

In: bc5
 Mag. Jct: TPC
 Clerk: BW
2/12/96

In The
 United States District Court
 For The
 Southern District of Ohio
 Eastern Division

RECEIVED
 1992 12 11 9:28
 U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF OHIO
 EASTERN DIVISION

City of Reynoldsburg,	:	Civil Action No. C2-92-882
	:	
Plaintiff,	:	Judge George C. Smith
	:	
v.	:	
	:	
Carol M. Browner, Administrator, United States Environmental Protection Agency, <i>et al.</i> ,	:	
	:	
Defendants.	:	<u>CONSENT DECREE</u>

Plaintiff City of Reynoldsburg, having filed the Complaint herein on September 25, 1992 against Carol M. Browner, Administrator, United States Environmental Protection Agency ("U.S. EPA"), George Voinovich, Governor of Ohio ("VOINOVICH") and Donald Schregardus ("SCHREGARDUS"), Director of Environmental Protection, the Ohio Environmental Protection Agency ("DIRECTOR" OR "Ohio EPA") alleging violations of Section 208 of the Federal Water Pollution Control Act ("FWPCA"), as amended, 33 U.S.C. §1288; and the Plaintiff and Defendants Voinovich and Schregardus (hereinafter, at times, collectively referred to as the "State Defendants") having agreed that settlement of this matter is in the public interest and that entry of this Decree without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings; and without adjudication of any issues of fact or law, and upon consent of the Plaintiff and the State Defendants hereto, it is hereby ORDERED and DECREED as follows:

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action and of the parties consenting hereto, pursuant to 28 U.S.C. §1345 and 33 U.S.C. §1369. The complaint states a claim upon which the relief provided in this consent decree can be granted.

42

II. Applicability

The provisions of this Decree shall apply to and be binding upon the parties who are signatories hereto, their elected officials, officers, agents, representatives, employees, successors, assigns and any person in active concert or participation with them who receives actual notice of the order by personal service or otherwise.

III Compliance Program

A. Not later than December 29, 2001, the State Defendants shall prepare and certify to U.S. EPA an Areawide Waste Treatment Management Plan ("AWTMP") for the Blacklick Creek Drainage Basin, which forms a part of the Scioto River Basin ("Blacklick Creek AWTMP"). The Blacklick Creek AWTMP shall contain all of the elements specified in §208(b)(2)(A),(E) & (H) of the FWPCA, as amended, 33 U.S.C. §1288(b)(2)(A),(E) & (H).

<u>MILESTONE</u>	<u>DATE</u>
1. Initiate work on Blacklick Creek AWTMP	December 30, 1995
2. Complete any sampling and/or biological studies	June 1, 1997
3. Complete public notice and consultation activities with local governmental bodies	December 30, 2000

B. After December 29, 2001, THE State Defendants shall annually certify and submit updates TO the Blacklick Creek AWTMP to U.S. EPA in accordance with §208(b)(3) of the FWPCA, 33 U.S.C. §1288(b)(3). THE State Defendants may incorporate or combine such certification and submittal of the Blacklick Creek AWTMP into any basin plan or continuous water quality planning performed for the Scioto River in accordance with §303 of the FWPCA, 33 U.S.C. §1313.

IV. Review of Permits

A. In reviewing applications for permits to install ("PTI") and issuance of National Pollutant Discharge Elimination System ("NPDES") permits for new discharges to waters in the Blacklick Creek Drainage Basin, the Director shall implement the provisions of Ohio's "Section

208" planning as such plans exist at the time of review or issuance, *i.e.*, the Director shall not issue permits that are inconsistent with the Section 208 plans as such plans exist at the time of the permit issuance. As used in this decree, the term "new discharges" includes a discharge which involves wastewater which was not previously being discharged into the waterbody that will receive the treated effluent under the permit approval, whether it comes from a new plant, the expansion of an existing plant or construction of sewers to collect additional sewage.

B. In the review and issuance of such PTIs and NPDES permits for the blacklick creek drainage basin, the Director, shall utilize the criteria set forth on pages C-28 and C-29 of the comments section of the Ohio EPA "1993 Water Quality Management Plan and 208 Update" (these criteria are attached to this Consent Decree as "Exhibit A" and are incorporated by reference as if fully rewritten herein) unless those criteria are changed by a subsequent Water Quality Management Plan or update.

C. The Director (or his/her staff) may utilize a "checklist" mechanism or format to document the use and consideration of the criteria set forth in Exhibit A to this Consent Decree.

D. The Director will not change the criteria set forth in Exhibit A to this Consent Decree without first holding a public hearing prior to such change. The director will provide public notice prior to holding such public hearing.

V. Enforcement

A. Notwithstanding any other provision of this Consent Decree, Plaintiff shall not seek to file any motion or other pleading to hold the State Defendants in contempt or violation of this Consent Decree on the grounds that any Permit to Install PTI or NPDES permit was issued in violation of the terms and conditions of Parts III or IV of this Consent Decree, unless or until Plaintiff has first pursued its administrative remedies under Chapters 3745. and 6111. of the Ohio Revised Code, including but not limited to the filing of an appeal to the Ohio Environmental Board of Review ("EBR") from the issuance of any such permit(s) and the completion of any and all appellate review of any decision of the EBR which is sought by any party to such proceedings. The failure to pursue and exhaust these administrative remedies with regard to any particular permit shall be *res judicata* as to the lawfulness and reasonableness of that permit. The ruling resulting from pursuing an appeal to the EBR and any and all state appellate review shall be *res judicata* as to the lawfulness and reasonableness of the permit in question.

B. Plaintiff City of Reynoldsburg may seek to enforce the terms of Part III of this Consent Decree without exhausting any available state administrative remedies in the event that the State Defendants fail to comply with the requirements of Part III of this Consent Decree.

VI. Termination CLAUSE

A. This Consent Decree shall terminate upon: (1) completion, certification and submittal of the Blacklick Creek AWTMP to the U.S. EPA; and (2) the completion, certification and submittal to the U.S. EPA of the first annual update to the Blacklick Creek AWTMP.

B. In the event that the requirements of §208 of the FWPCA, 33 U.S.C. §1288, are repealed or amended at any time subsequent to the entry of this Consent Decree by the Court, the requirements of Parts III and IV of this Consent Decree shall be terminated or modified in order to conform with any repeal or amendment of the requirements of "Section 208".

VII. Funding

Compliance with the terms of this Consent Decree is not conditioned upon the application for or receipt of any federal or state grant or loan funds. In addition, failure to comply with the requirements of this Consent Decree is not excused by the lack of federal or state grant or loan funds, or by the processing of any applications for such funds.

VIII. General Provisions

A. It is the intent of the parties hereto that the clauses of this Consent Decree are severable, and should any clause(s) be declared by a court of competent jurisdiction to be invalid and unenforceable, the remaining clauses shall remain in full force and effect, except to the extent that an essential part of this Consent Decree has been defeated thereby.

B. This Consent Decree shall constitute full settlement and satisfaction of the violations alleged in the Complaint filed herein and of any liability by the state defendants for all claims set forth in the Complaint.

C. Nothing in this decree shall be construed as an admission of fact, law or liability by the State Defendants and shall have no effect on any other administrative, civil and/or criminal

proceeding relating to the claims set forth in the Complaint.

IX. Retention of Jurisdiction

A. The Court shall retain jurisdiction of this case until termination of this Consent Decree in order to enforce or modify the Decree, and to interpret the rights and obligations of the parties to this Consent Decree.

B. To the extent consistent with part v and part ix, paragraph a of this decree and prior to termination of this Consent Decree, any party may apply to this Court for any relief necessary to construe and effectuate the provisions of this Decree.

C. To the extent consistent with part v and part ix, paragraphs a and b of this decree, the parties hereto reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree.

X. COSTS

Each party shall bear its own costs.

WHEREFORE, the parties therefore enter into this Consent Decree and submit it to the Court that it may be approved and entered:

ENTERED THIS 11 DAY OF February, 1996.

UNITED STATES DISTRICT
COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION


JUDGE GEORGE C. SMITH

CITY OF REYNOLDSBURG, OHIO

By: *Christopher R. Schraff*

Title: ATTORNEY FOR CITY OF REYNOLDSBURG

Christopher R. Schraff
Attorney for City of Reynoldsburg

STATE OF OHIO

George Voinovich,
Governor of Ohio

Donald Schregardus,
Director of Environmental Protection

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

Margaret A. Malone
By MARGARET A. MALONE

Title ASSISTANT ATTORNEY GENERAL

Exhibit A

MUNICIPAL AND INDUSTRIAL WASTE TREATMENT 130.6(c)(3)

Area(s) Addressed

WQM Plan Content

Comments

All

In the WOMP for the nondesignated planning area, municipal and industrial sources were inventoried; land use summaries at the basin, township and facilities planning area levels were prepared; population projections at the county, facilities planning area and incorporated levels were completed. The initial projections were revised, based on public comment and 1970 census data, and republished as part of the 1982 update to the Water Quality Management Plan.

In the WOMP, population projections in five year increments were developed at the township, facilities planning area, existing service area and incorporated area level. These projections were revised, as appropriate, and republished as part of the 1982 update to the WOMP. In 1982, load reduction needs were developed and certified for significant dischargers on 108 WQL segments in the nondesignated planning area. Alternative waste treatment systems, assessment of land availability and capital costs and financial arrangements were developed for some, but not all, municipal waste treatment systems. The existing status of entities' Construction Grants efforts were included in the WOMP for the nondesignated planning area.

Package Sewage Treatment Plants: Objectives and Recommendations for Program Improvements reviews the current regulatory and administrative framework for management of package plant installation, operation and inspection in Ohio, and presents recommendations for program improvements. (1982)

Municipal waste treatment system needs must be assessed for those areas where stream use classifications are not being achieved and/or where municipal systems are not meeting NPDES permit limits. Specific assessments of municipal waste treatment system needs will be provided on a case-by-case basis through the preparation of WQBELs and issuance of NPDES permits.

In 1992, Ohio EPA, in conjunction with U.S. EPA's 1992 National Needs Survey, collected information on municipal wastewater treatment needs, municipal stormwater needs, as well as nonpoint source pollution needs in the State of Ohio. The Needs Survey will be reported to Congress by U.S. EPA. The Division of Environmental and Financial Assistance (DEFA) coordinated this effort for Ohio EPA, which involved collecting and documenting information from within the Agency in conformance with criteria established by U.S. EPA, and entering this information into U.S. EPA's national database. This effort resulted in the documentation of \$5.9 billion of needs in Ohio to provide 20 year solutions to the identified pollution control problems.

The review of Permit To Install (PTI) applications and the issuance of National Pollutant Discharge Elimination System (NPDES) permits, the following criteria will be used to review proposals for new dischargers: 1) The application for a new wastewater treatment system must meet all applicable Ohio EPA and U.S. EPA laws, rules, and other requirements. 2) The application must be consistent and comply with the requirements and conditions of any grants or loans awarded by the state of Ohio and/or U.S. EPA. 3) The application should include an evaluation of different options for handling of wastewater which are designed to minimize the degradation of the waters of the state. In reviewing the application, Ohio EPA will encourage the implementation of practical options with minimum impact on the waters of the state. The applicant is required to evaluate options with no discharge to waters of the state (connecting to existing sewers, land application,

MUNICIPAL AND INDUSTRIAL WASTE TREATMENT 130.6(c)(3)

etc.). If any of the no discharge options are judged to be practical and cost effective, the applicant will be required to implement such option. 4) The selected option for handling of wastewater is required to comply with all antidegradation requirements. (OAC 3745-1-05) 5) Package treatment plants will only be approved as temporary systems, which will be required to be abandoned when public sewers become available. 6) Ohio EPA will take into consideration overlapping service areas. Ohio EPA will discourage projects which may result in overlapping service areas. However, Ohio EPA may approve such projects in order to eliminate existing unaddressed water pollution or public health problems. 7) Ohio EPA will consider existing 208 planning and planning areas to the extent that the source(s) of the new dischargers seeking permits were specifically anticipated and addressed in the planning process so that a specific entity was actually assigned responsibility for undertaking and providing treatment for the discharge. Where 201 planning has been carried out and a specific alternative has been implemented, Ohio EPA will consider existing 201 planning areas to the extent that service to the entire planning area was the alternative chosen for implementation.

Specific assessments of needs of industrial waste treatment systems holding NPDES permits were prepared. For the Scioto River Basin only, the inventory included an analysis of effluent data provided through LEAPS as well as facility data. In the 1980 WOMP, an inventory of industrial dischargers was provided on a case-by-case basis via the NPDES permit program, reflecting, where available, the wasteload allocations for selected watersheds.

Planning boundaries have been established consistent with State subbasin boundaries. In the Initial Water Quality Management Plan (IWQMP) for the nondesignated planning areas, facility planning areas and stream segments (originally classified by the State of Ohio in 1973) were identified, as were locations of significant dischargers and monitoring stations. The Water Pollution Control Loan Fund (WPCLF) was signed into law on May 26, 1989. This is a loan program which could make \$500 million available between 1989-1994 for municipal wastewater treatment improvements and nonpoint source pollution control projects.