

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

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

CASE NO. 89CV-09-6842

JUDGE P. Mc Grath

Plaintiff,

vs.

CITY OF DUBLIN

CONSENT ORDER

Defendant.

FILED
COMMON PLEAS COURT
91 APR 25 PM 3:49
FRANKLIN COUNTY
OHIO

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 City of Dublin (hereinafter "Dublin") having consented to the entry of this Order,

NOW THEREFORE, without trial of any issues 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 Dublin 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 allowed numerous overflows of waterborne raw sewage from its pump station located off High Street between Short Street and Karrer Place (hereafter Dublin pump station) in violation of the water pollution laws of the State of Ohio. Dublin has never been issued a National Pollutant Discharge Elimination System permit to authorize this discharge. Notwithstanding the above, nothing contained herein shall be deemed an admission by Defendant as to the allegations set forth in the Complaint or an admission by Defendant that violations of the above-cited laws have occurred. 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. PERMANENT INJUNCTION

4. Defendant Dublin 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. Dublin shall immediately

eliminate all overflows from its pump station and force main system. Dublin is hereby enjoined to properly operate and maintain its force main and pump station and any associated equipment and structures.

V. SCHEDULE OF IMPROVEMENTS

5. Defendant Dublin is enjoined and ordered to eliminate discharges from overflows and bypasses from its sanitary sewer system; to complete construction of the improvements to its sanitary sewer system described in the Permit to Install application submitted to Ohio EPA on April 12, 1989; and to undertake further evaluations and improvements to its sewage system, in accordance with the following scheduled:

<u>MILESTONE</u>	<u>COMPLETION DATE</u>
(a) Installation of flow measuring equipment at the pump station	Complete
(b) Submit report to Ohio EPA pursuant to Paragraphs 11A and c below	December 15, 1989
(c) Submit to OhioEPA, for its review and approval, an approvable Best Management Plan for the operations of the Dublin pump station pursuant to Paragraph 11b, below	December 15, 1989
(d) Submit to OhioEPA, for its review and approval, approvable detail plans for improvements to the Dublin pump station sufficient to ensure that the pump station does not constitute an odor nuisance pursuant to Paragraph 13, below	December 15, 1989
(e) Submit general plan pursuant to Paragraph 12, below	January 1, 1990

Within seven (7) days from each completion date listed above, Defendant Dublin shall submit a written report, stating whether or not Dublin has performed the action set forth therein, to Ohio EPA's Central District Office.

This Consent Order does not constitute authorization of approval of the construction of any physical structure or facilities, or the modification of any existing 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 Dublin shall pay to the State of Ohio a civil penalty of Seventy-Five Thousand Dollars (\$75,000.00). The penalty shall be paid by delivering to counsel for Plaintiff a certified check, payable to the order of "Treasurer, State of Ohio" within thirty (30) days of the entry of this Order.

VII. NOTIFICATIONS AND LOGS

7. Dublin shall notify OhioEPA Central District Office at 614/644-2055 during weekdays from 7:00 a.m. to 5:00 p.m., and Ohio EPA at 1-800-282-9378 during other times, and Columbus, Division of Water within one (1) hour upon discovery of pump station overflows. Dublin shall follow-up in writing within seven (7) days of an overflow with a detailed description of the cause of overflow, length of time of overflow, estimated amount of overflow, and corrective actions taken. This letter shall be sent to OhioEPA, Central District Office.

7a. Within one (1) hour of discovery of a pump station overflow, Dublin shall provide notice to the public of such release by insuring that radio and television stations are provided with the notice set forth below and requested to immediately broadcast such notice:

Raw sewage has been discharged to the Scioto River from an overflowing pump station owned by the City of Dublin. The pump station is located adjacent to the Scioto between Short Street and Karrer Place in Dublin. The overflow occurred at _____, on _____, an estimated _____ gallons of raw sewage was discharged to the Scioto River.

Direct body contact, including waterskiing, wading and fishing, with the Scioto River, in the area south of the State Route 161 bridge and north of Griggs Dam may result in exposure to this raw sewage and may potentially result in adverse health effects.

8. Dublin shall inspect the sewage pump station daily to ensure proper operations of the pump station. A written log shall be kept of all inspections. This log shall include such items as:

- a) date and time of inspection and individual performing inspections,
- b) operating status of pumps, (sound or vibration indicating whether pumps are operating, any unusual sound from the pumps),
- c) evidence of overflows, (any overflow occurring at the time of inspection or evidence of occurrence of overflows since previous inspection),
- d) odors detected upon inspection of the pump station, including walking entirely around the pump station, (distance and direction from pump station and strength of odors),
- e) maintenance and repair work performed on the pump station since last inspection,
- f) any observations of unusual conditions .

Dublin shall obtain and operate a rain gauge within the City limits and shall maintain a daily log of precipitation.

8a. When OhioEPA has approved a best management plan for the operation of the Dublin pump station, Dublin shall comply with the inspection and log requirements established in the approved best management plan in lieu of the provisions set forth in paragraph 8 above.

VIII. MONITORING

9. Dublin shall monitor the Scioto River for fecal coliform, total kjeldahl nitrogen, ammonia, nitrate, nitrite, total suspended solids, BOD5, COD and phosphorus at three sampling locations downstream of the pump station overflows and one sampling location upstream of the pump station overflow. The sampling locations shall be approved by OhioEPA. Sampling shall be conducted three times per week on non-consecutive days. Sampling shall commence upon the occurrence of each overflow from the pump station. Such sampling shall continue until an entire weekly series of sampling has been completed without the intervening occurrence of any further overflow from the pump station.

10. Sampling and analyses shall be in accordance with EPA approved methodologies and results telephoned to OhioEPA immediately upon receipt. A copy of lab results shall be mailed to OhioEPA within three (3) days of receipt of lab results.

IX. REPORTING

11. On or before December 15, 1989, Dublin shall submit a report to OhioEPA, Central District Office. The report shall

include:

- a. Correlation of flow monitoring data, overflows, and precipitation events, and capacity of existing force mains under Scioto River and current available capacity of existing Columbus gravity sewer on east side of Scioto River.
- b. A Best Management Plan (BMP) for the operation of the pump station. The BMP shall detail how the pump station will be operated with regard to operation and maintenance, routine inspections, alarm system operation, and testing of the alarm system and back-up systems. The BMP shall include schedules for maintenance and inspections, a description of the maintenance activities to be performed, and provide for documentation, by log, of the maintenance and inspections.
- c. Future plans and measures to prevent overflows before completion of the Upper Scioto West Branch Interceptor.

12. Dublin shall prepare and submit to the OhioEPA Central District Office an approvable general plan for the installation of a permanent disposal system to serve the area served by the Dublin pump station. This permanent disposal system shall be adequate to dispose of all present raw sewage flow tributary to the Dublin pump station and shall be designed to adequately dispose of future flow. In addition, the general plan shall include a description of tasks to be performed as well as a schedule for the completion of said tasks.

13. Dublin shall prepare and submit to the OhioEPA a report and detail plans for improvements to the pump station to ensure that the pump station and its operation does not emit odors or vapors sufficient to constitute a public nuisance. This report shall include a schedule for implementation of the improvements in

the detail plans. The improvements to the pump station to eliminate the odor nuisance shall be installed in accordance with the schedule as approved.

X. STIPULATED PENALTIES

14. In the event that Defendant Dublin fails to meet any of the requirements of this Consent Order set forth in subparagraphs 5(a), 5(b), 5(c) and Paragraphs 7 through 13, including any scheduled milestone requirements, 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 each failure to meet a requirement, up to thirty (30) days - Two Hundred Fifty Dollars (\$250.00) per day. For each day of each failure to meet a requirement, from thirty-one (31) to sixty (60) days - Five Hundred Dollars (\$500.00) per day. For each day of each failure to meet a requirement, from sixty-one (61) to ninety (90) days - One Thousand Two Hundred Fifty Dollars (\$1,250.00) per day. For each day of each failure to meet a requirement, from ninety-one (91) to one hundred twenty (120) days - One Thousand Seven Hundred Fifty Dollars (\$1,750.00) per day. For each day of each failure to meet a requirement, over one hundred twenty (120) days - Three Thousand Five Hundred Dollars (\$3,500.00) per day.

15. In the event that Defendant Dublin fails to meet any of the requirements of this Consent Order set forth in Paragraph 4, the Defendant shall immediately and automatically be liable for payment of a stipulated penalty of One Thousand Five Hundred Dollars (\$1,500.00) per day of violation of any such requirement

which violation occurs on or before December 31, 1989. In the event that Defendant Dublin fails to meet any of the requirements of this Consent Order set forth in Paragraph 4, after December 31, 1989, Defendant shall immediately and automatically be liable for payment of a stipulated penalty of Six Thousand Dollars (\$6,000.00) per day of violation of any such requirement.

16. Any payment required to be made under the provisions of Paragraphs 14 or 15 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. POTENTIAL FORCE MAJEURE

17. In any action to enforce any of the provisions of this Consent Order Defendant Dublin 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. 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 Dublin shall rest with Dublin. 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 Dublin. 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.

XII. RETENTION OF JURISDICTION

18. 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.

TERMINATION

19. The provisions of this Consent Order set forth in Section X, Paragraphs 14 and 15, requiring the payment of stipulated penalties may be terminated after Defendant Dublin has completed all construction, improvements, and submissions required under Sections V and IX and has maintained compliance with all of the provisions of this Order for a period of two (2) years following completion of all construction required pursuant to this Order and has paid all penalties required. Termination shall be by Order of this Court, upon motion of either parties, upon a finding that all requirements of this Order have been met.

XIII. COSTS

20. Defendant Dublin is hereby ordered to pay the costs of this action.

21. This Consent Order does not limit or affect the rights of Dublin or the Plaintiff against third parties, nor does it affect the rights of third parties. This Consent Order is made solely between the parties hereto, and nothing contained herein shall be construed to grant any substantive benefit to any third person not a party hereto.

JUDGE, COURT OF COMMON PLEAS

Approved:

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

BY:

Karen S. Cleveland
MARGARET A. MALONE
KAREN S. CLEVELAND
ASSISTANT ATTORNEYS GENERAL
30 EAST BROAD STREET
COLUMBUS, OHIO 43266-0410
614/466-5257

Stephen J. Smith
STEPHEN J. SMITH
5354 CEMETERY ROAD
POST OFFICE BOX 7
HILLIARD, OHIO 43026
614/876-1229

X [Signature]
AUTHORIZED REPRESENTATIVE OF
THE CITY OF DUBLIN

CITY MANAGER
DUBLIN, OHIO