

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO, ex rel. : CASE NO. 87 09 1127
BETTY D. MONTGOMERY, ATTORNEY :
GENERAL OF OHIO : JUDGE JOHN R. MOSER

Plaintiff,

vs.

CITY OF OXFORD

Defendant.

FILED in Common Pleas Court
BUTLER COUNTY, OHIO

APR 17 1997

CINDY CARPENTER
CLERK OF COURTS

THIRD MODIFIED CONSENT DECREE

On September 10, 1987, a Complaint in the above-captioned matter was filed, and Plaintiff State of Ohio by its Attorney General ("Plaintiff" or "State of Ohio") and Defendant City of Oxford ("Oxford"), consented to the entry of a Consent Decree. On September 10, 1987, the Court entered a Decree for injunctive relief in the above-captioned case enjoining Oxford to operate its wastewater treatment plant and sewer system in compliance with Chapter 6111. and the rules promulgated thereunder. Following the filing of the Decree, the Parties in this action filed a second Consent Decree modifying the final compliance date of the original Consent Decree. The second modified Consent Decree was signed by this Court and filed with the Butler County Clerk's office on February 23, 1989. Oxford has failed to comply with, and is in violation of such Decrees of this Court. In order to resolve this violation, Oxford shall comply with the terms of this Third Modified Consent Decree ("Third Modified Consent Decree"), and shall pay the civil penalty contained in this Third Modified Consent Decree. The terms of this

Third Modified Consent Decree shall supersede and replace the September 10, 1987 and February 23, 1989 Decrees of this Court. The State of Ohio and the City of Oxford and the Mayor and members of the City Council of Oxford have consented to the entry of this Third Modified Consent Decree.

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

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the Parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Defendant Oxford under O.R.C. Chapter 6111., and venue is proper in this Court.

II. PARTIES

2. The provisions of this Third Modified Consent Decree shall apply and be binding upon Defendant Oxford, its agents, officers, employees, assigns, representatives, successors in interest, contractors, consultants and any person acting in concert or privity with any of them. Defendant Oxford is ordered to provide a copy of this Third Modified Consent Decree to each contractor and consultant it employs to perform the work itemized herein. Defendant Oxford is further ordered to require each general contractor to provide a copy of this Third Modified Consent Decree to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleged in its Complaint, filed on September 10, 1987, and Motion to Modify Consent Decree filed with this Third Modified Consent Decree that Defendant Oxford had operated its wastewater treatment plant and sewer system in such a manner as to result in

numerous violations of the requirements of the NPDES Permits issued to it by the Director of Ohio EPA and in violation of the water pollution laws of the State of Ohio. Compliance with the terms of this Third Modified Consent Decree shall constitute full satisfaction of any civil liability by Defendant Oxford for all claims under such laws alleged in the September 10, 1987 Complaint and for all violations corresponding to the counts alleged in the Complaint occurring subsequent to the filing of the September 10, 1987 Complaint up through the date of entry of this Third Modified Consent Decree and any civil liability resulting from Defendant's contempt of the September 10, 1987 and February 23, 1989 Decrees of this Court occurring before the filing of this Third Modified Consent Decree. Nothing in this Third Modified Consent Decree shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint or to seek relief for violation of the types of claims alleged in the Complaint which occur after the filing of this Third Modified Consent Decree.

IV. PERMANENT INJUNCTION

4. Defendant Oxford is hereby permanently enjoined and ordered to immediately comply with the requirements of O.R.C. Chapter 6111. and the rules adopted thereunder, and the terms and conditions of its currently effective National Pollutant Discharge Elimination System (NPDES) permit No. 1PD00007*HD, and any renewals or modifications thereof, except for the conditions prohibiting bypasses and overflows from its wastewater treatment plant and sanitary sewer system until May 31, 1988.

5. After May 31, 1998, Defendant Oxford is ordered and enjoined to comply with all requirements in its NPDES permit No. 1PD00007*HD, and any modifications or renewals thereof and is prohibited from allowing bypasses and overflows from its wastewater treatment

plant and sanitary sewer system.

6. Defendant Oxford is enjoined and ordered to immediately comply with Indirect Discharge Permit 1PD00007100*AP and is prohibited from discharging any landfill leachates into waters of the State.

7. Defendant Oxford is enjoined and ordered to properly operate and maintain its wastewater treatment plant, sewer system and any associated equipment and structures.

V. COMPLIANCE SCHEDULES

8. Defendant Oxford is enjoined and ordered to complete construction of the improvements to its wastewater treatment system so as to attain compliance with all requirements of NPDES permit No. 1PD00007*HD, and any modifications or renewals thereof, and to eliminate discharges from overflows and bypasses from its sanitary sewer system and wastewater treatment plant in accordance with the following schedules:

INFLUENT PUMPS

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Submittal of Detailed Plans and Specifications to Ohio EPA	<u>February 28, 1997</u>
(b) Advertisement of Building Bids	<u>March 31, 1997</u>
(c) Execution of Building Contracts	<u>May 31, 1997</u>
(d) Initiation of Construction	<u>July 31, 1997</u>
(e) Completion of Construction	<u>May 31, 1998</u>

EQUALIZATION BASIN

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Submittal of Detailed Plans and Specifications to Ohio EPA	<u>February 28, 1997</u>
(b) Advertisement of Building Bids	<u>March 31, 1997</u>
(c) Execution of Building Contracts	<u>May 31, 1997</u>
(d) Initiation of Construction	<u>July 31, 1997</u>
(e) Completion of Construction	<u>May 31, 1998</u>

After May 31, 1998, the date that the above two construction projects are required to be completed, Defendant Oxford shall comply with all requirements in its NPDES permit No. 1PD00007*HD, and any modifications or renewals thereof and is prohibited from allowing bypasses and overflows from its wastewater treatment plant and sanitary sewer system.

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

VI. INFLOW/INFILTRATION REDUCTION

10. Except as provided by Paragraphs 11 through 13 below, Oxford is hereby prohibited from connecting additional sources of sewage to its POTW, until the completion of the improvements detailed in the construction schedules of Section V.

11. The manhole rehabilitation project removed an estimated 1.11 MGD of

inflow/infiltration (I/I) (outlined in the Oxford's November 4, 1996 memo to Ohio EPA, attachment A). Based upon the I/I removed by this project and upon the issuance of a Permit to Install (PTI) by Ohio EPA, Oxford may connect additional flows (e.g. development) with an additional average daily flow of no greater than 0.026 MGD (peak flow not greater than 0.107 MGD).

12. Upon the completion of the additional I/I reduction projects (Campus Avenue, Sandra Drive, and Patterson Avenue) which will remove an estimated 0.732 MGD of I/I (outlined in the city's November 4, 1996 letter to Ohio EPA, attachment B) and upon the issuance of a PTI by Ohio EPA, Oxford may connect additional flows with an additional average daily flow of no greater than 0.023 MGD (peak flow not greater than 0.09 MGD). After completion of each I/I reduction project, Oxford may request from Ohio EPA connection of a prorated share of the additional flows. Approval of the request by Ohio EPA will be based on the estimated I/I removed by the completed project.

13. Oxford may connect additional flows, beyond those permitted by paragraph 12 above, contingent upon the issuance of a PTI from Ohio EPA and the completion by Oxford of additional I/I removal reduction projects. Furthermore, the additional average daily flow from such additional flows shall not be greater than 10% of the amount of I/I removed from the sewer system. This ratio of 10:1 removal to additional flow shall not be exceeded until the completion of the improvements detailed in the construction schedules of Section V.

VII. REPORTING REQUIREMENT

14. Within seven (7) days from the completion date of each task listed in Sections V and VI., Defendant Oxford is ordered to submit a written report stating whether it has performed the actions set forth therein to the following address:

Ohio EPA
Southwest District Office
401 East 5th Street
Dayton, Ohio 45402
Attn: Ned Sarle (or his successor), Division of Surface Water.

VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

15. Performance of the terms of this Third Modified Consent Decree by Defendant Oxford is not conditioned on the receipt of any federal or state grant loans or funds. In addition, Defendant Oxford's performance is not excused by the failure to obtain or shortfall of any federal or state grant, loans or funds, or by the processing of any applications for the same.

IX. CIVIL PENALTY

16. Defendant Oxford is ordered, pursuant to O.R.C. Section 6111.09, to pay to the State of Ohio a civil penalty of Fifty Thousand (\$50,000.00) Dollars. Payment of this penalty shall also resolve any stipulated penalties accrued in this case from September 10, 1987 until the date of entry of this Third Modified Consent Decree. This penalty shall be paid by delivering to Lyndia Jennings, Administrative Secretary (or her successor), Environmental Enforcement Section, Ohio Attorney General, State Office Tower-25th floor, 30 E. Broad Street, Columbus, Ohio 42315-3428 a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within fifteen (15) days from the date of this Court's entry of this Third Modified Consent

Decree.

X. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

17. In furtherance of the mutual objectives of the State of Ohio and the City of Oxford in improving waters of the State and the environment, Defendant Oxford agrees to and is ordered to contribute Forty-Five Thousand (\$45,000.00) Dollars to the Four Mile Valley Conservation Trust. This contribution shall be submitted with the condition that it be used to protect the types of properties identified in Section B.2. of the Trust's Land Protection Policy (attachment C).

18. The Forty-Five Thousand (\$45,000.00) Dollar contribution shall be paid by delivering to The Four Mile Valley Conservation Trust, C/O Wallace I. Edwards, 5431 Tallawanda Lane, Oxford, Ohio 45056 certified checks for that amount, payable to the order of The Four Mile Valley Conservation Trust, according to the following payment schedule:

- a Twenty-Two Thousand Five Hundred (\$22,500.00) Dollar payment within fifteen (15) days from the date of this Court's entry of this Third Modified Consent Decree
- a Twenty-Two Thousand Five Hundred (\$22,500.00) Dollar payment by February 1, 1998

The City of Oxford shall submit a copy of each canceled check to Ohio EPA's Southwest District Office, Division of Surface Water within forty-five (45) days of payment.

19. In the event that Defendant Oxford does not contribute the full Forty-Five Thousand (\$45,000.00) Dollars to the Four Mile Valley Conservation Trust by April 1, 1998 the remaining balance shall be paid to State of Ohio as a civil penalty. This remaining balance shall be paid as set forth in Section IX. and shall be paid by May 1, 1998.

20. On a quarterly basis and for at least two years after entry of this modified Consent

Decree, Defendant Oxford shall publish and mail to the residents/rate payers of Oxford the BIOTOPICS newsletter. This newsletter shall include information on such topics as water conservation, public pollution prevention, or other such environmental topics as may be suggested by Ohio EPA.

XI. STIPULATED PENALTIES

21. In the event that Defendant Oxford fails to meet any of the compliance deadlines set forth in Section V, paragraph 8 of this Decree, Defendant Oxford shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

- (a) For each day of each failure to meet a requirement, up to thirty (30) days--two hundred fifty dollars (\$250.00) per day per requirement not met;
- (b) For each day of each failure to meet a requirement, from thirty-one (31) to sixty days (60) --five hundred dollars (\$500.00) per day per requirement not met;
- (c) For each day of each failure to meet a requirement over sixty (60) days--seven hundred fifty dollars (\$750.00) per day per requirement not met;

22. In the event that Defendant Oxford fails to maintain compliance with the final effluent limitations in its then effective NPDES permit, Defendant Oxford shall immediately and automatically be liable for a stipulated penalty according to the following schedule:

- (a) For each 30 day effluent limitation that is violated, one thousand dollars (\$1,000.00) for each requirement not met.

- (b) For each 7 day or daily effluent limitation that is violated two hundred fifty dollars (\$250.00) for each requirement not met.

For purposes of computing these stipulated penalties, each separate 30 day effluent discharge violation shall be considered one violation and each separate 7 day effluent discharge violation shall be considered one violation.

23. For violation of any other requirement in NPDES permit No. 1PD00007*HD, and any renewals or modifications thereof, including but not limited to monitoring and reporting requirements, Defendant Oxford shall immediately and automatically be liable for a stipulated penalty in the amount of five hundred dollars (\$500.00) for each day of each requirement not met.

24. Any payment required to be made under the provisions of Section XI. of this Modified Consent Decree shall be made by delivering to Lyndia Jennings at the address set forth in paragraph 16, a certified check or checks, for the appropriate amounts within thirty (30) days from the date of the failure to meet the requirement of this Consent Order, made payable to "Treasurer, State of Ohio". The payment of stipulated penalties by Defendant Oxford and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to Section XI. shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to O.R.C. Chapter 6111 or to otherwise seek judicial enforcement of this Third Modified Consent Decree.

XII. RETENTION OF JURISDICTION

25. The Court will retain jurisdiction of this action for the purpose of enforcing and administering the terms and provisions of this Third Modified Consent Decree.

XIII. COSTS

26. Defendant Oxford is hereby ordered to pay the costs of this action.

XIII. MODIFIED CONSENT DECREE

27. This Third Modified Consent Decree entered into between the Parties represents the entire understandings between the Parties and supersedes any earlier verbal or written communications regarding same. This Third Modified Consent Decree will supersede the Consent Decrees entered into and filed on September 10, 1987 and February 23, 1989, respectively.

XIV. ENTRY OF MODIFIED CONSENT DECREE AND FINAL JUDGMENT BY CLERK

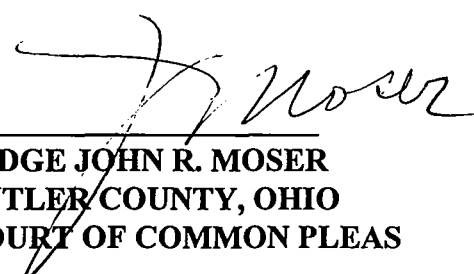
28. The parties agree and acknowledge that final approval by Plaintiff and Defendant Oxford and entry of this Third Modified Consent Decree is subject to the requirement of 40 C.F.R. §123(d)(2)(iii), which provides for notice of the lodging of this Consent Decree, opportunity for public comment, and the consideration of any public comment. Both Plaintiff and Defendant Oxford reserve the right to withdraw this Third Modified Consent Decree based on comments received during the public comment period.

29. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Modified Consent Decree by the Court, the clerk is hereby directed to enter it upon the journal. Within three days of entering the judgment upon the journal, the clerk is hereby directed to serve

upon all parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

IT IS SO ORDERED:

Entered this _____ day of _____.

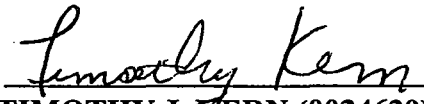


**JUDGE JOHN R. MOSER
BUTLER COUNTY, OHIO
COURT OF COMMON PLEAS**

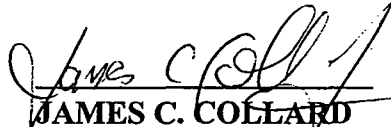
APPROVED:

**STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO**


CITY OF OXFORD



**TIMOTHY J. KERN (0034629)
Assistant Attorneys General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
(614) 466-2766**



**JAMES C. COLLARD
City Manager
City of Oxford**



**STEPHEN M. MCHUGH (0018788)
ALFICK & CORWIN CO., L.P.A.
1700 One Dayton Centre
One South Main Street
Dayton, Ohio 45402
(937) 223-1201**

Attorney, City of Oxford

ATTACHMENT A

MEMORANDUM

TO: Ned Sarge, Ohio EPA

FROM: Mark S. Tate, P.E. *[Signature]*
Service Director/City Engineer

DATE: November 4, 1996

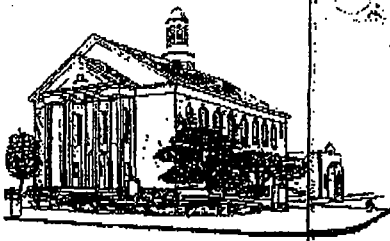
SUBJECT: Infiltration and Inflow Calculations

The City of Oxford has repaired during the 1995-1996 year approximately 37 manholes including eight (8) manholes along Collins Creek and its tributaries. The SSES report includes estimates of removable I/I for manhole correction work that indicate a range (406 gpd to 138,840 gpd) per manhole. Based on these numbers and assuming an average correction of 30,000 gpd per manhole. The correction for 37 manholes is 1,110,000 gpd.

The City of Oxford is continuing with the manhole rehabilitation and repair program and the on-going inspection program of every manhole within the City of Oxford.

ATTACHMENT B

Sewage



City of Oxford

Municipal Building
101 East High Street
Oxford, Ohio 45056-1887

November 4, 1996

Mr. Ned Sarle
Environmental Specialist
Ohio Environmental Protection Agency
Southwest District Office
401 E. Fifth Street
Dayton, Ohio 45402-2911

RECEIVED
OHIO EPA
NOV 05 1996
SOUTHWEST DISTRICT

**RE: Permits to Install: Western Knolls Section VI
South Farm Subdivision Section II
Indian Trace Apartments**

Dear Ned:

Attached is the draft of the Infiltration and Inflow study report for the City of Oxford as prepared by Camp Dresser & McKee for the proposed projects. The City of Oxford requests that the permits to install for the three developments proposed at this time (Western Knolls Section VI, Indian Trace Apartments and South Farm Section II) be approved.

The City of Oxford can show the removal of 10 to 1 reduction in infiltration and inflow to the sewer system as a result of the proposed improvements. The proposed developments would contribute 49,000 gallons per day of average daily flow to the sewer system upon completion. The I&I projects by the City of Oxford will reduce I&I by approximately 732,000 gpd plus the additional amount corrected by the on-going program of repairing manholes. Please see the attached calculations.

Should you have any questions regarding this matter please call me at (513) 524-5207.

Sincerely,

Mark S. Tate, P.E.
Service Director/City Engineer

cc: Jim Mehl, Ohio EPA

Encl.(as)

FOUR MILE VALLEY CONSERVATION TRUST

Land Protection Policy

A. Goals and Mission:

The Four Mile Valley Conservation Trust (FMVCT) is dedicated to the preservation and maintenance of significant forests, streams, open spaces, and cultural resources in the Four Mile Valley and to the advancement of conservation values inherent in land protection.

The FMVCT's mission is to preserve the special character of the Four Mile Creek Valley from Hueston Woods State Park in the northwest to its juncture with the Seven Mile Creek Valley in the southeast. Techniques available include purchase and donation of conservation easements and fee simple lands, bargain sales, limited development agreements, land exchanges, and purchase/leaseback agreements.

The FMVCT is legally and ethically bound to demonstrate public benefit in all of its land protection projects. In addition, the Trust must show its ability to sustain a long-run conservation management plan incorporating landowner conditions and FMVCT preservation principles. Every land protection proposal, therefore, will receive careful scrutiny by the FMVCT trustees and their advisors.

B. Conditions favoring a land protection proposal:

Although every property is unique and is judged on its own merits, the FMVCT believes the following conditions to be positive factors when evaluating any proposal for land protection:

1. The property contains significant mature forest, wildlife habitat and flora, or provides buffers to the same.
2. The property contains drainages, wetlands, aquifers, or other features important to protecting water quality, preventing erosion, or serving as natural flood control.
3. The property contains or buffers an uncommon ecological community, such as bluffs and/or rare and endangered species habitat.
4. The property contains or buffers scenic assets accessible to public view from existing right of ways.
5. The property has historical, archeological, or geological value or buffers such property.

6. The property is adjacent to land that is already protected under one or more of the above categories.
7. The property falls under one or more of the above categories and borders the main stream or any branch of the Four Mile Creek between Hueston Woods and Seven Mile Creek.

C. Conditions weighing against a land protection proposal:

A property may meet one or more of the criteria above and still not be accepted by the Trust if one or more of the following conditions are present:

1. The property poses stewardship and maintenance problems that the Trust feels make it impossible to protect "in perpetuity."
2. The property owner insists on retaining rights to the land that are inconsistent with relevant criteria in Section B.
3. The possible or likely development of adjacent properties would seriously diminish the conservation value of the land.
4. The property cannot be secured or acquired by the Trust with reasonable effort or cost in relation to the property's conservation value.
5. The property is found to be irreparably contaminated.

D. Responsibilities of the Trust:

Commensurate with its goals and mission, the Trust undertakes certain long-term responsibilities:

1. Working through its own volunteers and with other conservation organizations and public agencies, it will design a long-term conservation plan for each property under its stewardship.
2. Working through a newsletter and/or other media, it will inform landowners and the public of its general and site-specific conservation goals and will endeavor to earn the cooperation and support of all segments of the Four Mile Valley community in its land preservation activities.
3. Through the development of an endowment and annual fundraising, it will meet the costs of annual surveillance and necessary conservation measures to assure successful fulfillment of its responsibilities for land conservation in the Four Mile Valley.