

IN THE COURT OF COMMON PLEAS
COLUMBIANA COUNTY, OHIO

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

Plaintiff,

vs.

VILLAGE OF LEETONIA

Defendant.

CASE NO. 88-CIV-389

JUDGE DOUGLAS C. JENKINS

CONSENT ORDER

FILED
JUL 13 1988
COLUMBIANA COUNTY
COMMON PLEAS COURT
Carl L. Stacey, Clerk

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 Leetonia (hereinafter "Leetonia") 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 Leetonia 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. 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 Leetonia 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 all 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 15, 1990, Defendant is enjoined 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 15, 1990, Defendant Leetonia is enjoined to meet the final effluent standards set forth in its NPDES permit No. 3PB00017*BD and any renewals or modifications thereof. Leetonia is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

5. Defendant Leetonia is enjoined and ordered to eliminate in flow and discharges from overflows and bypasses from its sanitary sewer system and to complete construction of the improvements to its wastewater treatment plant described in the Municipal Compliance Plan submitted to Ohio EPA on October 31, 1987 and to attain compliance with the final effluent limitations of NPDES Permit No. 3PB00017*BD and any modifications or renewals thereof in accordance with the following schedule:

TASK

COMPLETION DATE

- | | |
|--|--------------------|
| (a) Initiation of Project Design Work | Completed |
| (b) Submittal of Approvable Plans and Specifications to Ohio EPA | September 30, 1988 |
| (c) Advertisement of Building Bids | December 15, 1988 |
| (d) Execution of Building Contracts | April 15, 1989 |
| (e) Initiation of Construction | June 1 , 1989 |
| (f) Completion of Construction of Sufficient Wetstream Treatment to Ensure Compliance with Final Effluent Limitations and Elimination of Inflow, Bypasses and Overflows. | October 15, 1990 |
| (g) Attain Compliance with Final Effluent Limitations. | December 15, 1990 |

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 Leetonia shall pay to the State of Ohio a civil penalty of Four Thousand One Hundred Fifty Dollars (\$4,150.00). 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 days from the date of entry of this Consent Order.

VII. STIPULATED PENALTIES

7. In the event that Defendant Leetonia 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), 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 thirty days - \$500.00 per day. For each day of failure to meet a requirement, from thirty-one to sixty days -\$1,000.00 per day. For each day of failure to meet a requirement, from sixty-one to ninety days \$2,500.00. For each day of failure to meet a requirement, from ninety-one to one hundred twenty days - \$3,500.00 per day.

8. In the event that Defendant Leetonia 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 \$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 thirty (30) 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(g) continues more than sixty (60) 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 Leetonia 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 Leetonia is hereby ordered to pay the costs of this action.

DOUGLAS C. JENKINS

JUDGE, COURT OF COMMON PLEAS

APPROVED:

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

BY:

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

JOHN BECK, Solicitor
26 North Park Avenue
Lisbon, Ohio 44432

LINDA LUTZ, MAYOR
Authorized Representative
of Village of Leetonia

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ADDITIONAL MONITORING REQUIREMENTS (cont)

1. Plant Bypass. The permittee shall monitor the treatment plant's bypass, when discharging, at Station 3PB00017002 and report to the Ohio EPA in accordance with the following table. See PART II, OTHER REQUIREMENTS, of NPDES Permit No. 3PB00017*BD for location of sampling.

<u>CHARACTERISTIC</u>			<u>MONITORING REQUIREMENTS</u>	
Reporting Code	Units	Parameter	Measurement Frequency	Sample Type
80998	Number	Occurrences	Daily	Continuous
80999	Hr./day	Duration	Daily	Continuous
00310	mg/l	BOD ₅	Once/day	Grab
00530	mg/l	Suspended Solids	Once/day	Grab
50050	MGD	Flow	Daily	Continuous

Data for the Number of Occurrence(s) per day, the daily Duration and the total daily Flow may be estimated.

For days when there are no bypass discharges, data for parameters which require laboratory analyses should be reported as "AH" and an explanation of "No Discharge" entered in the "Additional Remarks" section. Also, on such days Zero should be reported for occurrences, duration, and flow.

2. The permittee is authorized to discharge from the following bypass only during wet weather periods when the flow in the sewer system exceeds the capacity of the sewer system. See Item 1, Plant Bypass for monitoring and reporting requirements. Also, see Part III, Item II of NPDES Permit No. 3PB00017*BD.

<u>Station Number</u>	<u>Description</u>	<u>Receiving Stream</u>
3PB00017002	Plant Bypass	East Branch of Middlefork

Date Issued: April 30, 1986
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3024P

Form EPA 4456

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS for Outfall 3P800017001

1. <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	Continuous
00010	°C	Temperature	-	-	-	-	Daily	Max. Ind. Therm.
00530	mg/l	Suspended Solids	30	45	55.5	83.2	2/Week	Composite
00310	mg/l	BOD ₅	30	45	55.5	83.2	2/Week	Composite
31616	Count /100ml	Fecal Coliform (Summer Only)	1000	2000	-	-	2/Week	Grab
00550	mg/l	Oil & Grease	-	-	-	-	1/Qtr.	Grab
80082	mg/l	CBOD ₅	-	-	-	-	2/Week	Composite
00610	mg/l	Ammonia (N)	-	-	-	-	1/Month	Composite
00665	mg/l	Phos., Total	-	-	-	-	1/Month	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 maintained at a level of not less than 5.0 mg/l and shall be monitored daily by grab sample.

* The average effluent loading limitations are established using the following flow value: 0.488 MGD

Date Issued: April 30, 1986
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