

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO, ex rel.
ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO
30 East Broad Street
Columbus, Ohio 43266-0410

Plaintiff,

v.

CITY OF OXFORD,

Defendant.

CASE NO. CV87 09 1127

JUDGE

FILED In Common Pleas Court
BUTLER COUNTY, OHIO

SEP 10 CONSENT DECREE

EDWARD S. ROBB, JR.
CLERK

The Complaint in the above-captioned case having been filed herein, and the Plaintiff State of Ohio, by its Attorney General Anthony J. Celebrezze, Jr. (hereinafter "Plaintiff"), and the Defendant City of Oxford (hereinafter "Oxford") having consented to this decree.

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

This Court has jurisdiction over the subject matter herein pursuant to R.C. Chapter 6111 and rules adopted thereunder. The Complaint states a claim upon which relief can be granted under these statutory and regulatory provisions. This Court has jurisdiction over the parties hereto. Venue is proper in this Court.

II. PERSONS BOUND BY THE DECREE

The provisions of this Consent Decree shall apply to and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest, and those persons in active concert or participation with them who receive actual notice of this Consent Decree whether by personal service or otherwise.

III. CONTINUING JURISDICTION

This Court shall retain jurisdiction of this action for the purpose of making any order or decree which it may deem necessary to carry out the Consent Decree.

IV. ORDERS

Defendant is permanently enjoined to take the following actions with respect to its wastewater treatment facility:

A. by November 1, 1987, submit for approval to Ohio EPA a sampling program to locate and characterize the discharges of high strength waste into the city's sewer system;

B. complete the approved sampling program of the high strength discharges into the city sewer system no later than March 1, 1988;

C. submit a report on the sampling program and a plan to control such high strength discharges to Ohio EPA no later than April 1, 1988;

D. no later than May 1, 1988, issue compliance orders to those entities discharging unacceptable levels of high strength waste into the sanitary sewer system which orders establish deadlines not to extend past November 1, 1988 within which such entities must reduce, eliminate, or otherwise control such discharges;

E. implement and enforce the terms of the general plan to control high strength BOD discharges as approved by Ohio EPA no later than November 1, 1988, so that the plant influent meets plant design limits and requirements by that date;

F. no later than January 3, 1989, commence operation of all treatment processes that the City of Oxford installs to comply with 33 U.S.C. Section 1311 of the Water Pollution Prevention and Control Act so that all treatment processes on and after this date are in full and sustained operation as planned and designed;

G. no later than April 1, 1989, meet the final permit effluent limitation requirements contained in Part IA of Modified Permit No. 1PDO0007*DD (Attachment "A");

H. comply with the interim NPDES permit effluent limitations and monitoring requirements set forth in paragraphs 1.A and 1.B of Modified Permit No. 1PDO0007*DD until the upgraded plant is subject to the final permit effluent limitations as referenced in paragraph C above; and,

I. comply with the other requirements and general conditions of Part II and III of Modified Permit No. 1PDO0007*DD.

For purposes of this order, high strength discharges are those discharges of BOD₅ and total suspended solids that in quantities and concentrations exceed those levels of discharges from normal domestic sewage.

V. CIVIL PENALTY

Defendant shall pay to the State of Ohio a civil penalty in the amount of thirty-thousand dollars (\$30,000.00) by delivering to Plaintiff's counsel or his successor in the office of the Attorney General, a check in such amount made to the order of "Treasurer, State of Ohio" no later than sixty days after entry of this decree. Payment shall be credited to the General Revenue Fund.

VI.

If Defendant fails to perform any of the acts specified in Paragraphs IV D, E and F within the time frames specified therein, Defendant shall pay a civil penalty pursuant to R.C. 6111.09 of five hundred dollars for each day that it fails to perform any of these acts. A separate civil penalty shall accrue for the failure to perform each act. Payment made pursuant to this provision shall be made by forwarding to Plaintiff's counsel within thirty days after commission of the violation a certified check in the appropriate amount payable to "Treasurer, State of Ohio" for deposit in the State's General Revenue Fund.

In any action to enforce any of the provisions of this Consent Decree, Defendant may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons beyond its control such as, by way of example and not limitation, act of God, unusually severe weather conditions, strikes, acts of war or civil disturbances, or orders of any regulatory agency. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by the parties that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an enforcement action, if any, is commenced. Acceptance of this Consent Decree without a force majeure clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

VII.

Defendant shall pay court costs.

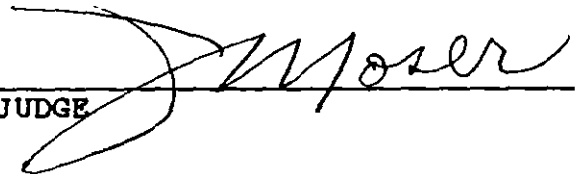
VIII.

The Court retains jurisdiction of this suit for the purpose of making any order or decree which it may deem necessary.

DATE

9-10-87

JUDGE



APPROVED:

Respectfully submitted,

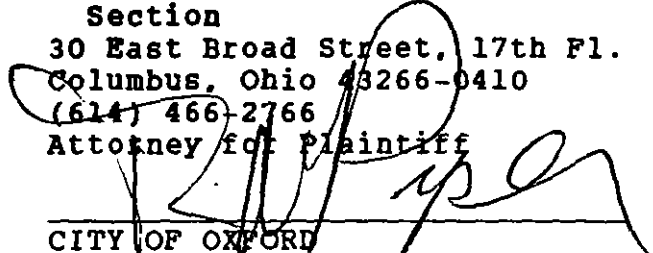
ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO



DOMINIC J. HANKET

TIMOTHY KERN
Assistant Attorneys General
Environmental Enforcement
Section

30 East Broad Street, 17th Fl.
Columbus, Ohio 43266-0410
(614) 466-2766
Attorney for Plaintiff



CITY OF OXFORD

4886E

Robert N. Piper
Attorney for Defendant
510 Dollar Federal Building
Hamilton, OH 45011
(513) 892-0820

OHIO ENVIRONMENTAL PROTECTION AGENCY
MODIFICATION OF NATIONAL POLLUTANT DISCHARGE
ELIMINATION SYSTEM (NPDES) PERMIT

ISSUE DATE: July 18, 1986

EXISTING PERMIT NO: 1PDO0007*DD

EFFECTIVE DATE: September 8, 1986

APPLICATION NO: OH0026930

ENTITY NAME: City of Oxford

FACILITY LOCATION: 501 McKee Avenue
Oxford, Ohio

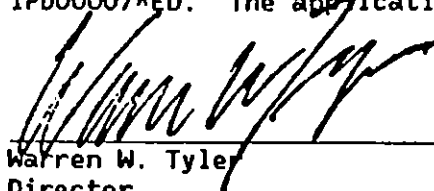
In accordance with Rule 3745-33-06 of the Ohio Administrative Code (formerly Ohio EPA Regulation EP-31-06), the above referenced NPDES permit is hereby modified as follows:

- | | |
|--------------|---|
| Page 1a - 1b | Add interim effluent limitations and monitoring requirements. |
| Page 2 | Delete Biochemical Oxygen Demand; add winter limitations for CBOD ₅ ; add footnote referenced by "***". |
| Page 3 | Delete Nitrate and Nitrite; add Nitrate (N) & Nitrite (N) as reporting code 00630; delete Chromium; add Hexavalent Chromium and Trivalent Chromium; add footnote referenced by "***". |
| Page 5 | Add Hexavalent Chromium and Trivalent Chromium; add footnote referenced by "*". |
| Page 6 | Add Ammonia and Total Kjeldahl Nitrogen. |
| Page 6a | Add Schedule of Compliance. |
| Page 7 | Revise Items C and H. |
| Page 7a | Add Items J and K. |
| Page 10 - 16 | Revise Part III, General Conditions. |
| Page 17 | Delete. |

Attached are the modified pages to the NPDES permit. 1a, 1b, M2, M3, M5, M6, 6a, M7, 7a, M10, M11, M12, M13, M14, M15, M16, M17.

All terms and conditions of the existing permit not recommended for modification by this document will remain in effect. Further, any existing term or condition which this modification will change will remain in effect until any legal restraint to the imposition of this modification has been resolved. Any term or condition which this modification will change shall supersede, on the date this modification is effective, the existing respective term or condition of the permit.

When the modification is effective, the OEPA permit number will be changed to 1PDO0007*ED. The application number will remain OH0026930.


Warren W. Tyler
Director

PART I, A. - INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning on the effective date of this modification and lasting until the date that the improved wastewater treatment works are to attain operational level as specified in Item 7 in the Schedule of Compliance, the permittee is authorized to discharge in accordance with the following limitations and monitoring requirements from the following outfall(s): 1PDO0007001. See PART II, OTHER REQUIREMENTS, for locations 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
			Other Units (Specify)		kg/day			
			30 day	7 day	30 day	7 day		
00010	°C	Temperature	-	-	-	-	Daily	Max. Ind. Thermal
		(Sept. - May)	45	68	512	773	3/Week	Composite
00310	mg/l	BOD ₅						
		(June - Aug.)	30	45	342	512	3/Week	Composite
00530	mg/l	Suspended Solids	30	45	342	512	3/Week	Composite
00550	mg/l	Oil & Grease	-	-	-	-	1/Month	Grab
00610	mg/l	Ammonia (N)						
		(Summer)	8	12	91	136	3/Week	Composite
		(Winter)	-	-	-	-	3/Week	Composite
31616	Count /100ml	Fecal Coliform (Summer Only)	1000	2000	-	-	3/Week	Composite
50050	MGD	Flow	-	-	-	-	Daily	Continuous

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 grab sample.
 2. The Chlorine Residual (Reporting Code 50060) shall be maintained at a level not to exceed 0.5 mg/l and shall be monitored at least 3 times daily by grab sample and the highest value shall be reported daily. (Summer only).
 3. The Dissolved Oxygen (Reporting Code 00300) shall be maintained at a level of not less than 5.0 mg/l and shall be monitored at least 3 times daily by grab sample and the lowest value shall be reported daily.
 4. See Part II, OTHER REQUIREMENTS.
- * The average effluent loading limitations are established using the following flow value: 3.0 MGD.

PART I, A. - INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning on the effective date of this modification and lasting until the date that the improved wastewater treatment works are to attain operational level as specified in Item 7 in the Schedule of Compliance, the permittee is authorized to discharge in accordance with the following limitations and monitoring requirements from the following outfall(s): 1PD00007001. See PART II, OTHER REQUIREMENTS, for locations of effluent sampling.

<u>EFFLUENT CHARACTERISTIC MONITORING</u>			<u>DISCHARGE LIMITATIONS</u>				
<u>REQUIREMENTS</u>			Concentration		Loading*		
Reporting Sample Code	UNITS	PARAMETER	Other Units (Specify)		kg/day		Meas.
			30 day	7 day	30 day	7 day	Freq. Type
00630	mg/l	Nitrate (N) + Nitrite (N)	-	-	-	-	1/Week Composite
01027	ug/l	Cadmium	-	-	-	-	1/Month Composite
01032	ug/l	Chromium (Hex)	-	-	-	-	1/Month Composite
01033	ug/l	Chromium (Tri)	-	-	-	-	1/Month Composite
01042	ug/L	Copper	-	-	-	-	1/Month Composite
01051	ug/l	Lead	-	-	-	-	1/Month Composite
01067	ug/l	Nickel	-	-	-	-	1/Month Composite
01092	ug/l	Zinc	-	-	-	-	1/Month Composite
71900	ug/l	Mercury	Not to exceed 0.5 at any time				1/Week Composite

* The average effluent loading limitations are established using the following flow value: NA MGD

PART I, A. - FINAL EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning on the date that the improved wastewater treatment works are to attain operational level as specified in Item 7 in the Schedule of Compliance or July 1, 1988 whichever occurs first and lasting until the expiration date, the permittee is authorized to discharge in accordance with the following limitations and monitoring requirements from the following outfall(s): 1PD00007001. 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
		Other Units (Specify)		kg/day			
		30 day	7 day	30 day	7 day		
00010	°C Temperature	-	-	-	-	Daily	Max. Ind. Thermal
00530	mg/l Suspended Solids						
	(Summer)	22	33	350	525	3/Week	Composite
	(Winter)	30	45	478	716	3/Week	Composite
00550	mg/l Oil & Grease	Not to exceed 10 at any time				1/Month	Grab.
00610	mg/l Ammonia (N)						
	(Summer)	1.5	2.3	24.0	37.0	3/Week	Composite
	(Winter)	2.9	4.4	46.0	70.0	3/Week	Composite
50050	MGD Flow	-	-	-	-	Daily	Continuous
80082	mg/l CBOD ₅						
	(Summer)	22	33	350	525	3/Week	Grab
	(Winter)	25	40	398	637	3/Week	Grab

2. 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 at least 3 times daily by grab sample and the average value shall be reported daily.
3. The Chlorine Residual (Reporting Code 50060) shall be maintained at a level not to exceed 0.5 mg/l and shall be monitored at least 3 times daily by grab sample and the highest value shall be reported daily. (Summer Only)**.
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 at least 3 times daily by grab sample and the lowest value shall be reported daily.

* The average effluent loading limitations are established using the following flow value: 4.2 MGD

** See Part II, Item J

PART I, A. - FINAL EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (Cont.)

1. During the period beginning on the date that the improved wastewater treatment works are to attain operational level as specified in Item 7 in the Schedule of Compliance or July 1, 1988 whichever occurs first and lasting until the expiration date, the permittee is authorized to discharge in accordance with the following limitations and monitoring requirements from the following outfall(s): 1PD00007001. SEE PART II, OTHER REQUIREMENTS, for location of effluent sampling.

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		
00630	mg/l Nitrate (N) + Nitrite (N)	-	-	-	-	1/Week	Composite
01027	ug/l Cadmium	Not to exceed 12 at any time				1/Month	Composite
01032	ug/l Chromium (Hex)	-	-	-	-	1/Month	Composite**
01033	ug/l Chromium (Tri)	-	-	-	-	1/Month	Composite**
01042	ug/L Copper	Not to exceed 120 at any time				1/Month	Composite
01051	ug/l Lead	Not to exceed 30 at any time				1/Month	Composite
01067	ug/l Nickel	Not to exceed 430 at any time				1/Month	Composite
01092	ug/l Zinc	Not to exceed 330 at any time				1/Month	Composite
71900	ug/l Mercury	Not to exceed 0.2 at any time				2/Month	Composite

* The average effluent loading limitations are established using the following flow value: NA MGD

** See Part II, Item K.

PART I, B. - ADDITIONAL MONITORING REQUIREMENTS (Cont.)

2. Upstream and Downstream. The permittee shall monitor the receiving stream, upstream of the point of discharge at Station Number 1PD00007801, and downstream of the point of discharge at Station Number 1PD00007901, and report to the Ohio EPA in accordance with the following table. See PART II, OTHER REQUIREMENTS for location of sampling.

<u>CHARACTERISTIC</u>			<u>MONITORING REQUIREMENTS</u>	
Reporting Code	Units	Parameter	Measurement Frequency	Sample Type
00010	°C	Temperature	1/Week	Grab
00300	mg/l	Dissolved Oxygen	1/Week	Grab
00310	mg/l	BOD ₅	1/Week	Grab
00530	mg/l	Suspended Solids	1/Week	Grab
00610	mg/l	Ammonia (N)	1/Week	Grab
00900	mg/l	Hardness (as CaCO ₃)	1/Week	Grab
01032	ug/l	Chromium (Hex)	1/Month	Grab*
01033	ug/l	Chromium (Tri)	1/Month	Grab*
31616	Count /100ml	Fecal Coliform* (Summer Only)	1/Week	Grab
50060	mg/l	Chlorine Residual (Summer Only, Downstream Only)	1/Week	Grab

*Upstream only

PART I, B. - ADDITIONAL MONITORING REQUIREMENTS (Cont.)

3. Sludge. The permittee shall monitor the treatment work's final sludge at Station Number 1PD00007581 and report to the Ohio EPA in accordance with the following Table. See PART II, OTHER REQUIREMENTS, for location of Sludge Sampling.

<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>
00610	mg/l	Ammonia-N	1/Month	Composite
00627	mg/kg	Nitrogen, Kjeldahl	1/Month	Composite
01028	mg/kg	Cadmium	1/Month	Composite
01029	mg/kg	Chromium	1/Month	Composite
01043	mg/kg	Copper	1/Month	Composite
01052	mg/kg	Lead	1/Month	Composite
01068	mg/kg	Nickel	1/Month	Composite
01093	mg/kg	Zinc	1/Month	Composite
70316	Dry Tons	Sludge Weight	Daily	*Grab
70318	%	Percent Total Solids	Daily	Grab
71921	mg/kg	Mercury	1/Month	Composite

* Calculated total for the day reported.

** When sludge is not wasted enter "AH" on report and explain in the "Remarks Section".

Part I, C. SCHEDULE OF COMPLIANCE

The entity shall control plant influent organic loadings consistent with the design requirements of the Ohio EPA approved general plan for plant improvements and shall complete construction of improvements to the Oxford Wastewater Treatment Plant and sanitary sewer system as outlined in the Ohio EPA approved general plan in accordance with the following schedule:

1. As soon as possible but not later than August 15, 1986, submit to the Ohio EPA an approvable general plan for controlling high strength discharges to the sanitary sewer system.
2. As soon as possible but not later than September 19, 1986, submit to the Ohio EPA approvable detailed plans for plant and sanitary sewer system improvements.
3. As soon as possible but not later than November 1, 1986, advertise for bids for the plant and sanitary sewer improvements.
4. As soon as possible but not later than January 15, 1987, award construction contracts for the plant and sewer improvements.
5. As soon as possible but not later than February 1, 1987, start construction of the plant and sewer improvements.
6. As soon as possible but not later than July 1, 1988, complete construction of the plant and sewer improvements.
7. As soon as possible but not later than July 1, 1988, attain operational level of the plant improvements and meet the final effluent limits.

Since the time necessary for completion of some items in the schedule is more than 12 months, Federal Regulations stipulate that progress reports shall be submitted. Progress reports shall be submitted every sixth month beginning six months after the effective date of this modification to the Ohio EPA public wastewater section.

The permittee shall notify the Ohio EPA Public Wastewater Section in writing of its compliance or noncompliance with any item in the schedule. This notification shall occur no later than 14 days following each date in the schedule.

See Part III, Item 12, Noncompliance Notification.

PART II, OTHER REQUIREMENTS

- A. The wastewater treatment works must be under supervision of a State certified operator as required by Rule 3745-7-02 of the Ohio Administrative Code for a Class III Operator.
- B. Description of the location of the required sampling stations are as follows:

<u>Sampling Station</u>	<u>Description of Location</u>
1PD00007001	Effluent to Four Mile Creek
1PD00007601	Plant Influent
1PD00007581	Sludge
1PD00007801	Upstream
1PD00007901	Downstream

- C. In addition to the reporting required by the paragraph entitled "REPORTING" in PART III, General Conditions, effluent monitoring results obtained in accordance with Part I. A, during each month shall be summarized and reported on a Discharge Monitoring Report Form (EPA No. 3320-1 or T-40 as appropriate), to be received no later than the 15th of the next month. The original copy of the report form shall be signed and mailed to:

Attention: Kenneth Fenner, Chief
U.S. EPA - Region V (5WQP)
Water Quality Branch
230 S. Dearborn Street
Chicago, Illinois 60604

- D. All parameters, except flow, need not be monitored on days when the plant is not normally staffed (Saturdays, Sundays and Holidays). On those days report "AN" on the monthly report form.
- E. Composite samples shall be comprised of at least 3 grab samples proportionate in volume to the sewage flow rate at the time of sampling and collected at not less than 30 minute, nor more than 2 hour, intervals during the period that the plant is staffed on each day for sampling. Such samples shall be collected at such times and locations, and in such fashion, as to be representative of the facility's overall performance.
- F. Grab samples shall be collected at such times and locations, and in such fashion, as to be representative of the facility's performance.
- G. This permit may be modified, or alternatively revoked and reissued to incorporate an approved POTW Pretreatment Program or a Finalized Compliance Schedule for the development of a POTW Pretreatment Program.
- H. Final permit limitations based on preliminary or approved waste load allocations or Comprehensive Water Quality Reports are subject to change based on modifications to or finalization of the allocation or report or changes to Water Quality Standards. Monitoring requirements and/or special conditions of this permit are subject to change based on regulatory or policy changes.

- I. The plant must be staffed and operated in accordance with the Ohio EPA approved Operation and Maintenance Manual.
- J. The chlorine residual limit is being reevaluated by the Ohio EPA. Upon completion of the reevaluation, a more stringent chlorine limitation may be required and the permit may be modified to incorporate the revised limitation.
- K. The data collected for hexavalent and trivalent chromium will be used within 12 months of the effective date of this modification to develop effluent limits for these pollutants.

PART III - GENERAL CONDITIONS

I. DEFINITIONS

"daily load limitations" is the total discharge by weight during any calendar day. If only one sample is taken during a day, the weight of pollutant discharge calculated from it is the daily load.

"daily concentration limitation" means the arithmetic average of all the determinations of concentration made during the day. If only one sample is taken during the day its concentration is the daily concentration. Coliform bacteria limitations compliance shall be determined using the geometric mean.

"7-day load limitation" is the total discharge by weight during any 7-day period divided by the number of days in that 7-day period that the facility was in operation. If only one sample is taken in a 7-day period the weight of pollutant discharge calculated from it is the 7-day load. If more than one sample is taken during the 7-day period the 7-day load is calculated by determining the daily load for each day sampled, totaling the daily loads for the 7-day period and dividing by the number of days sampled.

"7-day concentration limitation" means the arithmetic average of all the determinations of daily concentration limitation made during the 7-day period. If only one sample is taken during the 7-day period, its concentration is the 7-day concentration limitation for that 7-day period. Coliform bacteria limitations compliance shall be determined using the geometric mean.

"30-day load limitation" is the total discharge by weight during any 30-day period divided by the number of days in the 30-day period that the facility was in operation. If only one sample is taken in a 30-day period the weight of pollutant discharge calculated from it is the 30-day load. If more than one sample is taken during one 30-day period the 30-day load is calculated by determining the daily load for each day sampled, totaling the daily loads for the 30-day period and dividing by the number of days sampled.

"30-day concentration limitation" means the arithmetic average (weighted by flow) of all the determinations of daily concentration made during the 30-day period. If only one sample is taken during the 30-day period, its concentration is the 30-day concentration for that 30-day period. Coliform bacteria limitations compliance shall be determined using the geometric mean.

"85 percent removal limitations" means the arithmetic mean of the values for effluent samples collected in a period of 30 consecutive days shall not exceed 15 percent of the arithmetic mean of the values for influent samples collected at approximately the same times during the same period.

Absolute Limitations. Compliance with limitations having descriptions of "shall not be less than", "nor greater than", "shall not exceed", "minimum", or "maximum", shall be determined from any single value for effluent samples and/or measurements collected.

"Net concentration" shall mean the difference between the concentration of a given substance in a sample taken of the discharge and the concentration of the same substances in a sample taken at the intake which supplies water to the given process. For the purpose of this definition samples that are taken to determine the net concentration shall always be 24-hour composite samples made up of at least six increments taken at regular intervals throughout the plant day.

"Net load" shall mean the difference between the load of a given substance as calculated from a sample taken of the discharge and the load of the same substance in a sample taken at the intake which supplies water to given process. For purposes of this definition samples that are taken to determine the net loading shall always be 24-hour composite samples made up of at least six increments taken at regular intervals throughout the plant day.

"MGD" means million gallons per day

"mg/l" means milligrams per liter

"ug/l" means micrograms per liter

"Reporting Code" is a five digit number used by the Ohio EPA in processing reported data. The reporting code does not imply the type of analysis used nor the sampling techniques employed.

Quarterly sampling frequency means the sampling shall be done in the months of March, June, August and December.

Yearly sampling frequency means the sampling shall be done in the month of September.

Semi-annual sampling frequency means the sampling shall be done during the months of June and December.

Winter shall be considered to be the period from November 1 thru April 30.

"Bypass" means the intentional diversion of waste streams from any portion of the treatment facility.

Summer shall be considered to be the period from May 1 thru October 31.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

2. GENERAL EFFLUENT LIMITATIONS

The effluent shall, at all times, be free of substances:

- A. In amounts that will settle to form putrescent, or otherwise objectionable, sludge deposits; or that will adversely affect aquatic life or water fowl;
- B. Of an oily, greasy, or surface-active nature, and of other floating debris, in amounts that will form noticeable accumulations of scum, foam or sheen;
- C. In amounts that will alter the natural color or odor of the receiving water to such degree as to create a nuisance;
- D. In amounts that either singly or in combination with other substances are toxic to human, animal, or aquatic life;
- E. In amounts that are conducive to the growth of aquatic weeds or algae to the extent that such growths become inimical to more desirable forms of aquatic life, or create conditions that are unsightly, or constitute a nuisance in any other fashion;
- F. In amounts that will impair designated instream or downstream water uses.

3. FACILITY OPERATION AND QUALITY CONTROL

All wastewater treatment works shall be operated in a manner consistent with the following:

- A. At all times, the permittee shall maintain in good working order and operate as efficiently as possible all treatment or control facilities or systems installed or used by the permittee necessary to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with conditions of the permit.
- B. The permittee shall effectively monitor the operation and efficiency of treatment and control facilities and the quantity and quality of the treated discharge.
- C. Maintenance of wastewater treatment works that results in degradation of effluent quality shall be scheduled during non-critical water quality periods and shall be carried out in a manner approved by the Ohio EPA as specified in the Paragraph in this PART III entitled, "UNAUTHORIZED DISCHARGES".

4. REPORTING

- A. Monitoring data required by this permit shall be reported on the Ohio EPA report form (4500) on a monthly basis. Individual reports for each sampling station for each month are to be received no later than the 15th day of the next month. The original plus first copy of the report form must be signed and mailed to:

Ohio Environmental Protection Agency
Records Control Group
Post Office Box 1049
Columbus, Ohio 43266-0558

- B. If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified below, the results of such monitoring shall be included in the calculation and reporting of the values required in the reports specified above.
- C. Analyses of pollutants not required by this permit, except as noted in the preceding paragraph, shall not be reported on Ohio EPA report form (4500) but records shall be retained as specified in the paragraph entitled "RECORDS RETENTION".

5. SAMPLING AND ANALYTICAL METHODS

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored flow. Test procedures for the analysis of pollutants shall conform to regulation 40 CFR 136, "Test Procedures for The Analysis of Pollutants" unless other test procedures have been specified in this permit. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals to insure accuracy of measurements.

6. RECORDING OF RESULTS

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

- A. The exact place and date of sampling; (time of sampling not required on EPA 4500)
- B. The person(s) who performed the sampling or measurements;
- C. The date the analyses were performed on those samples;
- D. The person(s) who performed the analyses;
- E. The analytical techniques or methods used; and
- F. The results of all analyses and measurements

7. RECORDS RETENTION

The permittee shall retain all of the following records for the wastewater treatment works for a minimum of three years, including:

- A. All sampling and analytical records (including internal sampling data not reported);
- B. All original recordings for any continuous monitoring instrumentation;
- C. All instrumentation, calibration and maintenance records; and
- D. All plant operation and maintenance records.
- E. All reports required by this permit.
- F. Records of all data used to complete the application for this permit for a period of at least three years from the date of the sample, measurement, report or application.

These periods will be extended during the course of any unresolved litigation, or when so requested by the Regional Administrator or the Ohio EPA. The three year period for retention of records shall start from the date of sample, measurement, report or application.

8. AVAILABILITY OF REPORTS

Except for data determined by the Ohio EPA to be entitled confidential status, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the appropriate District Offices of the Ohio EPA. Both the Clean Water Act and Section 6111.05 Ohio Revised Code state that effluent data and receiving water quality data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in the Ohio Revised Code Section 6111.99.

9. DUTY TO PROVIDE INFORMATION

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

10. RIGHT OF ENTRY

The permittee shall allow the Director, or an authorized representative upon presentation of credentials and other documents as may be required by law to;

- A. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit.
- B. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit.
- C. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit.

D. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

11. UNAUTHORIZED DISCHARGES

- A. Bypassing or diverting of wastewater from the treatment works is prohibited unless:
1. Bypass was unavoidable to prevent loss of life, personal injury or severe property damage;
 2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of downtime. This condition is not satisfied if adequate back up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 3. The permittee submitted notices as required under paragraph C. of this section.
- B. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.
- C. The Director may approve an unanticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in paragraph 11. A. of this section.
- D. The permittee shall submit notice of an unanticipated bypass as required in section 12 (one hour notice).
- E. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded if that bypass is for essential maintenance to assure efficient operation.

12. NONCOMPLIANCE NOTIFICATION

- A. The permittee shall by telephone report any of the following within one hour of discovery, at (toll free) 1-800-282-9378:
1. Any noncompliance which may endanger health or the environment;
 2. Any unanticipated bypass which exceeds any effluent limitation in the permit;
 3. Any upset which exceeds any effluent limitation in the permit; or
 4. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours.
- B. For these telephone reports, the following information must be included:
1. The times at which the discharge occurred, and was discovered;
 2. The approximate amount and the characteristics of the discharge;
 3. The stream(s) affected by the discharge;
 4. The circumstances which created the discharge;
 5. The names and telephone numbers of the persons who have knowledge of these circumstances;
 6. What remedial steps are being taken; and
 7. The names and telephone numbers of the persons responsible for such remedial steps.
- C. These telephone reports shall be confirmed in writing within five days of the discharge and submitted to the appropriate Ohio EPA District office. The report shall include the following:
1. The limitation(s) which has been exceeded;
 2. The extent of the exceedance(s);
 3. The cause of the exceedance(s);
 4. The period of the exceedance(s) including exact dates and times;
 5. If uncorrected, the anticipated time the exceedance(s) is expected to continue, and
 6. Steps being taken to reduce, eliminate and/or prevent recurrence of the exceedance(s).

D. Compliance Schedule Events:

If the permittee is unable to meet any date for achieving an event, as specified in the Schedule of Compliance, the permittee shall submit a written report to the appropriate District Office of the Ohio EPA within 14 days of becoming aware of such situation. The report shall include the following:

1. The compliance event which has been or will be violated;
 2. The cause of the violation;
 3. The remedial action being taken;
 4. The probable date by which compliance will occur; and
 5. The probability of complying with subsequent and final events as scheduled.
- E. The permittee shall report all instances of noncompliance not reported under paragraphs A, C, or D of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph C of this section.
- F. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

13. RESERVED**14. Duty to Mitigate**

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

15. AUTHORIZED DISCHARGES

All discharges authorized herein shall be consistent with the terms and conditions of this permit. The discharge of any pollutant identified in this permit more frequently than, or at a level in excess of, that authorized by this permit shall constitute a violation of the terms and conditions of this permit. Such violations may result in the imposition of civil and/or criminal penalties as provided for in Section 309 of the Act, and Ohio Revised Code Sections 6111.09 and 6111.99.

16. DISCHARGE CHANGES

The following changes must be reported to the appropriate Ohio EPA District Office as soon as practicable.

- A. For all treatment works, any significant change in character of the discharge which the permittee knows or has reason to believe has occurred or will occur which would constitute cause for modification or revocation and reissuance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. Notification of permit changes or anticipated noncompliance does not stay any permit condition.
- B. For publicly owned treatment works:
 1. Any proposed plant modification, addition and/or expansion that will change the capacity or efficiency of the plant;
 2. The addition of any new significant industrial discharge; and
 3. Changes in the quantity or quality of the wastes from existing tributary industrial discharges which will result in significant new or increased discharges of pollutants.
- C. For non-publicly owned treatment works, any proposed facility expansions, production increases, or process modifications, which will result in new, different, or increased discharges of pollutants.

Following this notice, modifications to the permit may be made to reflect any necessary changes in permit conditions, including any necessary effluent limitations for any pollutants not identified and limited herein. A determination will also be made as to whether a National Environmental Policy Act (NEPA) review will be required. Sections 6111.44 and 6111.45, Ohio Revised Code, require that plans for treatment works or improvements to such works be approved by the Director of the Ohio EPA prior to initiation of construction.

- D. In addition to the reporting requirements under 40 CFR 122.41(i) and per 40 CFR 122.42(a), all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Director as soon as they know or have reason to believe:

1. That any activity has occurred or will occur which would result in the discharge on a routine or frequent basis of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the "notification levels" specified in 40 CFR Sections 122.42(a)(1)(i) through 122.42(a)(1)(iv).
2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the "notification levels" specified in 122.42(a)(2)(i) through 122.42(a)(2)(iv).

17. TOXIC POLLUTANTS

The permittee shall comply with effluent standards or prohibitions established under Section 307 (a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement. Following establishment of such standards or prohibitions, the Director shall modify this permit and so notify the permittee.

18. PERMIT MODIFICATION OR REVOCATION

- A. After notice and opportunity for a hearing, this permit may be modified or revoked, by the Ohio EPA, in whole or in part during its term for cause including, but not limited to, the following:
 1. violation of any terms or conditions of this permit;
 2. obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or
 3. a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.
- B. Pursuant to rule 3745-33-06, Ohio Administrative Code the permittee may at any time apply to the Ohio EPA for modification of any part of this permit. The filing of a request by the permittee for a permit modification or revocation does not stay any permit condition. The application for modification should be received by the appropriate Ohio EPA District Office at least ninety days before the date on which it is desired that the modification become effective. The application shall be made only on forms approved by the Ohio EPA.

19. TRANSFER OF OWNERSHIP OR CONTROL

This permit cannot be transferred or assigned nor shall a new owner or successor be authorized to discharge from this facility, until the following requirements are met:

- A. The permittee shall notify the succeeding owner or successor of the existence of this permit by a letter, a copy of which shall be forwarded to the appropriate Ohio EPA District Office. The copy of that letter will serve as the permittee's notice to the Director of the proposed transfer. The copy of that letter shall be received by the appropriate Ohio EPA District Office sixty days prior to the proposed date of transfer;
- B. A written agreement containing a specific date for transfer of permit responsibility and coverage between the current and new permittees (including acknowledgement that the existing permittee is liable for violations up to that date, and that the new permittee is liable for violations from that date on) shall be submitted to the appropriate Ohio EPA District Office within sixty days after receipt by the District Office of the copy of the letter from the permittee to the succeeding owner;
- C. The Director does not exercise his right within thirty days after receipt of the written agreement to notify the current permittee and the new permittee of his or her intent to modify or revoke the permit and to require that a new application be filed; and
- D. The new owner or successor receives written confirmation and approval of the transfer from the Director of the Ohio EPA.

20. OIL AND HAZARDOUS SUBSTANCE LIABILITY

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

21. SOLIDS DISPOSAL

Collected screenings, slurries, sludges and other solids shall be disposed of in such a manner as to prevent entry of those wastes into waters of the State. For publicly owned treatment works these shall be disposed of in accordance with the approved OEPA Sludge Management Plan.

22. CONSTRUCTION AFFECTING NAVIGABLE WATERS

This permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any navigable waters.

23. CIVIL AND CRIMINAL LIABILITY

Except as exempted in the permit conditions on UNAUTHORIZED DISCHARGES or UPSETS, nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

24. STATE LAWS AND REGULATIONS

Nothing in this permit shall be construed to preclude the institution of any legal action nor relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 910 of the Act.

25. PROPERTY RIGHTS

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, state, or local laws or regulations.

26. UPSET

The provisions of 40 CFR Section 122.41(n), relating to "Upset," are specifically incorporated herein by reference in their entirety. For definition of "upset", see Part 1.

27. SEVERABILITY

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

28. SIGNATORY REQUIREMENTS

All applications submitted to the Director shall be signed and certified in accordance with the requirements of 40 CFR 122.22(b) and (c).

All reports submitted to the Director shall be signed and certified in accordance with the requirements of 40 CFR Section 122.22(b) and (c).

29. OTHER INFORMATION

- A. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.
- B. ORC 6111.99 provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$25,000 per violation.
- C. ORC 6111.99, states that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$25,000 per violation.
- D. ORC 6111.99 provides that any person who violates Sections 6111.04, 6111.042, 6111.05, or division (A) of Section 6111.07 of the Revised Code shall be fined not more than twenty-five thousand dollars or imprisoned not more than one year, or both.

30. NEED TO HALT OR REDUCE ACTIVITY

40 CFR 122.41(c), states that it shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with conditions of this permit.

31. APPLICABLE FEDERAL RULES

All references to 40 CFR in this permit mean the version of 40 CFR which is effective as of the effective date of this permit.

O. DUTY TO HALT OR REDUCE ACTIVITY

- A. 40 CFR 122.41(c), dated April 1, 1983, states that it shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with conditions of this permit.
- B. 40 CFR 122.41(c), dated April 1, 1983, states that upon reduction, loss, or failure of the treatment facility, the permittee shall, to the extent necessary to maintain compliance with its permit, control production or all discharges or both until the facility is restored or an alternative method of ~~primary source of power~~ for example, when the primary source of power st.

DELETE

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO, ex rel.	:	CASE NO. CV 87 09 1127
ANTHONY J. CELEBREZZE, JR.	:	
ATTORNEY GENERAL OF OHIO	:	JUDGE MOSER
30 East Broad Street	:	
Columbus, Ohio 43266-0410	:	
	:	
Plaintiff,	:	
	:	
v.	:	<u>MODIFIED CONSENT DECREE</u>
	:	
CITY OF OXFORD,	:	
	:	
Defendant.	:	

Upon motion of the parties hereto and for good cause shown, the Court hereby ORDERS that the September 10, 1987 Consent Decree be modified as follows. . . .

FINDINGS

1. The parties enter into this modified consent decree without trial of any issue of fact or law.
2. This Court has jurisdiction over the subject matter herein pursuant to R.C. Chapter 6111 and rules adopted thereunder. The Complaint states a claim upon which relief can be granted under these statutory and regulatory provisions. This Court has jurisdiction over the parties hereto. Venue is proper in this Court.

3. The provisions of this Consent Decree shall apply to and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest, and those persons in active concert or participation with them who receive actual notice of this Consent Decree whether by personal service or otherwise.

4. This Court shall retain jurisdiction of this action for the purpose of making any order or decree which it may deem necessary to carry out the Consent Decree.

5. Defendant has complied with paragraph IV(A) through (D) and paragraph V of the original consent decree.

ORDERS

Defendant is permanently enjoined to take the following actions with respect to its wastewater treatment facility:

A. implement and enforce the terms of the general plan to control high strength BOD discharges as approved by Ohio EPA no later than November 1, 1988, so that the plant influent meets plant design limits and requirements by that date;

B. no later than April 30, 1989, commence operation of all treatment processes that the City of Oxford installs to comply with Sections 6111.03 and 6111.04 of the Revised Code and its NPDES Permit No. 1PD00007*DD and any renewals thereof so that all treatment processes on and after this date are in full and sustained operation as planned and designed;

C. no later than July 31, 1989, meet the final permit effluent limitation requirements contained in Part IA of Modified Permit No. 1PD00007*DD (Attachment "A") and any renewals thereof;

D. comply with the interim NPDES permit effluent limitations and monitoring requirements set forth in paragraphs 1.A and 1.B of Modified Permit No. 1PD00007*DD until the upgraded plant is subject to the final permit effluent limitations as referenced in paragraph C above; and,

E. comply with the other requirements and general conditions of Parts II and III of Modified Permit No. 1PD00007*DD and renewals thereof.

For purposes of this order, high strength discharges are those discharges of BOD₅ and total suspended solids that in quantities and concentrations exceed those levels of discharges from normal domestic sewage.

STIPULATED PENALTIES

If Defendant fails to perform any of the acts specified in Paragraphs IV A and B within the time frames specified therein, Defendant shall pay a civil penalty pursuant to R.C. 6111.09 of five hundred dollars for each day that it fails to perform any of these acts. A separate \$500.00 civil penalty shall accrue for the failure to perform each act. Payments made pursuant to this provision shall be made by forwarding to Plaintiff's

counsel within thirty days after commission of the violation a certified check in the appropriate amount payable to "Treasurer, State of Ohio" for deposit in the State's General Revenue Fund.

In any action to enforce any of the provisions of this modified consent decree, Defendant may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons beyond its control such as, by way of example and not limitation, act of God, unusually severe weather condition, strikes, acts of war or civil disturbances, or orders of any regulatory agency. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by the parties that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an enforcement action, if any, is commenced. Acceptance of this modified consent decree without a force majeure clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

MISCELLANEOUS

1. Defendant shall pay court costs.
2. The Court retains jurisdiction to this suit for the purpose of making any order or decree which it may deem necessary.

3. This modified consent decree completely supercedes and replaces the September 10, 1987, Consent Decree.

DATE

JUDGE

APPROVED:

Respectfully submitted,

ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO

Dominic J. Hanket

DOMINIC J. HANKET

TIMOTHY KERN

Assistant Attorneys General
Environmental Enforcement
Section

30 East Broad Street, 17th Fl.

Columbus, Ohio 43266-0410

(614) 466-2766

Attorney for Plaintiff

Robert N. Piper

ROBERT N. PIPER

510 Dollar Federal Building

Hamilton, Ohio 45011

(513) 892-0820

Attorney for Defendant

4814E

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO, ex rel. : CASE NO. 87 09 1127
BETTY D. MONTGOMERY, ATTORNEY :
GENERAL OF OHIO : JUDGE JOHN R. MOSER

Plaintiff,

vs.

CITY OF OXFORD

Defendant.

FILED in Common Pleas Court
BUTLER COUNTY, OHIO

APR 17 1997

CINDY CARPENTER
CLERK OF COURTS

THIRD MODIFIED CONSENT DECREE

On September 10, 1987, a Complaint in the above-captioned matter was filed, and Plaintiff State of Ohio by its Attorney General ("Plaintiff" or "State of Ohio") and Defendant City of Oxford ("Oxford"), consented to the entry of a Consent Decree. On September 10, 1987, the Court entered a Decree for injunctive relief in the above-captioned case enjoining Oxford to operate its wastewater treatment plant and sewer system in compliance with Chapter 6111. and the rules promulgated thereunder. Following the filing of the Decree, the Parties in this action filed a second Consent Decree modifying the final compliance date of the original Consent Decree. The second modified Consent Decree was signed by this Court and filed with the Butler County Clerk's office on February 23, 1989. Oxford has failed to comply with, and is in violation of such Decrees of this Court. In order to resolve this violation, Oxford shall comply with the terms of this Third Modified Consent Decree ("Third Modified Consent Decree"), and shall pay the civil penalty contained in this Third Modified Consent Decree. The terms of this

Third Modified Consent Decree shall supersede and replace the September 10, 1987 and February 23, 1989 Decrees of this Court. The State of Ohio and the City of Oxford and the Mayor and members of the City Council of Oxford have consented to the entry of this Third Modified Consent Decree.

NOW THEREFORE, without trial of any issue of law or of fact, and upon the 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 Oxford under O.R.C. Chapter 6111., and venue is proper in this Court.

II. PARTIES

2. The provisions of this Third Modified Consent Decree shall apply and be binding upon Defendant Oxford, its agents, officers, employees, assigns, representatives, successors in interest, contractors, consultants and any person acting in concert or privity with any of them. Defendant Oxford is ordered to provide a copy of this Third Modified Consent Decree to each contractor and consultant it employs to perform the work itemized herein. Defendant Oxford is further ordered to require each general contractor to provide a copy of this Third Modified Consent Decree to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleged in its Complaint, filed on September 10, 1987, and Motion to Modify Consent Decree filed with this Third Modified Consent Decree that Defendant Oxford had operated its wastewater treatment plant 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 this Third Modified Consent Decree shall constitute full satisfaction of any civil liability by Defendant Oxford for all claims under such laws alleged in the September 10, 1987 Complaint and for all violations corresponding to the counts alleged in the Complaint occurring subsequent to the filing of the September 10, 1987 Complaint up through the date of entry of this Third Modified Consent Decree and any civil liability resulting from Defendant's contempt of the September 10, 1987 and February 23, 1989 Decrees of this Court occurring before the filing of this Third Modified Consent Decree. Nothing in this Third Modified Consent Decree shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint or to seek relief for violation of the types of claims alleged in the Complaint which occur after the filing of this Third Modified Consent Decree.

IV. PERMANENT INJUNCTION

4. Defendant Oxford is hereby permanently enjoined and ordered to immediately comply with the requirements of O.R.C. Chapter 6111. and the rules adopted thereunder, and the terms and conditions of its currently effective National Pollutant Discharge Elimination System (NPDES) permit No. 1PD00007*HD, and any renewals or modifications thereof, except for the conditions prohibiting bypasses and overflows from its wastewater treatment plant and sanitary sewer system until May 31, 1988.

5. After May 31, 1998, Defendant Oxford is ordered and enjoined to comply with all requirements in its NPDES permit No. 1PD00007*HD, and any modifications or renewals thereof and is prohibited from allowing bypasses and overflows from its wastewater treatment

plant and sanitary sewer system.

6. Defendant Oxford is enjoined and ordered to immediately comply with Indirect Discharge Permit 1PD00007100*AP and is prohibited from discharging any landfill leachates into waters of the State.

7. Defendant Oxford is enjoined and ordered to properly operate and maintain its wastewater treatment plant, sewer system and any associated equipment and structures.

V. COMPLIANCE SCHEDULES

8. Defendant Oxford is enjoined and ordered to complete construction of the improvements to its wastewater treatment system so as to attain compliance with all requirements of NPDES permit No. 1PD00007*HD, and any modifications or renewals thereof, and to eliminate discharges from overflows and bypasses from its sanitary sewer system and wastewater treatment plant in accordance with the following schedules:

INFLUENT PUMPS

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Submittal of Detailed Plans and Specifications to Ohio EPA	<u>February 28, 1997</u>
(b) Advertisement of Building Bids	<u>March 31, 1997</u>
(c) Execution of Building Contracts	<u>May 31, 1997</u>
(d) Initiation of Construction	<u>July 31, 1997</u>
(e) Completion of Construction	<u>May 31, 1998</u>

EQUALIZATION BASIN

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Submittal of Detailed Plans and Specifications to Ohio EPA	<u>February 28, 1997</u>
(b) Advertisement of Building Bids	<u>March 31, 1997</u>
(c) Execution of Building Contracts	<u>May 31, 1997</u>
(d) Initiation of Construction	<u>July 31, 1997</u>
(e) Completion of Construction	<u>May 31, 1998</u>

After May 31, 1998, the date that the above two construction projects are required to be completed, Defendant Oxford shall comply with all requirements in its NPDES permit No. 1PD00007*HD, and any modifications or renewals thereof and is prohibited from allowing bypasses and overflows from its wastewater treatment plant and sanitary sewer system.

9. This Third Modified Consent Decree does not constitute authorization or approval of the construction of any physical structure or 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.

VI. INFLOW/INFILTRATION REDUCTION

10. Except as provided by Paragraphs 11 through 13 below, Oxford is hereby prohibited from connecting additional sources of sewage to its POTW, until the completion of the improvements detailed in the construction schedules of Section V.

11. The manhole rehabilitation project removed an estimated 1.11 MGD of

inflow/infiltration (I/I) (outlined in the Oxford's November 4, 1996 memo to Ohio EPA, attachment A). Based upon the I/I removed by this project and upon the issuance of a Permit to Install (PTI) by Ohio EPA, Oxford may connect additional flows (e.g. development) with an additional average daily flow of no greater than 0.026 MGD (peak flow not greater than 0.107 MGD).

12. Upon the completion of the additional I/I reduction projects (Campus Avenue, Sandra Drive, and Patterson Avenue) which will remove an estimated 0.732 MGD of I/I (outlined in the city's November 4, 1996 letter to Ohio EPA, attachment B) and upon the issuance of a PTI by Ohio EPA, Oxford may connect additional flows with an additional average daily flow of no greater than 0.023 MGD (peak flow not greater than 0.09 MGD). After completion of each I/I reduction project, Oxford may request from Ohio EPA connection of a prorated share of the additional flows. Approval of the request by Ohio EPA will be based on the estimated I/I removed by the completed project.

13. Oxford may connect additional flows, beyond those permitted by paragraph 12 above, contingent upon the issuance of a PTI from Ohio EPA and the completion by Oxford of additional I/I removal reduction projects. Furthermore, the additional average daily flow from such additional flows shall not be greater than 10% of the amount of I/I removed from the sewer system. This ratio of 10:1 removal to additional flow shall not be exceeded until the completion of the improvements detailed in the construction schedules of Section V.

VII. REPORTING REQUIREMENT

14. Within seven (7) days from the completion date of each task listed in Sections V and VI., Defendant Oxford is ordered to submit a written report stating whether it has performed the actions set forth therein to the following address:

Ohio EPA
Southwest District Office
401 East 5th Street
Dayton, Ohio 45402
Attn: Ned Sarle (or his successor), Division of Surface Water.

VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

15. Performance of the terms of this Third Modified Consent Decree by Defendant Oxford is not conditioned on the receipt of any federal or state grant loans or funds. In addition, Defendant Oxford's performance is not excused by the failure to obtain or shortfall of any federal or state grant, loans or funds, or by the processing of any applications for the same.

IX. CIVIL PENALTY

16. Defendant Oxford is ordered, pursuant to O.R.C. Section 6111.09, to pay to the State of Ohio a civil penalty of Fifty Thousand (\$50,000.00) Dollars. Payment of this penalty shall also resolve any stipulated penalties accrued in this case from September 10, 1987 until the date of entry of this Third Modified Consent Decree. This penalty shall be paid by delivering to Lyndia Jennings, Administrative Secretary (or her successor), Environmental Enforcement Section, Ohio Attorney General, State Office Tower-25th floor, 30 E. Broad Street, Columbus, Ohio 42315-3428 a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within fifteen (15) days from the date of this Court's entry of this Third Modified Consent

Decree.

X. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

17. In furtherance of the mutual objectives of the State of Ohio and the City of Oxford in improving waters of the State and the environment, Defendant Oxford agrees to and is ordered to contribute Forty-Five Thousand (\$45,000.00) Dollars to the Four Mile Valley Conservation Trust. This contribution shall be submitted with the condition that it be used to protect the types of properties identified in Section B.2. of the Trust's Land Protection Policy (attachment C).

18. The Forty-Five Thousand (\$45,000.00) Dollar contribution shall be paid by delivering to The Four Mile Valley Conservation Trust, C/O Wallace I. Edwards, 5431 Tallawanda Lane, Oxford, Ohio 45056 certified checks for that amount, payable to the order of The Four Mile Valley Conservation Trust, according to the following payment schedule:

- a Twenty-Two Thousand Five Hundred (\$22,500.00) Dollar payment within fifteen (15) days from the date of this Court's entry of this Third Modified Consent Decree
- a Twenty-Two Thousand Five Hundred (\$22,500.00) Dollar payment by February 1, 1998

The City of Oxford shall submit a copy of each canceled check to Ohio EPA's Southwest District Office, Division of Surface Water within forty-five (45) days of payment.

19. In the event that Defendant Oxford does not contribute the full Forty-Five Thousand (\$45,000.00) Dollars to the Four Mile Valley Conservation Trust by April 1, 1998 the remaining balance shall be paid to State of Ohio as a civil penalty. This remaining balance shall be paid as set forth in Section IX. and shall be paid by May 1, 1998.

20. On a quarterly basis and for at least two years after entry of this modified Consent

Decree, Defendant Oxford shall publish and mail to the residents/rate payers of Oxford the BIOTOPICS newsletter. This newsletter shall include information on such topics as water conservation, public pollution prevention, or other such environmental topics as may be suggested by Ohio EPA.

XI. STIPULATED PENALTIES

21. In the event that Defendant Oxford fails to meet any of the compliance deadlines set forth in Section V, paragraph 8 of this Decree, Defendant Oxford shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

- (a) For each day of each failure to meet a requirement, up to thirty (30) days--two hundred fifty dollars (\$250.00) per day per requirement not met;
- (b) For each day of each failure to meet a requirement, from thirty-one (31) to sixty days (60) --five hundred dollars (\$500.00) per day per requirement not met;
- (c) For each day of each failure to meet a requirement over sixty (60) days--seven hundred fifty dollars (\$750.00) per day per requirement not met;

22. In the event that Defendant Oxford fails to maintain compliance with the final effluent limitations in its then effective NPDES permit, Defendant Oxford shall immediately and automatically be liable for a stipulated penalty according to the following schedule:

- (a) For each 30 day effluent limitation that is violated, one thousand dollars (\$1,000.00) for each requirement not met.

- (b) For each 7 day or daily effluent limitation that is violated two hundred fifty dollars (\$250.00) for each requirement not met.

For purposes of computing these stipulated penalties, each separate 30 day effluent discharge violation shall be considered one violation and each separate 7 day effluent discharge violation shall be considered one violation.

23. For violation of any other requirement in NPDES permit No. 1PD00007*HD, and any renewals or modifications thereof, including but not limited to monitoring and reporting requirements, Defendant Oxford shall immediately and automatically be liable for a stipulated penalty in the amount of five hundred dollars (\$500.00) for each day of each requirement not met.

24. Any payment required to be made under the provisions of Section XI. of this Modified Consent Decree shall be made by delivering to Lyndia Jennings at the address set forth in paragraph 16, a certified check or checks, for the appropriate amounts within thirty (30) days from the date of the failure to meet the requirement of this Consent Order, made payable to "Treasurer, State of Ohio". The payment of stipulated penalties by Defendant Oxford and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to Section XI. shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to O.R.C. Chapter 6111 or to otherwise seek judicial enforcement of this Third Modified Consent Decree.

XII. RETENTION OF JURISDICTION

25. The Court will retain jurisdiction of this action for the purpose of enforcing and administering the terms and provisions of this Third Modified Consent Decree.

XIII. COSTS

26. Defendant Oxford is hereby ordered to pay the costs of this action.

XIII. MODIFIED CONSENT DECREE

27. This Third Modified Consent Decree entered into between the Parties represents the entire understandings between the Parties and supersedes any earlier verbal or written communications regarding same. This Third Modified Consent Decree will supersede the Consent Decrees entered into and filed on September 10, 1987 and February 23, 1989, respectively.

XIV. ENTRY OF MODIFIED CONSENT DECREE AND FINAL JUDGMENT BY CLERK

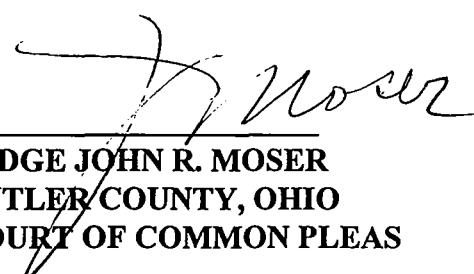
28. The parties agree and acknowledge that final approval by Plaintiff and Defendant Oxford and entry of this Third Modified Consent Decree is subject to the requirement of 40 C.F.R. §123(d)(2)(iii), which provides for notice of the lodging of this Consent Decree, opportunity for public comment, and the consideration of any public comment. Both Plaintiff and Defendant Oxford reserve the right to withdraw this Third Modified Consent Decree based on comments received during the public comment period.

29. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Modified Consent Decree by the Court, the clerk is hereby directed to enter it upon the journal. Within three days of entering the judgment upon the journal, the clerk is hereby directed to serve

upon all 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:

Entered this _____ day of _____.

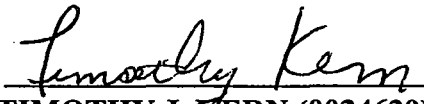


**JUDGE JOHN R. MOSER
BUTLER COUNTY, OHIO
COURT OF COMMON PLEAS**

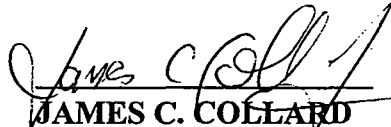
APPROVED:

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


CITY OF OXFORD



**TIMOTHY J. KERN (0034629)
Assistant Attorneys General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
(614) 466-2766**



**JAMES C. COLLARD
City Manager
City of Oxford**



**STEPHEN M. MCHUGH (0018788)
ALFICK & CORWIN CO., L.P.A.
1700 One Dayton Centre
One South Main Street
Dayton, Ohio 45402
(937) 223-1201**

Attorney, City of Oxford

ATTACHMENT A

MEMORANDUM

TO: Ned Sarge, Ohio EPA

FROM: Mark S. Tate, P.E. *[Signature]*
Service Director/City Engineer

DATE: November 4, 1996

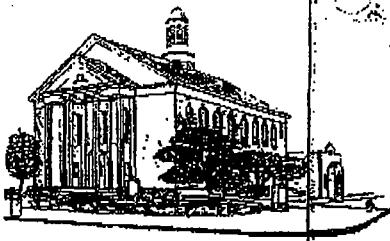
SUBJECT: Infiltration and Inflow Calculations

The City of Oxford has repaired during the 1995-1996 year approximately 37 manholes including eight (8) manholes along Collins Creek and its tributaries. The SSES report includes estimates of removable I/I for manhole correction work that indicate a range (406 gpd to 138,840 gpd) per manhole. Based on these numbers and assuming an average correction of 30,000 gpd per manhole. The correction for 37 manholes is 1,110,000 gpd.

The City of Oxford is continuing with the manhole rehabilitation and repair program and the on-going inspection program of every manhole within the City of Oxford.

ATTACHMENT B

Sewage



City of Oxford

Municipal Building
101 East High Street
Oxford, Ohio 45056-1887

November 4, 1996

Mr. Ned Sarle
Environmental Specialist
Ohio Environmental Protection Agency
Southwest District Office
401 E. Fifth Street
Dayton, Ohio 45402-2911

RECEIVED
OHIO EPA
NOV 05 1996
SOUTHWEST DISTRICT

**RE: Permits to Install: Western Knolls Section VI
South Farm Subdivision Section II
Indian Trace Apartments**

Dear Ned:

Attached is the draft of the Infiltration and Inflow study report for the City of Oxford as prepared by Camp Dresser & McKee for the proposed projects. The City of Oxford requests that the permits to install for the three developments proposed at this time (Western Knolls Section VI, Indian Trace Apartments and South Farm Section II) be approved.

The City of Oxford can show the removal of 10 to 1 reduction in infiltration and inflow to the sewer system as a result of the proposed improvements. The proposed developments would contribute 49,000 gallons per day of average daily flow to the sewer system upon completion. The I&I projects by the City of Oxford will reduce I&I by approximately 732,000 gpd plus the additional amount corrected by the on-going program of repairing manholes. Please see the attached calculations.

Should you have any questions regarding this matter please call me at (513) 524-5207.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark S. Tate", is written over a faint, larger version of the same signature.

Mark S. Tate, P.E.
Service Director/City Engineer

cc: Jim Mehl, Ohio EPA

Encl.(as)

FOUR MILE VALLEY CONSERVATION TRUST

Land Protection Policy

A. Goals and Mission:

The Four Mile Valley Conservation Trust (FMVCT) is dedicated to the preservation and maintenance of significant forests, streams, open spaces, and cultural resources in the Four Mile Valley and to the advancement of conservation values inherent in land protection.

The FMVCT's mission is to preserve the special character of the Four Mile Creek Valley from Hueston Woods State Park in the northwest to its juncture with the Seven Mile Creek Valley in the southeast. Techniques available include purchase and donation of conservation easements and fee simple lands, bargain sales, limited development agreements, land exchanges, and purchase/leaseback agreements.

The FMVCT is legally and ethically bound to demonstrate public benefit in all of its land protection projects. In addition, the Trust must show its ability to sustain a long-run conservation management plan incorporating landowner conditions and FMVCT preservation principles. Every land protection proposal, therefore, will receive careful scrutiny by the FMVCT trustees and their advisors.

B. Conditions favoring a land protection proposal:

Although every property is unique and is judged on its own merits, the FMVCT believes the following conditions to be positive factors when evaluating any proposal for land protection:

1. The property contains significant mature forest, wildlife habitat and flora, or provides buffers to the same.
2. The property contains drainages, wetlands, aquifers, or other features important to protecting water quality, preventing erosion, or serving as natural flood control.
3. The property contains or buffers an uncommon ecological community, such as bluffs and/or rare and endangered species habitat.
4. The property contains or buffers scenic assets accessible to public view from existing right of ways.
5. The property has historical, archeological, or geological value or buffers such property.

6. The property is adjacent to land that is already protected under one or more of the above categories.
7. The property falls under one or more of the above categories and borders the main stream or any branch of the Four Mile Creek between Hueston Woods and Seven Mile Creek.

C. Conditions weighing against a land protection proposal:

A property may meet one or more of the criteria above and still not be accepted by the Trust if one or more of the following conditions are present:

1. The property poses stewardship and maintenance problems that the Trust feels make it impossible to protect "in perpetuity."
2. The property owner insists on retaining rights to the land that are inconsistent with relevant criteria in Section B.
3. The possible or likely development of adjacent properties would seriously diminish the conservation value of the land.
4. The property cannot be secured or acquired by the Trust with reasonable effort or cost in relation to the property's conservation value.
5. The property is found to be irreparably contaminated.

D. Responsibilities of the Trust:

Commensurate with its goals and mission, the Trust undertakes certain long-term responsibilities:

1. Working through its own volunteers and with other conservation organizations and public agencies, it will design a long-term conservation plan for each property under its stewardship.
2. Working through a newsletter and/or other media, it will inform landowners and the public of its general and site-specific conservation goals and will endeavor to earn the cooperation and support of all segments of the Four Mile Valley community in its land preservation activities.
3. Through the development of an endowment and annual fundraising, it will meet the costs of annual surveillance and necessary conservation measures to assure successful fulfillment of its responsibilities for land conservation in the Four Mile Valley.