

FILED
HARDIN COUNTY
COMMON PLEAS COURT

IN THE COURT OF COMMON PLEAS
HARDIN COUNTY, OHIO

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TEDDY DODDS
CLERK

STATE OF OHIO, ex rel
LEE FISHER
ATTORNEY GENERAL OF OHIO

Plaintiff,

vs.

CITY OF KENTON
111 West Franklin Street
Kenton, Ohio 43326

Defendant.

CASE NO. 90-CV-114
JUDGE DAVID C. FAULKNER

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Lee Fisher (hereinafter "Plaintiff") and Defendant the City of Kenton (hereinafter "Kenton") having consented to the entry of this Order,

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 6111 of the Ohio Revised Code, and venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them. Defendant Kenton shall provide a copy of this Consent Order to each contractor it employs to perform work itemized herein, and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant has operated its wastewater treatment plant and sanitary sewer system in such a manner as to result in numerous violations of the requirements 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. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims under such laws alleged in the Complaint. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint.

IV. COMPLIANCE SCHEDULE

4. Defendant Kenton is hereby enjoined and ordered to immediately comply with the requirements of Chapter 6111 of the Ohio Revised Code ("R.C.") and the rules and regulations adopted under that Chapter and the terms and conditions of Kenton's currently expired NPDES Permit, including all effluent limitation requirements and any renewals or modifications thereof, with the exception of sanitary sewer system overflows and plant bypasses. After the date established in Section VI, Paragraph 8(h), 9(h) or 10(h) below for the elimination of all sanitary sewer system overflows and all unauthorized discharges from the treatment plant bypasses, whichever date is applicable, Defendant Kenton is permanently both enjoined to eliminate any and all sanitary sewer system overflows and any and all unauthorized discharges from the treatment plant bypasses.

V. MONITORING SCHEDULE

5. Between the effective date of this Consent Order and the date upon which all sanitary sewer system overflows are eliminated, or January 1, 1998, whichever is earlier, Defendant is enjoined to comply with the following monitoring and discharge requirements:

A. Defendant Kenton is not authorized to and is enjoined from discharging from any and all sanitary sewer system overflows during dry weather. Between the effective date of this Consent Order and the date upon which all sanitary sewer

system overflows are eliminated, or January 1, 1998, whichever is earlier, Defendant Kenton is authorized to discharge from the following sewer system overflows only during wet weather periods when the flow in the sewer system exceeds the capacity of the sewer system.

<u>Outfall Number</u>	<u>Description</u>	<u>Latitude</u>	<u>Longitude</u>	<u>Receiving Stream</u>
2PD00020003	Alley between Mill and Leighton Sts. at the north side of the Scioto River 24" overflow pipe from 30" interceptor	40°38'40"	83°36'55"	Scioto River
2PD00020004	North side of river halfway between Detroit and Main Sts. at the upstream end of the existing siphon	40°38'35"	83°36'30"	Scioto River
2PD00020005	Alley between Lynn and Railroad Sts. at one-half block east of Wayne Street 18" overflow pipe	40°38'30"	83°36'20"	Scioto River
2PD00020006	North side of the river at Brumm St. extended 24" overflow pipe	40°38'25"	83°36'10"	Scioto River
2PD00020007	Half a block east of Wayne Street near the end of the first alley south of Brumm Street 15" overflow to Scioto River from 24" main trunk sewer	40°38'20"	83°36'12"	Scioto River

2PD00020008	Overflow at head of treatment plant	40°38'10"	83°35'55"	Scioto River
2PD00020009	Chesney at alley between Wayne & Cherry Streets	40°39'30"	83°36'20"	Scioto River
2PD00020010	North of Scioto River and west of the Conrail tracks	40°38'40"	83°36'45"	Scioto River
2PD00020011	Main Street south of Scioto River	40°38'33"	83°36'27"	Scioto River

B. Defendant Kenton shall monitor the system's overflows at Outfalls 2PD00020003 through 2PD00020011 and report to the Ohio EPA in accordance with all parameters listed in the following Table:

<u>CHARACTERISTIC</u>			<u>MONITORING REQUIREMENTS</u>	
<u>REPORTING CODE</u>	<u>UNITS</u>	<u>PARAMETER</u>	<u>MEASUREMENT FREQUENCY</u>	<u>SAMPLE TYPE</u>
80998	Number/Mo	Occurrences	When discharging	Estimate
80999	Hours	Duration	When discharging	Daily Est.
50050	Million Gallons	Volume	When discharging	Daily Est.
80082	mg/l	CBOD ₅	1/month	Grab
00530	mg/l	Suspended Solids	1/month	Grab

C. Defendant Kenton shall set up a rotating schedule to sample at least five (5) outfalls during each storm event. Samples should be collected during the first flush of discharge or as soon as practicable after discharge begins. This sampling is not required where storm events occur on Saturdays, Sundays, recognized Holidays or after the usual hours of

operation. In this situation, Kenton shall use the "AN" code to record such storm event.

D. Defendant Kenton may estimate the number of occurrence(s) per day, the daily duration and the total daily flow.

E. For days when there are no discharges, data for parameters which require laboratory analyses should be reported as "AH" and an explanation of "no discharge" entered in the "Additional Remarks" Section. On such days, zero should be reported for occurrences, duration, and flow.

F. Monitoring data shall be submitted for each month when discharge occurs. When discharge occurs, the monthly monitoring report shall be attached to the normal monthly report form (EPA-4500).

6. The sewer system shall be operated and maintained in such a manner as necessary to reduce impacts to the receiving stream resulting from combined sewer overflows ("CSOs"). The permittee shall utilize the following technology to reduce water quality impacts:

- A. provide proper operation and maintenance programs for the sewer system and combined sewer overflow points;
- B. provide maximum use of the collection system for storage prior to allowing overflows;

- C. review and modify pretreatment program if applicable;
- D. maximize flow to the POTW for treatment;
- E. prohibit dry weather overflows; and
- F. control solid and floatable materials in the CSO discharge.

7. This Consent Order and the monitoring requirements set forth above do not constitute an NPDES permit nor a modification of any existing permit. Defendant Kenton is enjoined to comply with the final effluent limits set forth in its NPDES Permit No. 2PD00020*ED and any renewals or modifications thereof. In no event shall the date for elimination of all sanitary sewer system overflows be later than January 1, 1998. In no event shall the date for elimination of all treatment plant bypasses be later than January 1, 1998. Kenton is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structure.

VI. CONSTRUCTION SCHEDULE

8. Defendant Kenton is enjoined and ordered to eliminate discharges from overflows and bypasses from its sanitary sewer system and to complete construction of any and all improvements to its wastewater treatment plant and sanitary sewer system as needed to attain compliance with the final effluent limitations and requirements of NPDES Permit No. 2PD00020*ED or any

renewals or modifications thereof in accordance with the following schedule:

PHASE I:

<u>TASK</u>	<u>COMPLETION DATE</u>
-- Remove roof drains from sanitary sewer system;	
-- Complete separation of the combined sewer system via construction of storm sewers; and	
-- Correct major inflow sources (miscellaneous improvements).	

The above tasks must be completed according to the following schedule:

a. start engineering design;	August 1, 1991
b. complete engineering design and submit permit to install applications if necessary;	November 1, 1991
c. advertise for bids;	December 1, 1991
d. award contract;	January 1, 1992
e. start construction;	February 2, 1992
f. complete construction and start monitoring period;	August 1, 1992
g. complete monitoring period;	August 1, 1993
and	
h. eliminate all discharges from overflows and plant bypasses	August 1, 1993

9. If all discharges from overflows and plant bypasses have not been eliminated by August 1, 1993 as required by Section VI, Paragraph 8, Phase I (h), Defendant Kenton must implement Phase II in accordance with the following schedule:

PHASE II:

TASK

COMPLETION DATE

- Rehabilitate sanitary sewer system (minor spot repairs, root treatment, grouting of joints and correction of bad lateral connections); and
- Rehabilitate manholes (repairs to pipe connections and channels, sealing of covers and sealing of leaking walls).

The above tasks must be completed according to the following schedule:

- a. start engineering design; August 1, 1993
- b. complete engineering design and submit Permit to Install applications if necessary; December 1, 1993
- c. advertise for bids; January 1, 1994
- d. award contract; February 1, 1994
- e. start construction; March 1, 1994
- f. complete construction and start monitoring period; January 1, 1995
- g. complete monitoring period; January 1, 1996
- and
- h. eliminate all discharges from overflows and plant bypasses. January 1, 1996

10. If all discharges from overflows and plant bypasses have not been eliminated by January 1, 1996 as required by Section VI, Paragraph 9, Phase II (h), Defendant Kenton must implement Phase III in accordance with the following schedule:

PHASE III:

TASK

COMPLETION DATE

-- Replacement of damaged sanitary sewers due to structural deficiencies.

The above task must be completed according to the following schedule:

- | | |
|--|-----------------|
| a. start engineering design; | January 1, 1996 |
| b. complete engineering design and submit Permit to Install applications if necessary; | April 1, 1996 |
| c. advertise for bids; | May 1, 1996 |
| d. award contract; | June 1, 1996 |
| e. start construction; | July 1, 1996 |
| f. complete construction and start monitoring period; | January 1, 1997 |
| g. complete monitoring period; | January 1, 1998 |
| and | |
| h. eliminate of all discharges from overflows and plant bypasses. | January 1, 1998 |

11. By July 31, 1991, Defendant Kenton shall operate the wastewater treatment plant under the supervision of at least a Class III certified operator who shall be a full-time employee.

12. By March 31, 1990, Defendant Kenton shall place the responsibility for the technical operation and maintenance of the sanitary sewer collection system under the supervision of at least a Class I certified operator who shall be a full-time employee.

13. Within fourteen (14) days after each milestone date in this Consent Order Defendant Kenton shall submit a written

report stating whether or not Kenton has performed the action set forth therein to Ohio EPA, Northwest District Office.

14. This Consent Order does not constitute authorization nor approval of the construction of any physical structure or facilities, nor the modification of any existing treatment works or sewer system. Approval for any such construction or modification shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

VII. CIVIL PENALTY

15. Defendant Kenton shall pay to the State of Ohio a civil penalty of Six Thousand (\$6,000.00). The penalty shall be paid by delivering to counsel for Plaintiff a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within forty-five (45) days from the date of entry of this Consent Order.

VII. STIPULATED PENALTIES

16. In the event that Defendant Kenton fails to meet any of the requirements of this Consent Order set forth in Paragraphs 4, 5, 6, 9, 11, and 12 and Subparagraphs 8(a), 8(b), 8(c), 8(d), 8(e), 8(f), 8(g), 9(a), 9(b), 9(c), 9(d), 9(e), 9(f), 9(g), 10(a), 10(b), 10(c), 10(d), 10(e), 10(f) and 10(g), including any scheduled milestone requirement or completion dates, Defendant Kenton shall immediately and automatically be liable for and shall pay a stipulated penalty according to the

following payment schedule: For each day of each failure to meet a requirement, up to thirty (30) days - Five Hundred Dollars (\$500.00) per day for each requirement not met. For each day of each failure to meet a requirement, from thirty-one (31) to sixty days (60) - One Thousand Dollars (\$1,000.00) per day for each requirement not met. For each day of each failure to meet a requirement, from sixty-one (61) to ninety (90) days - Two Thousand Five Hundred Dollars (\$2,500.00) per day for each requirement not met. For each day of each failure to meet a requirement, over ninety days (90) days - Three Thousand Five Hundred Dollars (\$3,500.00) per day for each requirement not met.

17. In the event that Defendant Kenton fails to meet any of the requirements of this Consent Order set forth in Paragraph 7, or Subparagraphs 8(h), 9(h) or 10(h), Defendant Kenton shall immediately and automatically be liable for payment of a stipulated penalty of \$5,000.00 per day of each violation of each requirement. Defendant Kenton shall be liable for an additional stipulated penalty of One Thousand Dollars (\$1,000.00) per day of each violation if the failure to comply continues for more than thirty (30) days, i.e. Six Thousand Dollars (\$6,000.00) per day of each violation. In the

event that failure to comply with the requirements of Paragraph 7 or Subparagraphs 8(h), 9(h) or 10(h) continues more than sixty (60) days, Defendant Kenton shall be liable for an additional Four Thousand Dollars (\$4,000.00) per day of each violation, i.e., Ten Thousand Dollars (\$10,000.00) per day of each violation.

18. Any payment required to be made under the provisions of Paragraphs 16 or 17 of this Order shall be made by delivering to Plaintiff's counsel a certified check or checks for the appropriate amounts, within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, made payable to "Treasurer, State of Ohio".

IX. POTENTIAL FORCE MAJEURE

19. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Defendant Kenton 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 Defendant Kenton to prevent or minimize the delay and the timetable by which measures will be implemented. Defendant Kenton will adopt all reasonable measures to avoid or minimize any such delay.

20. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendant Kenton may raise whether 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 Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and the Plaintiff 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 the Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant Kenton shall rest with Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances shall not constitute circumstances entirely beyond the control of Defendant, or serve as a basis for an extension of time under this Consent Order. Failure by Defendant Kenton to comply with the notice requirements of Paragraph 19 shall render this Paragraph void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendant's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one compliance date based on a particular incident does not mean that Defendant Kenton qualifies for an extension of a subsequent compliance date or dates. Defendant Kenton must make an individual showing

or proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order without a Force Majeure Clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

X. COMPLIANCE NOT DEPENDENT ON FINANCING

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

XI. RETENTION OF JURISDICTION

22. The Court will retain jurisdiction of this action for the purpose of making any order or decree which it deems appropriate to carry out this Consent Order.

XII. COSTS


23. Defendant Kenton is hereby ordered to pay the costs of this action.


JUDGE DAVID C. FAULKNER
COURT OF COMMON PLEAS
HARDIN COUNTY, OHIO

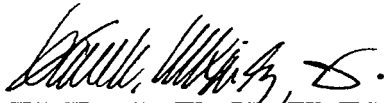
APPROVED:

STATE OF OHIO, ex rel.
LEE FISHER
ATTORNEY GENERAL OF OHIO

BY:


TIMOTHY KERN (0034629)
LAUREN C. ANGELL (0042615)
Assistant Attorneys General
Environmental Enforcement
Section, 25th Floor
30 East Broad Street
Columbus, Ohio 43266-0410
(614) 466-2766


Authorized Representative of
City of Kenton


PAUL MCKINLEY, JR. (0027081)
936 East Franklin Street
P.O. Box 207
Kenton, Ohio 43326-0207

Director of Law
City of Kenton, Ohio

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IN THE COURT OF COMMON PLEAS
HARDIN COUNTY, OHIO

STATE OF OHIO, ex rel)
BETTY D. MONTGOMERY)
ATTORNEY GENERAL OF OHIO)

Plaintiff,)

vs.)

CITY OF KENTON)
111 West Franklin Street)
Kenton, Ohio 43326)

Defendant.)

CASE NO. 90-CV-114
JUDGE DAVID C. FAULKNER

AMENDED CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein on April 19, 1990, and the Plaintiff, State of Ohio, by its Attorney General Betty D. Montgomery ("Plaintiff"), and Defendant, the City of Kenton ("Kenton" or "Defendant"), having consented to the entry of this Consent Order Amending the previous Consent Order entered herein on January 9, 1992,

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 6111. of the Ohio Revised Code, and venue is proper in this Court.

II. PARTIES

2. The provisions of this Amended Consent Order shall apply to and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them. Defendant Kenton shall provide a copy of this Amended Consent Order to each contractor it employs to perform work itemized herein, and each general contractor shall provide a copy of this Amended Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleged in its Complaint that Defendant had operated its wastewater treatment plant ("WWTP") and sewer system in such a manner as to result in numerous violations of the requirements of the NPDES Permits issued to it by the Director of Ohio EPA and in violation of the water pollution laws of the State of Ohio. Compliance with the terms of the January 9, 1992 Consent Order constitutes full satisfaction of any civil liability by Defendant for all claims under such laws alleged in the April 19, 1990 Complaint, which occurred prior to the entry of the Consent Order.

4. Compliance with the terms of this Amended Consent Order shall constitute full satisfaction of any civil liability by Defendant, for all claims under such laws alleged in the April 19, 1990 Complaint, for all violations which occurred subsequent to the entry of the January 9, 1992 Consent Order up through the date of entry of this Amended Consent Order. Nothing in this Amended Consent Order shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint, including violations which occur after the filing of this Amended Consent Order.

IV. COMPLIANCE SCHEDULE

5. Defendant Kenton is hereby enjoined and ordered to immediately comply with the requirements of Chapter 6111. of the Ohio Revised Code ("O.R.C.") and the terms and conditions of the rules and regulations adopted under that Chapter, and with Kenton's currently effective NPDES permit, and any renewals or modifications thereof, except for:

- (1) the final effluent limitations and monitoring requirements set forth in Part I, A, Sections 1 - 4 of said permit;
- (2) the prohibition on sewer system overflows set forth in said permit; and
- (3) the prohibition on non-emergency bypasses set forth in said permit.

The three exceptions listed above to compliance with Chapter 6111. are contingent on full compliance with the terms and conditions of Appendix "A" attached hereto and with Section VI, paragraphs 9 and 10 of the Amended Consent Order. Between the effective date of this Amended Consent Order and January 1, 2000, Defendant is hereby ordered and enjoined to comply with the interim effluent limitations and monitoring requirements set forth in Appendix A. The interim effluent limitations and monitoring requirements contained in Appendix A do not constitute an NPDES permit nor a modification of any existing permit. After January 1, 2000, Defendant Kenton is permanently enjoined to meet the final effluent standards and monitoring requirements set forth in its currently effective NPDES permit and any renewals or modifications thereof. After January 1, 2000, Defendant Kenton is permanently enjoined to eliminate any and all non-emergency plant bypasses and any and all sewer system overflows. Defendant Kenton is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. STIPULATED PENALTIES FOR FAILURE TO COMPLY WITH APPENDIX A

6. In the event that Defendant Kenton fails to meet any of the **monitoring and daily effluent limitation and 7-day effluent limitation requirements only** of this Amended Consent Order set forth in Section IV, paragraph 5 and Appendix A, Defendant Kenton shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment chart:

•First year following the effective date of this Amended Consent Order;	\$100 per day per violation
•Second year following the effective date of this Amended Consent Order;	\$200 per day per violation
•Third year following the effective date of this Amended Consent Order;	\$300 per day per violation
•Fourth year following the effective date of this Amended Consent Order;	\$400 per day per violation
•Fifth year following the effective date of this Amended Consent Order;	\$500 per day per violation
•Sixth year following the effective date of this Amended Consent Order and continuing until January 1, 2000.	\$600 per day per violation

7. In the event that Defendant Kenton fails to meet any of the **30-day effluent limitation requirements only** of this Amended Consent Order set forth in Section IV, paragraph 5 and Appendix A, Defendant Kenton shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment chart:

- First year following the effective date of this Amended Consent Order; \$300 per day per violation
- Second year following the effective date of this Amended Consent Order; \$400 per day per violation
- Third year following the effective date of this Amended Consent Order; \$500 per day per violation
- Fourth year following the effective date of this Amended Consent Order; \$600 per day per violation
- Fifth year following the effective date of this Amended Consent Order; \$700 per day per violation
- Sixth year following the effective date of this Amended Consent Order and continuing until January 1, 2000. \$800 per day per violation

8. For the purpose of calculating stipulated penalties under the provisions of this Amended Consent Order only, Plaintiff agrees to treat each 7-day effluent limitation violation as one violation only, and each 30-day effluent limitation violation as one violation only.

VI. COMPLIANCE AND MONITORING SCHEDULE FOR SEWER SYSTEM OVERFLOWS

9. Between the effective date of this Amended Consent Order and the date upon which all sewer system overflows are eliminated, or January 1, 2000, whichever is earlier, Defendant is enjoined to comply with the following monitoring and discharge requirements:

- A. Defendant Kenton is prohibited and enjoined from discharging from any and all sewer system overflows during dry weather. Between the effective date of this Consent Order and the date upon which all sewer system overflows are eliminated, or January 1, 2000, whichever is earlier, Defendant Kenton may discharge from the following sewer system overflows only, during wet weather periods only, and only when the flow in the sewer system exceeds the capacity of the sewer system.

<u>Outfall Number</u>	<u>Description</u>	<u>Latitude</u>	<u>Longitude</u>	<u>Receiving Stream</u>
2PD00020003	Alley between Mill and Leighton Sts. at the north side of the Scioto River 24" overflow pipe from 30" interceptor	40°38'40"	83°36'55"	Scioto River
2PD00020004	North side of river halfway between Detroit and Main Sts. at the upstream end of the existing siphon	40°38'35"	83°36'30"	Scioto River
2PD00020005	Alley between Lynn and Railroad Sts. at one-half block east of Wayne Street 18" over-flow pipe	40°38'30"	83°36'20"	Scioto River
2PD00020006	North side of the river at Brumm St. extended 24" overflow pipe	40°38'25"	83°36'10"	Scioto River
2PD00020007	Half a block east of Wayne Street near the end of the first alley south of Brumm Street 15" overflow to Scioto River from 24" main trunk sewer	40°38'20"	83°36'12"	Scioto River

2PD00020008	Overflow at head of treatment plant	40°38'10"	83°35'55"	Scioto River
2PD00020009	Chesney at alley between Wayne & Cherry Streets	40°39'30"	83°36'20"	Scioto River
2PD00020010	North of Scioto River and west of the Conrail tracks	40°38'40"	83°36'45"	Scioto River
2PD00020011	Main Street south of Scioto River	40°38'33"	83°36'27"	Scioto River

B. Defendant Kenton shall monitor the sewer system's overflows at Outfalls 2PD00020003 through 2PD00020011 and report to the Ohio EPA in accordance with all parameters listed in the following Table:

<u>CHARACTERISTIC</u>		<u>MONITORING REQUIREMENTS</u>		
<u>REPORTING CODE</u>	<u>UNITS</u>	<u>PARAMETER</u>	<u>MEASUREMENT FREQUENCY</u>	<u>SAMPLE TYPE</u>
80998	#/Mo	Occurrences	When discharging	Estimate
80999	Hours	Duration	When discharging	Daily Est.
50050	Million Gallons	Volume	When discharging	Daily Est.
80082	mg/l	CBOD ₅	1/month	Grab
00530	mg/l	Suspended Solid	1/month	Grab

C. Defendant Kenton shall set up a rotating schedule to sample at least five (5) outfalls during each storm event. Samples should be collected during the first flush of discharge or as soon as practicable after discharge begins. This sampling is not required where storm events occur on Saturdays, Sundays, recognized Holidays, or after the usual hours of operation. In this situation, Kenton shall use the "AN" code to record such storm event.

- D. Defendant Kenton may estimate the number of occurrence(s) per day, the daily duration and the total daily flow.
- E. For days when there are no discharges, data for parameters which require laboratory analyses should be reported as "AH" and an explanation of "no discharge" entered in the "Additional Remarks" Section. On such days, zero should be reported for occurrences, duration, and flow.
- F. **Monitoring data shall be submitted for each month of the year, on form EPA 4500, regardless of whether or not any discharge has occurred. These monthly monitoring reports shall be attached each month to the normal form EPA 4500 monthly report.**

10. The sewer system shall be operated and maintained in such a manner as is necessary to reduce impacts to the receiving stream resulting from sewer overflows. The permittee shall utilize the following technology to reduce water quality impacts:

- A. provide proper operation and maintenance programs for the sewer system overflow points;
- B. provide maximum use of the collection system for storage prior to allowing overflows;
- C. review and modify pretreatment program if applicable;
- D. maximize flow to the POTW for treatment;
- E. prohibit dry weather overflows; and
- F. Police the areas surrounding all nine (9) sanitary sewer overflows identified in Section VI, Paragraph 9(A) of this Amended Consent Order. Policing the areas shall include, at a minimum, collecting all debris resulting from the overflow discharges. A written report of this policing shall be included in the remarks section of the Monthly Operating Report.

VII. STIPULATED PENALTIES FOR FAILURE TO COMPLY WITH SECTION VI

11. In the event that Defendant Kenton fails to meet any of the requirements of this Consent Order set forth in Section VI, paragraph 9(A), that is, if any dry weather overflows occur from the date of the filing of this Amended Consent Order until the date upon which all overflows have been eliminated from the City of Kenton's sewer system, or January 1, 2000, whichever comes first, Defendant Kenton shall immediately and automatically be liable for and shall pay a stipulated penalty of five hundred dollars (\$500.00) per day per occurrence of dry weather overflow.

12. In the event that Defendant Kenton fails to meet any of the requirements of this Consent Order set forth in Section VI, paragraphs 9(B) through 9(E), that is, in the event Defendant Kenton fails to monitor any wet weather overflow from the sewer system as per the requirements set forth in paragraphs 9(B) through 9(E) of this Amended Consent Order, Defendant Kenton shall immediately and automatically be liable for and shall pay a stipulated penalty of one thousand dollars (\$1000.00) per monitoring report which contains any failure of any requirement of paragraphs 9(B) through 9(E).

13. In the event that Defendant Kenton fails to meet any of the requirements of this Consent Order set forth in Paragraph 9(F), that is, in the event Defendant Kenton fails to provide the Ohio EPA with a monthly monitoring report, regardless of whether or not a discharge occurred from the sewer system overflows, Defendant Kenton shall immediately and automatically be liable for and shall pay a stipulated penalty of two thousand dollars (\$2000.00) per unprovided monitoring report.

VIII. CONSTRUCTION SCHEDULE

14. Defendant Kenton is enjoined and ordered to eliminate discharges from overflows from its sanitary sewer system, eliminate discharges from bypasses at the WWTP, and to complete construction of any and all improvements to its WWTP and sewer system as needed to attain compliance with the final effluent limitations and requirements of NPDES Permit No. 2PD00020*FD or any modifications thereof,

in accordance with the following schedule:

<u>TASK</u>	<u>STARTING DATE</u>	<u>COMPLETION DATE</u>
a) Remove largest inflow sources	begun	December 31, 1995;
b) Disconnect downspouts	begun	December 31, 1995;
c) Perform repairs to stop river intrusion	begun	December 31, 1995;
d) Rehabilitate manholes most prone to inflow	begun	December 31, 1995;
e) Flow monitor at the WWTP	January 1, 1996	May 31, 1996;
f) Begin other sewer repairs, in rank of the most important first	January 1, 1996	December 31, 1999;
g) Finalize Design Criteria	June 1, 1996	August 31, 1996;
h) Arrange project financing	June 1, 1996	November 30, 1997;
i) Begin design of interceptor and treatment plant	August 1, 1996	June 30, 1997;
j) Submit permit to install application	June 1, 1997	N/A;
k) Obtain necessary easements	July 1, 1997	March 31, 1998;
l) Advertise for building bids	November 1, 1997	February 28, 1998;
m) Construct new facilities	March 1, 1998	October 31, 1999;
n) Start - up of new facilities	November 1, 1999	December 31, 1999;

TASK

STARTING DATE

COMPLETION DATE

o) Attain compliance with Amended Consent Order by eliminating any and all plant bypasses, by eliminating any and all sewer system overflows, and by meeting the final effluent limitations in Kenton's current NPDES permit or any renewals or modifications thereof for any and all discharges from the WWTP.

N/A

January 1, 2000.

15. This Consent Order does not constitute authorization nor approval of the construction of any physical structure or facilities, nor the modification of any existing treatment works or sewer system. Approval for any such construction or modification shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

IX. STIPULATED PENALTIES FOR FAILURE TO COMPLY WITH CONSTRUCTION SCHEDULE

16. In the event that Defendant Kenton fails to meet any of the requirements of this Amended Consent Order as set forth in Section VIII, Paragraph 14 a), 14 i), 14 j), 14 m), and/or 14 n), that is, in the event Defendant Kenton fails to timely meet any of the above listed interim task completion deadlines or milestones, Defendant Kenton shall immediately and automatically be liable for and shall pay a stipulated penalty of five hundred dollars (\$500.00) per day a task deadline is missed.

17. In the event that Defendant Kenton fails to meet the final compliance deadline of the above detailed construction schedule, as set forth in Section VIII, Paragraph 14 o), that is, in the event Defendant Kenton fails to timely meet the final effluent limitations given in its current NPDES permit or any renewals or modifications thereof for any and all discharges from its WWTP, and/or to completely eliminate all sewer system overflows

and/or to completely eliminate all treatment plant bypasses by January 1, 2000, Defendant Kenton shall immediately and automatically be liable for and shall pay a stipulated penalty of five thousand dollars (\$5000.00) per day after January 1, 2000, per overflow occurrence, per bypass occurrence and/or per final effluent limitation violation.

X. MISCELLANEOUS REQUIREMENTS

18. Defendant Kenton shall continue to operate the wastewater treatment plant under the supervision of at least a Class III certified operator who shall be a full-time employee.

19. Defendant Kenton shall continue to place the responsibility for the technical operation and maintenance of the sewer collection system under the supervision of at least a Class I certified operator who shall be a full-time employee.

20. Within fourteen (14) days after each milestone date set forth in Section VIII, paragraph 14 above, Defendant Kenton shall submit a written report stating whether or not Kenton has performed the action set forth therein to:

Ohio EPA, Northwest District Office
347 North Dunbridge Road
Bowling Green, Ohio 43402

XI. CIVIL PENALTY

21. Defendant Kenton shall pay to the State of Ohio a civil penalty of ten thousand dollars (\$10,000). The penalty shall be paid by delivering to the "Administrative Assistant", a certified check for \$10,000, payable to the order of "Treasurer, State of Ohio", within forty-five (45) days from the date of entry of this Amended Consent Order. Said check shall be mailed to the following address:

State of Ohio Attorney General's Office
State Office Tower
30 E. Broad Street, 25th Floor
Environmental Enforcement Section
Columbus, Ohio 43215 - 3428
Attention: Administrative Assistant

XII. PAYMENT OF STIPULATED PENALTIES

22. Any stipulated penalty required to be paid pursuant to the provisions of Section V Paragraphs 6, and 7, Section VII Paragraphs 11, 12 and 13, and Section IX Paragraphs 16 and 17 of this Amended Consent Order, shall be made by delivering to "Administrative Assistant", a certified check or checks for the appropriate amounts, within forty-five (45) days from the date of the failure to comply with the herein listed sections of the Amended Consent Order. Said check shall be mailed to the following address:

State of Ohio Attorney General's Office
State Office Tower
30 E. Broad Street, 25th Floor
Environmental Enforcement Section
Columbus, Ohio 43215 - 3428
Attention: Administrative Assistant

XIII. POTENTIAL FORCE MAJEURE

23. If any event occurs which causes or may cause a delay of any requirement of this Amended Consent Order, Defendant Kenton 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 Defendant Kenton to prevent or minimize the delay, and the timetable by which measures will be implemented. Defendant Kenton will adopt all reasonable measures to avoid or minimize any such delay.

24. In any action by the Plaintiff to enforce any of the provisions of this Amended Consent Order, Defendant Kenton may raise whether 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 Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and Plaintiff 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 recommended by Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant Kenton shall rest with Defendant. Unanticipated or increased

costs associated with the implementation of any action required by this Amended Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Defendant, or serve as a basis for an extension of time under this Amended Consent Order. Failure by Defendant Kenton to comply with the notice requirements of Paragraph 23 shall render this Paragraph void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendant's right to request an extension of its obligations under this Amended Consent Order based on such incident. An extension of one compliance date based on a particular incident does not mean that Defendant Kenton qualifies for an extension of a subsequent compliance date or dates. Defendant Kenton must make an individual showing or proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Amended Consent Order without a Force Majeure Clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

XIV. TERMINATION OF STIPULATED PENALTIES

25. The provisions of this Amended Consent Order, set forth in portions of Section IX Paragraph 17, requiring payment of stipulated penalties for any and all violations of the final effluent limitations in Kenton's NPDES permit or any renewals or modifications thereof, shall terminate if the City of Kenton has:

- (1) achieved and maintained compliance with the final effluent limitations contained in its currently effective NPDES permit or any renewals or modifications thereof, for any and all discharges from its WWTP, for a period of one (1) year;
- (2) has conducted all required monitoring and sent all required monitoring reports to the Ohio EPA for a period of one (1) year; and
- (3) has paid all penalties, both civil and stipulated, required to be paid pursuant to this Amended Consent Order.

Termination of these stipulated penalties shall only be effected by Order of Court, upon application by any party and a demonstration that the three (3) conditions set forth in this paragraph have been met.

26. The remaining provisions of this Amended Consent Order, as set forth in Section V Paragraphs 6, 7 and 8, Section VII Paragraphs 11, 12 and 13, and Section IX Paragraphs 16 and 17, requiring payment of stipulated penalties, shall terminate if the City of Kenton has:

- (1) completed all necessary construction to its wastewater treatment plant and sewer system as was necessary to eliminate any and all sewer system overflows and treatment plant bypasses;
- (2) eliminated any and all sewer system overflows and treatment plant bypasses;
- (3) achieved and maintained compliance with the final effluent limitations contained in its currently effective NPDES permit or any renewals or modifications thereof, for any and all discharges from its WWTP, for a period of one (1) year;
- (4) has conducted all required monitoring and sent all required monitoring reports to the Ohio EPA for a period of one (1) year; and
- (5) has paid all penalties, both civil and stipulated, required to be paid pursuant to this Amended Consent Order.

Termination of these stipulated penalties shall only be effected by Order of Court, upon application by any party and a demonstration that the five (5) conditions set forth in this paragraph have been met.

XV. COMPLIANCE NOT DEPENDENT ON FINANCING

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

XVI. RETENTION OF JURISDICTION

28. The Court will retain jurisdiction of this action for the purpose of making any order or decree which it deems appropriate to carry out this Consent Order.

XVII. COSTS

29. Defendant Kenton is hereby ordered to pay the costs of this action.

APPROVED:

DATE:

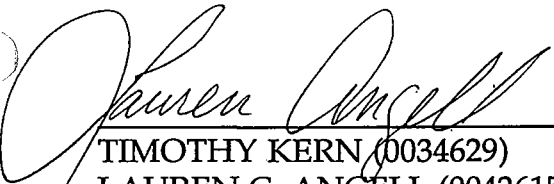
THE HONORABLE JUDGE DAVID C. FAULKNER
COURT OF COMMON PLEAS
HARDIN COUNTY, OHIO

APPROVED:


DATE

5/30/95

STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO


TIMOTHY KERN (0034629)
LAUREN C. ANGELL (0042615)
Assistant Attorneys General
Environmental Enforcement
Section, 25th Floor
30 East Broad Street
Columbus, Ohio 43266-0410
(614) 466-2766


Authorized Representative of
City of Kenton


PAUL MCKINLEY, JR. (0027081)
936 East Franklin Street
P.O. Box 207
Kenton, Ohio 43326-0207

Director of Law, City of Kenton, Ohio

APPENDIX A

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning on the effective date of the Amended Consent Order entered into between the State of Ohio and The City of Kenton and lasting until January 1, 2000, the permittee is authorized to discharge in accordance with the following effluent limitations and monitoring requirements. The location of effluent sampling shall be at the location appropriate to collect any and all treated wastewater and plant bypass water (outfall 001).

<u>EFFLUENT CHARACTERISTIC</u>		<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
		Concentration		Loading		Meas	Sample
Reporting Code	UNITS PARAMETER	Other Units	(Specify)	kg/day		Freq	Type
		30 day	7 day	30 day	7 day		
00010	°C Temperature	-	-	-	-	Daily	Continuous (Max. Ind. Therm.)
00530	mg/l Suspended Solids	40	60	-	-	3/week	Composite
00556	mg/l Oil & Grease	Not to exceed 10.0 at any time				1/week	Grab
00610	mg/l Ammonia (N)						
	Summer	5	7.5	-	-	3/week	Composite
	Winter	14	21	-	-	3/week	Composite
1616	Count Fecal Coliform /100ml (Summer only)	1000 ⁵	2000 ⁵	-	-	3/week	Grab
50050	MGD Flow	-	-	-	-	Daily	Continuous
80082	mg/l CBOD ₅	35	52	-	-	3/week	Composite

2. The pH (Reporting Codes 00402 (minimum) and 00401 (maximum)) shall not be less than 6.5 S.U. nor greater than 9.0 S.U. and shall be monitored daily by multiple grab samples.
3. Beginning on the effective date of the Amended Consent Order and lasting until January 1, 2000, the Chlorine Residual shall be maintained at a level not to exceed 0.5 mg/l and shall be monitored daily by multiple grab samples (Summer only). The highest value shall be reported.
4. The Dissolved Oxygen (Reporting Code 00300) shall be maintained at a level of not less than 5.0 mg/l and shall be monitored daily by multiple grab samples. The lowest value shall be reported.
5. On days where Permittee experiences a bypass event, there shall be no effluent limitation for fecal coliform only if Permittee properly reports the bypass event as described in Part III, Section 12 of NPDES Permit number 2PD00020, and if Permittee properly samples and reports fecal coliform as required in Paragraph 6 of Appendix A to the Amended Consent Order. On days where Permittee experiences a bypass event, Permittee must continue to monitor for fecal coliform as outlined in Paragraph 1 of Appendix A to the Amended Consent Order.

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont.)

5. During the period beginning on the effective date of the Amended Consent Order entered into between the State of Ohio and The City of Kenton and lasting until January 1, 2000, on days where Permittee experiences a bypass event, the permittee is authorized to discharge in accordance with the following effluent limitations and monitoring requirements. The location of effluent sampling shall be at the point of discharge from the chlorine contact tank.

<u>EFFLUENT CHARACTERISTIC</u>		<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
Reporting Code	UNITS PARAMETER	Concentration		Loading		Meas Freq	Sample Type
		Other Units	(Specify)	kg/day			
		30 day	7 day	30 day	7 day		
31616	Count Fecal Coliform /100ml (Summer only)	1000	2000	-	-	3/week	Grab

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (cont.)

7. During the period beginning on the effective date of the Amended Consent Order entered into between the State of Ohio and The City of Kenton and lasting until January 1, 2000, the permittee is authorized to discharge in accordance with the following effluent limitations and monitoring requirements from the following outfall: 2PD000200001. SEE PART II, OTHER REQUIREMENTS, for location of effluent sampling.

<u>EFFLUENT CHARACTERISTIC</u>		<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
Reporting CODE/UNITS	PARAMETER	Concentration		Loading		Meas. Freq.	Sample Type
		30 DAY	DAILY MAX.	30 DAY	DAILY MAX.		
00335 mg/l	COD	-	-	-	-	1/Week	Composite
00625 mg/l	Kjeldahl, TKN(N)	-	-	-	-	1/Month	Composite
00630 mg/l	Nitrite (N) = Nitrate (N)	-	-	-	-	3/Week	Composite
01027 ug/l	Cadmium, Total	-	15	-	-	1/Month	Composite
01034 ug/l	Chromium, Total	-	-	-	-	1/Month	Composite
01042 ug/l	Copper, Total	-	53	-	-	1/Month	Composite
01051 ug/l	Lead, Total	-	79	-	-	1/Month	Composite
01067 ug/l	Nickel, Total	-	126	-	-	1/Month	Composite
01092 ug/l	Zinc, Total	-	299	-	-	1/Month	Composite
01220 ug/l	Chromium (Hex,) Dissolved	-	-	-	-	1/Month	Grab
61425 TUa	Acute Toxicity, <u>Ceriodaphnia</u>	-	-	-	-	1/Month	See Part II, M
61426 TUC	Chronic Toxicity, <u>Ceriodaphnia</u>	-	-	-	-	1/Qtr.	See Part II, M
61427 TUC	Acute Toxicity, <u>Pimephales promelas</u>	-	-	-	-	1/Month	See Part II, M
61428 TUC	Chronic Toxicity, <u>Pimephales promelas</u>	-	-	-	-	1/Qtr.	See Part II, M
70300 MG/L	Solids, Dissolved-Sum of	-	-	-	-	1/Month	Composite
71900 ug/l	Mercury, Total	-	0.95	-	-	1/Month	Composite