

IN THE  
COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, <i>ex rel.</i>	:	CASE NO. 162837
LEE FISHER	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE CAROLYN B. FRIEDLAND
	:	
Plaintiff,	:	
	:	
v.	:	<u>CONSENT ORDER AS TO</u>
	:	<u>DEFENDANTS THE CITY OF</u>
THE CITY OF CLEVELAND, OHIO,	:	<u>CLEVELAND, OHIO AND</u>
<i>et al.</i> ,	:	<u>EXECUTIVE HANGARS, INC.</u>
	:	
Defendants.	:	

The Complaint in the above-captioned case having been filed herein, and Plaintiff State of Ohio, by its Attorney General, Lee Fisher and Defendants City of Cleveland, Ohio ("City") and Executive Hangars, Inc. ("Executive") having consented to the entry of this Order;

**NOW, THEREFORE**, without trial of the issues of fact or law and upon consent of the parties hereto, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

I. JURISDICTION

1. The Court has jurisdiction over the parties and subject matter of this action. The Complaint states a claim upon which relief can be granted against Defendants City and Executive pursuant to Chapter 6111. of the Ohio Revised Code ("RC"), and venue is proper in this Court.

## II. PARTIES BOUND

2. The provisions of this Consent Order shall apply to and be binding upon Plaintiff and Defendants City and Executive, their agents, directors, officers, employees, servants, assigns, and successors in interest, and those persons in active concert or privity with any of them. Defendants City and Executive are ordered to provide a copy of this Consent Order to each contractor and/or consultant they employ to perform the work itemized herein, and each general contractor and/or consultant shall provide a copy of this Consent Order to each of its subcontractors and/or subconsultants for such work.

3. The provisions of this Consent Order shall in no way apply to, include or refer to Defendant Sundorph Aeronautical Corporation ("Sundorph").

## III. SATISFACTION OF LAWSUIT

4. Plaintiff alleges in its Complaint that Defendants City and Executive conducted activities at the Cleveland Hopkins International Airport ("Airport") in violation of RC Chapter 6111. and the rules adopted thereunder. Said Defendants deny such allegations, and the entering into of this Consent Order shall not be construed as an admission of any liability on the part of Defendants City and Executive for the violations alleged in the Complaint. This Consent Order requires said Defendants to conduct their governmental or business operations at the Airport in a manner designed to

ensure compliance with RC Chapter 6111. and the rules adopted thereunder.

5. Compliance with the terms of this Consent Order shall constitute full satisfaction of Defendants City's and Executive's civil liability for all violations of RC Chapter 6111. and the rules promulgated thereunder which have been alleged in Plaintiff's Complaint and which occurred prior to the Court's entry of this Consent Order. With the exception of Section V, Paragraph 22, nothing in this Consent Order shall be construed to limit the authority of Plaintiff to seek relief for violations not alleged in the Complaint, or violations which may occur after the Court's entry of this Consent Order.

6. This Consent Order shall in no way apply to or constitute satisfaction with regards to Defendant Sundorph for those violations alleged in the Complaint to have been caused by said Defendant.

#### IV. PERMANENT INJUNCTION

7. With respect to any and all discharges to waters of the state or any publicly owned treatment works which are the result of activities conducted within the geographical boundaries of the Airport property:

- (a) Defendants City and Executive, their officers, directors, agents, servants, employees, assigns, successors in interest and companies and/or subsidiaries of any company that said Defendants own or have a majority interest are hereby permanently enjoined and ordered to comply with the provisions of RC Chapter 6111. and the rules adopted thereunder; and

- (b) Defendant City, its officers, directors, agents, servants, employees, assigns, successors in interest and companies and/or subsidiaries of any company that said Defendant owns or has a majority interest are hereby permanently enjoined and ordered to require that all Airport tenants comply with the provisions of RC Chapter 6111. and the rules adopted thereunder.

V. OTHER INJUNCTIVE RELIEF

A. Prohibition of Discharges to Waters of the State.

8. With the exception of airplane and runway deicing compounds actively utilized in deicing operations, Defendants City and Executive are immediately and permanently enjoined from placing, and/or causing to be placed any "sewage", "industrial waste" or "other wastes" in a location where they cause pollution of waters of the state except in accordance with a valid National Pollution Discharge Elimination System ("NPDES") permit. Furthermore, Defendant City is hereby enjoined and ordered to adopt regulations and execute lease provisions applicable to its tenants so as to provide for the prevention of any discharges of "sewage", "industrial waste", or "other wastes", other than discharges permitted pursuant to RC Chapter 6111.

9. As used in this Consent Order, the terms "sewage", "industrial waste", and "other wastes" shall be defined as those terms are defined in RC §§6111.01(B), (C) and (D). As used in this Consent Order, the term "waters of the state" shall be defined as that term is defined in RC §6111.01(H) and shall include, but not be limited to, Abrams Creek and the Rocky River.

10. With respect to airplane and runway compounds actively utilized in deicing operations, the injunction set forth in Section V, Paragraph 8 shall take effect on that date determined pursuant to Section V, Subsection C of this Consent Order.

B. Discharges of Wastewater From Building Leased by Executive Hangars, Inc.

11. Defendants City and Executive are immediately and permanently enjoined and ordered to cease placing, and/or causing to be placed, any sewage, industrial waste and/or other wastes from the premises currently leased to Defendant Executive, i.e., Building #204, into waters of the state except in accordance with an applicable NPDES permit. Specifically, Defendants City and Executive are immediately enjoined and ordered to cease placing, and/or causing to be placed, any sewage, industrial waste or other wastes from the premises currently leased to Defendant Executive into the Airport's storm sewer system.

12. Defendant Executive is hereby enjoined and ordered to install a sanitary sewer line at the Airport from its offices and hangars and continuing under said leased property until the sewer line reaches the boundary of the leased property. The sanitary sewer line shall provide a means of transporting all sanitary wastes, process wastewater, and sink and floor drain wastes from said Defendant's offices and hangars to a sanitary sewer to be constructed by Defendant City pursuant to this Consent Order.

13. Defendant Executive is enjoined and ordered to install the sanitary sewer line, referenced in Section V, Paragraph 12, in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
a. Begin surveying the existing sanitary sewer lines and determine the proposed location of the sanitary sewer line to be constructed.	Completed
b. Submit general plans and an approvable Permit-To-Install ("PTI") application for the installation of the sanitary sewer line to the Ohio Environmental Protection Agency ("Ohio EPA").	Completed
c. Initiate construction and installation of the sanitary sewer line.	May 1, 1992
d. Completion of construction and installation of the sanitary sewer line.	June 15, 1992
e. Cease using in-ground septic tank.	October 21, 1992

14. In addition to the injunctive relief provided in Section V, Paragraphs 12 and 13, upon issuance of a PTI by the Director of Ohio EPA for Defendant Executive's installation of its sanitary sewer, said Defendant is enjoined and ordered to perform the work required by said Section and Paragraphs in accordance with the PTI. The terms and conditions of the PTI issued by the Director of Environmental Protection shall become an enforceable part of this Consent Order.

15. Defendant City is enjoined and ordered to install a sanitary sewer line at the Airport in accordance with its existing PTI plans and Section V, Paragraph 16, starting from the boundary of Defendant Executive's leased property and continuing until such sanitary sewer line is connected with the presently existing sanitary sewer system at the Airport. Defendant City is also enjoined and ordered to install any and all hook-ups which are necessary to connect the sanitary sewer line to be constructed by Defendant Executive to the sanitary sewer line to be constructed by Defendant City.

16. Defendant City is hereby enjoined and ordered to install the sanitary sewer line, referenced in Section V, Paragraph 15, in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
a. Begin surveying the existing sanitary sewer lines and determine the proposed location of the sanitary sewer line to be constructed.	Completed
b. Submit an approvable PTI application for the installation of the sanitary sewer line to the Ohio EPA.	Completed
c. Issue notice to proceed to contractor.	May 21, 1992
d. Initiate physical construction and installation of the sanitary sewer line.	August 21, 1992

- e. Completion of construction and installation of the sanitary sewer line. September 22, 1992
- f. Install hook-up(s) to connect Defendants City's and Executive's sanitary sewer lines together. October 5, 1992

17. In addition to the injunctions provided in Section V, Paragraphs 15 and 16, Defendant City is enjoined and ordered to perform the work required by said Section and Paragraphs in accordance with the terms and conditions of the PTI issued by the Director of Environmental Protection. Said PTI is hereby incorporated as an enforceable part of this Consent Order.

18. In the event that Defendant Executive fails to substantially complete construction of the sanitary sewer connection from Building #204 by May 21, 1992, the time for Defendant City to initiate construction and installation of its portion of the sanitary sewer line for Building #204 is extended one (1) day for each day Defendant Executive fails to achieve substantial construction for its portion of the sanitary sewer connection. Once substantial construction has been achieved by Defendant Executive, Defendant City is enjoined and ordered to install the sanitary sewer line, referenced in Section V, Paragraph 15, in accordance with the schedule set forth in Section V, Paragraph 16 as modified, i.e., milestone c. shall be implemented within twenty-one (21) days of Defendant Executive's achieving substantial



construction, milestone d. shall be implemented within one hundred and eleven (111) days of Defendant Executive's achieving substantial construction, milestone e. shall be implemented within one hundred and forty-one (141) days of Defendant Executive's achieving substantial construction, and milestone f. shall be implemented within one hundred and fifty-five (155) days of Defendant Executive's achieving substantial construction. "Substantial construction" is defined as the completion of all necessary trenches, preparation of the ground, and the completion of 1/3 of all laying of sewer pipe by Defendant Executive.

19. In the event Defendant Executive no longer occupies Building #204 on May 1, 1992, the construction requirements of Section V, Paragraphs 15 and 16 shall no longer apply to Defendant City. However, in the event that Defendant Executive no longer occupies Building #204 on May 1, 1992 or any time thereafter, Defendant City is enjoined and ordered to immediately:

- a. Prohibit the use of any in-ground septic tank at Building #204; and
- b. Prohibit the occupancy of any "person", as that term is defined in RC Section 6111.01(I), who engages in any activities resulting in the production of "sewage", "industrial waste", or "other wastes", e.g., use of restrooms or water for any purpose, including the washing of aircraft and/or other vehicles, or any portions of the surfaces of Building #204 in Building #204 until such time as Defendant City provides for a sanitary sewer connection for said building.

Any sanitary sewer connection installed in Building #204 pursuant to this Paragraph must be installed at least thirty (30) days prior to the occupancy of any "person" engaging in activities resulting in the production of "sewage", "industrial waste", or

"other wastes". Defendant City is further enjoined and ordered to obtain a permit to install from the Director of Environmental Protection prior to the construction of the sanitary sewer connection from Building #204, and to provide such connection for said building in accordance with the terms, conditions and schedule set forth in the PTI issued by the Director.

20. In the event that Defendant Executive no longer occupies Building #204 on May 1, 1992, the construction requirements of Section V, Paragraphs 12 and 13 shall no longer apply to said Defendant.

C. Discharges of Deicing Compounds.

21. Defendant City is enjoined and ordered to perform such studies and take such steps, including, but not limited to, the construction of any necessary facilities, the adoption of any regulations, and the execution of any necessary lease provisions applicable to its tenants so as to provide for the prevention and elimination of any discharges other than discharges permitted pursuant to RC Chapter 6111. and the rules adopted thereunder from the Airport to waters of the state, and to take such steps:

- a.) ensuring that its own discharges of deicing compounds, and,
- b.) requiring that its tenants' discharges of deicing compounds,

are discharged in a manner in no way violative of RC Chapter 6111. or the rules adopted thereunder.

22. It is anticipated by the parties to this Consent Order and the Court that until the work required by Section V, Subsection C is completed in accordance with Paragraphs 23 and 24, that there will be direct discharges of untreated waters containing aircraft and runway deicing compounds from the Airport property to waters of the state arising from the normal and appropriate application of such compounds for the sole purpose of keeping airplanes and runways free of ice. To the extent any discharges of these compounds occur as a result of the normal and appropriate application of these compounds for the sole purpose of keeping airplanes and runways free of ice, such discharges will not be deemed to be violative of this Consent Order, and the stipulated penalties contemplated by Section XII, Paragraph 37 shall not apply to such discharges.

23. Defendant City is enjoined and ordered to perform such studies and take such steps pursuant to Section V, Paragraph 21 in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
a. Complete the study identifying the sources of deicing compounds discharged.	Completed
b. Submit to the Ohio EPA a plan for the elimination of any unpermitted deicing compound discharges, including a schedule of planned activities.	July 1, 1994

24. In addition to the injunction provided in Section V, Paragraph 23, upon Ohio EPA approval of the plan submitted by Defendant City pursuant to Section V, Paragraph 23b, said Defendant is enjoined and ordered to perform the work required by said Section and Subparagraph in accordance with the Schedule of Activities contained in the approved plan. The Ohio EPA-approved "City" elimination plan shall become an enforceable part of this Consent Order.

25. The Schedule of Activities contained in Defendant City's approved plan shall include fixed date milestones for the submission of PTI application(s), commencing construction, completion of construction, the adoption of any regulations and the execution of any leases requiring Defendant City's tenants to comply with RC Chapter 6111. and the rules adopted thereunder, and the date by which there shall be no discharges of deicing compounds to waters of the state except in accordance with RC Chapter 6111. and the rules thereunder.

D. Aircraft Fuel Spills.

26. Defendant City is hereby enjoined and ordered to develop a comprehensive aircraft fuel spill preparedness, monitoring, notification, remediation, response, and record keeping program at the Airport consisting of the following:

- a. Defendant City is enjoined and ordered to require all of its tenants who fuel trucks or airplanes to have fuel spill carts at each fueling location, stocked with such equipment as shall be sufficient to deal with any fuel spills which may reasonably be expected

to occur. In furtherance of such order, the City has, as of February 1, 1992, notified such tenants of this requirement. The type of equipment required to be maintained on the fuel spill carts will be as set out in Exhibit A to this Consent Order.

- b. Defendant City is enjoined and ordered to install autodialing telephones at each tank farm, hangar and terminal fueling location where the fueling of trucks or airplanes occur by no later than June 8, 1992. The telephones shall be programmed to automatically dial the relevant regulatory agencies in the event of a fuel spill. The telephones shall be programmed to contact the Ohio EPA, the Cuyahoga Local Emergency Response Coordinator, the National Response Center of the United States Coast Guard, the Ohio Division of Natural Resources, the Airport Rescue and Fire Fighter Unit, the Airport Operations Office, and Defendant City's fuel spill coordinator.

That portion of the program developed pursuant to and in accordance with paragraph 26(a) and 27 shall be set forth and described in writing and submitted to Ohio EPA by April 1, 1992. That portion of the program developed pursuant to and in accordance with paragraph 26(b) shall be set forth and described in writing and submitted to Ohio EPA by June 8, 1992.

27. Defendant City is enjoined and ordered to designate one (1) or more individuals, trained in the area of fuel spill remediation and response, to serve as a fuel spill response coordinator. Such person's duties shall include:

- (a) monitoring the Airport tenants' compliance with Defendant City's preparedness monitoring, notification and record keeping program;
- (b) maintaining fuel spill records;
- (c) insuring that appropriate notification is given to the Ohio EPA in the event of any fuel spills of which the City is aware;
- (d) requiring that the City's tenants provide adequate notification to Ohio EPA in the event of a fuel spill by a tenant or its agents; and

- (e) coordinating response and remedial measures of the responsible parties and their contractors in the event of a spill.

Such person shall be the primary contact between the Ohio EPA and Defendant City in the event of a spill.

#### VI. MISCELLANEOUS INJUNCTIVE PROVISIONS

28. In the event Defendant City is notified by the Ohio EPA that any or all of the applications, plans, or other documents submitted pursuant to Section V (with the exception of the program report to be submitted pursuant to paragraph 26) are unsatisfactory in whole or in part, the Ohio EPA will include a statement in the notification as to the modifications or additions which must be made to the document prior to any approval. Subject to the exception in Paragraph 29, within forty-five (45) days after receipt of the Ohio EPA's notification requiring modifications or additions, said Defendant is enjoined and ordered to amend and submit to the Ohio EPA a revised application, plan, or other document incorporating all of the required modifications or additions. Such revised applications, plans, or other documents must be to the Ohio EPA's satisfaction. The Ohio EPA will notify Defendant City whether the revised application, plan, or other document is approved. In the event the Ohio EPA approves the revision, Defendant is enjoined and ordered to commence the implementation of those measures set forth in the approved applications, plans or other documents, within fifteen (15) days after receiving written approval from the Ohio EPA.

29. In the event that the modifications or additions required by the Ohio EPA pursuant to Paragraph 28 constitute a major change to Defendant City's submission, Defendant City may request from the Ohio EPA an extension of the forty-five (45) day response period referenced in Section V, Paragraph 28. Such requests shall be directed to the Enforcement and Compliance Group Leader, Division of Water Pollution Control, Ohio EPA, Northeast District Office, 2110 Aurora Rd., Twinsburg, Ohio 44087, and Enforcement and Compliance Section Manager, Division of Water Pollution Control, Ohio EPA, 1800 Watermark Dr. P.O. Box 1049, Columbus, Ohio, 43266-0149. Defendant City is enjoined and ordered to submit any such request, in writing, within ten (10) business days after OEPA's notification requiring modifications or additions and to show cause as to why an extension should be granted for the period of time sought. Ohio EPA's receipt of the Defendant's written request for an extension shall toll the forty-five day period in which Defendant City must amend and resubmit its application, plan, or other document, pursuant to paragraph 28, until, in the event of Ohio EPA's denial of the request, Ohio EPA notifies the Defendant City that its request has been denied. Upon such notification, the forty-five day period will continue to run. The tolling of the forty-five day period, however, is contingent upon the City's inclusion of the following language in the first paragraph of its written extension request:

Pursuant to paragraph 29 of the Consent Order between the State and the City, receipt of this extension request by Ohio EPA tolls the forty-five day period which the City has to amend its application, plan, or document until, in the event of a denial, Ohio EPA notifies the City of the denial.

In the event that the Ohio EPA grants in whole or part any extension request, Defendant City is enjoined and ordered to submit the modification or addition in accordance with the Ohio EPA's directive as to the length of the requested extension.

#### VII. REPORTING REQUIREMENT

30. Unless otherwise stated in this Consent Order, within fourteen (14) calendar days from the completion date of any and all deadlines and milestones set forth in this Consent Order or documents thereinto incorporated, Defendants City and Executive are ordered to submit a written report stating whether they have performed the action set forth therein and any documentation pertaining to the completion of such tasks to Enforcement and Compliance Group Leader, Division of Water Pollution Control, Ohio EPA, Northeast District Office, 2110 Aurora Rd., Twinsburg, Ohio 44087, and Enforcement and Compliance Section Manager, Division of Water Pollution Control, Ohio EPA, 1800 Watermark Dr. P.O. Box 1049, Columbus, Ohio, 43266-0149.



VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

31. Performance of the terms of this Consent Order by Defendants City and Executive are not conditioned on the receipt of any federal or state grant or loan funds. In addition, said Defendants' performance is not excused by the failure to obtain or a shortfall of any federal or state grant or loan funds or by the processing of any applications for the same.

IX. EFFECT OF CONSENT ORDER

32. This Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing wastewater facility. Approval for any such construction or modification shall be by permit issued by the Director of Environmental Protection or other such permits as may be required by applicable federal, state or local laws, rules or regulations.

X. POTENTIAL FORCE MAJEURE

33. In any action to enforce any of the provisions of this Consent Order, Defendants City and Executive may raise at that time the question of whether they are entitled to a defense that their conduct was caused by reasons beyond their 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.

Cleveland

While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by the parties that it is premature at this time to raise and adjudicate the existence of such a defense, and that the appropriate point at which to adjudicate the existence of such a defense is at the time that a dispute arises and/or an enforcement action, if any, is commenced. Acceptance of this Consent Order without a force majeure clause does not constitute a waiver by Defendants City and Executive of any rights or defenses they may have under applicable State law.

XI. CIVIL PENALTY

34. Defendant City is ordered, pursuant to RC §6111.09, to pay to the State of Ohio a civil penalty of twenty-five thousand dollars (\$25,000.00). The civil penalty shall be paid by delivering to the attorney for Plaintiff, or his successor, two (2) certified checks for twelve thousand five hundred dollars (\$12,500.00) each, payable to the "Treasurer of the State of Ohio", with the first check due and owing within forty-five (45) days of the Court's entry of this Consent Order, and the second check due and owing within ninety (90) days of the Court's entry of this Consent Order.

35. In the event that Defendant Executive no longer occupies Building #204 on May 1, 1992, or leaves the premises at a later date without complying with the requirements set forth in Section V, Paragraphs 12 through 14,

said Defendant agrees and is ordered, pursuant to RC §6111.09, to pay to the State of Ohio a civil penalty of five thousand dollars (\$5,000.00). The civil penalty shall be paid by delivering to the attorney for Plaintiff, or his successor, a certified check for the above amount, payable to the "*Treasurer of the State of Ohio*", within thirty (30) days after leaving Building #204.

#### XII. STIPULATED PENALTIES

36. Subject to the exception in paragraph 22, in the event that Defendants City and/or Executive fail to meet any of the requirements of this Consent Order set forth in Sections IV, V and VI, including any scheduled milestone requirement, such Defendant(s) shall be liable for and shall pay a stipulated penalty according to the following payment schedule:

- a. For each day of each failure to meet a requirement, up to forty-five (45) days--five hundred dollars (\$500.00) per failure per day.
- b. For each day of each failure to meet a requirement, from forty-six (46) to seventy-five days (75)--one thousand dollars (\$1,000.00) per failure per day.
- c. For each day of each failure to meet a requirement, from seventy-six (76) to one hundred five (105) days--one thousand five hundred Dollars (\$1,500.00) per failure per day.
- d. For each day of each failure to meet a requirement, over one hundred five (105) days--two thousand dollars (\$2,000.00) per failure per day.

37. Any payment required to be made under the provisions of Paragraph 36 of this Section shall be made by delivering to Plaintiff's attorney, or his successor, a certified check or checks for the appropriate amounts, within thirty (30) days from the date of Defendants' failure to meet the requirement of the Consent Order, made payable to "*Treasurer, State of Ohio*".

**XIII. TERMINATION OF STIPULATED PENALTIES**

38. The provisions of this Consent Order set forth in Section XII requiring the payment of stipulated penalties by Defendant City may be terminated upon a demonstration by said Defendant that a) it has completed the work set forth in Sections V and VI and b) the remedy effected by said work enabled Defendant City to achieve and maintain compliance with RC Chapter 6111. and the rules adopted thereunder for the period of one (1) calendar year. Where during said one (1) year period, Defendant City fails to maintain compliance with RC Chapter 6111. and the rules adopted thereunder, the one (1) year period will begin anew from the date of said Defendant's failure.

39. The provisions of this Consent Order set forth in Section XII requiring the payment of stipulated penalties by Defendant Executive may be terminated upon a demonstration by said Defendant that a) it has completed the work set forth in Sections V and VI, and b) the remedy effected by said work

enabled Defendant Executive to achieve and maintain compliance with RC Chapter 6111. and the rules adopted thereunder for the period of one (1) calendar year. Where during said one (1) year period, Defendant Executive fails to maintain compliance with RC Chapter 6111. and the rules adopted thereunder, the one (1) year period will begin anew from the date of said Defendant's failure.

40. Termination of stipulated penalties shall be:

a.) by order of the Court, upon application by any party and a demonstration that the conditions of this Section have been met; or

b.) by mutual agreement of the parties as reflected in a joint stipulation filed with the Court.

In the event of such mutual agreement, termination of stipulated penalties shall occur upon the filing of the joint stipulation.

#### XIV. RIGHT OF ENTRY

41. Plaintiff State of Ohio and the Ohio EPA, their agents, authorized representatives and employees, shall have the authority to enter, at reasonable times, without a search warrant, all property that comprises Defendants City's and/or Executive's Airport property for purposes consistent with this Consent Order and State law. Such authority includes, but is not limited to, inspecting records, operating logs and contracts related to the work required by this Consent Order;

reviewing the progress of Defendants City and/or Executive in carrying out the terms of this Consent Order; conducting such tests as the Ohio EPA deems necessary; interviewing Defendants City's and/or Executive's personnel; and verifying the data submitted to the Ohio EPA by Defendants City and/or Executive.

42. Defendant City has supplied to Plaintiff State of Ohio certain Federal Aviation Administration ("FAA") regulations pertaining to Airport property access. Plaintiff acknowledges that, under some conditions, such regulations may at times delay its and the Ohio EPA's ability to enter certain portions of the Airport property. If these regulations are modified in any way, Defendant City is ordered to provide the modified regulations to Plaintiff and the Ohio EPA. In the event that Plaintiff's and/or the Ohio EPA's access to any portion of the Airport property is denied because it is prohibited by FAA regulations, Defendant City is ordered to submit, in writing, to Plaintiff and the Ohio EPA an explanation of the reason for the denial, and a plan for accommodating the access in a less intrusive manner.

43. Defendant City is ordered to supply to Plaintiff State of Ohio and the Ohio EPA with a copy of applicable FAA regulations in the event that such regulations have not been previously provided and are asserted as the basis for denial of access, or are modified in the future.

44. Nothing in this Consent Order shall be construed to limit Plaintiff's statutory or permit authority under RC Chapter 6111. and the rules adopted thereunder to conduct inspections, surveys and/or take samples.

**XV. COMPLIANCE WITH APPLICABLE LAW**

45. Nothing in this Consent Order shall be construed to relieve Defendants City and Executive of the obligation to comply with applicable federal, state or local statutes, regulations or ordinances.

**XVI. INTERPRETATION OF SECTIONS AND PROVISIONS OF CONSENT ORDER**

46. Each Section, Paragraph and Subparagraph of this Consent Order shall be construed, interpreted and read in conformity with each and every other Section, Paragraph and Subparagraph of this Consent Order for the purpose of properly interpreting the intent of the parties hereto as set forth herein.

**XVII. RETENTION OF JURISDICTION**

47. The Court retains jurisdiction of this action for the purpose of enforcing the terms and provisions of this Consent Order.

**XVIII. COSTS**

48. Defendants City and Executive are each hereby ordered to pay one half (1/2) of all court costs of this action.

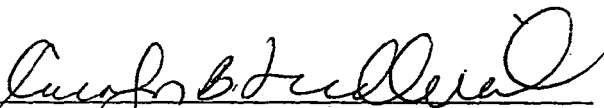
**XIX. NOTICE TO CITY**

49. With respect to the notification to the City contemplated by Section VI, paragraphs 28 and 29 of this

Consent Order, Ohio EPA agrees to provide such notification by personal delivery or by certified mail, postage pre-paid, return receipt requested, to the following address:

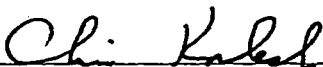
Director of Port Control  
City of Cleveland  
Second Floor, Terminal Building  
Cleveland Hopkins International Airport  
5300 Riverside Drive  
Cleveland, Ohio 44135

Entered this 14<sup>th</sup> day of August, 1992.

  
\_\_\_\_\_  
JUDGE CAROLYN B. FRIEDLAND  
CUYAHOGA COUNTY COURT OF COMMON PLEAS

APPROVED:

LEE FISHER  
ATTORNEY GENERAL OF OHIO

  
\_\_\_\_\_  
CHRISTOPHER KORLESKI (0039770)  
RETANIO A; RUCKER (0039744)  
Assistant Attorneys General

Environmental Enforcement  
30 East Broad Street, 25th Fl.  
Columbus, Ohio 43266-0410  
(614) 466-2766

Attorney for Plaintiff State of Ohio



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William M. Ondrey Gruber  
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Assistant Director of Law  
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Cleveland, Ohio 44114  
(216) 664-2894

Attorney for Defendant  
the City of Cleveland, Ohio

Cynthia D. Rich  
CYNTHIA D. RICH, Director  
Department of Port Control

Authorized Representative  
for Defendant the City of  
Cleveland, Ohio

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EDWARD J. MAHER, ESQ.  
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(216) 696-4161  
O.S.C.C.R. #0003705  
Attorney for Defendant Executive Hangers, Inc.

EXECUTIVE HANGERS, INC.

BY: John R. Kovach  
JOHN R. KOVACH, President

RECEIVED FOR FILING

AUG 12 1992

GERALD E. FUERST, CLERK  
BY: [Signature] DEP.

4883E/1-27  
kmh



DEPARTMENT OF PORT CONTROL  
CYNTHIA D. RICH, DIRECTOR

# City of Cleveland

MICHAEL R. WHITE, MAYOR



5300 RIVERSIDE DRIVE  
CLEVELAND HOPKINS INT'L AIRPORT  
CLEVELAND, OHIO 44135-3193  
(216) 265-6000  
FAX (216) 265-6021

January 10, 1992

## Exhibit A

TO Consent Order Between the City of Cleveland and the Ohio  
Environmental Protection Agency OEPA.

Subject: Minimum stocks for fuel spill carts

Dear:

In order to properly respond to fuel spill emergencies, the Department of Port Control is requiring your company to obtain, stock, and maintain a fuel spill cart(s). The carts shall be placed in the most easily accessible spot feasible near fueling operations. The minimum requirements for contents of each cart(s) are as follows:

- DOT/"17-H" flammable open-head drum
- bundles of spill pads
- (30) feet of absorbent boom
- bags of oil-dry clay powder
- "Zammie" (spill stopper) rubberized manhole cover
- ample impervious boots, gloves, and goggles for cleanup crew
- sandbags
- non-sparking shovels and brooms
- dry chemical fire extinguisher
- fire Extinguisher "B", "C" Non Corrosive Potassium Carbonate

This list represents minimum quantities that would insure an adequate first response. It is each fueler's responsibility to ensure proper stocks and backup supplies to handle larger spills are maintained and accessible at all times. To this end, your areas of operations have been identified as needing \_\_\_ cart(s) at the following locations: Ramp/Hangar. The City will be submitting this program to the Ohio EPA.