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NORTHERN DISTRICT OF OHIO
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NORTHERN DISTRICT OF OHIO

at
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U. S. District Court, N.D.O.
Akron, OH

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,
Plaintiff,
and
THE STATE OF OHIO
Realigned Plaintiff,
v.
NORTH OLMSTED, OHIO,
Defendant.

1:95CV1109

CIVIL ACTION No.

JUDGE ALDRICH

MAG. JUDGE HEMANN

CONSENT DECREE

Plaintiff, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"), filed a Complaint, alleging that the City of North Olmsted, Ohio ("North Olmsted") violated Section 301 of the Clean Water Act ("Act"), 33 U.S.C. § 1311, and an Administrative Order issued by EPA pursuant to Section 309(a) of the Act, 33 U.S.C.

§ 1319(a). The United States alleges pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), that North Olmsted's discharge of pollutants from North Olmsted's wastewater treatment plant ("Plant") exceeded authorized effluent limits and bypassed or overflowed the Plant in violation of North Olmsted's National Pollutant Discharge Elimination System ("NPDES") permit and the Act, and that North Olmsted has not complied with the Administrative Order issued by EPA on July 31, 1991, in further violation of the Act.

The State of Ohio ("State") has been joined as a Party pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e), and shall have no liability under this Decree except to the extent, if any, required by that subparagraph. The Attorney General of the State of Ohio hereby certifies and the parties agree, that the present laws of the State do not prevent North Olmsted from raising revenues needed to comply with this Decree. The State has filed a motion to be realigned as a plaintiff and the parties agree to the realignment of the State as a plaintiff. The State is hereby realigned as plaintiff.

The State has filed a Cross Complaint alleging that North Olmsted violated the Act, as well as Ohio Revised Code ("O.R.C.") Sections 6111.07 and 6111.09 and other provisions of State water pollution control law.

The United States of America, the State, and North Olmsted (collectively referred to as the "Parties") agree that settlement of this action is in the public interest and have entered into

this Consent Decree in good faith to avoid expensive and protracted litigation and to settle the claims raised by the United States and the State.

NOW, THEREFORE, before the taking of any testimony, before adjudication of the merits of the case, and with the consent of the Parties, it is ORDERED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this Complaint and Cross Complaint, and over the Parties, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 309(b) and 505 of the Act, 33 U.S.C. §§ 1319(b) and 1365. The State's claims are also properly before the Court under the Court's pendent jurisdiction. The Complaint states claims against North Olmsted upon which relief can be granted pursuant to Sections 309(b) and 505 of the Act, 33 U.S.C. §§ 1319(b) and 1365. The Cross Complaint states claims against North Olmsted upon which relief can be granted pursuant to the Ohio Revised Code Sections 6111.07 and 6111.09. Venue lies in this District pursuant to Sections 309(b) and 505 of the Act, 33 U.S.C. §§ 1319(b) and 1365, and under 28 U.S.C. §§ 1391(b) and 1395.

II. APPLICABILITY

2. Each representative of a party to this Consent Decree certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this Decree.

3. The provisions of this Consent Decree shall apply to and be binding upon the Parties to this action, as well as North Olmsted's officials, agents, employees, successors and assigns, and all persons having notice of this Consent Decree who are, or will be, acting in concert or participation with North Olmsted. In any action to enforce this Consent Decree, North Olmsted shall not raise as a defense the failure by any of its agents, officials, contractors, or employees to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

4. Unless otherwise defined herein, terms defined in the Act or EPA's regulations, enacted pursuant to the Act, shall have the definitions used in the Act and regulations.

5. The term "Monthly Operating Report" ("MOR") is defined as the report which North Olmsted submits to the Ohio Environmental Protection Agency on a monthly basis on which sampling data for the previous month is recorded. This report is referred to in Part III, Section 4 of North Olmsted's NPDES Permit No. OH0026778.

IV. STIPULATIONS OF FACT

6. North Olmsted is a municipal corporation organized and existing under the laws of the State of Ohio. North Olmsted owns and operates a wastewater treatment plant ("Plant") located at 23775 Mastick Road, North Olmsted, Ohio, which treats wastewater for the communities of North Olmsted, and portions of Fairview

Park and Olmsted township. The Plant discharges wastewater into the Rocky River through Outfall 001.

7. North Olmsted is a "person" as that term is defined in Section 502(5) of the Act, 33 U.S.C. §1362(4).

8. The Plant is a Publicly Owned Treatment Works ("POTW"), as defined in Section 212(2) of the Act, 33 U.S.C. § 1292(2), and 40 C.F.R. § 403.3(o), and as used in Section 301(b)(1)(B) and (i) of the Act, 33 U.S.C. § 1311(b)(1)(B) and (i).

9. For purposes of this Decree, the "applicable NPDES Permit" means that version of the Plant's NPDES Permit that was issued pursuant to the Act and is applicable, federally-approved and in effect at the time. Should any proposed, modified, or reissued NPDES permit for the Plant become federally approved and effective, except as specifically stated otherwise in this Decree, it will replace the previous permit as the "applicable NPDES Permit."

10. At all times relevant to this Consent Decree, North Olmsted discharged pollutants into the Rocky River from Outfall 001 at the Plant, within the meaning of Section 502(6) and (12) of the Act, 33 U.S.C. § 1362(6) and (12), and 40 C.F.R. § 122.2.

11. Outfall 001 is a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

12. The Rocky River is a "navigable water" as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and is part of the "waters of the United States" within the meaning of 40 C.F.R. § 122.2.

13. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, on September 30, 1988, the Ohio Environmental Protection Agency ("OEPA") issued NPDES Permit No. OH0026778 ("Permit") to North Olmsted. On October 27, 1988, North Olmsted appealed the Ohio EPA's actions in determining certain pollutant parameters contained in the September 30, 1988, NPDES permit to the State of Ohio Environmental Board of Review (EBR). The appeal was resolved on May 10, 1993, by the Ohio EPA issuance of an NPDES permit modification.

14. On June 21, 1991, OEPA issued an Administrative Order to North Olmsted requiring inter alia, that North Olmsted eliminate all overflows and bypasses unless otherwise authorized by its Permit.

15. On or about July 31, 1991, EPA issued Administrative Order No. V-W-91-AO-33 to North Olmsted, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), requiring, inter alia, that North Olmsted achieve consistent compliance with its Permit within forty (40) days of receipt of the Administrative Order.

16. On at least 2,130 occasions from November 1988 through at least September 1994, North Olmsted discharged one or more of the following pollutants to the Rocky River in violation of the specific effluent limitations in its Permit: Biological Oxygen Demand (BOD₅); Oil and Grease (O&G); Fecal Coliform (FC); Ammonia (NH₃); Copper (Cu); Mercury (Hg); Phosphorus (P); Chromium (Cr); Cadmium (Cd); and Zinc (Zn). In addition, during this same period, North Olmsted discharged effluent to the Rocky River with

a dissolved oxygen (DO) content below the minimum required by its Permit.

17. On at least 112 occasions from November 1988 through at least September 1994, North Olmsted discharged pollutants to the Rocky River in violation of its Permit, through unauthorized bypasses and overflows of the treatment system and sewers.

18. From September 14, 1991, through at least September 1994, North Olmsted has operated its Plant in violation of the Administrative Order issued by EPA on July 31, 1991.

19. North Olmsted represents that it has taken significant steps toward compliance with its applicable NPDES Permit, as described in Attachment A to this Consent Decree.

V. COMPLIANCE PROGRAM

20. Effective upon the date of entry of this Consent Decree, North Olmsted shall achieve and, thereafter, maintain compliance with its NPDES Permit No. OH0026778 or any other applicable NPDES Permit issued to North Olmsted during the term of this Consent Decree; the EPA Administrative Order of July 31, 1991; the Act; the OEPA's Administrative Order of June 21, 1991; and O.R.C. Chapter 6111.

21. During the term of this Consent Decree, North Olmsted shall timely submit all reports required by its applicable NPDES Permit, including MORs, and reports of bypass and overflow events to:

Chief, Compliance Section (WCC-15J)
Water Division
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
Attn: Tom Bramscher

22. By March 1, 1995, North Olmsted shall certify that Phase E of the Sanitary and Storm Connection rehabilitation project referenced in North Olmsted's Fifteenth Quarterly Progress Report to OEPA was completed and shall provide an analysis of the effectiveness of the entire sewer rehabilitation project (i.e., Phases A through E as described in North Olmsted's Quarterly Progress Reports to OEPA) to the person listed in Paragraph 21, above, and to:

Enforcement Group Leader
Division of Surface Waste
Northeast District Office
Ohio EPA
2110 E. Aurora Rd.
Twinsburg, OH 44087

The certification shall be signed by an authorized representative of the City and notarized.

23. By September 30, 1995, North Olmsted shall complete Phase F of the Sanitary Main, Sanitary and Storm connection Rehabilitation project referenced in North Olmsted's Fifteenth Quarterly Progress Report to OEPA. Within thirty (30) days of completion of Phase F, North Olmsted shall certify that Phase F was completed. Within one hundred twenty (120) days of completion of Phase F, North Olmsted shall provide an analysis of

the effectiveness of the entire sewer rehabilitation project to the person listed in Paragraph 21, above, and to:

Enforcement Group Leader
Division of Surface Waste
Northeast District Office
Ohio EPA
2110 E. Aurora Rd.
Twinsburg, OH 44087

The certification shall be signed by an authorized representative of the City and notarized. For each Phase after Phase F of the Sanitary Main, Sanitary and Storm connection Rehabilitation project that North Olmsted chooses to undertake and implement during the term of this Decree, North Olmsted shall inform EPA and OEPA of the start and completion dates of such Phase and shall certify completion of and submit an analysis about the Phase, as described in this paragraph.

24. By July 1, 1995, North Olmsted shall make the following equipment changes at the Plant and have such equipment fully operational:

- a) Replace current diffusion system with a tapered, fine bubble diffusion system;
- b) Connect two final clarifiers of the Storage Facility to the aeration process and ensure that the existing or improved aeration capacity is sufficient to handle the increased flows from the two clarifiers.
- c) Add an additional aeration blower;
- d) Add programmable blower controllers;
- e) Add influent DO probes for all four aeration tanks; and

f) Install additional equipment as necessary to the sodium aluminate feed system to improve the feeding and monitoring of the sodium aluminate feed system.

Commencing with the first calendar quarter after the entry of this Consent Decree, North Olmsted shall provide EPA and OEPA quarterly progress reports for the activities in this paragraph until those activities are completed. After the completion of the activities listed in this Paragraph, North Olmsted shall certify their completion. The certification shall be signed by an authorized representative of the City and notarized.

VI. CIVIL PENALTY

25. North Olmsted shall pay a civil penalty in the amount of One Hundred Seventy-Five Thousand Dollars (\$175,000). This amount shall be divided as follows: One Hundred Forty-Five Thousand Dollars (\$145,000) to the United States of America and Thirty Thousand (\$30,000) to the State of Ohio. Payment to the United States shall be made by delivering a certified or cashier's check in the sum stated above, within thirty (30) days of entry of this Consent Decree, made payable to "Treasurer, United States of America," and sent to:

Office of United States Attorney
1800 Bank One Center
Attn: Collections
600 Superior Ave, East
Cleveland, Ohio 44114-2600

Payment to the State shall be made by delivering a certified or cashier's check in the sum stated above, within thirty (30) days

of entry of this Consent Decree, made payable to "Treasurer,
State of Ohio" and sent to:

Administrative Assistant
Office of the Attorney General
Environmental Enforcement Section
30 East Broad Street
25th Floor
Columbus, Ohio 43266-0410

A copy of both checks and the letters tendering the checks shall
be mailed to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Branch Secretary
Multi-Media Branch (CM-29A)
Office of Regional Counsel
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Chief, Compliance Section (WCC-15J)
Water Division
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20530

VII. STIPULATED PENALTIES

26. North Olmsted's failure to comply with the following
requirements of this Consent Decree shall result in North Olmsted
paying, to the United States and the State of Ohio, the following
stipulated penalties:

a. For each exceedance of a daily limitation for any parameter in its applicable NPDES Permit, North Olmsted shall pay \$500.00 per exceedance.

b. For each exceedance of a weekly average limitation for any parameter in its applicable NPDES Permit, North Olmsted shall pay:

For a weekly average exceedance of a parameter \$500.00

Second exceedance of the same parameter during the five (5) week period calculated from the first day of any violating weekly period \$1250.00

Third and subsequent exceedances of the same parameter during the five (5) week period calculated from the first day of any violating weekly period \$2500.00

c. For each exceedance of a monthly average limitation for any parameter in its applicable NPDES Permit, North Olmsted shall pay:

For a monthly average exceedance of a parameter \$2000.00

Second exceedance of the same parameter during the three (3) month period calculated from the last day of any violating monthly period \$5000.00

Third and subsequent exceedances of the same parameter during the three (3) month period calculated from the last day of any violating monthly period \$8000.00

d. For each bypass or overflow event in violation of North Olmsted's applicable NPDES Permit, in addition to any amounts payable pursuant to the previous sub-paragraphs, North Olmsted shall pay:

First violation during the term of the Decree \$ 5,000.00

Second violation during the term of the Decree \$ 7,500.00

Third and subsequent violations during the term of the Decree \$15,000.00

e. For each day that a report required by North Olmsted's applicable NPDES Permit is late, North Olmsted shall pay \$200 per day for the first thirty days. Once a report is more than thirty days late, the violation shall become a failure to submit that report and therefore subject to the additional penalties in paragraph g below.

f. For each day that a certification or report required by Paragraphs 22, 23 and 24 of this Consent Decree is late, North Olmsted shall pay \$100 per day.

g. For each failure to submit a report required by North Olmsted's applicable NPDES Permit, such as MORs and bypass and overflow reports, in addition to the penalty under sub-paragraph (e), above, North Olmsted shall pay:

First violation during the term of the Decree.....	\$ 2000.00
Second violation during the term of the Decree	\$ 4000.00
Third and subsequent violations during the term of the Decree	\$ 6000.00

h. For purposes of this Consent Decree, a single operational upset which results in simultaneous daily effluent violations for more than one pollutant parameter shall be treated as a single violation. However, each day on which a limitation is exceeded shall be treated as a separate violation even if the violations arise from a single operational upset. Liability for stipulated penalties for monthly and weekly effluent limit violations is not affected by the existence of daily maximum

violation(s) for different parameters that may have arisen from the same operational upset.

i. In overlapping periods where weekly average and monthly average limitations are exceeded for the same parameter, North Olmsted shall pay stipulated penalties for either the monthly average exceedance or the weekly average exceedance, whichever is greater. In overlapping periods where daily and monthly average limitations are exceeded for the same parameter, North Olmsted shall pay stipulated penalties for either the monthly average exceedance or the daily exceedances, whichever is greater.

j. North Olmsted shall pay 80% of any amounts due as stipulated penalties or interest and late penalties thereon to the United States and shall pay the remaining 20% of any such amounts to the State of Ohio.

27. Any penalties paid pursuant to Paragraph 26 of this Consent Decree shall be in addition to any other relief which may be available to the United States against the Defendants under the Act and to the State under O.R.C. Chapter 6111.

28. All penalties incurred under this Section shall be paid without demand in the manner specified in Paragraph 25, above.

VIII. LATE PAYMENT OF CIVIL OR STIPULATED PENALTY

29. Interest shall accrue and be paid on the overdue unpaid balance of any penalties due to the United States or the State under the terms of this Consent Decree at the rate established by the Secretary of Treasury, pursuant to 28 U.S.C. § 1961. The rate shall be that in effect on the due date of the civil penalty

provided for in Paragraph 25, above, or, in the case of stipulated penalties, at the time such payment becomes due. Interest shall be computed beginning thirty (30) days after the date that the penalty in question is due. If interest is due, North Olmsted shall submit, in writing, along with such payment to the Office of the United States Attorney for the Northern District of Ohio and to the State, its calculation of interest. In addition, after the first thirty (30) days that any amount under this Consent Decree is overdue, a late payment charge of fifteen dollars (\$15.00) shall be paid, and an additional charge of fifteen dollars (\$15.00) shall be paid for every subsequent thirty (30) day period that any monies are overdue.

IX. DISPUTE RESOLUTION

30. If, in the opinion of any Party, there is a good faith dispute with respect to the meaning of this Consent Decree or North Olmsted's obligations thereunder, that party shall send the other parties a written notice outlining the nature of the dispute and requesting informal negotiations to resolve the dispute. Such period of informal negotiations shall not extend beyond thirty (30) days from the date the notice was sent, unless the parties agree otherwise.

31. If the informal negotiations are unsuccessful, the position of the United States and the State shall control unless North Olmsted files with the Court a petition describing the nature of the dispute and including a proposal for its resolution. North Olmsted's petition must be filed no more than

twenty (20) days after termination of the informal negotiations. The United States and the State shall then have thirty (30) days within which to file a written response to such petition. In any such dispute, North Olmsted shall have the burden of proving that the position of the United States or the State is arbitrary or capricious or is otherwise contrary to law.

32. The pendency of any dispute under this Section shall not affect North Olmsted's responsibility for timely compliance with the obligations of this Consent Decree, or the right of The United States or the State to seek enforcement of the Decree.

X. FORCE MAJEURE BETWEEN THE UNITED STATES AND DEFENDANT

33. Any failure by Defendant to comply with the requirements of this Consent Decree shall not be a violation of this Consent Decree if such failure is the result of a Force Majeure event. A "Force Majeure" event is defined as any event that is caused by circumstances entirely beyond the control of Defendant which could not reasonably have been foreseen or prevented by Defendant or its contractors. "Force Majeure" does not include increased costs or precipitation events.

34. Should Defendant be unable to comply with any provision of this Consent Decree as a result of any circumstances, whether or not such circumstances constitute a Force Majeure, Defendant shall notify the United States no later than 14 days from when it knew or by the exercise of due diligence should have known of such circumstances. Such notification shall be in writing and shall include a precise description of the circumstances, the

measures taken and to be taken to prevent or minimize the noncompliance, a statement as to whether Defendant is claiming Force Majeure, and the bases for Defendant's claim of Force Majeure. Such notification shall be promptly supplemented as additional information becomes available to Defendant concerning the circumstances of the noncompliance, measures taken or to be taken in response to the noncompliance, and the bases for Defendant's claim of Force Majeure. Defendant shall adopt all reasonable measures to avoid or minimize any such noncompliance. Failure to notify the United States within the time period specified above shall constitute a waiver of any claim of Force Majeure. Notification of any noncompliance, in and of itself, shall not extend the time allowed for meeting any requirement or excuse the delay or payment of stipulated penalties.

35. If the United States and Defendant agree that the noncompliance is due to a Force Majeure event, the Parties may petition the Court to extend compliance dates directly affected by the delay for a period of time not to exceed the period of delay resulting from such circumstances.

36. If the United States and Defendant cannot agree whether the noncompliance is due to a Force Majeure event, the matter shall be resolved pursuant to the Dispute Resolution provision of this Decree. Defendant shall have the burden of going forward and proving that the circumstances alleged to be causing the delay or noncompliance constitute a Force Majeure event, that the duration of the delay caused by such noncompliance is or was

warranted under the circumstances, and that, as a result of the noncompliance, a particular extension period is appropriate.

37. The standards and provisions of this Section shall govern delays in obtaining permits or approvals required for work required by this Decree, provided that Defendant has made timely and complete application for such permits and approvals.

**XI. POTENTIAL FORCE MAJEURE BETWEEN
NORTH OLMSTED AND THE STATE OF OHIO**

38. A. If any event occurs which causes or may cause a delay in North Olmsted's compliance with any requirement of this Consent Decree, North Olmsted shall notify the Ohio EPA in writing within fourteen (14) days from when it knew or by the exercise of due diligence should have known of the event, describing in detail the anticipated length of the delay, the precise cause or causes of delay, the measures taken and to be taken by North Olmsted to prevent or minimize the delay and the timetable by which those measures will be implemented. North Olmsted shall adopt all reasonable measures to avoid or minimize any such delay.

B. In any action by the State of Ohio to enforce any of the provisions of this Consent Decree, North Olmsted may raise at that time the question of whether it is entitled to a defense that its conduct was caused by circumstances beyond its control. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed by North Olmsted and the State of Ohio 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, if ever, that the proceeding to enforce this Consent Decree is commenced by the State. At that time the burden of proving that any delay was or will be caused by circumstances beyond the control of North Olmsted shall rest with North Olmsted. Failure by North Olmsted to timely comply with the notice requirements of this paragraph at the option of Ohio EPA shall constitute a waiver by North Olmsted of any right it may have to raise such a defense. Changed financial circumstances or increased costs associated with the implementation of any action required by this Consent Decree, or changed financial circumstances shall not in any event constitute circumstances beyond the control of North Olmsted, or serve as a basis for an extension of time under this Consent Decree.

XII. GENERAL PROVISIONS

39. The United States and the State do not waive any rights or remedies available for any violation by North Olmsted of federal or state laws, regulations, or permit conditions other than those specifically addressed in this Consent Decree.

40. The Parties agree that it is the responsibility of North Olmsted to achieve and maintain compliance with all applicable Federal and State laws, regulations, and permits, and that compliance with this Consent Decree shall not be a defense to any actions commenced pursuant to said laws, regulations or permits.

41. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant in any manner that North Olmsted's compliance with this Consent Decree will result in compliance with the provisions of the Act, O.R.C. Chapter 6111 or its applicable NPDES Permit. North Olmsted shall remain solely responsible for compliance with the terms of this Consent Decree and its applicable NPDES Permit.

42. This Consent Decree does not limit or affect the rights of North Olmsted, the State of Ohio, or The United States against parties not named in this Consent Decree.

43. This Consent Decree resolves the civil claims of the United States and the State of Ohio for the violations alleged in the Complaint and Cross-complaint in this action through September 1994.

44. This Consent 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 Act, 33 U.S.C. §1342, or under State law, and shall not be construed to waive or relieve North Olmsted of any obligation to apply for, obtain and comply with any applicable NPDES Permit.

45. This Consent Decree does not authorize or approve the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Approval for such construction or modification shall be by permit issued by the OEPA or such other permits as may be required by applicable county or State laws, rules, or regulations.

46. The United States, the State, and North Olmsted shall bear their own costs and attorney's fees in this action. Should North Olmsted subsequently be determined to have violated the terms and conditions of this Consent Decree, North Olmsted shall be liable to the United States and the State for their respective costs and attorney's fees in any action against North Olmsted arising out of noncompliance with this Consent Decree.

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

48. The Court shall retain jurisdiction of this case until termination of this Consent Decree in order to enforce the Consent Decree.

XIII. RIGHT OF ENTRY

49. EPA, OEPA, and their contractors and consultants shall have the right of entry into and upon the Plant at all times upon proper presentation of credentials, to:

- (A) Monitor the progress of activities required by this Consent Decree;
- (B) Verify any data or information required to be submitted pursuant to this Consent Decree;
- (C) Obtain samples, and, upon request, splits of any samples taken by North Olmsted or its consultants; and
- (D) Assess North Olmsted's compliance with this Consent Decree.

50. This Consent Decree in no way limits or affects any right of entry and inspection held by The United States or the State pursuant to applicable federal or state laws, regulations, or permits.

XIV. TERMINATION

51. After North Olmsted has maintained continuous compliance with the Act, its applicable NPDES Permit, O.R.C. Chapter 6111 and this Consent Decree for a period of one (1) year after the date of entry of this Consent Decree, and has paid the civil penalty and any accrued stipulated penalties as required by the Consent Decree, North Olmsted shall have the right to petition the Court for termination of this Consent Decree. The United States and the State shall have the right to disagree with North Olmsted's petition and to seek extension of this period.

FOR PLAINTIFF, UNITED STATES OF AMERICA:

By: *Lois J. Schiffer*

Dated: 5/14/95

LOIS J. SCHIFFER
Assistant Attorney General
Environmental and Natural Resources Division
United States Department of Justice
10th & Pennsylvania Ave., N.W.
Washington, D.C. 20044

UNITED STATES OF AMERICA , Plaintiff, and THE STATE OF OHIO,
Realigned Plaintiff v. NORTH OLMSTED, OHIO

EMILY SWEENEY
United States Attorney

By: James L. Bickett Dated: 5/17/95
JAMES L. BICKETT
Assistant United States Attorney
Northern District of Ohio
Office of the United States Attorney
U.S. Courthouse and Federal Building
Room 208
2 South Main Street
Akron, Ohio 44308

By: Valdas V. Adamkus Dated: 4/10/95
VALDAS V. ADAMKUS
Regional Administrator
United States Environmental
Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

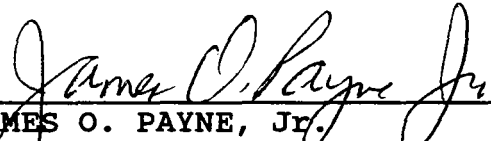
By: Padmavati G. Klejwa Dated: 3/31/95
PADMAVATI G. KLEJWA
Assistant Regional Counsel
United States Environmental
Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

UNITED STATES OF AMERICA , Plaintiff, and THE STATE OF OHIO,
Realigned Plaintiff v. NORTH OLMSTED, OHIO

FOR REALIGNED PLAINTIFF, THE STATE OF OHIO:

ATTORNEY GENERAL OF OHIO

By:



JAMES O. PAYNE, Jr.
Assistant Attorney General
Environmental Enforcement Section
Office of the Attorney General of Ohio
30 E. Broad St. 25th Floor
Columbus, OH 43215
(614) 466-2766


Dated: 12-2-94

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U.S. DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

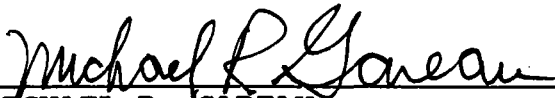
UNITED STATES OF AMERICA , Plaintiff, and THE STATE OF OHIO,
Realigned Plaintiff v. NORTH OLMSTED, OHIO

FOR DEFENDANT, THE CITY OF NORTH OLMSTED:

By: 
EDWARD J. BOYLE
Mayor

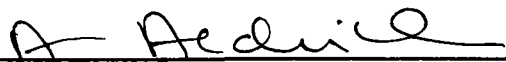
Dated: March 10, 1995

APPROVED AS TO FORM:

By: 
MICHAEL R. GAREAU
DIRECTOR OF LAW
CITY OF NORTH OLMSTED

Dated: Mar 12, 1995

Consent Decree entered in accordance with the foregoing this 11
_____ day of July, 1995.


JUDGE
United States District Court
Northern District of Ohio

UNITED STATES OF AMERICA, Plaintiff, and THE STATE OF OHIO,
Realigned Plaintiff v. NORTH OLMSTED, OHIO

NORTH OLMSTED REPRESENTS THE FOLLOWING AS STATED IN
PARAGRAPH 19 OF THIS CONSENT DECREE:

ATTACHMENT A

1. North Olmsted completed design of the dechlorination facilities stipulated under Part I, C., Schedule of Compliance, Paragraph 2 of the 1988 NPDES Permit, in October 1991.

2. North Olmsted took beneficial occupancy of the dechlorination facilities stipulated under Part I, C., Schedule of Compliance, Paragraph 2 of the 1988 NPDES Permit, on April 8, 1992.

3. North Olmsted completed the Immediate Operational Improvements Report in March 1992 and completed implementation of the recommended operational improvements by July 1992.

4. North Olmsted submitted a facilities plan update along with reports regarding three pilot tests on March 17, 1993. The facilities plan was prepared in response to a requirement contained in the August 13, 1991 Compliance Evaluation Inspection completed by the Ohio EPA.

5. North Olmsted initiated the design of the Bid Package No. 2 on March 15, 1993 which contains the existing wet stream and odor control systems improvements recommended in the March 1993 North Olmsted Facilities Plan Update Report.

6. North Olmsted obtained a Permit to Install from the Ohio EPA on January 14, 1994 for Bid Package No. 2 and initiated construction of Bid Package No. 2 on June 3, 1994.

7. North Olmsted submitted a study for copper sources within the North Olmsted sanitary sewer system service area on June 10, 1993 as required by a March 26, 1993 Director's Findings and Orders.

8. North Olmsted submitted a study for mercury sources within the North Olmsted sanitary sewer system service area on August 15, 1993 as required by a March 26, 1993 Director's Findings and Orders.

9. North Olmsted initiated construction of Sanitary Sewer System Rehabilitation Phase A in 1985 and completed construction of both phases of Phase A by March 1990.

10. North Olmsted initiated construction of Sanitary Sewer System Rehabilitation Phase B-90 in September 1990 and completed construction of both portions of the Phase B-90 construction by June 1992.

11. North Olmsted initiated construction of Sanitary Sewer System Rehabilitation Phase C in July 1992 and completed construction of the Phase C construction in April 1993.

12. North Olmsted initiated construction of Sanitary Sewer System Rehabilitation Phase D in December 1992 and completed construction of the Phase D construction in August 1993.

13. North Olmsted initiated construction of Sanitary Sewer System Rehabilitation Phase E in June 1993 and substantially completed construction of the Phase E construction in April 1994.

14. North Olmsted initiated construction of Sanitary Sewer System Rehabilitation Phase F in September 1994 and has scheduled completion of Phase F in May 1995.

15. North Olmsted's total expenditure for the sanitary sewer system rehabilitation described in paragraphs 9 through 14 above totals 13.5 million dollars.

16. North Olmsted has submitted the quarterly progress reports to the Ohio EPA regarding the progress of the North Olmsted Sanitary Sewer System Rehabilitation Program starting with Report No. 1 dated November 1, 1990 as required by the June 21, 1991 Director's Findings and Orders.

17. North Olmsted installed new sodium aluminate feed pumps' gear boxes during December 1993 and reached operational attainment of the modified sodium aluminate feed pumps in January 1994.

18. North Olmsted installed new sodium aluminate day tank metering equipment in July 1994 and reached operational attainment of the metering equipment in September 1994.