

IN THE COURT OF COMMON PLEAS  
BUTLER COUNTY, OHIO

STATE OF OHIO, *ex rel.*  
LEE FISHER  
ATTORNEY GENERAL OF OHIO,

*Plaintiff,*

vs.

CITY OF HAMILTON!

*Defendant.*

CASE NO. CV88 10 1450

JUDGE VALEN

CONSENT ORDER

WHEREAS, the Plaintiff, State of Ohio, on relation of Lee Fisher, Attorney General of Ohio, ("State" or "Plaintiff"), having filed a complaint in this matter against Defendant, City of Hamilton!, ("Hamilton" or "Defendant") on behalf of the Director of the Ohio Environmental Protection Agency, to enforce the State of Ohio's water pollution, hazardous waste, and solid waste laws and rules thereunder, the Plaintiff and Defendant now come before this Court and have consented to entry of this Consent Order.

THEREFORE, before the taking of any testimony, upon the pleadings, upon the consent of the parties hereto, without any admission of fact or law, and pursuant to the decree of the Court, it is hereby ORDERED, ADJUDGED, AND DECREED, as follows:

## I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the parties and the subject matter of this Consent Order. The Complaint states claims upon which relief can be granted against Defendant pursuant to Chapters 6111. and 3734. of the Ohio Revised Code and the rules promulgated thereunder. Venue is proper in this Court.

## II. CONTINUING JURISDICTION

2. This Court shall retain jurisdiction of this action for the purpose of making any order or decree which it may deem at any time to be necessary to carry out the terms of the Consent Order.

## III. PERSONS BOUND

3. All terms and provisions of this Consent Order shall apply to and be binding upon Defendant Hamilton and its assigns, successors in interest, agents, representatives, servants, employees, and officials, elected and appointed. Hamilton shall provide a copy of this Consent Order to each contractor it employs or enlists to perform work itemized herein, and Hamilton shall make best efforts to insure that each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work.

#### IV. SATISFACTION OF CLAIMS

4. Except as provided in this Section, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil or administrative liability of Hamilton, its assigns, successors in interest, agents, representatives, servants, employees and officials elected and appointed, to Plaintiff for all claims and counts stated in Plaintiff's complaint arising on or before the date of entry of this Order, provided, however, that: (1) nothing in this Consent Order shall limit the State of Ohio from seeking any lawful remedy for enforcement of Hamilton's obligations under this Consent Order, and (2) satisfaction of Hamilton's Liability for Counts Twelve and Thirteen of the Complaint is based, in part, upon groundwater data and other information presented in Burgess and Niple "Hamilton, Ohio Sludge Landfill Hydrogeologic Assessment (May, 1991)," as supplemented, Exhibit F to this Consent Order. In the event the State of Ohio becomes aware of data or information not in such report, whether or not such data or information was available before the date of entry hereof, which indicates that additional remedies are appropriate under applicable law to protect ground or surface waters of the State, the State may take the appropriate actions pursuant to such applicable law, including R.C. 6111 and R.C. 3734. Hamilton reserves its right to contest any such action.

5. This Consent Order shall not be construed so as to preclude Plaintiff from taking any civil, criminal, and/or

administrative enforcement action pursuant to any available legal authority, including the right to seek monetary, injunctive, or other relief against Defendant for violations other than those violations stated in Plaintiff's Complaint against Defendant occurring prior to the entry of this Consent Order. Plaintiff reserves its right to take any enforcement action pursuant to any available legal authority, including the right to seek injunctive relief and monetary penalties, for violations of Chapters 6111 and 3734 of the Revised Code addressed in this Complaint or Consent Order occurring after the entry of this decree. Hamilton reserves its rights to contest any such enforcement action, and nothing herein shall be construed to abridge such rights.

#### V. WASTEWATER TREATMENT PLANT

6. Nothing in this paragraph constitutes an NPDES permit or a modification of any existing permit. However, between the effective date of this Consent Order and the time for completion of construction of sewer improvements as required in paragraph 8 of this Consent Order, notwithstanding any provision of its currently effective NPDES permit, Hamilton is authorized to discharge at those stations described in Exhibit A of this Consent Order, pursuant to the conditions set forth therein.

7. Between the effective date of this Consent Order and the time for completion of construction of sewer improvements

as required in paragraph 8 of this Consent Order, Hamilton is enjoined to monitor its wastewater treatment system's bypasses and overflows and to report the results of such monitoring to the Ohio EPA in the manner and time frames and at the locations set forth in Exhibit A of this Consent Order.

8. Hamilton is enjoined and ordered to eliminate discharges from overflows and bypasses from its sanitary sewer system in accordance with the schedule set forth in Exhibit B. Nothing in this Consent Order, however, is intended to abridge any available defenses provided by Permit No. 1PE00002\*ED (or any renewals or modifications thereof).

#### VI. SLUDGE LANDFILL FACILITY

9. Except as provided in the approved site stabilization plan (Exhibit "C"), Defendant is hereby immediately enjoined and ordered from disposing of sludge and other wastes at its sludge disposal facility adjacent to Defendant's wastewater treatment plant located at 2451 River Road, the City of Hamilton!, Butler County, Ohio 45011, on the Great Miami River without a permit and license issued pursuant to R.C. Chapters 3734 and 6111. Nothing herein shall be construed to limit Hamilton's use of its property, including the sludge landfill, so long as such use complies with applicable law and this Consent Order.

10. Within thirty days after the effective date of this Consent Order, Hamilton shall begin closure of the sludge

disposal facility in the manner and time frames set forth in the approved Site Stabilization Plan attached hereto as Exhibit "C". The fully approved Site Stabilization Plan shall be incorporated into and made part of this Consent Order, and shall be included as Exhibit "C". Hamilton is ordered and enjoined to comply with the tasks and schedules contained in the approved Site Stabilization Plan.

11. Hamilton shall complete the Riverside Natural Area as described in Exhibit E hereto as follows. Within 60 days of entry hereof, or upon such other date as the parties shall mutually agree but in no event later than the date scheduled for appropriation of funds for the Site Stabilization Plan under paragraph 10. hereof, Hamilton shall deposit at least \$112,110.00 in a special account in a bank of its choice. Evidence of establishing such account and its balance shall be provided to Plaintiff and to the Court. Hamilton may draw on such account for the sole purpose of paying the reasonable and necessary expenses of design and construction of the Riverside Natural Area. Interest accruing on the balance in the account shall be credited to the account. Annually, on or before December 31, Hamilton shall submit an itemized statement to Ohio EPA showing withdrawals from the special account and the expenditures made to date for the Riverside Natural Area. Upon expenditure of \$112,110.00 on the Riverside Natural Area, Hamilton shall provide a final accounting of its expenditures to the Plaintiff's counsel and the Court. If neither the Court

nor Plaintiff's counsel object to the accounting within 30 days of its submittal, Hamilton may use the account balance for any lawful purpose and may close the account. Any disputes as to whether Hamilton has fulfilled its obligations under this paragraph may be referred to this Court for resolution.

#### VIII. WATER PLANT

12. Hamilton is ordered and enjoined to construct lime settling and storage lagoons for its South Water Plant in accordance with the schedule set forth in Exhibit "D" hereto.

13. On and after December 8, 1991, Hamilton is ordered and enjoined from discharging lime slurry or other wastewater from the South Water Plant to waters of the state without a permit issued by the Director pursuant to R.C. 6111.04. In the event that Hamilton obtains an NPDES permit for its discharge from the South Water Plant, Hamilton shall comply with the terms and conditions of such permit, and any renewals or modifications thereof.

14. From the time of entry of this decree through December 7, 1991, Hamilton is authorized to discharge lime slurry from the South Water Plant in accordance with the expired Permit No. 1IW00060\*AD except that the provisions in Table 1 of the permit that shall not apply. Hamilton shall continue to monitor and report the analysis of its lime slurry sludge and other wastewaters from the South Plant in accordance with NPDES Permit No. 1IW00060\*AD. Hamilton shall properly

operate and maintain its water plant and any associated equipment and structures during this period.

VIII. PRETREATMENT PROGRAM

15. Hamilton is ordered and enjoined to submit its annual inventory of priority pollutants, as required by its NPDES Permit No. 1PE00002\*ED and renewal or modification thereof, that comply with its approved pretreatment program as incorporated in such permit and the conditions set forth in Part (II)(R) of such permit.

IX. STIPULATED PENALTIES

16. Hamilton shall pay the following stipulated penalties:

(a) for failure to eliminate overflows under Paragraph 8 hereof during the period from the date for elimination of an overflow until termination as provided in Section XI below.

<u>OCCURRENCE AT PARTICULAR LOCATION</u>	<u>PENALTY PER VIOLATION PER DAY</u>
First and Second occurrence	\$ 250.00
Third and Fourth occurrence	500.00
Fifth through Eighth occurrence	750.00
Ninth occurrence and over	1000.00

For purposes of this paragraph, each occurrence is defined as one or more sanitary discharges in a twenty-four hour period or any single continuous discharge greater than twenty-four hours in duration.

(b) for failure to meet the date for completion of the approved Site Stabilization Plan.



<u>PERIOD OF FAILURE TO COMPLY</u>	<u>PENALTY PER VIOLATION PER DAY</u>
1st through 30th day	\$ 250.00
31st through 60th day	500.00
61st through 90th day	750.00
91st and over day	1000.00

(c) for failure to meet the date for completion of construction and cessation of unpermitted discharges at the South Water Plant set forth in Exhibit D.

<u>PERIOD OF FAILURE TO COMPLY</u>	<u>PENALTY PER VIOLATION PER DAY</u>
1st through 30th day	\$ 250.00
31st through 60th day	500.00
61st through 90th day	750.00
91st and over	1000.00

(d) For failure to comply with paragraph 15 hereof regarding submittal of the annual inventory of priority pollutants.

<u>PERIOD OF FAILURE TO COMPLY</u>	<u>PENALTY PER VIOLATION PER DAY</u>
1st through 30th day	\$ 250.00
31st through 60th day	\$ 500.00
61st through 90th day	\$ 750.00
91st and over	\$1000.00

17. Any payment required to be made under the provisions of Paragraph No. 16 of this Consent Order shall be made by

delivering to Plaintiff's counsel a certified check or checks for the appropriate amounts, within forty-five days from the date of the failure to meet the requirement of the Consent Order, made payable to "Treasurer, State of Ohio." Payments made pursuant to paragraphs 16(a), (c) and (d) shall be credited in the manner prescribed by R.C. 6111.09. Payments made pursuant to paragraph 16(b) shall be credited to the Hazardous Waste Clean-up Fund created in R.C. 3734.28.

X. CIVIL PENALTY AND COSTS

18. Hamilton is enjoined and ordered to pay a civil penalty in the amount of eighty thousand dollars (\$80,000.00) to the Plaintiff in the following manner and time frames. Within sixty days after the date of entry of this Consent Order, Hamilton is enjoined and ordered to pay a civil penalty in the amount of twelve-thousand dollars (\$12,000) to the Plaintiff by delivering to Plaintiff's counsel a certified check payable to the order of "State of Ohio", which payment shall be credited to the Hazardous Waste Clean-up Fund created in R.C. 3734.28. In addition, within sixty days after the date of entry of this Consent Order, Hamilton is enjoined and ordered to pay a civil penalty in the amount of thirteen thousand dollars (\$13,000.00) in the manner described in this paragraph, which payment shall be credited as prescribed in R.C. 6111.09.

19. Hamilton shall pay the following civil penalties in the manner prescribed above within the following time frames.

April 1, 1992	\$ 20,000.00
April 1, 1993	\$ 20,000.00
April 1, 1994	\$ 10,000.00
April 1, 1995	\$ 5,000.00

These payments shall be credited as prescribed in R.C. 6111.09.

20. Hamilton shall be responsible for paying court costs in this case assessed up to the entry of this Consent Order.

#### XI.. TERMINATION OF STIPULATED PENALTIES

21. The stipulated penalties set forth in Section IX, Paragraph 16(a) of this Consent Order shall terminate for each outfall set forth in Exhibit B if, for twelve consecutive months after the date for elimination of overflows at a particular outfall set forth in such Exhibit B, Hamilton has not discharged wastes or wastewater from such outfall and has paid all penalties due and owing required pursuant to this Order. Termination of these stipulated penalties shall be affected only (1) by order of the Court upon application by any party, and a determination by the Court that the conditions for termination set forth in this paragraph have been met; or (2) by order of the Court upon stipulation of the parties.

22. The stipulated penalties set forth in Section IX, Paragraph 16(d) of this Consent Order concerning the submittals of annual inventories of priority pollutants shall terminate if

Hamilton has achieved and maintained compliance with paragraph 17 for a period of three consecutive years and has paid all penalties due and owing required pursuant to this Consent Order. Termination of these stipulated penalties shall be affected only (1) by order of the Court, upon application by any party, and a determination by the Court that the conditions for termination set forth in this paragraph have been met; or (2) by order of the Court upon stipulation of the parties.

#### XII. MISCELLANEOUS

23. Unless this Consent Order expressly provides otherwise, Hamilton's duties and obligations under this Consent Order become effective upon the entry of this Consent Order in the civil docket of the Court of Common Pleas, Butler County, Ohio.

24. This Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Approval for any such construction or modification shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

25. On or before the first business day of each quarter until all milestones set forth herein have been achieved, Hamilton shall mail a written report to the Southwest District Office of Ohio EPA whether it has performed the actions

required by this Consent Order to be taken during the preceding quarter.

26. All reports and plans submitted to Plaintiff, pursuant to this Consent Order, shall be sent to and/or delivered to:

Ohio Environmental Protection Agency  
Southwest District Office  
40 South Main Street  
Dayton, Ohio 45402

or a designee otherwise specified in writing by the Director.

27. All written notices, requests, or verifications of Defendant pursuant to this Consent Order shall be sent to and/or delivered to:

City Manager  
City of Hamilton  
High & Monument Streets  
Hamilton, Ohio 45011

Copy to: Director of Law  
City of Hamilton  
High & Monument Streets  
Hamilton, Ohio 45011

or his/her designee as specified in writing.

28. Hamilton shall obtain all federal, state, or local permits necessary to comply with this Consent Order. Nothing herein shall affect Defendant's obligation to comply with all applicable federal, state, or local laws, regulations, rules or ordinances.

APPROVED AND SO ORDERED,

By: \_\_\_\_\_  
JUDGE, COURT OF COMMON PLEAS  
BUTLER COUNTY

STATE OF OHIO  
LEE FISHER  
ATTORNEY GENERAL OF OHIO

CITY OF HAMILTON

By: Dominic J. Hanket  
DOMINIC J. HANKET  
CHRISTOPHER KORLESKI  
Assistant Attorneys General  
Environmental Enforcement  
30 East Broad St., 25th Fl.  
Columbus, Ohio 43215  
Telephone: (614)466-2766

By: \_\_\_\_\_  
JAMES F. ALLEN  
Squire, Sanders & Dempsey  
41 South High Street  
Columbus, Ohio 43215

GARY L. SHEETS  
Director of Law  
City of Hamilton  
High & Monument Street  
Hamilton, Ohio 45011

1092E  
mp

EXHIBIT A

1. Hamilton is authorized to discharge from the following overflows and bypasses only during wet weather periods when the flow in the sewer system exceeds the capacity of the sewer system. See Item 2 below, for monitoring and reporting requirements.

<u>Station Number</u>	<u>Description</u>	<u>Receiving Water</u>
1PE00002 002	Overflow from MH16-47	Storm sewer to Great Miami River
1PE00002 008	Overflow from MH38-49	Hick's Creek
1PE00002 010	Overflow from MH72-25	Storm sewer to Great Miami River
1PE00002 011	Overflow from MH72-19	Storm sewer to Great Miami River
1PE00002 012	Overflow from MH72-43	Storm sewer to Great Miami River
1PE00002 013	Overflow from MH42-79	Storm sewer to Great Miami River
1PE00002 014	Overflow from MH63-13	Storm sewer to Two Mile Creek
1PE00002 021	Overflow from MH76-9	Storm sewer to Two Mile Creek
1PE00002 022	Overflow from MH76-6	Storm sewer to Two Mile Creek
1PE00002 027	Overflow from MH78-36	Two Mile Creek
1PE00002 029	Overflow from MH43-29	Storm sewer to Two Mile Creek
1PE00002 030	Overflow from MH43-1	Storm sewer to Great Miami River
1PE00002 036	Overflow from MH72-10	Storm sewer
1PE00002 037	Overflow from MH72-88	Storm sewer to Great Miami River

2. Hamilton shall monitor the system bypasses and overflows at Stations 1PE00002002 through 1PE00002037 and report to the Ohio EPA in accordance with the following table:

<u>CHARACTERISTIC Reporting</u>			<u>MONITORING REQUIREMENTS Measurement</u>	
<u>Code</u>	<u>Units</u>	<u>Parameter</u>	<u>Frequency</u>	<u>Sample Type</u>
80998	Number/Mo.	Occurrences	When discharging	Estimate
80999	Hours	Duration	When discharging	Daily Estimate
50050	MGD	Flow	When discharging	Daily Estimate

Monitoring data shall be submitted for each month when a discharge occurs. The monthly monitoring report shall be attached to the normal monthly report form (EPA-4500).

EXHIBIT B

OVERFLOW ELIMINATION SCHEDULE

<u>OUTFALL</u>	<u>DATE</u>
002	1/22/92
008	11/31/93
010	1/22/92
011	11/30/92
012	6/31/94
013	6/31/94
014	11/30/92
021	[The date of entry hereof]
022	1/22/92
027	6/31/94
029	6/31/94
030	[The date of entry hereof]
036	11/31/93
037	11/31/93





EXHIBIT D

HAMILTON, OHIO  
SOUTH WATER TREATMENT PLANT  
RESIDUAL LIME DECANT FACILITY

CONSTRUCTION SCHEDULE

Event

Date

Complete Construction

December 8, 1991

SUMMARY OF CONSENT ORDER

State of Ohio, ex rel. Lee Fisher, Attorney General of Ohio  
v. City of Hamilton!

Case No. 88-10-1450

Court of Common Pleas, Butler County, Ohio

This case was brought by the State of Ohio against the City of Hamilton on October 25, 1988 to address several environmental compliance issues involving the sludge landfill located adjacent to the Sewage Plant at 2451 River Road, Hamilton, Ohio, the sewage plant itself, the South Water Treatment Plant, located at 5140 East River Road, Fairfield, Ohio, and the Municipal Garage. Through a series of settlement negotiations, the State of Ohio and the City of Hamilton! have successfully resolved their disputes concerning these facilities and have settled the case through a Consent Order. Hamilton has not admitted liability, but has agreed to the terms of the Consent Order, which will be submitted to Judge Anthony Valen for approval. Under the Consent Order Hamilton will stabilize the sludge landfill, implement a plan to turn the landfill into a nature preserve, conduct sewer system improvements, submit to Ohio EPA on a yearly basis its annual inventory of priority pollutants as part of its pretreatment program, cease discharges of lime slurry or other wastewater from the South Water Plant to waters of the State without an NPDES permit by December 8, 1991, and pay a civil penalty to the State of Ohio in the amount of \$80,000, to be paid over a period of four years.

The Consent Order contains the following major components. With respect to the wastewater treatment plant, Hamilton is required to complete improvements to its sewer system pursuant to a construction schedule that will eliminate discharges from overflows in this system. Hamilton must complete final work on the sewer system by June 21, 1994.

Concerning remediation of the sludge landfill adjacent to the sewage treatment plant, Hamilton will implement a "Site Stabilization Plan." This Plan is composed of the following major items - the cleaning and grubbing of the landfill surface, the removal of sludges above certain elevations and placement of these sludges into existing pits below certain design excavation elevations, the grading of the overall surface of the landfill to an acceptable elevation, the construction of a two foot thick soil cover over the entire landfill surface, the establishment of a vegetative cover over the cap, the control of surface water runoff from the landfill, and the operation of a groundwater monitoring program to detect the effects on groundwater caused by the sludge landfill. The work on the landfill will proceed in segments with completion scheduled for February 23, 1995.

After the cap to the landfill is installed and vegetation established, Hamilton is required to monitor the landfill for a period of thirty years to insure that the surface water diversion and drainage system at the landfill is operating properly and that the integrity of the soil cap and vegetative cover is maintained. Hamilton is required, pursuant to the Order, to conduct groundwater monitoring of the stabilized landfill for a period of 10 years after the landfill is covered with soils and vegetated.

In the event the State of Ohio becomes aware of data or information about the sludge landfill indicating that additional remedies are appropriate under applicable law to protect ground or surface waters of the State, the Consent Order provides that the State may take the appropriate actions pursuant to such applicable law, including R.C. 6111 and 3734, to require Hamilton to perform additional work. In the Order, Hamilton has reserved its right to contest any such action.

As part of settlement of the case, Hamilton will be subject to stipulated penalties on a graduated scale set forth in the Consent Order should it fail to comply with the following specific requirements - successfully eliminating the overflows at a particular substation of the sewer system after the scheduled date for elimination, eliminating discharges from its South Water Plant by the required date, timely submitting its annual inventory of priority pollutants to Ohio EPA and meeting the date for completion of the approved Site Stabilization Plan. The Consent Order provides for the termination of these stipulated penalty provisions if compliance with the specific requirement of the decree is achieved for a certain period of time and all penalties due and owing are paid.

In addition to stabilizing the sludge landfill, pursuant to the Consent Order, Hamilton will place \$112,110 into a special account, which monies are earmarked to cover the costs of building the Riverside Natural Area Project. This project is intended to provide a park-like setting at the closed landfill, enhance the wildlife habitat and attract additional species. The project provides for establishment of prairie grasses on the former landfill area, the planting of various trees to enhance the diversity of vegetation and wildlife habitat, and the installation of various animal attraction devices such as perch poles and nesting boxes. Hamilton plans a parking area and various walking paths once the project is completed.