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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
TOLEDO

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CLERK U.S. District Court
Northern District of Ohio
TOLEDO

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA and
THE STATE OF OHIO,

Plaintiffs,

v.

THE BOARD OF COUNTY
COMMISSIONERS OF ALLEN
COUNTY, OHIO,

Defendant.

(96CV7134)
3:96CV7135

Civil Action No.

JUDGE DAVID A. KATZ

CONSENT DECREE

WHEREAS, plaintiff United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("U.S. EPA"), is filing a Complaint herein concurrently with lodging of this Consent Decree, alleging that defendant Board of County Commissioners of Allen County, Ohio (the "Board" or the "County") has violated and continues to violate Section 301 of the Federal Water Pollution Control Act (the "Clean Water Act" or the "Act"), 33 U.S.C. § 1311 ("Act"), and the terms and conditions of two National Pollutant Discharge Elimination System ("NPDES") Permits issued to it by the Ohio Environmental Protection Agency ("Ohio EPA" or "OEPA");

ORIGINAL

3

WHEREAS, plaintiff State of Ohio, on behalf of the Ohio EPA, is filing a separate Complaint against the Board concurrently with lodging of this Consent Decree, alleging violations of the Act, 33 U.S.C. § 1251 et seq., and Chapter 6111 of the Ohio Revised Code ("O.R.C");

WHEREAS, the County owns and operates two wastewater treatment plants: the American Bath plant on Bluelick Road in Bath Township, Ohio ("American Bath") and the Shawnee No. 2 plant at 3640 Spencerville Road, Shawnee Township, Ohio ("Shawnee No. 2");

WHEREAS, the Complaints allege that the County discharged pollutants from its American Bath and Shawnee No. 2 plants in excess of the effluent limitations in its NPDES Permits (OEPA Permit Numbers 2PH00007*BD and 2PK00002*CD, respectively) for these facilities;

WHEREAS, the parties have stipulated to and the Court hereby orders realignment of the State as a plaintiff in the United States' action and consolidation of the actions filed by the United States and the State;

WHEREAS, the Board has embarked upon and is continuing to implement a construction program designed to upgrade its system beyond that which is required by current NPDES Permit requirements;

WHEREAS, the parties agree and the Court, by entering this Decree, finds that settlement of this matter without further litigation is in the public interest and that entry of this

Consent Decree is the most appropriate means of resolving the matter;

NOW, THEREFORE, upon consent of the parties hereto, before the taking of testimony, without any adjudication of issues of fact or law and without admission of fact or liability on the part of the Board, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1.1 This Court has jurisdiction over the subject matter of this action and over the parties, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1331, and 28 U.S.C. §§ 1331, 1345, and 1355. This Court has supplemental jurisdiction over the claims asserted by the State of Ohio pursuant to 28 U.S.C. § 1367. The United States' Complaint states a claim upon which relief can be granted pursuant to Section 309 of the Act, 33 U.S.C. § 1319. The State's Complaint states claims upon which relief can be granted pursuant to O.R.C. §§ 6111.07 and 6111.09. The parties agree not to contest the jurisdiction of the Court to enter and enforce this Decree.

1.2 Venue is properly in this District pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and under 28 U.S.C. §§ 1391 and 1395.

II. BINDING EFFECT

2.1 The provisions of this Consent Decree shall apply to and be binding upon the United States, the State and upon the Board, its members, agents, employees, successors and assigns.

The signatory for the Board represents that he or she is fully authorized to execute this Decree and to legally bind the County to its terms.

2.2 The Board shall provide a copy of this Consent Decree to all its officers and members, to persons responsible for operation of the Shawnee No. 2 and American Bath facilities and to any contractor, consultant, agent or other entity retained to perform any activity required by the Decree. Nothing herein or in any contract entered into with such contractor, agent or other entity shall alter or affect the Board's responsibility to comply with the terms of this Consent Decree.

III. DEFINITIONS

3.1 Unless otherwise defined herein, terms used in this Decree shall have the meaning given to them in the Clean Water Act, 33 U.S.C. §§ 1251 et seq., and the regulations promulgated thereunder.

3.2 "NPDES Permits" or "Permits," unless otherwise defined, shall mean the Board's current OEPA-issued NPDES Permits: number 2PH00007*BD for the American Bath plant and number 2PK00002*CD for the Shawnee No. 2 plant and any renewals or modifications thereof. The current permits have May 29, 1986 effective dates and May 26, 1991 expiration dates. Prior to the expiration dates, the Board made timely application for renewal permits, which have not yet been issued by Ohio EPA. Pursuant to O.R.C. Section 119.06, under these circumstances where timely application has been made for issuance of a new or replacement

NPDES permit, the permittee may continue to operate under the terms of the expired permit.

IV. COMPLIANCE PROGRAM

4.1 Shawnee No. 2 Plant

4.1.1 The Board has completed certain improvements at the Shawnee No. 2 plant, which are described more specifically in the Ohio EPA Permit to Install ("PTI") for Sewage Treatment Expansion of Shawnee #2 Wastewater Treatment Plant ("WWTP"), issued on December 17, 1992, a copy of which is attached hereto as Appendix 1, and the application for said permit. The improvements described in Appendix 1 and the application were completed as of January 1994.

4.1.2 To further upgrade its facility, the Board shall implement the Sludge Thickening and Storage Facilities Improvement Project for Shawnee #2 WWTP which is described more fully in the Ohio EPA Permit to Install for this project issued on July 12, 1995, a copy of which is attached hereto as Appendix 2, and the application for said permit. Completion of the Sludge Thickening and Storage Facilities Improvement Project shall be accomplished in accordance with the following schedule:

Complete construction..... June 29, 1996

Commence operation consistent
with design criteria.....September 29, 1996

4.2 American Bath Plant

In order to meet or go beyond the requirements and limitations in its current Permit, the Board shall implement the improvements described more specifically in the Ohio-EPA issued

Permit to Install for Improvements for American Bath WWTP issued on September 13, 1994, a copy of which is attached hereto as Appendix 3, and the application for said permit. Completion of these improvements shall be accomplished in accordance with the following schedule:

Complete Construction.....June 30, 1996

Attain compliance with effluent limits in 5.2.2September 30, 1996

V. INTERIM LIMITS

5.1 Shawnee No. 2

Immediately upon entry of this Consent Decree and until issuance of a renewal NPDES permit for the facility, the Board shall comply with all conditions and limitations of the current NPDES Permit for the Shawnee No. 2 facility, except that it shall meet the following interim loading limitations:

| <u>Parameter</u> | <u>Loading</u> (kg/day based on 2.0 MGD) | |
|-------------------|--|-------------------------|
| | <u>30 day</u> | <u>7 day</u> (averages) |
| CBOD ₅ | 82.6 | 124.3 |
| Suspended Solids | 119.0 | 178.9 |
| Ammonia | 27.29 | 40.9 |

5.2 American Bath

5.2.1 Immediately upon entry of this Consent Decree and until the improvements being implemented under the Permit to Install for this facility (Appendix 3 hereto) are in operation, the Board shall comply with all conditions of the applicable NPDES Permit for the American Bath facility, except

that it shall meet the following interim limitations until such improvements are in operation:

| <u>Parameter</u> (averages) | <u>Concentration</u> | | <u>Loading</u> | |
|---|----------------------|---------------|----------------|---------------|
| | <u>7 day</u> | <u>30 day</u> | <u>7 day</u> | <u>30 day</u> |
| CBODs | 53.0 | 35.0 | Monitor only | Monitor only |
| Suspended Solids | 120.0 | 80.0 | Monitor only | Monitor only |
| Ammonia | 32.0 | 21.0 | Monitor only | Monitor only |
| Dissolved Oxygen.....monitor daily..... | | | | |
| Chlorine Residuals.....monitor daily..... | | | | |
| Fecal Coliform.....monitor 2 times/week.. | | | | |

5.2.2 In the event the improvements being implemented under the Permit to Install for the American Bath facility are in operation before a renewal permit is issued by Ohio EPA, the Board shall comply with all conditions of NPDES Permit 2PH00007*BD, except that it shall meet the following interim limitations until a renewal permit is issued:

| <u>Parameter</u> (averages) | <u>Concentration</u> | | <u>Loading</u> (kg/day based on 1.5 MGD) | |
|--------------------------------|----------------------|---------------|---|---------------|
| | <u>7 day</u> | <u>30 day</u> | <u>7 day</u> | <u>30 day</u> |
| CBOD5 | 15 | 10 | 85.2 | 56.8 |
| Suspended Solids | 18 | 12 | 102.3 | 68.2 |
| Ammonia | | | | |
| (Summer) | 2.4 | 1.6 | 13.6 | 9.1 |
| (Winter) | 9.0 | 6.0 | 51.1 | 34.0 |

VI. FUNDING

6.1 Compliance with the terms of this Consent Decree by the Board is not conditioned on the receipt of Federal or State grant and/or loan funds, nor is failure to comply excused by the lack of Federal or State grant funds or by the processing of any applications for the same.

VII. REPORTING REQUIREMENTS

7.1 Reporting on Compliance Program. The Board shall submit construction progress reports to U.S. EPA Region V and OEPA with respect to the Shawnee No. 2 Sludge Thickening and Storage Facilities Improvement Project and the American Bath Improvements Project, respectively, by the end of each full calendar quarter after entry of this Consent Decree and for every calendar quarter thereafter until the applicable construction or improvement is completed. In addition, within ten days following the deadline date of any requirement in paragraphs 4.1.2 and 4.2 of this Consent Decree, the Board shall submit written notice to U.S. EPA Region V and Ohio EPA that the required action has been taken or completed, as applicable. This notice shall include the reason(s) for any failure to timely complete a requirement and the Board's plan for meeting any applicable deadline(s) in the future. Notification pursuant to this paragraph shall not excuse failure to perform any of the requirements of this Decree.

7.2 Reporting on Discharges. Until the termination of this Consent Decree, the Board shall submit to U.S. EPA a copy of each discharge monitoring and any other report that it is required to submit to the Ohio EPA under its current NPDES Permits or any renewal permits for the Shawnee No. 2 and American Bath facilities.

VIII. STIPULATED PENALTIES/INJUNCTIVE RELIEF

8.1 If the Board fails to comply with any of the reporting requirements in paragraph 7.1 of this Consent Decree, it shall pay the following stipulated penalties:

| <u>Period of Failure to Comply</u> | <u>Penalty per Day</u> |
|------------------------------------|------------------------|
| 1st to 30th day..... | \$100 |
| 31st to 60th day..... | \$200 |
| 60th to 90th day..... | \$300 |

8.2 If the Board fails to comply with any construction schedule milestone in paragraphs 4.1.2 and 4.2 of this Consent Decree, it shall pay the following stipulated penalties:

| <u>Period of Noncompliance</u> | <u>Penalty per Day</u> |
|--------------------------------|------------------------|
| up to 30 days..... | \$100 |
| 31 to 60 days..... | \$200 |
| 61 to 90 days..... | \$300 |
| each day beyond 90 days..... | \$500 |

8.3 From the date of entry of this Consent Decree, the Board is ordered and enjoined to comply with Section 301 of the Clean Water Act, 33 U.S.C. § 1311, Chapter 6111 of the Ohio Revised Code and the terms and conditions of NPDES Permits 2PH00007*BD and 2PK00002*CD except as specifically provided for in Section V hereof (Interim Limits), and any renewals or modifications thereof.

8.4 If, during the term of this Consent Decree, the Board fails to comply with any of effluent limitations in the current permits as modified by the interim limits set forth in Section V of this Decree, or fails to comply with such interim

limitations for the Shawnee No. 2 or American Bath facilities, it shall pay the following stipulated penalties:

| <u>Violation</u> | <u>Penalty per violation</u> |
|-----------------------------|--|
| <u>Daily Maximum</u> | \$ 500 per violation of each parameter per day, for first 30 days of violation. In the event violations for a parameter continue without interruptions for more than 30 days, \$700 per violation for continuing and uninterrupted violations beyond the 30th day. |
| <u>Weekly Average</u> | \$ 800 per violation of each parameter per week. In the event that violations for a parameter continue without interruptions for more than five weeks, \$1200 per violation for each week of continuing and uninterrupted violations beyond the fifth week. |
| <u>30-day Average</u> | \$ 1000 per violation of each parameter per month. In the event that violations for a parameter continue without interruption for more than three weeks, \$2000 per violation for each month of continuing and uninterrupted violations beyond the third month. |

8.5 For purposes of this Consent Decree, a single operational upset which leads to simultaneous exceedances of more than one pollutant parameter shall be treated as a single violation. However, each day on which an exceedance occurs shall be treated as a separate violation even if the exceedances arise from a single operational upset. In addition, liability for stipulated penalties for monthly violations is not affected by

the existence of daily maximum or weekly average violation(s) for different parameters that may have arisen from the same operational upset.

8.6 In overlapping periods where weekly average and monthly average limitations are exceeded for the same parameter, the Board shall pay either the weekly average or the monthly average stipulated penalty, whichever is greater. In overlapping periods where daily maximum and monthly average limitations are exceeded for the same parameter, the Board shall pay either the monthly average stipulated penalty or the daily maximum stipulated penalty, whichever is greater.

8.7 The stipulated penalties herein shall be in addition to other remedies or sanctions available to the United States or the State by reason of the Board's failure to comply with the requirements of this Decree, its NPDES permits, or the Clean Water Act provided, however, that a civil penalty imposed for a violation or violations for which the Board has paid stipulated penalties under this Decree shall be reduced in the amount of stipulated penalties paid. The payment of such stipulated penalties shall not be construed to relieve the Board from specific compliance with this Decree or applicable federal or State law, nor shall it limit the authority of U.S. EPA or OEPA to require compliance with such laws.

8.8 Stipulated penalties, if any, are due without demand by the United States. Any stipulated penalties incurred by the Board shall be paid by certified or cashier's check made

payable to "Treasurer, United States of America", and shall be tendered to U.S. EPA Region V, Post Office Box 70753, Chicago, Illinois 60673, by the 20th day of the month following the month in which the violations occurred, or within 30 days of receipt of a written demand, if such a demand is issued by U.S. EPA. The transmittal letter accompanying the check shall specify the caption and docket number of this action and the facility and the violations for which the stipulated penalties are being paid. A copy of the letter and the check shall also be sent to U.S. EPA Region V, Water Compliance Branch, Compliance Section, WCC-15J, 77 West Jackson Boulevard, Chicago, Illinois 60604.

IX. CIVIL PENALTY

9.1 Within thirty days (30) of entry of this Consent Decree, the Board shall pay a civil penalty of one hundred thousand dollars (\$100,000), to resolve the civil claims of the United States and the State for the violations alleged in the Complaints herein through the date of lodging of this Decree. This amount shall be divided as follows: ninety thousand dollars (\$90,000) to the United States and ten thousand dollars (\$10,000) to the State.

9.2 Payment of 90 per cent of the civil penalty (\$90,000) shall be made by Fed Wire Electronic Funds Transfer ("EFT") to the Federal Reserve Bank, New York, for credit to the U.S. Department of Justice account in accordance with current EFT procedures, which shall be provided to counsel for the Board by the Financial Litigation Unit of the United States Attorney's

Office in the Northern District of Ohio following lodging of the Consent Decree. Any EFTs received at the Federal Reserve Bank prior to its time of closing will be credited on that business day. The Board shall send notice to EPA and the Department of Justice that the payment has been made at the addresses specified in paragraph 15.1 of this Consent Decree.

9.3 Payment of 10 percent of the civil penalty shall be made by certified or cashier's check payable to Treasurer, State of Ohio, which shall be sent to Matt Sanders, Administrative Assistant (or his successor), at the Office of the Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410.

9.4 Interest shall accrue on any balance of the civil penalty which is unpaid after 30 days from entry of this Consent Decree, at the statutory judgment interest rate prescribed in 28 U.S.C. § 1961 in effect on the date of entry. Payment of such interest, if any, shall be made in accordance with the instructions in the preceding two paragraphs.

X. DELAYS OR IMPEDIMENTS TO PERFORMANCE

10.1 If any event occurs which causes or may cause the Board to violate any provision of this Consent Decree, the Board shall notify U.S. EPA Region V orally or by telefax as soon as practicable and in writing within 10 days from the date the Board first knew that compliance with the Consent Decree would be prevented or delayed. The notice shall reference this Section of the Consent Decree and shall describe in detail the anticipated

length of time the violation may persist, the precise cause or causes of the violation, the measures taken or to be taken by the Board to prevent or minimize the violation and the timetable by which those measures will be implemented. The Board shall make every effort to avoid or minimize any such violation. Failure by the Board to comply with the notice requirements of this paragraph shall render this Section void and of no effect as to the particular incident involved, and shall constitute a waiver of the Board's rights to obtain an extension of time or other relief under this Section based on such incident.

10.2 If U.S. EPA agrees that the violation has been or will be caused entirely by circumstances beyond the control of the Board or any entity controlled by it, including its consultants and contractors, and that the Board could not have prevented such violation, the time for performance of the requirement in question may be extended for a period not to exceed the actual delay resulting from such circumstance, and stipulated penalties shall not be due for such delay or non-compliance. In the event U.S. EPA does not so agree, the Board may invoke the dispute resolution provisions in Section XIII of this Consent Decree. U.S. EPA shall notify the Board in writing of its agreement or disagreement with the Board's claim of delay or impediment to performance within 30 days of receipt of the Board's notice under the preceding paragraph (10.1).

10.3 If the Board invokes dispute resolution and the United States or the Court determines that the violation was

caused entirely by circumstances beyond the control of the Board or any entity controlled by it, the Board shall be excused as to that violation, but only for the period of time the violation continues due to such circumstances.

10.4 The Board shall bear the burden of proving that any delay or violation has been or will be caused entirely by circumstances beyond its control, as set forth above. The Board shall also bear the burden of establishing the duration and extent of any delay or violation attributable to such circumstances, that such duration or extent is or was warranted under the circumstances and that, as a result of the delay, a particular extension period is appropriate. An extension of one compliance date based on particular circumstance beyond the Board's control shall not automatically extend any subsequent compliance date or dates.

10.5 Changed financial circumstances or unanticipated or increased costs or expenses associated with implementation of this Consent Decree, shall not serve as a basis for excusing violations of or granting extensions of time under this Decree.

XI. POTENTIAL DELAYS OR IMPEDIMENTS TO PERFORMANCE
BETWEEN THE BOARD AND THE STATE

11.1 If any event occurs which causes or may cause the Board to violate any provision of this Consent Decree, the Board shall notify the Ohio EPA in writing within ten days from when it knew that compliance with the Decree would be prevented or delayed, describing in detail the precise cause or causes of the delay or violation, the anticipated length of the delay if

applicable, the measures taken by the Board to prevent or minimize the delay and the timetable by which those measures will be implemented. The Board shall make every effort to avoid or minimize any such violation or delay.

11.2 In any action by the State of Ohio to enforce any of the provisions of this Consent Decree, the Board may raise at that time the question of whether it is entitled to a defense that its conduct was caused by circumstances beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed by the Board 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, if ever, that the proceeding to enforce this Consent Decree is commenced by the State. At that time the burden of proving that any delay was or will be caused by circumstances beyond the control of the Board shall rest with the Board. Failure by the Board to timely comply with the notice requirements of Paragraph 11.1 shall, at the option of Ohio EPA, constitute a waiver by the Board of any right it may have to raise such a defense. Changed financial circumstances or increased costs associated with the implementation of any action required by this Consent Decree shall not in any event constitute circumstances beyond the

control of the Board or serve as a basis for an extension of time under this Decree.

XII. DISPUTE RESOLUTION

12.1 The dispute resolution procedure in this Section shall be the exclusive mechanism for resolving disputes arising under or with respect to implementation of this Consent Decree. Any order or directive issued to the Board by U.S. EPA which asserts facts or conclusions pertaining to the Board's compliance with this Decree, purports to define the Board's obligations under this Decree, or orders the Board to perform tasks in order to attain compliance with this Decree, are subject to dispute resolution under this Decree. The issuance, renewal, modification, denial or revocation of a permit and the issuance of orders or other actions of the Director of Environmental Protection (OEPA) are not subject to dispute resolution under this Decree but, rather, shall be subject to challenge under Chapter 3745, Ohio Revised Code. The term "actions of the Director of Environmental Protection" shall be consistent with the definitions set forth in Chapter 3745, Ohio Revised Code.

12.2 If in the opinion of any party, there is a good faith dispute with respect to the meaning of this Consent Decree or the Board's obligations hereunder, that party shall send the other parties a written notice outlining the nature of the dispute and requesting informal negotiations to resolve it.

Such period of informal negotiations shall not exceed thirty (30) days from the date the notice was sent, unless the parties agree otherwise.

12.3 If the informal negotiations are unsuccessful, the position of the United States and the State, which shall be provided in writing to the Board, shall control unless the Board files a petition with the Court describing the nature of the dispute and a proposal for its resolution. The Board's petition must be filed no more than twenty (20) days after termination of the informal negotiations. The United States and/or the State shall then have 30 days to file a response setting forth its/their position and proposal for resolution. In any such dispute, the Board shall have the burden of proving that position of the United States or the State position is inconsistent with the terms, conditions, requirements or objectives of this Consent Decree. Nothing shall prevent the United States or the State from arguing that the Court shall apply the arbitrary and capricious standard to all disputes arising under this Decree and nothing shall prevent the Board from arguing that such standard shall not apply.

12.4 Stipulated penalties with respect to any disputed matter shall accrue from the first day of noncompliance as provided in Section VIII of this Decree, but payment shall be stayed pending resolution of the dispute, as follows:

12.4.1 If the dispute is resolved by informal agreement before appeal to this Court, accrued penalties, if any,

determined to be owing shall be paid within 30 days of the agreement or the receipt of the United States' or the State's final position in writing.

12.4.2 If the dispute is appealed to this Court and the United States and/or the State prevails in whole or in part, the Board shall pay all accrued penalties determined to be owed within 30 days of receipt of the Court's decision or order.

XIII. RIGHT OF ENTRY

13.1. Until termination of this Consent Decree, U.S. EPA and OEPA, their attorneys, representatives, contractors and consultants shall have the authority to enter any facility covered by this Decree, at all reasonable times, upon proper presentation of credentials, for the purposes of:

- (a) monitoring the progress of activities required by this Consent Decree;
- (b) verifying any data or information required to be submitted pursuant to this Consent Decree;
- (c) obtaining samples and, upon request, splits of any samples taken by the Board or its contractors and consultants; and
- (d) assessing the Board's compliance with this Consent Decree and Permits.

13.2 Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, including enforcement authorities, under the Clean Water Act and any other applicable statutes or regulations. This Decree in no way limits or affects any right of entry and/or inspection held by the United States or OEPA

pursuant to applicable federal or State laws, regulations, or permits.

XIV. NON-WAIVER PROVISIONS

14.1 This Consent Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaints filed herein through the date of entry of this Decree. The United States and the State do not waive any rights or remedies available for any violation by the Board of federal or State laws, regulations or permit conditions other than those specifically alleged in the Complaints and resolved by this Decree. Compliance with this Decree shall in no event be a defense to any actions commenced pursuant to said laws, regulations or permits. The Board does not waive any rights, remedies, or defenses pertaining to the matters addressed in this paragraph.

14.2 This Consent Decree is not and shall not be interpreted to be a permit or a modification of any existing permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

14.3 The pendency or outcome of any proceeding concerning issuance, reissuance or modification of any NPDES permit for the Shawnee No. 2 or American Bath facilities shall not affect or postpone the Board's responsibilities under this Decree, except insofar as a provision of a permit has been stayed, vacated or modified by an order or decision rendered in the proceeding.

14.4 By entering into this Consent Decree, the United States and the State do not warrant or aver in any manner that compliance by the Board with any aspect of the Decree will result in compliance with the provisions of the Clean Water Act or any applicable NPDES permit. Notwithstanding review by U.S. EPA and OEPA of the compliance plans referenced in this Consent Decree, the Board shall remain solely responsible for compliance with the Act, this Decree and any other applicable law, including any discharge permit.

XV. NOTICE

15.1 All notices and correspondence under this Decree shall be sent to the following addresses:

For the United States:

Chief, Enforcement and Compliance
Assurance Branch
Water Division (WCC-15J)
U.S. EPA, Region V
77 West Jackson Blvd.
Chicago, Illinois 60604

and

U.S. Department of Justice
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
Post Office Box 7611
Washington, D.C. 20044
Reference DJ # 90-5-1-1-3841

For Ohio EPA:

OEPA-NW District Office
Attention: Enforcement Coordinator
Division of Surface Water
347 North Dunbridge
Bowling Green, Ohio 43402

For Board of County Commissioners of Allen County:

Allen County Sanitary Engineer
204 N. Main Street, Suite 301
Lima, Ohio 45801

XVI. CONTINGENT LIABILITY OF STATE OF OHIO

16.1 Section 309(e) of the Act, 33 U.S.C. § 1319(e), requires that the State be a party to this action insofar as it may be liable in the event the laws of Ohio prevent the Board from raising revenues needed to comply with this Decree. The State of Ohio, by signing this Decree, certifies that the current laws of the State do not prevent the Board from raising revenues needed to comply with this Decree. Except as required by Section 309(e) of the Act, the State of Ohio shall have no liability under this Consent Decree.

XVII. PUBLIC COMMENT

17.1 This Consent Decree shall be lodged with the Court for a period of not less than 30 days, for public notice and comment in accordance with the provisions of 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments received disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. If no comments are received or if no changes are proposed in response to public comments, the Board consents to entry of this Consent Decree without further notice.

XVIII. CONTINUING JURISDICTION/MODIFICATION

18.1 The Court shall retain jurisdiction for the duration of performance under this Consent Decree, to construe, enforce or modify the terms of the Decree, and to resolve disputes arising hereunder as may be necessary.

18.2 Except as provided in Rule 60(b) of the Federal Rules of Civil Procedure, there shall be no modification of this Consent Decree without written approval of the parties and the Court.

XIX. TERMINATION

19.1 This Consent Decree shall be terminated, on motion by the Board, after the Board certifies in writing to U.S. EPA and OEPA that all obligations under the Decree have been performed and that the Board has been in compliance with the provisions of its applicable NPDES permits, including, as applicable, the interim limitations in Section V, for a period of twelve (12) consecutive months. Concurrence by U.S. EPA and OEPA shall be submitted with the Board's motion to terminate this Decree. In the event U.S. EPA or Ohio EPA dispute the Board's certification, the Consent Decree shall remain in effect pending resolution of the dispute in accordance with the provisions of Section XII of this Decree. Completion of the requirements in Section IV (Compliance Program) of this Decree shall be certified by a Board official with the requisite authority to do so.

XX. COUNTERPARTS/AGENT FOR SERVICE

20.1 This Consent Decree may be executed in two or

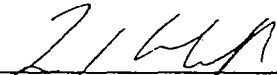
more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

20.2 The Board shall identify, on the attached signature page, the name, address and telephone number of an agent authorized to accept service of process by mail on its behalf with respect to all matters arising under this Consent Decree. The Board agrees to accept service in such manner and to waive the formal service requirements in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court.

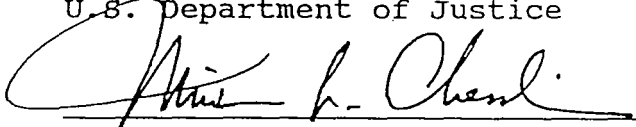
THE UNDERSIGNED PARTIES enter into this Consent Decree, subject to the public notice requirements of 28 C.F.R. § 50.7, and submit it to the Court for entry.

FOR THE UNITED STATES OF AMERICA:

Date: 2/21/96



LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural
Resources Division
U.S. Department of Justice



MIRIAM L. CHESSLIN
Trial Attorney
Environmental Enforcement Section
Environmental and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
(202) 514-1491

EMILY M. SWEENEY
United States Attorney for the
Northern District of Ohio

Date:

2/29/96

By:

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Date:

2/9/96


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FOR STATE OF OHIO:

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By:



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FOR BOARD OF COUNTY COMMISSIONERS
OF ALLEN COUNTY, OHIO

Date: February 1, 1996

By:

Adelta M. Lee

(Name)

Q

President

(Title)

AGENT FOR SERVICE OF PROCESS:

David Northrop
Samuels and Northrop Co., LPA

(name)

180 E. Broad St., Suite 816 Columbus, Ohio
(address) 43215

SO ORDERED, this 30th day of April 1996.

[Signature]
United States District Judge

ISSUED
FILED

96 MAY -3 PM 2:49

96 MAY -3 PM 2:15

CLERK U.S. DISTRICT COURT IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO THE NORTHERN DISTRICT OF OHIO
TOLEDO OHIO

UNITED STATES OF AMERICA and
THE STATE OF OHIO,
Plaintiffs,

v.

Civ. Action 3:96 CV 7134

THE BOARD OF COUNTY
COMMISSIONERS OF ALLEN COUNTY,
OHIO,

Defendant.

UNOPPOSED MOTION FOR ENTRY OF CONSENT DECREE

Plaintiff, the United States of America, hereby moves the Court for entry of the Consent Decree in this action, which was lodged with the Court on February 29, 1996. Notice of lodging of the Decree was published in the Federal Register on March 12, 1996, 61 Fed. Reg. 10010.

The thirty-day period for public comment has now expired and the United States has received no comments regarding the proposed Consent Decree. Defendant Board of County Commissioners of Allen County consented to entry of the Decree without further notice if no comments were received (Consent Decree ¶ 17.1). The State of Ohio having also agreed to this

MOTION GRANTED

DATE

DAVID A. KATZ
U.S. DISTRICT JUDGE

