

**FILED**

JUN - 7 1994  
COLUMBIANA COUNTY  
COMMON PLEAS COURT  
ANTHONY J. DATTILIO, CLERK

IN THE COURT OF COMMON PLEAS  
COLUMBIANA COUNTY, OHIO

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

CASE NO. 92-CIV-10

JUDGE DAVID TORBIN

*Plaintiff,*

*vs.*

MOTION FOR MODIFIED  
CONSENT ORDER

VILLAGE OF WASHINGTONVILLE

*Defendant.*

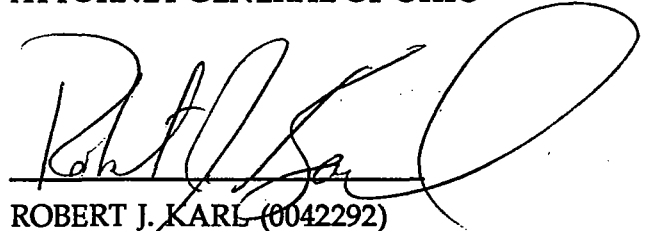
On January 8, 1992, a Complaint in the above-captioned matter was filed with this Court, and Plaintiff State of Ohio by its Attorney General Lee Fisher (hereinafter "Plaintiff" or "State of Ohio") and Defendant Village of Washingtonville (hereinafter "Washingtonville"), consented to the entry of a Consent Order. On January 13, 1992, the Court entered an Order for injunctive relief permanently enjoining Washingtonville to operate its wastewater treatment plants and sewer system in compliance with Chapter 6111 and the rules promulgated thereunder. Following the filing of the Order, the parties in this action filed a second Consent Order modifying the completion dates in Section V., Construction Schedule, of the original Consent Order. The second modified Consent Order was signed by this Court and filed with the Columbiana County Clerks office on April 28, 1992.

Washingtonville has failed to comply with, and is in contempt of such Orders of this Court. In order to, purge this contempt, Washingtonville shall comply with the terms of this Modified Consent Order (hereinafter "Modified Consent Order"), and shall pay the civil penalty contained in this Modified Consent Order. The terms of this Modified Consent Order shall supersede and replace the January 13, 1992 and April 28, 1992 Orders of this Court.

The parties herein agree that the Consent Orders entered on January 13, 1992 and April 28, 1992, should be modified with the Court's permission and pursuant to Provision XII of the underlying Consent Orders. Defendant has represented to Plaintiff that they believe that they have the resources to accomplish and comply with the terms of a new modified Construction Schedule as set forth at Section V., paragraph 5.

For the foregoing reasons, the State of Ohio moves the Court for the issuance of the Modified Consent Order enjoining Washingtonville to operate its wastewater treatment plants and sewer system in compliance with Ohio Revised Code Chapter 6111, the rules promulgated thereunder, and the Construction Schedule as set forth in the Modified Consent Order.

Respectfully Submitted,  
**LEE FISHER**  
**ATTORNEY GENERAL OF OHIO**

A handwritten signature in black ink, appearing to read "Robert J. Karl", written over a horizontal line.

**ROBERT J. KARL (0042292)**  
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street  
Columbus, Ohio 43266-0410  
(614) 466-2766

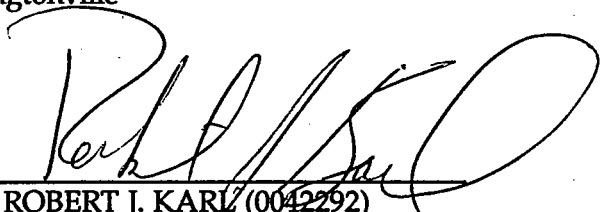
Counsel for Plaintiff  
State of Ohio

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing State of OHIO's MOTION TO MODIFY  
CONSENT ORDER was forwarded by regular U.S. Mail, postage prepaid, on this  
2<sup>nd</sup> day of June, 1994, to:

RICHARD C. SHELAR (0002976)  
Village Solicitor  
252 Main Street  
P. O. Box 231  
Leetonia, Ohio 44431-0231

Authorized Representative of  
Village of Washingtonville



ROBERT J. KARL (0042292)  
Assistant Attorney General  
Environmental Enforcement Section



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STATE OF OHIO,  
ex rel, LEE FISHER  
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*Plaintiff,*

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MODIFIED  
CONSENT ORDER

VILLAGE OF WASHINGTONVILLE

*Defendant.*

On January 8, 1992, a Complaint in the above-captioned matter was filed herein, and Plaintiff State of Ohio by its Attorney General Lee Fisher (hereinafter "Plaintiff" or "State of Ohio") and Defendant Village of Washingtonville (hereinafter "Washingtonville"), consented to the entry of a Consent Order. On January 13, 1992, the Court entered an Order for injunctive relief in the above-captioned case permanently enjoining Washingtonville to operate its wastewater treatment plants and sewer system in compliance with Chapter 6111 and the rules promulgated thereunder. Following the filing of the Order, the parties in this action filed a second Consent Order modifying the completion dates in Section V., Construction Schedule, of the original Consent Order. The second modified Consent Order was signed by this Court and filed with the Columbiana County Clerks office on April 28, 1992. Washingtonville has failed to comply with, and is in contempt of such Orders of this Court. In order to, purge this contempt, Washingtonville shall comply with the terms of this Modified Consent Order (hereinafter "Modified Consent Order"), and shall pay the civil penalty contained in this Modified Consent Order. The terms of this Modified Consent Order shall supersede and replace the January 13, 1992 and April 28, 1992 Orders of this Court. The State of Ohio and the Village of Washingtonville and the Mayor and members of the Village Council of Washingtonville and their successors have consented to the entry of this Modified Consent Order.

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

**I. JURISDICTION AND VENUE**

1. The Court has jurisdiction over the parties and the subject matter of this action, pursuant to R.C. Chapter 6111 and the rules adopted thereunder. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 6111 of the Ohio Revised Code, and venue is proper in this Court.

## **II. PARTIES BOUND**

2. The provisions of this Modified Consent Order shall apply to and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest, and any person acting in concert, privity or participation with any of them, who receives actual notice of this Modified Consent Order whether by personal service or otherwise. Defendant Washingtonville shall provide a copy of this Modified Consent Order to each contractor they employ to perform work itemized herein, and each general contractor shall provide a copy of this Modified Consent Order to each of its subcontractors for such work.

## **III. SATISFACTION OF LAWSUIT**

3. Plaintiff alleged in its Complaint filed with this Court on January 8, 1992, and Motion to Modify Consent Order filed with this Modified Consent Order that Defendant operated its wastewater treatment plants and sewer system in such a manner as to result in numerous violations of the discharge limitations and monitoring requirements of the NPDES Permits issued to it by the Director of Ohio EPA and in violation of Chapter 6111. of the Ohio Revised Code and regulations promulgated thereunder by the Director of the Ohio Environmental Protection Agency. Compliance with the terms of this Modified Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims under such laws alleged in the Complaint and any civil liability resulting from Defendant's contempt of the January 13, 1992 and April 28, 1992 Orders of this Court which occurs before the filing of this Modified 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 this Modified Consent Order.

## **IV. COMPLIANCE SCHEDULE**

4. Defendant Washingtonville 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 Permits, and any renewals or modifications thereof, except for the final effluent limitations set forth in said permits. Between the effective date of this Modified Consent Order and December 31, 1995, Defendant is enjoined to comply with the interim effluent limitations set forth in Appendix "A" and Plant bypass reporting requirements of Appendix "B" attached hereto. The interim effluent limits contained in Appendix "A" do not constitute a NPDES Permits or a modification of any existing permit. After, December 31, 1995, Defendant Washingtonville is

enjoined to meet the final effluent standards set forth in its NPDES Permit No. 3PB00051\*ED and any renewals or modifications thereof. After, December 31, 1995, Defendant Washingtonville is enjoined to prevent and prohibited from allowing Plant bypasses and overflows from its wastewater treatment plant. Defendant Washingtonville is hereby Enjoined and Ordered to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

**V. CONSTRUCTION SCHEDULE**

5. Defendant Washingtonville is Enjoined and Ordered to eliminate discharges from overflows and bypasses from its sanitary sewer system and to complete construction of the improvements to its wastewater treatment plants and to attain compliance with the final effluent limitations of NPDES Permit No. 3PB00051\*ED, and any modifications or renewals thereof in accordance with the following schedule:

<u>TASK</u>	<u>PHASE I</u>	<u>COMPLETION DATE</u>
<i>(Wastewater Treatment Plant Improvements)</i>		
(a)	Advertisement of Bids	December 28, 1993
(b)	Receive Bids	May 1, 1994
(c)	Execution of Building Contracts	June 1, 1994
(d)	Initiation of Construction	June 1, 1994
(e)	Completion Of Construction Of Sufficient Wetstream Treatment Facility	October 15, 1994
(f)	To Ensure, attain and maintain Compliance With Final Effluent Limits And The Elimination Of Bypasses And Overflows	December 31, 1995
 <b><u>PHASE II</u></b>		
<i>(Pump Station and Collection System Improvements)</i>		
(g)	Submittal Of A PTI Application And Detailed Plans For Pump Stations	July 1, 1994
(h)	Initiation Of Construction of all pump stations and collection system improvements	January 15, 1995
(i)	Phase II Completion Of Construction	December 31, 1995
(j)	Eliminate Bypasses And Overflows	December 31, 1995

6. Within seven (7) days from each completion date listed above, Defendant Washingtonville shall submit a written report stating whether or not Defendant Washingtonville has performed the action set forth therein to Ohio EPA's Northeast District Office, to the attention of Enforcement Section Group Leader.

7. This Modified 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.

#### **VI. SUBMITTAL OF DOCUMENTS**

8. All required documents shall be submitted to:

Ohio EPA  
Northeast District Office  
2110 E. Aurora Road  
Twinsburg, Ohio 44087-1969  
Attn: Enforcement Section Group Leader.

#### **VII. PAYMENT OF CIVIL PENALTY**

9. Defendant Washingtonville shall pay to the State of Ohio a civil penalty in the amount of FIVE THOUSAND DOLLARS (\$5,000.00). The penalty shall be paid by delivering to Plaintiff, c/o Matt Sanders, Administrative Assistant, or his successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, a certified check in that amount, payable to the order of "Treasurer, State of Ohio," within forty-five (45) days from the date of entry of this Modified Consent Order.

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

10. In the event that Defendant fails to meet any of the requirements of this Modified Consent Order set forth in Paragraphs 4, 5(a) through (i) including any scheduled milestone requirement, the Defendants shall immediately and automatically, be liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of each failure to meet a requirement, up to thirty (30) days – Five hundred Dollars (\$500.00) per day for each requirement not met. For each day of each failure to meet a requirement, from thirty-one (31) to



sixty (60) days – One Thousand Dollars (\$1,000.00) per day for each requirement not met. For each day of each failure to meet a requirement, from sixty-one (61) to ninety (90) days – One Thousand Five Hundred Dollars (\$1,500.00) per day for each requirement not met. For each day of each failure to meet a requirement, over ninety (90) days – Two Thousand Five Hundred Dollars (\$2,500.00) per day for each requirement not met.

11. In the event that Defendant Washingtonville fails to meet the requirements of this Modified Consent Order set forth in Subparagraph 5(i), the Defendant shall immediately and automatically be liable for and pay a stipulated penalty of Two Thousand Five Hundred Dollars (\$2,500.00) per day for each requirement not met. The Defendant shall be liable for an additional penalty of One Thousand Dollars (\$1,000.00) per day of each violation if the failure to comply continues for more than thirty (30) days, i.e. Three Thousand Five Hundred Dollars (\$3,500.00) per day for each violation. In the event that failure to comply with the requirements of Subparagraph 5(i) continues for more than sixty (60) days, Defendant shall be liable for an additional One Thousand Five Hundred Dollars (\$1,500.00) per day of each violation, i.e., Five Thousand Dollars (\$5,000.00) per day for each violation.

12. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by the Plaintiff for specific violations pursuant to this provision shall not be construed to limit the Plaintiff's authority to seek additional relief pursuant to R.C. Chapter 6111 or to otherwise seek judicial enforcement of this Modified Consent Order.

13. Any stipulated penalty required to be made under this provisions of Paragraphs 8 or 9 of this Modified Consent Order shall be paid by delivering to Plaintiff, c/o Matt Sanders, Administrative Assistant, or his successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, a certified check in the amount of the stipulated penalty, payable to the order of "Treasurer, State of Ohio," within thirty (30) days from the date of the failure to meet the requirement(s) of this Modified Consent Order.

#### **IX. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND APPROVALS**

14. All activities undertaken by Defendant pursuant to this Modified Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state and local

laws, rules and regulations, and permits. For work both on and off the Facilities (Wastewater Treatment Plant, Pump Station, and Collection System Improvements), Defendant shall obtain all permits or approvals necessary under applicable federal, state or local laws, and shall submit timely applications and requests for any such permits and approvals. Where such laws appear to conflict with the other requirements of this Modified Consent Order, Defendant shall immediately notify Ohio EPA of the potential conflict. Defendant shall include in all contracts or subcontracts entered into for work required under this Modified Consent Order, provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and rules. This Modified Consent Order is not a permit issued pursuant to any federal, state or local law or rule.

#### **X. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS**

15. Performance of the terms of this Modified Consent Order by Defendant Washingtonville is not conditioned on the receipt of any Federal or State grant funds or loans. In addition, Defendant Washingtonville's performance is not excused by the failure to obtain or shortfall of any Federal or State grant funds or loans, or by the processing of any application for the same.

#### **XI. PLAINTIFF'S ENFORCEMENT COSTS**

16. For Plaintiff's litigation costs in investigating and prosecuting this case, Defendant shall reimburse the Attorney General's Office in the amount of Five Hundred Dollars (\$500.00). This reimbursement shall be paid by delivering a certified check for that amount payable to the order of "Treasurer, State of Ohio," within seven (30) days of entry of this Order in the manner provided for in Provision VII, paragraph 9 above.

#### **XII. POTENTIAL FORCE MAJEURE**

17. If any event occurs which causes or may cause a delay of any requirement of this Modified Consent Order, Washingtonville shall notify the Ohio EPA, Division of Water Pollution Control, Enforcement Coordinator, 1800 WaterMark Drive, Columbus, Ohio 43215, 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 Washingtonville to prevent or minimize the delay and the timetable by which measures will be implemented.

18. In any action by the State of Ohio to enforce any of the provisions of this Modified

Consent Order, Washingtonville may raise that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war, civil disturbances and orders of any regulatory agency. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed upon by Washingtonville 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 that an action to enforce the terms of this Modified Consent Order is commenced by Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances beyond the control of Washingtonville shall rest with Washingtonville. Unanticipated or increased costs associated with the implementation of any action required by this Modified Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Washingtonville or serve as a basis for an extension of time under this Modified Consent Order. Acceptance of this Modified Consent Order without a force majeure clause does not constitute a waiver by Washingtonville of any rights or defense it may have under applicable law, except that, failure by Washingtonville to comply with the notice requirements of paragraph 15 shall render this paragraph void and of no force and effect as to the particular incident involved.

### **XIII. TERMINATION OF STIPULATED PENALTIES**

19. The provisions of this Modified Consent Order set forth in Section VIII, paragraphs 10 and 11, requiring payment of stipulated penalties, shall terminate if Defendant Washingtonville has paid all penalties required pursuant to this Modified Consent Order and has completed all construction required under Section V., and has achieved and maintained compliance with the final effluent limitations contained in its NPDES permit No. 3PB00051\*ED, and any renewals or modifications thereof, for a period of one (1) year, commencing December 31, 1995, or for any one (1) year period thereafter. Termination of the aforementioned stipulated penalties shall only be effected by Order of the Court upon application by any party containing a demonstration that the two (2) conditions set forth in this paragraph have been met, and a determination that by the Court that the two conditions have been met.

### **XIV. RETENTION OF JURISDICTION**

20. This Court will retain jurisdiction of this action for the purpose of enforcing compliance with this Modified Consent Order.

**XV. COSTS**

21. Defendant Washingtonville is hereby ordered to pay all court costs of this action.

**XVI. MODIFIED CONSENT ORDER**

22. This Modified Consent Order entered into between the parties represents the entire understandings between the parties and supersedes any earlier verbal or written communications regarding same. This Modified Consent Order will supersede the Consent Orders entered into and filed on January 17, 1992 and April 28, 1992 respectively.

**XVII. ENTRY OF MODIFIED CONSENT ORDER AND FINAL JUDGMENT BY CLERK**

23. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Modified Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three days of entering the judgment upon the journal, the clerk is hereby directed to serve upon all parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

DATED 6-7, 1994

**DAVID TOBIN**

JUDGE,  
COLUMBIANA COUNTY  
COURT OF COMMON PLEAS

State of Ohio  
Columbiana County SS

} I, **ANTHONY J. DATTILIO**, Clerk of Court of Common Pleas

within and for the County of Columbiana and the State of Ohio, do hereby certify that the foregoing is truly taken and copied from the original, now on file in said Clerk's office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court, at Lisbon, Ohio

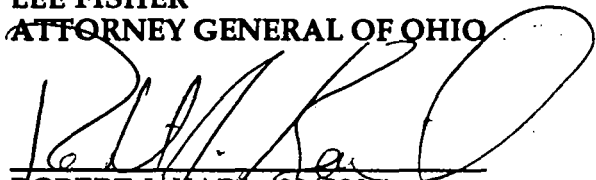
this 7<sup>th</sup> day of June, 1993

**ANTHONY J. DATTILIO**, Clerk

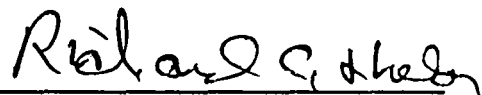
Rose Anna Deputy

**APPROVED:**

**LEE FISHER  
ATTORNEY GENERAL OF OHIO**



**ROBERT J. KARL (0042292)**  
Assistant Attorney General  
Environmental Enforcement Section  
30 East Broad Street - 25th Floor  
Columbus, Ohio 43266-0410  
(614) 466-2766  
Counsel for Plaintiff  
State of Ohio



**RICHARD C. SHELAR (0002976)**  
Village Solicitor  
252 Main Street  
P. O. Box 231  
Leetonia, Ohio 44431-0231  
Authorized Representative of  
Village of Washingtonville



**PATRICK C. SNOW, MAYOR**  
Authorized Representative of  
Village of Washingtonville

**APPENDIX A  
Village of Washingtonville**

**INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

NPDES Permit No. 3PB00051\*ED  
Outfall 001

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
<u>Reporting Code</u>	<u>Units</u>	<u>Parameter</u>	<u>Concentration Other Units (Specify)</u>		<u>Loading Kg/Day</u>		<u>Meas. Freq.</u>	<u>Sample Type</u>
			<u>30 Day</u>	<u>7 Day</u>	<u>30 Day</u>	<u>7 Day</u>		
00010	°C	Temperature	-	-	-	-	Daily	Grab
00530	mg/l	Suspended Solids						
		(Summer)	30	40	-	-	2/week	Composite
		(Winter)	40	55	-	-	2/week	Composite
00556	mg/l	Oil & Grease	Not to exceed 10 at any time				1/qtr.	Grab
00610	mg/l	Ammonia (N)						
		(Summer)	5.7	8.6	-	-	2/month	Composite
		(Winter)	-	-	-	-	2/month	Composite
31616	Count /100mi	Fecal Coliform (Summer only)	1000	2000	-	-	1/week	Grab
50050	MGD	Flow	-	-	-	-	Daily	Continuous
80082	mg/l	CBOD <sub>5</sub>						
		(Summer)	25	33	-	-	2/week	Composite
		(Winter)	35	50	-	-	2/week	Composite

1. The pH (Reporting Code 00400) shall not be less than 6.5 S.U. nor greater than 9.0 S.U. and shall be monitored daily by grab sample.
2. If the entity uses chlorine for disinfection, the Chlorine Residual (Reporting Code 50060) shall be maintained at a level not to exceed 0.5 mg/l and shall be monitored daily by grab sample. (Summer only)\*\*
3. The Dissolved Oxygen (Reporting Code 00300) shall be maintained at a level of not less than 4.0 mg/l and shall be monitored daily by grab sample.

\*\*See Part II, Item H.

**APPENDIX A**  
**Village of Washingtonville**

**INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (Cont.)**

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
<u>Reporting Code</u>	<u>Units</u>	<u>Parameter</u>	<u>Concentration</u>		<u>Loading</u>		<u>Meas. Freq.</u>	<u>Sample Type</u>
			<u>Other Units (Specify)</u>	<u>30 Day</u>	<u>7 Day</u>	<u>30 Day</u>		
01027	ug/l	Cadmium, Total	-	-	-	-	2/year	Composite
01034	ug/l	Chromium, Total	-	-	-	-	2/year	Composite
01042	ug/l	Copper, Total	-	-	-	-	2/year	Composite
01051	ug/l	Lead, Total	-	-	-	-	2/year	Composite
01067	ug/l	Nickel, Total	-	-	-	-	2/year	Composite
01092	ug/l	Zinc, Total	-	-	-	-	2/year	Composite
01220	ug/l	Chromium (Hex.) Dissolved	-	-	-	-	2/year	Grab
71900	ug/l	Mercury, Total	-	-	-	-	2/year	Composite

**APPENDIX B**  
**Village of Washingtonville**

Plant Bypass- The permittee shall monitor the treatment plant's bypass, when discharging, at station 3PB00051002

CHARACTERISTICS

MONITORING REQUIREMENTS

<u>Reporting Code</u>	<u>Units</u>	<u>Parameter</u>	<u>Frequency</u>	<u>Sample Type</u>
00530	mg/l	Suspended Solids	Once/day	Grab
50050	MDG	Flow	Daily	Continuous
80082	mg/l	CBOD <sub>5</sub>	Once/day	Grab
80998	Number	Occurrences	Daily	Continuous
80999	Hr/day	Duration	Daily	Continuous

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Data for the number of occurrence(s) per day, the daily duration, and the total flow may be estimated.

If there are no bypass discharges during month, leave data area blank and enter "No discharges during month" in the "Additional Remarks" section (signature still required).