

IN THE COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO
GENERAL TRIAL DIVISION

COMMON PLEAS COURT
1989 OCT 17 PM 2 40
CLERK OF COURT
CLEVELAND, OHIO

STATE OF OHIO, ex rel. : CASE NO. 89-CV-110421
LEE FISHER, ATTORNEY GENERAL, :
STATE OF OHIO, : JUDGE
 : EDWARD EMMETT O'FARRELL
 :
PLAINTIFF :
 :
 : JUDGMENT ENTRY-PLAINTIFF'S
 : 11/13/89 COMPLAINT FOR
 : INJUNCTIVE RELIEF AND CIVIL
vs. : PENALTY CONSIDERED-REQUESTS
 : FOR INJUNCTIVE RELIEF AND
 : CIVIL PENALTY GRANTED-
 : COMPLIANCE SCHEDULE ORDERED-
TWIN CITY WATER AND : COSTS ASSESSED AGAINST
SEWER DISTRICT, : DEFENDANT-NO JUST CAUSE FOR
 : DELAY (RULE 54[B], OHIO RULES
 : OF CIVIL PROCEDURE)-CLERK TO
DEFENDANT : CLOSE CASE FILE AND REMOVE
 : FROM PENDING CASE DOCKET
 :

Based upon the Findings of Fact and Conclusions of Law contained in the Decision in this case authored under separate cover and which is incorporated herein by reference as if fully rewritten, the Court

FINDS that the Findings of Fact and Conclusions of Law contained in the Decision authored under separate cover are hereby incorporated herein by reference as if fully rewritten and adopted herein by the Court as its Findings of Fact and Conclusions of Law.

FINDS that Plaintiff's 11/13/89 Complaint for Injunctive Relief and Civil Penalty has been proved by a preponderance of the evidence and the relief requested should be Granted.

FINDS that the Compliance Schedule contained in the Plaintiff's Post-Trial Brief filed on 1/28/94 is incorporated herein by reference as if fully rewritten.

It is therefore

ORDERED, ADJUDGED AND DECREED that the Findings of Fact and Conclusions of Law contained in the Decision authored under separate cover in this case are adopted as the Findings of Fact and Conclusions of Law of the Court in this litigation.

ORDERED, ADJUDGED AND DECREED that as and for Injunctive Relief sought by the Plaintiff in this case the Defendant is required to follow and meet all of the requirements of the Compliance Schedule set forth below.

ORDERED, ADJUDGED AND DECREED that as and for a Civil Penalty for the various and multiple violations by the Defendant of Sections 6111.04 and 6111.07, Ohio Revised Code, and as provided in Section 6111.09, Ohio Revised Code, a Civil Penalty of Fifty Thousand Dollars (\$50,000.00) is entered against the Defendant

and shall be paid at the rate of Ten Thousand Dollars (\$10,000.00) per year commencing 1/1/95 and with each Ten Thousand Dollars (\$10,000.00) annual installment to be paid on the first day of the first month of each succeeding year until paid in full.

ORDERED, ADJUDGED AND DECREED that the Defendant is hereby enjoined from further violations of Sections 6111.04 and 6111.07, Ohio Revised Code, and lawful Orders of the Director of Environmental Protection, State of Ohio, except as allowed in the Compliance Schedule set forth in the next Order, below.

ORDERED, ADJUDGED AND DECREED that the following Compliance Schedule is issued directing the Defendant to attain full compliance with its NPDES Permits:

COMPLIANCE SCHEDULE

Defendant shall complete the following within six (6) months of the journalization of this Judgment Entry:

1. Correct all collection system defects identified in the 1984 SSES (Ex. 130) which have not already been corrected, e.g. downspouts, area drains, storm sewer cross connections, etc. To assure implementation of this Order, Defendant shall submit a report, within six (6) months of the journalization of this Judgment Entry, to Ohio EPA's Southeast District listing all work which was completed.
2. Implement a comprehensive collection system maintenance program. To implement

this Order, the Defendant shall submit an approvable collection system maintenance manual, within six (6) months of the journalization of this Judgment Entry, to Ohio EPA's Southeast District Office. This manual shall provide for a comprehensive collection system program and list the equipment, e.g. smoke testing equipment, equipment to televise sewers, sewer cleaning equipment, portable flow monitoring equipment, etc. purchased to implement the maintenance program. If Ohio EPA finds deficiencies in the manual, the Defendant shall correct the deficiencies listed by Ohio EPA within thirty (30) days of receipt of notice by Ohio EPA. The Defendant shall operate and maintain the collection system in accordance with the approved manual.

3. Submit an evaluation work plan to evaluate the performance of the collection system during wet weather and high stream flows. Such work plan shall at a minimum provide for the following:

- a. Flow monitoring at key locations.
- b. Precipitation monitoring.
- c. Stream flow monitoring.
- d. An observation plan for all overflows and plant bypasses during wet weather - this plan shall contain all of the monitoring requirements set forth in State's Exhibit 153.
- e. Evaluation of the operation of the combined sewer in downtown Dennison and its impact on the operation of the collection system.
- f. A schedule which shall require completion of the evaluation work by eighteen (18) months after the

journalization of this Judgment Entry.

The Defendant shall submit the work plan, within six (6) months of the journalization of this Judgment Entry, to Ohio EPA's Southeast District Office. If Ohio EPA finds deficiencies in the work plan, the Defendant shall correct the deficiencies listed by Ohio EPA within thirty (30) days of receipt of notice from Ohio EPA.

The Defendant shall complete the following within nineteen (19) months of the journalization of this Judgment Entry:

1. Submit the evaluation report and a work plan for a new Sewer System Evaluation Survey (SSES) to identify remaining significant sources of Inflow/Infiltration in the collection system. The SSES work plan shall at a minimum provide for the following:

- a. Televising of the sewers.
- b. Dye testing.
- c. Smoke testing.
- d. Flow monitoring.
- e. A schedule to complete the work within twenty-eight (28) months of the journalization of this Judgment Entry.

The Defendant shall submit the SSES work plan, within nineteen (19) months of the journalization of this Judgment Entry, to Ohio EPA's Southeast District Office. If Ohio EPA finds deficiencies in the SSES work plan, the Defendant shall correct the deficiencies listed by Ohio EPA within thirty (30) days of receipt of notice from Ohio EPA.

The Defendant shall complete the following within twenty-nine (29) months of the journalization of this Judgment Entry:

1. Submit the SSES final report with a work plan and schedule to correct Inflow/Infiltration problems necessary to eliminate plant bypassing and sewer overflows and to consistently meet final Effluent Limitations at the treatment plant. The Defendant shall submit the work plan, within twenty-nine (29) months of the journalization of this Judgment Entry, to Ohio EPA's Southeast District Office. If Ohio EPA finds deficiencies in the work plan, the Defendant shall correct the deficiencies listed by Ohio EPA within thirty (30) days of receipt of notice from Ohio EPA.

All work plans, manuals and reports approved by Ohio EPA shall become an enforceable part of this Judgment Entry.

ORDERED, ADJUDGED AND DECREED that the costs of this litigation are assessed against the Defendant and shall be paid in full on or before 1/1/95.

ORDERED, ADJUDGED AND DECREED that the Clerk of Courts shall close this case file and remove it from the pending case docket of the Court.

ORDERED, ADJUDGED AND DECREED that there is no just cause for delay pursuant to Rule 54(B), Ohio Rules of Civil Procedure.

IT IS SO ORDERED.

Edward O'Farrell

Edward Emmett O'Farrell, Judge

Date: 10/17/94

cc: Assign. Comm.
Asst. Attys. General Timothy J. Kern and Gertrude Kelly
Atty. Joseph Wheeler

IN THE COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO
GENERAL TRIAL DIVISION

FILED
COMMON PLEAS COURT
'89 OCT 17 PM 2 41
ROCKNE W. CLARKE
CLERK OF COURTS

STATE OF OHIO, ex rel. : CASE NO. 89-CV-110421
LEE FISHER, ATTORNEY GENERAL, :
STATE OF OHIO, : JUDGE
 : EDWARD EMMETT O'FARRELL
PLAINTIFF :
 :
vs. :
 :
TWIN CITY WATER AND :
SEWER DISTRICT, :
 :
DEFENDANT :

DECISION

INTRODUCTION AND STATEMENT OF THE CASE

On 11/13/89 the Plaintiff, Attorney General of the State of Ohio, upon the written request of the Director of Environmental Protection, State of Ohio, filed a Complaint for Injunctive Relief and Civil Penalty. The Complaint was filed to enforce Chapter 6111, Ohio Revised Code, and rules promulgated thereunder. The following general allegations serve to set the backdrop against which the specific causes of action contained in the Complaint are premised:

>Defendant Twin City Water and Sewer District (hereinafter Defendant) is a regional water and sewer district. Defendant is a "person" as defined by Section 6111.01(I), Ohio Revised Code, and Ohio Administrative Code (OAC) 3745-33-01(N).

>Pursuant to Section 6111.03, Ohio Revised Code, Defendant owns and operates a waste water treatment plant at 1580 Boyd Street, Uhrichsville, Ohio. Defendant's waste water treatment plant discharges effluent into Stillwater Creek, which is "waters of the State" as that term is defined in Section 6111.01(H), Ohio Revised Code.

>The effluent discharged from the Defendant waste water treatment plant is "sewage," "industrial waste" and/or "other wastes," as those terms are defined in Section 6111.01, Ohio Revised Code.

>On 8/15/78, the Director of the Ohio Environmental Protection Agency (Director) issued National Pollutant Discharge Elimination System (NPDES) Permit No. D515*BD governing the discharges from Defendant's waste water treatment plant, pursuant to Section 6111.03(J), Ohio Revised Code. A copy of NPDES Permit No. D515*BD was attached as Exhibit A to the Complaint. The expiration date of NPDES Permit No. D515*BD was 8/15/83. Defendant submitted a timely Renewal Application for its permit.

>On 12/1/83, the Director issued NPDES Permit No. OPD00015*CD to Defendant's plant, pursuant to Section 6111.03(J), Ohio Revised Code. A copy of NPDES Permit No. OPD00015*CD was attached as Exhibit B to the Complaint. The expiration date of NPDES Permit No. OPD00015*CD was 7/1/88. Defendant submitted a timely Renewal Application for its permit.

>On 9/25/86, the Director issued NPDES Permit Modification No. OPD00015*DD to Defendant's plant pursuant to Section 6111.03(J), Ohio Revised Code. A copy of NPDES Permit Modification No. OPD00015*DD was attached as Exhibit C to the Complaint. The expiration date of NPDES Permit Modification No. OPD00015*DD was 7/1/88. Defendant submitted a timely Renewal Application for its permit.

>On 7/18/88, the Director issued NPDES Permit No. OPD00015*ED to Defendant's plant, pursuant to Section 6111.03(J), Ohio Revised Code. A copy of NPDES Permit No. OPD00015*ED was attached as Exhibit D to the Complaint. The expiration date of NPDES Permit No. OPD00015*ED was 7/15/93.

>At all times relevant to the Complaint, Defendant was operating its waste water treatment plant pursuant to a permit issued by the Director or had a Renewal Application pending.

Plaintiff then proceeds to allege that the Defendant, from January, 1982, through March, 1993, committed multiple violations of the Effluent Limitations and Monitoring Requirements contained in Defendant's relevant NPDES Permits. The Plaintiff seeks, pursuant to Section 6111.07, Ohio Revised Code, the issuance of an Injunction Ordering the Defendant to attain full compliance with its relevant NPDES Permits. Plaintiff suggests a proposed Compliance Schedule for inclusion in the Injunctive Order to provide for full compliance by the Defendant with its NPDES Permits. Plaintiff seeks the issuance of the Injunction to assure that the Defendant will implement procedures which will reduce the Inflow/Infiltration (I\I) problems at Defendant's treatment plant and which will ultimately result in full compliance by the Defendant with NPDES Permit Requirements at said treatment plant.

The Plaintiff also seeks an Order directing the Defendant to pay a civil penalty to the State of Ohio for water

pollution violations the Plaintiff asserts have been proved at Trial and have been committed by the Defendant in violation, from January, 1982, through March, 1993, of the Effluent Limitations in Defendant's NPDES Permits. This civil penalty is sought pursuant to Section 6111.09, Ohio Revised Code, and is premised upon the alleged violations by the Defendant of its relevant NPDES Permits as well as recalcitrance, defiance and/or indifference to the requirements of state law governing the operation of Defendant's waste water treatment plant. Additionally, Plaintiff seeks a civil penalty against the Defendant for alleged violations by the Defendant of the Director's 12/81 Findings and Orders and the NPDES Compliance Schedule which required that all overflows and bypasses in the Defendant's water and sewer system be eliminated on or before 7/1/88.

Defendant asserts that the type of permit issued to the Defendant by the Director did not properly address the type of water and sewer system actually in existence in the Uhrichsville/Dennison area and, consequently, it was physically impossible for the Defendant to comply with the NPDES Permits issued by the Director and the Director's 12/81 Findings and Orders. As a fallback position, Defendant asserts that it has not been willful or negligent in violations which have occurred and contends that a civil penalty is unnecessary and would "needlessly impair the

efforts of the District to continue its improvements to the system." (See Defendant's Post-Trial Brief at Page 4).

A Bench Trial was commenced on 7/9/91 and evidence/ testimony was presented on subsequent dates of 7/10/91, 2/18/93, 2/19/93, and 6/29/93 when the Trial was concluded. The Plaintiff was represented by Timothy Kern and Gertrude Kelly, Assistant Attorneys General, Office of Attorney General Lee Fisher, Columbus, Ohio. The Defendant was represented by Joseph Wheeler, Attorney at Law, Uhrichsville, Ohio. Subsequent to the conclusion of the Trial in this case, a Post-Trial Briefing Schedule was established to coincide with the preparation and reception by the parties of the transcript of these proceedings. The Plaintiff filed its initial Post-Trial Brief containing proposed Findings of Fact and Conclusion of Law on 1/28/94. Defendant filed its Post-Trial Brief on 2/25/94. Defendant filed what is characterized as a Supplement to Post-Trial Brief on 3/9/94 and on 3/29/94 Plaintiff filed a Reply seeking an Order striking Defendant's 3/9/94 Supplement to Post-Trial Brief for failure to comply with Rules 901(B)(7) and 8038, Ohio Rules of Evidence. The Court has read the Post-Trial Briefs, etc. and has reviewed the voluminous transcript of these proceedings. It is now prepared to enter Findings of Fact, Conclusions of Law, and Final Orders in this case.

FINDINGS OF FACT

1. Defendant committed in excess of two thousand (2,000) NPDES Effluent violations from January, 1982, until March, 1993.
2. Defendant violated the Director's December, 1981, Findings and Orders from April, 1982, until early 1988.
3. Defendant has violated the requirement in its 1986 NPDES Modified Permit and 1988 NPDES Permit to eliminate, by 7/1/88, overflows and bypasses in its system and to attain, by 7/1/88, full compliance with final Effluent Limitations.
4. Defendant conducted a 1984 Sewer System Evaluation Survey which identified sources of Inflow/Infiltration (I/I) and recommended corrective measures.
5. After the 1984 Sewer System Evaluation Survey was approved, Defendant received a federal grant to pay for the cost of some of the I/I reduction, plant upgrades and additional sewers.
6. The federal grant, which totaled 4.8 Million Dollars, provided Defendant with funds to reduce I/I.
7. Continuous high flows are still received at the Defendant's treatment plant.
8. The excessive high flows force Defendant to bypass secondary treatment at the plant, which is prohibited by Defendant's NPDES Permit. This bypass action taken by Defendant is to avoid a washout or overload of the secondary treatment capability.
9. The excessive high flows, which are diluted with rainwater or streamwater, also prevent the plant from properly treating the sewage received at the plant and cause violations of NPDES Permit Effluent Loading Limitations and the NPDES Permit requirement to remove 85% of the pollutants from the sewage received at Defendant's treatment plant.
10. Sufficient Inflow/Infiltration reduction will reduce flows to the treatment plant and should permit Defendant to eliminate all overflows and bypasses and to attain compliance with all final Effluent

Limitations including Loading Limitations and the NPDES 85% Removal Requirement.

11. Recommendations in the 1984 Sewer System Evaluation Survey (SSES) to reduce I/I relied on Defendant's Plant Inflow Records which the Director had reason to believe were accurately reflecting the actual flows received at Defendant's plant.

12. Defendant's treatment Plant Inflow Records were not accurate because Defendant never recorded the bypassing that was occurring at the plant during high flow periods.

13. The monitoring of the Defendant's plant bypass was never done despite the fact that the Defendant's 1978 and 1983 NPDES Permits specifically required the volume of the then allowed plant bypass to be estimated during each discharge event.

14. During the time the Defendant was receiving the federal grant to which reference has been made above, the Defendant's NPDES Permit was modified in 1986 to require the elimination of all overflows and bypasses by 7/1/88.

15. The 7/1/88 deadline for elimination of all overflows and bypasses was a mandate of the Federal Clean Water Act which the State of Ohio implemented in the NPDES Permits issued to the Defendant.

16. Other municipal water and sewer authorities comparable to the Defendant and some smaller than the Defendant received Compliance Schedules similar to that issued to the Defendant in order to eliminate overflows and bypasses in their systems. The compliance date was 7/1/88.

17. The federal government provided federal grant funds to communities in order to eliminate overflows and bypasses by 7/1/88. These funds were awarded in Ohio by the Ohio Environmental Protection Agency, Division of Construction Grants.

18. Despite the fact that the Defendant conducted the studies which were the prerequisite to receiving the federal funds indicated, supra, and despite the fact that the Defendant received 4.8 Million Dollars in

federal grant funds, the Defendant has failed to adequately reduce Inflow/Infiltration and to eliminate overflows and bypasses in its water/sewer system.

19. A small area in downtown Dennison, Ohio, is the only area in the Defendant's collection system that has combined sewers. The remainder of the Defendant's collection system is served by separate sanitary sewers and storm sewers.

20. Excessive flows experienced at the Defendant's plant are not coming from the combined sewers in its system.

21. The Effluent parameters in Defendant's NPDES Permits have been set at certain limits so that federal secondary treatment standards are met.

22. Pursuant to federal secondary treatment standards, all dischargers are limited to the amount of suspended solids which may be discharged because suspended solids is a pollutant of genuine and great concern. Excessive amounts of suspended solids cause sludge deposits in a receiving screen or create an excessive oxygen demand in the stream. Depleted oxygen in a stream can kill fish and other aquatic organisms.

23. Certain parameters in the Defendant's NPDES Permits, such as fecal coliform, ammonia and carbonaceous biochemical oxygen demand (CBOD-5) were set at more stringent limits than federal secondary standards in order to protect the water quality requirements of Stillwater Creek, the receiving stream into which the Defendant's treatment plant discharges.

24. Stillwater Creek is classified as a warm water habitat and the Defendant's discharges of fecal coliform, ammonia and CBOD-5 were all given more stringent limitations in order to protect the warm water quality of Stillwater Creek.

25. Degradation of the water quality of Stillwater Creek was caused by the Defendant's treatment plant discharges.

26. Defendant has caused degradation in Stillwater Creek and Defendant's continued excessive discharges of such pollutants as suspended solids, fecal coliform and

ammonia have created an environmental risk to Stillwater Creek.

27. In May 1981 an Inspector of the Ohio Environmental Protection Agency found several treatment units out of operation at the Defendant's plant. After this inspection, the Director, in 12/81, issued Findings and Orders (Plaintiff's Exhibit 133) stating that the Defendant was in violation of water pollution requirements and Ordered the Defendant to make improvements to its plant, within ninety (90) days, to correct said violations. Despite a January, 1982, letter from Defendant's agent to the Director, promising to make repairs to the plant in 1982, the plant remained in a state of disrepair until 1988.

28. During six (6) inspections from January, 1982, through August, 1987, an agent of the Ohio Environmental Protection Agency found treatment tanks and other plant equipment broken, not working properly or, simply, out of operation. Inspection reports authored by the agent of the Ohio Environmental Protection Agency reflected these findings and said reports were forwarded by the Ohio Environmental Protection Agency to the Defendant's agent.

29. After the plant upgrade in 1988, the Defendant had still not achieved compliance as required.

30. Commencing in May, 1981, and continuing through Trial, the Defendant has failed to meet the requirements of the water pollution laws and the multiple violation notices and inspections issued by the Ohio Environmental Protection Agency.

31. The Defendant did not make plant repairs of its treatment plant until 1988 when it received the federal grant funds.

32. The Defendant's Trunk Sewer Project will have a positive and beneficial impact on the Inflow/Infiltration problems, the main reason Defendant is currently not in compliance with Ohio and federal law.

33. The economic benefit for the delay by the Defendant in implementing the \$360,000.00 Trunk Sewer Project for a period of sixty-one (61) months, i.e., from 7/1/88 (compliance deadline) until 8/93 (projected trunk sewer

completion date) is \$224,256.00. (See Transcript Volume 5, Pages 808 and 809; Transcript Volume 5, Pages 918 through 924; Exhibit 174; Transcript Volume 3, Pages 593 through 594).

34. In determining the economic benefit of \$224,256.00, Ohio Environmental Protection Agency Economist Hogan used the USEPA-BEN Computer Model.

35. The State of Ohio has incurred extraordinary enforcement costs in litigating this lawsuit against the Defendant.

36. The Defendant has an economic/financial capability to pay a civil penalty of Fifty Thousand Dollars (\$50,000.00).

37. Defendant's violations of the Director's 12/81 Findings and Orders constitute an additional 2,000 plus violations of Chapter 6111, Ohio Revised Code.

38. Defendant's violations of the NPDES requirement to eliminate overflows and bypasses and to attain compliance with final Effluent Limitations by 7/1/88 constitute additional violations of Chapter 6111, Ohio Revised Code.

CONCLUSIONS OF LAW

1. The NPDES Effluent Limitation violation committed by the Defendant (in excess of 2,000) are prohibited by Sections 6111.04 and 6111.07, Ohio Revised Code.

2. Pursuant to Section 6111.09, Ohio Revised Code, the Defendant's NPDES Effluent Limitation violations can be penalized up to Ten Thousand Dollars (\$10,000.00) for each violation.

3. Defendant's failure to comply with the 12/81 Findings and Orders issued by the Director of the Ohio Environmental Protection Agency is prohibited by Section 6111.07, Ohio Revised Code.

4. Pursuant to Section 6111.09, Ohio Revised Code, Defendant's violations of the Director's 12/81 Findings

and Orders can be penalized up to Ten Thousand Dollars (\$10,000.00) for each violation.

5. Defendant's failure to eliminate overflows and bypasses and to attain compliance with final Effluent Limitations by 7/1/88 is prohibited by Section 6111.07, Ohio Revised Code.

6. Pursuant to Section 6111.09, Ohio Revised Code, Defendant's violations of its NPDES Permit requirement to eliminate overflows and bypasses and to attain compliance with final Effluent Limitations by 7/1/88 can be penalized up to Ten Thousand Dollars (\$10,000.00) for each violation.

7. Based on the provisions of Section 6111.09, Ohio Revised Code, and the Civil Penalty Assessment Factors of harm or risk of harm to the environment, recalcitrance and indifference to the law, in economic benefit and extraordinary state enforcement costs, the Defendant could be Ordered to pay a civil penalty of Two Million Six Hundred Eighty-Eight Thousand Dollars (\$2,688,000.00).

8. Based on the provisions of Section 6111.09, Ohio Revised Code, and all of the Civil Penalty Assessment Factors, including ability to pay, the Defendant should be Ordered to pay a civil penalty of Fifty Thousand Dollars (\$50,000.00).

9. Based on the authority of Section 6111.07, Ohio Revised Code, and further based or premised upon the fact that the Defendant has been and is violating or threatening to violate the terms and conditions of its NPDES Permits, an Injunction Order should issue to the Defendant requiring the following:

>Attainment of complete compliance with all Effluent Limitations in the Defendant's currently effective NPDES Permit.

>Elimination of all overflows and bypasses in the Defendant water/sewer system as required by the Compliance Schedules in the Defendant's 1986 Modified NPDES Permit and its 1988 NPDES Permit.

>Attainment and/or maintaining complete compliance with all terms and conditions in the Defendant's NPDES Permit currently in effect.

10. To achieve implementation, *supra*, the Injunctive Order to be issued by this Court should Order the Defendant to implement the Compliance Schedule set forth by the Plaintiff at Section II of its Brief which this Court finds to be reasonable and necessary. During the implementation of the Compliance Order, the Defendant should not be required to meet the Effluent Loading Limitations and the 85% Removal Requirement. However, during the implementation of the Compliance Schedule, all other current NPDES Permit requirements should be met, including, but not limited to, Effluent Concentration Limitations. Upon completion of the Compliance Schedule, the Defendant shall have eliminated all overflows and bypasses and attained full compliance with all Effluent Limitations, including Loading Limitations and the 85% Removal Requirement.

11. This Court has no authority to issue Orders modifying or vacating terms and conditions of an NPDES Permit. Pursuant to Sections 3745.04 and 3745.05, Ohio Revised Code, the Environmental Board of Review has exclusive jurisdiction in the first instance to modify and/or vacate an NPDES Permit. If, pursuant to Section 3745.04, Ohio Revised Code, an entity such as the Defendant fails to appeal to the Environmental Board of Review, its right to have an NPDES Permit modified or vacated has been waived.

CONCLUSION

For the reasons set forth above and based upon the Findings of Fact and Conclusions of Law, *supra*, Plaintiff's request for Orders issuing Injunctive Relief and assessing a civil penalty against the Defendant contained in its Complaint filed 11/13/89 should be Granted. The Compliance Schedule

offered by the Plaintiff in its Post-Trial Brief having been found to be reasonable and necessary should be adopted by the Court in its Orders which will follow under separate cover.

Edward O'Farrell

Edward Emmett O'Farrell, Judge

Date: 10/17/94

cc: Asst. Atty. Generals Timothy J. Kern and Gertrude Kelly
Atty. Joseph Wheeler