

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO, <i>ex rel.</i>	:	CASE NO. 162837
BETTY D. MONTGOMERY	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE CAROLYN B. FRIEDLAND
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
THE CITY OF CLEVELAND, OHIO,	:	
<i>et al.,</i>	:	
	:	
Defendant.	:	

**MODIFIED CONSENT ORDER AS TO
DEFENDANT THE CITY OF CLEVELAND, OHIO**

On August 12, 1992, the Complaint in the above-captioned matter was filed with the Cuyahoga County Court Of Common Pleas. The Plaintiff, State of Ohio, by and through its then Attorney General, Anthony J. Celebrezze, Jr., ("Plaintiff"), and Defendant, the City of Cleveland ("Defendant" or "City"), consented to the entry of a Consent Order; and the Court entered an Order for injunctive relief enjoining Defendant to operate the Cleveland Hopkins International Airport in compliance with R.C. Chapter 6111 and the rules promulgated thereunder. Plaintiff asserts that Defendant has partially complied with the August 12, 1992 Order of this Court. Nothing in this Modified Consent Order should be construed as an admission by the City of Cleveland to the charges asserted in the Complaint or any non-compliance of this Court's August 12, 1992 Order. In order to come into compliance, Defendant shall comply with the terms of

this Modified Consent Order. The terms of this Modified Consent Order shall supersede and replace the August 12, 1992 Order of this Court. The State of Ohio and the City of Cleveland have consented to the entry of this Modified Consent 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 both personal and subject matter jurisdiction over the Parties in this action. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 6111 of the Ohio Revised Code (hereinafter referred to as "R.C.") and the rules promulgated under that Chapter. Venue is proper in this Court.

II. PERSONS BOUND

2. All terms and provisions of this Modified Consent Order shall apply to and be binding upon Plaintiff and Defendant and Defendant's agents, assigns, successors in interest and others bound by Rule 65(D) of the Ohio Rules of Civil Procedure, and any person who are or will be acting in concert and/or in privity with the Defendant. The Defendant shall provide a copy of this Modified Consent Order to each contractor and/or consultant employed to perform any and all 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 AND RESERVATION OF RIGHTS

3. Plaintiff alleged in its initial complaint that the Defendant conducted activities at the Cleveland Hopkins International Airport in violation of Ohio's water pollution control laws, R.C. Chapter 6111 and the regulations adopted thereunder. Currently, Plaintiff alleges that the

Defendant violated the Consent Order filed on August 12, 1992 with this Court. Compliance with the terms of this Modified Consent Order shall constitute full satisfaction of any civil liability by Defendant for the claims under such laws as alleged in the Complaint against Defendant and any civil liability resulting from Defendant's non-compliance with the August 12, 1992 Consent Order of this Court relating to the installation and operation of a storm water collection system and a storm water treatment facility in order to address the unpermitted discharge of deicing compounds which occurs before the filing of this Modified Consent Order. Nothing in this Modified Consent Order shall be construed to limit the authority of the State of Ohio to seek relief for violations promptly and properly reported to Ohio.

4. Nothing in this Modified Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against other appropriate persons for claims or conditions alleged in this complaint. Nothing in this Modified Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief against Defendant or other appropriate persons for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Modified Consent Order, nor shall anything in this Modified Consent Order limit the right of Defendant to any defenses it may have for such claims. Similarly, nothing in this Modified Consent Order shall be construed so as to limit the authority of the State of Ohio to undertake any action against any person, including Defendant, to eliminate or mitigate conditions which may present a threat to the public health, welfare or the environment.

IV. PERMANENT INJUNCTION

5. Defendant is hereby permanently enjoined and ordered to operate the Cleveland Hopkins International Airport in compliance with the requirements of O.R.C. Chapter 6111 and rules adopted thereunder, and the terms and conditions of any future NPDES Permit issued to Cleveland Hopkins International Airport, and any renewals or modifications thereof, except as otherwise provided in Section V of this Modified Consent Order. Defendant is further prohibited from constructing, installing or connecting any new source of pollutants to the Cleveland Hopkins International Airport's sewerage system unless and until such time as any applicable Permit to Install ("PTI") and/or plan approval is obtained for any such connection from the Ohio EPA as required by Ohio Administrative Code ("O.A.C.") Chapter 3745-31. This Modified Consent Order does not limit any of Defendant's appellate rights under O.R.C. Chapter 3745 to appeal "actions" of the Director to the Environmental Review Appeals Commission. Defendant reserves its right to appeal any such renewals, modifications, or changes to Defendant's NPDES Permit issued by the Director after the entry of this Modified Consent Order as provided under O.R.C. Chapter 3745.

V. OTHER INJUNCTIVE RELIEF

6. Interim Measures

a. Current Data Summary: Within sixty (60) days of the effective date of this Order, Defendant City is ordered and enjoined to submit to Ohio EPA all currently available data, and a summary of that data, to identify areas of concern within the Airport facility that may contribute ammonia nitrogen and glycols (including propylene glycol and ethylene glycol) to the storm water system from historic use of deicing compounds at the Airport facility.

b. Source Area Reduction: Within thirty (30) days of the effective date of this Modified Consent Order, Defendant City is ordered and enjoined to submit to Ohio EPA a Source Area Sampling and Analysis Plan to identify potential glycol and ammonia source areas within the Airport facility. The implementation schedule in the Source Area Sampling and Analysis Plan shall provide for ninety (90) days of sampling activities.

- (i) Within fourteen (14) days of receiving Ohio EPA approval of the Source Area Sampling and Analysis Plan, Defendant City is ordered and enjoined to implement the Source Area Sampling and Analysis Plan.
- (ii) Within forty-five (45) days of completion of sampling activities under the Source Area Sampling and Analysis Plan, Defendant City is ordered and enjoined to submit a Source Area Reduction Plan which describes potential glycol and ammonia source areas identified through sampling activities and Defendant City's recommendations for addressing those areas. The Defendant City is ordered and enjoined to make its best effort to implement the approved recommendations as soon as practical, but no later than three hundred sixty-five (365) days after approval by Ohio EPA.
- (iii) Within forty-five (45) days of the end of each quarter, during implementation of the Source Area Reduction Plan, Defendant City is ordered and enjoined to submit a Quarterly Progress Report, indicating the activities completed in implementing the Plan during the previous quarter.
- (iv) It shall be the goal of the Source Area Reduction Plan to, within twenty-four (24) months of the effective date of this Order, reduce the concentrations of ammonia nitrogen and glycols in storm water discharges from the Airport facility to the concentrations listed in Table 1 below:

Table 1.

Parameter	Abram Creek Discharges	Rocky River Discharges	Silver Creek Discharges
Ammonia Nitrogen (mg/l)	4.7	10.4	9.1
Ethylene Glycol (mg/l)	1300	2600	1300
Propylene Glycol (mg/l)	710	1400	640
COD (mg/l)*	1193	2352	1075

* For purposes of monitoring compliance with this Order, Defendant City and Ohio EPA agree that in the absence of specific data for ethylene and propylene glycol, the relationship of "1 mg/l COD = 1.68 mg/l glycol" shall be used to evaluate glycol concentrations in the absence of specific analyses, and the resulting glycol concentration will be assumed to be 100 percent propylene glycol.

- (v) If, after nine (9) months from the date of this Order, the Ohio EPA reasonably concludes, based on sampling results submitted to or obtained by the Ohio EPA, that the water quality goals listed in Table 1 above will not be met within twenty-four (24) months of the effective date of this Order, the Ohio EPA may request that Defendant City meet with Ohio EPA to discuss development of a Supplemental Source Area Reduction Plan. If as a result of that discussion Ohio EPA reasonably determines that it is necessary to develop a Supplemental Source Area Reduction Plan in order to achieve the water quality goals in Table 1 above, Defendant City is ordered and enjoined to, in consultation with Ohio EPA, investigate all reasonable, additional remedial measures that would assist in meeting the water quality goals, consistent with long term storm water control measures being developed for the Airport facility.
- (vi) Within forty-five (45) days of the completion of the investigation required in paragraph 6.b.(v), above, Defendant City is ordered and enjoined to submit to Ohio EPA a Supplemental Source Area Reduction Plan which shall include the results of the investigation required under paragraph 6.b.(v) and a schedule of implementation of measures necessary to meet the water quality goals listed in Table 1, above.

- (vii) Upon approval of the Supplemental Source Area Reduction Plan by the Ohio EPA, Defendant City is ordered and enjoined to implement the plan in accordance with the schedule contained therein.

c. Sampling and Analysis Plan: Within sixty (60) days of the effective date of this Modified Consent Order, Defendant City is enjoined and ordered to submit a Sampling and Analysis Plan to identify areas previously impacted by deicing compounds that may contribute ammonia and glycols in storm water under a variety of base-flow conditions. The implementation schedule in the Sampling and Analysis Plan will provide for three hundred sixty-five (365) days of sampling activities, commencing within thirty (30) days of Ohio EPA's approval of the Sampling and Analysis Plan, and shall provide for the submittal of data to Ohio EPA on a monthly basis. The data will be used for the Summer-time Base-Flow Feasibility Study and the Comprehensive Feasibility Study described below.

d. Summer-time Base-Flow Feasibility Study: On or before November 15, 2001, Defendant City is enjoined and ordered to submit to the Ohio EPA a Data Summary Report that presents pertinent data and a summary of applicable monthly status reports to define Summer-time Base-Flows.

- (i) Within sixty (60) days of submitting the Data Summary Report, Defendant City is enjoined and ordered to submit to the Ohio EPA a Data Analysis Report that identifies factors influencing the persistence or degradation of urea and glycols in the environment during Summer-time Base-Flow conditions. This analysis will provide a basis for evaluating alternatives to reduce the potential adverse impacts of storm water discharges during Summer-time Base-Flow conditions.
- (ii) Within sixty (60) days following Ohio EPA approval of the Data Analysis Report, Defendant City is enjoined and ordered to submit to Ohio EPA for approval an Summer-time Feasibility Study ("Summer-time Feasibility Study") that outlines appropriate alternatives, to be considered for implementation, to control glycols and ammonia in storm water discharges during Summer-time Base-Flow conditions. The Defendant City will then work with Ohio EPA to select an alternative and

implementation schedule that meets desired objectives to address discharges from Summer-time Base-Flows.

e. Comprehensive Feasibility Study: Within forty-five (45) days of completion of the Sampling and Analysis Plan described in Paragraph 6.c. of this Section, Defendant City is enjoined and ordered to submit to the Ohio EPA a Data Summary Report that contains all data and a summary of all monthly status reports.

- (i) Within sixty (60) days of submitting the Data Summary Report, Defendant City is enjoined and ordered to submit to the Ohio EPA a Data Analysis Report that identifies factors influencing the persistence or degradation of urea and glycols in the environment. This analysis will provide a basis for evaluating long term alternatives to reduce the potential adverse impacts of storm water containing ammonia and glycols.
- (ii) Within ninety (90) days following Ohio EPA approval of the Data Analysis Report, Defendant City is enjoined and ordered to submit to Ohio EPA for approval a Feasibility Study ("Feasibility Study") that outlines appropriate alternatives to be considered for the control of glycols and ammonia in storm water discharges. The Defendant City will then work with Ohio EPA to select an alternative and implementation schedule that meets desired objectives to address Airport storm water discharges.

7. Deicing Management Plan

a. Defendant City is immediately enjoined and ordered to continue performing deicing activities at the Airport facility in accordance with the 1998 Deicing Management Plan until an approved, revised plan is implemented.

b. Within sixty (60) days of the effective date of this Modified Consent Order, Defendant City is enjoined and ordered to revise the 1998 Deicing Management Plan to:

- (i) Incorporate measures necessary to further control releases of deicing compounds to waters of the State resulting from ongoing deicing activities at the Airport facility;
- (ii) Make it consistent with current Airport Operations; and

(iii) Address Ohio EPA's comments set forth in the Inter-Office Communication dated August 7, 1998, a copy of which is attached hereto as Appendix A.

c. Within seven (7) days of approval of the revised Deicing Management Plan, Defendant City is enjoined and ordered to commence implementation of the revised Deicing Management Plan.

8. Sampling Program and Reporting

a. Beginning not later than thirty (30) days after the effective date of this Order and continuing until Defendant City is issued an individual NPDES permit for the discharge of storm water from the Airport facility, Defendant City is enjoined and ordered to implement and maintain a weekly sampling program of all outfalls from the Airport facility to surface waters of the State. The sampling analysis and monitoring shall include, but is not limited to, the following parameters:

- (i) Temperature (T),
- (ii) pH,
- (iii) Dissolved oxygen (DO),
- (iv) Total suspended solids (TSS),
- (v) Total dissolved solids (TDS),
- (vi) Ammonia nitrogen (NH₃-N),
- (vii) Chemical oxygen demand (COD), and.
- (viii) flow monitoring (24 hour estimate)

b. In addition, analysis of outfall samples taken during the second week of each month shall be analyzed for ethylene and propylene glycol.

c. On or before the tenth (10th) day of each month, Defendant City is ordered and

enjoined to submit to Ohio EPA all analytical results from the sampling program received by the Defendant City and not previously submitted to Ohio EPA.

9. Airport Construction Activities: Upon authorization of coverage under the General Storm Water NPDES Permit for Construction Activities for any construction activities at the Airport facility, in addition to the terms and conditions of the general permit, Defendant City is enjoined and ordered to comply with the Special Terms and Conditions set forth in Exhibit B of this Order, which are hereby incorporated as if fully written herein, for those construction activities covered by the General Storm Water NPDES Permit for Construction Activities.

10. Submittals

a. Defendant City shall provide to Ohio EPA, upon request, copies of all Documents within its possession or control or within the possession or control of its contractors, subcontractors, consultants, or agents relating to events or conditions at the Airport facility which are pertinent to this Order including, but not limited to, plans, reports, correspondence, or sampling data. "Document" means any record, report, notes, logs, journals, photograph, videotape, correspondence, computer disk, or tape recorded, compact disk, or retrievable information of any kind, including raw data, narrative reports, and any and all documentary evidence.

b. All plans, sampling results, or other documents required to be submitted to Ohio EPA, shall be sent to the following address:

Ohio EPA
Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087
Attn: DSW Enforcement Coordinator

VI. MISCELLANEOUS INJUNCTIVE RELIEF

11. In the event Defendant City is notified by the Ohio EPA that any or all of the applications, plans, or other documents that require Ohio EPA approval and are submitted pursuant to Section V are unsatisfactory, in whole or in part, the Ohio EPA will include a statement in the notification as to the modifications or additions which must be made to the document prior to any approval. Except as otherwise provided in the extension of time request of Paragraph 12, within forty-five (45) days after receipt of Ohio EPA's notification requiring modifications or additions, Defendant City is enjoined and ordered to amend and submit to Ohio EPA a revised application, plan, or other document incorporating all of the required modifications or additions. Such revised applications, plans, or other documents must be to Ohio EPA's satisfaction. Ohio EPA will notify Defendant City whether the revised application, plan, or other document is approved.

12. In the event that the modifications or additions required by Ohio EPA pursuant to Paragraph 11 constitute a major change to Defendant City's submission, Defendant City may request from Ohio EPA an extension of the forty-five (45) day response period referenced in Paragraph 11. Such requests shall be directed to the Enforcement and Compliance Group Leader, Division of Surface Water, Ohio EPA, Lazarus Government Center, 122 South Front Street, Columbus, Ohio 43215 and Surface Water Unit Supervisor, Division of Surface Water, Northeast District Office, Ohio EPA, 2110 Aurora Road, Twinsburg, Ohio 44087. Defendant City is enjoined and ordered to submit any such request, in writing, within ten (10) business days after Ohio EPA's notification requiring modifications or additions and to show cause as to why

an extension should be granted for the period of time sought. Ohio EPA's receipt of Defendant's written request for an extension shall toll the forty-five (45) day period in which Defendant must amend and resubmit its application, plan, or other document, pursuant to Paragraph 11, until, in the event of Ohio EPA's denial of the request, Ohio EPA Enforcement and Compliance Group Leader from the Columbus Central Office notifies in writing Defendant that its request has been denied. Upon such notification, the forty-five (45) day period will continue to run. The tolling of the forty-five (45) day period is contingent upon the Defendant's inclusion of the following language in the first paragraph of its written extension request:

Pursuant to Paragraph 12 of the Modified Consent Order between the State and the City, receipt of this extension request by Ohio EPA tolls the forty-five day period which the City has to amend its application, plan, or document until, in the event of a denial, Ohio EPA notifies the City of the denial.

In the event that Ohio EPA grants in whole or part any extension request, Defendant is enjoined and ordered to submit the modification or addition in accordance with Ohio EPA's directive as to the length of the requested extension.

VII. REPORTING REQUIREMENTS

13. Unless otherwise stated in this Modified Consent Order, within fourteen (14) calendar days from the completion date of any and all deadlines and milestones set forth in this Modified Consent Order, Defendant is ordered to submit a written report stating whether they have performed the action set forth therein and any documentation pertaining to the completion of such tasks to Enforcement and Compliance Section Manager, Division of Surface Water, Ohio EPA, Lazarus Government Center, 122 South Front Street, Columbus, Ohio 43215 and

Surface Water Unit Supervisor, Division of Surface Water, Northeast District Office, Ohio
EPA, 2110 Aurora Road, Twinsburg, Ohio 44087.

VIII. TIME EXTENSIONS

14. If any date for performance falls upon a weekend or state or federal holiday, the time for performance is extended to the next working day following the weekend or holiday.

IX. EFFECT OF CONSENT ORDER

15. 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 wastewater facility. Approval for any such construction or modification shall be by permit issued by the Director of Environmental Protection or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

X. POTENTIAL FORCE MAJEURE

16. In any action to enforce any of the provisions of this Modified Consent Order, Defendant may raise at that time the question of whether they are entitled to a defense that its conduct was caused by reasons beyond its control such as, by way of example and not limitation, act of God, unusually severe weather conditions, strikes, acts of war, or civil disturbances, or orders of any regulatory agency. While Plaintiff does not agree that such a defense exists, it is, however, agreed upon by the parties 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 a dispute arises and/or an enforcement action, if any, is commenced. Acceptance of this Modified Consent Order without

a force majeure clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable State law.

XI. CIVIL PENALTY

17. Within forty-five (45) days of this Order and pursuant to R.C. Section 6111.09, it is hereby ordered that Defendant shall pay to the State of Ohio a civil penalty of ninety-five thousand Dollars (\$95,000.00) for settlement as set forth in paragraph 3 of this Modified Consent Order. Civil penalty payment shall be paid by certified check for the appropriate amount, made payable to "Treasurer, State of Ohio", which check shall be delivered by mail, or otherwise, to Jena Suhadolnik, Administrative Assistant, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

18. In lieu of paying an additional civil penalty in the amount of two hundred thousand dollars (\$200,000.00) and in furtherance of the mutual objectives of Ohio EPA and City of Cleveland in improving the environment and reducing the impacts to waters of the State of Ohio, City of Cleveland agrees and is hereby ordered to perform, utilizing soil bioengineering techniques, a stream, corridor and wetland restoration project on a one-acre, City of Cleveland-owned lot located along the Chevy Branch of Big Creek ("Milligan Gardens Project") and another stream restoration and/or wetland restoration project along the Chevy Branch of Big Creek to be Selected by the City with Ohio EPA's concurrence. The Milligan Gardens project shall include: restoring meanders to the stream; regarding the site to contain excess water in a wetlands area for absorption, filtration and eventual release back into the stream; and creating habitat through a new stream bed and new native vegetation. Defendant shall prepare detail

plans for each project and, upon receiving any necessary permits, initiate and complete construction of the projects within two years of the date of this Order. The City of Cleveland shall spend at least two hundred thousand dollars (\$200,000.00) in non-grant monies on this Project. In the event that the cost of preparation of the detail plans and construction do not exceed \$200,000, Defendant shall pay the balance to Ohio EPA as set forth in Paragraph 17.

XII. STIPULATED PENALTIES

19. In the event that Defendant fails to meet any of the deadlines and requirements of this Modified Consent Order, Defendant shall pay a stipulated penalty for each failure according to the following payment schedule: (a) for each day of each failure to meet each deadline or requirement, up to thirty (30) days - Two Hundred and Fifty Dollars (\$250.00) per each day for each deadline or requirement not met; (b) for each day of each failure to meet each deadline or requirement, from thirty-one (31) to sixty (60) days – Five Hundred Dollars (\$500.00) per day for each deadline or requirement not met; (c) for each day of each failure to meet each deadline or requirement, from sixty-one (61) days to ninety (90) days – Seven Hundred and Fifty Dollars (\$750.00) per each day for each deadline or requirement not met; (d) for each day of each failure to meet each deadline or requirement, over ninety-one (91) days – One Thousand Dollars (\$1,000.00) per each day for each deadline or requirement not met.

20. Any payment required to be made under the provisions of Section XII of this Modified Consent Order shall be made by delivering to Jena Suhadolnik, or her successor, at the address set forth in Section XI within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, a certified check or checks for the appropriate amount(s), made payable to the order of "Treasurer, State of Ohio". Defendant shall also state

in writing the specific failure of the Modified Consent Order which was not complied with, and the date(s) of non-compliance. The payment of stipulated penalties by the Defendant and the acceptance of such stipulated penalties by the Plaintiff for specific violations pursuant to Section XII shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to R.C. Chapter 6111 and the rules promulgated thereunder or to seek judicial enforcement of this Modified Consent Order.

XIII. MODIFIED CONSENT ORDER

21. This Modified Consent Order entered into between the Parties represents the entire understandings between the Parties and supersedes any earlier verbal or written communication regarding same. This Modified Consent Order will supersede the Consent Order entered into, filed and issued by this Court on August 12, 1992.

XIV. TERMINATION OF STIPULATED PENALTIES

22. The provisions of this Modified Consent Order set forth in Section XII requiring payment of stipulated penalties by Defendant may be terminated upon a demonstration by said Defendant that: (a) it has completed the work set forth in Section V; and (b) the remedy effected by said work enabled Defendant to achieve and maintain compliance with R.C. Chapter 6111, and the rules promulgated thereunder for the period of one (1) calendar year. Where during said one (1) year period, Defendant fails to maintain compliance with R.C. Chapter 6111 and the rules promulgated thereunder, the one (1) year period will begin anew from the date of said Defendant's failure.

23. Termination of stipulated penalties shall be: (a) by order of the Court, upon application by any party and a demonstration that the condition of this section have been met;

or (b) by mutual agreement of the parties as reflected in a joint stipulation filed with the Court. In the event of such mutual agreement, termination of stipulated penalties shall occur upon the filing of the joint stipulation.

XV. RIGHT OF ENTRY

24. Plaintiff State of Ohio and Ohio EPA, their agents, authorized representatives and employees, shall have the authority to enter upon proper identification, at reasonable times, without a search warrant, all property that comprises Defendant's property for purposes consistent with this Modified Consent Order and State law. Such authority includes, but is not limited to, inspecting records, operating logs and contracts related to the work required by this Modified Consent Order; reviewing the progress of Defendant in carrying out the terms of this Modified Consent Order; conducting such tests as the Ohio EPA deems necessary; interviewing Defendant's personnel to ascertain compliance with the Modified Consent Order; and verifying the data submitted to the Ohio EPA by Defendant to ascertain compliance with the Modified Consent Order.

25. Defendant has supplied to Plaintiff State of Ohio certain Federal Aviation Administration ("FAA") regulations pertaining to Airport property access. Plaintiff acknowledges that, under some conditions, such regulations may at times delay its and the Ohio EPA's ability to enter certain portions of the Airport property. If these regulations are modified in any way, Defendant is ordered to provide the modified regulations to Plaintiff and Ohio EPA. In the event that Plaintiff's and/or the Ohio EPA's access to any portion of the Airport property is denied because it is prohibited by FAA regulations, Defendant is ordered to submit,

in writing, to Plaintiff and Ohio EPA an explanation of the reason for the denial, and a plan for accommodating the access in a less intrusive manner.

26. Defendant is ordered to supply to Plaintiff and Ohio EPA with a copy of applicable FAA regulations in the event that such regulations have not been previously provided and are asserted as the basis for denial of access, or are modified in the future.

XVI. COMPLIANCE WITH APPLICABLE LAW

27. Nothing in this Modified Consent Order shall be construed to relieve Defendant of the obligation to comply with applicable federal, state or local statutes, regulations or ordinances.

XVII. COMPLIANCE NOT DEPENDANT ON GRANTS OR LOANS

28. Performance of the terms of this Modified Consent Order by Defendant are not conditioned on the receipt of any Federal or State grant or loan funds. In addition, Defendant's performance is not excused by the failure to obtain any Federal or State grant or loan funds, or by the processing of any applications for the same.

XVIII. RETENTION OF JURISDICTION

29. The Court will retain jurisdiction of this action for the purpose of enforcing and administering Defendant's compliance with this Modified Consent Order.

XIX. COURT COSTS

30. Defendant is hereby ordered to pay the court costs of this action.

XX. ENTRY OF CONSENT ORDER AND FINAL JUDGEMENT BY CLERK

31. The parties agree and acknowledge that final approval by the Plaintiff and the Defendant and entry of this Modified Consent Order is subject to the requirements of 40 C.F.R.

123.27(d)(1)(iii), which provides for notice of the lodging of the Modified Consent Order, opportunity for public comment, and the consideration of any public comments. Both Plaintiff and the Defendant reserve the right to withdraw this Modified Consent Order based upon comments received during the public comment period. Defendant shall pay the costs of public notice associated with this Modified Consent Order.

32. 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 (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the 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.

XXI. PERMITS, AUTHORIZATIONS, AND APPROVALS

33. In the event that changes, deletions, acceptances, approvals or revisions by Ohio EPA delay the time schedules set forth in a work plan or other plan, said schedule may be adjusted accordingly upon agreement of the Parties.

XXII. AUTHORITY TO ENTER INTO THE CONSENT ORDER

34. Each signatory for Defendant represents and warrants that he/she has been duly authorized to sign this document and to so bind the Defendant to all terms and conditions thereof.

IT IS SO ORDERED.

April 20, 2001
DATE

Joseph B. Reed
JUDGE, COURT OF COMMON PLEAS
CUYAHOGA COUNTY

APPROVED:

BETTY D. MONTGOMERY,
ATTORNEY GENERAL OF OHIO

Robert J. Karl
ROBERT J. KARL (0042292)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428

Cornell P. Carter
CORNELL P. CARTER (0062968)
Director of Law
City of Cleveland, Department of Law
601 Lakeside Ave., Room 106
Cleveland, Ohio 44114-1077

Counsel for Plaintiff State of Ohio

Counsel for Defendant City of Cleveland

Reg 871
Authorized Representative of the
City of Cleveland

2/22/01
DATE

THE STATE OF OHIO Cuyahoga County	SS. I. GERALD E. FUERST, CLERK OF THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY.
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL	
<i>Filed April 20, 01</i>	
NOW ON FILE IN MY OFFICE.	
WITNESS MY HAND AND SEAL OF SAID COURT THIS	
DAY OF <u>April</u>	A.D. 20 <u>01</u>
GERALD E. FUERST, Clerk	
By <u><i>Debra Jane</i></u>	Deputy

RECEIVED FOR FILING
APR 20 2001
BY *Gerald E. Fuerst* CLERK DEP.

Appendix A

August 7, 1998 Inter-Office Communication

INTER-OFFICE COMMUNICATION

TO: Mike Stevens, DSW, NEDO
FROM: Paul Anderson, DSW, NEDO
DATE: August 7, 1998
SUBJECT: Review of CHIA Draft Deicing Management Plan

I have reviewed the draft deicing management plan for the airport. The plan appears to be well thought out with regard to the big picture of achieving control of discharges of deicing chemicals from the airport. However, additional detail and clarification is needed, and a more detailed schedule for implementation will need to be provided at some point so that a permit can be written with a reasonable and firm schedule of compliance. Specific comments regarding the plan are as follows:

1. A key to acronyms used in the report should be included at the beginning.
2. Maps throughout the report should be better labeled so that the concourses, etc. are identified for easier orientation.
3. Page 3, third paragraph: Ohio EPA has documented violations of the water quality criteria for ammonia in Abram Creek throughout the year, not only during the winter.
4. Page 4: Data should be provided, if available, regarding the aquatic toxicity thresholds of the various alternate runway deicers (perhaps as an appendix).
5. Page 6, second paragraph: A description or map of the areas of the airport where pavement deicing is conducted by the airport tenants should be provided.
6. Page 6, third paragraph: The time period necessary for ground maintenance personnel to become familiar with the usage of alternative runway deicers mentioned is vague. Is there any estimate of the time required which could be made based upon the experience of other airports?
7. Page 6, fourth paragraph: Is it envisioned that urea usage (even in emergency situations) can be completely eliminated during the life of an N.P.D.E.S. permit issued by the Ohio EPA (5 years)?
8. Page 11, last paragraph: Mention is made that the effectiveness of deicing pads can be impaired by the migration of deicers through the collection pad. Coatings for concrete used within deicer collection areas is probably available which would minimize this possibility. An evaluation of the use of these materials should be conducted as part of the design process.

9. Section 3.2.2.1, pages 13-14: The installation of equalization tanks into the collection systems for flows destined for discharge to the NEORSD sanitary sewers appears to be indicated. These tanks would provide for equalization of flows to the sewer, more uniform chemical characteristics for the waste stream, and would serve to minimize the number and severity of overflows to waters of the state. The plan should be modified to include feasibility studies and design to accommodate this option.
10. Page 16, second paragraph and Section 3.2.2.3, page 17: Documentation regarding the design and performance of subsurface wetland treatment systems and additional discussion regarding how these might be effective in treating runoff from CHIA should be provided.
11. Page 16, third paragraph:
 - a. The plan states that the choice of deicers used in deicing aircraft is solely the choice of the tenant airlines. However, the use of different deicers within the same area of the airport destroys any ability to recycle the collected deicer fluids. This situation does not seem reasonable or defensible. As the landlord of the facility and the permit holder for environmental permits, it appears that the City of Cleveland should have the ability to affect a transition to uniform deicer usage through rules and leases over a relatively short period of time. This should be made a priority within the deicing management plan and should be instituted as soon as possible.
 - b. A statement is made that deicer recycling is not feasible for concourse A. However, no discussion regarding why recycling of the deicer is not feasible is provided. The discussion of future deicing chemical management for the concourse A runoff found on pages 20-22 indicates that the concourse A flows are easily isolated, constitute a small drainage area, and can be centrally collected. It would seem that the installation of equalization tankage would allow for an efficient recovery system for high percentage glycols which would allow for recycling under low and moderate flows. This tankage would also serve to reduce variation in the composition of the waste stream discharged to the sanitary sewer (potentially reducing long term monitoring costs and frequencies), and will reduce the frequency and severity of overflows to waters of the state.
12. Section 3.3: The plan should discuss the necessity for long term monitoring of the effectiveness of the interim and final measures implemented at the airport to reduce releases of pollutants to surface water. In addition, some discussion of additional evaluations necessary to determine if remedial efforts will be needed to control the discharge of pollutants from leaching of contaminated soils should be provided.

13. Page 19, first paragraph: Please describe how "key catch basins" for the use of inserts to collect glycol have been or will be identified. Provide estimates of how the use of inserts has decreased discharges of glycols to waters of the state and the collection efficiencies expected during the interim period prior to the initiation of the final plan for deicer control.
14. Page 19, second paragraph: The plan states that some issues regarding the use of pushback areas have yet to be negotiated with the airport tenants. Please provide additional information regarding the issues which remain to be resolved.
15. Page 21, first paragraph:
 - a. Please provide an estimate of the percentage of time that the proposed collection system for concourse A will overflow to outfall 001 once the final plan is implemented.
 - b. The plan states that runoff from concourse A will be allowed to discharge directly to outfall 001 during the summer months. Please provide an estimate of summer flows which will be expected.
 - c. The plan as written assumes that flows from concourse A will be clean during the summer months. However, past monitoring of discharges from CHIA indicate that summer flows may contain significant concentrations of residual pollutants which are carried over from high use periods. A plan for monitoring the discharge from the concourse A area to ensure that the summer flows are suitable for direct discharge, with a contingency of discharging these flows to the NEORSO sewer will need to be a component of the long term management plan for deicing chemicals.
16. Page 23: The long term management plan for concourse B includes the use of centralized deicing pads for the south side but not for the north side. The feasibility of installing additional deicing pads on the north side of concourse B should be investigated. Although the initial construction cost may be high, these costs may be offset by lower long term operational costs than the use of GRV's in this area.
17. Page 24: One of the bullet items at the top of the page indicates that onsite storage tanks must be sized and installed. Please clarify what type of tanks these might be.
18. Page 25: Please provide additional information regarding the interim deicing chemical management plans for concourse C prior to centralized pad installation.

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19. Page 26: It would seem that the installation of a deicing pad for the cargo area would be the most efficient long term control plan for the cargo area. The plan should be modified to investigate the feasibility of this option.
20. Section 4.0, pages 28-32: Among the tasks which will have to be performed to institute this plan is the submission of appropriate PTI applications to the Ohio EPA for review and approval. A schedule for the submission of these plans and applications (or a time frame for the development of a schedule) should be provided.

Please let me know if I can be of additional help or if you have any questions.

Appendix B

Special Terms and Conditions for Construction Activities

Special Terms and Conditions for Construction Activity

1. **Comprehensive Storm Water Pollution Prevention Plan (SWP3)**

A. **List and Narrative Description**

For all projects, which are included in the Airport's Master Plan and have been designed and approved (by City of Cleveland Council) for construction, a list and narrative description will be provided. Such projects, will include any off-site staging, stockpiling, or spoil and borrow areas specifically related to and required for the completion of the approved projects.

B. **Site Map**

The SWP3 shall contain a site map clearly identifying the limits of proposed construction and confirmed areas of concern, as well as Best Management Practices (BMPs) to address these areas of concern. Areas of concern include: former (there are no current) solid waste landfills; areas of known jet fuel spills, in excess of the reportable quantity, that have occurred within the past three years; and other areas identified in the FAA Environmental Due Diligence Audit (EDDA), NASA's Remedial Investigation (RI, for the NASA South 40 Area), and several additional investigative studies. Refer to Supplemental General Condition C-55, Section B, pertaining to "Releases, Clean-Up and Soil & Groundwater Contamination." Also, the site map shall clearly identify areas of storm sewer backfill which are suspected of containing pockets of deicing compounds and are within the proposed Limits of Work.

C. **Master Drainage Plan**

In order to help explain the impact of proposed Work within the context of current (past) and long-range future drainage patterns and conditions, DPC has provided complete paper and electronic copies of the Master Drainage Plan (MDP) to Ohio EPA. The MDP may be used as a reference document to understand how a portion of the proposed Work integrates into the drainage plan for the Airport over the long-term. The Master SWP3, which was provided to Ohio EPA, in conjunction with a Notice of Intent application for coverage under Ohio EPA's General NPDES Permit, on August 1, 2000, provides:

- 1) Current drainage patterns and outfalls for the Airport;
- 2) Temporary drainage patterns and outfalls for the Airport that will be created during construction;
- 3) Final drainage patterns and outfalls for the Airport that will be established once the proposed construction has been completed; and
- 4) BMPs for addressing erosion and sediment control practices that will be required throughout.

D. Post-Construction BMPs

The Master SWP3 shall contain all post-construction BMPs which will be installed as part of the proposed Expansion Program for anticipated storm water impacts arising from discharges which occur once elements of the Expansion Program have been constructed. The Master SWP3 shall demonstrate that the post-construction BMPs:

- Are compatible with and supportive of the objectives defined in the Master Drainage Plan Recommendations Report, Deicing Management Plan, and 2000 Implementation Program as modified in accordance with the Airport's pending NPDES Industrial Discharge permit;
- Have been identified, screened, evaluated, selected and designed to promote flow management and water quality improvements for areas within the Limits of Work;
- Do not preclude the Airport's ability to implement the steps and components of the Master Drainage Plan Recommendations Report, Deicing Management Plan, 2000 Implementation Program and the NPDES permit for Industrial Storm Water Discharges; and
- Contribute to the Airport's overall effort of eliminating water quality concerns within the receiving streams.

In order to demonstrate that DPC has met this requirement, the Master SWP3 shall include a narrative section which describes:

- The overall plan and implementation program for achieving water quality criteria within the receiving streams and the anticipated NPDES Industrial permit limits, including application of appropriate post-construction BMPs;
- The rationale and technical justification for selecting the post-construction BMPs in the Master SWP3 and how these BMPs contribute to the overall effort of eliminating water quality concerns;
- The BMPs to be included in each construction project at the Airport and a schedule for when each project will be implemented; and
- The narrative shall be updated to reflect the completion of approved portions of the Plan and addenda to the Plan as they relate to the Expansion Program.

E. Project-Specific Storm Water Pollution Plan Submittal

DPC will amend the Master SWP3, incorporating new project specific sheets (and specifications, when required), and submit the amended Plan to Ohio EPA at least 45 days prior to the start of construction of any new, approved projects.

2. Site Stabilization

A. **Use of Rainwater and Land Development, Ohio's Standards for Storm Water Management, Land Development and Urban Stream Protection**

Site stabilization BMPs shall be applied at the rates and in accordance with the guidelines included in Rainwater and Land Development, Ohio's Standards for Storm Water Management, Land Development and Urban Stream Protection ("Rainwater and Land Development") or other reference document agreed upon by Ohio EPA.

B. **Daily Cover for "Hot Spots"**

Daily cover, or other equally effective means, shall be provided to prevent runoff discharge from areas of concern that contain wastes or impacted soils and subsurface waters and that become exposed due to construction activity. "Waste" refers to materials located within former solid waste landfills or other waste disposal areas. "Impacted soils" and "subsurface waters" refer to soils and excavation trench water encountered during construction of the Airport Expansion Program which may have been previously impacted by deicing compounds, fuels or their breakdown products. Soils and water shall be determined to be impacted based on the protocol developed in Section 7 of the "Plan for Managing Potentially Impacted Soils and Subsurface Water Encountered During Implementation of Expansion Program at Cleveland Hopkins International Airport" (the Plan) which has been agreed upon by Ohio EPA. Impacted soils and subsurface water shall be managed in accordance with the Plan. No discharge of storm water from these areas of impacted soils and subsurface waters may occur if the concentration of pollutants in the soil or water exceeds the trigger level for ammonia-nitrogen or glycol (measured as Chemical Oxygen Demand or glycol) as determined in Appendix A of the Plan, or for petroleum hydrocarbons (measured as diesel range organics) as determined in Appendix A of the Plan. No discharge of storm water that comes into contact with waste areas (including but not limited to Grayton Road Landfill, Airport South Landfill, NASA Old Landfill, NASA South 40 Landfill, and NASA Space 1957 Landfill) shall be permitted under any condition.

C. **Permanent Stabilization**

Areas, which are scheduled to remain bare and idle for periods in excess of one year, shall be stabilized, as required in Rainwater and Land Development. Stabilization shall be applied in accordance with standard timing requirements, for example stabilization within 7 days of the last disturbance or within 2 days in any disturbed areas located within 50 feet of streams, including intermittent streams.

D. Winter Stabilization

Any areas planned to be idle over the winter must be stabilized prior to the onset of winter weather, but in no instance later than November 15th.

E. Erosion Control Matting

Erosion control matting shall be installed to stabilize all ditches >1.5% slope and all slopes >6%, once areas have been brought to final grade. Runoff shall be diverted from slopes, which are steeper than 2:1, and no permanent slope shall be steeper than 4:1.

3. Sediment Control

A. Use of Rainwater and Land Development, Ohio's Standards for Storm Water Management, Land Development and Urban Stream Protection

Sediment control BMPs shall be applied at the rates and in accordance with the guidelines included in Rainwater and Land Development or other reference document agreed upon by Ohio EPA.

B. Sediment Control Phasing

Sediment controls shall be installed and made functional prior to disturbing the upstream area that the BMPs are meant to control.

C. Sediment Pond Design

Sediment basins shall provide a minimum length-to-width ratio of 2:1 between inlet(s) and outlet during low flow conditions only. This may be accomplished by relocating the relative positions of inlet(s) and/or the basin outlet or through the use of baffles comprising plywood or earthen dikes. If a baffle is used, it shall be designed to lengthen the flow path between the inlet(s) and the basin outlet.

D. Inlet Protection Phasing

Where inlet protection is required, inlet protection shall be installed and made functional prior to starting any construction which would create sediment-laden runoff that would impact the subject inlet.

E. Temporary Stream Crossings

Temporary stream crossings shall be constructed, as described in the Technical Specifications for this type of BMP within Rainwater and Land Development. No soil shall be placed within an active stream channel for the construction of this or any other type of BMP.

F. Sediment Control Design

In order for sediment controls to be considered functional, they shall be capable of ponding runoff and be built in accordance with the guidelines included in

Rainwater and Land Development or other reference document agreed upon by Ohio EPA.

G. Sediment Pond Usage

Sediment basins shall be used to control all drainage areas in excess of the capacity of silt fence, as noted in Rainwater and Land Development or other reference document agreed upon by Ohio EPA, where their use is practicable. In in-field areas, the cut area of Brookpark Road realignment and in areas where ponding of water violates FAA safety circulars, other means for sediment control, such as inlet protection, may be substituted, in consultation with Ohio EPA.

4. Trench & Groundwater Control & Disposal

Trench or ground waters, which contain sediment generated during construction, shall pass through a sediment basin that provides a minimum detention time of 24 hours prior to discharge from the site, where practicable. Refer to the proposed requirements at Item 3G above. In in-field areas, the cut area of Brookpark Road realignment and in areas where ponding of water violates FAA safety circulars, other means for sediment control, such as inlet protection, may be substituted, in consultation with Ohio EPA. The discharge of clean trench or ground water shall not be accomplished by traversing areas containing disturbed soils. If glycol- or ammonia-laden or fuel-impacted trench or ground waters are encountered, as determined by field screening or laboratory results generated in accordance with the Sampling and Analysis Plan (SAP) incorporated within DPC's "Plan for Managing Potentially Impacted Soils and Subsurface Water Encountered During Implementation of Expansion Program at Cleveland Hopkins International Airport" (Plan), the waters shall be handled in accordance with the provisions of the Plan. No discharge of impacted trench or groundwater may occur if the concentration of pollutants exceeds the trigger level for ammonia-nitrogen or glycol (measured as Chemical Oxygen Demand or glycol) as determined in Appendix A of the Plan, or for petroleum hydrocarbons (measured as diesel range organics) as determined in Appendix A of the Plan. In summary, such waters shall be collected, containerized and transported to a NEORSD sanitary sewer for discharge, with NEORSD approval or to an appropriately licensed treatment and/or disposal facility, depending on the results of the water sample analyses.

5. Operations & Maintenance

A. BMP Maintenance Procedures

The Master SWP3 shall include procedures to assure the maintenance of BMPs throughout the duration of Work, up to and including final stabilization of each area. DPC shall advise and take, as appropriate, enforcement action against contractors (including actions or omissions of subcontractors) that fail to properly implement the Master SWP3.

B. Contractor's SWP3 Responsibilities

DPC shall provide to Ohio EPA documentation that all contractors (and through these contractors, their subcontractors), who are required to implement any portion of the Master SWP3, have read the Master SWP3 and profess that they are aware of their responsibilities in implementing the SWP3, prior to commencing any construction services on project, which the Master SWP3 addresses. A list of contractors and their subcontractors, which have responsibilities in implementing the Master SWP3, shall be provided to Ohio EPA prior to commencing Work on the project elements, for which they are responsible.

C. SWP3 Updated as Required

DPC shall provide major amendments (e.g., reflecting the addition of a new project, deletion of a completed project, or design change, which is significant enough to warrant a change order for the overall construction project) to the Master SWP3 in accordance with the requirements of item 1E above. Changes of a minor nature shall be maintained on the field copy of the Master SWP3 by the Contractor, and checked by the DPC Resident Engineer and third-party Inspector described in item 6A, on a daily basis, as necessary. Examples of "changes of a minor nature" may include moving a 50-foot section of silt fence a few feet (to be out-of-the-way of construction equipment turning radius) or adding BMPs identified as contingency items within the Master SWP3 (e.g., three rock construction entrances may be added to this sheet). By the third calendar day after the end of each month, as one of the requirements of Pay Item P-156-5.2, Maintenance of Pollution Control Devices, the Contractor shall provide DPC with a marked-up copy of the Master SWP3, indicating all of the minor changes completed during the previous month. DPC shall then direct its Master SWP3 Maintenance Consultant to incorporate all minor changes noted on the field copy into the Master SWP3 and issue copies to DPC, the Contractor and Ohio EPA by the 15th calendar day following the end of the month in which the changes were made. Current, updated copies of the Master SWP3 shall be maintained at the Contractor's Field Office (e.g., Analex Building) and DPC Engineering Office and shall be made available to Ohio EPA, upon request, during normal business hours.

6. Monitoring & Reporting

A. Inspections By Qualified Third-Party

A qualified third-party erosion and sediment control inspector approved by Ohio EPA, e.g., a Certified Professional in Erosion and Sediment Control (CPESC) or equivalent, shall provide daily site inspections to assure that all required BMPs have been installed and are functioning properly. In the event that DPC believes that Ohio EPA is unreasonably withholding approval of its proposed candidate for this position, DPC may appeal the Agency's decision to the Cuyahoga County

section of Natural Resources Conservation Service (NRCS).

B. Weekly Inspection Reports

The inspector identified in item 6A above shall prepare inspection reports at least one per 7 days and within 24 hours of a rainfall event of 0.5 inches or greater. These reports shall be submitted to Ohio EPA for review on a weekly basis.

C. Monitoring Requirements

DPC shall conduct monitoring of existing outfalls, the outfall of the phase 1 detention basin, the outfall of the phase 2 detention basin and 2 locations in Abram Creek as follows:

1. Existing outfalls (001, 002, 003, 004, 005, 006, 007, 008, and 009) shall be monitored as long as they are receiving storm water flows from construction areas. The temporary outfall from the stage 1 detention basin and the permanent outfall from the phase 2 detention basin shall be monitored when the basins begin receiving runoff or begin receiving flow from storm sewers diverted to them. The Abram Creek monitoring locations shall be monitored for the duration of any construction activity being undertaken within any catchment basin which discharges to Abram Creek between the two monitoring locations.
2. Samples from outfalls shall be taken at the end of pipe where possible. For the existing outfalls designated 006 and 009, samples shall be taken at end of pipe and will include storm water commingled with storm water from the NASA storm sewer system. Samples in Abram Creek shall be taken as composite samples at the following locations: at the Brook Park-Cleveland Corporate boundary line downstream from Grayton Road (river mile .85), and just upstream of the confluence with the unnamed tributary (located at river mile .98).
3. All of the permanent and temporary outfalls mentioned above (but not the Abram Creek locations) shall be monitored for ammonia-nitrogen (NH₃-N), glycols (as described below in this Paragraph), pH, dissolved oxygen (DO), temperature, total suspended solids (TSS) and total dissolved solids (TDS) or conductivity. The Abram Creek locations shall be monitored for TSS, DO, temperature, pH and TDS or conductivity. COD may be used as a surrogate for measurement of propylene glycol and ethylene glycol as long as sufficient samples for glycols are collected to ensure the COD:glycol relationship remains valid. To confirm the validity of the COD:glycol relationship, 10% of the samples shall be tested for propylene glycol and ethylene glycol.
4. DPC shall conduct weekly monitoring at the points mentioned above to monitor the effectiveness of the placement and maintenance of BMPs. With the exception of TSS, if any of the parameters sampled exceeds permit limits corrective action

shall be taken. In the absence of permit limits the following limits will be used: 4.7 mg/l NH₃-N in any sample obtained in an outfall discharging to Abram Creek; 10.4 mg/l NH₃-N in any sample obtained in an outfall discharging to Rocky River; 1,500 mg/l for TDS (or conductivity of 2,400 µmho/cm at 25 degrees C). Corrective measures should be taken if the ethylene glycol concentration exceeds 1,300 mg/l in any sample obtained from an outfall discharging to Abram Creek or 2,600 mg/l in any sample obtained from an outfall discharging to Rocky River, or if the propylene glycol concentration exceeds 710 mg/l in any sample obtained from an outfall discharging to Abram Creek or 1,400 mg/l in any sample obtained from an outfall discharging to Rocky River. For TSS, if a 25% increase above the average concentration is detected in two successive measurements, corrective action must be taken. The average concentration of TSS shall be the running average concentration during construction activity, not the preconstruction average.

5. If any parameter exceeds the limits described in the preceding paragraph, DPC shall instruct its contractors and consultants to identify the source of the increased loading and add, modify or otherwise improve the BMPs such that the situation is mitigated.

D. Reporting Requirements

Within 10 business days of receipt of a written request by certified mail, DPC shall provide to the Director, or his duly authorized representative, information that he requests for the purposes of ascertaining compliance with these Construction Site Storm Water Requirements or the NPDES permit issued for storm water discharges associated with construction activities. Ohio EPA shall review documents required under these Requirements or the NPDES permit in a timely fashion, in accordance with established deadlines for document review and response.