

as the Eastern Regional Wastewater Treatment Plant located at 1802 Spaulding Road, Kettering, Montgomery County, Ohio and the Western Regional Treatment Plant located at 4111 Hydraulic Road, West Carrollton, Montgomery County, Ohio. In accordance with and pursuant to O.R.C. Section 6111.03(Q) and O.A.C. Rule 3745-3-01(C), the County has established and the Director of the Ohio Environmental Protection Agency (hereinafter "The Director") has approved an Eastern Regional Pretreatment Program on October 13, 1984 and Western Regional Pretreatment Program on December 14, 1984 to administer and enforce the pretreatment of industrial wastes received by these treatment plants. Furthermore, the Western and Eastern Regional Wastewater Treatment Plants are authorized to discharge sewage, industrial waste or other wastes to waters of the State in accordance with the conditions set forth in National Pollutant Discharge Elimination System (NPDES) Permits issued by the Director pursuant to O.A.C. Section 6111.03 (I).

II. JURISDICTION

1. The Court has jurisdiction over the subject matter herein pursuant to O.R.C. Chapter 6111. The Complaint states a claim upon relief can be granted against the County under these statutes. The Court has jurisdiction over the parties hereto. Venue is proper in this Court.

III. PARTIES

2. The provisions of this Consent Order shall apply to and be binding upon the County, its agents, officers, employees, assigns, and successors in interest. In addition, this Order shall apply to all persons, firms, corporations and other entities having notice of this Order and acting in privity with the County and any consultant hired by the County to conduct the work required by this Consent Order. Furthermore, the County shall provide a copy of this Consent Order to any consultant hired by the County to conduct the work required by this Consent Order.

IV. SATISFACTION OF LAWSUIT

3. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of the County, its agents, officers, employees, assigns, and successors in interest, for violations resulting from the County's administration and enforcement of its Eastern Regional and Western Regional Pretreatment Programs, as alleged in the Complaint, and which occurred prior to the entry of this order, and the following violations of the County's NPDES Permits (1) all violations alleged in the Complaint which occurred prior to the entry of this Order, (2) all effluent discharge violations at outfall 1PL00001001 at the Eastern Treatment Plant and all effluent discharge violations at outfall 1PL00002001 at the Western Treatment Plant which occurred prior to entry of this

Order, (3) all monitoring and reporting violations of the NPDES permits for the Western and Eastern Treatment Plants which occurred prior to entry of this order and (4) all violations of notification requirements (NPDES Part III, number 12) of the NPDES permits for the Western and Eastern Treatment Plants which occurred prior to entry of this order.

4. However, nothing in this Consent Order shall constitute or be construed as a release of the County, its agents, officers, employees, assigns and successors in interest for any claim, cause of action or demand in law or equity for any violations of ORC Chapter 6111., or the regulations adopted thereunder not alleged in the Complaint, and/or for violations of the types of claims alleged in the Complaint which occur after the entry of this Order.

5. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, as defined under O.R.C. Section 6111.01(I), not subject to the release set forth in Paragraph 3, for any liability it may have arising out of or relating in any way to the pretreatment of industrial wastes or any other violations of O.R.C. Chapter 6111. or the rules adopted thereunder.

V. GENERAL INJUNCTIVE RELIEF

6. The County is permanently enjoined and ordered to immediately comply with the requirements of ORC Chapter 6111.,

the rules adopted thereunder, and the terms and conditions of its current NPDES Permits, No. 1PL00002*GD, as modified by Permit Modification No. 1PL00002*HD, issued to the Western Treatment Plant and No. 1PL00001*GD, issued to the Eastern Treatment Plant, and any modifications or renewals thereof of the permits for either plant.

7. The County is further permanently enjoined and ordered to properly operate its Eastern and Western wastewater treatment plants and any associated equipment and to implement its Eastern Regional Pretreatment Program, as approved by the Director on October 13, 1984 and any modifications thereof and its Western Regional Pretreatment Program approved by the Director on December 14, 1984 and any modifications thereof.

VI. CIVIL PENALTIES

8. The County is further ordered to pay a civil penalty pursuant to Ohio Revised Code Section 6111.09, of Fifty Thousand (\$50,000.00). This payment shall be made by tendering a certified check or cashier check to Plaintiff's attorney within ten (10) days after the entry of this Order. Said check shall be payable to the "Treasurer, State of Ohio" and delivered to the following address:

Janis Miller
Administrative Assistant
Environmental Enforcement Section
30 East Broad Street, 25th Fl.
Columbus, Ohio 43266-0410

VII. STIPULATED PENALTIES

9. In the event that the County fails to comply with a final effluent limitation as required by its Western Treatment Plant NPDES Permit No. 1PL00002*GD, as modified by Permit Modification No. 1PL00002*HD, and any other modifications or renewals thereof the County shall be liable for and shall pay a stipulated penalty according to the following payment schedule:

For each 30 day effluent limitation that is violated, \$2,000.00 dollars for each violation. If the same 30 day effluent limitation is violated consecutively, \$4,000.00 for the second violation. If the same 30 day effluent limitation is violated consecutively, \$6,000.00 for the third violation. For the same 30 day effluent limitation that is violated consecutively thereafter, \$8,000.00 for each violation.

For each 7 day or daily effluent limitation that is violated, \$1,000.00 dollars for each violation. If the same 7 day or daily effluent limitation is violated consecutively, \$2,500.00 for the second violation. If the same 7 day or daily effluent limitation is violated consecutively, \$4,000.00 for the third violation. For the same 7 day or daily effluent discharge violation consecutively thereafter, \$6,000.00 for each violation.

For violation of any other permitting requirement, including but not limited to monitoring and reporting requirements, \$500.00 for each day each requirement is not met.

10. In the event that the County fails to comply with a final effluent limitation as required by its Eastern Treatment Plant NPDES Permit No. 1PL00001*GD, and any modifications or renewals thereof, the County shall be liable for and shall pay

a stipulated penalty accordingly to the following payment schedule:

For each 30 day effluent limitation that is violated, \$2,000.00 dollars for each violation. If the same 30 day effluent limitation is violated consecutively, \$4,000.00 for the second violation. If the same 30 day effluent limitation is violated consecutively, \$6,000.00 for the third violation. For the same 30 day effluent limitation that is violated consecutively thereafter, \$8,000.00 for each violation.

For each 7 day or daily effluent limitation that is violated, \$1,000.00 dollars for each violation. If the same 7 day or daily effluent limitation is violated consecutively, \$2,500.00 for the second violation. If the same 7 day or daily effluent limitation is violated consecutively, \$4,000.00 for the third violation. For the same 7 day or daily effluent limitation that is violated consecutively thereafter, \$6,000.00 for each violation.

For violation of any other permitting requirement, including but not limited to monitoring and reporting requirements, \$500.00 for each day each requirement is not met.

11. 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.

VIII. POTENTIAL FORCE MAJEURE

12. In any action by Plaintiff to enforce any of the provisions of this Consent Order, the County may raise at that

time the question of whether they are entitled to a defense that their conduct was caused by reasons beyond their control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by the parties that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an enforcement action, if any, is commenced by Plaintiff. Acceptance of this Consent Order without a force majeure clause does not constitute a waiver by the County of any rights or defenses they may have under applicable law.

IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

13. Performance of the terms of this Consent Order by the County is not conditioned on the receipt of any Federal or State grant or loan funds. In addition, the County's performance is not excused by the failure to obtain or the shortfall of any Federal or State grant or loan funds, or by the processing of any applications for the same.

X. TERMINATION OF STIPULATED PENALTIES

14. The provisions of this Consent order set forth in Section VII, Paragraphs 9 and 10, requiring the payment of stipulated penalties for NPDES permit violations at the Western

Treatment Plant may be terminated after (1) the County has achieved and maintained compliance with the final effluent limitations contained in the NPDES permit for the Western Treatment Plant for a period of One (1) year, which period may begin to run as early as October, 1991, and (2) the County has paid all stipulated penalties as required pursuant to this Consent Order for the Western Treatment Plant and the County has paid all civil penalties as required by Paragraph 8. Termination of stipulated penalties shall be by Order of the Court, upon application by any party and upon a demonstration that the conditions set forth in this paragraph have been met.

15. The provisions of this Consent order set forth in Section VII, Paragraphs 9 and 10, requiring the payment of stipulated penalties for permit violations at the Eastern Treatment Plant may be terminated after (1) the County has achieved and maintained compliance with the final effluent limitations contained in the NPDES permit for the Eastern Treatment Plant for a period of One (1) year, which period may begin to run as early as January, 1992, and (2) the County has paid all stipulated penalties as required pursuant to this Consent Order for the Eastern Treatment Plant and the County has paid all civil penalties as required by Paragraph 8. Termination of stipulated penalties shall be by Order of the Court, upon application by any party and upon a demonstration that the conditions set forth in this paragraph have been met.

XI. MISCELLANEOUS

16. The Court shall retain jurisdiction of this matter for the purpose of overseeing the implementation of this Order.

XII. COSTS

17. The County shall pay the costs of this action.

JUDGE

LEE FISHER
ATTORNEY GENERAL OF OHIO

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