

IN THE COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

90CV0804

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

CASE NO. _____

JUDGE _____

Plaintiff,

vs.

VILLAGE OF BATAVIA

CONSENT ORDER

Defendant.

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CLERK OF COURTS
CLERMONT COUNTY

FILED

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 Batavia (hereinafter "Batavia") 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 Batavia 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 that have occurred on or before the date of entry of this Consent Order. 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 Batavia 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, and any renewals or modifications thereof, except as provided in paragraph 5 below. Defendant Batavia is enjoined to meet the final effluent standards set forth in its NPDES permit No. 1PB00001*CD and any renewals or modifications thereof. Batavia is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

5. Defendant Batavia is enjoined and ordered to eliminate discharges from overflows and bypasses from its sanitary sewer system, including those stations listed in Part I, B(4), page 8, of Permit No. 1PB00001*CD no later than October 31, 1990. Nothing in this Consent Order, however, is intended to eliminate the language pertaining to unauthorized discharges contained in Part III (11) of the general conditions of such permit or any renewals or modifications thereof.

No later than November 8, 1990, Defendant Batavia shall submit a written report stating whether or not Batavia has performed the action set forth herein to Ohio EPA's Southwest District Office.

6. 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.

V. CIVIL PENALTY

7. Defendant Batavia shall pay to the State of Ohio a civil penalty of Seventy-five Hundred Dollars (\$7,500.00). 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.

8. Defendant Batavia shall pay stipulated penalties for violation of the requirement to comply with final effluent limitations set forth in paragraph 4 in the amounts set forth herein. For each violation of a particular effluent limitation, Defendant shall pay a stipulated penalty based upon the number of violations occurring after the effective date of this Consent Order for a final effluent limitation. Although the parties (may) disagree as to whether a violation of a seven-day or thirty-day average effluent limitation constitutes one or (seven or thirty) violations, it is agreed that for the purpose of the imposition of stipulated penalties pursuant to this Consent Order, a violation of a seven-day average effluent limitation is considered one violation and a violation of a

thirty-day average effluent limitation is considered one violation. Defendant shall pay the following stipulated penalties set forth in the schedule below:

<u>Occurrence of Violation</u>	<u>Daily Limit</u>	<u>7-Day Avg.</u>	<u>30-Day Avg.</u>
First	\$ 400	\$ 1,000	\$2,000
Second	\$ 800	\$ 2,000	\$4,000
Third	\$1,000	\$ 3,000	\$5,000
Greater than Three	\$2,000	\$ 4,000	\$6,000

9. In the event that Defendant Batavia fails to meet any of the requirements of this Consent Order set forth in paragraph 5, the Defendant shall immediately and automatically be liable for payment of a stipulated penalty of Two Thousand Dollars (\$2,000.00) per day of each violation of each 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. Three Thousand Dollars (\$3,000.00) per day of each violation. In the event that failure to comply with the requirements of Paragraph 5 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., Six Thousand Dollars (\$6,000.00) per day of each

violation. For purposes of this paragraph, every twenty-four hour period in which a bypass or overflow occurs is considered one event.

10. Any payment required to be made under the provisions of Paragraphs 7, 8, or 9 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".

11. The provisions of Section VI providing for the payment of stipulated penalties shall terminate after a determination by order of this Court that the wastewater treatment plant has been in total compliance with all of the final effluent limitations in its effective permit and bypasses and overflows from its sanitary sewer system have been eliminated as required by this Consent Order for a period of twelve consecutive months.

VII. POTENTIAL OF FORCE MAJEURE

12. In any action by the State of Ohio to enforce any of the provisions of this Consent Order, Defendant may raise at that time the question 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, acts of God, strikes, acts of war, acts of regulatory agencies, or civil disturbances. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and the State of Ohio 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 Plaintiff. At that time the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant shall rest with Defendant. 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 Defendant, or serve as a basis for an extension of time under this Consent Order.

VIII. RETENTION OF JURISDICTION

13. 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.

IX. COSTS

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



JUDGE, COURT OF COMMON PLEAS

APPROVED:

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

BY:

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E. J. Puro
Authorized Representative of
Village of Batavia

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