BEFORE THE ENVIRONMENTAL BOARD OF REVIEW

STATE OF OHIO

WASTE TECHNOLOGIES INDUSTRIES	:	Case No. EBR 152581
Appellant,	:	
v.	:	
DONALD SCHREGARDUS, DIRECTOR OF ENVIRONMENTAL PROTECTION	:	
Appellee.	:	Issued: March 1, 1994

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

Issued By:

ENVIRONMENTAL BOARD OF REVIEW
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This matter comes before the Environmental Board of Review (EBR) upon an appeal by Waste Technology Industries ("WTI") from the issuance of a National Pollutant Discharge Elimination System ("NPDES") permit to Appellant by Appellee, the Director of the Ohio Environmental Protection Agency ("OEPA"). The permit in question was effective on October 30, 1991. Appellant timely filed the instant Notice of Appeal on November 24, 1991.

On May 24, 1993, the parties filed a Joint Stipulation of Facts and a Joint Motion to Admit ("JS") certain documents as Joint Exhibits ("JE"). On June 1, 1993, the Board issued a ruling accepting the Joint Stipulation of Facts and admitted the listed documents. A hearing upon the appeal was held before the Board on June 3 and 4, 1993. The sole issue presented on appeal is whether it was unreasonable and/or unlawful for the Director to include a limitation for pH of 6.5 - 9.0 for Type B storm water in Appellant's final NPDES permit when there is evidence that the naturally occurring rain water in the geographic area surrounding the facility has an average pH value below the minimum pH value contained in the permit.

Based upon the pleadings of the parties, the record of the proceedings below which were certified to this Board pursuant to ORC Section 3745.04, the Joint Stipulation of Facts and Joint Motion to Admit and the evidence adduced at the de novo hearing in this case, the Board makes the following Findings of Fact, Conclusions of Law and Final Order.

FINDINGS OF FACT

THE FACILITY

1. Waste Technologies Industries (WTI) is a hazardous waste treatment, storage and disposal facility located on a 21.5 acre site in East Liverpool, Columbiana County, Ohio. (Appellee's Exhibit 1)

2. On September 17, 1990, the Ohio EPA received an application for a NPDES permit from WTI. The application referenced two outfalls at the facility: Outfall 001 and Outfall 002. Prior to the issuance of the final NPDES permit, the application for discharge from Outfall 001 was withdrawn. (CR 5, CR 12)

3. An internal monitoring station (IMS) monitors a waste stream prior to its mixing with another waste stream. These monitoring stations are located within a facility and do not discharge directly into waters of the State. The WTI facility has four separate IMSs: IMS 601; IMS 602; IMS 603; and IMS 604. (H.T., Vol 1, p. 149, CR 11)

4. Waste streams flow through one or more IMSs prior to being discharged through an outfall. An outfall is used to monitor waste streams at the point of discharge to waters of the State. WTI discharges through two outfalls to the Ohio River: Outfall 001 and Outfall 002. (CR 11)

5. WTI discharges both storm water conveyed or collected at its facility and non-contact cooling water that it purchases from the city of East Liverpool, Ohio into the Ohio River through Outfall 002. (JS paragraph 3)

6. All storm water conveyed or collected at the WTI facility is classified as either Type A, Type B or Type C storm water. (JS paragraph 5; Appellant's Exhibit A)

7. Type A storm water is runoff from conveyance system A areas, which are

non-process areas with no potential for exposure to hazardous waste. Non-process areas consist of the employee parking lot, grassy areas, and rooftops at the site. (CR 11 and JS paragraph 6)

8. Type A storm water, which is present after rain events, is conveyed via a dedicated storm sewer network where it is combined first with non-contact cooling water and then with Type B storm water at IMS 601. Ultimately, this mixture is discharged, through Outfall 002, to the Ohio River, on a continuous flow basis. (JS paragraphs 6, 11)

9. Type B storm water is runoff from all collection system B areas which are non-active process areas at the WTI facility. Non-active process areas are all areas in which waste is not actively handled, stored or treated, but in which there is a possibility that storm water passing over the areas could come in contact with process waste via drips or spills. Collection system B areas consist of the curbed roadways at the site. (CR 11, JS 7, Appellee's Exhibit 1)

10. Type B storm water is collected, transferred to three 200,000 gallon storage tanks and then analyzed prior to discharge through IMS 602. (JS 7, Appellee's Exhibit 3)

11. Type C storm water is runoff from active process areas. Active process areas are all areas in which waste is handled, stored and/or treated. Type C storm water is not permitted to be discharged from the WTI facility; rather, it is collected, transferred to storage tanks, treated, recycled into the process, incinerated or transported off-site. (JS paragraph 9)

12. Non-contact cooling water consists of water purchased by WTI from the City of East Liverpool, Ohio, and is used at the WTI facility to cool machinery. This water is combined with Type A storm water which is then discharged via IMS

601 and ultimately through Outfall 002 to the Ohio River. (CR 11, JS 7)

THE PERMIT

13. On September 3, 1991, the Director of the Ohio EPA issued a public notice regarding WTI's draft NPDES Permit No. 31N00170*AD. The public notice outlined the relevant factors regarding the WTI facility and the discharges at issue and described the procedure for interested parties to submit written comments regarding the draft permit. (CR 11)

14. The draft NPDES permit included limitations for the following six outfalls and IMSs at the WTI facility:

1. Outfall 3IN00170*AD (001), consisted of discharges from a project which is unrelated to WTI's process activities. The application for discharge from this outfall was withdrawn and, thus, this outfall is not regulated under the final NPDES permit;

2. IMS 3IN00170601 (601) consists of a mixture of non-contact cooling water, Type A storm water, and Type B storm water;

3. IMS 3IN00170602 (602) consists of Type B storm water only;

4. IMS 3IN00170603 (603) is limited to off-site stormwater runoff entering WTI's property and, thus, it is not regulated under the final NPDES permit;

5. IMS 3IN00170604 (604) is limited to off-site stormwater runoff entering WTI's property and, thus, it is not regulated under the final NPDES permit;

6. Outfall 3IN0017002 (002) is a combined outfall made up of discharges from IMSs 601, 602, 603 and 604. (JS paragraph 13 JE 11, CR 6)

15. Among the limitations contained in the draft permit was a proposed range for pH of not less than 6.5 Standard Units ("S.U.") and not greater than 9.0 S.U.

for Type B storm water to be measured at IMS 602 once prior to discharge. (CR 11)

16. The NPDES Permit Program Fact Sheet specifically indicated that "pH limitations on all outfalls and monitoring stations are based on Ohio Water Quality Standards, OAC 3745-1-7." (CR 11)

17. On October 3, 1991, WTI submitted written comments regarding the draft NPDES permit to OEPA. (CR 7)

18. In its written comments, WTI included a request that the OEPA delete the pH limitation for all IMSs that were a part of Outfall 002 (i.e., IMS 601, IMS 602, IMS 603 and IMS 604), as well as for Outfall 002 itself. Specifically, WTI stated:

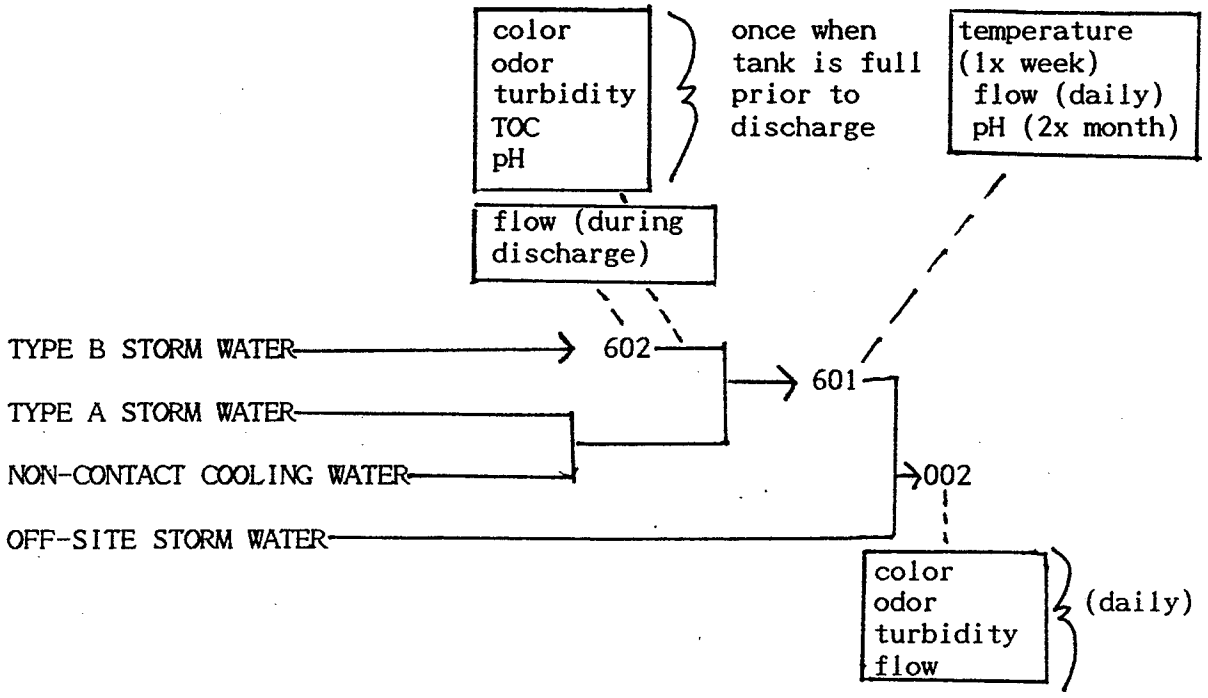
> "Because of acid rain, a minimum pH of 6.5 may not be achievable for undiluted storm water sample stations. WTI believes that pH should be a parameter that is monitored only for all stations that are part of outfall 3IN00170002. After we have enough data for pH that is influenced by rainfall, the Agency could review that data and propose an appropriate lower limit (if necessary) for storm water pH." (CR 7)

19. The OEPA responded to WTI's comments by letter dated October 30, 1991. The OEPA indicated that it would remove Outfall 001 and IMSs 603 and 604 from regulation under the final NPDES permit and it would delete the requirement to monitor for pH at Outfall 002. However, despite WTI's comments, OEPA did not remove the requirement that pH be monitored at IMS 601 and IMS 602. (CR 5)

20. On October 30, 1991, the OEPA issued a final NPDES permit to WTI. The final permit requires, inter alia, that Type B storm water be tested for color, odor, turbidity, total organic carbon ("TOC") and pH at IMS 602 once prior to discharge. Type B storm water may be discharged only if the monitoring at IMS

602 reveals that the TOC level is 168 mg/l or less and the pH level is not less than 6.5 S.U. nor greater than 9.0 S.U.. In addition, the final NPDES permit requires that temperature be monitored once per week, flow be monitored daily and pH be monitored once every two weeks at IMS 601. The pH level at this location must also be not less than 6.5 S.U. nor greater than 9.0 S.U. in order for the mixture to be discharged. Finally, color, odor, turbidity and flow must be monitored on a daily basis at Outfall 002. (CR 1)

21. A diagram of the discharge routes, internal monitoring stations and monitoring requirements at the WTI facility pursuant to the final NPDES permit is as follows:



TYPE B STORM WATER

22. As stated above, Type B storm water at the WTI facility is collected, transferred to three 200,000 gallon storage tanks and then analyzed for color, odor, turbidity, TOC and pH prior to discharge through IMS 602. Pursuant to the

NPDES permit at issue, in order for the B water to be discharged through IMS 602, the pH of the water must be not less than 6.5 S.U. and not greater than 9.0 S.U. and its TOC level must be less than or equal to 168 mg/1. After the B water travels through IMS 602, it proceeds through IMS 601 and, ultimately, through Outfall 002. (CR 1)

23. In its "'B Water Management Plan" Appellant describes the treatment of B water at WTI as follows:

> "Normal operation of the B Water Collection and Discharge System will enable WTI to collect potentially contaminated storm water including: (1) spills that occur during a precipitation event; (2) spills that remain undetected until a sump inspection is performed; and (3) spills that are detected during routine sample and analysis of the storm water tank." (Appellee's Exhibit 3, p. 2)

24. In various documents Appellant characterizes Type B stormwater as "potentially exposed to wastes" and "potentially contaminated storm water." (Appellee's Exhibit 1, paragraph 3.1; Appellee's Exhibit 3, p. 2)

25. Similarly, the NPDES Permit Program Fact Sheet indicates that Type B storm water is "runoff from non-active process areas that has a slight potential to be exposed to process waste." (CR 11)

26. Bryan J. Schmucker, an Environmental Engineer for the Division of Water Pollution Control in the Northeast District Office of the Ohio EPA and the individual who drafted the original NPDES permit at issue, testified that the Ohio EPA treated Type B storm water as "industrial waste" because of the potential that the B water could be contaminated by hazardous waste. (HT, Vol. 1, pp 149-150)

27. Mr. Schmucker further testified that the pH range of 6.5-9.0

contained in the permit reflected the Water Quality Standards of the Ohio River. He also indicated that this limitation was included at IMS 602 because Type B storm water, which could potentially be contaminated by hazardous wastes and which may not be in compliance with the applicable Water Quality Standards, could, under certain circumstances, be discharged through IMS 602, IMS 601 and, ultimately, Outfall 002 into the Ohio River without being combined with any other water. In other words, prior to discharging the B water through IMS 602 could be the last opportunity to measure the pH of the B water before its discharge into the Ohio River. (HT, Vol. 1, p. 143, pp 150-151, p. 167)

28. Mark Mann, the Environmental Supervisor for the Industrial NPDES Permit Section in the Division of Water Pollution Control at the Ohio EPA, testified regarding actual instream measurements of the pH of the Ohio River taken at East Liverpool by ORSANCO, an organization consisting of the states bordering the Ohio River whose duty it is to oversee and maintain the quality of the river. Mr. Mann discussed 28 pH readings taken by ORSANCO at East Liverpool, Ohio between January 30, 1990 and June 9, 1992; the results of which ranged from 6.9 to 8.2. (Appellee's Exhibit 7, HT, Vol. 2, pp. 14-18)

29. Paul Anderson, an Environmental Supervisor for the Division of Hazardous Waste Management in the Northeast District Office of Ohio EPA, testified that the pH and TOC parameters were included in the permit at IMS 602 as an "indicator tool" or to "raise flags" regarding the possibility of an undetected spill in the B water tanks. (HT, Vol. 1, pp. 124-126; 137-138)

DISCUSSION OF pH

30. The acidity of rainwater is generally measured using pH, which measures the potential amount of hydrogen ion activity in a particular liquid.

The pH scale runs from 0 to 14.0. In this scale: 7.0 is neutral; acidic solutions have a pH of less than 7.0; and, alkaline solutions have a pH of greater than 7.0. (J.S. No. 24)

31. Pure water has been assigned a pH value of 7.0. Furthermore, although there is some disagreement regarding the normal pH of clean rain water, it is generally accepted as having a pH of 5.5 - 5.6. (J.S. No. 26, H.T. p. 89)

32. The North Ohio Valley Air Authority ("NOVAA") has collected precipitation samples in Steubenville, Ohio for the past ten years. The rain samples which are collected and analyzed by NOVAA never touch the earth, or any other matter, prior to entering the rain collection containers. (JS 21 and 22)

33. The WTI facility is approximately twenty miles from Steubenville, Ohio.

34. Doctor Stephen Zemba, who was offered and accepted during the hearing as an expert in the area of acid rain issues and dispersion of air pollutants, testified that the acidity of rain is a regional, rather than a localized, phenomenon. In keeping with this, Dr. Zemba further testified that he would expect the pH of rain at the WTI site to mimic the range observed at Steubenville where the NOVAA samples were taken. (H.T. p.p. 80; 89.)

35. The NOVAA data reveals monthly composite pH values for the Steubenville, Ohio collection area for the period from 1989 through 1992 of between 3.32 and 5.21. Specifically, the readings were as follows:

1989

January	4.01	July	3.75
February	4.10	August	5.02
March	4.09	September	--
April	4.04	October	--
May	3.99	November	4.16
June	3.89	December	4.18

1990

January	4.20	July	4.90
February	4.10	August	5.21
March	4.60	September	5.20
April	5.20	October	5.10
May	4.26	November	4.60
June	4.61	December	4.80

1991

January	4.20	July	3.32
February	4.10	August	3.90
March	4.60	September	3.45
April	5.20	October	5.01
May	5.20	November	4.06
June	3.51	December	4.24

1992

January	3.88	July	4.02
February	3.90	August	3.96
March	4.09	September	3.92
April	--	October	3.94
May	4.57	November	4.06
June	3.61	December	4.10

36. The pH readings of the stormwater discharges from IMS 602 for the period from December 2, 1991 through February 17, 1993, were as follows:

Date	pH of Discharge
12-2-91	8.0
12-3-91	7.9
12-4-91	8.1
12-20-91	7.2
12-21-91	7.5
12-31-91	8.7
1-2-92	7.7
1-15-92	9.5
1-16-92	8.9
2-3-92	7.9
2-4-92	7.7
2-24-92	8.8
2-26-92	8.4
3-18-92	8.48
3-20-92	8.26
3-23-92	8.97
3-25-92	8.22
3-31-92	8.60

4-7-92	8.74
4-13-92	8.40
4-20-92	8.18
4-27-92	6.95
5-4-92	6.9
5-18-82	7.7
5-28-92	6.8
6-5-92	7.8
6-8-92	6.7
6-11-92	7.2
6-12-92	7.9
6-15-92	6.6
6-16-92	6.6
7-6-92	6.8
7-15-92	6.7
7-20-92	8.5
7-23-92	6.7
7-27-92	7.2
7-28-92	7.1
7-31-92	8.0
8-5-92	7.3
8-12-92	6.8
8-13-92	6.7
8-14-92	8.0
8-20-92	7.5
8-25-92	6.7
8-28-92	6.9
8-31-92	7.4
9-9-92	7.3
9-21-92	8.3
9-22-92	6.6
9-29-92	8.9
10-9-92	8.78
10-27-92	7.55
10-28-92	6.77
10-29-92	8.82
10-30-92	8.90
11-2-92	8.0
11-9-92	7.35
11-13-92	8.70
11-19-92	8.73
11-30-92	7.53
12-21-92	7.6
1-10-93	6.5
2-17-93	8.5 (Appellant's Exhibit T)

37. Deborah Rushin, the Environmental Manager at WTI, testified that since the facility began accepting waste in the Fall of 1992, they have not treated

the storm water in the B tanks, and there were no violations of the pH limitations contained in the NPDES permit. (HT, Vol. 1, pp. 53-54)

38. Ms. Rushin further testified that, although the pH of the untreated B water had not fallen below the lower pH limit of 6.5 contained in the NPDES permit, she was concerned about an apparent trend toward lower pH readings of the B water. (HT, Vol. 1, p. 23)

APPLICABLE STATUTES AND REGULATIONS

39. Revised Code Section 6111.03 broadly enumerates the powers vested in the director of environmental protection to ensure the quality of the waters of the state. Included in these powers the director may:

> "(A) Develop plans and programs for the prevention, control, and abatement of new or existing pollution of the waters of the state;"
> . . .
> "(J) Issue, revoke, modify, or deny permits for the discharge of sewage, industrial waste, or other wastes into the waters of the state . . . ."

40. Revised Code Section 6111.01(A) defines "pollution" as "the placing of any sewage, industrial waste, or other wastes in any waters of the state."

41. Revised Code Section 6111.01(C) defines "industrial waste" as "any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacture, trade, or business, or from the development processing, or recovery of any natural resource, together with such sewage as is present."

42. Ohio Revised Code Section 6111.01(D) defines "other wastes" as "garbage, refuse, decayed wood, sawdust, shavings, bark, and other wood debris, lime, sand, ashes, offal, night soil, oil, tar, coal, dust, dredged or fill material, or silt, other substances that are not sewage or industrial waste, and any other 'pollutants' or 'toxic pollutants' as defined in the 'Federal Water

Pollution Control Act' that are not sewage or industrial waste."

43. Ohio Administrative Code Section 3745-33-02 provides in relevant part:

> "(A) No person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant without applying for and obtaining an Ohio NPDES permit in accordance with the requirements of this Chapter, 3745-33. . . .
>
> "(B) Each point source shall come under the Ohio NPDES permit system. The Director may issue a single permit covering more than one point source, but authorized discharge levels, monitoring requirements, and other appropriate requirements shall be specified for each point source."

44. Ohio Administrative Code Section 3745-33-01 (S) defines "point source" as "any discernible, confined and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, . . . from which pollutants are or may be discharged."

45. Outfall 002 constitutes a point source as defined in OAC 3745-33-01(S) and, thus, pursuant to OAC 3745-33-02, must be regulated pursuant to a permit. (CR 11)

46. Ohio Administrative Code Section 3745-33-04 sets out the criteria the Director must follow in issuing such a permit. Subdivision (B)(1)(a)(i) of this section provides that ". . . the Director shall determine and specify in the permit the maximum levels of pollutants that may be discharged to insure compliance with (i) applicable water quality standards, . . ."

47. Ohio Administrative Code Section 3745-33-05(B) grants the Director the following broad power relative to NPDES permits:

> "The director may include in an Ohio NPDES permit any other terms or conditions he finds reasonable and appropriate for the prevention and abatement of pollution."

48. Ohio Revised Code Section 6111.041 provides in relevant part:

> "In furtherance of sections 6111.01 to 6111.08 of the Revised Code, the director of environmental protection shall adopt standards of water quality to be applicable to the waters of the state. . . Such standards shall be adopted in accordance with section 303 of the 'Federal Water Pollution Control Act' and shall be designed to improve and maintain the quality of such waters for the purpose of protecting the public health and welfare, and to enable the present and planned use of such waters for public water supplies, industrial and agricultural needs, propagation of fish, aquatic life, and wildlife, and recreational purposes . . . ."

49. Pursuant to R.C. 6111.041, Ohio Administrative Code Chapter 3745-1 sets out the Ohio Water Quality Standards. OAC 3745-1-01(A) provides that:

> "It is the purpose of these water quality standards, Chapter 3745-1 of the Administrative Code, to establish minimum water quality requirements for all surface waters of the state, thereby protecting public health and welfare; and to enhance, improve and maintain water quality as provided under the laws of the State of Ohio, section 6111.041 of the Revised Code, the Federal Clean Water Act, 33 U.S.C. Section 1251 et seq., and rules adopted thereunder."

50. Ohio Administrative Code Section 3745-07 (A) then provides that:

> "(A) Water quality standards contain two distinct elements: designated uses; and numerical or narrative criteria designed to protect and measure attainment of the uses.
> (1) Each water body in the state is assigned one or more aquatic life habitat use designations. Each water body may be assigned one or more water supply use designations and/or one recreational use designation."

51. Ohio Administrative Code Section 3745-1-32 assigned the Ohio River the following designations:

> The Ohio River is designated warmwater habitat, public water supply, agricultural water supply, industrial water supply and bathing waters, and will meet the criteria set forth in rules 3745-1-01 to 3745-1-07 of the Administrative Code. However, criteria set forth in this rule supersede the above rules where applicable.

These criteria apply outside the mixing zone."

52. Bryan Schmucker testified that while OAC 3745-1-32 states that the criteria set forth in OAC 3745-1-01 to 3745-1-07 apply "outside the mixing zone", the Director requires all permittees to satisfy applicable criteria at the point of discharge into the river due to the impossibility of monitoring outside the mixing zone. (HT, Vol. 1, pp. 172-173)

53. Ohio Administrative Code Section 3745-1-07 sets out the numerical and narrative criteria for the various use designations. Specifically, table 7-1 of this Section requires that pH be limited to a range of 6.5-9.0 in waters of the State, such as the Ohio River, which have a warmwater habitat use designation.

54. Finally, OAC 3745-1-01(D) contains an exception to the water quality criteria contained in OAC Chapter 3745-1. Ohio Administrative Code Section 3745-1-01(D) provides:

> "Water quality criteria will not apply where such criteria are exceeded due to natural conditions alone. This shall in no way preclude the abatement of man-induced nonpoint source pollution."

CONCLUSIONS OF LAW

1. In reviewing and deciding a de novo appeal, the Board must determine whether or not the action of the Director which is under appeal was unreasonable or unlawful.

2. Unlawful means that the action taken by the Director is not in accordance with law. Unreasonable means that the action is not in accordance with reason or that it has no factual foundation. Only where the Board can find from the certified record filed in the case and from the evidence which was produced at the de novo hearing that there is no valid factual foundation for the

Director's action or that the action was not in accordance with law, can the action under appeal be found to be unreasonable or unlawful. (Citizens Committee to Preserve Lake Logan v. Williams, 56 Ohio App. 2d 61 [1977])

3. Where the record produced before the Board demonstrates that the action taken by the Director is reasonable and lawful the Board must affirm the action of the Director. The Board may not substitute its judgment for that of the Director. (Citizens, Supra)

4. The discharge from Outfall 002 at the WTI site into the Ohio River is subject to the authority of the Director of the Ohio EPA and the NPDES permit system. Pursuant to Ohio Revised Code Chapter 6111 and the regulations adopted thereunder, the Director is authorized to impose water quality related limitations as conditions of an NPDES permit.

5. Although Appellant asserts that Type B water is "pure" stormwater, in several respects a review of the evidence leads us to another conclusion. First, the fact that the pH of the rainwater in the area of the facility consistently differs so dramatically from the pH of the untreated Type B water tested at IMS 602, clearly indicates that the contact of the B water with the non-active process areas of Appellant's facility, as well as the collection of the runoff from these areas, in and of itself, affects the pH of the Type B water which is ultimately discharged into the Ohio River. The effect of Appellant's intervention in collecting and routing the B storm water is especially relevant since the record demonstrates that there are circumstances where Type B water alone could be discharged through Outfall 002 into the Ohio River. Thus, the last opportunity to test Type B water for pH prior to its discharge into the Ohio River could be at IMS 602. With all this in mind, it was reasonable and lawful

for the Director to include conditions in the NPDES permit requiring Appellant to test Type B storm water for pH at IMS 602 and to preclude the discharge of this water if it fails to meet the pH range of 6.5-9.0 established for the Ohio River in Ohio's Water Quality Standards.

6. Furthermore, Appellant admits, and the evidence adduced at the hearing establishes, that Type B storm water is "potentially contaminated" and "has a slight potential to be exposed to process waste,"; i.e., once again, Type B storm water can not be treated as "pure" storm water. In view of this fact, it was perfectly reasonable for the Ohio EPA to treat Type B storm water as "industrial waste," i.e., a pollutant, as Bryan Schmucker testified. Accordingly, Ohio Revised Code Section 6111.03, in conjunction with OAC 3745-33-05 plainly authorizes the Director to impose testing requirements and appropriate standards relative to the Type B storm water at the WTI facility. Thus, the Director's action in including such conditions in the NPDES permit at issue was both reasonable and lawful.

7. Finally, the Board finds no merit in Appellant's argument that case law, and OAC 3745-1-01(D) preclude the Director from including a condition in the NPDES permit requiring Type B storm water to meet a pH limitation of 6.5 to 9.0 because of the natural acidity of rain water in the East Liverpool area. Specifically, Appellant asserts that it was unreasonable and unlawful for the Director to include the pH limitation for Type B water in the permit because the applicable water quality criteria are exceeded due to natural conditions alone or as a result of factors external to the site and, therefore, they are being asked to remedy a condition for which they are not responsible. As discussed above, the record indicates that Type B storm water is not consistent with the

rain water generally falling in the East Liverpool area; rather, the rain water has been clearly altered through its interaction with the WTI facility as indicated by the variation in the pH of the pure rain water in the area versus the pH of the untreated Type B storm water at IMS 602. Thus, the Board disagrees with Appellant's contention that the Director is requiring Appellants to remove pollutants for which they are not responsible, or to alter conditions which are naturally occurring.

FINAL ORDER

The action of the Director in including a condition in Appellant's NPDES permit imposing a pH limitation and testing requirement on Type B storm water on IMS 602 was both reasonable and lawful and is hereby AFFIRMED.

The Board, in accordance with Section 3745.06 of the Revised Code and Ohio Administrative Code 3746-13-01, informs the parties that:

> Any party adversely affected by an order of the Environmental Board of Review may appeal to the Court of Appeals of Franklin County, or, if the appeal arises from an alleged violation of a law or regulation to the court of appeals of the district in which the violation was alleged to have occurred. Any party desiring to so appeal shall file with the Board a Notice of Appeal designating the order appealed from. A copy of such notice shall also be filed by the Appellant with the court, and a copy shall be sent by certified mail to the Director of Environmental Protection. Such notices shall be filed and mailed within thirty days after the date upon which Appellant received notice from the Board by certified mail of the making of an order appealed

from. No appeal bond shall be required to make an appeal effective.

THE ENVIRONMENTAL BOARD OF REVIEW

Julianna F. Bull, Chairwoman

Toni E. Mulrane, Vice-Chairwoman

Jerry Hammond, Member

Entered in the Journal of the Board this 1st day of March, 1994.

COPIES SENT TO:

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FINDINGS OF FACT
AND FINAL ORDER
Case No. EBR 152581

CERTIFICATION

I hereby certify that the foregoing is a true and accurate copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER in WASTE TECHNOLOGIES INDUSTRIES V. DONALD SCHREGARDUS, DIRECTOR OF ENVIRONMENTAL PROTECTION, Case No. EBR 152581 entered into the Journal of the Board this 1st day of March, 1994.

Mary J. Oxley

Mary J. Oxley, Executive Secretary

Dated this 1st day of
March, 1994, at Columbus, Ohio.