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U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

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

UNITED STATES OF AMERICA,)
 Plaintiff, and)
)
 STATE OF OHIO, ex rel.)
 Lee Fisher, Attorney)
 General of Ohio,)
 Intervenor Plaintiff,)
)
 v.)
)
 CITY OF AKRON, OHIO,)
 a municipal corporation,)
)
 Defendant.)

Case No. 88-CV-2279A
Chief Judge Thomas D. Lambros

CONSENT DECREE

WHEREAS, Plaintiff, United States of America, on behalf of the United States Environmental Protection Agency, having filed the Complaint herein on July 1, 1988, against Defendant, City of Akron, Ohio ("Akron"), alleging violations of the Clean Water Act, 33 U.S.C. § 1251 et seq. ("Act"), and the terms and conditions of its National Pollutant Discharge Elimination System ("NPDES") Permit Nos. 3PF00000*CD and 3PF00000*DD ("Permit"); and

WHEREAS the State of Ohio, ("Ohio") having moved to intervene as a party plaintiff and this Court having granted said Motion; and

WHEREAS Ohio's complaint against Akron alleges violations of the Act, Chapter 6111 of the Ohio Revised Code and the terms and conditions of its currently and previously effective NPDES Permits and Administrative Orders; and

WHEREAS the parties having agreed that settlement of this matter is in the public interest and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter;

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

I. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action and over the parties consenting hereto, pursuant to 28 U.S.C. §§ 1345, 1355 and 1365 and 33 U.S.C. § 1319(b). The Complaints state claims against Akron upon which relief can be granted.

II. APPLICABILITY

2. The provisions of this Consent Decree shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors and assigns and any person having notice of this Consent Decree who is, or will be, acting in concert or participation with Akron. Akron shall provide a copy of this Consent Decree to any successor in interest at least thirty (30) days prior to transfer of that interest, and simultaneously shall verify in writing to the

United States Environmental Protection Agency ("U.S. EPA") that such notice has been given.

The United States alleges in its complaint that Akron has operated its wastewater treatment plant in violation of effluent limitations contained in its applicable NPDES permits and in violation of various requirements of its pretreatment program. Ohio alleges in its complaint that Akron has operated its wastewater treatment plant and sewer system in a manner which has resulted in numerous violations of the NPDES Permit issued to it by the Director of Ohio EPA and in violation of the water pollution laws of the State of Ohio. Akron continues to deny such allegations.

III. FINDINGS OF FACT

3. Akron is a municipal corporation organized and existing under the laws of the State of Ohio. Akron owns and operates a wastewater treatment plant located in Summit County, at 2460 Akron-Peninsula Road, Akron, Ohio ("plant"). The plant discharges pollutants into the Cuyahoga River, which flows into Lake Erie.

4. On November 28, 1984, the Ohio Environmental Protection Agency ("Ohio EPA") reissued a NPDES permit, No. 3PF00000*CD, to Akron. The permit set effluent limitations on Akron's discharge of pollutants into the Cuyahoga River. On September 8, 1986, Ohio EPA issued modified NPDES permit No. 3PF00000*DD, which included, among other things, initial, interim and final effluent limits, and incorporated by reference Akron's pretreatment

program. The renewal NPDES permit, No. 3PF00000*ED, became effective on September 30, 1991. On September 12, 1994, Ohio EPA issued modified NPDES permit, No. 3PF00000*FD which became effective September 19, 1994. On September 30, 1994, Ohio EPA issued renewal NPDES permit, No. 3PF00000*GD which became effective November 1, 1994.

IV. COMPLIANCE PROGRAM

5. Akron shall achieve the compliance program set forth below.

A. Compliance with NPDES Permit

Beginning upon the date of lodging of this Consent Decree, and continuously thereafter, Akron shall comply with all effluent limitations and other terms and conditions of its applicable NPDES permit except as provided in Paragraph 5 B, Secondary Capacity, below.

B. Secondary Capacity

From the date of lodging of this Consent Decree until March 28, 1998 Akron shall comply with the interim effluent limits and conditions set forth in Appendix A Stress Test which is incorporated herein by reference, in lieu of compliance with NPDES Permit No. 3PF00000*GD, Part I.A. - Secondary Bypass Effluent Limitations and Monitoring Requirements, page 5 of 32. From the date of lodging of this Consent Decree until June 30, 1997 Akron shall comply with the interim effluent limits and conditions set forth in Appendix B Dissolved Oxygen, which is incorporated herein by reference, in lieu of compliance with the

final effluent limitations and monitoring requirements contained in NPDES Permit No. 3PF00000*GD, Part I.A. - Final Effluent Limitations and Monitoring Requirements, page 2 of 32.

C. Necessary Improvements to the Water Pollution Control Station

Akron shall take the following steps to increase and improve the waste handling capacity and to ensure consistent operation of its Water Pollution Control Station:

<u>Milestone</u>	<u>Date</u>
(1) <u>Final clarifier covers</u>	
(a) Commence construction of sixteen additional final clarifier covers if the pilot project indicates that covers are a viable method of protecting against freezing and algae growth.	August 23, 1993
(b) Complete construction of sixteen additional covers on final clarifiers.	December 1, 1995
(2) <u>Computer control</u>	
(a) Award contract and issue notice to proceed for installation of a computer system for distributive control of plant processes.	March 22, 1993
(b) Complete installation and thereafter operate a computer system for distributive control of plant processes.	November 20, 1995
(3) <u>Fine bubble difusers</u>	
(a) Award contract and issue notice to proceed for installation of fine bubble difusers in six aeration tanks.	October 31, 1994
(b) Complete installation of fine bubble difusers in six aeration	

tanks.

December 31, 1996

(4) Final clarifier baffles

(a) Submit approvable application for permit to install final clarifier baffles

June 10, 1993

(b) Award contract and issue notice to proceed for installation of final clarifier baffles

August 23, 1993

(c) Complete installation of final clarifier baffles

December 1, 1995

(5) Stress Test

(a) Devise stress test plan and submit to Ohio EPA

December 31, 1996

(b) Commence stress test

March 31, 1997

(c) Complete stress test

September 30, 1997

(d) Submit to U.S. EPA and Ohio EPA a final report documenting the results of the stress test

November 30, 1997

(6) Dissolved Oxygen

(a) Begin continuous monitoring of dissolved oxygen in Cuyahoga River

November 1, 1994

(b) Complete monitoring

December 31, 1996

(c) Compile data and submit to Ohio EPA

February 28, 1997

D. Sanitary Sewer Projects

Akron shall eliminate any discharges resulting from less than a 10 year intensity storm from the separate sanitary sewer system, whether occurring at the locations identified in NPDES permit No. 3PF0000*DD or elsewhere. If any such discharge occurs in any portion of the separate sanitary sewer system, other than

those listed below, Akron shall take affirmative action, within 30 days of becoming aware of the discharge, to eliminate the discharge as expeditiously as possible. Any such discharge from the overflows and bypasses listed below shall be eliminated in accordance with the schedules below.

(1) Project 1: Hawkins District Relief Sewers:

- 3PF00000021 - White Pond - Mull Ave. Lift Station Overflow
- 3PF00000030 - Little St. and South Hawkins Ave. Sanitary Bypass
- 3PF00000031 - 1187 Copley Rd. Sanitary Sewer Bypass
- 3PF00000032 - Hardesty Blvd. and Little St. Sanitary Bypass
- 3PF00000033 - Cadillac Blvd. and Packard Dr. Sanitary Bypass
- 3PF00000043 - Copley Rd. and Bacon Ave. Sanitary Bypass
- 3PF00000081 - Bye St. Sanitary Sewer Sanitary Bypass

Milestone

Date

Hawkins I (Hawkins @ Marion to Kildare.
@ Mull Ave. via R/W, Artman and Kildare)

Commence construction of
relief sewer

August 23, 1993

Complete construction of
relief sewer and eliminate
discharges

August 15, 1995

(2) Project 2: Willow Run (Lakeshore Blvd.)
Projects:

3PF00000005 - Mud Run Sewage Pump Station Overflow

Milestone

Date

Complete construction of trunk
sewer replacement and upsizing
to allow increased flow
capacity from the completed and
upsized Mud Run Pump Station and
upsized and redirected Mud Run force
main and eliminate discharges.

March 1, 1995

E. Industrial Pretreatment Projects

Akron shall sample and analyze the effluent from each significant industrial user (SIU) and conduct surveillance activities in order to identify, independent of information supplied by SIU's, occasional and continuing noncompliance with pretreatment standards. Akron shall inspect and sample the effluent from each SIU at least once a year as required by 40 C.F.R. § 403.8(f)(2)(v).

Akron shall submit the Quarterly Violation Report (QVR) and the Annual Industrial Pretreatment Program Effectiveness Report to U.S. EPA and Ohio EPA utilizing the forms and format provided by Ohio EPA on the schedule required by Akron's NPDES permit and contained in its approved Pretreatment Program.

F. Injunction

Akron agrees and hereby is enjoined from the initiation of any construction that requires a Permit to Install under Ohio Administrative Code Chapter 3745-31 without first obtaining such permit issued by Ohio EPA.

V. FUNDING

6. Compliance with the terms of this Consent Decree by Akron is not conditioned on the receipt of Federal or State grant funds. In addition, failure to comply is not excused by the lack of Federal or State grant funds, or by the processing of any applications for the same.

VI. REPORTING

7. Beginning with the end of the next full calendar quarter after entry of this Consent Decree and for every calendar quarter thereafter until this Consent Decree terminates in accordance with Paragraph 39, below, Akron shall submit written status reports to U.S. EPA and Ohio EPA. In the reports, Akron shall state the deadlines and other terms which it was required by the Consent Decree to meet during the reporting period, whether it met these requirements, the reasons for any noncompliance, and a projection of work to be performed pursuant to this Consent Decree during the following three-month period. Notification to U.S. EPA and Ohio EPA of any anticipated delay shall not, by itself, excuse the delay.

8. Akron shall submit each report within thirty (30) days after the end of each calendar quarter. Each report shall be signed by a duly authorized representative of Akron having knowledge of the report's contents and shall include a statement certifying on behalf of Akron that to the best of the certifying official's knowledge after due inquiry, the information contained in the report is true, accurate and complete. Akron shall not object to the admissibility in evidence of any quarterly report in any proceeding to enforce this Consent Decree.

9. Until the termination of this Consent Decree pursuant to Paragraph 39, Akron shall submit to U.S. EPA a copy of each report which it is required by its applicable NPDES permit to submit to Ohio EPA.

10. Akron shall submit all written reports, notices, and submittals required by this Consent Decree to be submitted to U.S. EPA to: Director, Water Division, Attention: Chief, Compliance Section (WC-15J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604. Akron also shall submit a copy of all reports, notices and submittals to the Ohio EPA-NEDO, 2110 East Aurora Road, Twinsburg, Ohio 44087 Attention: Compliance Enforcement Section/DWPC. All reports, notices and submittals (other than monthly operating reports) shall be deemed submitted on the date they are postmarked, sent by certified mail, or transmitted by facsimile.

VII. STIPULATED PENALTIES

11. Beginning upon the date of lodging, Akron shall pay to plaintiff United States of America and the intervenor plaintiff State of Ohio, two-thirds to the United States and one-third to the State of Ohio, on demand, the following stipulated penalties:

A. For each failure to comply with a compliance schedule milestone specified in Part IV, Compliance Program, Paragraphs 5 C or D:

<u>Period of Noncompliance with Milestone</u>	<u>Penalty per day</u>
1st day to 30th day	\$ 500
31st day to 60th day	\$ 1,000
Each day beyond 60 days	\$ 1,500

If Akron asserts that it will be unable to comply with a future requirement of Paragraph 5 D, Sanitary Sewer Projects, Paragraph 13, Septic Tank Elimination, or Paragraph 15 A, Combined Sewer System and Pump Station Project, due to inability to timely obtain easements or Permits to Install or acquire property where required, Akron shall notify the parties of the cause of the delay and the milestones which Akron proposes to be extended as a result. Within 30 days of receipt of Akron's notification, U.S. EPA and Ohio EPA each shall notify Akron whether the delays are acceptable. If the delays are not acceptable, the parties shall meet within 30 days of notice of nonacceptance to discuss the asserted delay. If the parties are unable to agree, any party may submit the matter to the Court in accordance with the procedures and standards set forth in Parts XI and XII, below. Any agreed or ordered period of delay shall have the effect of extending the period for performance of the milestones involved without violation of this Consent Decree and without attachment of stipulated penalties under this part.

B. For failure to comply with any reporting requirements of Part IV, Paragraph 5 E, or Part VI, above:

<u>Period of noncompliance with requirement to submit report</u>	<u>Penalty per day</u>
1st day to 30th day	\$ 250
31st day to 60th day	\$ 500
Each day beyond 60th day	\$1,000

C. For failure to comply with any effluent limitations as required by Part IV, Paragraphs 5 A or B, above, until a renewal NPDES permit is issued and effective:

<u>Period of Noncompliance With Final Daily Effluent Limit</u>	<u>Penalty Per Day</u>
1st day to 30th day	\$ 750
31st day to 60th day	\$1,000
Each day beyond 60th day	\$1,500
<u>Failure to Comply With Average Effluent Limits</u>	<u>Penalty</u>
Seven day average limit	\$1,500
Thirty day average limit	\$7,500

The failure to attain 110 Million Gallon Per Day capacity through the secondary treatment process shall not incur stipulated penalties under this Consent Decree.

12. Akron shall pay any penalties incurred under this Part within 30 days of demand by certified or cashier's check or electronic funds transfer, two-thirds payable to the United States and one-third to the State of Ohio, to: "Treasurer, United States of America," and sent to the United States Attorney, 1800 Bank One Center, 600 Superior Avenue, Cleveland, Ohio 44114, and "Treasurer, State of Ohio," and sent to Janis Miller, Administrative Assistant, or a person subsequently designated by Ohio, at the Office of the Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410. Akron shall enclose with the check a letter, or shall separately send a letter if using electronic funds transfer, summarizing the violations for which

the penalty is paid. Akron shall send a copy of the letter and check or notice of transfer to the addressees in Paragraph 16, below.

VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECT
(UNITED STATES AND STATE OF OHIO)

13. Septic Tank Elimination

In addition to the civil penalty set forth in Part X of the Decree, and in furtherance of the mutual objectives of the United States, the State of Ohio, and Akron in improving the environment, Akron agrees to and is hereby ordered to spend \$1,500,000.00 to eliminate, to the extent such funds allow, existing septic tank systems by providing connection to sanitary sewers from the list set forth below:

A. Septic Tank Elimination Projects in Order of Priority

- (1) Copley Rd (W of St. Michaels Ave. to Collier Rd., S on Collier Rd.)
- (2) Selzer St./Lorenz Ave. (Uhler Ave. to N of Lorenz Ave.)
- (3) Morse St./Newdale Ave.
 - (a) Morse St. (Mud Run to Newdale Ave.)
 - (b) Newdale Ave. (Morse Rd St. to dead end)
- (4) W. Waterloo Rd. (RR Tracks, E. of Wintergreen Ave. to Gaugler Ave.)
- (5) Tampa Ave. (Wintergreen Ave. to W of LaRue Ave.)
- (6) Home Ave./Success Rd.
 - (a) Front St. (North Side interceptor to Cuyahoga Falls Ave.)
 - (b) Cuyahoga Falls Ave. (Front St./Gorge Blvd. northeasterly to R/W

- (c) Success Rd. & R/W - (Cuyahoga Falls Ave. to Home Ave.)
- (d) Home Ave. (N of Success Rd. to Belden Ave.)
- (7) Acoma Dr. (Derbydale Rd. to Emmitt Rd.)
- (8) Anton Dr./Acoma Dr.
 - (a) Anton Dr. (S of Derbydale Rd. to Bruce Rd.)
 - (b) Bruce Rd. (Anton Dr. to Acoma Dr.)
 - (c) Acoma Dr. (Bruce Rd. to Derbydale Rd.)
- (9) Parkgate Ave. (Hawkins District Relief Sewer - Project 1 to White Pond Dr.)
- (10) White Pond Dr. (470' S to 540' N of Parkgate Ave.)
- (11) Samuel Ave. (Iona Ave. to Chester Ave.)
- (12) McTaggart, Dr., Stimson St., Redbush Ave., Cordova Ave.
 - (a) McTaggart Dr. (Wooster Ave. to Stimson St.)
 - (b) Stimson St. (McTaggart Dr. to Collier Rd.)
 - (c) Redbush Ave. (Himelright Blvd. to Cordova Ave.)
 - (d) Cordova Ave. (Redbush Ave. to Bellevue Ave. Pump Station)
- (13) Kohler Ave., Steffee Ave., W. Waterloo Rd.
 - (a) Kohler Ave. (Steffee Ave. to Gaugler Ave.)
 - (b) Steffee Ave. (Waterloo Rd. to Kohler Ave.)
 - (c) W. Waterloo Rd. (Gaugler Ave. to W of Steffee Ave.)

B. Akron shall obtain Permits to Install and any other permits or approvals required for the construction required under this Paragraph.

C. Akron shall implement the septic tank elimination projects in accordance with the following schedule:

- (1) Begin construction April 18, 1994
- (2) Complete construction December 31, 1996

D. Within forty-five (45) days of construction of the sewer mains, Akron shall order the installation of lateral connections for all buildings within two hundred feet of the main. Such orders shall require that construction of the lateral connections shall be completed within six months of the order or earlier if reasonable.

E. (1) Until Akron has fully completed construction of the sewers and all buildings are connected, Akron shall report its progress on a quarterly basis in writing to the U.S. EPA and Ohio EPA consistent with Part VI of this Decree. This quarterly report shall include an itemized summary of the money expended in the quarter to accomplish the project.

(2) When Akron completes this project, it shall notify U.S. EPA and Ohio EPA consistent with Part VI of the Decree and provide a final itemized summary of the money expended.

F. In the event that Akron does not spend \$1,500,000.00, in carrying out Paragraph 13 of Part VIII of this Decree, Akron shall comply with the provisions of Paragraph 14.

14. Substitute Project

A. Akron shall make all good faith efforts to carry out the projects in Paragraph 13. In the event that Akron does not spend \$1,500,000.00 in carrying out the projects in Paragraph 13, Akron shall, within 30 days of termination of the septic tank

elimination project and at its own option, either a) pay the balance as a civil penalty with two-thirds paid to the United States and one-third paid to the State of Ohio, or b) notify the United States and the State of Ohio in writing that it intends to propose, subject to approval of the United States, an additional supplemental environmental project ("SEP") to be performed with the remaining money.

B. In the event that Akron seeks to perform such additional project, it shall submit its proposal for the project within 90 days of termination of the septic tank elimination project.

C. The additional project must satisfy the criteria for such projects set forth in U.S. EPA's SEP policy ("Policy on the Use of Supplemental Enforcement Projects in EPA Settlements," February 2, 1991) and/or other applicable policy or guidance documents identified by U.S. EPA.

D. In the event that the United States, in its discretion, does not agree to accept Akron's proposed additional project, the United States and Akron shall enter a 30 day period of negotiation during which the parties shall attempt to agree on a substitute project. At the end of this period, the United States, in writing, shall accept or reject the proposed project. The period of negotiation may be extended by agreement of the parties.

E. If the parties cannot agree, Akron shall pay to the United States and the State of Ohio as a civil penalty the amount

calculated as described in Paragraph 14 A, within thirty (30) days of written notification of nonacceptance by the United States of the proposed additional project. The United States' disapproval of or failure to agree to Akron's proposed additional project, including an implementation schedule that would become part of an agreed order modifying this Consent Decree, shall not be subject to dispute resolution under this Consent Decree or any other judicial review.

F. Upon receipt of written notice of U.S. EPA's approval of any proposed additional SEP, Akron agrees to implement the approved SEP in accordance with the schedule in the approved SEP.

G. If approved by U.S. EPA, the implementation schedule for the additional SEP would be included in a proposed agreed order modifying this Consent Decree to be submitted to the Court for approval. Once approved by the Court, the implementation schedule for the additional SEP would become enforceable under this Consent Decree.

H. (1) Until Akron has fully completed the additional SEP, Akron shall report its progress on a quarterly basis in writing to the U.S. EPA and Ohio EPA consistent with Part VI of this Decree. This quarterly report shall include an itemized summary of the money expended in the quarter to accomplish the project.

(2) When Akron completes this project, it shall notify U.S. EPA and Ohio EPA consistent with Part VI of the

Decree and provide a final itemized summary of the money expended.

I. In the event that Akron does not spend the balance of the \$1,500,000.00 on the additional project, then, within 30 days of termination of the additional project, Akron shall pay the balance as a civil penalty with two-thirds paid to the United States and one-third paid to the State of Ohio.

IX. SUPPLEMENTAL POLLUTION REDUCTION PROJECTS (STATE OF OHIO)

15. A. Combined Sewer System and Pump Stations Project

In addition to the civil penalty set forth in Part X of this Consent Decree and in furtherance of the mutual objectives of the State of Ohio and Akron in improving the environment and reducing the impact to the Cuyahoga River, Little Cuyahoga River, Ohio canal and other surface waters, Akron agrees and is hereby ordered to spend at least \$1,475,000.00 to install a radio-based monitoring system for monitoring its sewer system combined sewer overflow (CSO) and pump stations and upgrade the combined sewer overflow and pump station sensors as set forth below.

(1) Schedule

(a) Akron shall submit to Ohio EPA detailed plans for the implementation of this project which address all 35 combined sewer overflow stations and 31 pump stations. Upon approval this plan shall be incorporated and become enforceable under this Decree.

(b) Akron shall implement this project in accordance with the following schedule:

Commence construction July 1, 1994

Complete construction December 31, 1995

(c) Following installation of the improvements, Akron shall maintain and thereafter operate the monitoring system, sensors and other improvements.

(2) Plan

The Plan submitted pursuant to (a) above shall at a minimum include:

(a) Pump Stations Controls

(i) Standardization and updating of the pump controls in the pump stations;

(ii) The addition of a transmitter to each bubbler system to control wet well depth;

(iii) Backup floats or probes in wet wells will be standardized to enhance reliability and float switches will be added as high level sensors for pumps installed in dry wells;

(iv) Remote telemetry units to connect signals to the Home Avenue Central Data monitoring will be provided for the following parameters: 1) station door, 2) dry well hatch, 3) external wet well hatch, 4) pump run signal(s), 5) high level dry well, 6) wet well level, 7) generator or pump engine run, 8) station power, and 9) flow meters at stations with gravity overflows. In addition, the system will monitor the Mud Run pump station inlet gate and the Goodyear Retention Basin overflow flow meter.

(b) Combined Sewer Overflows Controls

Ultrasonic sensors to continuously measure the height of wastewater in the combined sewers will be installed at all CSO's and will be calibrated to indicate overflow and overflow rates when the height of wastewater flow reaches the top of the overflow weir.

(c) Telemetry Upgrades

Remote telemetry units will be installed at pump stations and CSO's. These RTU's will be connected to the control monitoring facility at the Home Avenue Control Center and capable of operating independently of the central controller in case of communications failure. These RTU's would accumulate and store pump station run times and flows in the pump stations and CSO's until collected by the central controller.

(3) Reports

(a) Until Akron has fully completed construction of the upgrades and they are operational, Akron shall report its progress on a quarterly basis in writing to Ohio EPA consistent with Part VI of this Decree. This quarterly report shall include an itemized summary of the moneys expended in the quarter to accomplish the upgrades.

(b) When Akron completes this project, it shall notify Ohio EPA consistent with Part VI of this Decree and provide a final itemized summary of the moneys expended.

(4) Unspent Funds

In the event that Akron completes the installation of the pump station and combined sewer overflow controls and telemetry upgrades consistent with the detail plans but does not expend \$1,475,000.00, in carrying out Paragraph 15 A of Part IX of this Decree, the balance shall be used to perform additional environmentally beneficial projects. These additional projects shall be the elimination of the worst septic systems identified in Paragraph 13 above, as having a relatively high priority for elimination but which were not addressed by the project carried out under Part VIII of this Decree. If no such projects remain unfunded, Akron shall submit to Ohio EPA its proposal for these additional projects within 30 days of completion of construction of the sewer mains in the project described in Part VIII of this Decree or this project under Part IX, Paragraph 15 A, whichever is later. The proposal shall include a listing of the projects and a schedule for the commencement and completion of construction. Upon acceptance by Ohio EPA this schedule shall be incorporated into this Decree as if set forth herein and shall be enforceable under the Decree.

B. Odor Characterization and Remediation Plan Development

In addition to the civil penalty set forth in Part X of this Consent Decree and in furtherance of the mutual objectives of the State of Ohio and Akron in improving the environment, Akron agrees to and is hereby ordered to spend at least \$350,000.00 to conduct an odor characterization study and develop

a remediation plan to abate offsite odors from the wastewater treatment plant, as set forth below:

(1) Akron shall perform the odor characterization and develop a remediation plan in accordance with the following schedule:

<u>Milestone</u>	<u>Date</u>
Begin characterization	January 1, 1994
Complete characterization and Remediation Plan and submit to Ohio EPA	December 31, 1994

(2) The Remediation Plan submitted under (1) above shall at a minimum address the abatement of offsite odors from the mixing and holding tanks, waste liquor tanks, and gravity thickener tanks.

(3) (A) Until Akron has completed the odor characterization study and submitted the characterization and remediation plan to Ohio EPA, Akron shall report its progress on a quarterly basis in writing to the Ohio EPA. This quarterly report shall include an itemized summary of the money expended in the quarter to accomplish the project.

(B) When Akron completes this project, it shall notify Ohio EPA and provide a final itemized summary of the money expended.

(4) In the event that Akron does not spend \$350,000.00 in carrying out Paragraph 15 B of Part IX of this Decree, the balance shall be used to perform additional environmentally beneficial projects. These additional projects

shall be the elimination of the worst septic systems identified in Paragraph 13 above, as having a relatively high priority for elimination but which were not addressed by the project carried out under Part VIII of this Decree. If no such projects remain unfunded, Akron shall submit to Ohio EPA its proposal for these additional projects within 30 days of completion of construction of the sewer mains in the project described in Part VIII of this Decree or this project under Part IX, Paragraph 15 B, whichever is later. The proposal shall include a listing of the projects and a schedule for the commencement and completion of construction. Upon acceptance by Ohio EPA this schedule shall be incorporated into this Decree as if set forth herein and shall be enforceable under the Decree.

X. CIVIL PENALTY

16. This Consent Decree 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 the state of Ohio's Complaint, all civil claims under the Clean Water Act for effluent limitations and monitoring violations disclosed in Monthly Operating Reports received by U.S. EPA and Ohio EPA by the date of lodging of this Decree with the Court, and all civil claims for violations of the Ohio EPA Director's September 30, 1991 Final Findings and Orders (or as modified) up to the date of lodging of this Consent Decree with the Court. Nothing in the Consent Decree is intended to nor shall be construed to operate in any way to resolve any criminal

liability of Akron. For such past violations, Akron shall pay a civil penalty of \$290,000.00 within 30 days of entry of this Consent Decree. This amount shall be divided, two-thirds to be paid to the United States of America and one-third to be paid to the State of Ohio. Payment shall be made by certified or cashier's checks, payable to "Treasurer, United States of America," and sent to the United States Attorney, 1800 Bank One Center, 600 Superior Avenue, Cleveland, Ohio 44114; and "Treasurer, State of Ohio," and sent to Janis Miller, 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 43266-0410, or electronic transfer to the designated accounts. A copy of the check and transmittal letter 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 90-5-1-1-3144), and Water Division Secretary, J.S. EPA, Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604.

17. Nothing in this Part, Civil Penalty, or in Part VII, Stipulated Penalties, shall be construed to limit any other remedies available for violations of this Consent Decree, Akron's NPDES permit, or any regulation or provision of law, including but not limited to, injunctive relief and civil or criminal contempt sanctions. Where an act or omission that constitutes a

violation of this Consent Decree also constitutes a violation of statute, the United States or Ohio may elect, in its sole discretion, to seek civil penalties under either this Consent Decree or under statute. If the United States and/or the State of Ohio elects to seek civil penalties under statute, the amount of any stipulated penalties paid to the United States and the State of Ohio for such violation shall be deducted from the amount of the civil penalty for such violation.

18. Interest shall accrue on any amounts overdue to the United States under the terms of this Consent Decree 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 Consent Decree at the rate of 10 percent, pursuant to Ohio Revised Code Section 1343.03.

XI. FORCE MAJEURE BETWEEN AKRON AND THE UNITED STATES

19. Akron's obligation to adhere to all schedules and deadlines for compliance and milestones set forth in this Consent Decree, including but not limited to the Supplemental Environmental Projects, may be delayed or excused to the extent that nonadherence is caused by circumstances beyond the control of Akron. Akron shall take all reasonable measures to avoid or minimize the delay or noncompliance.

20. If any event occurs that causes or may cause Akron to fail to achieve, demonstrate or maintain compliance with any requirement or construction milestone of this Consent Decree,

Akron shall notify U.S. EPA in writing within 14 days from when it knew or by the exercise of due diligence should have known of the event, describing in detail the anticipated length of the noncompliance or delay, the precise cause or causes of the noncompliance or delay, all measures taken and to be taken by Akron to prevent or minimize the noncompliance or delay, and the timetable by which those measures will be implemented.

21. An extension of one compliance date or milestone based on particular circumstances beyond Akron's control shall not automatically extend any subsequent compliance date or dates or milestone. Any subsequent compliance date or milestone may be extended pursuant to this Section only upon a showing that circumstances beyond Akron's control have prevented compliance or reaching a milestone by that date.

22. If Akron fails to fulfill the notice requirements of Paragraph 20, above, Akron's failure timely to achieve or maintain compliance with any requirement or milestone of this Consent Decree at the option of U.S. EPA shall not be excused pursuant to this Section.

23. If the parties agree that Akron's failure timely to achieve or maintain compliance with any requirement of or milestone in this Consent Decree has been or will be caused by circumstances beyond the control of Akron, the parties may stipulate to an extension or modification of the particular compliance requirements or milestones affected by a period not exceeding the delay actually caused by those circumstances. In

this event, the parties may apply to this Court for an appropriate modification of this Consent Decree. In the event the parties cannot agree, any party may submit the matter to the Court for resolution. The burden of proving that any failure timely to achieve or maintain compliance or reach a milestone was caused by circumstances beyond the control of Akron shall rest with Akron. Akron shall not be liable for stipulated penalties for the period of any delay which has been excused pursuant to this force majeure provision. Changed financial circumstances or increased costs shall not constitute a circumstances beyond Akron's control. Nothing in this force majeure provision between Akron and the United States shall be construed as providing for dispute resolution or judicial review of either (1) the United States' decision not to accept Akron's proposed additional project as provided in Paragraph 14, or (2) Akron's obligation to pay a civil penalty if it fails to complete the SEP by the deadline contained in Paragraph 13, or as such deadline may be extended by operation of this force majeure provision.

XII. POTENTIAL FORCE MAJEURE BETWEEN
AKRON AND THE AND THE STATE OF OHIO

24. A. If any event occurs which causes or may cause a delay in Akron's compliance with any requirement of this Consent Decree, Akron shall notify the Ohio EPA in writing within fourteen (14) days from when it knew or by the exercise of due diligence should have known of the event, describing in detail the anticipated length of the delay, the precise cause or causes

of delay, the measures taken and to be taken by Akron to prevent or minimize the delay and the timetable by which those measures will be implemented. Akron will adopt all reasonable measures to avoid or minimize any such delay.

3. In any action by the State of Ohio to enforce any of the provisions of this Consent Decree, Akron may raise at that time the question of whether it is entitled to a defense that its conduct was caused by circumstances beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed by Akron and the State of Ohio 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, if ever, that the proceeding to enforce this Consent Decree is commenced by the State. At that time the burden of proving that any delay was or will be caused by circumstances beyond the control of Akron shall rest with Akron. Failure by Akron to timely comply with the notice requirements of this Paragraph 24 at the option of Ohio EPA shall constitute a waiver by Akron of any right it may have to raise such a defense. Changed financial circumstances or increased costs associated with the implementation of any action required by this Consent Decree, or changed financial circumstances shall not in any event constitute circumstances beyond the control of

Akron, or serve as a basis for an extension of time under this Consent Decree.

XIII. RIGHT OF ENTRY

25. U.S. EPA, the State of Ohio, their contractors and consultants, shall have the right of entry into and upon the plant, at all reasonable times, upon proper presentation of credentials, for the purposes of:

A. Monitoring the progress of activities required by this Consent Decree;

B. Verifying any data or information required to be submitted pursuant to this Consent Decree; and

C. Obtaining samples and, upon request, splits of any samples taken by Akron or its consultants. Akron will be provided with splits of all samples taken by the United States or Ohio.

D. This provision in no way limits or affects any right of entry and inspection held by Plaintiffs pursuant to applicable Federal or State laws, regulations, or permits.

XIV. PERMIT OBLIGATIONS

26. This Consent Decree does not authorize or approve the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Approval for such construction or modification shall be as required by applicable county or State laws, or regulations.

27. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit

issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. Except as provided herein, this Consent Decree does not relieve Akron of any obligation to apply for, obtain and comply with the requirements of any new or existing NPDES permit or to comply with any federal, state or local laws or regulations.

XV. NON-WAIVER PROVISIONS

28. Except as otherwise provided herein, nothing contained in this Consent Decree 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 or other federal, state or local statutes or regulations.

29. This Consent Decree does not limit or affect the rights of Akron or Plaintiffs as against third parties.

30. Plaintiffs do not waive any rights or remedies available for any future violations by Akron of federal or state laws, regulations, or permit conditions following lodging of this Consent Decree. Nothing in this Consent Decree shall be construed to limit the authority of Ohio to seek relief for claims or conditions not alleged in Ohio's complaint, including violations which occur after the entry of this Consent Decree.

XVI. FAILURE OF COMPLIANCE

31. The United States and Ohio reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree. Akron reserves all legal and equitable defenses to enforcement under this Consent Decree which are not specifically waived.

XVII. CONTINGENT LIABILITY OF STATE

32. The State of Ohio is a party plaintiff hereto pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e). The State shall have no liability under this Consent Decree, except as required by Section 309(e) of the Act in the event that the laws of Ohio prevent Akron from raising revenues needed to comply with this Decree. The Attorney General of the State of Ohio hereby certifies that the present laws of the State do not prevent Akron from raising revenues needed to comply with this Consent Decree.

XVIII. COSTS OF SUIT

33. Each party shall bear its own costs and attorneys' fees in this action.

XIX. PUBLIC COMMENT

34. The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice and an opportunity for public comment.

XIX. PUBLIC DOCUMENTS

35. All information and documents submitted by Akron to U.S. EPA or Ohio EPA pursuant to this Consent Decree shall be subject to public inspection, unless identified and supported as confidential by Akron in accordance with 40 C.F.R. Part 2.

XX. CONTINUING JURISDICTION

36. The Court shall retain jurisdiction over this case until termination of this Consent Decree, in order to enforce or

modify the Consent Decree and to interpret the rights and obligations of the parties to the Consent Decree. During the pendency of this Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate this Consent Decree.

XXI. DISPUTE RESOLUTION

37. Any party to this Consent Decree may apply to the Court for resolution of a dispute concerning this Consent Decree, provided that the party making such application has made a good faith attempt to resolve the matter with the other party.

XXII. MODIFICATION

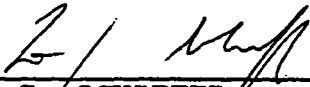
38. There shall be no modification of this Consent Decree without written approval by all parties to this Consent Decree and the Court, or by Order of the Court.

XXIII. TERMINATION

39. This Consent Decree shall terminate one year after Akron has completed all the requirements of the Compliance Program set forth in Paragraphs IV 5 C and IV 5 D, the Supplemental Environmental Project set forth in Part VIII, and the Supplemental Pollution Reduction Projects set forth in Part IX, provided that Akron has supplied U.S. EPA and the State of Ohio with all reports and data required pursuant to this Decree which are due and has paid the entire civil penalty and any stipulated penalties and interest due under Parts VII, VIII, IX, and X of this Decree.

The parties enter into this Consent Decree and submit it to the Court that it may be approved and entered.


FOR THE UNITED STATES OF AMERICA:



LOIS J. SCHIFFER
Assistant Attorney General

DATED: 5/18/85

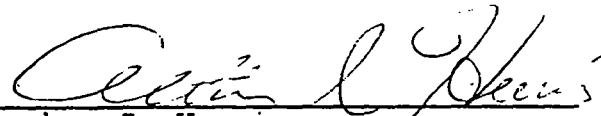
Environmental and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530



NANCY SPENCER
Attorney
Environmental Enforcement Section
Environmental and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

DATED: 5/23/85

EMILY M. SWEENEY
United States Attorney

By: 

Arthur I. Harris
Assistant United States Attorney
Northern District of Ohio
1800 Bank One Center
600 Superior Avenue, East
Cleveland, Ohio 44114-2600

DATED: 5/24/85

UNITED STATES V. CITY OF AKRON, ET AL.
CIVIL ACTION NO. 5:88CV2279

Steven A. Herman

STEVEN A. HERMAN
Assistant Administrator for Enforcement
and Compliance Assurance
U.S. Environmental Protection
Agency
401 M Street, S.W.
Washington, D.C. 20460

DATED: 4-14-95

David V. Adamkus

VALDAS V. ADAMKUS
Regional Administrator
U.S. Environmental Protection Agency
Region 5, (R-19J)
77 West Jackson Boulevard
Chicago, IL 60604-3590

DATED: 2/6/95

UNITED STATES V. CITY OF AKRON, ET AL.
CIVIL ACTION NO. 5:88CV2279

FOR THE STATE OF OHIO, OHIO ATTORNEY GENERAL

BY: *Margaret A. Neala*

Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428

DATED: 11/10/94

UNITED STATES V. CITY OF AKRON, ET AL.
CIVIL ACTION NO. 5:88CV2279

FOR THE CITY OF AKRON, OHIO

By: Max Rothal

Max Rothal *MR*
Director of Law
City of Akron, Ohio

DATED: 10/31/94

UNITED STATES V. CITY OF AKRON, ET AL.
CIVIL ACTION NO. 5:88CV2279

Consent Decree entered this ____ day of _____, ____.

UNITED STATES DISTRICT JUDGE

APPENDIX A STRESS TEST

1. In accordance with Part IV.5.B. of this Consent Decree, from the date of lodging of this Consent Decree until March 28, 1998, Akron is authorized to discharge in accordance with the following limitations and monitoring requirements from station: 3PF00000603* only when plant peak influent flows exceed 97 MGD** and the flow equalization pumping capacity is being maximized due to storm related events and activities.***

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS***</u>	
Reporting Code	Units	Parameter	Concentration Specified	Units	Loading	kg/day	Mon. Frequency	Sample Type
			30 Day	Daily	30 Day	Daily		
00530	mg/l	Total Suspended Solids	-	157	-	-	Daily	Composite
01074	ug/l	Nickel, Total Recoverable	-	-	-	-	1/Quarter	Composite
01094	ug/l	Zinc, Total Recoverable	-	-	-	-	1/Quarter	Composite
01113	ug/l	Cadmium, Total Recoverable	-	-	-	-	1/Quarter	Composite
01114	ug/l	Lead, Total Recoverable	-	-	-	-	1/Quarter	Composite
01118	ug/l	Chromium, Total Recoverable	-	-	-	-	1/Quarter	Composite
50050	MGD	Flow Rate	-	-	-	-	Daily	Continuous
80082	mg/l	CBOD ₅	-	91	-	-	Daily	Composite
99993	ug/l	Mercury, Total	-	-	-	-	1/Quarter	Composite

- * Secondary treatment bypass prior to mixing with effluent from final settling tanks.
- ** This value assumes that all installed equipment is available for use.
- *** Date and time when this is obtained shall be entered in the "Additional Remarks" section of the monthly report submitted to the Ohio EPA.
- **** When secondary bypass is in use.

APPENDIX B DISSOLVED OXYGEN

1. In accordance with Part IV.5.B. of this Consent Decree, from the date of lodging of the Consent Decree until June 30, 1997, Akron is authorized to discharge in accordance with the following limitations and monitoring requirements from outfall: 3PF00000001.*

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
<u>REPORTING</u>			<u>Concentration</u>		<u>Loading</u>		<u>Meas.</u>	<u>Sample</u>
<u>CODE</u>	<u>UNITS</u>	<u>PARAMETER</u>	<u>30 day</u>	<u>7 day</u>	<u>30 day</u>	<u>7 day</u>	<u>Freq.</u>	<u>Type</u>
31616	#/100ml	Fecal Coliform** (summer only)	1000	2000	-	-	Daily	Grab
59050	MGD	Flow Rate	-	-	-	-	Daily	Continuous
51425	TJa	Acute Toxicity, <u>Ceriodaphnia dubia</u> (1)					See Part II, U	
51427	TJa	Acute Toxicity, <u>Pimephales promelas</u> (1)					See Part II, U	

2. If the entity uses chlorine for disinfection, the Chlorine Residual (Reporting Code 50060) shall be maintained at a level not to exceed 0.5 mg/l until September 30, 1995 and 0.026 mg/l thereafter and shall be monitored continuously and verified daily by multiple grab sample (Summer only)***.
3.
 - a) Unless Outfall 3PF00000603 is activated, the Dissolved Oxygen (Reporting Code 00300) shall be maintained at a level not less than 5.0 mg/l and shall be monitored continuously.
 - b) When Outfall 3PF00000603 is activated, the Dissolved Oxygen shall be maintained at a level not less than 5.0 mg/l as a 24 hour average and shall be monitored continuously.
 - c) When Outfall 3PF00000603 is activated, or whenever there is a rainfall event, Akron shall continuously monitor the Dissolved Oxygen instream in the Cuyahoga River downstream of the WWTP at or near the Bath Road Bridge, midstream and middepth.

* Final outfall to Cuyahoga River after Chlorination.

** A single grab sample shall be collected each day at such time and location, and in such fashion, as to be representative of the facility overall performance.

*** See Part II, Item J and T of NPDES Permit No. 3PF00000*GD.

(1) When bypassing from station 3PF000000604. (Also see Part II, Item D)