

km Key

IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF OHIO
 WESTERN DIVISION

FILED
 KENNETH J. MURPHY
 CLERK
 89 DEC 13 AM 8:56

UNITED STATES OF AMERICA,)
)
 and)
)
 THE STATE OF OHIO, Plaintiffs,) CIVIL ACTION NO.
)
 v.) C-1-88-0623
)
 THE CITY OF MILFORD, OHIO) Judge Rubin
)
 Defendant.)

U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF OHIO
 WESTERN DIVISION

Judge	4810
Mag.	48AK
Journal	<input checked="" type="checkbox"/>
Motion #	
Issue	CMTC
Card	
W/S	893
Decketed	km

CONSENT ORDER

WHEREAS Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency, ("U.S. EPA"), filed the complaint herein on July 15, 1988, against Defendant, City of Milford, Ohio ("Milford" or "City"), alleging violations of the Clean Water Act ("the Act"), 33 U.S.C. §1251 et. seq., National Pollutant Discharge Elimination System ("NPDES") permit No. OH0020451 (State Permit No. IPC00005*CD) and Section 301(a) of the Act, 33 U.S.C. §1311(a);

WHEREAS the parties have agreed that settlement of this matter is in the public interest and that entry of this Order without a trial of any issue of fact or law in this case is the most appropriate means of resolving this matter;

WHEREAS on September 19, 1988, the United States District Court for the Southern District of Ohio granted Intervenor-Plaintiff status to the State of Ohio on behalf of the Ohio Environmental Protection Agency ("Ohio EPA");

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, and upon consent of the parties hereto, it is hereby ORDERED AND DECREED as follows:

I. DEFINITIONS

As used herein, the following terms shall have the meanings indicated:

A. "Milford," "City" or "Defendant" shall mean the municipality of the City of Milford, Ohio.

B. "Wastewater treatment plant," "WWTP," "treatment plant" and "plant" shall each be deemed to have reference to the facility owned by Milford which is located at Bay Road, Milford, Ohio, and which is used for the purpose of providing appropriate treatment to the wastewater of the City, prior to discharge into the East Fork of the Little Miami River.

C. "Summer only" shall mean the period of time between May 1 thru October 1 during any calendar year over the life of this Consent Order.

II. JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter of this action and of the parties pursuant to Section 309 of the Clean Water Act, 33 U.S.C. §1319 and 28 U.S.C. §§1331, 1345 and 1355. Venue lies in this District pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. §1319(b), and under 28 U.S.C. §§1391(b), 1393 and 1395(b). The Complaint in this action states a claim upon which relief can be granted pursuant to Section 309 of the Act, 33 U.S.C. §1319.

III. APPLICABILITY

The provisions of this Consent Order shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, contractors, successors and assigns and any person, firm or corporation having notice of this Consent Order who is, or will be acting in concert or participation with Defendant. Defendant shall provide a copy of this Consent Order to all officers and members of the Council of Milford and any successor, owner or operator of the Milford treatment plant prior to transfer of that ownership or operation interest. In the event the defendant proposes to sell or transfer real property or operations subject to this Order, the defendant shall advise such proposed purchaser or transferee of the existence of this Order and shall notify all parties to this Order of such proposed sale or transfer not later than thirty (30) days prior to transfer of ownership, operation or other interest. Milford shall condition the transfer of ownership, operation, other interest or any interest related to the performance of this Order upon the successful execution of the terms and conditions of this Order.

IV. OBJECTIVES OF THIS CONSENT ORDER

It is the express purpose of the parties in entering into this Consent Order to further the goals of the Act, specifically Sections 101 and 301 of the Act, 33 U.S.C. §§1251 and 1311. The specific objectives of this Consent Order include: compliance with the Clean Water Act and regulations promulgated thereunder, the proper operation and maintenance of the plant to ensure the

best interim effluent quality possible, and full and expeditious compliance with Milford's NPDES permit. It is also the objective of this Consent Order to resolve all claims raised by the United States and the State of Ohio in the Complaints and disputed by the City of Milford without further litigation.

V. AGREED FINDINGS OF FACT

A. Defendant, City of Milford, Ohio is a municipal corporation organized under the laws of the State of Ohio for the purpose of exercising those duties and prerogatives of local government and the administration of public affairs which have been or may be conferred upon it by the laws of the State of Ohio.

B. Milford owns and operates a wastewater treatment plant which is located at Bay Road, Milford, Clermont County, Ohio. Milford treats and discharges wastewater from the WWTP through a "point source" into the East Fork of the Little Miami River, which is a "navigable water" of the United States as those terms are defined in the Act.

C. On September 5, 1984, National Pollutant Discharge Elimination System ("NPDES") permit No. OH0020451 was issued to Milford by the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to Section 402 of the Clean Water Act, 33 U.S.C. Section 1342.

D. The NPDES permit authorizes Milford to discharge pollutants from the facility subject to certain effluent limitations which may not lawfully be exceeded. In part, the permit

establishes Final Effluent Limitations for Total Suspended Solids (TSS), Fecal Coliform bacteria (summer only), Ammonia ($\text{NH}_3\text{-N}$) (summer only), Biochemical Oxygen Demand (BOD_5), pH, and chlorine residual (Cl_2) (summer only).

E. On September 6, 1984, Director's Final Findings and Orders ("DFFO") were issued to Milford by the Ohio EPA pursuant to Section 6111.03(H) of the Ohio Revised Code.

F. The DFFO stated that Milford must meet the Final Effluent Limitations of the effective NPDES permit and eliminate discharge from outfalls 004, 005 and 006 no later than August 1, 1986. The DFFO also established interim limitations for TSS, BOD_5 , Fecal Coliform bacteria (summer only), pH and chlorine residual (summer only), and a construction schedule to make improvements needed to meet final effluent limitations.

G. On May 20, 1987, an Administrative Order ("AO") was issued by the U.S. EPA pursuant to Sections 308 and 309(a) of the Clean Water Act, 33 U.S.C. §1318 and 1319(a). The AO ordered Milford to submit a Municipal Compliance Plan, describing specifically when Milford would come into compliance with requirements set forth in its NPDES permit and Section 301(b) of the Act. Also, the AO ordered Milford to submit plans and specifications and an application for the construction of wastewater treatment plant improvements, with such construction to be completed no later than May 15, 1988. The AO required Milford to meet the interim effluent limits established in the DFFO during this construction.

H. On March 10, 1988, U.S. EPA spoke with Milford officials to discuss the interim and long range measures to be taken to bring the Milford WWTP into compliance with final permit requirements. Milford has initiated some immediate actions including the purchase of three (3) composite samplers for 24 hour flow monitoring/sampling, QA/QC training for one plant operator, the purchase of a water deionizer for the laboratory, the purchase of a sludge filter press, purchase of alum feed equipment to aid settling of solids, initiation of rehabilitation of the sludge drying beds, two of which have been completed, purchase of chlorination equipment and initiation of dechlorination.

VI. REMEDIAL ACTIONS

Milford shall undertake a program to attain and thereafter maintain compliance with its NPDES Permit and the Act and make all improvements to its WWTP as set forth below. All submittals required by the following schedule shall be of a standard and quality that is approvable by U.S. EPA and Ohio EPA.

A. Construction and Improvements at the WWTP

Milford shall design and construct all additions and improvements to its WWTP necessary to meet final effluent limitations according to the following schedule:

Compliance Activity

Compliance Date

Submit a revised Municipal Compliance Plan ("MCP") and comprehensive sludge management program to Ohio EPA for approval, sending a copy of the MCP

Completed

also to U.S. EPA (The MCP must be developed without regard to the availability of federal or State construction grant assistance and it must adequately address projected future wastewater flows and the elimination of any unauthorized discharges.);

Submit detailed Plans and Specifications for WWTP improvements necessary to meet final effluent limits and all other final NPDES permit requirements to Ohio EPA for approval;	Completed
--	-----------

Complete and submit to Ohio EPA and U.S. EPA details of the financing mechanism(s) to be employed in financing WWTP improvements, including projected user rates;	Completed
---	-----------

Advertise for bids on all construction described in the Ohio Permit to Install;	Completed
---	-----------

Commence construction of WWTP improvements in accordance with specifications of Ohio Permit to Install;	Completed
---	-----------

Complete construction and initiate start-up of the new facilities included in the Ohio Permit to Install;	April 15, 1990
---	----------------

Achieve and thereafter comply with effluent limits contained in NPDES permit OH0020451 or any renewal or modification thereof.	July 15, 1990
--	---------------

B. Interim Measures

Milford shall undertake the following interim measures at its WWTP, to ensure that the plant is operated as efficiently and as effectively as possible until the improvements required by Section VI.A. are made. All interim measures shall be implemented as expeditiously as possible, but no later than 30

days after entry of this Order, and shall be maintained until, at least, the new wastewater treatment and/or conveyance facilities are fully operational. Milford shall:

1. Continuously operate and maintain the WWTP under the direct supervision of the Class II operator certified by the Ohio EPA;
2. Maintain a staff including at least one supervisor and three operators (including the certified operator) to operate and maintain the WWTP and to collect, preserve, analyze, and record with the frequency stated in the NPDES permit, all sampling data;
3. Beginning with the month of entry of this Consent Order, submit monthly discharge monitoring reports to Ohio EPA and U.S. EPA no later than the 15th day of the month following the month for which the report is due;
4. ~~Prevent any construction related bypassing of wastewater flows unless such bypass is specifically authorized by Ohio EPA. Any bypass that does occur shall be fully consistent with the terms and conditions of Ohio EPA's authorization. Milford shall notify U.S. EPA in writing no later than five (5) days following the initiation of any such bypass, and report within 10 days of the bypassing on magnitude and duration.~~

C. Interim Effluent Limits and Monitoring Requirements

Milford WWTP shall at a minimum comply with the following interim effluent limits and monitoring requirements from the date of this Order until July 15, 1990:

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>		<u>MONITORING REQUIREMENTS</u>	
<u>CODE</u>	<u>REPORTING</u>		<u>Concentration</u>		<u>Meas. Freq.</u>	<u>Sample Type</u>
	<u>UNITS</u>	<u>PARAMETER</u>	<u>Other Units (Specify)</u>	<u>30 day</u>		
50050	MGD	Flow	--	--	Daily	Continuous
00010	C	Temperature	--	--	Daily	Max. Ind. Therm.
00530	mg/l	Suspended Solids	78	117	2/Week	Composite
31616	Count /100ml	Fecal Coliform (Summer Only)	1000	2000	2/Week	Grab
00610	mg/l	Ammonia (N)	--	--	2/Week	Composite
00550	mg/l	Oil & Grease	--	--	1/Qtr.	Grab
80082	mg/l	CBOD ₅	69	104	2/Week	Composite
01027	mg/l	Cadmium	--	--	1/Qtr.	Composite
01034	ug/l	Chromium	--	--	1/Qtr.	Composite
01042	ug/l	Copper	--	--	1/Qtr.	Composite
01051	ug/l	Lead	--	--	1/Qtr.	Composite
71900	ug/l	Mercury	--	--	1/Qtr.	Composite
01067	ug/l	Nickel	--	--	1/Qtr.	Composite
01092	ug/l	Zinc	--	--	1/Qtr.	Composite

- A. The pH shall not be less than 6.5 S.U. nor greater than 9.0 S.U. and shall be monitored at least three times per day by grab sample. The average, minimum, and maximum values shall be reported.
- B. The Chlorine Residual shall be maintained at a level not to exceed 0.5 mg/l and shall be monitored at least three times per day by grab sample. The highest value shall be reported. (Summer Only)
- C. The Dissolved Oxygen shall be monitored at least three times per day by grab sample. The lowest value shall be reported.
- D. For purposes of the interim effluent limitations contained in this Consent Order, The CBOD₅ discharge limitation contained herein incorporates, and shall be monitored in lieu of, the BOD₅ discharge limitation contained in Milford's existing NPDES permit.

D. Final Effluent Limits and Monitoring Requirements

Milford shall comply with the effluent limits and monitoring requirements at its WWTP as set forth in its applicable NPDES permit No. OH0020451 or any renewal or modification thereof as expeditiously as possible but no later than, July 15, 1990, and continuously thereafter. After completion of the additions and improvements to the WWTP required by Section VI.A, Milford shall maintain accepted operating practices as defined in the approved MCP.

VII. COMPLIANCE NOT DEPENDENT ON GRANTS

Performance of the terms of this Consent Order by Milford is not conditioned on the receipt of any Federal or State grant funds. In addition, Milford's performance is not excused by the failure to obtain or shortfall of any Federal or State grant funds, or by the processing of any applications for the same.

VIII. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

Except as provided in Section VI.C Remedial Measures, which authorizes Milford to discharge in accordance with the interim limitations contained therein, compliance with the terms of this Consent Order does not affect Milford's obligation to comply with other applicable requirements of the Clean Water Act and regulations promulgated thereunder or other applicable requirements of Federal, State or local law, which are not the subject of this Consent Order.

IX. REPORTING

A. Beginning with the calendar quarter ending December 31, 1989, and for every calendar quarter thereafter, the City shall submit to U.S. EPA and Ohio EPA a written report detailing the status and progress of projects required under this Consent Order. Such report shall also include the results of sampling and monitoring conducted during the quarter, a statement indicating the City's compliance or noncompliance with the applicable requirements of this Consent Order, including construction requirements and effluent limitations, and an explanation for any noncompliance. In addition, such reports ~~shall include a projection of the work to be performed pursuant~~ to this Consent Order during the following twelve month period and a thorough discussion of any factors that might cause non-compliance with the terms of this Consent Order. This discussion should also include plans for the elimination or minimization of such factors.

B. Milford shall submit the quarterly reports within fifteen (15) days immediately following the last month of each calendar quarter. All reports shall be available for inspection by any person at Milford's wastewater treatment facility.

C. In addition, within fifteen (15) calendar days after any compliance deadline contained in this Consent Order, Milford shall notify both U.S. EPA Region V and OEPA in writing of compliance or noncompliance with said requirement, the reasons

for any noncompliance, and a plan for preventing such noncompliance in the future.

D. Milford shall submit to Ohio EPA and U.S. EPA on or before the fifteenth day of each month, a Monthly Operation Report containing analytical test results obtained during the previous month's monitoring period. The Monthly Operation Report shall be submitted in the form required by Ohio EPA and the NPDES Permit. The report shall pertain to all discharges from Milford's WWTP, as required by the NPDES permit.

E. Notification to U.S. EPA pursuant to this Section of any anticipation of delay shall not, but itself, excuse the delay.

X. FULL SETTLEMENT

Compliance with this Consent Order shall satisfy all civil liability of the defendant for the violations alleged in the Ohio and Federal Complaints. Terms of settlement embodied in this Order are limited to the claims set forth in the Complaints, and except as provided specifically herein in Section VI.C, which authorizes Milford to discharge in accordance with the interim limits contained therein, do not affect Milford's liability for compliance with other aspects of the permit and applicable laws.

XI. INSPECTIONS AND RIGHT OF ENTRY

Until termination of this Consent Order, U.S. EPA or its authorized representatives, contractors, and consultants, and attorneys for the United States shall have the authority to enter

Milford's WWTP, upon proper presentation of credentials to the manager or managers of the facility or, in the manager's absence, to the highest ranking employee present on the premises, for the purposes of:

1. monitoring the progress of activities required by this Order;
2. verifying any data or information submitted to U.S. EPA or OEPA in accordance with the terms of the Order;
3. obtaining samples, and, upon request, splits of any samples taken by Milford or its consultants; and
4. assessing Milford's compliance with this Order.

~~The authority granted under this paragraph is in addition to U.S. EPA's right of entry and inspection under Section 308 of the Act, 33 U.S.C. § 1318.~~

XII. FORM OF NOTICE

Except as specified otherwise, when written notification to or communication with the United States, EPA Region V, Defendant, or the State is required by the terms of this Consent Order, it shall be addressed as follows:

As to the United States:

Chief, Environmental Enforcement Section
Land and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Ben Franklin Station
Washington, D.C. 20044
Reference Case No. 90-5-1-1-3180

As to EPA Region V:

Byron Jones
Water Quality Branch
Compliance Section
Water Division
U.S. Environmental Protection
Agency, Region V
230 South Dearborn Street
Chicago, Illinois 60604

and

Deborah D. Djeu
Assistant Regional Counsel
U.S. Environmental Protection
Agency, Region V
230 South Dearborn Street
Chicago, Illinois 60604

As to the State:

Section Manager - Enforcement and Compliance Section, DWPC
1800 Watermark Drive
Columbus, Ohio 43215

and

Ohio EPA
Southwest District Office
40 South Main Street
Dayton, Ohio 45402

As to Defendant:

David L. Spinney
City Manager
29 High Street
Milford, Ohio 45150

and

Michael Minniear
Law Director
626 Main Street
Milford, Ohio 45150

Notifications to or communications with U.S. EPA, Ohio or
the Ohio EPA or the United States shall be deemed submitted on

the date they are postmarked or sent by certified mail, return receipt requested.

XIII. STIPULATED PENALTIES

Milford shall pay stipulated penalties for violation of this Consent Order as follows:

A. If Milford fails to complete any construction required under Section VI.A. of this Consent Order by the dates specified therein, then Milford shall be liable to pay stipulated penalties as follows:

- (1) \$200 per day, for the first 60 days;
- (2) \$400 per day, for days 61 through 90;
- (3) \$800 per day, for days 91 through 120;
- (4) \$1000 per day for each day of violation beyond the 120th day.

B. If Milford violates any interim effluent limit specified in Section VI.C. of this Consent Order, Milford shall be liable to pay stipulated penalties as follows:

- (1) \$200 per day per parameter for the first 60 days in which the limit for that parameter is violated;
- (2) \$400 per day per parameter for days 61 through 90 in which the limit for that parameter is violated;
- (3) \$800 per day per parameter for days 91 through 120 in which the limit for that parameter is violated; and
- (4) \$1000 per day per parameter for each day of violation beyond the 120th day in which the limit for that parameter is violated.

C. If Milford fails to achieve and maintain any final effluent limit by the date specified in Section VI.D., then Milford shall be liable to pay stipulated penalties as follows:

- (1) \$500 per day per parameter for the first 60 days in which the limit for that parameter is violated;
- (2) \$1,000 per day per parameter for days 61 through 90 in which the limit for that parameter is violated;
- (3) \$2,000 per day per parameter for days 91 through 120 in which the limit for that parameter is violated; and,
- (4) \$5,000 per day per parameter for each day of violation beyond the 120th day in which the limit for that parameter is violated.

D. The City shall pay a stipulated penalty of \$150 per day for each violation of any reporting requirement or any other requirement in this Consent Order not covered in paragraphs A, B or C.

E. For purposes of paragraphs B, C and D, each violation of a weekly (7 day) interim or final effluent limitation shall be deemed to be seven days of violation, and each violation of a monthly (30 day) interim or final effluent limitation shall be deemed to be a violation for each day of that month.

F. The City shall pay all stipulated penalties due hereunder by cashier's or certified check made payable to the "Treasurer, United States of America," and delivered to United States Environmental Protection Agency, P.O. Box 70753, Chicago, Illinois 60673 within 30 days of the date of the violation. Also, the City shall include a letter with the payment describing the nature of the violations for which payment is tendered.

G. The stipulated penalties set forth above shall be in addition to, and shall not preclude use of, any other remedies or sanctions available to U.S. EPA by reason of Milford's failure to comply with any requirements of this Consent Order or any applicable law. The United States agrees not to seek both stipulated penalties, as provided for in this Order, and civil penalties, as authorized under the Clean Water Act, for the same violation of this Consent Order. The State of Ohio agrees not to seek both stipulated penalties, as provided for in this Order, and civil penalties, as authorized under the Ohio Revised Code, Sections 6111 et seq., for the same violation of this Consent Order.

XIV. CIVIL PENALTY

The City shall pay the United States, within thirty (30) days after the entry of this Consent Order, a civil penalty of \$63,000. Payment shall be made by cashier's or certified check, payable to the Treasurer of the United States of America, and shall be tendered to the United States Environmental Protection Agency, P.O. Box 70753, Chicago, Illinois 60673. A copy of the check shall be sent to U.S. EPA, Office of Regional Counsel, Attention: Branch Secretary, Air, Water, Toxics and General Law Branch, 230 South Dearborn Street, Chicago, Illinois 60604, and to the U.S. Department of Justice. Such payment shall constitute a civil penalty pursuant to 33 U.S.C. §1319(d).

The City shall pay the State of Ohio, within thirty (30) days after entry of this Consent Order a civil penalty of \$7000. Payment shall be made by certified check, payable to the Treasurer of the State of Ohio, and sent to Margaret A. Malone, Assistant Attorney General, State of Ohio, Office of Attorney General, 30 East Broad Street, Columbus, Ohio 43266-0410.

XV. DELAYS OR IMPEDIMENTS TO PERFORMANCE
(Force Majeure)

1. If any event occurs which causes or may cause Milford to violate any provision of this Consent Order, the City shall notify in writing the Court and all parties within seven calendar ~~days of when Milford first knew of the event or should have known~~ of the event by the exercise of due diligence. In this notice, the City shall specifically reference this section of the Order and describe in detail the anticipated length of the time the violation may persist, the precise cause or causes of the violation, and the exact measures taken or to be taken by the City to prevent or minimize the violation and any future violations. Milford shall adopt all measures necessary to avoid and minimize such violations.

2. Failure by Milford to fully and timely comply with the notice requirements of this section as specified above shall render this section void and of no effect as to the particular event involved, and shall constitute a waiver of Milford's right to obtain an extension of time for its obligation under this section based on such event.

3. If U.S. EPA Region V agrees that the violation has been or will be caused entirely by circumstances beyond the control of the City or any entity controlled by the City, including its contractors, and that Milford could not have foreseen and prevented such violation by the exercise of due diligence, the United States shall stipulate to an extension of the particular compliance requirements affected by the delay, by a period not exceeding the delay actually caused by such circumstances. Such a stipulation shall be filed as a modification to this Consent Order pursuant to the modification procedures established in this Order. The City shall not be liable for stipulated penalties for the period of such delay.

4. If U.S. EPA does not agree with the City's claim of a delay or impediment to performance, the City may submit the matter to an appropriate Court for resolution. If the City submits the matter to a Court for resolution and a Court determines that the violation has been or will be caused entirely by circumstances beyond the control of the City or any entity controlled by the City, including its contractors, and that Milford could not have foreseen and prevented such violation by the exercise of due diligence, Milford shall be excused as to that violation, but only for the period of time the violation continues due to such circumstances.

5. Milford shall bear the burden of proving that any delay or violation of any requirement of this Consent Order was caused or will be caused entirely by circumstances beyond the control of

the City or any entity controlled by the City, including its contractors, and that Milford could not have foreseen and prevent such violation by the exercise of due diligence. Also, Milford shall bear the burden of proving the duration and extent of any delay attributable to such circumstances. An extension of one compliance date based on a particular event does not necessarily result in an extension of a subsequent compliance date or dates. The City must make an individual showing of proof regarding each delayed incremental step or other requirement for which an extension is sought.

6. Unanticipated or increased costs or expenses associated with the implementation of this Order or changed financial circumstances shall not in any event, serve as a basis for changes in this Order or extension of time under this Order.

7. In any action by the State of Ohio to enforce any of the provisions of this Consent Decree, Milford may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons beyond its control such as, by way of example and not limitation, acts of God, acts of war, or civil disturbances. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed upon by Milford and the State of Ohio that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an enforcement action, if any, is commenced by Ohio. Failure by Milford to comply with the notice

requirement contained in Paragraph 1 shall render this Paragraph void and of no force and effect as to the particular incident involved and shall constitute a waiver of Milford's right to request an extension of its obligations under this Consent Decree based on such incident. Acceptance of this Consent Decree without a force majeure clause as to the State of Ohio does not constitute a waiver by Milford of any rights or defenses it may have under applicable law.

XVI. NOT A PERMIT

This Consent Order is not and shall not be interpreted to be a permit, or a modification or renewal of any existing permit issued pursuant to Section 402 of the Act. Except as specifically provided herein in Section VIC regarding interim limits, which authorizes Milford to discharge in accordance with the interim limitations set forth therein, nothing in this Consent Order shall in any way relieve the City of its obligation to obtain and comply with the requirements of an NPDES permit for the Plant or with any other Federal or State law or regulation. The City shall comply with any new permits or modification of existing permits in accordance with applicable Federal and State laws and regulations.

XVII. FAILURE OF COMPLIANCE

A. The Plaintiffs do not, by their consent to the entry of this Consent Order, warrant, or aver in any manner that the

City's compliance with this Consent Order will result in compliance with the provisions of the Act or the NPDES permit. Notwithstanding U.S. EPA's or Ohio EPA's review and approval of any plans, the City shall remain solely responsible for compliance with the Act and its NPDES permit.

B. The Plaintiffs do not waive any rights or remedies available to them for any violation by the City of Federal or State laws, regulations, or permit conditions following completion of the requirements of this Consent Order.

XVIII. NON-WAIVER PROVISIONS

Except as specifically provided for in Section VIC herein, ~~which authorizes Milford to discharge in accordance with the~~ Interim limitations contained therein, this Consent Order in no way limits the responsibility of the City to comply with any Federal, State or local law or regulation or permit. Except for those claims by the United States and the State resolved herein, compliance with this Consent Order shall be no defense to any action commenced pursuant to said laws, regulations or permits.

Nothing contained in this Consent Order shall be construed to prevent or limit the United States' or the State of Ohio's rights to obtain penalties or injunctive relief under the Act or other Federal or State statutes or regulations except as expressly specified herein. Except as otherwise provided herein, nothing in this Order shall preclude the City of Milford from exercising any rights it may have under applicable law to seek

review of any action by the United States or the State of Ohio under this Consent Order.

This Consent Order does not limit or affect the rights of the City or of the United States or of the State of Ohio as against any third parties, nor the rights of third parties, not parties to this Consent Order, against the defendants.

XIX. COSTS OF SUIT

Each party shall bear its own costs and attorney's fees in this action.

XX. CONTINGENT LIABILITY OF STATE OF OHIO

This Order does not affect the contingent liability of the State of Ohio under Section 309(e) of the Act, 33 U.S.C. § 1319(c). The United States specifically reserves its claims against the State, and the State reserves its defenses.

XXI. PUBLIC COMMENT

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

XXII. MODIFICATIONS

No requirement or provision of this Consent Order shall be modified for any reason except upon written order of this Court, entered after notice to the parties and an opportunity for the

parties to be heard. No provision of this Consent Order shall be modified orally or altered in any way by the performance or conduct of the parties.

XXIV. TERMINATION

This Order shall terminate when Milford has paid all penalties due, has completed all remedial measures specified herein, and EPA has determined that Milford has achieved compliance with its NPDES permit and the requirements of this Order for a period of twelve (12) consecutive months as indicated by letter to the Court from the United States.

For Plaintiff - UNITED STATES OF AMERICA:

Richard B. Stewart

~~DONALD A. CARR~~ *Richard B. Stewart*
 Acting Assistant Attorney General
 Land and Natural Resources
 Division
 U.S. Department of Justice
 10th & Pennsylvania Avenue
 Washington, D.C. 20430

Michael J. McNulty

MICHAEL J. McNULTY
 Attorney
 Environmental Enforcement Section
 Land and Natural Resources
 Division
 U.S. Department of Justice
 10th & Pennsylvania Avenue
 Washington, D.C. 20430

D. Michael Crites by D. W. W. W.
 D. MICHAEL CRITES
 United States Attorney
 Southern District of Ohio
 O AUSA

RE: U.S. vs. City of Milford, OH

Southern District of Ohio

By: Gerald F. Kaminski *Gerald F. Kaminski*
GERALD F. KAMINSKI
Assistant United States
Attorney
220 USPO & Courthouse Bldg.
5th & Walnut Street
Cincinnati, Ohio 45202

Edward E. Reich
EDWARD E. REICH, Acting
Assistant Administrator
Office of Enforcement and Compliance
Monitoring
U.S. Environmental Protection Agency

Valdas V. Adamkus *Frank M. Covington*
for VALDAS V. ADAMKUS
Regional Administrator
U.S. Environmental Protection
Agency, Region V

For Plaintiff-Intervenor - THE STATE OF OHIO

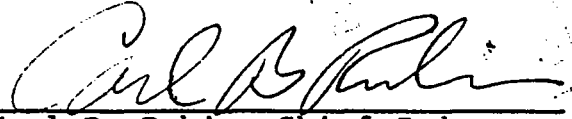
ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO

By: Margaret A. Malone
MARGARET A. MALONE
CHRISTOPHER KORLESKI
Assistant Attorneys General
Environmental Enforcement
Section
30 East Broad Street,
25th Floor
Columbus, Ohio 43266-0410

For Defendant - CITY OF MILFORD, OHIO

By: David L. Spinney
DAVID L. SPINNEY
City Manager
29 High Street
Milford, Ohio 45150

Consent Order entered in accordance with the foregoing
this ____ day of _____, 1989.



**Carl B. Rubin, Chief Judge
United States District Court
for the Southern District
of Ohio**