

IN THE COURT OF COMMON PLEAS
VAN WERT, OHIO

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CAROL SPEELMAN-CLERK
VAN WERT CO. OHIO

STATE OF OHIO, ex rel.	:	CASE NO. 88-4-31
BETTY D. MONTGOMERY	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE
	:	
<i>Plaintiff,</i>	:	
	:	
v.	:	
	:	
THE CITY OF VAN WERT, OHIO,	:	
	:	
<i>Defendant.</i>	:	

SECOND AMENDED CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Betty D. Montgomery (hereinafter the "State") and Defendant City of Van Wert (hereinafter "Van Wert" or "the City") having consented to the entry of this Second Amended Consent Order, which shall supersede and completely replace the Amended Consent order previously entered in this action on September 25, 1990 and all documents relating thereto.

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

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the parties and the subject matter of this case. The

Complaint states a claim upon which relief can be granted against the City of Van Wert under Chapter 6111. of the Ohio Revised Code, and venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them.

III. SATISFACTION OF LAWSUIT

3.1 The State alleges in its Complaint that the City has operated its wastewater plant in such a manner as to result in violations of the discharge limitations and monitoring requirements of the NPDES Permit issued to it by the Director of Ohio EPA and in violation of the water pollution laws of the State of Ohio. In response to that Complaint, the parties negotiated and entered into an Amended Consent Order, which was filed with this Court on September 25, 1990. The September 25, 1990 Amended Consent Order included a construction schedule for building improvements to Van Wert's wastewater treatment plant. The State alleges that Defendant, the City has violated the September 25, 1990 Amended Consent Order. The City denies these allegations. Compliance with the terms of this Second Amended Consent Order shall constitute full satisfaction of any violations of the September 25, 1990 Amended Consent Order which occurred prior to the date of lodging of this Second Amended Consent Order.

3.2 Nothing in this Order shall be construed to limit the authority of the State to seek relief for claims or conditions not alleged in the Complaint, including violations which occur after the lodging of the Second Amended Consent Order, except as expressly stated in Section III hereof. Nothing in this Order shall be construed to confer upon the Court jurisdiction over the

issuance, renewal, modification, denial or revocation of a permit or the issuance of orders or other actions of the Director of Environmental Protection (Ohio EPA). Nothing in this Order shall be construed to waive any right the City may have pursuant to R.C. Chapter 3745 to challenge an action of the Director of Environmental Protection before the Environmental Review Appeals Commission.

IV. PERMANENT INJUNCTION

4.1 The City is hereby permanently enjoined and immediately ordered to comply with the requirements of RC Chapter 6111 and the rules adopted thereunder, and the terms and conditions of its currently effective NPDES Permit No. 2PD00006*ND, and any renewals or modifications thereof, except as otherwise provided in Section V of this Second Amended Consent Order.

4.2 The City shall prevent wet weather bypasses and overflows from its wastewater treatment plant and sanitary sewer system (except as otherwise provided for in the City's NPDES permit) and the City shall properly operate and maintain its wastewater treatment plant, sewer system and any associated equipment and structures. NPDES Permit No. 2PD00006 is hereby incorporated herein by reference as if rewritten in full. All renewals, modifications or changes to the City's NPDES Permit approved by the Director of Ohio EPA and effective after the entry of this Second Amended Consent Order shall be deemed to be incorporated in and made an enforceable part of this Second Amended Consent Order.

V. INJUNCTION

5. The City is hereby enjoined and ordered to 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 NPDES permit No. 2PD00006*ND and any renewals or modifications thereof. The City is enjoined and ordered to complete construction of improvements to its wastewater treatment system so as to attain compliance with the City's NPDES permit in accordance with the following schedules:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Complete Wastewater study authorized jointly by the City of Van Wert and Van Wert County no later than;	January 1, 1997
(b) Submittal of a complete and approvable PTI application and approvable Detailed Plans and Specifications for upgrade and expansion of its wastewater treatment system;	August 17, 1998
(c) Advertisement of Building Bids;	May 1, 1999
(d) Initiation of Construction;	August 1, 1999
(e) Completion of Construction;	April 1, 2001
(f) Achieve compliance with final effluent limitations of Van Wert's then effective NPDES permit	June 1, 2001

6.1 Within eighteen (18) months of completion of construction pursuant to paragraph 5(e) above, the City of Van Wert must complete an additional wet weather stress test in accordance with Attachment B and submit a report to Ohio EPA.

6.2 Within eighteen (18) months of completion of construction, the City of Van Wert shall also complete and submit the results of a study characterizing the fecal coliform levels in Town Creek upstream and downstream of its combined sewer overflow discharges ("CSO's"). [Following the guidelines set forth in Part I. C. 3 of NPDES permit 2PD00006*ND].

6.3 From the date of lodging of this Second Amended Consent Order and lasting until

June 1, 2001, the City shall comply with the interim effluent limitations set forth in Attachment A in lieu of the final effluent limitations for Outfall 2PD00006001 set forth in Part I.A. of its NPDES Permit. After June 1, 2001, Defendant shall be in complete compliance with final effluent limitations contained within its NPDES Permit No. 2PD00006*ND and any renewals or modifications thereof.

6.4 The City shall submit a Combined Sewer System Long Term Control Plan that fully meets the requirements of Part I, C.4 of NPDES permit 2PD00006*ND, or any renewal thereof, by June 30, 1999.

7. This Second Amended 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, modification or expansion 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. CIVIL PENALTY

8. In addition to the amounts previously paid under the prior Amended Consent Order, the City shall pay to the State a civil penalty of \$1000.00 to resolve the City's liability for stipulated penalties under the September 25, 1990 Amended Consent Order. The penalty shall be paid by delivering to Jena Suhadolnik, or her successor at the Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within forty-five (45) days from the date of entry of this Second Amended Consent Order.

VII. STIPULATED PENALTIES

9. In the event the City fails to meet any of the requirements of this Second Amended Consent Order set forth in Paragraphs 4.1, 5, 6.1, 6.2, or 6.4, other than the failure to meet an effluent limitation, Defendant shall be liable for a stipulated penalty according to the following payment schedule:

- (1) For each day of each failure to meet a requirement and/or failure to comply with Defendant's NPDES permit term or condition up to thirty (30) days -- three hundred fifty dollars (\$350.00) per day per requirement not met;
- (2) For each day of each failure to meet a requirement and/or failure to comply with Defendant's NPDES permit term or condition from thirty-one (31) to sixty days (60) -- seven hundred dollars (\$700.00) per day per requirement not met; and
- (3) For each day of each failure to meet a requirement and/or failure to comply with Defendant's NPDES permit term or condition over (61) days -- one thousand four hundred dollars (\$1,400.00) per day per requirement not met.

10. In the event the City fails to meet any of the requirements of this Second Amended Consent Order set forth in Paragraphs 4.1, 4.2, 5, or 6.3 which involves failure to meet an interim or final effluent limitation, Defendant shall be liable for a stipulated penalty according to the following payment schedule:

- (1) For each day of each failure to meet a daily effluent limitation up to thirty (30) days -- five hundred dollars (\$500.00) per day per requirement not met; For each day of each failure to meet a daily effluent limitation from thirty one (31) to sixty days (60) one thousand dollars (\$1,000.00) per day per

requirement not met; For each day of each failure to meet a daily effluent limitation over (61) days -- one thousand five hundred dollars (\$1,500.00) per day per requirement not met.

(2) For each occurrence of a failure to meet a seven day effluent limitation from occurrences 1 through 5 -- one thousand dollars (\$1,000.00) per occurrence of a failure to meet a seven day effluent limitation; for each occurrence of a failure to meet a seven day effluent limitation from occurrences 6 through 10 -- two thousand dollars (\$2,000.00) per occurrence of a failure to meet a seven day effluent limitation; for each occurrence of a failure to meet a seven day effluent limitation from occurrences 11 through 15 -- three thousand dollars (\$3,000.00) per occurrence of a failure to meet a seven day effluent limitation; for each occurrence of a failure to meet a seven day effluent limitation from occurrence 16 and above-- four thousand dollars (\$4,000.00) per occurrence of a failure to meet a seven day effluent limitation;

(3) For each occurrence of a failure to meet a thirty day effluent limitation from occurrences 1 through 5 -- two thousand dollars (\$2,000.00) per occurrence of a failure to meet a thirty day effluent limitation; for each occurrence of a failure to meet a thirty day effluent limitation from occurrences 6 through 10 -- three thousand dollars (\$3,000.00) per occurrence of a failure to meet a thirty day effluent limitation; for each occurrence of a failure to meet a thirty day effluent limitation from occurrences 11 through 15 -- four thousand dollars (\$4,000.00) per occurrence of a failure to meet a thirty day effluent limitation; for each occurrence of a failure to meet a thirty day effluent limitation from occurrence 16 and above—five thousand dollars (\$5,000.00) per occurrence of a failure to meet a thirty day effluent limitation;

11. Any payment required to be made under the provisions of Section VI of this

Second Amended Consent Order shall be made by delivering to Jena Suhadolnik, or her successor at the address set forth in paragraph 8 above, a certified check or checks, for the appropriate amounts within forty-five (45) days from the date of the failure to meet the requirement of this Second Amended Consent Order, made payable to "Treasurer, State of Ohio." Defendant shall also state in writing the specific provision of the Second Amended Consent Order and/or NPDES permit term and condition, which was not complied with and the date(s) of non-compliance. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Second Amended Consent Order.

VIII. POTENTIAL RAISING OF FORCE MAJEURE DEFENSE

12. In any action to enforce any of the provisions of this Second Amended Consent Order, the City may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons beyond its control, such as (by way of example but not limitation): acts of God, unusual weather conditions, strikes, acts of war or civil disturbances or orders of any regulatory agency. While the State does not agree that such a defense exists, it is, however, hereby 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 do so is at the time, if ever, that an enforcement action is commenced. Approval of this Second Amended Consent Order without a specific *force majeure* clause does not constitute a waiver by the City of any rights or defenses it may have under applicable law.

IX. RETENTION OF JURISDICTION

13. The Court will retain jurisdiction of this action for the purpose of making any order or decree which it deems appropriate to carry out this Second Amended Consent Order. Any party may apply to the Court for any orders, directions or relief necessary to construe and effectuate this Second Amended Consent Order. This Consent Order may be modified with the agreement of the parties or by order of the Court.

X. TERMINATION OF STIPULATED PENALTIES

14. The provisions of this Second Amended Consent Order set forth in Section VII requiring the payment of stipulated penalties shall terminate if, after the City has completed construction of the improvements required in paragraph 5 above, the City has achieved and maintained compliance with the final effluent limitations contained in its NPDES permit for a period of one year, and has paid all penalties required pursuant to this Second Amended Consent Order. Termination of this or any other provisions of the Second Amended Consent Order shall be only by Order of the Court, upon application by any party and a determination that the preconditions set forth above have been met by the City.

XI. ENTRY OF SECOND AMENDED CONSENT ORDER AND FINAL JUDGMENT BY CLERK

15. The parties agree and acknowledge that this Second Amended Consent Order is being made available for public comment and final approval by the Plaintiff and Defendant, and entry of this Second Amended Consent Order is subject to the requirement of 40 C.F.R. §123 (d)(1)(iii), which provides for notice of the lodging of this Second Amended Consent Order, opportunity for public comment, and the consideration of any public comment. The State and

Defendant, reserve the right to withdraw consent to this Second Amended Consent Order based on comments received during the public comment period. Defendant shall pay the cost of publishing the public notice.

16. Upon the signing of this Second Amended 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 58 of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

XII. COSTS

17. The City is hereby ordered to pay the costs of this action

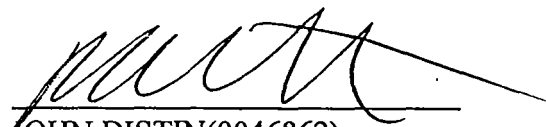
ENTERED THIS _____ DAY OF _____, 1999.

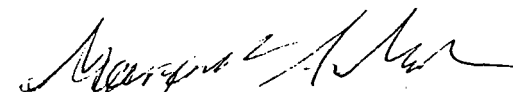
**ORIGINAL SIGNED BY
CHARLES D. STEELE**

JUDGE, Court of Common Pleas
Van Wert, Ohio

By the signatures below each of the parties named consents to this Amended Second Amended Consent Order:

STATE OF OHIO, ex rel.
BETTY D. MONTGOMERY



JOHN DISTIN(0046862)
3492 Middlepost Lane
Rocky River, Ohio 44116
(440)-333-2508


MARGARET A. MALONE (0021770)
HAROLD G. VIELHAUER (0040800)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street - 25th Floor

Counsel for Defendant
The City of Van Wert, Ohio

Columbus, Ohio 43215-3428
(614) 466-2766

Counsel for Plaintiff
State of Ohio



Authorized Representative
of The City of Van Wert, Ohio

ATTACHMENT A

Page 1 of 2

Part I, A. - INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS FOR OUTFALL NUMBER 2PD00006001

See Part II, of NPDES Permit **OTHER REQUIREMENTS**, for locations of effluent sampling.

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
Reporting Code	Units	Parameter	Concentration Specified Units		Loading kg/day		Meas. Freq.	Sample Type
			30 day	7day	30 day	7 day		
00530	mg/l	Total Suspended Solids (Summer)	30	45	-	-	3/Week	Composite
		(Winter)	45	67.9	-	-	3/Week	Composite
00556	mg/l	Oil and Grease	Not to exceed 10 at any time					
00610	mg/l	Nitrogen, Ammonia (NH ₃) (Summer)	3.0	4.5	-	-	½ Week	Composite
		(Winter)	8.5	9.0	-	-	½ Week	Composite
00665	mg/l	Phosphorus, Total	2.0	3.0	-	-	1/Week	Composite
31616	#/100ml	Fecal Coliform (Summer Only)	2500	5000	-	-	Quarterly	Grab
50050	MGD	Flow Rate	-	-	-	-	Daily	Continuous
80082	mg/l	CBOD ₅ (Summer)	18	27	-	-	3/Week	Composite
		(Winter)	27	40	-	-	3/Week	Composite

- 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 1/month sample.
- If the entity uses chlorine for disinfection, the Chlorine Residual (Reporting Code 50060) shall be maintained at a level not to exceed 0.019 mg/l and shall be monitored daily by grab sample. (Summer Only).
- The Dissolved Oxygen (Reporting Code 003000) shall be maintained at a level of not less than 7.0 mg/l and shall be monitored daily by grab sample. (Summer Only).
- The Dissolved Oxygen (Reporting Code 003000) shall be maintained at a level of not less than 5.0 mg/l and shall be monitored daily by grab sample. (Winter Only).
 - The average effluent loading limitations are established using the following flow value: 2.8 MGD.

Part I, A. - INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS FOR OUTFALL NUMBER
2PD00006001 (Continued)

See Part II, of NPDES Permit **OTHER REQUIREMENTS**, for locations of effluent sampling.

<u>EFFLUENT CHARACTERISTIC</u>			<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
Reporting Code	Units	Parameter	Concentration Specified Units		Loading* kg/day		Meas. Freq.	Sample Type
			30 day	7day	30 day	7 day		
00625	mg/l	Nitrogen, Total Kjeldahl	-	-	-	-	1/Month	Composite
00630	mg/l	Nitrogen, Nitrite + Nitrate	-	-	-	-	3/Week	Composite
01079	ug/l	Silver, Total Recoverable	1.4	14	0.015	0.15	1/Month	Composite
01094	ug/l	Zinc, Total Recoverable	256	282	2.71	2.99	1/Month	Composite
01118	ug/l	Chromium, Total Recoverable	-	-	-	-	1/Month	Composite
01220	ug/l	Chromium, Dissolved Hexavalent	-	-	-	-	1/Month	Composite
61425	TUa	Acute Toxicity, <u>Ceriodaphnia dubia</u>	-	-	-	-	See Part II, Item T.	
61426	TUc	Chronic Toxicity, <u>Ceriodaphnia dubia</u>	-	-	-	-	See Part II, Item T.	
61427	TUa	Acute Toxicity, <u>Pimephales promelas</u>	-	-	-	-	See Part II, Item T.	
61428	TUc	Chronic Toxicity, <u>Pimephales promelas</u>	-	-	-	-	See Part II, Item T.	
99984	ug/l	Nickel, Total Recoverable	-	-	-	-	1/Month	Composite
99988	ug/l	Lead, Total Recoverable	4.0	18	0.042	0.20	1/Month	Composite
99989	ug/l	Copper, Total Recoverable	30	52	0.32	0.55	1/Month	Composite
99990	ug/l	Cadmium, Total Recoverable	-	-	-	-	1/Month	Composite
99993	ug/l	Mercury, Total	0.013	1.8	0.00014	0.010	1/Month	Composite
99995	mg/l	Cyanide, Free	-	-	-	-	1/Month	Composite

* The average effluent loading limitations are established using the following flow value: 2.8 MGD.

ATTACHMENT B

Within 18 months of completion of construction of the improvements pursuant to Section V, paragraph 5 of this Consent Order, Van Wert shall undertake and complete the stress test and submit the report to Ohio EPA as described below:

- A. Within 2 months before completion of construction or by February 1, 2001, submit to the Northwest District Office for review and comment two copies of a detailed plan of study for conducting wet weather stress testing of the Van Wert WWTP. The purpose of the stress testing is to maximize wet weather combined sewer flow to the plant that can receive full treatment through secondary treatment without washing out the system or rendering it inoperable or ineffective.
- B. Within 15 months of the completion of construction complete wet weather stress testing.
- C. Within 18 months of completion of construction submit to the Northwest District Office two copies of a report on the results of the wet weather stress testing. This report shall include, at a minimum, the following elements:
 - (1) Documentation of the maximum wet weather capacity of primary treatment.
 - (2) Documentation of the maximum wet weather flow that can receive full treatment through secondary treatment without washing out the system or rendering it inoperable or ineffective. The documentation shall include determining peak wet weather influent rates and how long they can be sustained.
 - (3) Identification of process or hydraulic limitations that prevent the plant from treating additional wet weather flows.

After the results of the study are reviewed and accepted by Ohio EPA, the loading limits in Van Wert's NPDES permit for total suspended solids and CBOD may be modified. The loading limits for other parameters may be modified if appropriate.