or renewals thereof in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Initiate collection system survey consisting of smoke testing and physical survey to identify inflow sources, and initiation of project design work.	August 1, 1988
(b) Submittal of Approvable Plans and specifications to Ohio EPA	April 1, 1989
(c) Advertisement of Building Bids	June 1, 1989
(d) Execution of Building Contracts	August 1, 1989
(e) Initiation of Construction	September 1, 1989
(f) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits and the elimination of unauthorized bypasses and overflows.	February 1, 1991
(g) Attain compliance with final effluent limitations, and eliminate unauthorized overflows and bypasses.	February 1, 1991
(h) Completion of remaining construction	July 1, 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 Wintersville shall pay to the State of Ohio a civil penalty of Thirteen Thousand Five Hundred Dollars (\$13,500.00). The penalty shall be paid by delivering to counsel for Plaintiff a check for that amount, payable to the order of "Treasurer, State of Ohio", on or before September 1, 1988.

VII. STIPULATED PENALTIES

7. In the event that Defendant Wintersville 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), and 5 (h), including any schedule 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 fourteen days - \$250.00 per day. For each day of failure to meet a requirement, from fourteen to forty-five days - \$500.00 per day. For each day of failure to meet a requirement, from forty-six to seventy-five days - \$750.00 per day. For each day of failure to meet a

requirement, from seventy-six to one hundred and four days - \$2,000.00. For each day of failure to meet a requirement, for more than one hundred and five days - \$3,000.00 per day.

8. In the event that Defendant Wintersville fails to meet any of the requirements of this Consent Order set forth in Subparagraph 5 (g), the Defendant shall immediately and automatically be liable for payment of a stipulated penalty of \$3,000.00 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 thirty (30) days, i.e. four thousand dollars (\$4,000.00) per day of violation. In the event that failure to comply with the requirements of Subparagraph 5(g) continues more than sixty (60) days, Defendant shall be liable for an additional two thousand dollars \$(2,000.00) per day of violation, 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(g) continues more than ninety (90) days, Defendant shall be liable for an additional four thousand dollars \$(4,000.00) 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 Wintersville 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 Wintersville is hereby ordered to pay the costs of this action.



JUDGE, COURT OF COMMON PLEAS
JEFFERSON COUNTY

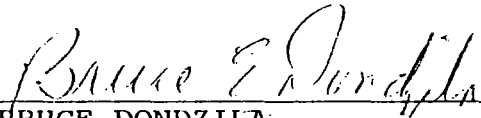
APPROVED:

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

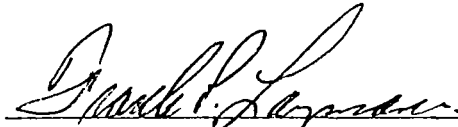
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FRANK P. LAZMAN,
Mayor
Authorized Representative
of Village of Wintersville

2137E18/25

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS for Outfall OPB00066001

1. <u>EFFLUENT CHARACTERISTIC</u>		<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
		Concentration		Loading*		Meas.	Sample
Reporting Code	UNITS PARAMETER	Other Units (Specify)		kg/day		Freq.	Type
		30 day	7 day	30 day	7 day		
50050 MGD	Flow	-	-	-	-	Daily	Total
00010 °C	Temperature	-	-	-	-	Daily	Max. Ind. Therm.
00530 mg/l	Suspended Solids						
	(Summer)	20	30	27.3	40.9	2/Week	Composite
	(Winter)	30	45	40.9	61.3	2/Week	Composite
31616 Count /100ml	Fecal Coliform (Summer Only)	1000	2000	-	-	2/Week	Grab
00610 mg/l	Ammonia (N)	-	-	-	-	1/Week	Composite
80082 mg/l	CBOD ₅						
	(Summer)	21	32	29.0	44.0	2/Week	Composite
	(Winter)	25	40	34.1	54.5	2/Week	Composite

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.

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: 0.360

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS for Outfall OPA00047001

<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)		30 day	7 day		
50050	MGD	Flow	-	-	-	-	Daily	Total
00010	°C	Temperature	-	-	-	-	Daily	Max. Ind. Therm.
00530	mg/l	Suspended Solids						
		(Summer)	20	30	6.1	9.1	1/Week	Composite
		(Winter)	30	45	9.1	13.6	1/Week	Composite
31616	Count /100ml	Fecal Coliform (Summer Only)	1000	2000	-	-	1/Week	Grab
00610	mg/l	Ammonia (N)	-	-	-	-	1/Week	Composite
80082	mg/l	CBOD ₅						
		(Summer)	22	30	7.0	9.0	1/Week	Composite
		(Winter)	25	40	7.6	12.1	1/Week	Composite

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. (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: 0.080 MGD

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS for Outfall OPA00048001

<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	Total
00010 °C	Temperature	-	-	-	-	Daily	Max. Ind. Therm.
00530 mg/l	Suspended Solids						
	(Summer)	20	30	5.0	7.2	1/Week	Composite
	(Winter)	30	45	7.2	10.7	1/Week	Composite
31616 Count	Fecal Coliform						
/100ml	(Summer Only)	1000	2000	-	-	1/Week	Composite
80082 mg/l	CBOD ₅						
	(Summer)	24	31	5.7	7.4	1/Week	Composite
	(Winter)	25	40	6.0	9.5	1/Week	Composite
00610 mg/l	Ammonia (N)	-	-	-	-	1/Week	Composite

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 at all times 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: 0.063 MGD

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS for Outfall OPA00049001

1. EFFLUENT CHARACTERISTIC			DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS	
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	Total
00010	°C	Temperature	-	-	-	-	Daily	Max. Ind. Therm.
00530	mg/l	Suspended Solids						
		(Summer)	20	30	6.1	9.1	1/Week	Composite
		(Winter)	30	45	9.1	13.6	1/Week	Composite
31616	Count /100ml	Fecal Coliform (Summer Only)	1000	2000	-	-	1/Week	Grab
00610	mg/l	Ammonia (N)	-	-	-	-	1/Week	Composite
80082	mg/l	CBOD ₅	27	35	8.0	11.0	1/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 and shall be monitored daily by grab sample. (Summer Only)
- 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: 0.080 MGD

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS for Outfall OPA00050001

1. <u>EFFLUENT CHARACTERISTIC</u>		<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
Reporting Code	UNITS PARAMETER	Concentration		Loading* kg/day		Meas. Freq.	Sample Type
		Other Units (Specify)		30 day	7 day		
50050 MGD	Flow	-	-	-	-	Daily	Total
00010 °C	Temperature	-	-	-	-	Daily	Max. Ind. Therm.
00530 mg/l	Suspended Solids						
	(Summer)	20	30	6.1	9.1	1/Week	Composite
	(Winter)	30	45	9.1	13.6	1/Week	Composite
31616 Count /100ml	Fecal Coliform (Summer Only)	1000	2000	-	-	1/Week	Composite
80082 mg/l	CBOD ₅	27	35	8.0	11.0	1/Week	Composite
00610 mg/l	Ammonia (N)	-	-	-	-	1/Week	Composite

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. (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: 0.080