

ORDINANCE NO. 88-46 AC CMS

AN ORDINANCE APPROVING THE PROVISIONS OF THE PROPOSED CONSENT DECREE BETWEEN THE CITY OF OBERLIN, OHIO, AND THE OHIO ENVIRONMENTAL PROTECTION AGENCY AND AUTHORIZING THE CITY SOLICITOR TO EXECUTE SAME ON BEHALF OF THE CITY OF OBERLIN AND DECLARING AN EMERGENCY

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the provisions of the proposed Consent Decree between the City of Oberlin, Ohio, and the Ohio Environmental Protection Agency, a copy being attached hereto and incorporated herein by reference, are hereby approved, and the City Solicitor is hereby authorized and directed to execute same on behalf of the City of Oberlin.

SECTION 2. That the City Manager is hereby authorized and directed to make payment to the State of Ohio of the stipulated penalty set forth in said Consent Decree, to wit: \$ 66,000, and said funds are hereby so appropriated from the Sewer Operating Fund.

SECTION 3. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of the Council and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

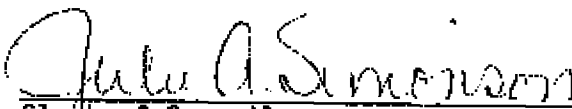
SECTION 4. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio, to-wit:

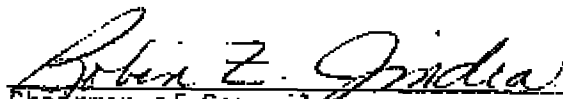
"to settle imminent litigation at the earliest possible date"

and shall take effect immediately upon passage.

PASSED: 1st Reading- June 20, 1988 (Emergency)
2nd Reading-
3rd Reading-

ATTEST:


Clerk of Council


Chairman of Council

POSTED: June 22, 1988

Effective Date: June 20, 1988

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY

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

Plaintiff,

vs.

CITY OF OBERLIN,

Defendant.

CASE NO. _____

JUDGE _____

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 City of Oberlin ("Oberlin") 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 Oberlin 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 in such a manner as to result in 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 Oberlin 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 Oberlin 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 except for the effluent limitations set forth in said permit. Between the effective date of this Consent Order and August 31, 1989, 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 August 31, 1989, Defendant Oberlin is enjoined to meet the final effluent standards set forth in its NPDES permit No. 3PD00025CD and any renewals or modifications thereof. Defendant Oberlin is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

5. Defendant Oberlin 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 plant and sewer system described in the Facilities Plan submitted to Ohio EPA on November 29, 1983 and amended on July 15, 1987 and to attain compliance with the final effluent limitations of NPDES permit No. 3PD00025CD in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Initiation of Project Design Work	Completed
(b) Submittal of Plans and Specifications to Ohio EPA	Completed
(c) Advertisement of Building Bids	Completed
(d) Execution of Building Contracts	October 18, 1988

- | | |
|---|-------------------|
| (e) Initiation of Construction | November 15, 1988 |
| (f) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limit and the elimination of bypasses and overflows in accordance with and as reflected in the facilities plan | August 31, 1989 |
| (g) Eliminate overflows and bypasses in accordance with and as reflected in the facilities plan | August 31, 1989 |
| (h) Attain compliance with final effluent limitations set forth in the then effective NPDES permit | August 31, 1989 |
| (i) Completion of remaining construction | |
| (i) sewer | November 30, 1989 |
| (ii) treatment plant | December 31, 1989 |

VI. CIVIL PENALTY

6. Defendant Oberlin shall pay to the State of Ohio a civil penalty of Sixty-Six Thousand Dollars (\$66,000.00). 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 sixty days from the date of entry of this Consent Order.

VII. STIPULATED PENALTIES

7. In the event that Defendant Oberlin fails to meet any of the requirements of this Consent Order set forth in Paragraphs 4, 5(d), 5(e), 5(f) and 5(i), including any schedule milestone requirement, 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 for up to thirty

(30) days, One Hundred Dollars (\$100.00) per day; for each day of failure to meet a requirement from thirty-one (31) days to sixty (60) days, Five Hundred Dollars (\$500.00) per day; for each day of failure to meet a requirement from sixty-one (61) days to one hundred twenty (120) days, One Thousand Dollars (\$1,000.00) per day; for each day of failure to meet a requirement from one hundred twenty-one (121) days to one hundred fifty (150) days, Two Thousand Dollars (\$2,000.00) per day; for each day of failure to meet a requirement beyond one hundred fifty (150) days, Three Thousand Dollars (\$3,000.00) per day.

8. In the event that Defendant Oberlin fails to meet the requirements of this Consent Order regarding elimination of overflows and bypasses set forth in Subparagraph 5(g), Defendant shall be liable and pay a stipulated penalty according to the following schedule: for each day of failure to meet that requirement for up to forty-five (45) days, Two Hundred Fifty Dollars (\$250.00) per day; for each day of failure to comply which continues from forty-five (45) days to ninety (90) days, Five Hundred Dollars (\$500.00) per day; for each day of failure to comply which continues from ninety-one (91) days to one hundred twenty (120) days, One Thousand Five Hundred Dollars (\$1,500.00) per day; for each day of failure to comply which continues from one hundred twenty-one (121) days to one hundred eighty (180) days, Three Thousand Dollars (\$3,000.00) per day. In the event that failure to meet that requirement continues for more than one hundred eighty-one (181) days, Defendant shall be liable for a stipulated penalty of Six Thousand Dollars (\$6,000.00) per day.

9. In the event that Defendant Oberlin fails to meet any of its 7-day average final effluent limitations by the date specified in Subparagraph 5(h), Defendant shall be liable for payment of a stipulated penalty of One Thousand Dollars (\$1,000.00) for each 7-day period during which the failure occurs; if the failure to meet any of its 7-day average final effluent limitations continues for a second consecutive 7-day period, Defendant shall be liable for payment of a stipulated penalty of Two Thousand Dollars (\$2,000.00); if the failure to meet any of its 7-day average final effluent limitations continues for a third consecutive 7-day period, Defendant shall be liable for payment of a stipulated penalty of Three Thousand Dollars (\$3,000.00); if the failure to meet any of its 7-day average final effluent limitations continues for a fourth consecutive 7-day period, Defendant shall be liable for payment of a stipulated penalty of Four Thousand Dollars (\$4,000.00); if the failure to meet any of its 7-day average final effluent limitations continues for a fifth consecutive 7-day period, Defendant shall be liable for payment of a stipulated penalty of Five Thousand Dollars (\$5,000.00); if the failure to meet any of its 7-day average final effluent limitations continues beyond a fifth consecutive 7-day period, Defendant shall be liable for payment of a stipulated penalty of Eight Thousand Dollars (\$8,000.00).

10. In the event that Defendant Oberlin fails to meet any of the 30-day average final effluent limitations by the date specified in Subparagraph 5(h), Defendant shall be liable for payment of a stipulated penalty of Two Thousand Dollars (\$2,000.00) for each 30-day period during which the failure occurs; if the failure to meet any of its 30-day average final effluent

limitations continues for a second consecutive 30-day period, Defendant shall be liable for the payment of a stipulated penalty of Three Thousand Dollars (\$3,000.00); if the failure to meet any of its 30-day average final effluent limitations continues for a third consecutive 30-day period, Defendant shall be liable for the payment of a stipulated penalty of Four Thousand Dollars (\$4,000.00); if the failure to meet any of its 30-day average final effluent limitations continues for a fourth consecutive 30-day period, Defendant shall be liable for the payment of a stipulated penalty of Five Thousand Dollars (\$5,000.00); if the failure to meet any of its 30-day average final effluent limitations continues beyond a fourth consecutive 30-day period, Defendant shall be liable for the payment of a stipulated penalty of Ten Thousand Dollars (\$10,000.00).

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

12. 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 Oberlin's sewer revenues and funds, and not to other funds or sources available to Oberlin 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 USE OF FORCE MAJEURE DEFENSE

13. In any action to enforce any of the provisions of this Consent Order Defendant Oberlin 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 but not limitation): acts of God, unusually severe weather conditions, strikes, acts of war or civil disturbances, or orders of any regulatory agency. While the State of Ohio and the Ohio EPA do 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 do so is at the time, if ever, that an enforcement action is commenced. Approval of this Consent Order without a force majeure clause does not constitute a waiver by Defendant Oberlin of any rights or defenses it may have under applicable law.

IX. CONTINUING JURISDICTION OF THE COURT

14. The Court will retain jurisdiction of this case in order to enforce or modify the Consent Order, or to interpret the rights and obligations of the parties to the Consent Order. Any party may apply to the Court for any orders, directions or relief necessary to construe and effectuate this Consent Order.

15. This Consent Order shall terminate as to Section VII Paragraphs 7, 8, 9 and 10 after Oberlin has achieved and maintained compliance with the final effluent limitations contained in its NPDES permit for period of one (1) year and has paid all penalties required pursuant to this Consent Order. Termination of these provisions of the Consent Order shall be by Order of the Court, upon application by any party.

X. COSTS

16. Defendant Oberlin is hereby ordered to pay the court costs herein.

JUDGE, COURT OF COMMON PLEAS
LORAIN COUNTY

APPROVED:

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

By:

MARGARET A. MALONE
SUSAN E. ASHBROOK
Assistant Attorneys General
30 East Broad Street
Columbus, Ohio 43266-0410

Authorized Representative
of the City of Oberlin

APPROVED:

ERIC SEVERS, Solicitor
City of Oberlin, Ohio