

IN THE COURT OF COMMON PLEAS  
HOLMES COUNTY, OHIO

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

Plaintiff,

v.

~~HOLMES CHEESE~~

and

ROBERT E. RAMSEYER,

Defendants.

'93 SEP 13 PM 4 02  
CASE NO. 92-C-192  
DORCAS L. MILLER, CLERK 45-15395  
JUDGE THOMAS WHITE  
COMMON PLEAS COURT  
HOLMES COUNTY, OHIO

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General (hereinafter "Plaintiff") and Defendant Holmes Cheese Company and Robert E. Ramseyer (hereinafter "Defendant Holmes Cheese") having consented to the entry of this Order,

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

I. JURISDICTION AND VENUE

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

II. EFFECT OF THIS CONSENT ORDER

2. By entry of this Consent Order, the court vacates the order of dismissal entered by the court in the above-captioned case.

III. PERSONS BOUND

3. The provisions of this Consent Order shall apply and be binding upon the parties to this action, their agents, officers, employees, assigns, and successors in interest. The provisions of this Consent Order shall also apply to those in active concert or participation with Defendant

Holmes Cheese who receive active notice of this Consent Order, whether by personal service or otherwise. Defendant Holmes Cheese shall provide a copy of this Consent Order to each contractor it employs to perform work itemized herein, and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work. Defendant Holmes Cheese shall also provide a copy of this Consent Order to all employees who are responsible for Defendant's compliance with the water pollution control laws. In the event that any of Defendant Holmes Cheese's agents, officers, employees, assigns, successors in interest or others in active concert or participation with Defendant Holmes Cheese cause or contribute to a violation of this Consent Order, the penalty for such violation shall be imposed upon and paid by the Defendant Holmes Cheese.

#### **IV. SATISFACTION OF LAWSUIT**

4. Plaintiff alleges in its Complaint that Defendant Holmes Cheese has operated its wastewater treatment works in such a manner as to result in numerous violations of the discharge limitations and monitoring requirements of the NPDES Permit issued to it by the Director of Ohio EPA and in violation of the water pollution laws of the State of Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant Holmes Cheese for all claims under such laws alleged in the Complaint which have occurred prior to the entry of this Consent Order. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint. Nothing in this Consent Order shall be construed to relieve Defendant Holmes Cheese of the obligation to comply with applicable federal, state or local statutes, regulations or ordinances or shall constitute a waiver or release of any right, remedy, defense or claim against Defendant Holmes Cheese with regard to any person not a party to this Consent Order. The State agrees not to seek relief for violations occurring subsequent to the filing of the Complaint but prior to the effective date of this Consent Order, since said violations are alleged in the Complaint.

Defendant Holmes Cheese agrees to the issuance of Ohio EPA NPDES Permit No. 31H00102\*BD provided said permit is issued identical in substance to Attachment "B" and Defendant agrees to waive any right to contest the lawfulness and/or reasonableness of said Permit before the Environmental Board of Review and/or any court of competent jurisdiction. Plaintiff State of Ohio agrees to waive its right to appeal the decision and entry dated August 10, 1992 entered in Franklin County Court of Common Pleas Case No. 92 CVH-03-2145.

5. Defendant Holmes Cheese is hereby enjoined and ordered to immediately comply with the requirements of Chapter 6111 of the Ohio Revised Code and the terms and conditions of the rules and regulations adopted under that Chapter and its currently effective NPDES Permit, and any renewals or modifications thereof, except for the final effluent limitations set forth in said permit. Between the effective date of this Consent Order and January 1, 1995 Defendant Holmes Cheese is enjoined to comply with the interim effluent limitations set forth in Attachment "A. These interim effluent limitations do not constitute an NPDES permit or modification of any existing permit. After January 1, 1995 Defendant Holmes Cheese is enjoined to meet the final effluent standards set forth in its NPDES Permit No. 31H00102\*BD and any renewals or modifications thereof. Defendant Holmes Cheese is hereby enjoined to properly operate and maintain its wastewater treatment works and any associated equipment and structures.

**VI. SCHEDULE FOR COMPLETING WASTEWATER TREATMENT IMPROVEMENTS**

6. Defendant Holmes Cheese is enjoined and ordered to complete improvements to its wastewater treatment works and to attain compliance with the final effluent limitations of NPDES Permit No. 31H00102\*BD and any modifications or renewals thereof in accordance with the following schedule:

**TASK**

**COMPLETION DATE**

- (a) Submit a Complete Application for a Permit to Install Including Approvable Detail Plans, to the

Northeast District of Ohio EPA for  
Treatment Plant Improvements to  
Meet Final Effluent Limits.

February 1, 1994

(b) Completion of Construction  
Treatment Facilities to Ensure  
Compliance With Final Effluent  
Limits.

November 1, 1994

(c) Attain and Maintain Compliance  
With Final Effluent Limits.

January 1, 1995

Within seven days from each completion date listed above, Defendant Holmes Cheese shall submit a written report stating whether or not Holmes Cheese has performed the action set forth therein to Ohio EPA's Northeast District Office.

7. This Consent Order 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.

#### **VII. CIVIL PENALTY**

8. Defendant Holmes Cheese shall pay to the State of Ohio a civil penalty of Ninety-Four Thousand Two Hundred and Seventy-Five Dollars (\$94,275.00). The penalty shall be paid by delivering to Janis Miller, Administrative Assistant, or her successor, a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within thirty (30) days from the date of entry of this Consent Order.

#### **VIII. STIPULATED PENALTIES**

9. In the event that Defendant Holmes Cheese fails to meet any of the requirements of this Consent Order set forth in Paragraphs 5, and 6(a) through 6(c), including any scheduled milestone requirement, Defendant Holmes Cheese shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of failure to meet a requirement, up to sixty (60) days - Two Hundred Fifty Dollars (\$250.00) per day for each

requirement not met. For each day of failure to meet a requirement, from sixty-one (61) to ninety days (90) - Five Hundred Dollars (\$500.00) per day for each requirement not met. For each day of failure to meet a requirement, from ninety-one (91) to one hundred and twenty (120) days - One Thousand Two Hundred Fifty Dollars (\$1,250.00) per day for each requirement not met. For each day of failure to meet a requirement, over one hundred and twenty days (120) days - Two Thousand Dollars (\$2,000.00) per day for each requirement not met. The penalties described in this paragraph do not apply to the interim and final limitations.

10. In the event that Defendant Holmes Cheese fails to meet any of the 30-day average interim effluent limitations contained in Attachment "A" attached hereto or any of its 30-day average final effluent limitations by the date specified in Subparagraph 6(c), Defendant Holmes Cheese shall be liable for payment of a stipulated penalty of Fifteen Hundred Dollars (1,500.00) for each 30-day period during which the failure occurs; if the failure to meet any of its 30-day average effluent limitations continues for a second consecutive 30-day period, Defendant Holmes Cheese shall be liable for the payment of a stipulated penalty of Two Thousand Dollars (\$2,000.00) for each second consecutive 30-day period; if the failure to meet any of its 30-day average final effluent limitations continues for a third consecutive 30-day period, Defendant Holmes Cheese shall be liable for the payment of a stipulated penalty of Four Thousand Dollars (\$4,000.00) for each third consecutive 30-day period; if the failure to meet any of its 30-day average effluent limitations continues for a fourth consecutive 30-day period, Defendant Holmes Cheese shall be liable for the payment of a stipulated penalty of Five Thousand Dollars (\$5,000.00) for each fourth consecutive 30-day period; if the failure to meet any of its 30-day average effluent limitations continues beyond a fourth consecutive 30-day period, Defendant Holmes Cheese shall be liable for the payment of a stipulated penalty of Six Thousand Dollars (\$6,000.00) for each consecutive 30-day period thereafter.

11. In the event that Defendant Holmes Cheese fails to meet any of its daily interim effluent limitations contained in Attachment "A", or any of its daily final effluent limitations by the date

specified in subparagraph 6(c), Defendant Holmes Cheese shall be liable for a payment of a stipulated penalty of \$175.00 for each day of any effluent limitations violation. Defendant Holmes Cheese shall be liable for an additional stipulated penalty of \$325.00 per day of violation if the failure continues for more than sixty days, i.e., Five Hundred Dollars (\$500.00) per day of violation. In the event that failure to meet any of the daily effluent limitations continues for more than one hundred and twenty (120) days, Defendant Holmes Cheese shall be liable for an additional Five Hundred Dollars (\$500.00) per day of violation, i.e., One Thousand Dollars (\$1,000.00) per day of violation.

12. Any payment required to be made under the provisions of Paragraphs 9 through 11 of this Order shall be made by delivering to Janis Miller, Administrative Assistant, or her successor, a certified check or checks for the appropriate amounts, within thirty (30) days from the date of the failure to meet the requirement of the Consent Order, made payable to "Treasurer, State of Ohio".

#### **IX. POTENTIAL FORCE MAJEURE**

13. If any event occurs which causes or may cause Defendants' failure to meet any requirement of this Consent Order, Defendant Holmes Cheese shall notify the Ohio EPA in writing within ten (10) days of the event, describing in detail the anticipated length of the (delay), the precise cause or causes of the delay, the measures taken and to be taken by Defendant Holmes Cheese to prevent or minimize the delay and the timetable by which measures will be implemented. Defendant Holmes Cheese will adopt all reasonable measures to avoid or minimize any such delay.

14. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendant Holmes Cheese may raise that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by ways of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant Holmes Cheese and the Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an

enforcement action, if any, is commenced by the Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant Holmes Cheese shall rest with Defendant Holmes Cheese. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances shall not constitute circumstances entirely beyond the control of Defendant Holmes Cheese, or serve as a basis for an extension of time under this Consent Order. Failure by Defendant Holmes Cheese to comply with the notice requirements of Paragraph thirteen (13) shall render this Paragraph void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendant Holmes Cheese's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one compliance date based on a particular incident does not mean that Defendant Holmes Cheese qualifies for an extension of a subsequent compliance date or dates. Defendant Holmes Cheese must make an individual showing or proof regarding each incremental step or other requirement for which an extension is sought.

15. All written notifications required pursuant to paragraph 13 and 14 herein shall be submitted to Ohio EPA's Northeast District Office to the attention of Irm Gomes, DWPC, and to Ohio EPA's Central Office to the attention of Heidi Sorin, DWPC, or their successors.

#### **X. TERMINATION OF STIPULATED PENALTIES**

16. The provisions of this Consent Order set forth in Section VIII, Paragraphs nine (9) through eleven (11) requiring the payment of stipulated penalties may be terminated after Defendant Holmes Cheese has achieved and maintained compliance with the final effluent limitations contained in its NPDES permit for a period of one (1) year after the completion of construction and payment of all penalties required pursuant to this Consent Order. Termination of stipulated penalties shall be by Order of the Court, upon application by any party and a demonstration that the conditions set forth in this paragraph have been met.

#### **XI. RETENTION OF JURISDICTION**

17. The Court will retain jurisdiction of this action for the purpose of making any order or

decree which it deems appropriate to carry out this Consent Order.

**XII. COSTS**

18. Defendant Holmes Cheese is hereby ordered to pay the costs of this action.

**XIII. STIPULATION OF DISMISSAL OF INDIVIDUAL**

19. The parties agree that the individual Defendant Robert E. Ramseyer is voluntarily dismissed with prejudice from this action by Stipulation of Dismissal to be filed immediately herewith.

**XIII. NOTICE**

20. Any submission to the Ohio EPA as required by this Consent Order unless otherwise indicated shall be delivered to Ohio EPA, Northeast District Office, 2110 East Aurora Rd., Twinsburg, Ohio 44087, Attn: Irm Gomes, or his successor.

**XIV. ENFORCEMENT COSTS OF THE ATTORNEY GENERAL**

21. Defendant Holmes Cheese is ordered to pay the enforcement costs of the Ohio Attorney General expended in pursuing the instant action totalling five thousand seven hundred and twenty-five dollars (\$5,725.00) by delivering a check in such an amount payable to the Treasurer, State of Ohio to counsel for Plaintiff at the address listed below.

13 Sept. 1993  
DATE

S/THOMAS D. WHITE, JUDGE  
\_\_\_\_\_  
JUDGE THOMAS WHITE  
COURT OF COMMON PLEAS  
HOLMES COUNTY



APPROVED:

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

BY:



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ATTORNEYS FOR  
HOLMES CHEESE COMPANY



ROBERT E. RAMSEYER  
PRESIDENT, HOLMES  
CHEESE COMPANY

on behalf of Defendant Holmes  
Cheese Company

ATTACHMENT A

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

EFFLUENT CHARACTERISTIC			DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS	
Reporting Code	Units	Parameter	Concentration Specified Units		Loading* kg/day		Meas. Frequency	Sample Type
			30 Day	Daily	30 Day	Daily		
00515	mg/l	Residue, Total Dissolved	-	-	-	-	1/Week	Grab
00530	mg/l	Total Suspended Solids	-	-	-	-	1/Week	Grab
00610	mg/l	Nitrogen, Ammonia (NH <sub>3</sub> ) (Summer) (Winter)	5.0	7.5	2.44	3.66	2/Week	Grab
			-	-	-	-	2/Week	Grab
00665	mg/l	Phosphorus, Total (P)	-	-	-	-	1/Month	Grab
31616	#/100ml	Fecal Coliform (Summer Only)	-	-	-	-	1/Week	Grab
50050	MGD	Flow Rate	-	-	-	-	Daily	24 Hr. Estimate
80082	mg/l	CBOD <sub>5</sub>	15	23	7.32	11.2	1/Week	Grab

\* Effluent loadings are based on a flow of 0.129 MGD.

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 1/week by grab sample.
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 1/week by grab sample.

ATTACHMENT "B"

Page 1 of 12  
Ohio EPA Permit No. 3IH00102\*BD

38/NE

Application No. OH0075922

Issue Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Expiration Date: 5 Years

**Ohio Environmental Protection Agency**  
**Authorization to Discharge Under the**  
**National Pollutant Discharge Elimination System**

In compliance with the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et. seq., hereafter referred to as "the Act"), and the Ohio Water Pollution Control Act (Ohio Revised Code Section 6111),

**Holmes Cheese Company**

is authorized by the Ohio Environmental Protection Agency, hereafter referred to as "Ohio EPA," to discharge from the wastewater treatment works located at 2444 S.R. 39, Millersburg, Ohio, Holmes County

and discharging to Corns Run

in accordance with the conditions specified in Parts I, II, and III of this permit.

This permit is conditioned upon payment of applicable fees as required by Section 3745.11 of the Ohio Revised Code.

This permit and the authorization to discharge shall expire at midnight on the expiration date shown above. In order to receive authorization to discharge beyond the above date of expiration, the permittee shall submit such information and forms as are required by the Ohio EPA no later than 180 days prior to the above date of expiration.

\_\_\_\_\_  
Donald R. Schregardus  
Director

Form EPA 4428

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

1. During the period beginning on the effective date of this permit 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: 3IH00102001. See Part II, OTHER REQUIREMENTS, for location of effluent sampling.

EFFLUENT CHARACTERISTIC			DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS	
Reporting Code	Units	Parameter	Concentration Specified Units		Loading* kg/day		Meas. Frequency	Sample Type
			30 Day	Daily	30 Day	Daily		
00515	mg/l	Residue, Total Dissolved	1750	2625	854	1282	1/Week	Grab
00530	mg/l	Total Suspended Solids	-	-	-	-	1/Week	Grab
00610	mg/l	Nitrogen, Ammonia (NH <sub>3</sub> )(Summer) (Winter)	2.0	3.0	0.98	1.46	2/Week 2/Week	Grab Grab
00665	mg/l	Phosphorus, Total (P)	-	-	-	-	1/Month	Grab
31616	#/100ml	Fecal Coliform (Summer Only)	1000	2000	-	-	1/Week	Grab
50050	MGD	Flow Rate	-	-	-	-	Daily	24 Hr. Total
80082	mg/l	CBOD <sub>5</sub>	15	23	7.32	11.2	1/Week	Grab

\* Effluent loadings are based on a flow of 0.129 MGD.

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 1/week by grab sample.
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 1/week by grab sample.
4. Samples taken in compliance with monitoring requirements specified above shall be taken at sampling stations described in Part II, OTHER REQUIREMENTS.

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

1. During the period beginning on the effective date of this permit 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: 3IH00102601. See Part II, OTHER REQUIREMENTS, for location of effluent sampling.

EFFLUENT CHARACTERISTIC			DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS	
Reporting Code	Units	Parameter	Concentration* Specified Units		Loading kg/day		Meas. Frequency	Sample Type
			30 Day	Daily	30 Day	Daily		
00310	mg/l	Biochemical Oxygen Demand, 5 Day	25	54	4.39	10.27	1/Week	Grab
00530	mg/l	Total Suspended Solids	33	80	6.30	15.17	1/Week	Grab
50050	MGD	Flow Rate	-	-	-	-	1/Week	24 Hr. Total

\* Effluent concentrations are based on a flow of 50,000 gallons per day.

This internal station is limited to wastewater treatment plant effluent.

2. The pH (Reporting Code 00400) shall be monitored 1/week by grab sample.
3. Permittee may report 24-hour estimates for flow for six (6) months from the effective date of this permit until flow metering equipment is installed to report 24-hour total for flow.
4. Samples taken in compliance with monitoring requirements specified above shall be taken at sampling stations described in Part II, OTHER REQUIREMENTS.

Part I, B. - ADDITIONAL MONITORING REQUIREMENTS

1. Sludge. The permittee shall monitor the treatment works' final sludge at Station Number 3IH00102581, and report to the Ohio EPA in accordance with the following table. See Part II, OTHER REQUIREMENTS, for location of sludge sampling.

CHARACTERISTIC Reporting code	units **	Parameter	MONITORING REQUIREMENTS*	
			Measurement Frequency	Sample Type
00611	mg/kg	Nitrogen, Ammonia	2/Year	Grab
00627	mg/kg	Nitrogen, Total Kjeldahl	2/Year	Grab
00668	mg/kg	Phosphorous	2/Year	Grab
01028	mg/kg	Cadmium	2/Year	Grab
01043	mg/kg	Copper	2/Year	Grab
01052	mg/kg	Lead	2/Year	Grab
01068	mg/kg	Nickel	2/Year	Grab
01093	mg/kg	Zinc	2/Year	Grab
70316	Dry Tons	Sludge Weight ***	2/Year	Grab
70318	%	Sludge Solids, Percent Total	2/Year	Grab
70322	%	Sludge Solids, Percent Volatile	2/Year	Grab

\* When sludge is removed from the wastewater treatment facility and disposed of according to a sludge management plan. 2/year monitoring requirements shall be met by taking samples in June and December of each year. If no sludge is removed during the month, leave data area blank and enter "No sludge removed during month" in the "Additional Remarks" section (signature still required).

\*\* Units of mg/kg on a dry weight basis.

\*\*\* Calculated total for the sampling period.

PART II. OTHER REQUIREMENTS

A. Description of the location of the required sampling stations are as follows:

<u>Sampling Station</u>	<u>Description of Location</u>
3IH00102001	Discharge of combined effluent including non-contact cooling water and treated process waste water prior to Corns Run. (Lat: 40° 34' 07"; Long: 81° 57' 37")
3IH00102581	Sludge removal according to sludge management plan.
3IH00102601	Discharge of wastewater treatment plant effluent prior to mixing with other effluent streams.

B. 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.

C. This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under Sections 301(b) (2) (C) and (D), 304(b) (2), and 307(a) (2) of the Clean Water Act, if the effluent standard or limitation so issued or approved.

1. Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or
2. Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.

D. In the event that the permittee's operation requires the use of cooling or boiler water treatment additives that are discharged to surface waters of the state, written permission must be obtained from the director of the Ohio EPA prior to use. Reporting and testing requirements to apply for permission to use additives can be obtained from the Ohio EPA, Central Office, Division of Water Pollution Control, Enforcement and Compliance Section. Reported information will be used to evaluate whether the use of the additive(s) at concentrations expected in the final discharge will be harmful or inimical to aquatic life.

E. Permit limitations may be revised in order to meet water quality standards after a stream use determination and waste load allocation are completed and approved. This permit may be modified, or alternatively, revoked and reissued, to comply with any applicable water quality effluent limitations.

F. Grab samples shall be collected at such times and locations, and in such fashion, as to be representative of the facility's performance.

**PART III - GENERAL CONDITIONS**

**1. 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 (weighted by flow) 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 (weighted by flow) 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 through 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 through 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.



**PART III - GENERAL CONDITIONS (continued)**

"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  
Division of Water Pollution Control  
Enforcement Section, ES/MOR  
P.O. Box 1049  
Columbus, Ohio 43266-0149

- 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.

**PART III - GENERAL CONDITIONS (continued)**

**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;
- D. All plant operation and maintenance records;
- E. All reports required by this permit; and
- 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 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 to 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 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;

**PART III - GENERAL CONDITIONS (continued)**

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 D. 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 has met 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 twenty-four (24) hours 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; or
  3. Any upset which exceeds any effluent limitation in the permit.
  4. Any violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit.
- B. For the telephone reports required by Part 12.A., 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

**PART III - GENERAL CONDITIONS (continued)**

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, B, or C of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraphs B and C of this section.
- F. Where the permittee becomes aware that it failed to submit any relevant 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(1) 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.

**PART III - GENERAL CONDITIONS (continued)**

**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. 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 permittee (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.

At anytime during the sixty (60) day period between notification of the proposed transfer and the effective date of the transfer, the Director may prevent the transfer if he concludes that such transfer will jeopardize compliance with the terms and conditions of the permit.

**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 Ohio EPA 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 510 of the Act.

**PART III - GENERAL CONDITIONS (continued)**

**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, DEFINITIONS.

**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.

IN THE COURT OF COMMON PLEAS  
HOLMES COUNTY, OHIO

STATE OF OHIO, ex rel.	:	Case No.	92-C-192
LEE FISHER	:		45-15395
ATTORNEY GENERAL OF OHIO	:		
	:	Judge Thomas White	
Plaintiff,	:		
	:		
vs.	:	STIPULATION AND ORDER	
	:	CONCERNING STIPULATED	
HOLMES CHEESE CO.	:	PENALTIES	
and	:		
ROBERT J. RAMSEYER,	:		
	:		
Defendants.	:		

The Plaintiff, State of Ohio, and Defendants, Holmes Cheese Co. and Robert J. Ramseyer, President, (collectively referred to as "Defendant Holmes Cheese"), hereby stipulate to the following agreement regarding the payment of stipulated penalties in this case and the Court, based upon that agreement, issues the Orders which follow.

WHEREAS, the State of Ohio and Defendant Holmes Cheese entered a Consent Order to resolve this case, which was signed by the Court on September 13, 1993;

WHEREAS, Paragraph 6(a) of the Consent Order required Defendant Holmes Cheese to submit a complete application for a permit to install, including approvable detail plans, to the Northeast District Office of Ohio EPA for wastewater treatment plant improvements to meet final effluent limits, by February 1, 1994;

WHEREAS, Defendant Holmes Cheese submitted a complete permit to install

application to Ohio EPA after the February 1, 1994 deadline in Paragraph 6(a) of the Consent Order. Said permit to install application was received by Ohio EPA on April 4, 1994;

WHEREAS, Paragraph 9 of the Consent Order provides for the payment of stipulated penalties in the event that Defendant Holmes Cheese fails to meet specific requirements in the Consent Order, including the requirement to submit the permit to install application by the agreed deadline;

WHEREAS, the State of Ohio has alleged that Defendant Holmes Cheese is obligated to pay stipulated penalties as a result of the late submittal of the permit to install application;

WHEREAS, without admission of any fact, violation or liability, Defendant Holmes Cheese, as a means by which to settle this matter expeditiously, has agreed to pay \$8,000.00 and to install a new digital monitoring and control system for its wastewater treatment system to satisfy the State of Ohio's allegation;

NOW THEREFORE, in consideration of the foregoing, and the promises and covenants contained hereinafter, the State of Ohio and Defendant Holmes Cheese hereby stipulate as follows, and this Court so orders that:

1. Defendant Holmes Cheese will pay a penalty in the amount of Eight Thousand Dollars (\$8,000.00) to the State of Ohio by means of a certified check made payable to "Treasurer, State of Ohio", within thirty (30) days of entry of this Stipulation and Order.

2. Defendant Holmes Cheese will install the new digital monitoring and control system described above by January 1, 1995.



3. The performance of the activities set forth in Paragraphs 1 and 2 above shall constitute full satisfaction against Defendant Holmes Cheese for the violation to install application by February 1, 1994.

SO ORDERED

\_\_\_\_\_  
DATE

\_\_\_\_\_  
JUDGE THOMAS WHITE  
COURT OF COMMON PLEAS  
HOLMES COUNTY

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

HOLMES CHEESE CO.  
AND  
ROBERT J. RAMSEYER

By: 

E. Dennis Muchnicki  
Assistant Attorney General  
Environmental Enforcement Section  
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