

IN THE COURT OF COMMON PLEAS
FAYETTE COUNTY, OHIO

STATE OF OHIO, <i>ex.rel.</i> ,	:	
JIM PETRO, ATTORNEY GENERAL,	:	Case No.
	:	
Plaintiff,	:	Judge
v.	:	
	:	
CITY OF WASHINGTON	:	
COURT HOUSE,	:	
	:	
Defendant.	:	

CONSENT ORDER

The Plaintiff, State of Ohio, by its Attorney General (hereinafter "Plaintiff" or "State of Ohio") and Defendant City of Washington Court House (hereinafter "Defendant"), hereby consent to the entry of this Consent Order in order to resolve the allegations in this matter and pursuant to Chapter 6111 of the Ohio Revised Code.

NOW THEREFORE, without trial or admission of any issue of law or of fact, and upon the 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 pursuant to R.C. Chapter 6111. The complaint states a claim upon which relief can be granted against the Defendant and venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply and be binding upon the Plaintiff and Defendant. Defendant's agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them. Defendant shall provide a copy of this

Consent Order to each general contractor and consultant it employs to perform the work itemized herein. Defendant shall require each general contractor to provide a copy of this Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

3. Plaintiff alleges that Defendant has operated its wastewater treatment plant (WWTP) and sewer system in such a manner as to result in violations of the requirements of Defendant's National Pollution Discharge Elimination System (hereinafter "NPDES") Permit and in violation of the water pollution control laws of the State of Ohio. The State's allegations include but are not limited to allegations that Defendant has had unauthorized discharges from its sewer system and wastewater treatment plant. Defendant denies the allegations of the complaint. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims of violations alleged in the complaint, as well as the claims for injunctive relief and civil penalties in the complaint.

4. Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against other appropriate persons for claims or conditions alleged in the complaint. Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against Defendant or other appropriate persons for claims or conditions not alleged in the complaint, including violations which occur after the filing of the complaint, nor shall anything in this Consent Order limit the right of Defendant to any defenses it may have for such claims. Similarly, nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to undertake any action against any person, including Defendant, to eliminate or mitigate conditions, which may present a threat to the public health, welfare or the environment.

IV. DEFINITIONS

5. Definitions

(a) "Defendant's sewer system" refers to all parts of the sanitary sewer system the Defendant owns or over which it has operational control.

(b) "Sanitary Sewer Overflow" or "SSO" refers to an overflow, spill, or release of wastewater from Defendant's sanitary sewer system, including interceptor sewers. An SSO that occurs on a city street or on the ground has the potential to reach waters of the state without treatment, and therefore meets the definition of an SSO. SSO(s) do not include WIB(s) unless the wastewater is discharged or otherwise released to the street or to where it can enter a storm sewer system.

(c) "Water in Basement" or "WIB" refers to wastewater backups into buildings that are caused by blockages or flow conditions in a sanitary sewer other than a building lateral. WIB(s) do not include the backup of sewage caused by a blockage or other malfunction in the building's lateral sewer.

(d) "Waste Water Treatment Plant" or "WWTP" refers to Defendant's wastewater treatment works/disposal system, located at 1210 South Elm Street, Washington Court House, Fayette County, and any other facilities for treatment of the sewage, industrial waste, or other wastes collected in the Defendant's sewer system.

(e) "Tap" refers to the connection of a building lateral to the Defendant's sewer system with a projected daily average flow of 400 gallons per day or less of wastewater.

V. SPECIFIC INJUNCTIVE RELIEF

6. Defendant is hereby permanently enjoined and immediately ordered to comply with the requirements of R.C. Chapter 6111 and the rules adopted thereunder, and with the terms

and conditions of its currently effective NPDES Permit No. 4PD00002, and any renewals or modifications thereof. Defendant shall properly operate and maintain its WWTP, sewer system, and any associated equipment and structures.

7. Defendant shall properly manage, operate and maintain, at all times, all parts of Defendant's sewer system. This will include but not be limited to:

- a. providing adequate capacity to convey base flows and peak flows for all parts of the sewer system;
- b. taking all feasible steps to stop SSO(s) and WIB(s) and to mitigate the impact of SSO(s) and WIB(s) from Defendant's sewer system; and
- c. providing notification to parties with a reasonable potential for exposure to pollutants associated with any overflow event.

8. By no later than October 1, 2007, Defendant shall develop and implement a program to address the capacity, management, and operation and maintenance of its sewer system. This program will include but not be limited to:

- a. establishing goals to achieve the elements set forth in paragraph 7(a-c) above;
- b. identifying all administrative and maintenance positions responsible for implementing measures to achieve the goals established in paragraph 8(a);
- c. identifying the chain of communication for reporting SSO(s) and WIB(s) from receipt of a complaint or other information to the person responsible for reporting each SSO or WIB incident to Ohio EPA or where necessary to the public;
- d. establishing the legal authority through sewer use ordinances, service agreements, or other legally binding documents, to:
 - i. control infiltration and connections from inflow sources;

- ii. require that sewers and connections be properly designed and constructed;
 - iii. ensure proper installation, testing and inspection of new and rehabilitated sewers (such as new or rehabilitated collector sewers and/or new or rehabilitated service laterals);
 - iv. implement the general and specific prohibitions of Defendant's pretreatment program;
- e. providing adequate maintenance facilities and equipment for Defendant's sewers;
 - f. maintaining a map of Defendant's sewer system and SSO locations;
 - g. establishing the proper management of information and the use of timely, relevant information to establish and prioritize appropriate capacity, management, operation and maintenance activities (such as the immediate elimination of dry weather overflows or overflows into sensitive waters such as public drinking water supplies and their source waters, waters where swimming or public contact occurs, waters within State or local parks, as well as waters containing threatened or endangered species or their habitat), and identify and illustrate trends in overflows, such as frequency and volume;
 - h. conducting routine preventive operation and maintenance activities for its sewers;
 - i. developing and utilizing a program to assess the current capacity of Defendant's sewer system and treatment facilities;
 - j. identifying and prioritizing structural deficiencies and identifying and implementing short-term and long-term rehabilitation actions to address each deficiency;
 - k. providing all appropriate and necessary training to staff on a regular basis;

- l. establishing inventories for all equipment and replacement parts including but not limited to identification of critical replacement parts;
- m. establishing and implementing requirements and standards for the installation of new sewers, pumps and other appurtenances, and rehabilitation and repair projects;
- n. establishing and implementing procedures and specifications for inspecting and testing the installation of new sewers, pumps, and other appurtenances for rehabilitation and repair projects;
- o. monitoring the implementation and, where appropriate, measuring the effectiveness of each element of the program;
- p. establishing and implementing a system for updating the program elements as appropriate based on monitoring or performance evaluations;
- q. establishing communication on a regular basis with interested parties on the implementation and performance of this program. The communication system should allow interested parties to provide input to Defendant about the program.

9. By no later than October 1, 2007, Defendant shall submit to Ohio EPA for review and approval a written summary of the program it has developed in accordance with paragraph 8 (a-q) above. The summary shall address all of the elements set forth in paragraph 8 (a-q) above. Defendant shall modify the summary as appropriate to keep it updated and accurate and shall submit any such modifications to Ohio EPA for review and approval.

10. By no later than March 1, 2008, Defendant shall submit to the Ohio EPA a complete audit of the program as set forth in paragraphs 8(a-q). This audit will include but not be limited to evaluating Defendant's compliance with the elements set forth in paragraphs 8(a-q). In the audit, Defendant shall identify any deficiencies and all steps that have been taken or will be

taken to correct the deficiencies. The audit shall include an implementation schedule to correct the deficiencies. Defendant shall correct the deficiencies in accordance with the implementation schedule.

11. By no later than October 1, 2006, Defendant shall submit to Ohio EPA for review and approval an Overflow Emergency Response Plan that identifies measures to protect public health and the environment. This plan shall include but not be limited to:

a. a mechanism to ensure that Defendant is made aware of all SSO(s) and WIB(s) from Defendant's sewer system;

b. establishing and implementing procedures to ensure that SSO(s) are appropriately responded to, including ensuring that reports of overflows are immediately dispatched to appropriate personnel for investigation and appropriate response;

c. establishing and implementing procedures to ensure that appropriate personnel are aware of and follow the Overflow Emergency Response Plan and are appropriately trained;

d. establishing and implementing emergency operations; and

e. establishing and implementing procedures to ensure immediate appropriate notification to the public, the appropriate board of health, and the Ohio EPA as required by paragraph 16 and 20. These procedures should be developed in consultation with potentially affected entities.

12. By no later than December 1, 2006, Defendant shall have implemented the Overflow Emergency Response Plan as approved by Ohio EPA.

13. By no later than July 1, 2008, Defendant shall submit to Ohio EPA for review and approval a System Evaluation and Capacity Assurance Plan ("SECAP") including an implementation schedule. The goal of the SECAP and the SECAP implementation schedule is to

provide adequate capacity to convey base flows and peak flows for all parts of Defendant's sewer system to the WWTP for full treatment. An additional goal is to take all feasible steps to stop, and to mitigate the impact of SSO(s) and WIB(s). This plan shall include but not be limited to:

a. an evaluation of the portions of Defendant's sewer system and/or WWTP that are experiencing or contributing to an SSO discharge caused by hydraulic deficiency or to noncompliance at Defendant's WWTP. The evaluation must provide estimates of peak flows (including flows from SSO(s) that escape from the system) associated with conditions similar to those causing overflow events, provide estimates of the capacity of key system components, identify hydraulic deficiencies (including components of the system with limiting capacity) and identify the major sources that contribute to the peak flows associated with overflow events within the sewer system and at the WWTP. The hydraulic evaluation shall include but not be limited to an evaluation of capacity within the City's sanitary sewer system, including the WWTP.

b. the establishment of short-term and long-term actions to address each hydraulic deficiency including prioritization, alternatives analysis (including costs), and a schedule for implementation of all recommended projects described in the SECAP. If a project is not recommended, or if an implementation schedule is impacted due solely to the affordability of the project, Defendant shall provide an affordability analysis including impacts on user rates.

c. the plan shall be updated to describe changes in proposed actions and/or the implementation schedule. Any significant changes to the plan shall be submitted to Ohio EPA for review and approval prior to changing the plan. The plan shall be updated to reflect current information on the performance measures that have been implemented.

14. The SECAP implementation schedule shall be submitted to Ohio EPA for approval. The implementation schedule shall include an end date of no later than July 1, 2011 by which Defendant will have achieved the goals set forth in paragraph 13. The implementation schedule, as approved by Ohio EPA, shall be incorporated into this Consent Order and become an enforceable part of the decree. Defendant shall comply with the schedule and perform all of the projects identified in the schedule. Defendant shall provide Ohio EPA with annual reports on the progress of the projects set forth in the implementation schedule. The reports shall be due to Ohio EPA on or before February 15 each year.

15. Defendant shall fully respond to any comments received from Ohio EPA on the documents submitted pursuant to this section within 60 days of receiving the comments (or such longer period as agreed upon by the parties), including modification of the plans as necessary.

VI. REPORTING, RECORD KEEPING, AND PUBLIC NOTIFICATION

16. Defendant shall report SSO(s) from its sewers that may imminently and substantially endanger human health pursuant to the terms of this paragraph. SSO(s) that may imminently and substantially endanger human health include dry weather overflows, major line breaks, overflow events that result in fish kills or other significant harm, and overflow events that occur in sensitive waters and high exposure areas such as protection areas for public drinking water intakes and waters where primary contact recreation occurs. These reports shall include:

- a. notification to the Ohio EPA (1-800-282-9378) within one hour and the appropriate Board of Health (i.e., city or county) the next business day of learning of the SSO. The report shall be in accordance with the procedures set forth in the Overflow Emergency Response Plan.

b. a written report to Ohio EPA within five days of the time Defendant became aware of the overflow. The written report shall contain:

- i. the location of the SSO;
- ii. the receiving water, if any;
- iii. an estimate of the volume of the SSO;
- iv. a description of the sewer component from which the release occurred;
- v. the estimated date and time when the overflow began and stopped or will be stopped;
- vi. the cause or suspected cause of the overflow;
- vii. steps taken or planned to reduce, eliminate, and prevent reoccurrence of the overflow and a schedule of major milestones for those steps; and
- viii. steps taken or planned to mitigate the impact(s) of the overflow and a schedule of milestones for those steps.

17. Defendant shall also report all SSO(s) in its monthly operating report (submitted in SWIMware), as required by Station 300 of its NPDES Permit by submitting its monthly operating report to Ohio EPA on the 20th day of the following month. To the extent that information needed to accurately report all SSOs from Defendant's sewer system is not amenable to the reporting format of SWIMware it shall be submitted separately but on the same date as the monthly operating report. The SSO report shall include all the items set forth in paragraphs 16(b)(i) –(viii) of this Consent Order.

18. Defendant shall prepare an annual report of all SSO(s) and WIB(s) from its sewers. For SSO(s) the annual report shall include for each SSO the date, the location, any receiving water, and the estimated volume of the flow. The annual report shall additionally include a summary section describing overflow events by severity, frequency, and sewer subbasins. The annual report shall summarize the WIB(s) by setting forth the total number of WIB(s) and by listing the number of WIB(s) in each sewer subbasin. The report shall also include a narrative analysis of patterns of the WIB(s) by location, frequency and cause, as well as any resultant changes in operations and maintenance procedures. The annual report shall be submitted to Ohio EPA by February 15 of the following year. Defendant shall make the public aware of the annual report by issuing a press release on its availability, and by making it available on the City's web page.

19. Defendant shall maintain the following records for at least three years:

- a. For each SSO and WIB:
 - i. the location of the SSO or WIB and the receiving water, if any;
 - ii. the estimated volume of the SSO;
 - iii. a description of the sewer component from which the release occurred;
 - iv. the estimated date and time the SSO or WIB began and ended;
 - v. the cause or suspected cause of the SSO or WIB;
 - vi. steps taken or planned to reduce, eliminate, and prevent reoccurrence of the overflow and a schedule of milestones for those steps;
 - vii. work orders that are associated with the investigation of system problems related to SSO(s) or WIB(s);

- viii. a list and description of complaints from customers or others;
- ix. documentation of performance and implementation measures.

20. By no later than 90 days after the date of entry of this Consent Order, Defendant shall identify and implement a public notification program to ensure the following: to inform the public of the locations of any SSOs; to inform the public of SSO occurrences; to inform the public of the possible health and environmental impacts associated with SSOs; to advise the public against contact recreation when elevated bacterial levels may endanger public health; and to inform downstream public water supplies of SSO events. At a minimum, the public notification program shall include signs at SSO locations, newspaper notices, and internet postings.

21. Defendant shall establish the legal authority through sewer use ordinances, services agreements, or other legally binding documents to:

- a. control when and where any new taps are made to Defendant's sewer system;
- b. limit the number of new taps made to Defendant's sewer system to no more than 200 new taps per calendar year until the SECAP required by paragraph 13 and the SECAP schedule required by paragraph 14 are approved by Ohio EPA, and incorporated into this Consent Order. For purposes of complying with the limit of 200 new taps per calendar year, each tap with a projected daily average flow that exceeds the projected daily average flow of 400 gallons domestic sewage per day specified in paragraph 5(e) shall be counted as multiple tap(s) consistent with the definition of "tap" in paragraph 5(e). For purposes of complying with the limit of 200 new taps per calendar year, each tap for non-domestic sewage shall be evaluated based on the volume of

projected flow, the nature of the user's operations and wastestreams, and what is expected to be present in the wastewater. Prior to authorizing the connection/expansion of a new or expanded significant industrial user Defendant shall submit this information, together with a proposal for how many taps should be assigned for the proposed addition, to Ohio EPA for review and approval. In the event that the City does not utilize 200 taps within a calendar year, any unused taps will carryover for usage in the following year. No tap shall carry over more than one year, i.e. to the immediately following year; at no time shall the number of available taps as defined in paragraph 5(e) exceed 400. Taps that have occurred in calendar year 2006 prior to the entry of this Consent Order will be counted in determining application of the 200 tap limitation;

c. control, or prohibit, new taps above SSOs such that any new tap will not increase the occurrence, frequency, duration, or magnitude of SSOs;

d. limit, manage, and monitor the number of new taps made to Defendant's sewer system, following the approval of the SECAP required by paragraph 13 and the SECAP schedule required by paragraph 14 such that SSOs and/or blending at the WWTP will not be increased, until Defendant has completed all work necessary to convey all flows in Defendant's sewer system to the WWTP and to provide full treatment for those flows at the WWTP. The plan for management of new taps following approval of the SECAP shall be set forth in the SECAP submitted under paragraphs 13 and 14 above.

By no later than 60 days after entry of this Consent Order, Defendant shall submit to Ohio EPA a copy of the ordinances, service agreements, and/or legally binding documents that establish Defendant's legal authority.

22. Defendant shall implement a program to limit the number of taps made to Defendant's sewer system in accordance with the limitations and provisions of paragraph 21(a)-(d). Defendant shall not allow any new taps to its sewer system until Defendant has established the legal authority necessary to implement this program and submitted a copy of that legal authority to Ohio EPA as required under paragraph 21. Defendant also shall establish the legal authority necessary to implement the program to limit taps that will be implemented after submission of the SECAP and submit a copy of that legal authority to Ohio EPA, prior to allowing any taps under the plan set forth in the SECAP.

23. Defendant shall submit semi-annual reports of the taps allowed into its sewer system. Each report shall identify the location and number of taps allowed, total flow from the taps allowed, and the number of available remaining taps for the calendar year. The reports shall be due to Ohio EPA on February 15 each year.

VII. SUBMITTAL OF DOCUMENTS

24. All documents required to be submitted to Ohio EPA pursuant to this Consent Order shall be submitted to the following address, or to such addresses as Ohio EPA hereafter may designate in writing:

Ohio EPA
Central District Office
Division of Surface Water
122 South Front Street
P.O. Box 1049
Columbus, Ohio 43216-1049

Attn: Enforcement Coordinator

**VIII. DUTY TO COMPLY AND COMPLIANCE NOT DEPENDENT
ON GRANTS OR LOANS**

25. Nothing in this Consent Order shall affect Defendant's obligation to comply with all applicable federal, State or local laws, regulations, rules or ordinances. Defendant shall obtain any and all federal, State or local permits necessary to comply with this Consent Order. Performance with the terms of this Consent Order by Defendant is not conditioned on the receipt of any federal or State grants, loans or funds. In addition, Defendant's performance is not excused by the failure to obtain any federal or State grant or loan funds, or by the processing of any application for the same.

IX. CIVIL PENALTY

26. Pursuant to R.C. 6111.09, Defendant is hereby ordered to pay to the State of Ohio a civil penalty of Fifty Thousand Dollars (\$50,000.00). The Defendant shall make the initial payment of \$17,000.00 on or before the 90th day after the entry of this Consent Order. The Defendant shall make the second payment of \$17,000.00 on or before the last day of the 15th month after entry of this Consent Order. The Defendant shall make the final payment of \$16,000.00 on or before the last day of the 27th month after the entry of this Consent Order. Each penalty payment shall be paid by delivering a certified check for the appropriate amount, payable to the "Treasurer, State of Ohio," to Mark Lemmon, Paralegal, or his successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215.

X. STIPULATED PENALTIES

27. Unless the deadlines listed in subparagraph (a) below are extended in writing by mutual agreement of the parties, the Defendant shall be immediately and automatically liable for and pay a stipulated penalty according to the schedule in subparagraph (b):

(a) Applicable Deadlines: Submission of written summary of program (paragraph 9); Submission of Audit (paragraph 10); Submission of Overflow Emergency Response Plan (paragraph 11); Submission of SECAP and Implementation Schedule (paragraph 13); Deadlines established in the approved SECAP implementation schedule (paragraph 14); Submission of annual SECAP progress reports (paragraph 14).

(b) Stipulated penalties: For each day of failure to meet a specified deadline up to thirty (30) days - Five Hundred Dollars (\$500.00) per day for each requirement not met. For each day of failure to meet a specified deadline, from thirty-one (31) to sixty days (60) - Seven Hundred Fifty Dollars (\$750.00) per day for each requirement not met. For each day of failure to meet a specified deadline, from sixty-one (61) and over - One Thousand Dollars (\$1,000.00) per day for each requirement not met.

28. During the term of this Consent Order, Defendant shall pay a stipulated penalty on an annual basis for each SSO event or WWTP bypass that occurred in the prior year. For purposes of this paragraph an "event" means each day (up to 24 hours) for each location that an SSO or WWTP bypass occurred. Defendant shall pay for each event according to the following schedule:

- (a) For each dry weather SSO, Defendant shall pay one thousand dollars (\$1,000.00) per event;
- (b) Prior to completion of all construction and other projects identified in the SECAP implementation schedule, Defendant shall pay the following stipulated penalties for wet weather SSOs and WWTP bypasses:
 - i. Five hundred dollars (\$500.00) for each wet weather SSO per event;
 - ii. Five hundred dollars (\$500.00) for each WWTP bypass per event.
- (c) After completion of all construction and other projects identified in the SECAP implementation schedule, Defendant shall pay one thousand dollars (\$1,000.00) per event for wet weather SSO(s) or WWTP bypass(es).

29. Defendant shall pay a stipulated penalty of five thousand dollars (\$5,000.00) per tap for every tap in excess of the 200 taps that Defendant allows to be connected to its sewer system in a calendar year, in violation of paragraphs 21 and 22 of this Consent Order. Defendant shall pay a stipulated penalty of five thousand dollars (\$5,000.00) per tap for every tap that Defendant allows to connect to its sewer system above an SSO that increases the occurrence, frequency, duration, or magnitude of any SSO.

30. If Defendant fails to meet any of the daily effluent limits of NPDES Permit No. 4PD00002, or any renewal or modification thereof, Defendant shall pay a stipulated penalty according to the following schedule:

- (a) For each day of each failure to comply with a daily effluent limit in its NPDES Permit from one (1) day to thirty (30) days – two hundred fifty dollars (\$250.00) per day per effluent limit not met;
- (b) For each day of each failure to comply with the daily effluent limits in its NPDES Permit from thirty-one (31) days to sixty (60) days – five hundred dollars (\$500.00) per day per effluent limit not met;
- (c) For each day of each failure to comply with the daily effluent limits in its NPDES Permit over sixty-one (61) days to ninety (90) days – seven hundred fifty dollars (\$750.00) per day per effluent limit not met.
- (d) For each day of each failure to comply with the daily effluent limits in its NPDES Permit over ninety (90) days – one thousand dollars (\$1,000.00) per day per effluent limit not met.

The provisions of this paragraph shall apply per each separate daily effluent limitation of NPDES Permit No. 4PD00002. Any failure to monitor for a daily effluent limit at the frequencies required by NPDES Permit No. 4PD00002 shall count as a violation of that limit for purposes of this paragraph.

31. If Defendant fails to meet any of the 7-day average effluent limits of NPDES

Permit No. 4PD00002, or any renewal or modification thereof, Defendant shall pay a stipulated penalty according to the following payment schedule:

- (a) For each first through fourth consecutive failure to meet any 7-day average effluent limitation, seven hundred fifty dollars (\$750.00) for each 7-day period during which each failure occurs;
- (b) For each fifth through eight consecutive failure to meet any 7-day average effluent limitation, one thousand dollars (\$1,000.00) for each 7-day period during which each such failure occurs;
- (c) For each ninth through eleventh consecutive failure to meet any 7-day average effluent limitation, one thousand two hundred fifty dollars (\$1,250.00) for each 7-day period during which each such failure occurs;
- (d) For each failure beyond the eleventh consecutive failure to meet any 7-day average effluent limitation, one thousand five hundred dollars (\$1,500.00) for each 7-day period during which each such failure occurs.

For the purpose of calculating stipulated penalties under the provisions of this paragraph, each 7-day period of violations of a specific 7-day average effluent limitation shall be calculated as a single violation. The provisions of this paragraph shall apply per each separate 7-day average effluent limitation of NPDES Permit No. 4PD00002. Any failure to monitor for a 7-day average effluent limit at the frequencies required by NPDES Permit No. 4PD00002 shall count as a violation of that limit for purposes of this paragraph.

32. If Defendant fails to meet any of the 30-day average effluent limits of NPDES Permit No. 4PD00002, or any renewal or modification thereof, Defendant shall pay a stipulated penalty according to the following payment schedule:

- (a) For each failure to meet any 30-day average effluent limitation, one thousand dollars (\$1,000.00) for each 30-day period during which each such failure occurs;
- (b) For each second consecutive failure to meet any 30-day average effluent limitation, one thousand five hundred dollars (\$1,500) for

each 30-day period during which each such consecutive failure occurs;

- (c) For each third consecutive failure to meet any 30-day average effluent limitation, two thousand dollars (\$2,000.00) for each 30-day period during which each such consecutive failure occurs;
- (d) For each failure beyond the third consecutive failure to meet any 30-day average effluent limitation, two thousand five hundred dollars (\$2,500.00) for each 30-day period which each such consecutive failure occurs.

For the purpose of calculating stipulated penalties under the provisions of this paragraph, each 30-day period of violation of a specific 30-day average effluent limitation shall be calculated as a single violation. The provisions of this paragraph shall apply per each separate 30-day average effluent limitation of NPDES Permit No. 4PD00002. Any failure to monitor for a 30-day average effluent limit at the frequencies required by NPDES Permit No. 4PD00002 shall count as a violation of that limit for purposes of this paragraph.

33. Payments due under paragraph 27 shall be made within forty-five (45) days from the date of the failure to meet the applicable deadline, and shall be accompanied by a written explanation of the deadline missed. Payments due under paragraph 28 shall be made by March 1 of each year for the preceding year's SSO(s) or WWTP bypass(es). Payments due under paragraph 29 shall be made within forty-five (45) days from the date on which Defendant allows the connection of a tap in violation of this Consent Order, and shall be accompanied by a written explanation of the violation. Payments due under paragraphs 30-32 shall be made within forty-five (45) days from the failure to meet the applicable NPDES permit limitation. Any payment required to be made under this paragraph shall be made by delivering to Mark Lemmon, Paralegal, or his successor, at the address set forth in Section IX a certified check or checks for the appropriate amounts, made payable to "Treasurer, State of Ohio". The payment of stipulated

penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to Section X shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order.

XI. RETENTION OF JURISDICTION

34. The Court will retain jurisdiction of this action for the purpose of administering or enforcing Defendant's compliance with this Consent Order.

XII. MODIFICATIONS

35. This Order may be modified by the agreement of all of the parties and approval of the Court. Modifications shall be in writing and shall be effective on the date entered and approved by the Court.

XIII. COSTS

36. Defendant is hereby immediately ordered to pay the court costs of this action.

XIV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

37. The parties agree and acknowledge that final approval by the Plaintiff and Defendant, and entry of this Consent Order is subject to the requirement of 40 C.F.R. §123.27 (d)(1)(iii), which provides for notice of the lodging of this Consent Order, opportunity for public comment, and the consideration of any public comment. The Plaintiff and Defendant reserve the right to withdraw consent to this Consent Order based on comments received during the public comment period. Defendant shall pay the cost of publishing the public notice within thirty (30) days of receipt of a bill or notice from the Ohio EPA

38. Upon the signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon all parties notices of the judgment and its date of entry

upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

IT IS SO ORDERED:

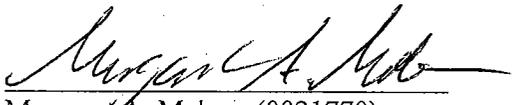
AS/ STEVEN P BEATHARD

Judge
Fayette County Court of Common Pleas

1/15/07
Date

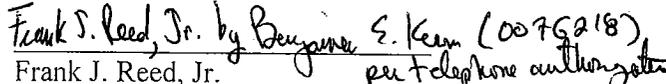
APPROVED:

JIM PETRO
ATTORNEY GENERAL

By: 
Margaret A. Malone (0021770)
Assistant Attorney General

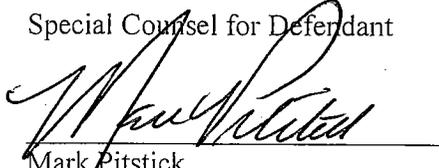
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400
Telephone: (614) 466-2766
Facsimile: (614) 644-1926

Attorneys for Plaintiff State of Ohio

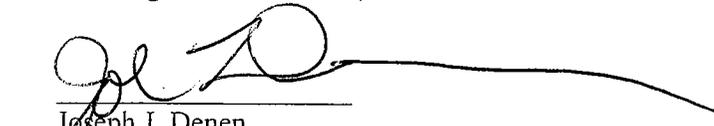
By: 
Frank J. Reed, Jr. *per telephone authorization*
Benesch Friedlander Coplan &
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