

the above. In reviewing submissions under this paragraph, EPA's primary approval criteria will be technical feasibility, appropriateness, cost-effectiveness and compliance with the requirements of Toledo's Current Permit, this Consent Decree, the Clean Water Act and, where applicable, the CSO Control Policy. Within 21 working days following receipt of a notice of disapproval or direction to modify the submission from U.S. EPA (or within such longer time set forth in such notice), Toledo shall submit a modified plan to U.S. EPA and Ohio EPA in accordance with U.S. EPA's directions. Any stipulated penalties applicable to the submission shall accrue during the 21-day or otherwise specified period but shall not be payable if U.S. EPA determines that Toledo has complied with U.S. EPA's directions upon resubmission of the plan.

54. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 53, Toledo shall proceed, if directed by U.S. EPA, to take any action required by any nondeficient portion of Toledo's submission. Implementation of any nondeficient portion of a submission shall not relieve Toledo of any liability for stipulated penalties.

55. In the event that a resubmitted plan or portion thereof is disapproved in whole or in part or approved with conditions by U.S. EPA, U.S. EPA may again require Toledo to correct the deficiencies or conditions in accordance with the preceding paragraphs. U.S. EPA also retains the right to modify or develop any disapproved or conditioned portion of the resubmitted plan. Toledo shall implement any such plan, report or item as modified or developed by U.S. EPA, subject only to its right to invoke the procedures set forth in Section XII, Dispute Resolution.

56. If upon resubmission, a plan is disapproved or modified in whole or in part by U.S. EPA due to a material defect previously identified and not corrected, Toledo shall be deemed to have failed to submit its plan timely and adequately unless it invokes the dispute resolution

procedures set forth in Section XII and U.S. EPA's action is overturned pursuant to that Section. If U.S. EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, except as provided in Paragraph 97. Whether U.S. EPA and Ohio EPA disapprove of Toledo's submissions or approve the submissions with modifications shall not affect the burden of proof or the standard of review set forth in Section XII, Dispute Resolution, of this Consent Decree.

K. Class IV Operator Compliance

57. Toledo shall implement all necessary steps to assure that the Bayview WWTP is under the responsible charge of a State of Ohio certified Class IV wastewater treatment plant operator. The term "responsible charge" means the physical on-site supervision of technical operations and maintenance of the wastewater treatment works at all times.

L. Wastewater Monitoring

58. Upon completion of construction of the ballasted flocculation facilities as required by Paragraph 8(f):

(a) Toledo shall monitor all discharges from outfall 001 in accordance with all monitoring requirements for all parameters specified in Toledo's Current Permit at a location after the location where all wastestreams that are discharged from outfall 001 are joined. This sampling location shall be referred to for purposes of this Consent Decree as "sampling location 001."

(b) Whenever Toledo is utilizing its ballasted flocculation facilities, Toledo shall also monitor its secondary effluent flows in accordance with all monitoring requirements specified in Toledo's Current Permit for volume, suspended solids, CBOD₅ and pH at a location

downstream of Toledo's secondary clarifiers but before where those flows are joined with flows from Toledo's ballasted flocculation facilities. This sampling location shall be referred to for purposes of this Consent Decree as "sampling location 602."

(c) Toledo shall monitor all flows from its ballasted flocculation facilities in accordance with all monitoring requirements specified in Toledo's Current Permit for volume, suspended solids and CBOD₅. This sampling location shall be referred to for purposes of this Consent Decree as "sampling location 603."

(d) Toledo shall include the results of its monitoring under this paragraph in the Monthly Operating Reports that it submits to the Ohio EPA.

VI. FUNDING

59. Compliance with the terms of this Consent Decree by Toledo is not conditioned on the receipt of federal or state grant funds or upon Toledo's financial capabilities. In addition, failure to comply is not excused by the lack of federal or state grant funds, or by the processing of any applications for the same, or by Toledo's financial capabilities. Toledo reserves the right to petition EPA and Ohio EPA for a change in compliance dates if it experiences significant adverse changes in its financial capabilities.

VII. REPORTING

60. Beginning with the end of the next full calendar quarter after entry of this Consent Decree and for every calendar quarter thereafter until this Consent Decree terminates in accordance with Section XXVII, Termination, below, Toledo shall submit written status reports to U.S. EPA and Ohio EPA. In each report, Toledo shall provide the following:

(a) a statement setting forth the deadlines and other terms that Toledo is required

by this Consent Decree to meet since the date of the last quarterly statement, whether and to what extent Toledo has met these requirements, and the reasons for any noncompliance;

(b) a general description of the work completed within the three-month period, and a projection of work to be performed pursuant to this Consent Decree during the three-month period. Notification to U.S. EPA and Ohio EPA of any anticipated delay shall not, by itself, excuse the delay; and

(c) copies of all Monthly Operating Reports, monthly SSD reports and quarterly reports of wastewater backups into buildings that Toledo submitted to Ohio EPA pursuant to Paragraphs 39-40, above, in the previous calendar quarter; and copies of all written reports of 002 discharges and bypass notifications that Toledo submitted to Ohio EPA pursuant to Paragraphs 61-62, below.

61. For each discharge from outfall 002, whether such discharge was anticipated or unanticipated, Toledo shall submit to Ohio EPA a written report containing all information required under Toledo's NPDES Permit No. 2PF00000*JD, Part III, Sections 11-12, pertaining to such discharge including, but not limited to, a detailed explanation of why the discharge was necessary to avoid loss of life, personal injury, or severe property damage, why Toledo believed that there were no feasible alternatives to the discharge based upon existing equipment at the Bayview WWTP, the total amount of wastewater discharged from outfall 001 during the 24-hour period during which the discharge from outfall 002 occurred, and the total amount of flow discharged from outfall 002. Toledo must submit each such report to Ohio EPA no later than five days from the date of such discharge from outfall 002.

62. For each time Toledo bypasses wastewater flow from any equipment at the Bayview

WWTP, including but not limited to the aeration basins and secondary clarifiers, Toledo shall submit to Ohio EPA a written report containing all information required under Toledo's NPDES Permit No. 2PF00000*JD, Part III, Sections 11-12, pertaining to such bypass including, but not limited to, a detailed explanation of why the discharge was necessary to avoid loss of life, personal injury, or severe property damage; whether there were feasible alternatives to the bypass based upon existing equipment at the Bayview WWTP and, if not, the reasons supporting Toledo's conclusions; and the total amount of wastewater bypassed during the 24-hour period of time. Toledo must submit each such report to Ohio EPA no later than five days from the date of such bypass.

VIII. COMMUNICATIONS

63. Except as specified otherwise, when written notification (including all reports) or communication with the United States U.S. EPA, the United States Department of Justice, the United States' Attorney, the State of Ohio, Ohio EPA, Toledo is required by the terms of this Consent Decree, it shall be addressed as follows:

As to the United States Department of Justice:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Washington, D.C. 20044-7611
Reference Case No. 90-5-1-1-3554

As to the United States Attorney:

Holly Taft Sydlow
Assistant United States Attorney
Northern District of Ohio
Western Division

1716 Spielbush Avenue
305 United States Courthouse
Toledo, Ohio 43624

As to U.S. EPA :

Chief
Water Enforcement and Compliance Assurance Branch
Water Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd
Chicago, Illinois, 60604

and

Gary O. Prichard
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson, Blvd.
Chicago, Illinois 60604

As to the State:

Northwest District Office
Division of Surface Water
Attn: Enforcement Group Leader
Ohio Environmental Protection Agency
347 Dunbridge Rd.
P.O. Box 466
Bowling Green, Ohio 43402-0466,

Margaret A Malone
Assistant Attorney General
State of Ohio Office of Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3824,

and

Randy Bournique
Enforcement Coordinator
Division of Surface Water
Ohio Environmental Protection Agency

122 South Front Street
Columbus, Ohio 43216-3669

As to Toledo:

Law Director
City of Toledo
One Government Center, Suite 2250
Toledo, Ohio 43604

Director of Public Utilities
420 Madison Street, Suite 100
Toledo, Ohio 43604

Any party, upon written notification to the other parties, may change the addresses to whom communications with that party shall be sent. All notifications or communications shall be deemed submitted on the date they are postmarked and sent by first class mail or certified mail, return receipt requested.

IX. STIPULATED PENALTIES

64. Toledo shall be liable for stipulated penalties in the amounts set forth in this Section to the United States and the State of Ohio for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section X, Force Majeure. "Compliance" by Toledo shall include all requirements of this Consent Decree, including, but not limited to, completion of the activities required under this Consent Decree or any work plan or other plan approved pursuant to this Consent Decree within the specified time schedules and deadlines established by and approved under this Consent Decree or any work plan or other plan.

65. For each failure to comply with the compliance schedule deadlines (including schedule deadlines contained in any plan or report approved by U.S. EPA and Ohio EPA) specified in Section V, Compliance Program or with the Supplemental Environmental Project

completion deadlines set forth in Paragraphs 107 and 119 (other than those requirements specifically identified in other Paragraphs of this Section, if any), Toledo shall pay the following stipulated penalties per violation per day:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty Per Day</u>
1st day to 30th day	\$ 1000
31st day to 60th day	\$ 2500
Each day beyond 60 days	\$ 5000

66. Prior to completion of construction of the ballasted flocculation facilities as required by Paragraph 8(f), for any failure to comply with any effluent limitations in Toledo's Current Permit applicable to Outfall 001 other than acute or chronic toxicity limitations, Toledo shall pay the following stipulated penalties per violation per day:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty</u>
Daily Effluent Limit	\$1,000 per day
7-Day Average Limit	\$2,500 per 7-day period
30-Day Average Limit	\$10,000 per 30-day period

Toledo shall pay a stipulated penalty of \$5,000 for violations of any acute or chronic toxicity effluent limits. Mass limits and concentration limits for the same parameter shall be separate effluent limitations so that, for example, a violation of a seven-day concentration limitation for suspended solids and a violation of a seven-day mass limitation for suspended solids shall be considered to be two separate "7-Day Average Limit" violations. Seven-day and thirty-day effluent limitations apply to any and all consecutive seven and thirty-day periods. Toledo is required to pay only one stipulated penalty for each day per violation of a seven-day or thirty-day effluent limitation (e.g., Toledo will not have to pay a penalty for seven days of violation of the

seven-day concentration limitation for suspended solids if it is also required to pay a stipulated penalty for the same days for violation of the thirty-day concentration limitation for suspended solids).

67. Following completion of construction of the ballasted flocculation facilities as required by Paragraph 8(f), for any failure to comply with any effluent limitations in Toledo's Current Permit applicable to discharges from the Bayview WWTP as determined based upon compliance monitoring performed in accordance with the monitoring requirements in Toledo's Current Permit, other than acute or chronic toxicity limitations, Toledo shall pay the following stipulated penalties per violation per day:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty</u>
Daily Effluent Limit	\$1,000 per day
7-Day Average Limit	\$2,500 per 7-day period
30-Day Average Limit	\$10,000 per 30-day period

Toledo shall pay a stipulated penalty of \$5,000 for violations of any acute or chronic toxicity effluent limits. Loading limits and concentration limits for the same parameter shall be separate effluent limitations so that, for example, a violation of a seven-day concentration limitation for suspended solids and a violation of a seven-day loading limitation for suspended solids shall be considered to be two separate "7-Day Average Limit" violations. Seven-day and thirty-day effluent limitations apply to any and all consecutive seven and thirty-day periods. Toledo is required to pay only one stipulated penalty for each day per violation of a seven-day or thirty-day effluent limitation (e.g., Toledo will not have to pay a penalty for seven days of violation of the seven-day concentration limitation for suspended solids if it is also required to pay a stipulated

penalty for the same days for violation of the thirty-day concentration limitation for suspended solids).

68. Following completion of construction of the ballasted flocculation facilities as required by Paragraph 8(f), Toledo also shall be liable for the following stipulated penalties if its wastewater as measured at sampling locations 001 or 602 (as defined in Paragraphs 58(a) and (b) of this Consent Decree), contains suspended solids or CBOD₅ levels in excess of the effluent limitations specified for those parameters in Table 1, or if the critical pH levels, as measured at sampling locations 001 or 602 are greater than the maximum levels and/or are less than the minimum levels set forth in Table 1:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty</u>
Daily Effluent Limit	\$1,000 per day
7-Day Average Limit	\$2,500 per 7-day period
30-Day Average Limit	\$10,000 per 30-day period

For purposes of this Consent Decree, loading limits and concentration limits for the same parameter shall be separate effluent limitations so that, for example, a violation of a seven-day concentration limitation for suspended solids and a violation of a seven-day loading limitation for suspended solids shall be considered to be two separate "7-Day Average Limit" violations. Seven-day and thirty-day effluent limitations apply to any and all consecutive seven and thirty-day periods. For purposes of calculating compliance with the seven and thirty-day effluent limitations for suspended solids or CBOD₅ set forth in Table 1 for sampling station 602, Toledo shall report in its Monthly Operating Reports, and shall use, the monitoring results at sampling station 602 for each day the ballasted flocculation facilities are used, and the results at sampling

station 001 for each day the ballasted flocculation facilities are not used. Toledo is required to pay only one stipulated penalty for each day per violation of a seven-day or thirty-day effluent limitation (e.g., Toledo will not have to pay a penalty for seven days of violation of the seven-day concentration limitation for suspended solids if it is also required to pay a stipulated penalty for the same days for violation of the thirty-day concentration limitation for suspended solids). Toledo shall not be required to pay a stipulated penalty under this Paragraph if Toledo is already required to pay a stipulated penalty under Paragraph 67 for a violation of the same effluent limitation for the same period of time for discharges as monitored pursuant to Toledo's Current Permit.

69. For each failure to submit a timely and adequate plan or permit to install required under Sections V.B through V.I, Toledo shall pay the following stipulated penalties per violation per day:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty Per Day</u>
1st day to 30th day	\$ 1000
31st day to 60th day	\$ 2500
Each day beyond 60 days	\$ 5000

Stipulated penalties under this Paragraph shall begin to accrue on the date that Toledo receives written notice from U.S. EPA or Ohio EPA of disapproval of the report, plan, or schedule and shall continue to accrue until Toledo submits a revised report, plan or schedule to U.S. EPA and Ohio EPA which U.S. EPA and Ohio EPA ultimately approve.

70. For each failure to submit timely and adequate reports or other written documents required by this Consent Decree, but not included in Paragraph 69, Toledo shall pay the

following stipulated penalties per violation per day:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty Per Day</u>
1st day to 30th day	\$ 250
31st day to 60th day	\$ 500
Each day beyond 60 days	\$ 1000

71. Prior to completion of the work required under Section V.B of this Consent Decree, for each twenty-four hour period that Toledo discharges flows from the Bayview WWTP's 001 outfall that have not been treated by the WWTP's secondary aeration basins and secondary clarifiers when the effluent flow rate from outfall 001 has not exceeded 170 million gallons per day for at least one entire hour during that twenty-four hour period, Toledo shall pay a stipulated penalty of \$1,000.

72. Prior to completion of the work required under Section V.B of this Consent Decree, for each twenty-four hour period that Toledo discharges from outfall 002 at any time during that twenty-four hour period when the effluent flow rate from outfall 001 has not exceeded 170 million gallons per day for at least one entire hour during that twenty-four hour period, Toledo shall pay a stipulated penalty of \$10,000.

73. Following completion of the work required under Section V.B of this Consent Decree, for each twenty-four hour period that Toledo discharges flows from the Bayview WWTP's 001 outfall that have not been treated by the WWTP's secondary aeration basins and secondary clarifiers when the effluent flow rate from outfall 001 has not exceeded 195 million gallons per day for at least one entire hour during that twenty-four hour period, Toledo shall pay a stipulated penalty of \$1,000.

74. Following completion of the work required under Section V.B, for each 24-hour period that Toledo discharges at any time from outfall 002 when the effluent flow rate from outfall 001 has not exceeded 400 million gallons per day for at least one entire hour during that 24-hour period, Toledo shall pay a stipulated penalty of \$10,000

75. For each day that Toledo discharges from a combined sewer overflow in violation of Paragraph 6 of this Consent Decree, Toledo shall pay a stipulated penalty of \$5,000 per day per outfall.

76. For each day that an SSD occurs prior to November 1, 2006, while Toledo is out of compliance with its Sewer System Management, Operation and Maintenance Plan, Toledo shall pay stipulated penalties of \$3,000 per day for each day of each SSD occurring. These stipulated penalties shall be in addition to any stipulated penalties for Toledo's failure to comply with its Sewer System Management, Operation and Maintenance Plan.

77. For each day that an SSD occurs on or after November 1, 2006, Toledo shall pay stipulated penalties of \$10,000 per day per location for each day of each SSD occurring except that Toledo shall not be liable for stipulated penalties for SSDs which are caused by a ten-year storm event.

78. For each CSO that violates the water quality-based or technology-based effluent limitations and conditions in Toledo's NPDES permit (including the General Effluent Limitations) that occurs subsequent to completion of all construction and full implementation of all measures under the Long Term Control Plan or August 31, 2016, whichever is earlier, Toledo shall pay stipulated penalties of \$5,000 per day for each day of each CSO occurring.

79. For each failure to comply with any other requirement of this Consent Decree not

specified in Paragraphs 65-78 above, Toledo shall pay the following stipulated penalties:

<u>Period of Noncompliance With Requirement</u>	<u>Penalty Per Day</u>
1st day to 30th day	\$ 250
31st day to 60th day	\$ 500
Each day beyond 60 days	\$ 1000

80. Multiple penalties may accrue on any one day for different violations of different requirements of this Consent Decree even if such violations are caused by the same set of circumstances.

81. Except as described in Paragraph 69, above, and Paragraph 97, below, all penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity.

82. Following U.S. EPA or Ohio EPA's determination that Toledo has failed to comply with a requirement of this Consent Decree, U.S. EPA or Ohio EPA may give Toledo written notification of the same, describe the noncompliance, and demand payment of stipulated penalties for the noncompliance. All penalties accruing under this Section shall be due and payable to the United States and the State of Ohio within 30 days following Toledo's receipt of such demand for payment which describes the noncompliance. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether or when U.S. EPA or Ohio EPA has notified Toledo of a violation.

83. Any stipulated penalties incurred by Toledo shall be paid as follows. Sixty-seven percent (67%) of the penalty shall be paid to the United States by a cashier's check or certified

funds payable to "Treasurer of the United States," and shall be tendered to U.S. EPA, Region V, Post Office Box 70753, Chicago, Illinois 60673, within 30 days of Toledo's receipt of a demand for payment of stipulated penalties from either the United States (or EPA) or the State of Ohio (or Ohio EPA). The transmittal letter accompanying the check shall specify the caption and docket number of this action and the facility and the violations for which the stipulated penalties are being paid. A copy of the letter and the check shall simultaneously be sent to U.S. EPA Region V, Water Compliance Branch, Compliance Section, WCC-15J, 77 West Jackson Boulevard, Chicago, Illinois 60604, and to Chief, Environmental Enforcement Section, United States Department of Justice, Post Office Box 7611, Washington, D.C. 20044-7611. Thirty-three percent (33%) of the penalty shall be paid to the State of Ohio by a cashier's check or certified funds payable to "Treasurer, State of Ohio," within 30 days of Toledo's receipt of a demand for payment of stipulated penalties from either the United States (or EPA) or the State of Ohio (or Ohio EPA) along with a copy of the same letter to be submitted to the United States, and sent to

Jena Suhadolnik, Administrative Assistant (or by a person subsequently designated by the State of Ohio)
Office of the Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410.

84. In any dispute over the applicability of stipulated penalties, Toledo shall bear the burden of proving that it is not subject to stipulated penalties, in accordance with Section XII, Dispute Resolution.

85. The stipulated penalties herein shall be in addition to other remedies or sanctions available to the United States by reason of Toledo's failure to comply with the requirements of

this Consent Decree, Toledo's Current Permit, or the Clean Water Act. The payment of such stipulated penalties shall not be construed to relieve Toledo from specific compliance with this Decree or federal or state law, or limit the authority of U.S. EPA or Ohio EPA to require compliance with such laws. The United States and State of Ohio are specifically authorized to seek injunctive relief in this civil action to address any violation of this Consent Decree.

86. If Toledo invokes dispute resolution as provided in Section XII, below, penalties shall continue to accrue as provided in Paragraphs 69, 81 and 97 during such dispute resolution period, but need not be paid to the United States until the following:

(a) If the dispute is resolved by agreement or by a decision of U.S. EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to the United States within 30 days of the agreement or the receipt of U.S. EPA's decision or order;

(b) If the dispute is appealed to this Court and the United States prevails in whole or in part, Toledo shall pay all accrued penalties determined by the Court to be owed to the United States within 60 days of receipt of the Court's decision or order, except as provided in subparagraph 86(c) below;

(c) If the District Court's decision is appealed by any Party, Toledo shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to U.S. EPA or to Toledo to the extent that such party(ies) prevail(s).

87. If Toledo fails to pay stipulated penalties when due, the United States or Ohio may

institute proceedings in this action to collect the penalties, as well as interest.

88. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Toledo's violation of this Decree or of Toledo's Current Permit or of the Act.

X. FORCE MAJEURE

89. "Force Majeure" for the purposes of this Consent Decree is defined as an event arising from causes beyond the control of Toledo or the control of any entity controlled by Toledo, including its consultants and contractors, which delays or prevents the performance of any obligation under this Consent Decree. Nothing in this section is intended to relieve Toledo of its duty to use all due diligence to complete the requirements of this Consent Decree in a timely matter or of Toledo's obligation to meet all discharge limitations and other obligations contained in Toledo's Current Permit and as set forth in Paragraph 6 of this Consent Decree. Unanticipated or increased costs or changed financial circumstances are not Force Majeure events. Failure to apply for a required permit or approval, or to provide in a timely manner all information required to obtain a permit or approval necessary to meet the requirements of this Consent Decree, are not Force Majeure events. However, if a permitting authority fails to issue, renew or modify--or delays in issuing, renewing or modifying--a lawful permit, order or other action required for any part of the work under this Consent Decree, Toledo is entitled to seek relief under the Force Majeure provisions of this Consent Decree.

90. If any event occurs that causes or may cause delay in the completion of any requirement of this Consent Decree, whether or not due to a Force Majeure event, Toledo shall so notify U.S. EPA, in writing, within fourteen (14) days after Toledo knows, or, in the exercise

of due diligence should have known of the event. The notice shall describe in detail the bases for Toledo's contention that it experienced a Force Majeure event, the precise cause or causes of the event, the measures taken or to be taken to prevent or minimize the noncompliance or event, and the timetable by which those measures will be implemented. Failure to so notify U.S. EPA shall constitute a waiver of any claim of Force Majeure as to the event in question.

91. If U.S. EPA finds that a delay in performance is, or was, caused by a Force Majeure event, it shall extend the time for performance, in writing, for a period to compensate for the delay resulting from such event and stipulated penalties shall not be due for such period. In proceedings on any dispute regarding a delay in performance, the provisions of Section XII, Dispute Resolution, shall apply, and Toledo shall have the burden of proving that the delay is, or was, caused by a Force Majeure event, and that the amount of additional time requested is necessary to compensate for that event.

92. Compliance with a requirement of this Consent Decree shall not by itself constitute compliance with any other requirement. An extension of one compliance date based on a particular event shall not automatically extend another compliance date or dates. Toledo shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought. Toledo may petition for the extension of more than one compliance date in a single request.

XI. FORCE MAJEURE BETWEEN TOLEDO AND THE STATE

93. If any event occurs that causes or may cause Toledo to violate any provision of this Consent Decree, Toledo shall notify the Ohio EPA in writing within fourteen (14) days from when it knows, or in the exercise of reasonable diligence under the circumstances should have

known, that compliance with the Decree would be prevented or delayed, describing in detail the precise cause or causes of the delay or violation, the anticipated length of the delay if applicable, the measures taken by Toledo to prevent or minimize the delay and the timetable by which those measures will be implemented. Toledo shall adopt all reasonable measures to avoid or minimize any such violation. Toledo shall make all reasonable efforts to identify events that cause or may cause a violation of this Consent Decree.

94. In any action by the State of Ohio to enforce any of the provisions of this Consent Decree, Toledo may raise at that time the question of whether it is entitled to a defense that its conduct was caused by circumstances beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed by Toledo and the State of Ohio that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time, if ever, that the proceeding to enforce this Consent Decree is commenced by the State. At that time the burden of proving that any delay was or will be caused by circumstances beyond the control of Toledo shall rest with Toledo. Failure by Toledo to timely comply with the notice requirements of Paragraph 93 shall, at the option of Ohio EPA, constitute a waiver by Toledo of any right it may have to raise such a defense. Changed financial circumstances or increased costs associated with the implementation of any action required by this Consent Decree shall not in any event constitute circumstances entirely beyond the control of Toledo or serve as a basis for an extension of time under this Section XI.

XII. DISPUTE RESOLUTION

95. Any dispute that arises between Toledo and the United States or State of Ohio with respect to the meaning or application of any of the requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between those parties to attempt to resolve such disputes. Such period of informal negotiations shall not extend beyond thirty (30) days from the date when notice of a dispute is given by one party to the others, unless all parties to the dispute have agreed in writing to extend that period. After informal negotiations, if the parties to the dispute are unable to agree upon the meaning or application of the requirements of this Consent Decree, then Toledo shall comply with the position taken by the United States and the State of Ohio, subject only to Toledo's right to petition the Court as set forth in Paragraph 96, below. This dispute resolution process shall not apply to the issuance, renewal, modification, denial or revocation of a permit and the issuance of orders or other actions of the Director of Environmental Protection (Ohio EPA). Notwithstanding the preceding sentence, the dispute resolution process shall in any event apply to disputes between Toledo and the State of Ohio with respect to the meaning or application of any requirements of this Consent Decree that relate to the review, modification, disapproval and/or approval of the Long Term Control Plan and/or Long Term Control Plan Report submitted to Ohio EPA pursuant to Paragraphs 30 and/or 32 of this Consent Decree.

96. Within thirty (30) days of the end of the informal negotiations period for resolution of the dispute set forth in Paragraph 95, above, Toledo may petition the Court for relief. Such petition shall set forth the nature of the dispute and proposal for its resolution. The United States and/or the State of Ohio shall have thirty (30) days to respond to the petition and propose an

alternate resolution. In any such dispute, the Court will conduct a de novo review in which Toledo shall bear the burden of demonstrating that its actions or positions taken are in accordance with, and will assure Toledo's compliance with, the terms, conditions, requirements and objectives of this Consent Decree, the Clean Water Act, Toledo's Current Permit, and where applicable, the CSO Policy. Any party may request an evidentiary hearing for good cause.

97. Except as provided in this Consent Decree, agreed to in writing by the parties, or ordered by the Court, the filing of a petition asking the Court to resolve a dispute shall not in and of itself extend or postpone any deadline or obligation of Toledo, provided that payment of any stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree, except as provided in Paragraph 69. In the event that Toledo does not prevail on the disputed issue, stipulated penalties, if applicable, shall be assessed and paid as provided in Section IX, Stipulated Penalties. For any dispute which may arise out of a disapproval in whole or in part or an approval with conditions by U.S. EPA or the State of Ohio of Toledo's Long Term Control Plan Report submitted in accordance with Paragraph 32, stipulated penalties shall not accrue during the period, if any, beginning on the 31st day after the Court's receipt of the United States' and/or the State of Ohio's response submission, as set forth in Paragraph 96, above, regarding the dispute until the date that the Court issues a final decision regarding such dispute. The preceding sentence shall not apply if Toledo did not have a reasonable basis for the dispute or if the petition was filed for the purposes of delay.

XIII. CIVIL PENALTY

98. Toledo shall pay a civil penalty of \$435,000 to the United States and \$65,000 to the State of Ohio within 30 days following entry of this Consent Decree. Payment to the United States shall be made via Fed wire Electronic Funds Transfer ("EFT") to the Department of Justice Lockbox Bank in accordance with specific instruction to be timely provided to Toledo upon entry of this Consent Decree and shall reference DOJ case No. 90-5-1-1-3554, the Civil Action Number assigned to this case by the United States District Court, Northern District of Ohio, and File No. ___ for the United States Attorney's Office for the Northern District of Ohio. Any funds received at the Lockbox bank after 11:00 a.m. (Eastern Time) shall be credited on the next business day. Toledo shall advise the Financial Litigation Unit of the United States Attorney's Office for the Northern District of Ohio at the time payment is being wire-transferred. In addition, Toledo shall confirm to U.S. EPA and the Department of Justice that payment has been made by providing notice in the manner specified in Section VIII, Communications, above.

Payment to Ohio shall be made by cashier's check or certified funds, payable to "Treasurer, State of Ohio," and shall be sent to:

Jena Suhadolnik, Administrative Assistant (or a person subsequently designated by the State of Ohio) at:
Office of the Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410.

Payment may also be made by electronic transfer to the designated accounts pursuant to instructions sent by Ohio upon request by Toledo. A copy of the check and transmittal letter or other evidence of payment shall be sent to Ohio and Ohio EPA at the addresses set forth in

Section VIII, Communications, above.

99. Nothing in this Section XIII, Civil Penalty, or in Section IX, Stipulated Penalties, shall be construed to limit any other remedies available for violations of this Consent Decree, any NPDES permit, or any regulation or provision of law, including, but not limited to, injunctive relief and civil or criminal contempt sanctions. Where an act or omission that constitutes a violation of this Consent Decree also constitutes a violation of statute, the United States, U.S. EPA or Ohio may elect, in the sole discretion of each, to seek civil penalties under statute. However, in an action for civil penalties based upon a violation of a statute, the parties stipulate that evidence that Toledo has paid a stipulated penalty to the United States, U.S. EPA, and/or the State of Ohio for the same violation for the same day in issue is admissible and can be considered as a factor in mitigation of a penalty.

100. Interest shall accrue on any amounts overdue to the United States under the terms of this Consent Decree at the rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 1317. Interest shall accrue on any amounts overdue to Ohio under the terms of this Consent Decree at the rate of 10 percent, pursuant to Ohio Revised Code § 1343.03.

XIV. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

101. In consideration of the settlement of this enforcement action under the Clean Water Act, the City shall conduct two Supplemental Environmental Projects, titled "The Duck Creek Wetland Restoration, Conservation and Public Access Project," or "Duck Creek Project," and the "Stickney West Industrial Park" ("SWIP") Project, respectively. Paragraphs 102 - 110 address the Duck Creek Project and Paragraphs 111 - 122 address the SWIP Project.

102. The parties agree that the goals of the Duck Creek Project will be: 1) to secure water

quality improvement, 2) to restore, enhance and create wetlands in the Duck Creek basin, 3) to provide for public access to the project area for educational, recreational, and environmental purposes, 4) to mitigate the effects of storm water run off to the water quality, and 5) to apprise the public in the city of Toledo of the benefits of the Duck Creek Project.

103. The City will meet these goals by taking necessary actions: (a) to restore existing low ecological value wetlands in the Duck Creek riparian corridor to naturally functioning higher value wetlands; b) to place these wetlands in perpetual conservation, (c) to make improvements to roads, trails, and/or parking which will facilitate public access to the project area for recreational, educational, and environmental purposes, (d) to provide for vegetative buffer strips in the upland areas surrounding Duck Creek which will be designed to function as a filtering system for storm water run off that enters the creek, and (e) to sponsor a public outreach program about the Duck Creek Project. The public outreach program must acknowledge that the Project will be implemented as part of this Consent Decree.

104. The City shall expend not less than \$500,000 on this Project and this expenditure shall be for the purpose of improving water quality as more fully described above. No part of this expenditure shall include federal funds, including low interest federal loans, federal contracts of federal grants. Expenditures unrelated to the goals of the Duck Creek Project as stated above will not count towards the requisite expenditure of \$500,000.

105. Within 180 days following entry of this Consent Decree, the City shall submit a Project Plan for EPA approval for the Duck Creek Project outlining the preliminary scope of work for the Project. This plan shall describe the work to be conducted under the various phases of the Project including, but not limited to, Site Suitability Review, Design, Construction, and

Planting and Monitoring. The plan shall identify the specific wetland target sites which will be evaluated during the Site Suitability Review phase. Each phase shall include submittal for EPA approval of a detailed scope of work for the subsequent phase of the Project. The plan shall include a schedule of milestones for completing each phase and project area of the SEP.

106. The City may use outside consultants or agencies, contractors, or employees of any City agency or department to accomplish the tasks in the Duck Creek Project Plan. Project costs associated with using employees of the City shall be credited toward the Duck Creek Project costs at their actual pay rate and cost to City government.

107. Upon approval of the Duck Creek Project Plan by EPA, the City shall implement the plan according to the schedule of milestones included in the plan. The City shall submit a Duck Creek Project Completion Report no later than 5 years from the date of entry of this Consent Decree. The completion report shall contain the following information:

- a. A detailed description of the SEP as implemented;
- b. A description of the operating problems encountered and the solutions thereto;
- c. Itemized costs, documented by purchase orders, force accounts and receipts or canceled checks (which must be made available to the United States, if requested);
- d. A description of the environmental and public benefits resulting from the implementation of the Duck Creek Project.

108. If, following receipt of the Duck Creek Project Report, EPA determines that the Project has not been completed satisfactorily, and/or if the City fails to comply with any of the terms or provisions of the Duck Creek Project Plan requirements and this decree, and/or if the City fails to expend or obligate the full \$500,000 on the Duck Creek Project in accordance with

the SEP Plan requirements, the City shall pay any portion of the amount not expended or obligated on the Duck Creek Project, up to \$500,000, to the United States Treasury and the State of Ohio as a stipulated penalty in accordance with Paragraph 83.

109. The City hereby certifies that it is not required to perform or develop the Duck Creek Project by any federal, State, or local law or regulation; nor is the City required to perform the Duck Creek Project by agreement, grant, or as injunctive relief in this or any other case or in compliance with State or local requirements. The City further certifies that it has not received, and is not presently negotiating to receive credit for the Duck Creek Project in any other enforcement action.

110. Within 120 days of the approval of the Duck Creek Project Plan by EPA, the City shall start submitting progress reports on a quarterly basis. The progress report shall outline the status of each ongoing Duck Creek Project phase and identify any impediment which may delay project progress or completion.

111. The parties agree that the goals of the SWIP Project will be to clean up certain "brownfields" properties that have been abandoned or otherwise left in a state of disrepair so that such properties may be used for industrial or other beneficial purposes. Furthermore, EPA approves the City of Toledo, Ohio Supplemental Environmental Project Proposal For the Stickney West Industrial Park, dated November 27, 2000 ("SWIP SEP Proposal"), which documents the manner in which investigation and cleanup will be conducted and is attached as Exhibit "1."

112. The City will meet these goals by taking necessary actions to: (a) Investigate and assess environmental conditions at the Gorney Parcel 4, Shepherd, and Toledo Recycling North

Parcels (collectively, the "SWIP SEP Project Parcels"), as such properties are depicted on the photograph attached to the SWIP SEP Proposal as Exhibit "2;" and (b) Perform environmental remediation and restoration upon all or discrete portions of the SWIP SEP Project Parcels consistent with the State of Ohio's Voluntary Action Program standards, Ohio Revised Code Chapter 3746 et seq., and as described in the SWIP SEP Proposal.

113. The City shall expend not less than \$500,000 on the SWIP SEP Project and this expenditure shall be for the purpose of improving environmental quality as more fully described above. No part of this expenditure shall include federal funds, including low interest federal loans, federal contracts or federal grants. Expenditures unrelated to the goals of the SWIP Project as stated above will not count towards the requisite expenditure of \$500,000 and a minimum of \$300,000 will be spent toward actual remediation and restoration of the SWIP SEP Project Parcels as provided in the SWIP SEP Proposal. The City shall also sponsor a public information program designed to apprise the public in the City of Toledo of the benefits of the SWIP SEP Project. The public information program must acknowledge that the SWIP SEP Project will be implemented as a part of this Consent Decree.

114. Within 90 days following entry of this Consent Decree, the City shall submit to EPA a copy of signed contractual agreements to perform Task 1a pursuant to the SWIP SEP Proposal. Those agreements, which demonstrate a commitment to complete Phase I Property Assessments pursuant to the SWIP SEP Proposal, shall include a detailed description of the specific portions of the SWIP SEP Parcels which will be addressed and the specific technical plan for accomplishing the assessment and determining the scope and extent of remediation activities. The plan shall include a Project budget detailing assessment costs and estimating

remediation priorities and costs.

115. Within 90 days of completion of Task 1a in accordance with Paragraph 114 above, the City shall submit to EPA signed copies of contractual agreements to perform Task 1b pursuant to the SWIP SEP Proposal. These agreements, which demonstrate a commitment to complete Phase II Property Assessments, Preliminary Risk Assessment and underground storage tank ("UST") Investigations pursuant to the SWIP SEP Proposal, shall describe sampling and other activities that will be conducted under the SWIP SEP Project and shall include a detailed description of the specific portions of the SWIP SEP Parcels which will be addressed, the specific technical plan for accomplishing the activities and a Project budget detailing assessment and analytical costs.

116. Following completion of Task 1b in accordance with Paragraph 115 above, the City shall submit to EPA signed copies of contractual agreements to perform Tasks 2 and 3 pursuant to the SWIP SEP Proposal. These agreements, which demonstrate a commitment to complete cleanup of contaminated media, UST removal, building demolition and waste disposal, as described more fully in the SWIP SEP Proposal, shall include detailed descriptions of the specific portions of the SWIP SEP Parcels which will be addressed, the specific technical plans for accomplishing the activities, a Project budget detailing the costs to perform these activities and a schedule of milestones for completing each phase of Tasks 2 and 3.

117. Following completion of Tasks 2 and 3 in accordance with Paragraph 116 above, the City shall submit to EPA, signed copies of contractual agreements to perform Task 4 pursuant to the SWIP SEP Proposal. These agreements, which demonstrate a commitment to prepare NFAs for the SWIP SEP Parcels and prepare a SEP Completion report for the SWIP

Project, as more fully described in the SWIP SEP Proposal, shall include detailed descriptions of the specific portions of the SWIP SEP Parcels which will be addressed, a descriptions of the activities necessary to complete Task 4 and a Project budget detailing the costs to perform these.

118. The City may use outside consultants or agencies, contractors, or employees of any City agency or department to accomplish the tasks in the SWIP SEP Project. Projects costs associated with using employees of the City shall be credited toward the SWIP SEP Project costs at their actual pay rate and cost to City government.

119. The City shall submit a SWIP SEP Project Completion Report no later than 5 years from the date of entry of this Consent Decree. The Project Completion Report shall contain the following information:

- a. A detailed description of the SWIP SEP Project as implemented;
- b. A description of the operating problems encountered and the solutions thereto;
- c. Itemized costs, documented by purchase orders, force accounts and receipts or canceled checks (which must be made available to the United States, if requested);
- d. A description of the environmental and public benefits resulting from the implementation of the SWIP Project.

120. If, following receipt of the SWIP Project Completion Report, EPA determines that the Project has not been completed satisfactorily, and/or if the City fails to comply with any of the terms or provisions of the SWIP SEP Proposal and this decree, and/or if the City fails to expend or obligate the full \$500,000 on the SWIP Project in accordance with the SWIP SEP Proposal, the City shall pay any portion of the amount not expended or obligated on the SWIP Project, up to \$500,000, to the United States Treasury and the State of Ohio as a stipulated

penalty in accordance with Paragraph 83.

121. The City hereby certifies that it is not required to perform or develop any portion of the SWIP Project by any federal, State, or local law or regulation; nor is the City required to perform the SWIP Project by agreement, grant, or as injunctive relief in this or any other case or in compliance with State or local requirements. The City further certifies that all work done pursuant to the SWIP Project is not required to be performed by any other person under any contractual arrangement with the City. The City certifies that it has not received, and is not presently negotiating to receive credit for any portion of the SWIP Project in any other enforcement action.

122. Within 120 days of submitting signed contractual agreements to perform Task 1a pursuant to the SWIP SEP Proposal to EPA as described in Paragraph 114 above, the City shall start submitting progress reports on a quarterly basis. The progress report shall outline the status of each ongoing SEP project phase and identify any impediment which may delay project progress or completion.

XV. RIGHT OF ENTRY

123. U.S. EPA and Ohio EPA, and their representatives, contractors, consultants, and attorneys shall have the right of entry into and upon the Bayview WWTP, at all reasonable times, upon proper presentation of credentials, for the purposes of:

- (a) Monitoring the progress of activities required by this Consent Decree;
- (b) Verifying any data or information required to be submitted pursuant to this Consent Decree;
- (c) Obtaining samples and, upon request, splits of any samples taken by

Toledo or its consultants. Upon request, Toledo will be provided with splits of all samples taken by the United States or Ohio; and

(d) Otherwise assessing Toledo's compliance with this Consent Decree.

124. This Section XV, Right of Entry, in no way limits or affects any right of entry and inspection held by the United States, U.S. EPA, Ohio, and Ohio EPA pursuant to applicable federal or state laws, regulations, or permits.

XVI. PERMIT OBLIGATIONS

125. This Consent Decree does not authorize or approve the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Approval of such construction or modification shall be as required by applicable county, state, or federal laws or regulations, including applicable requirements of Ohio law with regard to permits to install.

126. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, nor shall it be interpreted to be such. This Consent Decree does not relieve Toledo of any obligation to apply for, obtain and comply with the requirements of any new or existing NPDES permit or to comply with any federal, state or local laws or regulations.

XVII. CERTIFICATION

127. Any report, plan, or other submission that Toledo is required by this Consent Decree to submit, including reports, plans or other submissions that Toledo is also required to submit by its NPDES Permit, shall be signed by an official or authorized agent of Toledo and shall include the following certification:

I certify under penalty of law that the document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

128. Toledo shall not object to the admissibility into evidence of any report, plan, or other submission prepared in accordance with this Paragraph or the information contained in said reports in any proceeding to enforce this Consent Decree.

XVIII. AMENDMENT OF AMENDED COMPLAINT

129. Pursuant to Rule 15(b), Federal Rules of Civil Procedure, the parties have consented and requested, and the Court hereby orders that the Amended Complaints of the United States and the State of Ohio be amended to conform to certain issues raised and evidence brought forth during the course of this civil action. The United States and the State of Ohio hereby add to their Amended Complaints the following claims: (1) the City of Toledo has violated and continues to violate Section 301 of the Clean Water Act, 33 U.S.C. § 1311(a), and Chapter 6111 of the Ohio Revised Code by discharging pollutants from CSOs in violation of general effluent limitations contained in Toledo's current permit; and (2) the City of Toledo has violated and continues to violate Section 301(a) of the Act, 33 U.S.C. § 1311(a), and Chapter 6111 of the Ohio Revised Code by discharging pollutants to waters of the State or United States from Toledo's Sanitary Sewer System through point sources without authorization under any NPDES permit or otherwise as provided in Section 301(a) of the Act.

XIX. EFFECT OF SETTLEMENT

130. This Consent Decree in no way affects or relieves Toledo of its responsibility to comply with any federal, state, or local law, regulation, or permit. The parties agree that Toledo is responsible for achieving and maintaining complete compliance with all applicable federal and State laws, regulations, and permits, and that compliance with this Consent Decree shall be no defense to any actions commenced pursuant to said laws, regulations, or permits.

131. Except as expressly provided herein, this Consent Decree is entered in full and final settlement of this action for all parties to the following extent: the Consent Decree resolves those civil claims specifically alleged in the United States' and Ohio's Amended complaints, as further amended by Paragraph 129 of this Consent Decree, that have occurred prior to July 1, 2001 that are disclosed in Monthly Operating Reports that were received by Ohio EPA before July 15, 2001, including all civil claims under the Act for the violations of numeric and general effluent limitations set forth in Toledo's NPDES permits, including Toledo's current permit, identified in the Preamble to this Decree as having the EPA permit number OH0027740, violations of monitoring requirements and bypassing prohibitions set forth in those same permits that occurred prior to July 1, 2001 that are disclosed in Monthly Operating Reports that were received by Ohio EPA before July 15, 2001. Nothing in this Consent Decree is intended to nor shall be construed to operate in any way to resolve: (a) any civil claim based upon matters not disclosed in Monthly Operating Reports received by Ohio EPA before July 15, 2001, except for SSD violations that were otherwise disclosed to Ohio EPA before July 15, 2001, or upon violations of any kind occurring in whole or in part on or after July 1, 2001; and (b) any criminal liability of Toledo.

132. The United States and Ohio expressly reserve all remedies available to them for all

violations of the Act or Ohio Revised Code Chapter 6111 not specifically described in Paragraph 131, above.

133. Nothing herein shall be construed to limit the authority of the United States or the State to undertake any action against any person, including Toledo, in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

134. Nothing herein shall be construed to limit the authority of the United States to act under Section 308 of the Act, 33 U.S.C. § 1318.

135. The United States and the State reserve any and all legal and equitable remedies available to enforce the provisions of this Decree.

136. This Consent Decree does not limit or affect the rights of Toledo, the State of Ohio, or the United States as against any third parties (except as provided by operation of law), nor does it limit the rights of third parties, not parties to this Consent Decree, against Toledo.

XX. FAILURE OF COMPLIANCE

137. The United States and Ohio reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree. Toledo reserves all legal and equitable defenses to enforcement under this Consent Decree which are not specifically waived.

XXI. CONTINGENT LIABILITY OF STATE

138. Ohio is a party plaintiff hereto pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e). Ohio shall have no liability under this Consent Decree, except as required by Section 309(e) of the Act in the event that the laws of Ohio prevent Toledo from raising revenues needed to comply with this Consent Decree. The Attorney General of the State of Ohio hereby certifies

that the present laws of Ohio do not prevent Toledo from raising revenues needed to comply with this Consent Decree.

XXII. COSTS OF SUIT

139. Each party shall bear its own costs and attorneys' fees in this action.

XXIII. PUBLIC COMMENT

140. The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice and an opportunity for public comment. Toledo shall not withdraw its consent to this Consent Decree during the period of governmental and judicial review between lodging and entry of this Consent Decree and hereby consents to entry of this Decree without further notice.

XXIV. PUBLIC DOCUMENTS

141. All information and documents submitted by Toledo to U.S. EPA or Ohio EPA pursuant to this Consent Decree shall be subject to public inspection, unless identified and supported as confidential by Toledo in accordance with 40 C.F.R. Part 2.

XXV. CONTINUING JURISDICTION

142. The Court shall retain jurisdiction over this case until termination of this Consent Decree in order to enforce or modify the Consent Decree and to interpret the rights and obligations of the parties to this Consent Decree. During the pendency of this Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate this Consent Decree.

XXVI. MODIFICATION

143. There shall be no material modification of this Consent Decree without written

approval by all parties to this Consent Decree and the Court. Any modification to this Consent Decree shall be in writing and signed by the parties. The parties may modify the schedule for elimination of SSDs in accordance with Paragraph 37.

XXVII. TERMINATION

144. This Consent Decree shall terminate after the United States and the State of Ohio have certified to this Court that Toledo has been in compliance with all provisions of this Consent Decree for a period of two years following completion of all construction of all improvements required by this Decree, including but not limited to completion of all projects required under Section XIV, Supplemental Environmental Projects.

The parties enter into this Consent Decree and submit it to the Court that it may be approved and entered.

FOR THE UNITED STATES OF AMERICA

Tom Sansonetti
THOMAS L. SANSONETTI
Assistant Attorney General
Environmental and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

DATED: 5.20.02

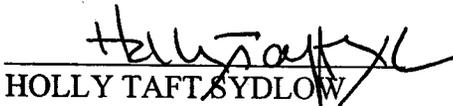
Consent Decree, *United States and State of Ohio v. City of Toledo, Ohio*, Civil Action No. 3:91:CV7646.



STEVEN D. ELLIS
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044
(202) 514-3163

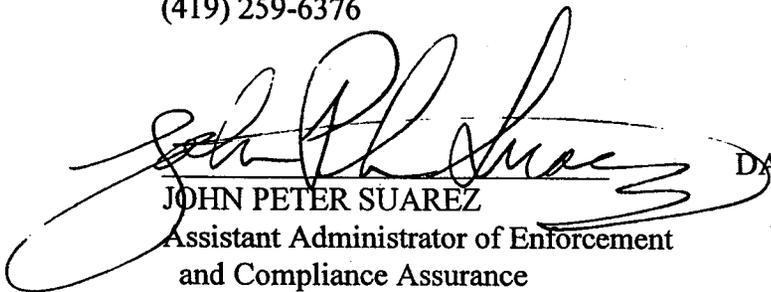
DATED: 8/26/02

EMILY M. SWEENEY
United States Attorney
Northern District of Ohio

By: 

HOLLY TAFT SYDLOW
Assistant United States Attorney
Northern District of Ohio
Western Division
Four Seagate, Suite 308
Toledo, Ohio 43604
(419) 259-6376

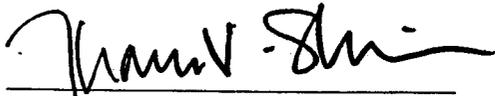
DATED: 8/28/02



JOHN PETER SUAREZ
Assistant Administrator of Enforcement
and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, D.C. 20460

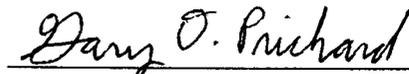
DATED: 8/26/02

Consent Decree, *United States and State of Ohio v. City of Toledo, Ohio*, Civil Action No. 3:91:CV7646.



DATED: 5-14-02

THOMAS V. SKINNER
Regional Administrator
United States Environmental Protection Agency
Region 5 (R-19J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590



DATED: 5-14-02

GARY O. PRICHARD
Associate Regional Counsel
United States Environmental Protection Agency
Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
(312) 886-0570

FOR THE STATE OF OHIO

BETTY MONTGOMERY
Attorney General of Ohio

By:

DATED: _____

MARGARET A. MALONE
Assistant Attorney General
Environmental Enforcement Section
Office of the Attorney General
30 East Broad Street/25th Floor
Columbus, Ohio 43215-3824

Consent Decree, *United States and State of Ohio v. City of Toledo, Ohio*, Civil Action No. 3:91:CV7646.

THOMAS V. SKINNER
Regional Administrator
United States Environmental Protection Agency
Region 5 (R-19J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

DATED: _____

GARY O. PRICHARD
Associate Regional Counsel
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77 West Jackson Boulevard
Chicago, Illinois 60604-3590
(312) 886-0570

DATED: _____

FOR THE STATE OF OHIO

BETTY MONTGOMERY
Attorney General of Ohio

By:


MARGARET A. MALONE
Assistant Attorney General
Environmental Enforcement Section
Office of the Attorney General
30 East Broad Street/25th Floor
Columbus, Ohio 43215-3824

DATED:

July 11, 2002

Consent Decree, *United States and State of Ohio v. City of Toledo, Ohio*, Civil Action No. 3:91:CV7646.

FOR THE CITY OF TOLEDO

By: *Barbara E. Herring*
BARBARA E. HERRING
Director of Law
City of Toledo
One Government Center, Suite 2250
Toledo, Ohio 43604

DATED: *8/15/02*

Consent Decree entered and approved this *16* day of *DECEMBER*, 2002.

James G. Carr
JAMES G. CARR, JUDGE
United States District Court
Northern District of Ohio, Western Division

TABLE 1
EFFLUENT LIMITATIONS FOR PARAGRAPHS 15 AND 68

Parameter	Concentration (mg/l)		Loading (kg/day)		Monitoring Rqmts.	
	30 day	7 day	30 day	7 day	Meas. Freq.	Sample Type
Total Suspended Solids	25	40	12,321	19,713	Daily	Composite
CBOD ₅	25	40	12,321	19,713	Daily	Composite

Monitoring for the parameter pH shall be continuous with the critical value reported daily. pH values shall not be less than 6.5 Standard Units (S.U.), nor greater than 9.0 S.U. Critical values shall be the minimum and maximum value reported each day.