

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, ex. rel.

Plaintiff,

v.

CITY OF NORTH ROYALTON

Defendant.

Case No. 172259

JUDGE: PEGGY FOLEY JONES

SECOND MODIFICATION OF
CONSENT ORDER

The Complaint in the above-captioned matter having been filed, and the Plaintiff State of Ohio ("State") and the Defendant City of North Royalton ("North Royalton") having consented to the entry of this Court's November 27, 1989 Consent Order, and the July 22, 1994 Modification of that Consent Order ("First Modification").

As set forth in the Joint Motion to Enter Second Modification ("Joint Motion"), North Royalton has failed to comply with, and is in contempt of, the November 27, 1989 Consent Order, and the First Modification. In order to purge this contempt North Royalton shall comply with the terms of this Second Modification of Consent Order ("Second Modification").

Now, therefore, it is Ordered, Adjudged, and Decreed as follows:

I. JURISDICTION

1. This Court has jurisdiction over the subject matter herein pursuant to Chapter 6111 of the Ohio Revised Code ("R. C."), and paragraph 11 of the November 27, 1989 Consent Order, and paragraph 15 of the First Modification. This Court has jurisdiction over the parties hereto. Venue is proper in this Court.

II. PARTIES

2. The provisions of this Second Modification shall apply to, and be binding upon, the parties to this action, their agents, officers, employees, assigns, successions in interest, and those in active concert or participation with them who receive notice of this Second Modification.

III. SATISFACTION

3. Compliance with the terms of this Second Modification shall constitute full satisfaction of Defendant's contempt liability of the First Modification of Consent Order as alleged in the Joint Motion filed with this Second Modification.

IV. NOVEMBER 27, 1989 CONSENT ORDER

4. As of the date of entry of this Second Modification, this Second Modification hereby modifies and supersedes the requirements of the First Modification.

V. COMPLIANCE SCHEDULE

5. Defendant North Royalton is ordered and enjoined to immediately comply with its NPDES permit No. 3PD00030*ED, and any renewals or modifications thereof, except for the final effluent limitations of said permit as further provided in this paragraph and paragraph 6. Between the effective date of this Order and December 30, 1997, North Royalton is ordered and enjoined to comply with the interim effluent limitations set forth in Appendix "A", attached hereto. The interim effluent limits set forth in Appendix "A" do not constitute an NPDES permit, or a modification of any existing or future NPDES permits.

6. After December 30, 1997, Defendant North Royalton is ordered and enjoined to comply with the final effluent limitations set forth in NPDES permit no. 3PD00030*ED and any renewals or modifications thereof. North Royalton is further ordered and enjoined to properly operate and maintain its wastewater treatment Plant A and any and all associated equipment or structures thereof.

VI. CONSTRUCTION SCHEDULE

7. Defendant North Royalton is enjoined and ordered to complete construction of the improvements to Plant A and to attain compliance with the final effluent limitations of NPDES permit No. 3PD00030*ED and any modifications or renewals thereof in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Submission of General Plan	April 1, 1994

- (b) Submittal of Approvable Detailed Plans and Application for a Permit to Install to Ohio EPA, NEDO October 1, 1994
- (c) Re-advertisement of Building Bids March 7, 1995
- (d) Award Building Contracts March 21, 1995
- (e) Initiation of Construction April 10, 1995
- (f) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits November 30, 1997
- (g) Attain compliance with final effluent limitations December 30, 1997

8. Within seven (7) days from each scheduled date listed above, Defendant North Royalton shall submit a written report stating whether or not North Royalton has performed the action set forth therein to Ohio EPA's Northeast District Office, attention Enforcement Groupleader

9. This Second Modification does not constitute authorization or approval of the construction of any physical structure of facilities, or 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. PENALTY

10. Defendant North Royalton has previously paid to the State of Ohio a penalty of Forty-five thousand dollars (\$45,000.00) for the violations and contempt identified in the June 29, 1994 Joint Motion as required by paragraph 10 of the First Modification. No further penalty shall be paid for the violations and contempt identified in the Joint Motion filed with this Second Modification.

VIII. STIPULATED PENALTIES

11. In the event that Defendant North Royalton fails to meet any of the requirements of this Second Modification set forth in Paragraphs 5 and 7, above, including any schedule milestone requirement, the Defendant 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 days - \$500.00 per day. For each day of each failure to meet a requirement, from thirty-one to sixty days - \$1,000.00 per day. For each day of each failure to meet a requirement, from sixty-one to ninety days - \$2,500.00. For each day of each failure to meet a requirement, beyond ninety-one \$3,500.00 per day.

12. In the event that Defendant North Royalton fails to meet any of the requirements of this Second Modification set forth in Paragraph 6, the Defendant shall immediately and automatically be liable for payment of a stipulated penalty of \$5,000.00 per day of each violation of each requirement. The Defendant 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 violation. In the event that failure to comply with the requirements of Paragraphs 6 continues more than sixty (60) days, Defendant 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 violation.

13. Any payment required to be made under the provisions of Paragraph 11 or 12 of this Order shall be made by delivering to Administrative Assistant, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, OH 43215-3428 a certified check or checks for the appropriate amounts, within thirty days from the date of the failure to meet the requirement of this Order, made payable to Treasure, State of Ohio."

IX. COMPLIANCE NOT DEPENDANT ON GRANTS

14. Performance of the terms of this Second Modification by North Royalton is not conditioned on the receipt of any Federal or State grant funds. In addition, North Royalton's performance is not excused by the failure to obtain any Federal or State grant funds, or by the processing of any applications for the same.

X. COSTS

15. Defendant shall pay the court costs of this action.
16. Defendant is hereby ordered to pay the costs incurred by the Ohio EPA for the publication of the Second Modification of Consent Order in a newspaper of general circulation. Defendant shall pay the costs associated with publication by delivering a certified check payable

to: "Treasurer, State of Ohio" with a notation that the monies go to "Fund 699" on the check, in the amount of the costs, to the Fiscal Officer, Ohio EPA, P.O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43216-1049, within 30 days from the date it receives notice of the costs from Ohio EPA.

XI. CONTINUING JURISDICTION

17. This Court shall retain jurisdiction over this action for the purpose of enforcing and administering Defendant's compliance with this Consent Order.

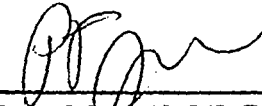
XII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

18. The parties agree and acknowledge that final approval by the Plaintiff and the Defendant and entry of this Consent Order is subject to the requirements of 40 CFR 123.27(d)(2)(iii), which provides for notice of the lodging of the Consent Order, opportunity for public comment, and the consideration of any public comments. Both the State and the Defendant, reserve the right to withdraw this Consent Order prior to its entry by the Court as a final judgment based on comments received during the public comment period.

19. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the parties notice of the judgment and its date of entry upon the journal in the manner prescribed by

Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

IT IS SO ORDERED.



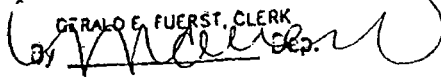
JUDGE, COURT OF COMMON PLEAS

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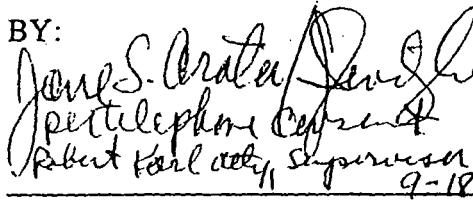
STATE OF OHIO, EX REL.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

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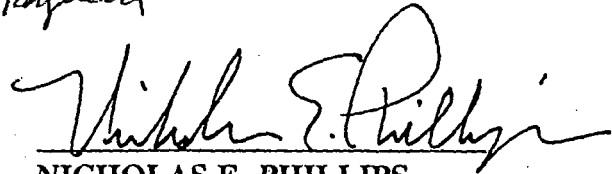
SEP 18 1997

GERALD E. FUERST, CLERK
By 

BY:


James S. Arata, Supervisor, Telephone Center
Robert Karl, City Supervisor, A.C. Office
Columbus, N. Royalton
9-18-97

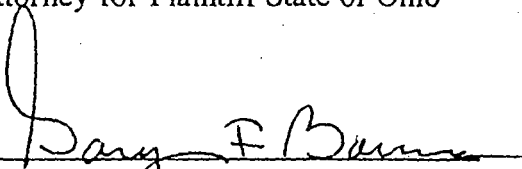
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Environmental Enforcement Section
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Attorney for Plaintiff State of Ohio

Attorney for Defendant North Royalton



GARY F. BARNA, MAYOR and
Authorized Representative of Defendant
City of North Royalton

APPENDIX "A"

INTERIM EFFLUENT LIMITATION AND MONITORING REQUIREMENTS

*Outfall 3PD00030602 At A Point Located After Final
Clarification But Prior To Chlorination*

EFFLUENT CHARACTERISTIC		DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS		
Reporting Code	Units	Parameter	Concentration		Loading		Meas. Freq.	Sample* Type
			Other Units (Specify)		kg/day			
			30 day	7 day	30 day	7 day		
✓ 00010	°C	Temperature	-	-	-	-	Daily	Continuous (Max. Ind. Therm)
00335	mg/l	COD	-	-	-	-	1/Month	Composite
00530	mg/l	Suspended Solids	30	45	-	-	3/Week	Composite
✓ 00550	mg/l	Oil & Grease	Not to exceed 10 at any time				1/Week	Grab
00610	mg/l	Ammonia (N)						
		(Summer)	2.0	3.0	-	-	3/Week	Composite
		(Winter)	4.4	6.6	-	-	3/Week	Composite
✓ 00615	mg/l	Nitrate (N)	-	-	-	-	3/Week	Composite
00620	mg/l	Nitrate (N)	-	-	-	-	3/Week	Composite
✓ 00625	mg/l	Kjeldahl, TKN(N)	-	-	-	-	1/Month	Composite
✓ 00665	mg/l	Phos., Total	1.5	2.25	-	-	3/Week	Composite
01027	ug/l	Cadmium, Total	-	-	-	-	1/Month	Composite
✓ 01034	ug/l	Chromium, Total	-	-	-	-	1/Month	Composite
✓ 01042	ug/l	Copper, Total	-	-	-	-	1/Month	Composite
01051	ug/l	Lead, Total	-	-	-	-	1/Month	Composite
01067	ug/l	Nickel, Total	-	-	-	-	1/Month	Composite

INTERIM EFFLUENT LIMITATION AND MONITORING REQUIREMENTS

*Outfall 3PD00030602 At A Point Located After Final
Clarification But Prior To Chlorination*

Page :

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>			<u>MONITORING REQUIREMENTS</u>		
<u>Reporting Code</u>	<u>Units</u>	<u>Parameter</u>	<u>Concentration</u>		<u>Loading</u>	<u>Meas. 7 day</u>	<u>Sample* Freq.</u>	<u>Type</u>
			<u>Other Units (Specify)</u>	<u>30 day</u>	<u>7 day</u>			
01092	ug/l	Zinc, Total	-	-	-	-	1/Month	Composite
01220	ug/l	Chromium (Hex.) Dissolved	-	-	-	-	1/Month	Grab
50050	MGD	Flow	-	-	-	-	Daily	Continuous
71900	ug/l	Mercury	-	-	-	-	1/Month	Composite
80082	mg/l	CBOD ₅	25	40	-	-	3/Week	Composite

* Composite samples shall be comprised of a series of grab samples collected over a 24 hour period and proportionate in volume to the sewage flow rate at the time of sampling. Such samples shall be collected at such times and locations, and in such a fashion as to be representative of the facility's overall performance.

INTERIM EFFLUENT LIMITATION AND MONITORING REQUIREMENTS

*Outfall 3PD00030001 - Plant Effluent Downstream
of Outfalls 3PD00030602 and 3PD00030603*

EFFLUENT MONITORING CHARACTERISTIC		DISCHARGE LIMITATIONS				REQUIREMENTS		
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	1000	2000	-	-		3/Week
	Grab	/100ml (Summer Only)						

1. The pH (Reporting Code 00400) shall not be less than 6.5 S.U. nor greater than 9.0 S.U. and shall be monitored daily by multiple grab sample.
2. If the entity uses chlorine for disinfection, the Chlorine Residual (Reporting Code 50060) shall be maintained at a level not to exceed 0.5 mg/l and shall be monitored daily by multiple grab sample. (Summer only.)
3. The Dissolved Oxygen (Reporting Code 00300) shall be maintained at a level of not less than 7.0 mg/l (summer) and 5.0 mg/l (winter) and shall be monitored continuously and reported daily.

ADDITIONAL MONITORING REQUIREMENTS

*Outfall 3PD00030603 At A Point Downstream Of The Flow Equalization
Basin and Upstream of Outfall 3PD00030001 only When Plant Peak
Effluent Flows Exceed 2.5MGD And The Flow Equalization Basin Exceeds Design Capacity
Due To Wet Weather Events*

**CHARACTERISTIC
REQUIREMENTS**

MONITORING

<u>Reporting Code</u>	<u>Units</u>	<u>Parameter</u>	<u>Measurement Frequency</u>
<u>Sample Type</u>			
00530 Grab	mg/l	Suspended Solids	Once/day
50050	MGD Continuous	Flow	Daily
80082 Grab	mg/l	CBOD ₅	Once/day
80998	Number Continuous	Occurrences	Daily
80999	Hr./day Continuous	Duration	Daily

Data for the Number of Occurrence(s) per day, the daily Duration and the total daily Flow may be estimated until such time as continuous monitoring equipment is installed, but in no event later than 60 days after the effective date of Modification of Consent Order.

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, ex. rel. : Case No. 172259
 :
 Plaintiff, :
 :
 v. : JUDGE: PEGGY FOLEY JONES
 :
 :
 CITY OF NORTH ROYALTON, :
 :
 Defendant. :
 :
 :

ORDER

The parties have jointly moved the Court for an Order substituting the "Corrected Appendix A" attached hereto for "Appendix A" as attached to the Second Modification of Consent Order, entered in the above-captioned matter on September 18, 1997. The Court finds the Motion well taken and hereby grants the Motion. The "Corrected Appendix A" attached hereto is hereby ordered substituted for "Appendix A" as originally ordered on September 18, 1997, by the Court. Hereafter the "Corrected Appendix A" shall become part of the Second Modification of Consent Order and all references to "Appendix A" or parts thereof, shall refer to "Corrected Appendix A" attached hereto.

IT IS SO ORDERED



JUDGE, COURT OF COMMON PLEAS

CORRECTED APPENDIX A

INTERIM EFFLUENT LIMITATION AND MONITORING REQUIREMENTS

*Outfall 3PD00030602 At A Point Located After Final
Clarification But Prior To Chlorination*

EFFLUENT CHARACTERISTIC		DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS		
Code	Reporting Units	Parameter	Concentration Other Units (Specify)		Loading kg/day		Meas. Freq.	Sample* Type
			30 day	7 day	30 day	7 day		
00010	°C	Temperature	-	-	-	-	Daily	Continuous (Max. Ind. Therm)
00335	mg/l	COD	-	-	-	-	1/Month	Composite
00530	mg/l	Suspended Solids	30	45	-	-	3/Week	Composite
00550	mg/l	Oil & Grease	Not to exceed 10 at any time				1/Week	Grab
00610	mg/l	Ammonia (N) (Summer)	2.0	3.0	-	-	3/Week	Composite
		(Winter)	4.4	6.6	-	-	3/Week	Composite
00615	mg/l	Nitrate (N)	-	-	-	-	3/Week	Composite
00620	mg/l	Nitrate (N)	-	-	-	-	3/Week	Composite
00625	mg/l	Kjeldahl, TKN(N)	-	-	-	-	1/Month	Composite
00665	mg/l	Phos., Total	.15	2.25	-	-	3/Week	Composite
01027	ug/l	Cadmium, Total	-	-	-	-	1/Month	Composite
01034	ug/l	Chromium, Total	-	-	-	-	1/Month	Composite
01042	ug/l	Copper, Total	-	-	-	-	1/Month	Composite
01051	ug/l	Lead, Total	-	-	-	-	1/Month	Composite
01067	ug/l	Nickel, Total	-	-	-	-	1/Month	Composite

INTERIM EFFLUENT LIMITATION AND MONITORING REQUIREMENTS

*Outfall 3PD00030602 At A Point Located After Final
Clarification But Prior To Chlorination*

EFFLUENT CHARACTERISTIC			DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS	
Reporting Code	Units	Parameter	Concentration		Loading		Meas. Freq.	Sample* Type
			Other Units (Specify)		kg/day			
			30 day	7 day	30 day	7 day		
01092	ug/l	Zinc, Total	-	-	-	-	1/Month	Composite
01220	ug/l	Chromium (Hex.) Dissolved	-	-	-	-	1/Month	Grab
50050	MGD	Flow	-	-	-	-	Daily	Continuous
71900	ug/l	Mercury	-	-	-	-	1/Month	Composite
80082	mg/l	CBOD ₅	25	40	-	-	3/Week	Composite

*Composite samples shall be comprised of a series of grab samples collected over a 24 hour period and proportionate in volume to the sewage flow rate at the time of sampling. Such samples shall be collected at such times and locations, and in such a fashion as to be representative of the facility's overall performance.

INTERIM EFFLUENT LIMITATION AND MONITORING REQUIREMENTS

*Outfall 3PD00030602 - Plant Effluent Downstream
of Outfalls 3PD00030602 and 3PD00030603*

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

1. The pH (Reporting Code 00400) shall not be less than 6.5 S.U. nor greater than 9.0 S.U. and shall be monitored daily by multiple grab sample.
2. If the entity uses chlorine for disinfection, the Chlorine Residual (Reporting Code 50060) shall be maintained at a level not to exceed 0.5 mg/l and shall be monitored daily by multiple grab sample. (Summer only.)
3. The Dissolved Oxygen (Reporting Code 00300) shall be maintained at a level of not less than 7.0 mg/l (summer) and 5.0 mg/l (winter) and shall be monitored continuously and reported daily.

ADDITIONAL MONITORING REQUIREMENTS

Outfall 3PD00030603 At A Point Downstream Of The Flow Equalization Basin and Upstream of Outfall 3PD00030001 only When Plant Peak Effluent Flows Exceed 2.5MGD And The Flow Equalization Basin Exceeds Design Capacity Due To Wet Weather Events

<u>CHARACTERISTIC REQUIREMENTS</u>		<u>MONITORING</u>		
<u>Reporting Code</u>	<u>Units</u>	<u>Parameter</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
00530	mg/l	Suspended Solids	Once/day	Grab
50050	MGD	Flow	Daily	Continuous
80082	mg/l	CBOD ₅	Once/day	Grab
80998	Number	Occurrences	Daily	Continuous
80999	Hr./day	Duration	Daily	Continuous

Data for the Number of Occurrence(s) per day, the daily Duration and the total daily Flow may be estimated until such time as continuous monitoring equipment is installed, but in no event later than 60 days after the effective date of Modification of Consent Order.

For days when there are no bypass 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. Also, on such days Zero should be reported for occurrences, duration, and flow.

The treatment plant bypass is prohibited except under emergency conditions as authorized by the Federal Regulation at 40 CFR 122.41(m) or Part III, Item II General Conditions of the permit.

APPROVED:

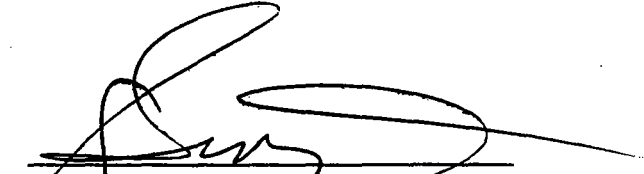
STATE OF OHIO, EX REL.
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

BY:



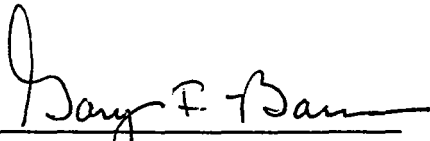
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North Royalton, Ohio 44133

Attorney for Defendant North Royalton



GARY F. BARNA, MAYOR an
Authorized Representative of Defendant
City of North Royalton

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OCT 31 1997

GERALD E. FUERST, CLERK
By B. Malbran Dep.

THE STATE OF OHIO }
Cuyahoga County } ss. I, GERALD E. FUERST, CLERK OF
THE COURT OF COMMON PLEAS
WITHIN AND FOR SAID COUNTY.
I HEREBY CERTIFY THAT THE ABOVE AND FOLLOWING IS TRULY
CORRECT AND COPIED FROM THE ORIGINAL
FILED IN MY OFFICE.
WITNESSED BY HAND AND SEAL OF SAID COURT THIS 31st
DAY OF October 1997 3/5