

RECEIVED
DISTRICT COURT
AKRON, OHIO

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JUL 14 1987

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE CITY OF ORRVILLE,
A MUNICIPAL CORPORATION,
and THE STATE OF OHIO,

Defendants.

CIVIL ACTION NO. C87-1079A

JUDGE BELL

CONSENT JUDGMENT

1987 JUL 14 PM 1:45
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
AKRON

FILED

WHEREAS, Plaintiff, United States of America, on behalf of the United States Environmental Protection Agency ("U.S. EPA"), filed the complaint herein on May 1, 1987, alleging that the Defendant City of Orrville ("the City") had violated the Clean Water Act, 33 U.S.C. §1251, et seq., ("the Act") and the terms and conditions of National Pollutant Discharge Elimination System ("NPDES") Permit No. 3PD00017*DD;

WHEREAS, Defendant, the City of Orrville, Ohio, owns and operates a wastewater treatment facility at Orrville, Ohio ("the plant") which is alleged by Plaintiff to be in violation of Section 301 of the Act, 33 U.S.C. §1311, and the aforesaid NPDES permit;

WHEREAS, Plaintiff issued an administrative order pursuant to Section 309 of the Act, 33 U.S.C. §1319, to the City on September 30, 1985, and alleges that the Defendant has failed to comply with the terms of this administrative order;

WHEREAS, the State of Ohio is a Party hereto pursuant to Section 309(e) of the Act, 33 U.S.C. §1319(e);

WHEREAS, the Parties, having consented to the entry of this consent judgment;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, and without adjudication of any issue of fact or law herein, or admission by Defendants of any fact, violation or liability, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION

The Court has jurisdiction over the Parties and the subject matter of this action under 28 U.S.C. §§1331, 1345 and 1355, and Section 309 of the Act, 33 U.S.C. §1319. The complaint states a claim against the City upon which the Court can grant relief.

II. APPLICABILITY

This consent judgment shall apply to and be binding upon the parties to this action, and the successors and assigns of each, as well as any agencies, officers, directors, agents and servants thereof. The State of Ohio does not agree to the terms of Section X of this consent judgment, and does not consent to be bound thereby. This consent judgment is entered in full and final settlement of this action.

III. OBJECTIVES OF THIS CONSENT JUDGMENT

The objectives of this consent judgment include compliance with the Act and regulations promulgated thereunder; construction of improvements to achieve compliance with the final effluent limitations contained in the NPDES permit (as that term is defined in Section IV), in accordance with the schedule below; and the continued proper operation and maintenance of the plant to ensure compliance with the interim and final effluent limitations set forth in the NPDES Permit, attached as Exhibit 1.

IV. DEFINITIONS

For purposes of the consent judgment, the following definitions shall apply:

Effluent - means the aqueous discharge from the Orrville wastewater treatment plant.

Effluent limitation or discharge limitation - means any interim or final restriction imposed on quantities, discharge rates, and/or concentrations of specified pollutant characteristics contained in the aqueous discharge from the Orrville wastewater treatment plant.

Eliminate or elimination - when used in the context of sewer overflows and bypasses, means
(i) the sealing or removal of the overflow itself,
or
(ii) the cessation of use of an overflow structure through flow enhancement or proper flow management.

NPDES permit - means National Pollutant Discharge Elimination System (NPDES) Permit No. 3PD00017. The City is presently subject to an NPDES permit (3PD00017*ED) issued by The State of Ohio, and effective until February 1, 1989. The presently-effective NPDES permit is attached hereto as Exhibit 1. The parties agree that the City may seek a variance from or modification to the NPDES permit at any time, in accordance with state

procedures. The parties intend for the term "NPDES permit" to mean the permit in effect at the time in question.

Complete or completion - when referring to construction of the plant, means that stage of construction where all treatment processes are operational.

V. REMEDIAL MEASURES AND COMPLIANCE SCHEDULE

Consistent with the objectives of this consent judgment, the Act, and the NPDES permit, the City shall construct the facilities approved by the Ohio Environmental Protection Agency's ("Ohio EPA") permit to install dated March 10, 1987 (attached hereto as Exhibit 2), and achieve compliance with the final effluent limits in the NPDES permit in accordance with the following schedules:

A. Plant Improvements Implementation Schedule

1. The City accepted bids on May 8, 1987.
2. By August 21, 1987, the City shall award bids.
3. By September 7, 1987, the City shall commence construction of plant improvements.
4. By March 31, 1988, the City shall complete construction of the equalization basins.
5. By May 3, 1989, the City shall complete construction of improvements to and expansion of the first stage treatment.
6. By May 31, 1989, the City shall complete construction of, and put into operation, all treatment processes necessary to meet the final limits contained in the City's NPDES permit.

B. Bypasses and Overflows

The City shall eliminate the bypasses and overflows identified in Part II, Paragraph K of the NPDES permit [hereinafter "Overflow Project"] in accordance with the following schedule:

1. The City advertised for bids on February 19, 1987.
2. The City awarded the contract on April 21, 1987.
3. The City commenced construction of the Overflow Project on June 15, 1987.
4. By July 1, 1988, the City shall eliminate all bypasses and overflows identified in Part II, Paragraph K of the NPDES Permit.

C. Operation and Maintenance

1. The City shall continue to maintain and operate the plant to minimize equipment breakdowns, interruptions of treatment, and overflows. Pending attainment of final effluent limits specified in the City's NPDES permit, the City shall operate the plant to provide the best effluent quality possible, consistent with meeting the other schedules and obligations, including interim effluent limitations, in this consent judgment.
2. The parties recognize that interruptions in the operation of the treatment plant may be necessary during the period when improvements to the plant are being made. Best efforts shall be made by the City to schedule interruptions to minimize any adverse environmental impacts. The City shall give at least two (2) days notice to the Ohio EPA of all planned interruptions of plant operations, by telephone call to the

○ Northeast District Office. Bypasses of treatment processes shall occur only with the concurrence of Ohio EPA. A written report confirming the interruption shall be delivered to U.S. EPA and Ohio EPA within ten days of any bypass or interruption. Any day on which a bypass occurs that is authorized under this section shall be excluded for the purpose of determining compliance with the monthly and weekly interim effluent limitations referenced in Section VII, below.

3. The City shall continue to implement its approved pretreatment program. The City shall notify U.S. EPA and Ohio EPA within fifteen (15) days after each of the three significant industrial users have completed construction of pretreatment facilities.

○
D. Attainment of Final Effluent Limits

By May 31, 1989, the City shall comply with the final effluent limits contained in its NPDES permit.

VI. COMPLIANCE SCHEDULE REPORTING REQUIREMENTS

A. After the lodging of this consent judgment and until it is terminated in accordance with Section XIX, the City shall submit to Plaintiff and the Ohio EPA a written report for each calendar quarter, detailing the current status and/or progress of the construction of improvements described in Sections V(A) and V(B) of the consent judgment. This report shall include, but not be limited to, identification of any items that might affect timely completion, and a projection of the work to be performed under Sections V(A) and V(B) of the consent

judgment during the next two calendar quarters. These reports shall be delivered by the 20th of April, July, October and January for the previous calendar quarter.

B. In addition to the quarterly reports required in this Section, not later than fourteen (14) calendar days following any date on which an action is required of the City under this consent judgment, the City shall deliver to the Ohio EPA and the U.S. EPA written notice that the action has been taken or completed as required. If the action has not been taken or completed as required, a notice shall be delivered to U.S. EPA and Ohio EPA stating the reasons and/or causes for any failure to complete a scheduled action, and the probability of meeting the next milestone in the schedule. The notice shall also describe the actions to be taken or that are being taken to return the program elements to the schedule.

VII. INTERIM EFFLUENT LIMITATIONS AND REPORTING

A. From the date of entry of this consent judgment until May 31, 1989, except as otherwise provided herein, the City shall comply with the interim effluent limits specified in Table 1 of the NPDES Permit, attached hereto as Exhibit 1.

B. The City shall deliver to U.S. EPA and Ohio EPA postmarked on or before the fifteenth day of each month, a Monthly Operating Report containing analytical test results obtained during the previous monthly monitoring period. The Monthly Operating Report shall be submitted in the format required by Ohio EPA and shall contain the analysis of samples

taken at the frequency and location specified in Table 1. Except as otherwise noted, each characteristic shall be reported for the final effluent outfall(s).

C. Analytical test procedures used shall conform to the rules and regulations promulgated under Section 304(h) of the Act, 33 U.S.C. §1314, and Title 40, Part 136 C.F.R., Guidelines Establishing Test Procedures for the Analysis of Pollutants.

VIII. STATE APPROVAL AND FACILITY CONSTRUCTION

Nothing herein shall be interpreted as relieving the City from applying for and receiving all permits required by law to construct the improvements described in Section V, herein. The City has obtained an Ohio EPA permit to install dated March 10, 1987.

IX. STIPULATED PENALTIES

A. If the City fails to complete any construction required under Section V(A) or Section V(B), by the dates specified in Sections V(A) and V(B), respectively, then the City shall be liable to pay stipulated penalties as follows:

- (1) \$100 per day, for the first sixty (60) days;
- (2) \$250 per day, for the days 61 through 90;
- (3) \$500 per day, for the days 90 through 120; and,
- (4) \$1000 per day for each day of violation beyond 120th day.

B. If the City violates any interim effluent limit specified in Table 1 of the NPDES permit, attached hereto as Exhibit 1, the City shall be liable to pay stipulated penalties as follows:

- (1) \$100 per day per parameter for the first sixty days in which the limit for that parameter is violated;
- (2) \$250 per day per parameter for days 61 through 90 in which the limit for that parameter is violated;
- (3) \$500 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 120th day in which the limit for that parameter is violated.

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

- (1) \$250 per day per parameter for the first sixty days in which the limit for that parameter is violated;
- (2) \$500 per day per parameter for days 61 through 90 in which the limit for that parameter is violated;
- (3) \$1000 per day per parameter for days 91 through 120 in which the limit for that parameter is violated; and,
- (4) \$5000 per day per parameter for each day of violation beyond 120th day in which the limit for that parameter is violated.

D. All stipulated penalties due hereunder shall be paid by cashier's or certified check made payable to the "Treasurer of the United States of America," and tendered to the United States Attorney, 1404 East Ninth Street, Cleveland, Ohio 44114-1748, within thirty (30) days of the City's violation.

E. In the event that funds available to the City (including the City's Sanitary Sewer Utility Reserve Fund), other than the City's Sewer Revenue Fund are insufficient to pay any stipulated penalty due hereunder, and the funds in the City's Sewer Revenue Fund are insufficient to pay both the annual debt service on mortgage revenue bonds for the City's sewer system for the current year and any stipulated penalty due hereunder, the City shall provide U.S. EPA written certification, together with supporting documentation of this situation and the anticipated length of deferral, within 30 days after any violation. If U.S. EPA agrees that the City's funds are insufficient to pay both the debt service for that year and any stipulated penalty, the City may defer payment of such stipulated penalty in accordance with the following provisions:

1. Liability for any stipulated penalty shall accrue at the time of violation.

2. The City may defer payment of any such stipulated penalty for up to two years from the accrual of such stipulated penalty. Stipulated penalties shall continue to accrue for any violations during this period.

3. The City shall pay interest on any unpaid stipulated penalty at the then-prevailing rates, as provided in 28 U.S.C. §1961, from the date of violation until the date of payment.

4. Nothing herein excuses the payment of any stipulated penalty or authorizes any delay greater than that described above.

X. FORCE MAJEURE

A. If any event occurs which causes or may cause a violation of any provision of this consent judgment by the City, the City shall notify U.S. EPA and Ohio EPA in writing within ten (10) days of the date on which the City has knowledge or should have had knowledge that such event may or will cause a violation. The notice shall describe the anticipated length of time the violation may persist, the precise cause or causes of the violation, the measures taken and to be taken by the City to prevent or minimize the violation, and the timetable by which those measures will be implemented. The City will adopt all reasonable measures to avoid or minimize any such violation. The City shall make all reasonable efforts to identify events which cause or may cause a violation of this consent judgment.

B. If the parties agree that a violation of this consent judgment is caused solely by circumstances beyond the reasonable control of the City, the City shall be excused as to that violation for the period of time the violation continues due to such circumstances. The City's time for performance shall be extended for a period not exceeding the delay actually resulting from such circumstances. In the event the parties cannot agree, any party may submit the matter to this Court for resolution. The burden of proving that any delay was caused solely by circumstances beyond the reasonable control of the City and the

length of such delay shall rest with the City. Failure by the City to comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved, and constitutes a waiver of the City's right under this provision to obtain an extension of its obligation based on that incident.

C. Compliance with any requirement of this consent judgment, by itself, shall not constitute compliance with any other requirement. The City must make an individual showing or proof regarding each delayed incremental step or other requirement for which an extension is sought.

D. Unanticipated or increased costs, by themselves, shall not serve as a basis for relief under this Section.

XI. CIVIL PENALTY

Thirty (30) days after the entry of this consent judgment by the Court, the City shall pay a civil penalty of Fifty Thousand Dollars (\$50,000). Payment of this penalty shall be by cashier's or certified check made payable to the "Treasurer of the United States of America," and tendered to the United States Attorney, 1404 East Ninth Street, Cleveland, Ohio 44114.

XII. COMPLIANCE WITH OTHER STATUTES/REGULATIONS

Nothing herein shall be construed as relieving the City of the duty to comply with all applicable federal, state and local laws and regulations and the applicable NPDES permit. During the pendency of the consent judgment, actions taken to

enforce applicable laws, regulations, and the NPDES permit shall be consistent with the provisions, terms and conditions of this consent judgment. Nothing in this consent judgment shall be construed to limit the right of the State of Ohio to seek the remedies available under state law for violation of applicable state laws.

XIII. RIGHT OF ENTRY

Consistent and in accordance with rights of entry under federal, state, and local law, regulation or permit, U.S. EPA, Ohio EPA, and their contractors and consultants, and the attorneys for the United States have authority to enter any facility covered by this consent judgment, upon proper presentation of credentials, for the purpose of:

A. Monitoring the progress of activity required by this consent judgment;

B. Verifying any data or information submitted to U.S. EPA and Ohio EPA in accordance with the terms of this consent judgment; and

C. Obtaining samples, and, upon request, splits of any samples taken by the City or its consultants. If U.S. EPA takes any samples, upon request the City or its consultants are entitled to split samples.

XIV. SEVERABILITY

The provisions of this consent judgment shall be severable, and should any provision be declared by a court of

competent jurisdiction to be unenforceable, the remaining provision of this consent judgment shall remain in full force and effect.

XV. REPORT SUBMITTALS

Reports or notices required pursuant to this consent judgment shall be submitted to the following addresses:

For Plaintiff:

U.S. Environmental Protection Agency, Region V
Water Division
Compliance Section 5WQC-TUB-8
230 South Dearborn Street
Chicago, Illinois 60604

For Ohio:

Attn: Harry Courtright
Ohio Environmental Protection Agency
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44806

Unless otherwise specified in this consent judgment, reports and notices shall be given in writing, and shall be considered delivered upon placement in the U.S. Mail, with proper postage affixed. If another means is used to deliver a report or notice, it shall be considered delivered upon the date received at the Ohio EPA or U.S. EPA office.

XVI. CAUSE OF HEARING

Any party may apply to this Court for such further orders and directions as may be appropriate.

XVII. RETENTION OF JURISDICTION

The Court shall retain jurisdiction of this matter until this consent judgment is terminated in accordance with Section XIX below.

XVIII. GENERAL PROVISIONS

A. This consent judgment is neither a permit nor a modification of any existing permit.

B. The Parties reserve and do not waive any and all legal and equitable rights, remedies and defenses available for violations of this consent judgment.

C. The United States does not waive any rights or remedies available to it for any past, present or future violation by Orrville of any Federal or State laws, regulations or permit conditions, other than those violations addressed in the complaint or resolved in the consent judgment.

D. Each party in this action shall bear its own costs.

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

F. This Consent Judgment does not limit the right of the Parties as against any third parties.

G. Nothing herein shall be construed to limit the authority of the United States to act under Section 308 of the CWA, 33 U.S.C. §1318.

H. The consent of the United States hereto is subject to the public notice provisions of 28 C.F.R. §50.7.

I. The State of Ohio is a Party hereto solely pursuant to Section 309(e) of the Act, 33 U.S.C. §1319(e). The United States has not alleged any affirmative act by the State of Ohio that violates the Clean Water Act, or any law of Ohio which prevents Orrville from raising revenues needed to comply with this consent judgment. The State shall have no liability under this consent judgment except as required by Section 309(e) of the Clean Water Act in the event that the laws of the State prevent the City from raising revenues needed to comply with this Order. The Attorney General of the State of Ohio hereby certifies that the present laws of the State do not prevent the City from raising revenues needed to comply with this Order. Based on, and expressly conditioned upon, this representation by the Attorney General of Ohio, this consent judgment does not impose any liability on the State under present law. The United States specifically reserves, and this consent judgment is without prejudice to, any rights against the State of Ohio under Section 309(e) based on any change in Ohio law.

XIX. TERMINATION

The provisions of this consent judgment shall terminate upon certification by U.S. EPA to the Court that the City has completed the plant and sewer improvements [Sections V(A) and V(B)], achieved and maintained compliance with the final effluent limitations specified in the City's then-existing NPDES permit for one year after completion of the improvements, and has paid

all penalties due hereunder. Until this consent judgment is terminated, any party may apply to the Court pursuant to the provisions of Section XVI (Cause of Hearing). Termination of the consent judgment shall be by order of the Court upon application by any party.

IT IS SO ORDERED:

Date: 14 July 1987

James Bee
UNITED STATES DISTRICT JUDGE

Approved:

CITY OF ORRVILLE, OHIO

By: Robert A. Nichols
Robert Nichols
Director, Public Utilities

By: John Kropf
John Kropf, Law Director
City of Orrville

By: Elizabeth E. Tulman
Van Carson
Squire, Sanders & Dempsey
1800 Huntington Building
Cleveland, Ohio 44115

Elizabeth E. Tulman
Squire, Sanders & Dempsey
155 E. Broad Street
Columbus, Ohio 43215

Attorneys for the City of
Orrville

UNITED STATES OF AMERICA

Roger J. Marzulla
Roger J. Marzulla
Acting Assistant Attorney General
for Land and Natural
Resources
U.S. Department of Justice
Washington, D.C. 20530

William J. Edwards, acting
Patrick M. McLaughlin
United States Attorney
Northern District of Ohio
1404 East Ninth Street,
Suite 500
Cleveland, Ohio 44114

Barbara A. Rogers
Barbara A. Rogers
Attorney
Environment Enforcement
Section
Land and Natural Resources
U.S. Department of Justice
Washington, D.C. 20530

THE STATE OF OHIO
Anthony J. Celebrezze
Attorney General of Ohio

By: Margaret A. Malone
Margaret A. Malone
Assistant Attorney General
Environmental Enforcement
Section of Attorney General's
Office
30 East Broad Street, 17th Floor
Columbus, Ohio 43215

Valdas V. Adamkus
Valdas V. Adamkus
Regional Administrator
U.S. Environmental
Protection Agency, Region V
230 South Dearborn Street
Chicago, Illinois 60604

Thomas L. Adams, Jr.
for Thomas L. Adams, Jr.
Assistant Administrator
Office of Enforcement and
Compliance Monitoring
U.S. Environmental Protection
Agency
Washington, D.C. 20460