

IN THE COURT OF COMMON PLEAS
AUGLAIZE COUNTY

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

) CASE NO. 85-244
)
) JUDGE _____
)

Plaintiff,

vs.

CITY OF ST. MARYS

) CONSENT ORDER
)

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 City of St. Marys (hereinafter "St. Marys") 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 binding upon the parties to this action, their agents,

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officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them. Defendant St. Marys 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 unauthorized discharges 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 St. Marys 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. INJUNCTION

4a. Defendant St. Marys 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 NPDES Permit No. 2PD00026*FD or any renewals or modifications thereof. St. Marys is also hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

4b. After December 30, 1989, Defendant St. Marys is enjoined to cease bypasses and overflows from its sanitary sewer system except in accordance with Part III, Section 11 of NPDES Permit No. 2PD00026*FD or any renewals or modifications of Permit No. 2PD00026*FD and to properly maintain its sanitary sewer system.

V. CONSTRUCTION SCHEDULE

5. Defendant St. Marys is enjoined and ordered to complete construction of the improvements to its sanitary sewer systems and wastewater treatment plant to eliminate bypasses and overflows, as described in the General Plan approved by the Ohio EPA on March 3, 1987, in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Submittal of Approvable Plans and Specifications to Ohio EPA	Completed
(b) Commencement of Advertisement of Building Bids	Completed
(c) Execution of Building Contracts and Initiation of Construction	September 15, 1988
(d) Completion of Construction of Improvements to the Sanitary Sewer System and Wastewater Treatment Plant and Placement of These Facilities Into Operation	December 30, 1989

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 St. Marys shall pay to the State of Ohio a civil penalty of twenty-five thousand dollars (\$25,000.00). The penalty shall be paid in two equal payments. The first twelve thousand five hundred dollar payment shall be paid within sixty days from the entry of this Consent Order. The second twelve thousand five hundred dollar payment shall be paid within one hundred and twenty days from the entry of this consent order. The payment shall be made by delivering to counsel for Plaintiff a certified check, payable to the order of "Treasurer, State of Ohio."

VII. STIPULATED PENALTIES

7. In the event that Defendant St. Marys fails to meet any of the requirements of this Consent Order set forth in Paragraphs 5(a), 5(b), 5(c) and 5(d) including any scheduled milestone requirement, the Defendant shall 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 days - \$250.00 per day. For each day of failure to meet a requirement, from thirty-one to sixty days - \$500.00 per day. For each day of failure to meet a requirement, from sixty-one to ninety days - \$1,000.00. For each day of failure to meet a requirement, from ninety-one to one hundred twenty days - \$2,000.00 per day. For each day of failure to meet a requirement beyond one hundred twenty days - \$3,000.00 per day.

8. In the event that Defendant St. Marys fails to meet any of the requirements of this Consent Order set forth in

Paragraph 4(b), the Defendant shall 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 (\$1,000.00) 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 Paragraph 4(b) continues more than sixty (60) days, Defendant shall be liable for an additional one thousand dollars (\$1,000.00) per day of violation, i.e., five thousand dollars (\$5,000.00) per day of violation. In the event that failure to comply with the requirements of paragraph 4(b) continues more than ninety (90) days Defendant shall be liable for an additional two thousand five hundred dollars (\$2,500.00) per day of violation, i.e., seven thousand five hundred dollars (\$7,500.00) per day of violation. In the event that failure to comply continues more than one hundred twenty (120) days Defendant shall be liable for an additional stipulated penalty of two thousand five hundred dollars (\$2,500.00) 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."

10. The payment of stipulated penalties under this Consent Order, or any further penalties ordered by the Court, shall be subordinate to annual repayment of the principal and interest requirements for the term of the financing required to implement the improvements. This provision for subordination applies only to payments from St. Marys sewer revenues and funds, and not to other funds or sources available to St. Marys to pay any penalties that may be due hereunder or ordered by this Court. This provision does not relieve the City of its liability for the payment of stipulated penalties or any further penalties ordered by the Court, but only defers such payment until it can be made without violating the terms of subordination contained in this provision.

VIII. POTENTIAL FORCE MAJEURE

11. In any action to enforce any of the provisions of this Consent Order Defendant St. Marys 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

12. 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. TERMINATION OF STIPULATED PENALTIES

13. The provisions of this Consent Order requiring the payments of stipulated penalties, set forth in paragraphs VII, 7, 8 and 9 will terminate after St. Marys has complied with the requirements of paragraph V 5(d); and has complied with the paragraph IV 4(b) for the period of one year; and has paid all penalties required pursuant to this order. Any termination of stipulated penalties shall be by Order of the Court upon application by any party.

XI. COSTS

14. Defendant St. Marys is hereby ordered to pay the costs of this action.


JUDGE, COURT OF COMMON PLEAS
AUGLAIZE COUNTY

APPROVED:

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

BY:

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K. E. M. M. M.
Law Director

[Signature]
Authorized Representative of
City of St. Marys

Michael Lynch
Michael Lynch, Mayor