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NORTHERN DISTRICT OF OHIO
CLEVELAND

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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

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

| | | |
|-----------------------------------|---|--------------------------------------|
| UNITED STATES OF AMERICA, et al., |) | CIVIL ACTION NO. 1:90CV1388 |
| |) | |
| Plaintiffs, |) | CHIEF JUDGE GEORGE W. WHITE |
| |) | |
| v. |) | MAGISTRATE JUDGE PERELMAN |
| |) | |
| NORTHEAST OHIO REGIONAL SEWER, |) | |
| DISTRICT, |) | |
| |) | |
| Defendant. |) | |

STIPULATION, SETTLEMENT AGREEMENT, AND ORDER

WHEREAS, Plaintiff, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("U.S. EPA"), having filed the Complaint herein on August 2, 1990, alleging that Defendant Northeast Ohio Regional Sewer District (the "District") violated the Clean Water Act, 33 U.S.C. § 1251 et seq. ("CWA"), and certain terms and conditions of its National Pollution Discharge Elimination System ("NPDES") permits issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342;

WHEREAS, the State of Ohio ("Ohio"), having been joined as a defendant in the Complaint pursuant to Section 309(e) of the CWA, 33 U.S.C. § 1319(e), and realigned as a plaintiff, and having

filed a Cross-Claim herein on August 27, 1990, alleging that the District violated the CWA and Ohio Revised Code ("O.R.C.") Chapter 6111, and certain terms and conditions of its NPDES permits;

WHEREAS, the District is a regional sewer district organized under the laws and constitution of the State of Ohio;

WHEREAS, the District owns and operates the Westerly Wastewater Treatment Facility ("Westerly") located at 5800 West Memorial Shoreway, Cleveland, Ohio;

WHEREAS, the District has denied and continues to deny the violations alleged in the Complaint;

WHEREAS, nothing in this Stipulation, Settlement Agreement, and Order shall be construed as an admission by the District of violations of any provisions of the CWA;

WHEREAS, the United States, Ohio, and the District (collectively, the "Parties") have agreed that the settlement of this matter without protracted litigation is in the public interest;

NOW THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent of the parties to this Stipulation, Settlement Agreement, and Order, it is hereby stipulated, agreed, and ordered as follows:

1. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to § 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355. The

Complaint states a claim upon which relief may be granted under § 309 of the CWA, 33 U.S.C. § 1319.

2. Within thirty (30) calendar days after entry of this Stipulation, Settlement Agreement, and Order, the District shall pay a civil penalty of \$40,000.00. This amount shall be divided, three-fourths (\$30,000.00) to be paid to the United States of America and one-fourth (\$10,000.00) to be paid to the State of Ohio. Payments shall be made by certified or cashier's checks. One check shall be made payable to "Treasurer, United States of America," and sent to the United States Attorney, 1800 Bank One Center, 600 Superior Avenue, Cleveland, Ohio 44114. The other check shall be made payable to "Treasurer, State of Ohio," and sent to Jena Sudadolnik, Administrative Assistant, or a person subsequently designated by the State of Ohio, at Office of the Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428. Copies of the checks and transmittal letters or other evidence of payment shall be sent to Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 (DJ 90-5-1-1-3453), and Water Division Secretary, U.S. EPA, Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604.

3. Interest shall accrue on any amounts overdue to the United States under the terms of this Stipulation, Settlement Agreement, and Order at the rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 3717. Interest shall

accrue on any amounts overdue to the State of Ohio under the terms of this Stipulation, Settlement Agreement, and Order at the rate of 10 percent, pursuant to Ohio Revised Code Section 1343.03.

4. This Stipulation, Settlement Agreement, and Order is entered in full and final settlement of this action, and it resolves for all parties all civil claims alleged in the United States' Complaint, all civil claims alleged in Ohio's Cross-Claim, and all civil claims under the Clean Water Act and O.R.C. Chapter 6111 for effluent limitations and monitoring violations at Westerly disclosed in Monthly Operating Reports received by U.S. EPA and Ohio EPA by the date of lodging of this Stipulation, Settlement Agreement, and Order with the Court. Nothing in the Stipulation, Settlement Agreement, and Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the District.

5. In signing this Stipulation, Settlement Agreement, and Order, the District certifies that, after completing its conversion from physical-chemical treatment to biological treatment at Westerly in 1996, the District has maintained at least one year of continuous compliance with its NPDES permit and the Clean Water Act for the Westerly facility.

6. The provisions of this Stipulation, Settlement Agreement, and Order shall apply to and be binding upon the United States, Ohio, and the District, as well as the Parties' officers, directors, employees, agents, successors, and assigns.

7. Except as otherwise provided herein, nothing contained in this Stipulation, Settlement Agreement, and Order shall be construed to prevent or limit the United States or Ohio's rights to obtain penalties or injunctive relief under the Clean Water Act, federal, state, or local statutes or regulations.

8. This Stipulation, Settlement Agreement, and Order does not affect the rights of the District or Plaintiffs as against third parties.

9. Plaintiffs do not waive any rights or remedies available to them for any future violations by the District of federal or state regulations, or permit conditions following lodging of this Stipulation, Settlement Agreement, and Order. Nothing in this Stipulation, Settlement Agreement, and Order shall be construed to limit the authority of Ohio to seek relief for claimant violations not alleged in Ohio's complaint, including violations that occur after the entry of this Stipulation, Settlement Agreement, and Order.

10. The United States expressly reserves, and this Stipulation, Settlement Agreement, and Order shall be without prejudice to, any claims that the United States may have against the District for the federal share of any refunds, rebates, credits, or other amounts that have accrued or are received by the District including, but not limited to, any proceeds from the resolution of the District's third-party claims against Environmental Science, Ltd. ("ESL"), and Engineering-Science, Inc. (ESI). The District expressly denies that the United States is

entitled to any refunds, rebates, credits, or other amounts, and, in particular, the District expressly denies that the United States is entitled to any proceeds from the settlement of the District's third-party claims against ESL and ESI.

11. The State of Ohio expressly reserves, and this Stipulation, Settlement Agreement, and Order shall be without prejudice to, any claim that the State of Ohio may have against the District or the United States for a share or portion of any refunds, rebates, credits, or other amounts that have accrued or are received by the District, including, but not limited to, any proceeds from the settlement of the District's third-party claims against ESL and ESI. The District expressly denies that the State of Ohio is entitled to any refunds, rebates, credits, or other amounts, and in particular, the District expressly denies that the State of Ohio is entitled to any proceeds from the settlement of the District's third-party claims against ESL and ESI.

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

13. This Stipulation, Settlement Agreement, and Order shall be effective on the date on which it is entered by the Court.

14. The parties acknowledge and agree that the final approval and entry of this Stipulation, Settlement Agreement, and Order is subject to the requirements of 28 C.F.R. Section 50.7, which provides that notice of proposed judgments be given to the public, that the public has at least thirty (30) days to make any


comments, and that the United States may withhold or withdraw its consent to this Stipulation, Settlement Agreement, and Order based on such comments.

15. The Court shall retain jurisdiction for the purposes of interpreting and enforcing this Stipulation, Settlement Agreement, and Order.

16. The individual executing this Stipulation, Settlement Agreement, and Order on behalf of the District represents that he is duly authorized to execute this Stipulation, Settlement Agreement, and Order on the District's behalf.

17. The parties enter into this Stipulation, Settlement Agreement, and Order and submit it to the Court that it may be approved and entered, following final approval after notice and comment as provided in Paragraph 14 above.

SO ORDERED THIS 18 DAY OF Sept., 1998.


United States District Judge