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FILED

SEP 2 1992

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

KENNETH J. MURPHY, Clerk
CINCINNATI, OHIO

UNITED STATES OF AMERICA,

Plaintiff,

and

THE STATE OF OHIO,

Realigned Plaintiff,

v.

CITY OF PORTSMOUTH, OHIO,

Defendant.

CIVIL ACTION NO. C-1-91-398
JUDGE CARL B. RUBIN

RECEIVED
SEP 08 1992
Environmental Enforcement Section

**NOTICE OF LODGING OF PROPOSED CONSENT DECREE PENDING SOLICITATION
OF PUBLIC COMMENT BY U.S. DEPARTMENT OF JUSTICE**

Plaintiff, the United States of America, respectfully notifies the Court that the United States is lodging a proposed Consent Decree in settlement of this action against the defendant, City of Portsmouth, Ohio. The proposed Consent Decree is provided to the Court with this Notice and a copy is available in the office of the undersigned Assistant United States Attorney.

The Court should not yet sign the Consent Decree. Instead, the proposed Consent Decree should remain lodged with the Court while the United States provides an opportunity for public comment as required by Department of Justice regulations codified at 28 U.S.C. § 50.7.

The Department will publish in the Federal Register a notice that the proposed Consent Decree has been lodged with the Court. The notice will solicit public comment for a period of 30 days. During the comment period no action is required by the Court.

After the close of the comment period, the United States will evaluate the comments received, if any, and will advise the Court whether the United States requests that the Consent Decree be entered.

Respectfully submitted,

VICKI A. O'MEARA
Acting Assistant Attorney General
Environment and Natural
Resources Division
U.S. Department of Justice

D. MICHAEL CRITES
United States Attorney
Southern District of Ohio

By:

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED

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10:48

KENNETH J. MURPHY, Clerk
CINCINNATI, OHIO

UNITED STATES OF AMERICA,
Plaintiff,
and
THE STATE OF OHIO,
Realigned Plaintiff,
v.
CITY OF PORTSMOUTH, OHIO,
Defendant.

CIVIL ACTION NO. C-1-91-398
JUDGE CARL B. RUBIN

Judge	<i>CRB</i>
Mag.	
Journal	
Motion #	
Issue	<i>mtc</i>
Card	
N/S	
Docketed	<i>mtc</i>

CONSENT DECREE

Plaintiff, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("U.S. EPA"), filed the Complaint herein on June 18, 1991, alleging that Defendant, the City of Portsmouth, Ohio ("City"), had violated the Clean Water Act, 33 U.S.C. § 1251 et seq. ("the Act"), and the conditions and limitations of National Pollutant Discharge Elimination System ("NPDES") Permit Numbers OPDOO013*ED and OPCOO018*BD.

Realigned Plaintiff, the State of Ohio ("State"), was named as a defendant in the Complaint pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e). The State filed the Cross-Claim herein on August 9, 1991, alleging that the City had violated the Act and Chapter 6111 of the Ohio Revised Code. The State was

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realigned as a Plaintiff by the Court's Order of October 25, 1991.

The City owns and operates two wastewater treatment plants ("WWTP") and their associated collection systems: the Portsmouth publicly owned treatment works ("POTW"), with a WWTP located at 2040 Charles Street in the City; and the Sciotoville POTW, with a WWTP located at U.S. Route 52 and Harding Avenue in the City.

The United States, the State and the City have consented to the entry of this Decree without trial of any issues, and the United States, the State and the City hereby stipulate to the Court that in order to resolve the issues stated in the United States' Complaint and the State's Cross-Claim, this Consent Decree should be entered.

NOW THEREFORE, it is hereby ORDERED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to Section 309 of the Act, 33 U.S.C. § 1319, and 28 U.S.C. § 1345. The Complaint and Cross-Claim state claims upon which relief may be granted under Section 309 of the Act, 33 U.S.C. § 1319. Venue lies in this District pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), 28 U.S.C. § 1319, 28 U.S.C. § 1391, and Rule 2.1.1 of the Local Rules for this District.

II. BINDING EFFECT

2. The provisions of this Decree shall apply to and be binding upon the United States, the State, and the City and the

City's officers, directors, agents, trustees, servants, employees, successors, assigns, attorneys, and all persons, firms, and corporations acting under the control or direction of the City. No later than thirty (30) days prior to the transfer, in whole or in part, of ownership, operation, or other interest in either the Portsmouth POTW or the Sciotoville POTW, the City shall give written notice of this Decree to any successors in interest. Upon transfer, in whole or in part, of ownership, operation, or other interest in either POTW, the City shall provide a copy of this Decree to any successor in interest and to each contractor retained to perform any activity required by this Decree. The City shall condition the transfer, in whole or in part, of ownership, operation, other interest, or any contract related to the performance of the Decree upon the successful execution of the terms and conditions of this Decree. The City shall notify in writing U.S. EPA, the United States, the Ohio Environmental Protection Agency ("Ohio EPA"), and the State of any successor in interest at least 30 days prior to any transfer.

III. OBJECTIVES

3. It is the express purpose of the parties in entering this Decree to further the objectives of the Clean Water Act, as enunciated at Section 101 of the Act, 33 U.S.C. § 1251, and the objectives of Chapter 6111 of the Ohio Revised Code. All plans, studies, construction, remedial maintenance, monitoring programs, and other obligations in this Decree or resulting from the activities required by this Decree shall have the objectives of

causing the City to come into and remain in full compliance with the Clean Water Act and Chapter 6111 of the Ohio Revised Code, including compliance with the terms and conditions of the City's NPDES Permits (as defined in Section IV, below), and the provisions of applicable Federal and State laws and regulations governing discharges from the City's POTWs.

IV. DEFINITIONS

4. Unless otherwise defined herein, terms used in this Decree shall have the meaning given to those terms in the Clean Water Act, 33 U.S.C. § 1251 et seq., the regulations promulgated thereunder at 40 C.F.R. § 401.11, Chapter 6111 of the Ohio Revised Code, and any applicable NPDES permit. For purposes of this Consent Decree, "NPDES Permits" means the City's NPDES Permit Numbers OPD00013*ED and OPC00018*BD, and all amendments or modifications thereto and renewals thereof as are applicable, federally-approved and in effect at the time.

V. REMEDIAL ACTIONS

A. Sciotoville POTW

5. The City shall conduct the following measures to eliminate all bypasses and overflows of the Sciotoville POTW to insure the City's compliance with its NPDES Permit No.

OPC00018*BD:

- (a) Within 30 days after the entry of this Decree, the City shall disconnect all roof drains, foundation drains, and all other clear water connections to the Sciotoville WWTP collection system.
- (b) Within 30 days after entry of this Decree, the City shall complete all of the recommendations of the February, 1989 "City of Portsmouth, Ohio

Sciotoville Area Sewer Study" (hereby incorporated by reference in this Decree) for reducing infiltration and inflow in the Sciotoville WWTP collection system.

- (c) Within 30 days after the entry of this Decree, the City shall submit to Ohio EPA and U.S. EPA, for approval by Ohio EPA and U.S. EPA, a plan for eliminating all bypasses and overflows of the Sciotoville POTW. The plan shall include a detailed schedule for corrective measures.
- (d) Within 90 days after the entry of this Decree, the City shall commence work to eliminate all bypasses and overflows of the Sciotoville POTW in accordance with the detailed schedule for corrective measures set forth in the approved plan.
- (e) The City shall eliminate all bypasses and overflows of the Sciotoville POTW by the date set forth in its approved plan, but in no event later than February 1, 1993.

B. Portsmouth WWTP

6. The City shall conduct the following measures to insure that the greatest quantity of wet weather flows receive the maximum possible treatment at the Portsmouth WWTP, as required by NPDES Permit No. OPD00013*ED:

- (a) Within 30 days after entry of this Decree, the City shall submit to Ohio EPA and U.S. EPA, for approval by Ohio EPA and U.S. EPA, a study comparing the actual and design peak flow that each treatment unit at the Portsmouth WWTP can accommodate. The study also shall identify all measures (including new construction) necessary to insure that the greatest quantity of wet weather flows receive the maximum possible treatment at the Portsmouth WWTP. The measures identified in the plan shall include, but not be limited to, measures designed specifically to maximize primary treatment of wastewater and measures designed specifically to maximize secondary treatment of wastewater during wet weather periods. The study shall include a detailed schedule for completing such measures.

If new construction is required, the plan shall include, without limitation, proposed dates for: (i) the submission of any necessary permit applications; (ii) the commencement of solicitation and advertising for bids to perform such construction; (iii) the commencement of such construction; and (iv) the completion of such construction.

- (b) Within 90 days after entry of this Decree, the City shall commence work to insure that the greatest quantity of wet weather flows receive the maximum possible treatment at the Portsmouth WWTP, in accordance with the schedule set forth in the approved plan.
- (c) The City shall complete all measures described in the approved plan for insuring that the greatest quantity of wet weather flows receive the maximum possible treatment by the date(s) set forth in the plan, but in no event later than February 1, 1993.

7. The City shall conduct the following measures to insure that the concentration of residual chlorine in the effluent discharged from the Portsmouth WWTP does not at any exceed 0.038 milligrams of chlorine per liter of effluent (mg/liter):

- (a) Within 30 days after the entry of this Decree, the City shall submit to Ohio EPA and U.S. EPA, for approval by Ohio EPA and U.S. EPA, a plan for construction of a dechlorination facility at the Portsmouth WWTP. Such plan shall include, at a minimum, the design specifications and cost estimate (including any operation, maintenance, and replacement costs) for the project, a description of the financing to be used for the project, and a detailed schedule for commencement and completion of the construction. The schedule shall include, without limitation, proposed dates for: (i) the submission of any necessary permit applications; (ii) the commencement of solicitation and advertising for bids to perform such construction; (iii) the commencement of such construction; (iv) the completion of such construction; (v) the attainment of full operation of the dechlorination facility; and (vi) the achievement of meeting at all times a maximum effluent limitation for residual chlorine of 0.038 mg/liter.

- (b) Within 90 days after the entry of this Decree, the City shall commence construction of the dechlorination facility in accordance with the schedule set forth in the approved plan.
- (c) The City shall complete construction and commence operation of the dechlorination facility by the date set forth in the approved plan, but in no event later than April 1, 1993.
- (d) The City shall not at any time discharge effluent from the Portsmouth WWTP containing a concentration of residual chlorine in excess of 0.038 mg/liter on or after April 1, 1993.
- (e) Prior to April 1, 1993, the City shall not at any time discharge effluent from the Portsmouth WWTP containing a concentration of residual chlorine in excess of 0.5 mg/liter.

This provision in no way affects or relieves the City of its responsibility to comply at all times with the effluent limitations for residual chlorine contained in NPDES Permit No. OPD00013*ED.

C. North Moreland Collection System

8. The City shall conduct the following measures to reduce infiltration and inflow ("I/I") in the entire portion of the sewer collection system that originates at Dever Street in the North Moreland area of the City, runs generally southeast along Munn's Run through the Village of New Boston, and ends at the New Boston eastern lift station (hereinafter, this entire portion of the sewer collection system, including the portions that are located in the Village of New Boston, shall be referred to as the "North Moreland sewer collection system"):

- (a) Within 30 days after entry of this Decree, and before the date that the New Boston WWTP is converted into a pump station pumping wastewater into the Portsmouth WWTP, the City shall complete

the recommendations listed on page 27 of the January 1989 "North Moreland Area Sewer Study" as "Proposed Actions" item number 1. The January 1989 "North Moreland Area Sewer Study" is hereby incorporated by reference in this Decree. These recommendations pertain specifically to the elimination of infiltration sites in the Munn's Run sanitary sewer trunkline.

- (b) Within 90 days after entry of this Decree, the City shall complete the recommendations listed on pages 27-28 of the North Moreland Area Sewer Study as "Proposed Action" item numbers 2 through 7.
- (c) Within 120 days after entry of this Decree, the City shall submit to Ohio EPA and U.S. EPA, for approval by Ohio EPA and U.S. EPA, a study of additional inflow and infiltration (I/I) in the North Moreland sewer collection system. The study shall identify the specific sources and volumes of I/I. The study also shall include a proposed course of action to reduce I/I in the North Moreland sewer collection system and a detailed schedule for completing all such measures.
- (d) Within 120 days after entry of this Decree, the City shall disconnect all roof drains, foundation drains, and other clear water connections to the North Moreland sewer collection system.
- (e) Within 150 days after entry of this Decree, the City shall commence work to reduce I/I in the North Moreland sewer collection system in accordance with the schedule set forth in the approved study.
- (f) The City shall complete all measures described in the approved study for reducing I/I in the North Moreland sewer collection system by the date(s) set forth in the study, but in no event later than February 1, 1993.

VI. SUBMISSIONS REQUIRING AGENCY APPROVAL

9. After review of any plan, report, study or other item which is required to be submitted for approval pursuant to this Decree, Ohio EPA and U.S. EPA may approve and/or disapprove the

submission, in whole or in part and in writing. Notwithstanding any disapproval of a portion of a plan, the City shall proceed to take any action required by any portions of the plan which Ohio EPA and U.S. EPA have approved.

10. If any plan, report, study or other item required to be submitted to Ohio EPA and U.S. EPA under this Decree, or portion thereof, is disapproved, in whole or in part, by Ohio EPA and/or U.S. EPA, the City shall be deemed to have failed to have submitted such plan, report, study or other item, until such time as the City resubmits to Ohio EPA and U.S. EPA a new plan, report, study or other item, or portion thereof.

11. All plans, reports, studies or other items required to be submitted to Ohio EPA and U.S. EPA under this Decree shall, upon approval by Ohio EPA and U.S. EPA, be incorporated by reference in this Decree. If Ohio EPA and U.S. EPA approve a portion of a plan, report, study or other item required to be submitted to Ohio EPA and U.S. EPA under this Decree, the approved portion shall be incorporated by reference in this Decree.

VII. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS, AND PERMITS

12. Except as otherwise provided in Section V of this Decree, the City shall comply with the requirements of the Clean Water Act, 33 U.S.C. § 1251 et seq., and all rules and regulations adopted thereunder; Chapter 6111 of the Ohio Revised Code, and all rules and regulations adopted thereunder; and the City's NPDES Permits.

VIII. FUNDING

13. The City's performance of the terms of this Decree is not conditioned on the receipt of any Federal or State loan or grant funds. In addition, the City's performance is not excused by the failure to obtain, or a shortfall in, any Federal or State grant or loan funds, or by the processing of any applications for the same.

IX. REPORTING

14. Beginning with the calendar quarter ending June 30, 1992, and continuing until all of the requirements of Section V of this Decree have been satisfied, the City shall submit in writing to U.S. EPA and to Ohio EPA a report describing the status and progress of projects required to be performed under Section V of this Decree, and a schedule for the work to be performed under Section V of this Decree during the following twelve month period. Along with any such quarterly reports, the City also shall submit to U.S. EPA a copy of all Monthly Operating Reports that the City has prepared as required by its two NPDES permits during the preceding calendar quarter. Notification to U.S. EPA and Ohio EPA pursuant to this section of any anticipated delay shall not excuse the delay.

15. The quarterly reports described in the preceding paragraph shall be submitted by the 15th day of the month immediately following the last month of each calendar quarter. The full report shall be made available for inspection by the public at the City's offices.

16. Within ten (10) days immediately following the deadline date for any requirement contained in or established under Section V of this Decree, the City shall notify U.S. EPA and Ohio EPA in writing of compliance or noncompliance with said requirement, the reason(s) for any noncompliance, and a plan for preventing such noncompliance in the future.

X. STIPULATED PENALTIES

17. If the City fails to submit any study, plan or permit application required by Section V of this Decree by the date(s) established under Section V, or fails to commence any work required by Section V by the date(s) established under Section V (including the date(s) established in any studies, plans or permits approved by Ohio EPA and U.S. EPA under Section V), then the City shall be liable to pay stipulated penalties as follows:

- (a) \$500 per day for each day that the study, plan or permit application is not submitted after the date that the City was required to submit the study, plan or permit application;
- (b) \$1,000 per day for each day that work does not commence after the date that the City was required to commence such work.

18. If the City fails to eliminate all bypasses and overflows of the Sciotoville POTW (except for bypasses that occur under emergency conditions as authorized by and in compliance with Part III, Item 11 of the General Conditions of NPDES Permit OPC00018*BD) by the date established under paragraph 5 of this Decree (including the date established in any plan approved by Ohio EPA and U.S. EPA under paragraph 5), then the City shall be liable to pay stipulated penalties as follows:

- (a) \$1,000 per day for the first 30 days during which a bypass or overflow occurs;
- (b) \$2,000 per day for days 31 through 90 during which a bypass or overflow occurs;
- (c) \$5,000 per day for days 91 through 120 during which a bypass or overflow occurs; and
- (d) \$10,000 per day for each day beyond the 120th day during which a bypass or overflow occurs.

19. If the City fails to complete all measures to insure the greatest quantity of wet weather flows receive the maximum possible treatment at the Portsmouth WWTP, as required by paragraph 6 of this Decree, by the date(s) established under paragraph 6 (including the date(s) established in any plan or study approved by Ohio EPA and U.S. EPA under paragraph 6), then the City shall be liable to pay stipulated penalties as follows:

- (a) \$1,000 per day for the first 30 days after each date established under paragraph 6 for completion of a specific measure;
- (b) \$2,000 per day for days 31 through 90 after each date established under paragraph 6 for completion of a specific measure;
- (c) \$5,000 per day for days 91 through 120 after each date established under paragraph 6 for completion of a specific measure; and
- (d) \$10,000 per day for each day beyond the 120th after each date established under paragraph 6 for completion of a specific measure.

20. If the City fails by April 1, 1993, to complete all measures to insure that the concentration of residual chlorine in the effluent discharged from the Portsmouth WWTP does not at any time exceed 0.038 mg/liter as required by paragraph 7 of this

Decree, then the City shall be liable to pay stipulated penalties as follows:

- (a) \$1,000 per day for the first 30 days that effluent is discharged containing a concentration of residual chlorine in excess of 0.038 mg/liter;
- (b) \$2,000 per day for days 31 through 90 that effluent is discharged containing a concentration of residual chlorine in excess of 0.038 mg/liter;
- (c) \$5,000 per day for days 91 through 120 that effluent is discharged containing a concentration of residual chlorine in excess of 0.038 mg/liter; and
- (d) \$10,000 per day for each day beyond the 120th day that effluent is discharged containing a concentration of residual chlorine in excess of 0.038 mg/liter.

21. If the City fails to complete all measures for reducing I/I in the sewer collection system serving the North Moreland area of the City, as required by paragraph 8 of this Decree, by the date(s) established under paragraph 8 (including the date(s) established in any study or plan approved by Ohio EPA and U.S. EPA under paragraph 8), then the City shall be liable to pay stipulated penalties as follows:

- (a) \$1,000 per day for the first 30 days after each date established under paragraph 8 for completion of a specific measure;
- (b) \$2,000 per day for days 31 through 90 after each date established under paragraph 8 for completion of a specific measure;
- (c) \$5,000 per day for days 91 through 120 after each date established under paragraph 8 for completion of a specific measure; and
- (d) \$10,000 per day for each day beyond the 120th day after each date established under paragraph 8 for completion of a specific measure.

22. If any dry weather bypassing of the Portsmouth WWTP occurs, then the City shall be liable to pay stipulated penalties as follows:

- (a) \$1,000 per day for the first 30 days during which dry weather bypassing occurs;
- (b) \$2,000 per day for days 31 through 90 during which dry weather bypassing occurs;
- (c) \$5,000 per day for days 91 through 120 during which dry weather bypassing occurs; and
- (d) \$10,000 per day for each day beyond the 120th day during which dry weather bypassing occurs.

23. If the City violates any final effluent limit contained in its NPDES Permits, the City shall be liable to pay stipulated penalties as follows:

- (a) \$1,000 per day per parameter for the first 30 days in which the limit for that parameter is violated;
- (b) \$2,000 per day per parameter for days 31 through 90 in which the limit for that parameter is violated;
- (c) \$5,000 per day per parameter for days 91 through 120 in which the limit for that parameter is violated; and
- (d) \$10,000 per day per parameter for each day of violation beyond the 120th day in which the limit for that parameter is violated.

For purposes of this paragraph, each violation of a weekly (7 day) effluent limitation shall be deemed to be seven days of violation, and each violation of a monthly (30 day) effluent limitation shall be deemed to be a violation for each day of that month.

24. The City shall pay a stipulated penalty of \$500 per day for each violation of any reporting requirement or any other

requirement in this Decree not covered in paragraphs 17 through 23.

25. The stipulated penalties herein shall be in addition to, and shall in no way limit, other remedies or sanctions available to the United States and the State by reason of the City's failure to comply with the requirements of this Decree, its NPDES Permits, the Clean Water Act, or Chapter 6111 of the Ohio Revised Code.

26. Nothing in this Decree shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Decree.

27. Stipulated penalties are due by the 15th day of the month following the month in which the violations occurred. The City shall pay fifty percent of each stipulated penalty to the United States and fifty percent to the State, each payment to be made by cashier's check. Stipulated penalties to the United States shall be made payable to "Treasurer of the United States," and delivered to the United States Attorney for the Southern District of Ohio, 220 U.S. Post Office and Courthouse, Fifth and Walnut Streets, Cincinnati, Ohio 45202. Stipulated penalties to the State shall be made payable to "Treasurer, State of Ohio," and delivered to the Office of the Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410. The City shall enclose with all checks a letter identifying the case name, court, docket number, specific stipulated penalty provision involved, and a

Portsmouth
description of the violation(s) of this Decree for which the stipulated penalties are being tendered. The City shall send copies of each letter and check to both U.S. EPA and Ohio EPA.

XI. PENALTY FOR PAST VIOLATIONS

28. The City shall pay a civil penalty to the United States in the amount of \$32,500 for the City's violations of the Clean Water Act and the City's NPDES Permits as set forth in the Complaint filed herein. Payment shall be made within thirty (30) days after the date of entry of this Decree by delivering a cashier's check in the sum stated above payable to "Treasurer of the United States" to the United States Attorney for the Southern District of Ohio, 220 U.S. Post Office and Courthouse, Fifth and Walnut Streets, Cincinnati, Ohio 45202. The check shall be accompanied by a letter stating that the payment is tendered in settlement of this action, identifying the case name, court, and docket number. The City shall mail a copy of the check and the letter tendering such check to both U.S. EPA and the State.

29. The City shall pay a civil penalty to the State in the amount of \$32,500 for the City's violations of the Clean Water Act, Chapter 6111 of the Ohio Revised Code, and the City's NPDES Permits as set forth in the Cross-Claim filed by the State herein. Payment shall be made within thirty (30) days after the date of entry of this Decree by delivering a cashier's check in the sum stated above payable to "Treasurer of the State of Ohio" to Janis Miller, Administrative Assistant, Attorney General's Office, State of Ohio, Environmental Enforcement Section, 30 East

Broad Street, 25th Floor, Columbus, Ohio 43266-0410. The check shall be accompanied by a letter stating that the payment is tendered in settlement of this action, identifying the case name, court, and docket number. The City shall mail a copy of the check and the letter tendering such check to U.S. EPA.

XII. LATE PAYMENT CHARGE

30. Interest shall accrue on any amounts overdue to the United States under the terms of this Decree at the rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 3717, for any delinquent payment of a civil or stipulated penalty. In addition, after the first thirty (30) days that any amount of a penalty is overdue, the City shall pay to the United States in accordance with paragraph 28, a late payment handling charge of One Hundred Dollars (\$100.00), and an additional charge of Fifty Dollars (\$50.00) for each and every subsequent thirty (30) day period for which monies are overdue. Furthermore, a 6 percent per annum penalty will be assessed on any principal amount not paid within 90 days of the date of entry of this Decree.

31. Interest shall accrue on any amounts overdue the State of Ohio under the terms of this Decree at the rate established by Chapter 1343.03 of the Ohio Revised Code for any delinquent payment of a civil or stipulated penalty. In addition, after the first thirty (30) days that any amount of a penalty is overdue, the City shall pay to the State of Ohio in accordance with paragraph 29, a late payment handling charge of One Hundred

Dollars (\$100.00), and an additional charge of Fifty Dollars (\$50.00) for each and every subsequent thirty (30) day period for which monies are overdue. Furthermore, a 10 percent per annum penalty will be assessed on any principal amount not paid in accordance with the requirements of this Decree.

XIII. RIGHT OF ENTRY

32. Until termination of this Decree, U.S. EPA and Ohio EPA and their representatives, contractors, consultants, and attorneys shall have the authority to enter any facility covered by this Decree at all times upon proper presentation of credentials to the manager or managers of the facility or, in the manager's absence, to the highest ranking employee present on the premises, for the purposes of:

- (a) monitoring the progress of activities required by this Decree;
- (b) verifying any data or information submitted to U.S. EPA and Ohio EPA in accordance with the terms of the Decree;
- (c) obtaining samples and, upon request, splits of any samples taken by the City or its consultants; and
- (d) assessing the City's compliance with this Decree.

This provision in no way limits or affects any rights of entry and inspection held by either U.S. EPA or Ohio EPA pursuant to applicable Federal or State laws, regulations or permits.

XIV. NOT A PERMIT

33. This Decree is not and shall not be interpreted to be a permit, or a modification of an existing permit, issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342,

or Chapter 6111 of the Ohio Revised Code, nor shall it in any way relieve the City of its obligation to obtain a permit and to comply with the requirements of its NPDES Permits or with any other applicable Federal or State law or regulation. The pendency or outcome of any proceeding concerning the issuance, reissuance, or modification of an NPDES permit shall neither affect nor postpone the City's duties and liabilities as set forth in this Decree.

XV. FAILURE OF COMPLIANCE

34. The United States and the State, by their consent to the entry of this Decree, do not warrant or aver in any manner that the City's complete compliance with this Decree will result in compliance with the provisions of the Clean Water Act, 33 U.S.C. § 1251 et seq., Chapter 6111 of the Ohio Revised Code, or NPDES Permit Numbers OPDO0013*ED and OPCO0018*BD. Notwithstanding U.S. EPA's and Ohio EPA's review and approval of any plans formulated pursuant to this Consent Decree, the City shall remain solely responsible for compliance with the terms of the Act, Chapter 6111 of the Ohio Revised Code, this Decree, and the City's NPDES Permits.

XVI. NON-WAIVER PROVISIONS

35. This Decree in no way affects or relieves the City of the City's responsibility to comply with any Federal, State, or local law or regulation. Nothing contained in this Decree shall be construed to prevent or limit the United States' or the State's right to obtain penalties or injunctive relief under the

Act, Chapter 6111 of the Ohio Revised Code, or other federal and state statutes or regulations except as expressly specified herein.

36. The parties agree that the City is responsible for achieving and maintaining complete compliance with all applicable Federal and State laws, regulations, and permits, and that compliance with this Decree shall be no defense to any actions commenced pursuant to such laws, regulations, or permits.

37. This Decree does not limit or affect the rights of the City, the United States, or the State as against any third parties, nor does it limit the rights of third parties, not parties to this Decree, against the City.

38. The United States and the State reserve any and all legal and equitable remedies available to enforce the provisions of this Decree.

XVII. COSTS OF SUIT

39. Each party shall bear its own costs and attorney's fees in this action. Should the City subsequently be determined to have violated the terms and conditions of this Decree, then the City shall be liable to the United States and the State for any costs and attorney's fees incurred by the United States or the State in any actions against the City for noncompliance with this Decree.

XVIII. FORM OF NOTICE

40. Except as specified otherwise, when written notification to or communication with the United States, U.S.

EPA, the State of Ohio, Ohio EPA, or the City is required by the terms of this Consent Decree, it shall be addressed as follows:

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Ben Franklin Station
Washington, D.C. 20044
Reference No. 90-5-1-1-3655

and

United States Attorney
Southern District of Ohio
220 U.S. Post Office and Courthouse
Fifth and Walnut Streets
Cincinnati, Ohio 45202
Reference Case No. C-1-91-398

As to U.S. EPA

Byron E. Jones (or his successor)
U.S. Environmental Protection Agency -
Region V
Water Division - Compliance Section
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

As to the State of Ohio:

Beverly Yale Pfeiffer (or her successor)
Assistant Attorney General
State of Ohio
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410

As to Ohio EPA

Joann Montgomery (or her successor)
Ohio Environmental Protection Agency
Southeast District Office
2195 Front Street
Logan, Ohio 43138-9031

As to the City:

Richard T. Schisler
City Solicitor
City Of Portsmouth
Municipal Building
728 Second Street
Portsmouth, Ohio 45662

41. Notifications or communications necessary to be submitted under this Decree shall be deemed submitted on the date they are received.

XIX. MODIFICATION

42. Schedules and tasks specified in studies or plans approved by Ohio EPA and U.S. EPA under Section V of this Decree may be modified by written agreement of all of the parties to this Decree. There shall be no other modifications of this Decree without the written approval of all of the parties to this Decree and of the Court.

XX. PUBLIC COMMENT

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

XXI. SEVERABILITY

44. It is the intent of the parties that the clauses in this Decree are severable. If a Court of competent jurisdiction declares any provision to be unenforceable, the remaining provisions of this Decree shall remain in full force and effect.

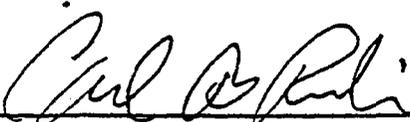
XXII. FULL SETTLEMENT

45. Compliance with this Decree shall satisfy all civil liability of the State and the City for the violations alleged in the Complaint filed herein by the United States through the date of entry of this Decree, and all civil liability of the City for the violations alleged in the Cross-Claim filed herein by the State through the date of entry of this Decree. Terms of settlement embodied in this Decree are limited to the claims set forth in the Complaint and the Cross-Claim and do not affect the City's liability for compliance with other aspects of its NPDES Permits and applicable Federal and State laws and regulations.

XXIII. TERMINATION

46. This Decree shall terminate when the City has paid all penalties due, has completed all remedial measures specified herein, and U.S. EPA and the State, in the exercise of their non-reviewable discretion, have determined that the City has achieved compliance with this Decree and its NPDES permits for a period of twelve (12) consecutive months as indicated by a letter to the Court from the United States and the State.

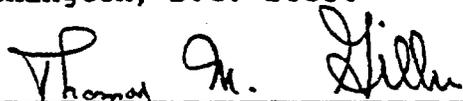
Dated and entered this ___ day of _____, 1992.


UNITED STATES DISTRICT JUDGE

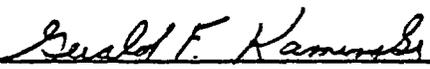
WE HEREBY CONSENT to the entry of this Decree, subject to the public notice requirements of 28 C.F.R. § 50.7.

FOR THE UNITED STATES OF AMERICA:


Vicki A. O'Meara
Acting Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice
Washington, D.C. 20530


THOMAS M. GILLER
Attorney
Environmental Enforcement Section
United State Department of Justice
c/o U.S. EPA, Region V [C-3T]
Chicago, Illinois 60604-3590

D. MICHAEL CRITES
United States Attorney
Southern District of Ohio

By: 
GERALD F. KAMINSKI
Assistant United States Attorney
Chief, Civil Division
220 U.S. Post Office and Courthouse
Fifth and Walnut Streets
Cincinnati, Ohio 45202

Herbert H. Tate, Jr.

HERBERT H. TATE, JR.
Assistant Administrator for
Enforcement
U.S. Environmental Protection
Agency
Washington, D.C. 20460

David A. Adamkus

VALDAS V. ADAMKUS
Regional Administrator
U.S. Environmental Protection
Agency
Region V
Chicago, Illinois 60604

FOR THE STATE OF OHIO:

David G. Cox

DAVID G. COX
Assistant Attorney General
Environmental Enforcement Section
State of Ohio
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410

FOR THE CITY OF PORTSMOUTH, OHIO:

Richard T. Schisler

RICHARD T. SCHISLER
City Solicitor
City of Portsmouth
Municipal Building
728 Second Street
Portsmouth, Ohio 45662

CERTIFICATE OF SERVICE

I certify that on the 2nd day of September, 1992, copies of the foregoing NOTICE OF LODGING OF PROPOSED CONSENT DECREE PENDING SOLICITATION OF PUBLIC COMMENT BY U.S. DEPARTMENT OF JUSTICE were served by first-class mail upon Richard T. Schisler, attorney for the Defendant, Municipal Building, 728 Second Street, Portsmouth, Ohio 45662, and David G. Cox, Assistant Attorney General, State of Ohio, 30 East Broad Street, 25th Floor, Columbus, Ohio 43226-0410.

Gerald F. Kanold

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