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CLERK OF COURT IN THE UNITED STATES DISTRICT COURT
U. S. District Court FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
THE CITY OF EUCLID, et al.,)
)
Defendants.)

CIVIL ACTION NO. C83-3855
JUDGE ALVIN I. KRENZLER

CONSENT DECREE

WHEREAS, Plaintiff, United States of America, on behalf of the United States Environmental Protection Agency ("U.S. EPA"), filed the Complaint herein on September 27, 1983, alleging that the Defendant, City of Euclid ("the City" or "Euclid"), had violated the terms and conditions of its National Pollutant Discharge Elimination System ("NPDES") Permit No. OH 0031062 Ohio Permit No. E803*BD ("the Permit"), (Exhibit "A" attached hereto);

WHEREAS, Plaintiff issued an administrative order pursuant to Section 309 of the Act, 33 U.S.C. §1319, to the Defendant on August 5, 1981, alleging that the Defendant had failed to comply with the terms of this administrative order;

WHEREAS, the State of Ohio filed a cross-claim against the City of Euclid on December 12, 1983;

WHEREAS, in order to achieve better plant performance, the City has undertaken installation of certain improvements, many of which were described in the November, 1982 "Report on Wastewater Treatment Plant Improvements" by Havens & Emerson (Exhibit "B" attached hereto for historical purposes only);

WHEREAS, the City of Euclid began a sewer construction, repair, and reconstruction program in 1970 which has continued to the present day and in which over 40 million dollars has been expended, including 3 million dollars for the elimination of cross connections, under which video recordings have been taken and used to identify, plan and continue the program;

WHEREAS, Euclid has active and ongoing sewer construction and reconstruction programs and has expended funds in excess of 13 million dollars over a seven-year period on sewer construction and reconstruction work, which amount includes the extensive installation of hydrobrakes in the City of Euclid;

WHEREAS, Euclid awarded contracts for replacement and installation of new settling tank collectors in seven settling tanks for the Treatment Plant on April 23, 1984, and May 15, 1984, respectively, and this construction was completed on or before April 30, 1985;

WHEREAS, Euclid has awarded contracts for improvements to the detritus tank of the Treatment Plant on November 12, 1984, and these improvements were completed on or before May 1, 1986;

WHEREAS, Euclid has awarded contracts for improvements of wet well, meters and sludge pumps, and for a new dechlorination facility for the Treatment Plant, as well as for sludge handling improvements at Euclid's Lakeland Boulevard facility on October 9, 1984, and construction began on October 29, 1984, and said construction was substantially completed on or before December 15, 1987;

WHEREAS, Euclid has adopted revised pretreatment regulations pursuant to its ordinance authority including all revisions requested by the U.S. EPA and the Ohio EPA, and a copy of same was submitted to the U.S. EPA and the Ohio EPA in November, 1985, and in April, 1989, Euclid submitted revised pretreatment regulations in light of the October, 1988, Amendments to the Federal pretreatment regulations;

WHEREAS, Euclid undertook to repair and restore the continuous operation of the Treatment Plant's mechanical mixers in the biological reactors, and said repair and restoration was completed on or about May 27, 1987;

WHEREAS, Euclid undertook to and did establish a replacement fund to be used only for the repair or replacement of major components of the Treatment Plant of the Lakeland Boulevard Facility by placing into this replacement fund on or before December 31, 1985, the sum of at least \$150,000.00 and has made like deposits of at least \$150,000.00 into said fund on or before December 31, 1986, December 31, 1987, December 31, 1988 and December 31, 1989;

WHEREAS, Euclid has completed the improvements to the phosphorus removal system which is now in satisfactory operation;

WHEREAS, Euclid hired a mechanical engineer to determine the design deficiencies of the microstrainers and to recommend alternative design improvements to permit extended maintenance free operation, and said improvement recommendations were implemented by Euclid in a microstrainer rebuilding project through a company specializing in the repair of large scale industrial machinery which project as to all four microstrainers was completed on or before December 5, 1988, and a report regarding the project and the success of same was submitted by Euclid to the U.S. EPA and the Ohio EPA on December 23, 1988;

WHEREAS, in November, 1987, Euclid submitted an Operations and Maintenance manual to the U.S. EPA and the Ohio EPA, and on December 23, 1988, submitted to the Ohio EPA a wet weather operations plan, and to both the U.S. EPA and the Ohio EPA a computerized inventory control plan/preventative maintenance program;

WHEREAS, the United States and the Defendants, by their respective attorneys, have consented to the entry of this Consent Decree;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, and without adjudication of any issue of fact or law herein, or admission by Defendants of any liability, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION

The Court has jurisdiction over the parties and the subject matter of this action under 28 U.S.C. §1331, 28 U.S.C. §1345, 33 U.S.C. §1251 et seq., and the Court's ancillary and pendent jurisdiction. The Complaint and the Cross-Complaint state a claim upon which the Court can grant relief, and venue is proper in this Court.

II. THE PARTIES

This Consent Decree shall apply to and be binding upon the parties and the successors and assigns of each, as well as any agencies, officers, directors, employees, agents, and servants thereof acting in their respective capacities. The City shall provide a copy of this Consent Decree to each contractor that it retains to perform all work required to be performed under this Consent Decree. Euclid is solely responsible for compliance with the terms, conditions and requirements of this Consent Decree.

III. THE FACILITY

Euclid owns, operates and maintains a wastewater treatment plant at 22201 Lakeshore Boulevard, Euclid, Ohio (hereinafter the "Treatment Plant"). At the present time, this facility is

an activated sludge plant with advanced secondary treatment and phosphorus removal capability. In addition, Euclid owns, operates and maintains a second facility on Lakeland Boulevard. This facility (hereinafter "Lakeland Boulevard Facility"), contains sludge processing operations including sludge storage, thickening, dewatering, and incineration. The Treatment Plant and the Lakeland Boulevard Facility, together with the City's pumping stations and collection system, are hereinafter collectively referred to as the "wastewater treatment facilities."

On June 8, 1977, the Ohio Environmental Protection Agency (hereinafter "Ohio EPA") issued to Euclid, National Pollutant Discharge Elimination System ("NPDES") Permit Number OH 0031062 (Ohio Permit E 803*BD), hereinafter "the Permit", which became effective on September 8, 1977.

The Permit, Exhibit A attached hereto, expired on June 30, 1982. Ohio EPA has not renewed this Permit. The Permit, including all effluent limitations contained therein, remains in full force and effect pursuant to Ohio Revised Code Sections 119.06 and 6111.04.

Euclid is authorized by the Permit to discharge pollutants from the Treatment Plant subject to certain effluent limitations, which may not be exceeded. In particular, the Permit establishes effluent limitations for Biochemical Oxygen Demand (hereinafter "BOD"), Chlorine, Fecal Coliform Bacteria, pH, Phosphorus and Total Suspended Solids (hereinafter "TSS").

Euclid has discharged pollutants from the Treatment Plant into navigable waters and into waters of the State in excess of the effluent limitations contained in its Permit, including the effluent limitations for BOD, Chlorine, Fecal Coliform Bacteria, pH, Phosphorus and TSS, and in violation of Section 301(a) of the Clean Water Act (hereinafter "the Act"), 33 U.S.C. §1311(a) and Ohio Revised Code Section 6111.07.

IV. OBJECTIVES OF THE CONSENT DECREE

The objectives of this Consent Decree are that Euclid shall come into and remain in full compliance with the Clean Water Act through: the elimination of discharges of pollutants from the Treatment Plant that violate State Water Quality Standards or any effluent limitation contained in any NPDES permit applicable to it; the establishment and implementation of measures to ensure the proper operation and maintenance of the Treatment Plant and the Lakeland Boulevard Facility; the elimination of sanitary sewer overflows and dry weather combined sewer overflows; the elimination of untreated wastewater bypasses; and, the continued implementation and effective enforcement of an approvable pretreatment program pursuant to 33 U.S.C. §1251 et seq., and Ohio Revised Code Section 6111.03(Q), and the regulations promulgated thereunder.

V. REMEDIAL ACTIONS PROGRAM AND COMPLIANCE SCHEDULE

The City has completed and implemented most of the corrective measures and improvements as proposed and described in Exhibit B (November 1982, "Report on Wastewater Treatment

Plant Improvements" by Havens & Emerson), as well as other corrective measures and improvements. Nonetheless, in order to achieve further the objectives of this Consent Decree, the City shall take the following remedial actions:

A. TREATMENT PLANT

1. Euclid shall have at least two (2) microstrainers on line and in continuous operation and shall have one microstrainer in reserve for backup purposes.

2. Euclid shall notify the Ohio EPA, in writing, five (5) days in advance of any scheduled shutdown which will prevent Euclid from keeping two microstrainers in continuous operation and one microstrainer in reserve for back-up purposes. This notification shall include a complete description of the repairs and/or the rehabilitation to be accomplished, the expected duration of shutdown, a plan to maximize plant performance in the event of extended shutdown based upon and/or utilizing procedures found to have worked in the past, and any planned adjustments to plant process control to minimize effluent TSS concentrations.

3. Euclid shall keep all mechanical mixers in continuous service unless the mixers must be shut down for preventative maintenance or corrective maintenance. If Euclid shuts down the mixers for twenty four (24) hours or more for either preventative maintenance or corrective maintenance, Euclid must provide and place into service backup equipment.

4. By October 6, 1989, Euclid completed replacement or retrofit of final settling tank effluent launderers to provide continuous and uniform overflow rates across all clarifiers.

5. On December 23, 1988, Euclid submitted to the Ohio EPA and the U.S. EPA for review and approval a wet weather operations plan which has been approved by the Ohio EPA as submitted. Euclid shall immediately implement this plan as approved by the Ohio EPA. This plan identifies and evaluates treatment alternatives which maximize the flow rate through the treatment unit, protect unit process control, prevent mixed liquor solids washout or equipment failure, and enable immediate restoration of plant performance after the flow rate subsides.

B. ELIMINATION OF SEWER OVERFLOWS, BYPASSES AND EXCESSIVE INFILTRATION AND OVERFLOW

1. On March 31, 1989, Euclid submitted to Ohio EPA and U.S EPA for review and approval a program proposal to eliminate excessive infiltration and inflow, plant bypasses, sewer overflows, and pump station bypasses. A copy of this program with revised dates is attached hereto as Exhibit "C" and incorporated by reference. Euclid shall implement this program in accordance with the following schedule:

(a) Phase I Projects:1. WWTP Auxiliary Treatment Facility-Swirl
Concentrators

	<u>Completion Date</u>
a. Submit detailed design for approval.	May 8, 1991
b. Award construction bids.	January 1, 1992
c. Start construction.	March 4, 1992
d. Complete construction.	April 20, 1994
e. Start operation.	April 27, 1994

2. Sanitary Overflow Modifications Projects:

1. Submit detailed design for approval.	March 14, 1990
2. Award construction bids.	October 10, 1990
3. Start construction.	December 12, 1990
4. Complete construction.	February 27, 1991

3. Mainline Rehabilitation Projects:

a. Submit detailed design for approval.	September 14, 1992
b. Start construction bids.	April 12, 1993
c. Start construction.	June 14, 1993
d. Complete construction.	February 28, 1994

4. Combined Sewer Overflow Projects:

	<u>Completion Date</u>
a. Submit detailed design for approval.	June 3, 1992
b. Award construction bids.	December 30, 1992
c. Start construction.	March 3, 1993
d. Complete construction.	April 13, 1994
e. Start operation of swirl concentrators.	April 20, 1994

(b) Phase II Projects: After Euclid completes the Phase I Projects, Euclid shall implement a monitoring and evaluation program to determine the effectiveness of the Phase I Projects in eliminating sanitary overflows, dry weather combined sewer overflows and untreated wastewater bypasses. Within 540 days or sooner of completion of the Phase I Projects, Euclid shall submit to U.S. EPA and Ohio EPA a written report documenting the results of its evaluation. If the completion of the Phase I Projects did not eliminate the sanitary sewer overflows, the dry weather combined overflows, and the untreated wastewater bypasses, then Euclid's report shall include a proposal with a schedule for Phase II Projects to further correct said overflows and bypasses. Such projects shall include, but not be limited to, the installation and construction of relief sewers. Upon review and approval by the Ohio EPA and the U.S.

EPA of the Phase II Project schedule, this schedule shall be incorporated into Euclid's then existing NPDES permit. Euclid shall not object this permit modification.

2. Euclid shall submit to the U.S. EPA and the Ohio EPA approvable detailed plans and specifications for each construction phase sufficiently in advance of the time, but in any event no later than sixty (60) days, for the commencement of construction of such phase to allow for Ohio EPA review and approval.

C. COMPLIANCE WITH EFFLUENT LIMITATIONS

1. On or December 1, 1989, Euclid submitted to the U.S. EPA and the Ohio EPA an evaluation of the plant process performance for the Treatment Plant. This evaluation describes plant operations, treatment efficiencies and a summary of monitoring results of effluent quality discharged from the wastewater treatment facilities from September 1, 1988, to September 1, 1989. This report also includes an evaluation of the following:

- a. plant performance due to seasonal, hydraulic or temperature changes;
- b. any improved plant performance due to the continuous operation of the microstrainers;
- c. chronological list (starting from the head of the plant towards the discharge outfall) of process units and/or equipment in service, not in service, or nonoperational; and
- d. plant performance resulting from Euclid's preventative maintenance and industrial pretreatment programs.

This study evaluates the actual plant performance and treatment efficiency, while the plant is in full operation, during both average flow conditions and peak flow conditions.

2. After June 1, 1988, Euclid shall not take out of service for more than twenty-four (24) hours, without prior notice to and approval by the Northeast District Office of the Ohio EPA, any equipment which significantly affects effluent quality at the wastewater treatment facilities, except as necessitated for safety, to protect equipment, or to preserve process integrity.

3. From the date of entry of this Consent Decree and until the issuance of a new NPDES permit by the Ohio EPA, Euclid shall comply with the interim effluent limitations and monitoring requirements set forth in Table 1, attached hereto as Exhibit "D", which is incorporated by reference to this Consent Decree.

4. Commencing on the effective date of its new NPDES Permit, Euclid shall comply with all requirements of the Clean Water Act, 33 U.S.C. §1251 et seq. Euclid is hereby enjoined from violating any provision of Chapter 6111 of the Ohio Revised Code, the rules adopted thereunder, and the terms and conditions of its new NPDES permit, any renewals or modifications to its NPDES permit except as expressly authorized by the provisions of Section V of this Consent Decree.

VI. OPERATIONS AND MAINTENANCE AT THE TREATMENT PLANT
AND THE LAKELAND BOULEVARD FACILITY

A. The wastewater treatment facilities shall, at all times, be operated and maintained in an efficient and responsible manner. The construction and maintenance of the treatment facility shall not result in degradation of effluent quality.

B. On November 30, 1987, Euclid submitted to the U.S. EPA and the Ohio EPA its final operation and maintenance ("O&M") manual which has been approved by the Ohio EPA as submitted. This manual includes all changes in unit design, unit configuration, and unit operation and maintenance required by all construction or rehabilitation projects described in Section V, above, which were installed by October 6, 1989. Euclid shall implement this O&M manual as approved by Ohio EPA, and keep it current and available to the U.S. EPA and the Ohio EPA for inspection and copying, upon request.

C. On December 23, 1988, Euclid submitted to the U.S. EPA and the Ohio EPA a computerized inventory control plan which has been approved by the Ohio EPA. This plan identifies and contains a record of all equipment, parts and supplies to be kept on hand by the City and which provides for the purchase of additional equipment, parts, and supplies whenever necessary to keep such items in stock. Euclid shall implement this plan as approved by Ohio EPA.

D. On December 23, 1988, Euclid submitted to the U.S. EPA and the Ohio EPA a computerized preventive maintenance program designed to prevent equipment malfunctions and breakdowns which has been approved by the Ohio EPA as submitted. This program provides the schedules and procedures for inspection of equipment and replacement of worn or aging parts. Euclid shall implement this program as approved by Ohio EPA.

E. If any process-impacting part of the Treatment Plant or Lakeland Boulevard facility malfunctions or fails to operate, Euclid shall immediately begin repair or replacement of that part and shall complete repair or replacement as soon as possible.

F. Euclid shall continue to add to its repair/replacement fund the sum of at least \$150,000.00 on or before December 31 of each year. This fund shall only be used for the repair or the replacement of major components at the Treatment Plant or Lakeland Boulevard facility.

G. By April 30 of each year while this Consent Decree remains in effect, Euclid shall submit to the U.S. EPA and the Ohio EPA an annual report for the previous calendar year regarding Euclid's sewage treatment, including, but not limited to the amounts of expenditures made on the sewage treatment facilities, the budget allocated for the sewage treatment facilities for the next calendar year, and the balance of the replacement fund at the end of the calendar year.

H. On November 20, 1989, Euclid appointed an independent auditor acceptable to the U.S. EPA and the Ohio EPA. This auditor, who may be reappointed or replaced by Euclid, shall annually audit and suggest improvements in the City's methods for funding its wastewater treatment facilities in order to operate these facilities in compliance with all applicable water pollution laws. The result of this audit shall be reported to the U.S. EPA and the Ohio EPA within sixty (60) calendar days of its completion.

VII. PRETREATMENT

On April 18, 1989, Euclid submitted to Ohio EPA an industrial waste pretreatment program, which has been approved by Ohio EPA in accordance with the terms and conditions of the Findings and Order dated March 2, 1990. Upon approval by the Director of Ohio EPA, Euclid shall implement and effectively enforce its industrial waste pretreatment program according to the requirements of 40 C.F.R. Part 403 and OAC 3745-3, and the terms and conditions of Ohio EPA's approval of the program.

VIII. REPORTING REQUIREMENTS

A. Beginning with the first calendar quarter after the entry of this Consent Decree, and continuing every calendar quarter thereafter while this Consent Decree remains in effect, Euclid shall submit, within fourteen (14) calendar days after the end of the previous calendar quarter, to the U.S. EPA and the Ohio EPA, a report detailing the current status and/or progress of all programs or projects ordered in this Consent

Decree, including, but not limited to, identification of any item(s) that might delay scheduled completion, and a projection of completion dates for the work yet to be performed under the terms and conditions of this Consent Decree. In these reports, Defendant shall specifically describe the progress made to date on the implementation of actions required by Sections V, VI, and VII of this Consent Decree.

B. Within fourteen (14) calendar days after the shutdown of any major equipment, other than a microstrainer, Euclid shall submit to the U.S. EPA and the Ohio EPA a written notice specifying the piece or pieces of major equipment shut down. This notice shall include the reason(s) for the shutdown and a description of the action which is being taken or will be taken to return the equipment to full operation.

IX. WASTEWATER MONITORING AND REPORTING

A. Except as provided in Table 1, Euclid shall comply with the monitoring, analysis, and reporting requirements contained in its NPDES permit until such time as the permit is replaced by a subsequent valid and lawful NPDES permit, at which time Euclid shall comply with the requirements of the subsequent permit.

B. The analytical test procedures used for analysis of samples collected pursuant to the permit and any subsequently issued valid and legal NPDES permit shall conform to the rules and regulations promulgated under Section 304(h) of the Clean

Water Act, 33 U.S.C. §1314(h), and 40 C.F.R. Part 136

(Guidelines Establishing Test Procedures for the Analysis of Pollutants) (July 1, 1986).

C. Euclid shall submit to the U.S. EPA and the Ohio EPA, postmarked on or before the 15th day of each month, a Monthly Operating Report containing all analytical test results obtained for the previous monthly reporting period. Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored flow. The Monthly Operating Report shall be submitted in the format required by the Ohio EPA and shall report the analyses of samples taken in accordance with the sampling frequency and locations specified in Table 1. (See Exhibit D).

X. MANAGEMENT REQUIREMENTS

A. Euclid presently has and shall continue to have its wastewater treatment facilities under the direct supervision of a Class IV operator certified by the Ohio EPA.

B. Euclid shall provide an adequate operating staff qualified to perform the operation, maintenance and testing functions required to ensure compliance with this Consent Decree, the permit, and any subsequent NPDES Permit.

XI. BYPASSING

Any diversion from or bypass of the wastewater treatment facilities is a violation of this Consent Decree and prohibited, except (i) if unavoidable to prevent loss of life, severe property damage, personal injury, or extended duration

wash out or process upset; (ii) if excessive flow would damage any facilities necessary for compliance with the effluent limitations of the Permit or any subsequent NPDES Permit; or (iii) if necessary for construction or repairs previously approved by the U.S. EPA and the Ohio EPA. Euclid shall promptly notify by telephone the Ohio EPA and the U.S. EPA of any such bypass or diversion. Such notice shall be supplemented by a written report within ten (10) calendar days of the bypass or diversion and shall detail the cause of such diversion or bypass and the corrective actions taken or to be taken to minimize the adverse impact and to eliminate the need for future diversion or bypass. For purposes of this Consent Decree, "bypassing" means any diverting of wastewater from the treatment works.

XII. RIGHT OF ENTRY

During the term of this Consent Decree, Euclid shall allow the U.S. EPA and the Ohio EPA, and/or their authorized representatives, upon presentation of credentials and without a warrant:

- a. To enter upon Euclid's premises where an effluent source is located or in which any records are kept or required to be kept under the terms and conditions of the Permit, any subsequent NPDES permit, or this Consent Decree; and

- b. At reasonable times to have access to and copy (subject to the reasonable cost of copying) any records kept or required to be kept under the terms and conditions of the Permit, any subsequent NPDES permit, or this Consent Decree; and to inspect any monitoring equipment or monitoring methods required by the Permit, any subsequent NPDES permit, or this Consent Decree and to sample any discharge.

XIII. FACILITY CONSTRUCTION

This Consent Decree does not authorize or approve the construction of any physical structures or facilities, the modification of any existing treatment works, or the undertaking of any work in any navigable waters. Approval for such construction shall be by permit issued by the Ohio EPA or such other permits as may be required by applicable Federal, State or local laws, rules or regulations.

XIV. CIVIL PENALTY

A. Within thirty (30) calendar days after entry of this Consent Decree, the City of Euclid, shall pay to the United States Treasury a sum of ONE HUNDRED THIRTY THOUSAND DOLLARS (\$130,000.00) with respect to the United States' civil claims for Euclid's violations of the Act. Such civil penalty shall be paid by certified or cashier's check, payable to the "Treasurer of the United States," and shall be tendered to the United States Attorney Office, 1404 East Ninth Street, Suite

500, Cleveland, Ohio 44114, with a copy of to Office of Regional Counsel, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

XV. OHIO'S CROSS-CLAIM AGAINST THE CITY OF EUCLID

The State of Ohio and the City of Euclid agree to resolve the State's cross-claim as follows. The United States is not a party to this part of the Consent Decree and does not approve or endorse its terms and conditions.

A. Within thirty (30) calendar days after entry of this Decree, the City of Euclid shall pay to the State of Ohio a civil penalty of ONE HUNDRED THIRTY THOUSAND DOLLARS (\$130,000.00) with respect to the State's claims for Euclid's violations of the Act. Such civil penalty shall be paid by certified or cashier's check, payable to "Treasurer, State of Ohio", and shall be tendered to the Office of Attorney General, Environmental Enforcement Section, 30 East Broad Street, Columbus, Ohio 43215.

B. Within thirty (30) calendar days after entry of this Decree, in lieu of said penalty, Euclid shall submit to the Ohio EPA for approval for an environmental improvement project(s) that meets the following criteria:

1. The project(s) shall further the statutory goals of the Clean Water Act as set forth at 33 U.S.C. §1251;

2. The project(s) shall be initiated as an addition to and not as a substitute for all statutory and regulatory compliance obligations of the City of Euclid; including Euclid's obligations under this Consent Decree;

3. The project(s) must be designed (i) to provide an environmental benefit beyond the benefits of full compliance with the law, (ii) to address the particular risk or harm resulting from the violations at issue in this case, and (iii) to demonstrate the City of Euclid's good faith commitment to statutory compliance;

4. In connection with the project(s), the City of Euclid shall expend at least ONE HUNDRED AND THIRTY THOUSAND DOLLARS (\$130,000.00). This expenditure shall be confirmed in writing by the City of Euclid's auditor to Ohio EPA, and shall be set forth specifically and identified as an expenditure or debit for such project(s) in each financial report submitted by the City of Euclid to the Auditor of the State of Ohio during the pendency of construction of the project(s); and

5. Upon Ohio EPA's approval of the project(s) proposed by the City of Euclid, the City shall implement the project(s) in accordance with Ohio EPA's approved schedule which shall require the completion of the project(s) within four (4) years of the date of the entry of this Consent Decree.

XVI. STIPULATED PENALTIES

A. Except as excused by the Force Majeure Section, below, Euclid's failure to comply with any requirement of this Consent Decree shall result in Euclid's payment of the following stipulated penalties:

1. If Euclid fails to timely comply with any compliance activity specified in Sections V, Paragraphs A and B, and Section VI, then Euclid shall be liable to pay stipulated, penalties as follows:

- (a) \$500.00 per day, for the first 60 days;
- (b) \$1,000.00 per day, for the days 61 through 90;
- (c) \$2,000.00 per day, for the days 91 through 120;
and
- (d) \$3,000.00 per day for each day of violation beyond the 120th day.

2. If Euclid violates any interim effluent limit for the parameters specified in Section V, Paragraph C, above, then Euclid shall be liable to pay stipulated penalties as follows:

- (a) \$300.00 per day per parameter for the first 60 days in which the limit for that parameter is violated;
- (b) \$600.00 per day per parameter for days 61 through 90 in which the limit for that parameter is violated;
- (c) \$900.00 per day per parameter for days 91 through 120 in which the limit for that parameter is violated; and
- (d) \$1,500.00 per day per parameter for each day of violation beyond the 120th day in which the limit for that parameter is violated.

3. If Euclid fails to achieve and maintain any final effluent limitation set forth in its new NPDES Permit in Section V, Paragraph C.4, above, then Euclid shall be liable to pay stipulated penalties as follows:

- (a) \$500.00 per day per parameter for the first 60 days in which the limit for that parameter is violated;
- (b) \$750.00 per day per parameter for days 61 through 90 in which the limit for that parameter is violated;
- (c) \$2,000 per day per parameter for days 91 through 120 in which the limit for that parameter is violated; and
- (d) \$4,000.00 per day per parameter for each day of violation beyond the 120th day in which the limit for that parameter is violated.

4. If Euclid fails to comply with any of the reporting requirements set forth in Section VIII above, then Euclid shall pay \$300.00 per day until that reporting requirement is achieved.

5. If Euclid fails to comply with any other requirement of this Consent Decree, then Euclid shall pay \$500.00 per day until that requirement is achieved.

6. For purposes of this Paragraph A, each violation of a weekly interim or final effluent limitation shall be deemed to be seven days of violation and each violation of a monthly interim or final effluent limitation shall be deemed to be violation of each day of that month.

B. Stipulated penalties are due within twenty (20) days of any violation set forth in Section XVI, Paragraph A, above. Stipulated penalties are payable to the U.S. EPA and the Ohio EPA by cashier's check, one-half payable to "Treasurer, United States of America," and mailed to the United States Attorney Office, 1404 East Ninth Street, Suite 500, Cleveland, Ohio 44114, with a copy of the same to the Branch Secretary, Air, Water, Toxics and General Law Branch (5CA-TUB-3), Office of Regional Counsel, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, and one-half payable to "Treasurer, State of Ohio," and mailed to the Office of the Attorney General, Environmental Enforcement Section, 30 East Broad Street, Columbus, Ohio 43215. A letter summarizing the violations for which payment is being made shall be enclosed with all checks and all copies of these checks.

C. Stipulated penalties are not the exclusive remedy of the United States and the Ohio EPA for Euclid's violation of this Consent Decree. The United States and the Ohio EPA reserve the right to use any other remedy to which each is entitled including, but not limited to, injunctive relief, for any failure to comply with interim or final compliance dates.

XVII. DISPUTE RESOLUTION

In any dispute between Euclid and either or both the U.S. EPA and the Ohio EPA concerning Euclid's compliance with any requirement of this Consent Decree, and the U.S. EPA's and/or

the Ohio EPA's disapproval or modification of any proposal by Euclid pursuant to the terms of this Consent Decree, the parties shall confer for a period not to exceed thirty (30) calendar days in a good faith effort to resolve their disagreement. If agreement between the parties is not reached within thirty (30) calendar days, any party hereto may move this Court for an appropriate order to resolve the dispute. In emergency situations, any party may immediately apply to this Court for such further orders and directions as may be appropriate. This Section XVII shall not apply to actions of the Director of Ohio EPA for which Ohio Revised Code Chapter 3745 provides an administrative remedy.

XVIII. PERMIT OBLIGATIONS

Nothing in this Consent Decree shall be interpreted to authorize Euclid to seek from this Court the review, modification or vacation of any existing, modified or subsequently issued NPDES permit. Any new permit, or modification of an existing permit must be complied with in accordance with applicable Federal and State laws and regulations. The pendency or outcome of any proceeding concerning the issuance, reissuance, or modification of an NPDES permit shall neither affect nor postpone the City of Euclid's duties and liabilities as set forth in this Consent Decree.

XIX. FORCE MAJEURE AS BETWEEN EUCLID AND THE UNITED STATES

A. If any event occurs which causes or may cause a delay of any requirement of this Consent Decree, Euclid shall notify the U.S. EPA in writing within ten (10) days 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 Euclid to prevent or minimize the delay and the timetable by which measures will be implemented. Euclid will adopt all reasonable measures to avoid or minimize any such delay.

B. If the U.S. EPA and Euclid agree that the delay has been or will be caused entirely by circumstances beyond the control of Euclid, then the U.S. EPA and Euclid may stipulate to any extension of the particular compliance requirement affected, by a period not exceeding the delay actually caused by such circumstances. In the event the U.S. EPA and Euclid may apply to this Court for an appropriate modification of this Consent Decree. In the event the U.S. EPA and Euclid cannot agree on an extension, then the U.S. EPA and/or Euclid may submit the matter to this Court for resolution pursuant to the provisions of Section XVIII of this Consent Decree.

C. The burden of proving that any delay was or will be caused entirely by circumstances beyond the control of Euclid shall rest with Euclid. Unanticipated or increased costs associated with the implementation of any action required by this Consent Decree, or changed financial circumstances shall

not constitute circumstances entirely beyond the control of Euclid, or serve as a basis for an extension of time under this Consent Decree. Failure by Euclid to comply with the notice requirements of this Paragraph shall render this Paragraph void and of no force and effect as to the particular incident involved and shall constitute a waiver of Euclid's right to request an extension of its obligations under this Consent Decree based on such incident. An extension of one compliance date based on a particular incident does not mean that Euclid qualifies for an extension of a subsequent compliance date or dates. Euclid must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought.

XX. POTENTIAL FORCE MAJEURE AS BETWEEN EUCLID AND THE STATE OF OHIO

A. If any event occurs which causes or may cause a delay of any requirement of this Consent Decree, Euclid shall notify the Ohio EPA in writing within ten (10) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Euclid to prevent or minimize the delay and the timetable by which measures will be implemented. Euclid will adopt all reasonable measures to avoid or minimize any such delay.

B. In any action by the State of Ohio to enforce any of the provisions of this Consent Decree, Euclid may raise that it is entitled to a defense that its conduct was caused by reasons

entirely 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 upon by Euclid 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 that an enforcement action, if any, is commenced by Ohio. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Euclid shall rest with Euclid.

Unanticipated or increased costs associated with the implementation of any action required by this Consent Decree, or changed financial circumstances shall not constitute circumstances entirely beyond the control of Euclid, or serve as a basis for an extension of time under this Consent Decree. Failure by Euclid to comply with the notice requirements of this Paragraph shall render this Paragraph void and of no force and effect as to the particular incident involved and shall constitute a waiver of Euclid's right to request an extension of its obligations under this Consent Decree based on such incident. An extension of one compliance date based on a particular incident does not mean that Euclid qualifies for an extension of a subsequent compliance date or dates. Euclid must make an individual showing of proof regarding each incremental step or other requirement for which an extension is

sought. Acceptance of this Consent Decree without a Force Majeure Clause as to the State of Ohio does not constitute a waiver by Euclid of any rights or defenses it may have under applicable law. This Section of the Consent Decree does not affect any rights of the United States.

XXI. FORM OF NOTICE

All written reports and notifications required pursuant to this Consent Decree shall be submitted by Euclid to the following:

As to the United States (for Dispute Resolution and Force Majeure events only):

Chief, Environmental Enforcement Section
Land and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

As to the U.S. EPA, Region V:

U.S. Environmental Protection Agency, Region V
Water Division
Chief, Compliance Section 5WQC-TUB-8
230 South Dearborn Street
Chicago, Illinois 60604
(312) 886-6760

As to the Ohio EPA:

Ohio Environmental Protection Agency
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44806
(216) 425-9171

As to the State of Ohio:

Office of Ohio Attorney General
Chief, Environmental Enforcement Section
25th Floor
30 East Broad Street
Columbus, Ohio 43266-0410
(614) 466-2766

XXII. SEVERABILITY

The provisions of this Consent Decree shall be severable. If any provision is declared by a Federal court of competent jurisdiction to be unenforceable, the remaining provisions of this Consent Decree shall remain in full force and effect.

XXIII. GENERAL PROVISIONS

A. This Consent Decree constitutes a full and final settlement of the Complaint and all Cross-Claims and Counter-Claims in this matter.

B. This Consent Decree in no way relieves Euclid of its responsibility to comply with any other Federal, State, or local laws, regulations, or permit conditions.

C. This Consent Decree is neither a permit nor a modification of any existing permit.

D. Euclid's obligations under this Consent Decree, including but not limited to the payment of civil penalties, are not dependent or conditioned upon the occurrence or non-occurrence of any event not specifically identified in this Consent Decree, except the Order entered by the Court in this case on September 26, 1984.

E. By this Consent Decree, the United States and the State of Ohio do not waive any rights or remedies available to them for any violations of this Consent Decree or any past, present, or future violations by Euclid, of Federal or State laws, regulations or permit conditions.

F. By this Consent Decree, the United States and the State of Ohio do not waive any rights or remedies available to them for any past, present or future violations by industrial users of Federal or State laws or regulations or municipal ordinances.

G. This Consent Decree does not limit or affect the rights of the United States, the State of Ohio, or Euclid as against any third parties.

H. Nothing herein shall be construed to limit, or constitute a waiver of Euclid's rights to challenge any subsequently issued NPDES permit, including Euclid's rights of administrative protest and appeal process.

I. Each party shall bear its own costs and attorney's fees in this action.

J. Nothing herein shall be construed to limit the authority of the United States or the State of Ohio to undertake any action against any person, including Euclid, in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

K. Nothing herein shall be construed to limit the authority of the United States to act under Section 308 of the Clean Water Act, 33 U.S.C. §1318.

L. The parties agree and acknowledge that final approval and entry of this Consent Decree is subject to the requirements of 28 C.F.R. §50.7.

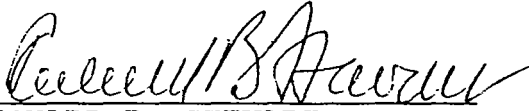
XXIV. CONTINUING JURISDICTION OF THE COURT

From the date of entry of this Consent Decree until its termination, the Court shall retain jurisdiction to enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Decree.

XXV. TERMINATION

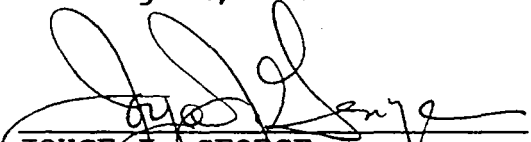
This Consent Decree shall terminate when all of the following conditions have been met: (i) Euclid has paid all civil penalties and stipulated penalties due; (ii) Euclid has completed all remedial measures specified in Sections V and VI; and (iii) the U.S. EPA and the Ohio EPA advise the Court, by letter, that Euclid has satisfactorily achieved and maintained compliance with the Clean Water Act for a period of one (1) year. Termination of this Consent Decree shall not affect Euclid's obligations under Section V, Paragraph C.4 and Section VI, Paragraph F of this Consent Decree. Such continuing obligations shall be enforceable as a judgment of this Court.

FOR THE UNITED STATES OF AMERICA



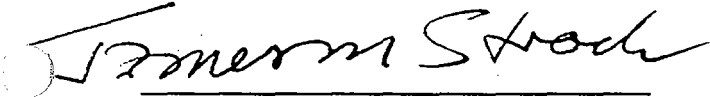
RICHARD B. STEWART
Assistant Attorney General
Land and Natural Resources
Division
United States Department of
Justice
Washington, D.C.

Dated: 2-12-91



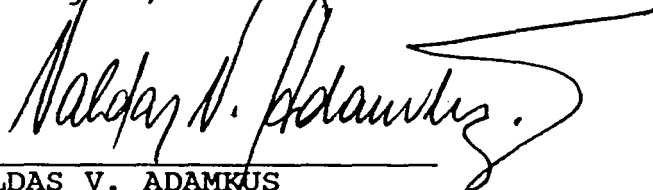
JOYCE J. GEORGE
United States Attorney
Northern District of Ohio
1404 East Ninth Street
Cleveland, Ohio 44114

Dated: 2-21-91



JAMES M. STROCK
Assistant Administrator
United States Environmental
Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dated: 10/1/90



VALDAS V. ADAMKUS
Regional Administrator
United States Environmental
Protection Agency, Region V
230 South Dearborn Street
Chicago, Illinois 60604

Dated: 8/21/90.

Debra A. Klassman
DEBRA A. KLASSMAN
Assistant Regional Counsel
United States Environmental
Protection Agency, Region V
230 South Dearborn Street
Chicago, Illinois 60604

Dated: 8-10-90

FOR THE STATE OF OHIO:

ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL

By: Bryan F. Zima
BRYAN F. ZIMA
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street
Columbus, Ohio 43215

Dated: 6/18/90

THE CITY OF EUCLID:

David M. Lynch
DAVID M. LYNCH
Mayor
City of Euclid, Ohio

Dated: 5/25/90

As Authorized Pursuant to Ordinance No. 156-1990, Passed May 21, 1990.

Paul F. Oyaski
PAUL F. OYASKI
Law Director
City of Euclid, Ohio

Dated: May 24, 1990

As Authorized Pursuant to Ordinance No. 156-1990, Passed May 21, 1990.

Henry B. Fischer
HENRY B. FISCHER
Special Counsel
City of Euclid, Ohio

Dated: May 25, 1990

Consent Decree entered in accordance with the foregoing
this 22 day of April, 1990.

Alvin I. Krenzler
JUDGE ALVIN I. KRENZLER
UNITED STATES DISTRICT JUDGE
FOR THE NORTHERN DISTRICT
OF OHIO

By _____
CLERK OF THE COURT