

DEC 23 1982

IN THE COURT OF COMMON PLEAS
RICHLAND COUNTY, OHIO

STATE OF OHIO, ex rel.)	
WILLIAM J. BROWN)	Case No. 79-179-C
ATTORNEY GENERAL OF OHIO,)	
)	JUDGE MAX K. CHILCOTE
Plaintiff,)	
)	
v.)	
)	
THE CITY OF MANSFIELD,)	<u>CONSENT JUDGMENT</u>
OHIO, et al.,)	
)	
Defendants.)	

The State of Ohio ex rel. William J. Brown, Attorney General ("plaintiff"), upon the request of the Ohio Environmental Protection Agency, filed the Complaint herein on April 26, 1979, alleging violations of the National Pollutant Discharge Elimination System ("NPDES") Permit No. E701*CD, issued to the City of Mansfield pursuant to the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., and Chapter 6111 of the Ohio Revised Code. Defendants named in the Complaint are the City of Mansfield and the Mayor and members of City Council of Mansfield in their official capacities ("defendants").

Plaintiff and defendants have determined that settlement of this matter is in the public interest and that the entry of this Consent Judgment without further litigation is the most appropriate means of resolving this matter.

NOW THEREFORE, without trial of any issues of fact or law and without any admission by defendants of the violations alleged in the Complaint, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I.

This Court has jurisdiction of the subject matter herein and of the plaintiff and defendants and the Complaint states a claim upon which relief could be granted.

II.

The provisions of this Consent Judgment shall apply to and be binding upon plaintiff and defendants, their successors and assigns, all present or successor officials, agents and employees of any party, and to all other persons including all governmental agencies, having notice of this Consent Judgment who are, or will be, acting in concert or privity with plaintiff or defendants or their respective officials, agents, employees and successors.

III.

The purposes of this Consent Judgment include: (i) to establish appropriate effluent limitations, both interim and final, governing the discharge of pollution into the waters of the State of Ohio by the City of Mansfield's public wastewater treatment works, (ii) to establish other appropriate conditions governing the operation of such public wastewater treatment works, including appropriate monitoring and reporting requirements, (iii) to identify and establish reasonable compliance schedules for the completion of steps to be taken by the City of Mansfield to improve said public wastewater treatment works in order to meet appropriate final effluent limitations, and (iv) to avoid the time, expense, and uncertainty of litigation in accomplishing the foregoing objectives. This Consent Judgment does not constitute, and shall not operate as an admission or inference of any fact or legal position by plaintiff or defendants, and they shall, in any subsequent litigation of issues not dealt with in this Consent Judgment or in any subsequent litigation upon termination or reopening of the provisions of this Consent Judgment, be in the same legal positions as they held prior to the entry of this Consent Judgment.

IV.

Defendants agree and are hereby enjoined to install and maintain additional water pollution treatment equipment at the

City of Mansfield's wastewater treatment facility in Mansfield, Ohio in order to meet final effluent limitations in accordance with the following compliance schedules which contain the shortest and most reasonable times within which final limits can be met given the availability of federal financial assistance and an adequate time for construction:

A. FLOW RELATED ITEMS

1. Receive approval of the flow-related facility plan by March 1, 1983.
2. Submit approvable flow-related detail plans and specifications to the Ohio EPA not later than September 15, 1984.
3. Submit approvable grant application for flow-related Step III Grant Application, as defined by CFR 35.2040 within two months after written notification from the Ohio EPA of the availability of federal funds for construction.
4. Receive award of Step III grant by December 15, 1984.
5. Advertise for and receive bids for construction of flow-related segment not later than March 1, 1985.
6. Award construction contracts and begin construction not later than June 15, 1985.
7. Notify appropriate Ohio EPA District Office within seven (7) days after beginning construction.
8. Complete construction of the treatment works or treatment works segment(s) not later than June 15, 1987 in order to attain operational level.
9. Attain operational level of constructed treatment works or treatment works segment(s) and comply with final effluent limitations not later than September 15, 1987, or such other date as amended by the implementation schedule of the approved facility plan, grant agreements, amended grant agreements, or special grant conditions.
10. Notify Ohio EPA District Office within seven (7) days after attaining operational level of the constructed treatment works or treatment works segment(s).

B. NON FLOW RELATED ITEMS

1. Submit approvable detail plans and specifications for non-flow related items to the Ohio EPA:
Completed
2. Submit an approvable Step III Grant Application as defined by 40 C.F.R. 35.920-3(c):
Completed
3. Advertise for and receive construction bids:
Completed

4. Award construction contracts:

Completed

5. Notify the appropriate Ohio EPA District Office within 7 days of the initiation of construction of the non-flow related segment.

Completed

6. Complete construction of the non-flow related segment(s) not later than September 30, 1984.

7. Notify the appropriate Ohio EPA District Office within 7 days of completion of construction of the non-flow related segment.

8. Attain operational level of the constructed non-flow related segment(s) not later than November 30, 1984.

9. Notify the appropriate Ohio EPA District Office within 7 days after attaining operational level of the constructed non-flow related treatment works segment(s).

For purposes of these compliance schedules, grant applications, plans and reports shall be considered approvable if submitted to the appropriate Ohio EPA District Office in a completed form and if the data set forth in the grant application, plan or report is such that approval would be fully consistent with all existing federal and state statutes and regulations.

V.

During the period beginning on the effective date of this Consent Judgment and lasting until the dates specified in paragraphs VI and VII below, defendants agree and are hereby enjoined to discharge only in accordance with the interim limitations and monitoring requirements from outfall E701001 set forth in Table I, below. See paragraph X-B for location of effluent sampling.

TABLE I

EFFLUENT CHARACTERISTIC			DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS	
CODE	REPORTING		Concentration		Loading		Measurement Frequency	Sample Type
	UNITS	PARAMETER	Other Units (Specify)		kg/day(lbs/day)			
			30 day	7 day	30 day	7 day		
50050	MGD	Flow	-	-	-	-	Daily	Continuous
00010	Deg. Cent.	Temperature	-	-	-	-	Daily	Grab
00530	mg/l	Suspended Solids	39	61	-	-	Daily	Composite
00310	mg/l	BOD ₅	28	42	-	-	Daily	Composite
31616	Count /100ml	Fecal Coliform (Summer only)	2000	4000	-	-	Daily	Grab
00610	mg/l	Ammonia (N) (Summer only)	16	20	-	-	Daily	Composite
00665	mg/l	Total Phosphorus	-	-	-	-	Daily	Composite
00550	mg/l	Oil & Grease	-	-	-	-	1/month	Grab
00070	J.U.	Maximum Turbidity	-	-	-	-	Daily	Composite
00335	mg/l	COD	-	-	-	-	Daily	Composite
00620	mg/l	Nitrate(N)	-	-	-	-	Daily	Composite
00615	mg/l	Nitrite(N)	-	-	-	-	Daily	Composite
00722	ug/l	Cyanide(free)	-	-	-	-	1/month	Composite
01027	ug/l	Cadmium	-	-	-	-	1/month	Composite
01034	ug/l	Chromium	-	-	-	-	1/month	Composite
01042	ug/l	Copper	-	-	-	-	1/month	Composite
01051	ug/l	Lead	-	-	-	-	1/month	Composite
71900	ug/l	Mercury	-	-	-	-	1/month	Composite
01067	ug/l	Nickel	-	-	-	-	1/month	Composite
01092	ug/l	Zinc	-	-	-	-	1/month	Composite

1. The pH (Reporting Code 00400) shall not be less than 6.5 S.U. nor greater than 9.0 S.U. and shall be monitored daily by grab sample.
2. The Chlorine Residual (Reporting Code 50060) shall be maintained at a level between 0.2 and 2.0 mg/l (Summer only) and shall be monitored daily by grab sample.
3. The Dissolved Oxygen (Reporting Code 00300) shall be monitored daily by grab sample.
4. See paragraph X, OTHER REQUIREMENTS.

VI.

Beginning on the date 135 days after the City of Mansfield's pretreatment ordinance requires compliance by Mansfield industries with effluent limitations established in such pretreatment ordinance, Defendants agree and are hereby enjoined to discharge in accordance with the final effluent limitations and monitoring requirements from outfall E701001 set forth in Table II below. Said pretreatment ordinance shall be enacted within thirty (30) days after entry of this Consent Judgment and shall contain industrial pretreatment effluent limitations consistent with levels derived from the formula set forth in "Industrial Waste Control in Los Angeles County," Journal of Water Pollution Control Federation (April 1978) and shall require compliance with final pretreatment effluent limitations by April 1, 1984.

TABLE II

EFFLUENT CHARACTERISTIC			DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS	
REPORTING			Concentration		Loading*		Measurement	Sample
CODE	UNITS	PARAMETER	Other Units (Specify)		kg/day(lbs/day)		Frequency	Type
00722	ug/l	Cyanide(free)	25	at	any	time	1/month	Composite
01027	ug/l	Cadmium	15	at	any	time	1/month	Composite
01034	ug/l	Chromium	101	at	any	time	1/month	Composite
01042	ug/l	Copper	61	at	any	time	1/month	Composite
01051	ug/l	Lead	37	at	any	time	1/month	Composite
71900	ug/l	Mercury	.2	at	any	time	1/month	Composite
01067	ug/l	Nickel	463	at	any	time	1/month	Composite
01092	ug/l	Zinc	202	at	any	time	1/month	Composite

1. See paragraph X, OTHER REQUIREMENTS.

2. During the term of this Consent Judgment, Defendants may move the Court to modify, inter alia, the effluent limitations contained in paragraph VI of this consent Judgment. Such motion shall propose to the Court a substitute effluent limitation. The Court shall modify this Consent Judgment to incorporate such substitute effluent limitation only upon a showing by Defendants that the substitute effluent limitation is consistent with all applicable state and federal statutes and regulations.

* The average effluent loading limitations are established using the following flow value: N/A.

VII.

Beginning on the date the improved wastewater treatment works are required to attain operational level as specified in paragraph IV above, Defendants agree and are hereby enjoined to discharge in accordance with the final effluent limitations and monitoring requirements from outfall E701001 set forth in Table III, below:

TABLE III

EFFLUENT CHARACTERISTIC			DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS		
CODE	REPORTING		Concentration		Loading *		Measurement Frequency	Sample Type	
	UNITS	PARAMETER	Other Units (Specify)		kg/day	(lbs/day)			
			30 day	7 day	30 day	7 day			
50050	MGD	Flow	-	-	-	-	Daily	Continuous	
00010	Deg. Cent.	Temperature	-	-	-	-	Daily	Max. Ind. Therm.	
00530	mg/l	Suspended Solids	(summer)	12	18	*	*	Daily	Composite
			(winter)	25	40	*	*	Daily	Composite
00310	mg/l	BOD ₅	(summer)	10	15	*	*	Daily	Composite
			(winter)	25	40	*	*	Daily	Composite
01616	Count /100 ml	Fecal Coliform (summer only)		2000	-	-	Daily	Grab	
00610	mg/l	Ammonia(N)	(summer)	2	4	*	*	Daily	Composite
			(winter)	15	20	*	*	Daily	Composite
00665	mg/l	Phos. Total	-	-	-	-	Daily	Composite	
00550	mg/l	Oil & Grease	5	at any time	-	-	1/month	Grab	
00335	mg/l	COD	-	-	-	-	Daily	Composite	
00620	mg/l	Nitrate(N)	-	-	-	-	Daily	Composite	
00615	mg/l	Nitrite(N)	-	-	-	-	Daily	Composite	

1. The pH (Reporting Code 00400) shall not be less than 6.5 S.U. nor greater than 9.0 S.U. and shall be monitored daily by grab sample.
 2. The Chlorine Residual (Reporting Code 50060) shall be maintained at a level not to exceed 0.5 mg/l and monitored daily by grab sample. (Summer Only).
 3. The Dissolved Oxygen (Reporting Code 00300) shall be maintained at a level not less than 6 mg/l and monitored daily by grab sample.
 4. See paragraph X, OTHER REQUIREMENTS.
- * See paragraph X-E.

VIII.

During the period beginning on the effective date of this Consent Judgment and lasting until the improved wastewater treatment works are required to attain operational level as specified in paragraph IV above, Defendants are authorized to discharge from the following overflows and bypasses only during periods when the flow in the sewer system exceeds the capacity of the sewer system.

<u>Station Number</u>	<u>Description</u>	<u>Receiving Stream</u>
E701002	Bypass after primary settling, preceding secondary treatment	Rocky Fork
E701003	Bypass after pre-aeration, preceding primary settling	Rocky Fork
E701004	Raw bypass at plant headworks	Rocky Fork
E701005	Bypass at Main Lift Station	Rocky Fork

Defendants agree and are hereby enjoined to monitor the system's bypasses and overflows at Stations E701002 through E701005 and report to the Ohio EPA in accordance with the following table:

<u>CHARACTERISTIC</u>		<u>MONITORING REQUIREMENTS</u>	
<u>REPORTING UNITS</u>	<u>PARAMETER</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
Number/Mo.	Occurrences	When discharging	Estimate
Hours	Duration	When discharging	Daily Estimate
Million Gallons	Volume	When discharging	Daily Estimate

Monitoring data shall be obtained for each month when a discharge occurs. The monthly monitoring report shall be attached to the normal monthly report form (EPA-SURV-1).

IX.

Defendants agree and are hereby enjoined to comply with the following additional monitoring and reporting requirements.

A. Influent Monitoring

Defendants shall monitor the treatment works' influent wastewater at Station Number E701601 and report to the Ohio EPA in accordance with the following table. Samples of influent used

for determination of net values or percent removal must be taken the same day as those samples of effluent used for that determination. See paragraph X-B for location of influent sampling.

<u>EFFLUENT CHARACTERISTIC</u>			<u>MONITORING REQUIREMENTS</u>	
<u>Code</u>	<u>REPORTING UNITS</u>	<u>PARAMETER</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
00530	mg/l	Suspended Solids	Daily	Composite
00310	mg/l	BOD ₅	Daily	Composite
00400	S.U.	pH	Daily	Grab
00010	Deg. Cent.	Temperature	Daily	Grab
00610	mg/l	Ammonia (N)	Daily	Composite

B. Upstream and Downstream Monitoring

Defendants shall monitor the receiving stream, upstream of the point of discharge at Station Number E701801, and downstream of the point of discharge at Station Number E701901, and report to the Ohio EPA in accordance with the following table. See paragraph X-B for locations of sampling.

<u>EFFLUENT CHARACTERISTIC</u>			<u>MONITORING REQUIREMENTS</u>	
<u>Code</u>	<u>REPORTING UNITS</u>	<u>PARAMETER</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
00400	S.U.	pH	1/week	Grab
00300	mg/l	Dissolved Oxygen	1/week	Grab
00310	mg/l	BOD ₅	1/week	Grab
00530	mg/l	Suspended Solids	1/week	Grab
31616	Count /100 ml	Fecal Coliform (summer only)	1/week	Grab
00610	mg/l	Ammonia (N)	1/week	Grab
50060	mg/l	Chlorine Residual (summer only)	1/week	Grab
00010	°C	Temperature	1/week	Grab

C. Sludge Monitoring

Defendants shall monitor the treatment works' final sludge at Station Number E701581 and report to the Ohio EPA in

accordance with the following table. See paragraph X-B for location of sludge sampling.

<u>EFFLUENT CHARACTERISTIC</u>			<u>**MONITORING REQUIREMENTS</u>	
<u>Code</u>	<u>REPORTING UNITS</u>	<u>PARAMETER</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
70316	Dry Tons	Sludge Weight	Daily	Grab*
70318	%	Percent Total Solids	Daily	Grab
70322	%	Percent Volatile Solids	Daily	Grab
01093	mg/kg	Zinc	1/month	Grab
01043	mg/kg	Copper	1/month	Grab
01068	mg/kg	Nickel	1/month	Grab
00400	S.U.	pH	Daily	Grab
01028	mg/kg	Cadmium	1/month	Grab
01029	mg/kg	Chromium	1/month	Grab
01052	mg/kg	Lead	1/month	Grab
71921	mg/kg	Mercury	1/month	Grab

*Calculated total for the day reported.
 **When disposed

X.

Defendants agree and are hereby enjoined to meet the following other requirements:

- A. The wastewater treatment works must be under supervision of a State certified operator as required by Rule 3745-7-02 of the Ohio Administrative Code (formerly OEPA Regulation EP-06-02/Ohio Sanitary Code Regulation HE-37-02) for a Class IV Operator.
- B. Description of the location of the required sampling stations are as follows:

<u>Sampling Station</u>	<u>Description of Location</u>
E701601	Influent just downstream of bar screen
E701001	Effluent channel downstream of final settling tank (Fecal Coliform and Chlorine samples are taken at outlet of effluent pipe)
E701801	Rocky Fork at Illinois Ave. bridge upstream of effluent discharge
E701901	Rocky Fork at State Route 39 bridge downstream of effluent discharge
E701581	Sludge to disposal

- C. In addition to the reporting required by the paragraph entitled "REPORTING" in Appendix A, General Conditions, monitoring results obtained during each month shall be summarized and reported on a Discharge Monitoring Report Form (EPA No. 3320-1 or T-40 as appropriate), to be received no later than the 15th of the next month. The original copy of the report form shall be signed and mailed to:

Ohio Environmental Protection Agency
Technical Records Section
Post Office Box 1049
Columbus, Ohio 43216

- D. All parameters, except flow, need not be monitored on days when the plant is not normally staffed (Saturdays, Sundays, and Holidays). On those days report "AN" on the monthly report forms. In any event, upon attaining operational level of the constructed non flow related segments(s) (step 8 of compliance schedule B in paragraph IV of this Consent Judgment), all parameters shall be monitored seven days each week or as required by the provisions of paragraphs V, VI, VII, VIII, and IX of this Consent Judgment.
- E. Flow and loadings shall be determined during facilities planning and/or the state continuous planning process.
- F. Composite samples shall be comprised of at least 3 grab samples proportionate in volume to the sewage flow rate at the time of sampling and collected at not less than 30 minute, nor more than 2 hour, intervals during the period that the plant is staffed on each day for sampling. Such samples shall be collected at such times and locations, and in such fashion, as to be representative of the facility's overall performance.
- G. Grab samples shall be collected at such times and locations, and in such fashion, as to be representative of the facility's performance.
- H. Defendants shall comply with the requirements under Section 201(b) and (c) of P.L. 95-217 to the extent not inconsistent with the other provisions of this Consent Judgment.
- I. Final permit limitations based on approved or preliminary waste load allocations may change when new waste load allocations are approved based on revised water quality standards.

XI.

Defendants agree and are hereby enjoined to comply with the requirements and definitions set forth in Appendix A attached to this Consent Judgment, General Conditions. When used in such General Conditions, the word "permit" shall mean this Consent Judgment, and the word "permittee" shall mean the Defendants.

The specific provisions of this Consent Judgment shall take precedence over any inconsistent provisions of such General Conditions.

XII.

If at any time during the effective period of this Consent Judgment, federal construction grant moneys are not available to the City of Mansfield for Step III work in improving the City's wastewater treatment facility, this Consent Judgment, except for the provisions set forth in Paragraph VI hereof, may be reopened and its requirements renegotiated, or if necessary, matters resolved by this Consent Judgment, except for the matters resolved by the provisions of Paragraph VI hereof, may be litigated as if this Consent Judgment had not been entered, provided, however, that if this Consent Judgment is reopened pursuant to this paragraph, compliance with all the terms of this Consent Judgment to the date of reopening, including any payment pursuant to paragraph XVII or paragraph XVIII of this Consent Judgment due prior to such reopening, which payments shall not be recovered, shall be a bar to an action for a civil penalty for violations occurring prior to such reopening of this Consent Judgment similar to those violations of the terms and conditions of NPDES Permit No. E701*CD charged in the Complaint.

NOTE: Without intending to affect in any way the rights or obligations of the parties to this Consent Judgment, the parties note that the City of Mansfield, the United States Environmental Protection Agency and the State of Ohio do not agree on the effect of failure to receive federal funds on Mansfield's obligations under the Clean Water Act or under Chapter 6111 of the Ohio Revised Code.

XIII.

In any proceeding to enforce compliance with the specific deadlines set forth in paragraph IV of this Consent Judgment, in addition to any other defenses under this Consent Judgment or

otherwise available to the City of Mansfield, the City of Mansfield shall be entitled to establish in mitigation of any liability thereunder (i) that any delay in compliance with such deadlines resulted from unreasonable action or inaction on the part of the Ohio EPA or the United States EPA in reviewing or approving a facility plan, a Step III grant application (or any necessary prerequisite to the approval thereof), or any construction contracts, but only to the extent that the City of Mansfield was unable with due diligence to minimize or offset such delay or (ii) that any failure to comply with such deadlines resulted from unavailability of construction grant moneys but only to the extent that the City of Mansfield could not reasonably foresee such unavailability and arrange alternative financing prior to the commencement of construction of such improvements.

XIV.

Except as provided in paragraph XII of this Consent Judgment, entry of this Consent Judgment shall bar any further actions arising out of any violation to date of Chapter 6111 of the Ohio Revised Code, the Clean Water Act, 33 U.S.C. §1251 et seq., or NPDES Permit No. E701*CD relating to the City of Mansfield's public wastewater treatment works. Moreover, compliance with all the terms of this Consent Judgment shall bar any further actions arising out of any such similar violations occurring during the effective period of this Consent Judgment to the extent that such similar violations do not also constitute violations of any provision of this Consent Judgment.

XV.

Upon the date the City of Mansfield's wastewater treatment facility attains operational level, defendants shall submit to the Ohio EPA additional data, if required, in support of Mansfield's presently pending application for a renewal of its NPDES Permit. Said application, together with the City of

Mansfield's Section 301(i) request, shall remain pending without action by Ohio EPA, during the effective period of this Consent Judgment. The requirements of paragraphs VI, VII, IX, X, and XI above shall remain in effect until defendants have obtained an effective NPDES Permit. This Consent Judgment shall terminate when the additional wastewater treatment equipment has been constructed, the City of Mansfield's wastewater treatment facility has attained operational level, and defendants have obtained an effective NPDES permit.

XVI.

A certified copy of this Consent Judgment shall be sent by the Clerk of Courts of Richland County via certified mail to:

United States Environmental Protection Agency
Region V
230 South Dearborn Street
Chicago, Illinois 60604

XVII.

Within thirty (30) days of the entry of this Consent Judgment, defendants shall forward to the Department of Rehabilitation and Correction a certified check drawn to the order of "Department of Rehabilitation and Correction, Property Receipts Rotary" in the amount of Forty Thousand Dollars (\$40,000.00). Payment of said sum in the manner above described shall be in lieu of payment of a civil penalty pursuant to Section 6111.09 of the Ohio Revised Code, and such payment shall be in full satisfaction of any and all liability of Defendants for the violations of the terms and conditions of NPDES Permit No. E701*CD charged in the Complaint and all similar violations of said Permit since the filing of the Complaint to the date of entry of this Consent Judgment. Said sum shall be used by the Department of Rehabilitation and Correction solely to assist in activities related to the abatement of air pollution at the Ohio State Reformatory (at Mansfield), including the planning, design,

purchase, construction or installation of new boilers or control equipment.

XVIII.

If defendants fail to perform any of the acts specified in Paragraph IV of this Consent Judgment, subparts A-2, A-9, B-1, B-2, and B-8, within the time frames specified therein, defendants shall pay, in lieu of a civil penalty pursuant to Section 6111.09 of the Ohio Revised Code, for each day that a failure to perform any of such acts occurs, the amount(s) prescribed as follows:

Days 1 through 10	\$100.00 per day
Days 11 through 20	\$200.00 per day
Days 21 through 30	\$700.00 per day
Days 31 and thereafter	\$1,000.00 per day

Such payments shall be made to plaintiff only upon the Court's issuance of a final judgment granting, after an evidentiary hearing to resolve contested issues of fact, if any, a motion by plaintiff in this action asserting that defendants have failed to comply in a timely manner with one or more of the above-specified provisions of Compliance Schedules A or B in Paragraph IV of this Consent Judgment. In mitigation of such liability, defendants may show that their failure to comply was caused by circumstances beyond the control of the City of Mansfield, its officials, employees, agents, consultants, and contractors, including without limitation strikes, lockouts, floods, fires, delays in delivery of materials or equipment, adverse weather conditions or acts of God. To the extent that such payments, including principal and interest charges on any indebtedness which may be incurred by the City to provide funds for such payments and which shall be regarded as being issued in satisfaction of a judgment based on a non-contractual obligation, are made from revenues of the City's sewerage system, they shall, as extraordinary expenditures on behalf of the system, properly be made from surplus revenues of the system remaining after all reasonable and proper expenses of operating and maintaining the system and debt

service costs incurred for replacements, extensions and improvements to the system have been paid; and sufficient rates for the services of the system shall be mandated and required to be charged to produce adequate surplus revenues for the purpose. Although plaintiff agrees to limit its recourse against sewer system revenues in the manner provided in the preceding sentence, plaintiff expressly preserves any and all other remedies available in law for the enforcement of any judgment rendered pursuant to this paragraph. Any payments made pursuant to this paragraph shall, if possible, be used by the State of Ohio for the improvement of the environmental quality of Mansfield, Ohio through securing compliance, or facilitating the attainment of compliance, with applicable environmental laws or regulations of this State or of the federal government, by State owned or operated facilities. However, to the extent that any moneys cannot be used for the above-stated purpose, such moneys shall be paid to the "Treasurer, State of Ohio" for deposit in the State's General Revenue Fund.

XIX.

This Court retains jurisdiction of this suit for the purpose of making any order or decree which it may deem at any time to be necessary to carry out this Consent Judgment.

XX.

Defendants shall pay the Court costs incurred to the date of entry of this Consent Judgment.

JUDGMENT ENTERED in accordance with the Consents of the parties this _____ day of _____, 1982.

Max K. Chilcote
MAX K. CHILCOTE, Judge
Court of Common Pleas

CONSENTED TO AND APPROVED:

For Plaintiff, State of Ohio

WILLIAM J. BROWN
ATTORNEY GENERAL OF OHIO

BY: *Steven J. Willey*
STEVEN J. WILLEY
Assistant Attorney General

and

OHIO ENVIRONMENTAL
PROTECTION AGENCY

BY: *Wayne S. Nichols*
WAYNE S. NICHOLS/
Director

For Defendants,
City of Mansfield, et al.

BY: *Vicki Jackson-Whitfield*
VICKI JACKSON WHITFIELD
Safety-Service Director
City of Mansfield

BY: *Reese Mills*
REESE MILLS
Law Director
City of Mansfield

BY: *Glenn M. Young*
GLENN M. YOUNG
JAMES F. ALLEN
Attorneys for Defendants

APPENDIX A

GENERAL CONDITIONS

1. DEFINITIONS

- A. 1. The "daily load limitation" is the total discharge by weight during any calendar day. If only one sample is taken during a day, the weight of pollutant discharge calculated from it is the daily load.
2. The "daily concentration limitation" means the arithmetic average (weighted by flow) of all the determinations of concentration made during the day. If only one sample is taken during the day its concentration is the daily concentration. Coliform bacteria limitations compliance shall be determined using the geometric mean.
3. The "7-day load limitation" is the total discharge by weight during any 7-day period divided by the number of days in that 7-day period that the facility was in operation. If only one sample is taken in a 7-day period the weight of pollutant discharge calculated from it is the 7-day load. If more than one sample is taken during the 7-day period the 7-day load is calculated by determining the daily load for each day sampled, totaling the daily loads for the 7-day period and dividing by the number of days sampled.
4. The "7-day concentration limitation" means the arithmetic average (weighted by flow) of all the determinations of daily concentration made during the 7-day period. If only one sample is taken during the 7-day period, its concentration is the 7-day concentration limitation for that 7-day period. Coliform bacteria limitations compliance shall be determined using the geometric mean.
5. The "30-day load limitation" is the total discharge by weight during any 30-day period divided by the number of days in the 30-day period that the facility was in operation. If only one sample is taken in a 30-day period the weight of pollutant discharge calculated from it is the 30-day load. If more than one sample is taken during one 30-day period the 30-day load is calculated by determining the daily load for each day sampled, totaling the daily loads for the 30-day period and dividing by the number of days sampled.
6. The "30-day concentration limitation" means the arithmetic average (weighted by flow) of all the determinations of daily concentration made during the 30-day period. If only one sample is taken during the 30-day period, its concentration is the 30-day concentration for that 30-day period. Coliform bacteria limitations compliance shall be determined using the geometric mean.
7. "Weighted by flow" means the summation of each sample concentration times its respective flow in convenient units divided by the summation of the respective flows.
- B. "85 percent removal limitation" means the arithmetic mean of the values for effluent samples collected in a period of 30 consecutive days shall not exceed 15 percent of the arithmetic mean of the values for influent samples collected at approximately the same time during the same period.
- C. 1. Absolute Limitations. Compliance with limitations having descriptions of "shall not be less than", "not greater than", "shall not exceed", "minimum", or "maximum", shall be determined from any single value for effluent samples and/or measurements collected.
2. "Net concentration" shall mean the difference between the concentration of a given substance in a sample taken of the discharge and the concentration of the same substance in a sample taken at the intake which supplies water to the given process. For the purposes of this definition samples that are taken to determine the net concentration shall always be 24-hour composite samples made up of at least six increments taken at regular intervals throughout the plant day.
3. "Net load" shall mean the difference between the load of a given substance as calculated from a sample taken of the discharge and the load of the same substance in a sample taken at the intake which supplies water to given process. For purposes of this definition samples that are taken to determine the net loading shall always be 24-hour composite samples made up of at least six increments taken at regular intervals throughout the plant day.
- D. 1. When Quarterly sampling frequency is specified, the sampling shall be done in the months of March, June, August and December.
2. When a Yearly sampling frequency is specified, the sampling shall be done in the month of September.
3. Winter shall be considered to be the period from November 1 thru April 30.
4. Summer shall be considered to be the period from May 1 thru October 31.
- E. 1. "Mpd" means million gallons per day
2. "mg/l" means milligrams per liter
3. "µg/l" means micrograms per liter
- F. "Reporting Code" is a five digit number used by the Ohio EPA in processing reported data. The reporting code does not imply the type of analysis used nor the sampling techniques employed.

2. GENERAL EFFLUENT LIMITATIONS

The effluent shall, at all times, be free of substances:

- A. In amounts that will settle to form putrescent, or otherwise objectionable, sludge deposits or that will adversely affect aquatic life or water fowl;
- B. Of an oily, greasy, or surface-active nature, and of other floating debris, in amounts that will form noticeable accumulations of scum, foam or sheen;
- C. In amounts that will alter the natural color or odor of the receiving water to such degree as to create a nuisance;
- D. In amounts that either singly or in combination with other substances that are toxic to human, animal, or aquatic life;

E. In amounts that are conducive to the growth of aquatic weeds or algae to the extent that such growths become inimical to more desirable forms of aquatic life, or create conditions that are unsightly, or constitute a nuisance in any other fashion;

F. In amounts that will impair designated instream or downstream water uses.

3. FACILITY OPERATION AND QUALITY CONTROL

All wastewater treatment works shall be operated in a manner consistent with the following:

A. At all times, the permittee shall maintain in good working order and operate as efficiently as possible all treatment or control facilities or systems installed or used by the permittee to achieve compliance with the terms and conditions of this permit.

B. The permittee shall effectively monitor the operation and efficiency of treatment and control facilities and the quantity and quality of the treated discharge.

C. Maintenance of wastewater treatment works that results in degradation of effluent quality shall be scheduled during non-critical water quality periods and shall be carried out in a manner approved by the Ohio EPA as specified in the Paragraph in this PART entitled, "UNAUTHORIZED DISCHARGES".

4. REPORTING

A. Monitoring data required by this permit shall be reported on the Ohio EPA report form (EPA-Sur-1) on a monthly basis. Individual reports for each sampling station for each month are to be received no later than the 15th day of the next month. The original plus first copy of the report form must be signed and mailed to:

Ohio Environmental Protection Agency
Technical Records Section
Post Office Box 1049
Columbus, Ohio 43216

B. If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified below, the results of such monitoring shall be included in the calculation and reporting of the values required in the reports specified above.

C. Analyses of pollutants not required by this permit, except as noted in the preceding paragraph, shall not be reported on Ohio EPA report form (EPA Sur-1) but records shall be retained as specified in the paragraph entitled "RECORDS RETENTION".

5. SAMPLING & ANALYTICAL METHODS

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored flow. Test procedures for the analysis of pollutants shall conform to regulation 40 CFR 136, "Test Procedures for The Analysis of Pollutants". The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals to insure accuracy of measurements.

6. RECORDING OF RESULTS

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

- A. The exact place, date, and time of sampling;
- B. The date and time the analysis was performed on those samples;
- C. The person(s) who performed the analyses;
- D. The analytical techniques or methods used; and
- E. The results of all analyses and measurements.

7. RECORDS RETENTION

The permittee shall retain all of the following records for the wastewater treatment works for a minimum of three years.

- A. All sampling and analytical records (including internal sampling data not reported);
- B. All original recordings for any continuous monitoring instrumentation;
- C. All instrumentation, calibration and maintenance records; and
- D. All plant operation and maintenance records.

These periods will be extended during the course of any unresolved litigation, or when so requested by the Regional Administrator or the Ohio EPA.

8. AVAILABILITY OF REPORTS

Except for data determined by the Ohio EPA to be entitled confidential status, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the appropriate District Offices of the Ohio EPA. Both Section 103, Public Law 92-500 and Section 5111.05 Ohio Revised Code state that effluent data and receiving water quality data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in the Ohio Revised Code Section 5111.99.

9. RIGHT OF ENTRY

The permittee shall allow authorized representatives of the Ohio EPA and US EPA upon the presentation of credentials:

1. To enter upon the permittee's premises where an effluent source is located or in which any records are required to be kept under the terms and conditions of this permit; and
2. At reasonable times to have access to and copy any records required to be kept under the terms and conditions of this permit; to inspect any monitoring equipment or monitoring method required in this permit; and to sample any discharge of pollutants.

10. UNAUTHORIZED DISCHARGES

A. Unless specifically authorized in Part VIII of this permit, deliberate by-passing or diverting of wastewater from the treatment works is prohibited except when necessary:

1. To prevent loss of life;
2. To prevent severe property damage;
3. To prevent damage to treatment works or processes; or
4. To allow essential maintenance to be performed according to a schedule approved in writing by the Ohio EPA District Office.

B. While typical unauthorized discharges are those resulting from pipeline breaks, equipment malfunctions or failures, operator errors, accidents, process interruptions, or power failures, all unauthorized discharges shall be reported according to the following procedure:

1. Report within one hour of discovery to Ohio EPA by calling (toll free) 1-800-257-9378.

2. For these telephone reports the following information must be included:

- a. the times at which the discharge occurred, and was discovered;
- b. the approximate amount and the characteristics of the discharge;
- c. the stream(s) affected by the discharge;
- d. the circumstances which created the discharge;
- e. the names and telephone numbers of the persons who have knowledge of these circumstances;
- f. what remedial steps are being taken;
- g. the names and telephone numbers of the persons responsible for such remedial steps.

3. These reports shall be confirmed in writing within seven days of the discharge and submitted to the appropriate Ohio EPA District Office and to the U.S. EPA Regional Administrator. This report should include the information required under "NONCOMPLIANCE NOTIFICATION".

11. NONCOMPLIANCE NOTIFICATION

A. Effluent Limitations

If the permittee is unable to meet any effluent limitations specified in this permit, the permittee shall submit a written report to the appropriate Ohio EPA District Office within seven days of becoming aware of the conditions. The report shall include the following:

1. The limitation(s) which has been violated;
2. The extent of the violation(s);
3. The cause of the violation(s);
4. The period of the violation(s) including exact dates and times;
5. If uncorrected, the anticipated time the violation(s) is expected to continue; and
6. Steps being taken to reduce, eliminate and/or prevent recurrence of the violation(s).

B. Compliance Schedule Events

If the permittee is unable to meet any date for achieving an event, as specified in the Schedule of Compliance, the permittee shall submit a written report to the appropriate District Office of the Ohio EPA within seven days of becoming aware of such situation. The report shall include the following:

1. The compliance event which has been or will be violated;
2. The cause of the violation;
3. The remedial action being taken;
4. The probable date by which compliance will occur; and
5. The probability of complying with subsequent and final events as scheduled.

12. POWER FAILURES

The failure of the primary source of power to a wastewater control facility will not be considered a justifiable basis for non-compliance with effluent limitations. The permittee is responsible for maintaining adequate safeguards to prevent the discharge of untreated or inadequately treated wastewater during electrical power failures either by means of alternate power sources, standby generators, retention of inadequately treated wastewater or reduced production. Should the treatment works not include the above capabilities at time of issuance of this permit, the provision for such necessary facilities is an integral part of the schedule of compliance. If a schedule of compliance is not included in this permit, a letter with a detailed schedule for providing necessary facilities shall be submitted within 180 days of the effective date of this permit. Such letter will be submitted to the appropriate Ohio EPA District Office.

13. ADVERSE IMPACT

In the event of either an unauthorized discharge or a violation of effluent limitations, the permittee shall take all reasonable steps to minimize any adverse impact on the waters of the State. This may include accelerated or additional monitoring to determine the extent of the impact of unauthorized discharge or the violation of limitations. If such additional monitoring is performed, the data collected shall be included in the written report submitted to the appropriate Ohio EPA District Office.

14. AUTHORIZED DISCHARGES

All discharges authorized herein shall be consistent with the terms and conditions of this permit. The discharge of any pollutant identified in this permit more frequently than, or at a level in excess of, that authorized by this permit shall constitute a violation of the terms and conditions of this permit. Such a violation may result in the imposition of civil and/or criminal penalties as provided for in Section 309 of the Act, and Ohio Revised Code Sections 6111.09 and 6111.99.

15. DISCHARGE CHANGES

The following changes must be reported to the appropriate Ohio EPA District Office as soon as practicable.

A. For publicly owned treatment works:

1. Any proposed plant modification, addition and/or expansion that will change the capacity or efficiency of the plant;
2. The addition of any new significant industrial discharge; and
3. Changes in the quantity or quality of the wastes from existing tributary industrial discharges which will result in significant new or increased discharges of pollutants.

B. For non-publicly owned treatment works, any proposed facility expansions, production increases, or process modifications, which will result in new, different, or increased discharges of pollutants.

Following this notice, modifications to the permit may be made to reflect any necessary changes in permit conditions, including any necessary effluent limitations for any pollutants not identified and limited herein. A determination will also be made as to whether a National Environmental Policy Act (NEPA) review will be required. Chapters 6111.44 and 6111.45, Ohio Revised Code, require that plans for treatment works or improvements to such works be approved by the Director of the Ohio EPA prior to initiation of construction.

16. TOXIC POLLUTANTS

If a toxic effluent standard or prohibition (including a schedule of compliance) is established under Section 307(a) of the Act for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition (including a schedule of compliance) is more stringent than any limitation upon such pollutant in this permit, the Director shall modify this permit in accordance with the toxic effluent standard and so notify the permittee.

17. PERMIT MODIFICATION, SUSPENSION, OR REVOCATION

A. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked, by the Ohio EPA, in whole or in part during its term for cause including, but not limited to, the following:

1. violation of any terms or conditions of this permit;
2. obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or
3. a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

B. Pursuant to Rule 3745-13-06, Ohio Administrative Code (Formerly Reg. 33-31-06) the permittee may at any time apply to the Ohio EPA for modification of any part of this permit. The application for modification should be received by the appropriate Ohio EPA District Office at least sixty days before the date on which it is desired that the modification become effective. The application shall be made only on forms approved by the Ohio EPA.

18. TRANSFER OF OWNERSHIP OR CONTROL

This permit cannot be transferred or assigned nor shall a new owner or successor be authorized to discharge from this facility, until the following requirements are met:

- A. The permittee shall notify the succeeding owner or successor of the existence of this permit by a letter, a copy of which shall be forwarded to the appropriate Ohio EPA District Office;
- B. The appropriate Ohio EPA District Office must be notified in writing sixty days prior to any proposed transfer of an Ohio NPDES permit. The new owner or successor shall submit a letter to the Ohio EPA requesting the permit be transferred and stating that he will assume the responsibility for this permit; and
- C. The new owner or successor receives written confirmation and approval of the transfer from the Director of the Ohio EPA.

19. OIL AND HAZARDOUS SUBSTANCE LIABILITY

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

20. SOLIDS DISPOSAL

Collected screenings, sludges, sludges, and other solids shall be disposed of in such a manner as to prevent entry of those wastes into waters of the State.

21. CONSTRUCTION AFFECTING NAVIGABLE WATERS

This permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any navigable waters.

22. CIVIL AND CRIMINAL LIABILITY

Except as exempted in the permit conditions on UNAUTHORIZED DISCHARGES and POLICE FAILURES, nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for non-compliance.

23. STATE LAWS AND REGULATIONS

Nothing in this permit shall be construed to preclude the institution of any legal action nor relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.

24. PROPERTY RIGHTS

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, state, or local laws or regulations.

25. SEVERABILITY

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.