

The provisions of this Consent Judgment shall apply to and be binding upon the parties to this action, their officers, directors, agents, servants, employees, representatives and successors.

III.

As described in Counts One to Seventy-Four of the Complaint, Plaintiff has alleged that Defendant violated Ohio Revised Code Sections 6111.04 and 6111.07 by failing to comply with schedules of compliance and effluent limitations set forth in four Findings and Orders issued by the Director of the Ohio Environmental Protection Agency on March 14, 1977 for Defendant's Eastlake, Avon Lake, Ashtabula A & B and C plants (hereafter treated as a single electric generating station), and Lake Shore Electric Generating Stations. Defendant has answered by denial as to certain Counts, and by affirmative defenses as to the remaining Counts (claiming, for example, that compliance with the schedules set forth in said Findings and Orders was impossible for reasons beyond Defendant's control). Compliance with Paragraphs IV, V, VI, VII and VIII of this Consent Judgment shall be in full settlement and satisfaction of the action filed by Plaintiff and of any alleged violations of the terms and conditions of the aforesaid Findings and Orders between February 5, 1981 and December 31, 1982.

IV.

Defendant shall pay a civil penalty, pursuant to Ohio Revised Code Section 6111.09, in the amount of \$111,255.34. This penalty shall be paid not later than thirty (30) days from the entry of this Consent Judgment by delivering to Plaintiff's counsel,

for payment into the State Treasury, a check in such amount made to the order of "Treasurer, State of Ohio".

V.

Not later than thirty (30) days after entry of this Consent Judgment, Defendant shall pay, for the benefit of Plaintiff, the following sums: \$9,761.05 to Mehler and Hagestrom, Inc.,; \$2,307.51 to Commonwealth Associates, Inc.; \$383.55 to Gemberling, O'Brien & Bails; and \$946.65 to Guren, Merritt, Feibel, Sogg & Cohen to defray the discovery costs of Plaintiff incurred in this lawsuit. In addition, Defendant will credit \$345.90 to Plaintiff's account to offset the outstanding balance for photocopying services performed by Defendant for Plaintiff.

VI.

Defendant shall purchase on behalf of the Ohio Environmental Protection Agency ("Ohio EPA") a gas chromatograph mass spectrometer system to be used for the control and abatement of water pollution, along with accessories and training courses, at a total cost not to exceed \$275,000.00, including applicable use and sales taxes and delivery charges. The model and manufacturer of this system, as well as the identity of the accessories and training courses to be purchased, will be designated by Ohio EPA no later than November 5, 1982. Defendant shall submit a purchase order for this system to the manufacturer's representative no later than November 14, 1982. Defendant shall pay 90% of the invoice price for the system not later than 30 days after Ohio EPA gives Defendant notice of delivery of the system to the Ohio EPA laboratory at 1030 King Avenue in Columbus, Ohio, and pay the remainder of the invoice not later than 30 days after acceptance of the system by Ohio EPA. If the final delivered cost of the system designated by Ohio EPA is less than \$275,000.00, Ohio EPA will designate additional

laboratory equipment to be used for research on water pollution control, which shall be purchased by Defendant at a total cost not to exceed the portion of \$275,000.00 not spent on the gas chromatograph mass spectrometer system. Provided, however, that Plaintiff's right to require Defendant to pay for said additional laboratory equipment must be exercised one time and before June 30, 1983.

VII.

In order to improve the reliability of Defendant's wastewater treatment systems and to reduce non-compliance with effluent limitations, Defendant shall install new on-site laboratories, including an atomic absorption unit in each laboratory, at the Eastlake, Avon Lake and Ashtabula Electric Generating Stations. It is estimated that these laboratories will cost \$633,420.00. Subject to the receipt of any and all regulatory approvals and licenses which may be required, including but not limited to licenses of the Nuclear Regulatory Commission for the aforesaid atomic absorption units, these laboratories shall be completed and operational not later than June 30, 1984. Provided, however, that Defendant shall pursue the acquisition of such approvals and licenses with diligence.

VIII.

Defendant represents that it has substantially completed construction of the water pollution control equipment required by the Findings and Orders, and that Defendant currently is completing construction and is correcting design, mechanical and operational problems discovered during the start-up and initial operation of said facilities.

From January 1, 1983 until such time as final NPDES permits are issued, Defendant shall comply with the draft NPDES permits attached hereto as Appendices A, B, C and D. After final NPDES permits have been issued, Defendant shall comply with the provisions of such final permits. Until the water pollution control equipment at an electric generating station becomes operational pursuant to Paragraph IX, infra, Defendant shall be required to pay a stipulated penalty, in accordance with Paragraph X, infra, at each electric generating station for each day during which there is an excession of the effluent limitation for ash and oily waste filter discharges, metal cleaning waste discharges, or coal pile runoff. (For purposes hereof, the monthly volumetric recycle flow provisions of the draft and final NPDES permits are not considered effluent limitations, the violation of which gives rise to stipulated penalties. These flow provisions, however, will be used to determine whether the pollution control equipment is operational pursuant to Paragraph IX, and may be enforced by contempt or other appropriate remedies.) After the water pollution control equipment at a station becomes operational pursuant to Paragraph IX, infra, Defendant shall not be required to pay stipulated penalties pursuant to the schedule in Paragraph X for an excession of a covered effluent limitation at that station, but instead Plaintiff shall have the option to bring contempt charges or pursue other appropriate relief for such excessions. Provided, however, that this Consent Judgment shall terminate as to the enforcement of any alleged excession of a covered effluent limitation at each electric generating station one year after the station's satisfactory completion of the applicable operational performance provisions of Paragraph IX, infra, for such covered effluent limitation;

and as to the enforcement of any alleged violation of the requirement to install a new laboratory as specified in Paragraph VII, supra, this Consent Judgment shall terminate as to an electric generating station six months after said laboratory is completed and operational. During the life of this Judgment, this Court shall retain jurisdiction to enable the Court to issue such further orders, directions or relief that it may deem appropriate.

IX.

Notwithstanding anything in this Consent Judgment to the contrary, Defendant's obligation to pay stipulated penalties for ash and oily waste filter excessions shall terminate as to any electric generating station when the water pollution control equipment treating ash and oily waste filter discharges at that station has become operational. This equipment will be deemed operational when, in any two consecutive calendar month period, said station (a) has not exceeded the applicable draft or final permit's monthly average limitations for total suspended solids and oil and grease for discharges from the ash and oily waste filters, (b) has complied with the federal pH limitations specified in 40 CFR §401.17 for ash and oily waste filter discharges, (c) has not had more than three (3) excessions of the daily maximum total suspended solids and oil and grease limitations specified in the applicable draft or final permit, and (d) the station has met at least a 92% monthly volumetric average for recycling of bottom ash transport water. Upon achieving these standards, Defendant shall certify said fact in a written report to Ohio EPA and to the Court. Upon the receipt of said certification as to an electric generating station by Ohio EPA and by the Court, Defendant's obligation to pay stipulated penalties for ash and oily waste filter excessions at that station shall terminate at the end

of the two consecutive calendar month period during which the equipment treating the ash and oily waste filter discharges became operational. Provided, however, that Ohio EPA may, in a written report to the Court, disagree with Defendant's certification, and thereupon either party may submit this matter to the Court for resolution.

Defendant's obligation to pay stipulated penalties for metal cleaning waste excessions shall terminate as to any electric generating station when the water pollution control equipment treating the metal cleaning wastes has become operational. This equipment shall be deemed operational when Defendant has had a total of no more than three (3) excessions of daily effluent limitations for metal cleaning wastes during two (2) consecutive runs (covering at least six (6) sampling days) of the equipment (each such run must consist of a treatment of the total volume of wastewater from a metal cleaning event). For purposes of demonstrating operational status of the metal cleaning waste treatment systems at the Ashtabula Electric Generating Station, separate tests shall be performed for the metal cleaning waste treatment systems at the A & B and at the C plants. Upon achieving these standards, Defendant shall certify said fact in a written report to Ohio EPA and to the Court. Upon the receipt of said certification as to an electric generating station by Ohio EPA and by the Court, Defendant's obligation to pay stipulated penalties for metal cleaning waste excessions at that station shall terminate at the end of the last of the two runs during which the equipment treating the metal cleaning wastes discharges became operational. Provided, however, that Ohio EPA may, in a written report to the Court, disagree with Defendant's certification, and thereupon either party may submit this matter to the Court for resolution.

Defendant's obligation to pay stipulated penalties for coal pile runoff excessions shall terminate as to any electric generating station when the water pollution control equipment treating the coal pile runoff has become operational. This equipment shall be deemed operational when Defendant has not had more than one excession of the daily maximum effluent limitations for coal pile runoff for five (5) consecutive weeks of discharges from the coal pile runoff equipment (i.e., a week during which no discharge occurred would not be included in the counting of the five consecutive weeks but a succeeding week or weeks during which a discharge occurred would be included in the counting of the five consecutive weeks). Upon achieving these standards, Defendant shall certify said fact in a written report to Ohio EPA and to the Court. Upon the receipt of said certification as to an electric generating station by Ohio EPA and by the Court, Defendant's obligation to pay stipulated penalties for coal pile runoff excessions at that station shall terminate at the end of the fifth week of discharge during which the equipment treating the coal pile runoff discharges became operational. Provided, however, that Ohio EPA may in a written report to the Court disagree with Defendant's certification, and thereupon either party may submit this matter to the Court for resolution.

The provisions of this paragraph pertaining to excessions of effluent limitations are not to be construed as determinations by this Court or admissions by the Ohio EPA that such excessions are lawful or that they constitute satisfactory level of compliance with the NPDES permits.

X.

Until the water pollution control equipment at each electric generating station is operational as determined by Paragraph IX above, Defendant shall pay stipulated civil penalties for any exces-

sions of effluent limitations specified by the applicable draft or final permit for ash and oily waste filters discharges, metal cleaning wastes, and coal pile runoff. Defendant will not be required to pay stipulated penalties pursuant to the following schedule for non-compliance with other provisions of the applicable draft or final NPDES permits, but instead, Plaintiff shall have the option to bring contempt charges or pursue other appropriate relief for such non-compliances.

Stipulated penalties for excessions of the effluent limitations for the ash and oily waste filters shall be paid pursuant to Ohio Revised Code Section 6111.09 in the following amounts, such penalties not to be suspended in whole or in part:

\$1,000.00 per day of excession per generating station from January 1, 1983 to March 31, 1983;

\$2,000.00 per day of excession per generating station from April 1, 1983 to June 30, 1983;

\$3,000.00 per day of excession per generating station from July 1, 1983 to September 30, 1983;

\$4,000.00 per day of excession per generating station from October 1, 1983 to December 31, 1983;

\$5,000.00 per day of excession per generating station from January 1, 1984 to date of operation, as determined by Paragraph IX.

Stipulated penalties for excessions of the effluent limitations for metal cleaning waste discharges and coal pile runoff shall be paid pursuant to Ohio Revised Code Section 6111.09 in the following amounts, such penalties not to be suspended in whole or in part:

\$1,000.00 per day of excession per generating station from January 1, 1983 to December 31, 1983;

\$2,500.00 per day of excession per generating station from January 1, 1984 to date of operation, as determined by Paragraph IX.

Multiple excursions from the same electric generating station on the same day shall be counted and treated as one excursion for that day. An excursion of a monthly average shall be deemed to constitute one day of excursion.

Civil penalties incurred during a month shall be paid not later than the last day of the next succeeding month by delivering to Plaintiff's counsel, for payment into the State Treasury, a check in the proper amount made to the order of "Treasurer, State of Ohio".

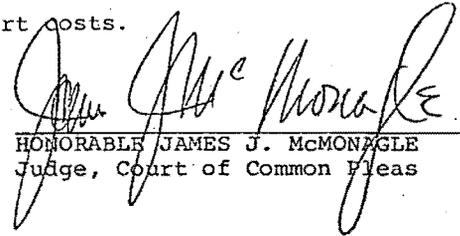
XI.

Defendant agrees to withdraw its requests for adjudication hearings concerning the proposed denial of its requests for modification of the Findings and Orders, currently pending before Ohio EPA. Plaintiff and Defendant acknowledge that certain provisions in the draft permits, including but not limited to, Part II, Paragraph B, and Part III, Paragraphs 3, 11, 13, 14, 16, 17, 18, 26, 28 and 30 are based on regulations adopted by the United States Environmental Protection Agency ("USEPA") in 40 CFR Part 122 relating to the "Consolidated Permit Regulations", which USEPA has agreed to modify in future rule-making. Accordingly, although Plaintiff does not hereby agree to modify the permits, Defendant retains the right to request such modification of affected provisions in the draft (or final) permits at such time as USEPA revises the underlying regulations, in accordance with the procedures established for such modifications. Defendant also retains whatever rights exist under applicable state and federal law to contest any federal or state action with respect to any terms and conditions and provision of any final permit to the extent they differ from the draft permits, including but not limited to determinations under §316 of the Clean Water Act, and to contest any refusal to grant, or adverse decision on, Defendant's request to modify the draft or final permit in

accordance with the aforesaid Consolidated Permit Regulation agreement. Defendant waives the right to adjudicate or appeal the effluent limitations and monitoring requirements set forth in Part I of the draft NPDES permits. This paragraph is not to be construed to entitle Defendant with rights to modification of the permits not already existing under state or federal law, but instead provides that Defendant retains the rights that it has or may have in the future to request modification and pursue remedies available under law for contesting Ohio EPA's response to such modification requests.

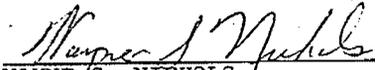
XII.

Defendant shall pay Court costs.


HONORABLE JAMES J. McMONAGLE
Judge, Court of Common Pleas

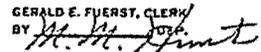
APPROVED:

THE OHIO ENVIRONMENTAL
PROTECTION AGENCY

BY: 
WAYNE S. NICHOLS

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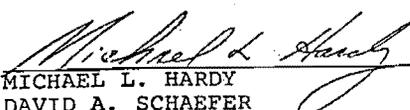
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