

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 and) Civil Action No. C2-87-415
)
 THE STATE OF OHIO,) Judge Graham
)
 Plaintiffs,)
)
 v.)
)
 CITY OF ██████████ OHIO,)
 a municipal corporation,)
)
 Defendant.)

CONSENT DECREE

Plaintiff, United States of America, on behalf of the United States Environmental Protection Agency, having filed the Complaint herein on April 1, 1987, against Defendant, City of Cambridge, Ohio ("City" or "Cambridge") and the State of Ohio, alleging violations of the Federal Water Pollution Control Act, as amended ("FWPCA"), 33 U.S.C. §§1251 et seq.; and the State of Ohio subsequently having been realigned as a plaintiff; and the parties having agreed that settlement of this matter is in the public interest and that entry of this Decree without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, and without adjudication of any issues of fact or law, and upon consent of the parties hereto, it is hereby ORDERED and DECREED as follows:

I. JURISDICTION

This Court has jurisdiction of the subject matter of this action and of the parties consenting hereto, pursuant to 28 U.S.C. §1345 and 33 U.S.C. §1319(b). If the allegations made in their complaint and cross-complaint were proved, the United States and the State would be entitled to relief from the City under 33 U.S.C. § 1319 and Chapter 6111 of the Ohio Revised Code.

II. APPLICABILITY

The provisions of this Decree shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, assigns, and any person having notice of the Decree who is, or will be, acting in concert or participation with Cambridge. Cambridge shall provide a copy of this Consent Decree to any successor in interest prior to transfer of that interest, and shall simultaneously verify to the United States Environmental Protection Agency ("U.S. EPA") and to the Ohio Environmental Protection Agency ("OEPA") at least two weeks in advance of any such transfer that such notice has been given. In any action to enforce this Consent Decree, Cambridge shall not raise as a defense the lack of notice to any of its agents,

servants, contractors, or employees to take any actions necessary to comply with the provisions thereof.

III. FINDINGS OF FACT

A. Defendant, City of Cambridge, Ohio, is a municipal corporation organized and existing under the laws and Constitution of the State of Ohio. The City owns and operates a wastewater treatment plant ("plant") located in and about Cambridge, Ohio. The plant discharges treated wastewater containing certain pollutants into Wills Creek.

B. On March 29, 1985, U.S. EPA approved Cambridge's Pretreatment Program in accordance with 40 C.F.R. §403.11. The Pretreatment Program was developed to control wastewaters which industrial users contribute to the City's plant.

C. On July 10, 1985, OEPA reissued a National Pollutant Discharge Elimination System (NPDES) permit, No. OH0024309, to Cambridge, and the Pretreatment Program was formally incorporated by reference as a term and condition of that permit. The permit also set effluent limitations on the City's discharge of pollutants into Wills Creek and thence to the Muskingum River, which is a tributary of the Ohio River. Since July 10, 1985, Cambridge has discharged wastewater that exceeds one or more effluent limits set forth in its NPDES Permit on certain occasions.

IV. COMPLIANCE PROGRAM

A. Cambridge shall achieve and thereafter maintain compliance with the terms of its NPDES permit, all renewals and modifications of that permit, the FWPCA, and Ohio Revised Code Chapter 6111 (and regulations promulgated thereunder), in accordance with the compliance program set forth below.

B. By February 15, 1989, the City of Cambridge shall achieve and demonstrate and thereafter maintain full compliance with Section 309(a) of the FWPCA and all terms, conditions and limitations of NPDES permit number OH0024309 and its successors.

The City shall construct the facilities necessary to obtain compliance with its NPDES permit according to the following schedule:

<u>MILESTONE</u>	<u>DATE</u>
1. Obtain approval of MCP*	Completed
2. Obtain approval of Phase 1 plans and specifications	Completed
3. Advertise for bids for Phase 1	Completed
4. Begin construction of Phase 1	Completed
5. Submit final plans and specifications to OEPA for	Completed

*The MCP or Municipal Compliance Plan refers to the revised August, 1985 General Plan of Improvements to the Sanitary Sewage System, which was submitted to U.S. EPA and OEPA by the City. This MCP was revised in December, 1985 and September, 1986. The MCP has been approved by U.S. EPA and OEPA.

Phases 2 and 3A

- | | | |
|------|--|-------------------|
| 6. | Advertise for bids for Phases 2 and 3A | Completed |
| 7. | Award Contract for Phases 2 and 3A | Completed |
| 8. | Begin construction of Phases 2 and 3A | Completed |
| 9. | Complete Infiltration/Inflow Study | Completed |
| 10. | Submit to OEPA - approval report or planned sewer system rehabilitation/improvement as recommended in Infiltration/Inflow Study above. | Completed |
| 11. | Complete construction of Phase 1 | Completed |
| 12. | Obtain operational level of Phase 1 | Completed |
| 13a. | Achieve compliance with final permit limits | February 15, 1989 |
| 13b. | Eliminate all bypasses and overflows | December 31, 1988 |
| 14. | Complete construction of Phases 2 and 3A | November 8, 1988 |
| 15. | Place in operation all equipment and processes constructed in Phases 2 and 3A | November 15, 1988 |

C. Cambridge shall continue to maintain and operate the plant and collection systems to minimize equipment breakdowns and interruptions of wastewater treatment. Cambridge shall maintain the best effluent quality possible by operating the treatment works in a manner consistent with Part III.3 of its NPDES permit. In addition to the above, Cambridge shall

maintain compliance with interim permit limits as provided in the Attachment to this Consent Decree until February 15, 1989.

D. By December 15, 1988, Cambridge shall develop an operation and maintenance manual for the plant and wastewater treatment system, incorporating all the newly constructed and rehabilitated improvements, and shall submit such manual to OEPA for approval. Upon approval by OEPA, the Defendant shall immediately implement the manual's procedures. A copy of this OEPA-approved manual shall be submitted to U.S. EPA as expeditiously as possible.

E. By December 31, 1988 and continuing throughout the life of this Decree, Cambridge shall fully implement and thereafter maintain the Pretreatment Program, as approved by the U.S. EPA and OEPA. The City shall undertake the following as part of properly implementing and maintaining its Pretreatment Program:

MILESTONE

DATE

- | | |
|--|-------------------|
| 1a. Commit the City's Pretreatment Coordinator, on a full-time basis, to overseeing and implementing the Pretreatment Program for six months, and commit adequate training efforts and/or provide adequate technical assistance to the Pretreatment Coordinator in support of the implementation and oversight effort. | Completed |
| 1b. After this six-month period, devote at least 75% of the Pretreatment Coordinator's time -- measured on a biweekly basis -- to maintaining the Pretreatment Program. | <u>Continuing</u> |

2. Notify all Industrial Users of requirements applicable to them under the Resources Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 et seq. January 31,
1989

3. Purchase required equipment needed to implement the Pretreatment Program. Minimum equipment shall include flow measurement equipment, samplers, and adequate safety equipment. Completed

F. In addition, throughout the life of this Decree, the City shall enforce all fixed-date schedules incorporated in the industrial user discharge permits and analogous licenses, permits, or schedules. Also, the City shall notify U.S. EPA and OEPA of any change in personnel, whether they are classified as full-time or part-time, involved in implementing the Pretreatment Program. Further, the City shall continue to: conduct industrial user inspections and maintain a consistent sampling frequency, maintain a record keeping system that memorializes information and data produced by any required monitoring activity, reevaluate current classifications, issue permits to all industrial users, identify all noncomplying industrial users and place them on fixed-date schedules to achieve compliance, and enforce all industrial user schedules. The City also shall sufficiently document the steps it takes in complying with this paragraph to allow OEPA and U.S. EPA to begin their evaluation of this City's efforts by reviewing the resulting documentation.

G. Within 60 days after entry of this Consent Decree, Cambridge shall develop and submit to U.S. EPA and OEPA written Enforcement Response Procedures (ERP) to address violations of the approved Pretreatment Program and/or the City's Sewer Use Ordinance. The ERP shall evaluate all categories of potential industrial and commercial user noncompliance and establish timely and appropriate criteria for taking enforcement responses to correspond to the significance of the violation. U.S. EPA and OEPA shall be reasonably responsive to any request for informal consultation and guidance from the City authorities responsible for the development of the ERP.

H. U.S. EPA and OEPA shall approve or disapprove such ERP within 30 days of receipt. Once U.S. EPA and OEPA approve the ERP, Cambridge shall implement it. If disapproved, U.S. EPA and OEPA shall specify the deficiencies of the ERP and Cambridge shall resubmit a revised ERP, within 60 days of notification.

I. On or before February 15, 1989, and continuously thereafter, Cambridge shall comply with all final effluent limits and other terms and conditions of its NPDES permit. Compliance shall be demonstrated by submittal of discharge monitoring reports to U.S. EPA and OEPA in accordance with the terms of the City's NPDES permits.

V. FUNDING

A. The City of Cambridge is not receiving Federal Funds in order to construct any improvements required by this Consent Decree. Regardless of the source(s) of funding or financing used by the City to comply with this Decree, compliance with the terms of the Decree by Cambridge is not conditioned on the receipt of federal or state grant funds. In addition, failure to comply is not excused by the lack of federal or state grant funds, or by the processing of any applications for the same.

VI. REPORTING

A. Beginning three months after entry of this Consent Decree, and for every calendar quarter thereafter, the City shall submit written status reports to U.S. EPA and OEPA identifying the deadlines and other terms of this Consent Decree which the City was required to meet during the reporting period, whether Cambridge met these requirements, the reasons for any noncompliance, and a projection of work to be performed pursuant to this Decree during the following twelve-month period. Notification to U.S. EPA and OEPA of any anticipated delay shall not, by itself, excuse the delay.

B. All reports referred to by this Section shall be mailed within fifteen days after the end of the reporting period. Each report, and any explanatory documentation,

shall be signed by a duly authorized representative of Cambridge having knowledge the report's contents and authority to sign such report on behalf of the City. The parties shall not object to the authenticity of any such report, or explanatory documentation, in any proceeding to enforce this Decree.

C. Beginning three months after its representatives sign this Decree, Cambridge shall submit to both U.S. EPA and OEPA copies of the Monthly Operating Report (MOR), Discharge Monitoring Report (DMR), and all reports that the City is required to submit pursuant to its NPDES permit. The MORs and DMRs shall be submitted on the forms authorized by OEPA. All reports shall be submitted to U.S. EPA at the same time such reports are required to be submitted to OEPA. The City need not submit the above-described reports to U.S. EPA once this Decree terminates.

D. Analytical test procedures used by the City shall conform to the rules and regulations promulgated under Section 304(h) of the FWPCA, 33 U.S.C. §1314(h), and Title 40 of CFR, Chapter 1, Subchapter D, Part 136, "Guidelines Establishing Test Procedure for the Analysis of Pollutants."

E. All written reports, notices, and submittals required by this Decree to be submitted to U.S. EPA shall be addressed to: Water Division, Attention: Chief, Compliance Section (5WQC-TUB-8), U.S. EPA Region V, 230 South Dearborn Street, Chicago, Illinois 60604. A copy of all reports,

notices and submittals to U.S. EPA shall also be submitted to OEPA, Southeast District Office, 2195 Front Street, Logan, Ohio 43138-9031.

VII. STIPULATED PENALTIES

A. Contingent only upon a written demand by the United States, the City will pay stipulated penalties as follows:

1. The sum of \$500 per day for each failure to comply in a timely manner with any provision specified in Section IV.
2. The sum of \$4,500 for each violation of any 30-day interim effluent limit listed in the Attachment to the Decree.
3. For violation of any 7-day interim limit listed in the Attachment to the Decree, based on the cumulative total of violations of those limits that occur on or before February 15, 1989:

Cumulative Violations of Limits Listed in this Paragraph	Stipulated Penalty Per Violation
1st	\$500
2d	\$1,000
3rd	\$1,500
4th and beyond	\$2,000

4. For violation of any 7-day final limit set by the City's NPDES Permit, based on the cumulative total of violations of those limits that occur after February 15, 1989:

Cumulative Violations of Limits Listed in this Paragraph	Stipulated Penalty Per Violation
1st	\$500
2d	\$1,000
3rd	\$1,500
4th and beyond	\$2,000

5. After February 15, 1989, for violation of each and every effluent limit contained in the City's NPDES permit for cadmium, chromium, copper, lead, nickel, zinc, or mercury, amount listed below, based on the cumulative total of violations of these limits during the life of the decree:

Cumulative Violations of Limits Listed in this Paragraph	Stipulated Penalty Per Violation
1st through 15th	\$500
16th through 30th	\$1,000
31st through 45th	\$1,500
46th and beyond	\$2,000

6. After February 15, 1989, \$4,500 for each violation of any 30-day effluent limit set by the City's NPDES permit.

7. The sum of \$100 per day for each violation of a reporting requirement specified by Section VI of this Consent Decree.

B. Any penalties incurred under this Section shall be paid by certified or cashier's check, payable to "Treasurer, United States of America," and delivered to U.S. EPA Region V, P.O. Box 70753, Chicago, Illinois 60673, by the 15th day of the month following the month in which the United States gave the written notice described in part A of this Section. Between the time that the United States gives such notice and

the fifteenth of the following month, the parties contemplate that the City may wish to inquire with U.S. EPA concerning matters raised in the written notice. U.S. EPA and the City may discuss the subjects raised in the notice, but none of these discussions will impair, enhance, or otherwise affect any of the rights and obligations of each of the parties to this Decree.

C. The stipulated penalty provisions established in this Decree are not mutually exclusive. Thus, where the City violates more than one requirement or effluent limit, even during overlapping periods of time, the City shall pay stipulated penalties for each such violation as stated above.

VIII. CIVIL PENALTY

Cambridge shall pay a civil penalty of \$29,000 to the United States of America. Half of that amount (\$14,500) shall be paid within fifteen days of entry of this Decree. The balance shall be paid within 180 days of entry of the Decree. Payments shall be made by certified or cashier's check, payable to "Treasurer, United States of America," and delivered to U.S. EPA Region V, P.O. Box 70753, Chicago, Illinois 60673.

IX. RIGHT OF ENTRY

A. U.S. EPA and OEPA, as well as their agents, contractors or consultants, shall have the right of entry

into and upon the plant, at all times, upon proper presentation of credentials for the purposes of:

1. Monitoring the progress of activities required by this Decree;

2. Verifying any data or information required to be submitted pursuant to this Decree; and

3. Obtaining samples, and, upon request, splits of any samples taken by the City or its consultants.

B. This provision in no way limits or affects any rights of entry and inspection held by either Plaintiff pursuant to applicable federal or state laws, regulations, or permits.

X. PERMIT OBLIGATIONS

A. This Consent Decree does not authorize or approve the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Approval for such construction or modification shall be by permit issued by the OEPA or such other permits as may be required by applicable county or state laws, rules, or regulations.

B. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Section 402 of the FWPCA, 33 U.S.C. §1342. Nor does this Consent Decree relieve Cambridge of any obligation to apply for, obtain and comply with the

requirements of any new or existing NPDES permit. This Consent Decree shall be interpreted such that provisions of any valid NPDES permit issued to the City shall become the permit provisions enforceable under this Decree.

XI. NON-WAIVER PROVISIONS

A. This Consent Decree does not affect the City's obligation to comply with any other federal, state, or local law or regulation.

B. This Consent Decree does not limit or affect the rights of the City or the Plaintiffs as against any third party.

XII. FAILURE OF COMPLIANCE

A. Plaintiffs do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Cambridge's complete compliance with the Decree will result in compliance with the provisions of the FWPCA, Chapter 6111 of the Ohio Revised Code, any applicable NPDES permit or other regulation. Notwithstanding U.S. EPA's or OEPA's review and approval of any plans, the City shall remain solely responsible for compliance with the terms of the Decree and the City's NPDES permit.

B. Plaintiffs do not waive any rights or remedies available for any violations by the City of federal or state

law, regulations, or NPDES permit conditions other than the violations that were alleged as part of this lawsuit.

C. The parties agree that it is the responsibility of the City to achieve and maintain complete compliance with all applicable federal and state laws, regulation and permits, and that compliance with the Decree shall not be a defense to any actions commenced pursuant to said laws, regulations or permits.

XIII. COSTS OF SUIT

The United States, the State, and the City shall each bear their own costs and attorney's fees -- if any.

XIV. FORCE MAJEURE AS BETWEEN THE CITY AND THE UNITED STATES

A. If any event occurs that causes or may cause a violation of any provision of this decree by the City, the City shall notify U.S. EPA and OEPA in writing within ten (10) days of the date of which the City first knew of, or should have known by exercise of due diligence, of such event. The notice shall describe in detail the anticipated length of time the violation will last, the measures taken or to be taken by the City to prevent or minimize the violation and the timetable by which those measures will be implemented. The City shall adopt any reasonable measure(s) to avoid or minimize any such violation. Failure by the City to comply with the notice requirements of this Section shall

constitute a waiver of the City's right to obtain an extension of time for its obligation under this Section based upon such incident, and such waiver leaves this Section without any force or effect as to that particular incident.

B. If the United States and the City agree that the violation has been or will be caused entirely by circumstances beyond the control of the City or any entity controlled by or under the common control of the City (including the City's consultants and contractors), and that the City could not have foreseen and prevented such violation, the time for performance of such requirement may be extended for a period not to exceed the actual delay resulting from such circumstances. In the event the parties are unable to agree, the matter may be submitted by either the United States or the City to the Court for resolution. If the violation is then determined to have been caused by circumstances beyond the control of the City (or any entity controlled by or under the common control of the City), and the City could not have foreseen and prevented such violation, the City may be excused as to that violation for the period of time the violation continues due to such circumstances.

C. The City shall bear the burden of proving that any delay or effluent violation was caused by circumstances beyond the control of the City or any entity controlled by or

under the control of the City, and that the City could not have found and prevented such violation.

D. Compliance with any requirement of this Consent Decree, by itself shall not constitute compliance with any other requirement. An extension of one compliance date or similar requirement based on a particular incident that is agreed upon pursuant to this Section does not automatically mean that the City qualifies for an extension of a subsequent compliance date. The City must make an individual showing of compliance regarding each delayed incremental step or other requirement for which an extension is sought.

E. Unanticipated or increased costs shall not serve as a basis for relief under this Section.

F. This Section of the Decree does not affect any rights of the City.

XIV. POTENTIAL FORCE MAJEURE AS BETWEEN CITY AND STATE

In any action by the State to enforce any provision of this Decree, the City 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 the State does not agree that such defense exists, it is, however, hereby agreed upon by the City and State that it

would be 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 defense is at the time an enforcement action, if any, is commenced. Acceptance of this Consent Decree with a force majeure clause as between the State and the City does not constitute a waiver by the City of any rights or defenses it may have under applicable law as against the State. This section of the Decree does not affect any rights of the United States.

XV. PUBLIC COMMENT

The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. §50.7, which provides for notice and an opportunity for public comment.

XVI. SECTION 309(e) CLAIM

The United States has not alleged any affirmative act by the State of Ohio that violates the FWPCA or the existence of any law of Ohio that prevents the City from raising revenues needed to comply with this Decree. The State of Ohio shall have no liability under this Decree except as required under 33 U.S.C. §1319(e). The Attorney General of the State hereby certifies that the laws of the State do not prevent the City from raising the revenues needed to comply with the terms of

the Decree. The United States is not currently aware of information that would dispute the certification presented here by the Attorney General of the State of Ohio. This section of the Decree does not affect any rights of the City.

XVII. GENERAL PROVISIONS

A. It is the intent of the parties hereto that the clauses hereof are severable, and should any clause(s) be declared by a court of competent jurisdiction to be invalid and unenforceable, the remaining clauses shall remain in full force and effect, except to the extent affected by the provisions that have been declared unenforceable or except to the extent that an essential part of this Consent Decree has been defeated thereby.

B. This Consent Decree shall constitute full settlement of the violations alleged in the Complaint filed in this action.

C. The Court shall retain jurisdiction of this case until termination of this Consent Decree, in order to enforce or modify the Decree, and to interpret the rights and obligations of the parties to the Decree. Prior to termination of this Decree, any party may apply to the Court for any relief necessary to construe and effectuate this Decree.

D. This Consent Decree shall terminate after Cambridge has complied with all provisions of Section IV above, has

paid all penalties due under Sections VII and VIII, and has achieved and maintained compliance with the final effluent limitations contained in its NPDES permit for a period of twelve consecutive months.

E. The Parties reserve any and all legal and equitable remedies available to enforce the provisions of this order and law.

F. Nothing herein shall be construed to limit the authority of the United States or the State of Ohio to undertake any action against any person, including the City, in response to conditions that may present an imminent and substantial endangerment to the environment or to the public health or welfare.

The parties enter into this Consent Decree and submit it to the Court that it may be approved and entered:

CITY OF CAMBRIDGE, OHIO

UNITED STATES OF AMERICA

Name:

Title:

Donald A. Carr
Acting Assistant Attorney
General
Land and Natural Resources
Division
U.S. Department of Justice

Christopher R. Schraff
Porter, Wright, Morris &
Arthur
Columbus, Ohio
Attorney for City of Cambridge

Thomas A. Mariani, Jr.
Environmental Enforcement
Section
U.S. Department of Justice

United States Attorney
Southern District of Ohio

By:

James E. Rattan
Assistant United States
Attorney

Thomas L. Adams, Jr.
Assistant Administrator for
Enforcement and Compliance
Monitoring
U.S. Environmental
Protection Agency

Valdas V. Adamkus
Regional Administrator
U.S. Environmental Protection
Agency
Region V

Sandra M. Lee
Assistant Regional Counsel
U.S. Environmental Protection
Agency
Region V

Anthony J. Celebrezze, Jr.
Attorney General State Ohio

By: _____
Margaret A. Malone
Assistant Attorney General
Columbus, Ohio

SO ORDERED:

Date: _____

UNITED STATES DISTRICT JUDGE
Southern District of Ohio